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JOHN C. LINCOLN Certified Specialist in Estate and Trust Law,
State Bar of Arizona
MICHELLE M. LAUER Associate Attorney
ERAKA I. ELLISON Legal Assistant

June 15, 2015

**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463
Attn: Amy Rothstein and Esther Gyory
Assistant General Counsel

Re: ***Amended Request for Advisory Opinion***

Dear Counsel:

As you know, we represent Alexina Shaber in her capacity as trustee of the Joseph Shaber Revocable Living Trust U/T/D February 11, 2010 (the Trust). The Trust directs our client to make specific and residuary distributions to the National Libertarian Party, also known as the Libertarian National Committee, Inc. (LNC), in excess of the annual contribution limit pursuant to 52 U.S.C. § 30116(a)(1)(B). After some discussions, you asked us to explain why our client cannot distribute the LNC's share of the Trust to the segregated accounts it may have established under the Consolidated and Further Continuing Appropriations Act (CFCAA). The reason is simple and supported for centuries by the laws of equity: A trustee cannot dictate how a beneficiary receives his/her share unless directed by the settlor in the trust instrument to do so. *See* Restatement (Second) of Trusts §§ 164-169 (1959).

The primary duty of a trustee is to follow in good faith the terms and purposes of the trust. *See* Uniform Trust Code § 801 cmt. (Nat'l Conf. Comm. on Uniform State Laws 2010). Specifically, a trustee's job is to carry out the settlor's last wishes and distribute or manage

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the trust property according to the terms of the trust. In administering the trust, the trustee must comply with the obligation not to place the interests of others above those of the beneficiaries. *Id.*

Perhaps the most fundamental duty charged to the trustee is the duty of loyalty to administer the trust solely in the interests of the beneficiaries. *See* Restatement (Second) of Trusts § 170(1) (1959). A trustee's duty of loyalty to the beneficiaries is a principle sometimes expressed as the obligation of the trustee not to place the trustee's own interests over those of the beneficiaries. *See* Uniform Trust Code § 802 cmt. (Nat'l Conf. Comm. on Uniform State Laws 2010).

The LNC declined to accept our client's proposal to distribute its share to the segregated accounts authorized by the CFCAA. The Trustee has no power to require that the beneficiary accept the beneficiary's share in a way not required by the Settlor. The Settlor directed that the distribution be made to the LNC outright. It is therefore entirely up to the LNC how it wishes to apply the distribution.

Therefore, on behalf of our client, we request an advisory opinion on whether our client as trustee would comply with federal election law if she were to engage an independent third party escrow agent, not controlled by the LNC, to receive the LNC's distributions under specific restrictive instructions to distribute annually to the LNC only the annual contribution limit permitted under said federal election law.

The Facts:

Joseph Shaber, as settlor and original trustee, established the Trust by executing a trust declaration on February 11, 2010. Pursuant to Article 5.1(e) of the Trust, the trustee is to distribute a specific monetary gift in the amount of \$50,000 to the LNC upon the settlor's death. In addition, pursuant to Articles 5.4(a) and (b), the trustee is also to distribute fifty percent of the residue of the trust estate to the LNC upon the settlor's death. Enclosed is a copy of the relevant Articles of the Trust as Exhibit A.

The settlor passed away on August 23, 2014, and therefore the Trust became irrevocable. Our client, Ms. Shaber, became the successor trustee pursuant to Article 7.2 of the Trust. On or about February 23, 2015, our client distributed to the LNC a portion of the specific monetary gift, the sum of \$33,400, in compliance with the federal election law contribution limit. The LNC is entitled to the balance of \$16,600 from the \$50,000 specific gift.

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In addition, our client has the duty to distribute fifty percent of the residue of the trust estate to the LNC. The LNC's said share is approximately \$175,000. Our client will have to keep the trust administration open for an estimated period of six years in order to distribute the LNC's full share of approximately \$191,600 given the contribution limit. This will require the Trust to incur ongoing fees, costs and expenses of administration, including annual tax filings, for six years and adversely impact the LNC's ultimate share amount. Our client would like to avoid extending the trust administration and its related expenses by taking the following action if doing so will not violate federal election law. Specifically, our client proposes to make a final distribution of the LNC's full share under the Trust to an independent third party escrow agent, not controlled by the LNC. The escrow agent would maintain the funds until exhausted and distribute annually to the LNC only the allowed contribution limit.

Existing Authority:

The existing authority seems to support the action our client wishes to take in distributing the LNC's share to an independent third party escrow agent. Namely, Advisory Opinion 1999-14 reversed earlier advisory opinions that permitted a political committee to set up a separate bank account under the political party's control to take testamentary bequests exceeding contribution limitations, with the promise it would not disburse to itself more than the annual limit, or otherwise benefit (e.g., via a pledge) from the funds held in the segregated account. This Advisory Opinion focused on 11 CFR 110.1, the regulation that discusses contribution limits, and concluded that federal election law was violated because the entire contribution had been delivered to the political committee in such a segregated account under the control of the political committee.

Advisory Opinion 2004-02 is instructive in that it authorizes testamentary trusts (trust created in a Will) to distribute a bequest in installments equal to the annual contribution limit over a period of years. The Advisory Opinion makes the point that a bequest can be spread out over a period of years, so long as control is not turned over to the political committee.

Analysis:

The facts in our case are distinguishable from those in Advisory Opinions 1999-14 and 2004-02. Our client proposes to deliver the LNC's full share to an independent third

party escrow agent with no control available to the LNC to compel disbursements to itself. Our client intends to instruct the escrow agent not to make distributions over the contribution

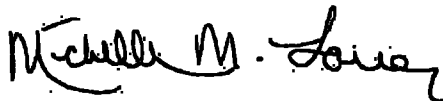
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limits permitted. This appears to comply with the authority of Advisory Opinion 1999-14.

Also, the independent third party escrow agent would spread the LNC's share of the Trust over a period of years and only distribute the annual contribution limit until the funds are exhausted. The LNC will have no control over the escrow agent or the funds maintained by the escrow agent. Neither our client or the escrow agent will be an officer, director, employee, member, agent, or affiliated organization of the LNC. Enclosed as Exhibit B is the proposed Escrow Agreement for your review. Our client's proposed action appears to comply with the authority in Advisory Opinion 2004-02.

Nevertheless, we defer to the FEC's analysis and look forward to your advisory opinion. Please let us know if we can provide further information to assist you.

Sincerely,



JOHN C. LINCOLN
MICHELLE M. LAUER

cc: Alexina Shaber, Trustee



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JOHN C. LINCOLN Certified Specialist in Estate and Trust Law,
State Bar of Arizona
MICHELLE M. LAUER Associate Attorney
ERAKA I. ELLISON Legal Assistant

May 6, 2015

**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: Request for Advisory Opinion

Dear Counsel:

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The Facts:

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The settlor passed away on August 23, 2014, and therefore the Trust became irrevocable. Our client, Ms. Shaber, became the successor trustee pursuant to Article 7.2 of the Trust. On or about February 23, 2015, our client distributed to the LNC a portion of the specific monetary gift, the sum of \$33,400, in compliance with the federal election law contribution limit. The LNC is entitled to the balance of \$16,600 from the \$50,000 specific gift.

In addition, our client has the duty to distribute fifty percent of the residue of the trust estate to the LNC. The LNC's said share is approximately \$175,000. Our client will have to keep the trust administration open for an estimated period of six years in order to distribute the LNC's full share of approximately \$191,600 given the contribution limit. This will require the Trust to incur ongoing fees, costs and expenses of administration, including annual tax filings, for six years and adversely impact the LNC's ultimate share amount. Our client would like to avoid extending the trust administration and its related expenses by taking the following action if doing so will not violate federal election law. Specifically, our client proposes to make a final distribution of the LNC's full share under the Trust to an independent third party escrow agent, not controlled by the LNC. The escrow agent would maintain the funds until exhausted and distribute annually to the LNC only the allowed contribution limit.

Existing Authority:

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Advisory Opinion 2004-02 is instructive in that it authorizes testamentary trusts (trust created in a Will) to distribute a bequest in installments equal to the annual contribution limit over a period of years. The Advisory Opinion makes the point that a bequest can be spread out over a period of years, so long as control is not turned over to the political committee.

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Analysis:

The facts in our case are distinguishable from those in Advisory Opinions 1999-14 and 2004-02. Our client proposes to deliver the LNC's full share to an independent third party escrow agent with no control available to the LNC to compel disbursements to itself. Our client intends to instruct the escrow agent not to make distributions over the contribution limits permitted. This appears to comply with the authority of Advisory Opinion 1999-14.

Also, the independent third party escrow agent would spread the LNC's share of the Trust over a period of years and only distribute the annual contribution limit until the funds are exhausted. The LNC will have no control over the escrow agent or the funds maintained by the escrow agent. Neither our client or the escrow agent will be an officer, director, employee, member, agent, or affiliated organization of the LNC. Enclosed as Exhibit B is the proposed Escrow Agreement for your review. Our client's proposed action appears to comply with the authority in Advisory Opinion 2004-02.

Nevertheless, we defer to the FEC's analysis and look forward to your advisory opinion. Please contact us if we can provide further information to assist you.

Sincerely,



JOHN C. LINCOLN
MICHELLE M. LAUER

cc: Alexina Shaber, Trustee

Exhibit A

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ARTICLE FIVE. DISTRIBUTIONS AFTER SETTLOR'S DEATH

- (e) The sum of fifty thousand dollars (\$50,000) to The National Libertarian Party.

5.4 Disposition of Trust Estate

On the death of the settlor, the trust estate (except for the special gifts that are to be distributed pursuant to the special gift provisions above) shall be disposed of as follows:

(a) The trustee shall divide the trust property (including all income then accrued but uncollected and all income then remaining in the hands of the trustee) into the following shares:

(ii) A share of twenty-five (25) percent of the total trust property for The National Libertarian Party; and

(iii) A share of fifty (50) percent of the total trust property for the settlor's grandchildren, or if the settlor has no grandchildren, such fifty percent shall be divided in equal shares between . and The National Libertarian Party.

(b) Any share created for . and/or The National Libertarian Party shall be distributed outright to such beneficiary.

Exhibit B

ESCROW AGREEMENT

This escrow agreement (Agreement) made this ____ day of _____, 2015, by ALEXINA SHABER (Trustee), as Trustee of the Joseph Shaber Revocable Trust dated February 11, 2010 (the Trust), LIBERTARIAN NATIONAL COMMITTEE, INC., a District of Columbia nonprofit corporation doing business as the Libertarian Party® (LP), located at 1444 Duke Street, Alexandria, Virginia 22314, and _____, an Arizona banking corporation (Escrow Agent), located at _____, Arizona, based on the following facts.

A. The Trust became irrevocable upon the death of the Settlor Joseph Shaber on August 23, 2014. LP is named as a beneficiary of the Trust. The Trustee, through counsel, has determined that LP's full share of the Trust Estate is approximately \$225,000 (LP's Share), which the Trustee must distribute to the LP.

B. LP is the governing body of the national Libertarian Party®, and the owner of the federally-registered trademark, Libertarian Party®. LP has been officially recognized by the Federal Election Committee (FEC) as the national political party committee of the Libertarian Party®. As a national political party committee, contributions by the Trust Estate to LP are currently limited under Federal campaign finance law to the sum of not more than \$33,400 per calendar year, as adjusted for inflation by the FEC in the future or as otherwise changed by law or court decision in the future (Contribution Limit).

C. Because LP's Share exceeds the Contribution Limit, the Trustee and LP have agreed that the Trustee will fulfill her obligation to distribute LP's Share by depositing in escrow with Escrow Agent \$191,600 of LP's Share (Escrow Fund). The Trustee and LP acknowledge that the Trustee already distributed \$33,400 of LP's Share to LP for the 2015 calendar year.

D. The Trustee and LP desire to designate Escrow Agent as the escrowee of the Escrow Fund.

ACCORDINGLY, TRUSTEE, LP AND ESCROW AGENT AGREE:

1. **Escrow Agent.** The Trustee and LP designate Escrow Agent, and Escrow Agent agrees to act, as escrowee for the purposes and upon the conditions set forth in this Agreement.

2. **Deposit of Escrow Fund.** The Trustee of the Trust shall deliver \$191,600 of LP's Share to the Escrow Agent and upon such delivery all duty, responsibility and liability of the Trustee to LP shall terminate. LP shall deliver to the Trustee a duly executed receipt and release, a copy of which is attached hereto as Exhibit A. All interest accruing on the Escrow Fund shall be deemed part of the Escrow Fund. Escrow Agent

shall invest the Escrow Fund in the name of Escrow Agent, for the benefit of LP, with all interest taxable to LP, in bank accounts or certificates of deposit fully insured by the Federal Deposit Insurance Corporation. LP agrees to sign and deliver such W-9 forms or other statements as Escrow Agent may reasonably request.

3. Distribution of Escrow Fund; Termination of Escrow. The Escrow Agent shall distribute the Escrow Fund only in increments equal to the Contribution Limit. Counsel for LP shall notify the Escrow Agent in writing on or before February 28 of each calendar year, commencing in calendar year 2016, of the (current bi-annually adjusted) Contribution Limit. Such notification shall contain a statement that distribution of funds equal to the Contribution Limit to LP from the Escrow Fund does not violate any applicable Federal or State laws and regulations. A check payable to LP, shall be mailed via regular United States mail to LP on or before January 15 of each calendar year, commencing in calendar year 2016. LP understands that under no circumstances may it request or require that the Escrow Agent pay to LP in any calendar year an amount that would exceed the Contribution Limit. Escrow Agent understands that LP may challenge the legal validity of the Contribution Limit in federal court. In the event that LP is successful in that challenge, LP may be able to certify to the Escrow Agent that the Contribution Limit equals the entire balance of the Escrow Fund, which Escrow Agent can then pay to LP. This Agreement shall terminate automatically when the entire Escrow Fund has been delivered to LP. The provisions of this Agreement that release the Escrow Agent from liability and/or limit the liability of the Escrow Agent and/or indemnify the Escrow Agent from liability and other provisions which by their nature contemplate rights and obligations of the parties to be enjoyed or performed after the expiration or termination of this Agreement will survive until their purposes are fulfilled.

4. Liability of Escrow Agent. Upon distributing the Escrow Fund and performing its obligations and services under this Agreement, Escrow Agent shall be released from any further liability under this Agreement. Escrow Agent shall have no obligation under this Agreement except to exercise good faith and ordinary care, and its good faith shall be conclusively presumed where it relies upon: (i) advice of counsel; or (ii) any document it believes to be genuine. Escrow Agent may act upon receipt of any certificate or other written document, and shall have no responsibility to determine or inquire into or otherwise corroborate the happening or occurrence of any event or condition described in such certificate or document or to determine whether the distribution of any amounts from the Escrow Fund complies with applicable Federal or State laws and regulations, including those related to campaign finance.

In the event of any disagreement or controversy under this Agreement or if Escrow Agent in good faith is in doubt as to what action it should take with respect to the Escrow Fund, Escrow Agent shall have the absolute right at its election to take any or all of the following actions:

(a) Hold the Escrow Fund until the Escrow Agent and LP agree upon the proper disposition of it; or

(b) Hold the Escrow Fund until Escrow Agent receives a court order concerning the disposition of the Escrow Fund in form and substance satisfactory to Escrow Agent; or

(c) File an interpleader action in an appropriate court naming LP and all other claimants and interested parties as parties, and deposit the Escrow Fund with the clerk of such court in full satisfaction of its responsibilities under this Agreement.

(d) Exercise any other rights or remedies available to it at law or in equity.

In any such event, Escrow Agent shall be reimbursed from the Escrow Fund for its reasonable attorneys' fees in taking such actions.

5. Indemnity; Exculpation. LP shall indemnify, hold harmless, and, at Escrow Agent's option, defend Escrow Agent from and against any loss, liability, claim or expense, including, without limitation, reasonable attorney fees and court costs arising as a result of Escrow Agent's acceptance of the Escrow Fund or the performance of Escrow Agent's duties under this Agreement unless such loss, liability, claim or expense is finally adjudicated to have resulted from the bad faith or gross negligence of Escrow Agent. Such indemnity, hold harmless and defense obligations shall survive Escrow Agent's resignation or removal and shall survive the termination of this Agreement. In no event shall Escrow Agent be liable, directly or indirectly, for any (a) diminution in the value of the Escrow Fund; (B) damages or expenses arising out of Escrow Agent's performance of this Agreement, other than damages and expenses that result from Escrow Agent's failure to act in accordance with this Agreement, or actions taken in bad faith or gross negligence; or (c) special or consequential damages, even if Escrow Agent has been advised of the possibility of such damages.

6. Resignation. Escrow Agent may resign for any reason, or without reason, in its sole discretion by giving thirty (30) days written notice to LP. Thereafter, and after payment of Escrow Agent's fees and expenses incurred to that point, or the offset of such fees against the distributions payable to LP under this Agreement, Escrow Agent shall deliver the Escrow Fund to a successor Escrow Agent, as appointed in writing by LP. If no such written notice of appointment is received by Escrow Agent within thirty (30) days after the notice of resignation, Escrow Agent is unconditionally and irrevocably authorized and empowered to pay over and distribute the Escrow Fund to such bank or trust company in the State of Arizona as Escrow Agent shall determine in its sole discretion and which has consented to act as escrow agent on substantially the same terms as set forth in this Agreement, or if none is available or willing to serve as Escrow Agent,

to file an interpleader action as described in Subsection 4(c) and deposit the Escrow Fund with the clerk of the court as described in that Subsection.

7. **Escrow Fee.** Escrow Agent agrees to act as the Escrow Agent pursuant to this Agreement in return for a \$ _____ fee, plus reimbursement of Escrow Agent's attorneys' fees to review this Agreement (estimated at no more than \$ _____), which shall be paid by LP upon signature of this Agreement by all parties. If Escrow Agent is ever in good faith in doubt of its obligations to carry out its duties under this Agreement, Escrow Agent may consult its attorneys for advice regarding carrying out its duties under this Agreement and may offset the amount of reasonable attorneys' fees thereby incurred from the distributions payable to LP under this Agreement. If any fees or other sums owed to Escrow Agent under this Agreement are not paid promptly when due, Escrow Agent may offset such sums against the distributions payable to LP under this Agreement.

8. **Successors and Assigns.** This Agreement shall bind and benefit the Estate, LP and Escrow Agent, and their respective successors, heirs, personal representatives, and assigns.

9. **Notices and Amendments.** Any and all notices or notifications provided to the Escrow Agent by counsel for LP relating to the Escrow Fund shall be made in writing, certified by legal counsel for LP. All notices or other communications to be given under this Agreement shall be deemed to have been duly given, made, and received when delivered personally or mailed by certified mail, return receipt requested and first class postage prepaid, to the parties' addresses set forth above, or to such other addresses as may be designated by a similar written notice. No amendment of this Agreement, in whole or in part, shall be effective unless in writing signed by the parties to this Agreement.

10. **Choice of Law and Forum.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Arizona. Any and all actions concerning any dispute arising hereunder shall be filed and maintained in a State or Federal court sitting in Maricopa County, Arizona. The parties hereby consent to the jurisdiction of any such court and consent to venue in any such court.

11. **Counterparts.** This Agreement may be signed in two or more counterparts, which together shall comprise one and the same instrument. Faxed or scanned signatures on this Agreement shall be deemed to have the same legal effect as original signatures.

12. **Entire Agreement.** This Agreement embodies the entire agreement of the parties with respect to the subject matter of this Agreement. All prior discussions are merged in this Agreement.

The parties have signed this Agreement and intend it to be effective as of the date set forth above.

ALEXINA SHABER, Trustee of the
Joseph Shaber Revocable Trust dated
February 11, 2010

**LIBERTARIAN NATIONAL
COMMITTEE, INC. d/b/a the
Libertarian Party®**

By _____

Its _____

BANK

By _____

Its _____

EXHIBIT A

Receipt and release

RECEIPT, RELEASE, AND INDEMNITY AGREEMENT
in the
JOSEPH SHABER REVOCABLE LIVING TRUST

I, Wes Benedict, Executive Director, on behalf of the Libertarian National Committee, Inc. (LNC), a beneficiary of the Joseph Shaber Revocable Living Trust U/T/D February 11, 2010, hereby acknowledge receipt of the sum of \$ _____, which constitutes the LNC's full distributive share of the said Trust.

I further acknowledge that the LNC has received an Accounting of the Trust Estate. The LNC has reviewed the Accounting, and acknowledges that it is a complete and satisfactory accounting of the Trustee's administration of the Trust Estate. The LNC has no objections to any of the items of expenditure listed thereon, and believes that the Accounting is correct. In consideration of this full and final distribution having been made to the LNC, the LNC hereby grants the Trustee a full discharge regarding the administration of the Trust Estate, and release the Trustee from all further responsibility regarding the administration of the Trust Estate.

The LNC agrees to indemnify and hold the Personal Representative harmless from any and all claims of creditors and income taxes of the decedent, and of the estate, to the extent of my proportionate share of the estate, and to the extent only of the amount received by the LNC.

Signed and agreed this ____ day of _____, 2015.

LIBERTARIAN NATIONAL COMMITTEE, INC.
1444 Duke Street
Alexandria, Virginia 22314

By: _____
Wes Benedict, Executive Director
Its Authorized Agent