



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 11, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2015-05

John C. Lincoln, Esq.
Michelle M. Lauer, Esq.
John C. Lincoln Law Offices
3514 E. Indian School Road
Phoenix, AZ 85018

Dear Mr. Lincoln and Ms. Lauer:

We are responding to your advisory opinion request on behalf of Alexina Shaber concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to Ms. Shaber’s proposal to engage an independent third-party escrow agent to receive certain funds bequeathed to the Libertarian National Committee (the “Committee”) under the terms of a trust for which Ms. Shaber is the trustee. The Commission concludes that the proposal as described in the request is permissible.

Background

The facts presented in this advisory opinion are based on your advisory opinion request, consisting of letters received on May 20 and June 22, 2015.

Alexina Shaber is the trustee of a trust established by Joseph Shaber, the settlor and original trustee, on February 11, 2010. Upon the death of the settlor on August 23, 2014, the trust became irrevocable and Ms. Shaber became the successor trustee.

Under the terms of the trust, the trustee is to distribute to the Committee upon the settlor’s death a specific monetary gift of \$50,000, plus fifty percent of the residue of the trust estate. In February 2015, Ms. Shaber distributed to the Committee a portion of the specific monetary gift, in the amount of \$33,400, “in compliance with the federal election law contribution limit.” Advisory Opinion Request at AOR002. Half of the residue of the trust

estate is valued at approximately \$175,000. Thus, the amount remaining to be distributed to the Committee under the trust is approximately \$191,600, comprising \$16,600 remaining from the \$50,000 specific gift and the \$175,000 residual distribution.

The Committee has declined to accept any of the remaining distribution into a segregated account established pursuant to the Consolidated and Further Continuing Appropriations Act, 2015.¹ AOR002. The request states that Ms. Shaber, as trustee, “has no power to require that the [Committee] accept [its] share in a way not required by the Settlor.” *Id.* (emphasis in original). Instead, because the settlor “directed that the distribution be made to the [Committee] outright,” the request states that it is “entirely up to the [Committee] how it wishes to apply the distribution.” *Id.*

Given the annual limit on contributions to national party committees, Ms. Shaber estimates that she will need to administer the trust for a period of six years to distribute the Committee’s full share into its general account. The request states that this continued administration will require the trust to incur ongoing fees and other expenses, including for annual tax filings, and adversely impact the Committee’s share amount. To avoid extending the trust administration and incurring related expenses, Ms. Shaber proposes to make a final distribution of the Committee’s full share under the trust to an independent third-party escrow agent. The Committee will have “no control over the escrow agent or the funds maintained by the escrow agent,” and the escrow agent will not be an officer, director, employee, member, agent, or associated organization of the Committee. AOR004. Ms. Shaber will instruct the escrow agent to distribute annually to the Committee’s general account the full amount permissible under the relevant contribution limit until the funds are exhausted.

Question Presented

May Ms. Shaber engage an independent third-party escrow agent to receive the funds designated for the Committee under the trust and to disburse annually to the Committee the maximum amount permissible under the Act and Commission regulations?

Legal Analysis and Conclusion

Yes, under the Act and Commission regulations, Ms. Shaber may engage an independent third-party escrow agent to receive the funds designated for the Committee under the trust and to disburse annually to the Committee’s general account the maximum amount permissible under the Act, as described in the request.

The Act and Commission regulations limit contributions from any “person” to the general

¹ The Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2772 (2014), amended the Act by establishing separate limits on contributions to three types of segregated accounts of national party committees. 52 U.S.C. § 30116(a)(1)(B), (2)(B), (9). For 2015, the limit on contributions by individuals to each segregated account is \$100,200. Contribution Limits for 2015-2016 Federal Elections, http://www.fec.gov/ans/answers_general.shtml#How_much_can_I_contribute (last visited July 9, 2015).

account of a national party committee to \$25,000 per calendar year, indexed for inflation.² 52 U.S.C. § 30116(a)(1)(B), (c); 11 C.F.R. § 110.1(c)(1). The Act defines a “person” to include “an individual,” 52 U.S.C. § 30101(11); *see also* 11 C.F.R. § 100.10, and the Commission has previously concluded that the testamentary estate of a decedent is the successor legal entity to the individual testator. *See, e.g.*, Advisory Opinion 2004-02 (National Committee for an Effective Congress) (“NCEC”) at 3; Advisory Opinion 1999-14 (Council for a Livable World) at 2. As such, the testamentary estate qualifies as a “person” under the Act and is subject to the same limitations and prohibitions as the decedent would be subject to if he were still living and making the contributions directly.³ *See, e.g.*, Advisory Opinion 2004-02 (National Committee for an Effective Congress) (“NCEC”) at 3; Advisory Opinion 1999-14 (Council for a Livable World) at 2; *see also* Advisory Opinion 1983-13 (National Maritime Union Political and Legislative Organization on Watch) (explaining that Commission “will apply the Act and its limits to [the testamentary estate of a decedent] as the alter ego of the living testator”). Thus, an estate may distribute a decedent’s bequeathed contributions but may not exceed the relevant contribution limits in doing so. *See* Advisory Opinion 1999-14 (Council for a Livable World) at 3 (superseding prior opinions that had permitted lump-sum distributions of bequeathed contributions in excess of contribution limits); *see also* Advisory Opinion 2004-02 (NCEC).

The proposal presented here, in which Ms. Shaber would place into escrow the sums remaining to be distributed to the Committee from the decedent’s estate, is similar to a proposal approved by the Commission in Advisory Opinion 2004-02 (NCEC). In that advisory opinion, a nonconnected political committee proposed to accept bequests from testamentary trusts that were created and funded through the estates of individuals who were legally qualified at the time of their deaths to make contributions under the Act. *Id.* at 1. The terms of the trusts would limit each trust to making the maximum annual contribution permitted under the Act. *Id.* The testators or executors of the estates would select the trustees, and the trustees would exercise no discretion regarding the amount of the contributions. *Id.* at 2. The recipient political committee would have no involvement in the administration of the trusts, and the trusts would include as a condition of their contributions that the recipient political committee could not pledge, assign, or otherwise obligate anticipated contributions. *Id.* The Commission found that the political committee could “accept contributions under [these terms] because the testamentary trust . . . [was] beyond [the political committee’s] control.” *Id.* at 3.

Here, likewise, Ms. Shaber will deliver the full amount of the remaining bequest to an

² For 2015, the limit on contributions by an individual to a national party committee’s general account is \$33,400 annually. Contribution Limits for 2015-2016 Federal Elections, http://www.fec.gov/ans/answers_general.shtml#How_much_can_I_contribute (last visited July 6, 2015).

³ The Commission has previously articulated this principle as subjecting a testamentary estate to the same limitations and prohibitions “applicable to the decedent in the decedent’s lifetime.” *See, e.g.*, Advisory Opinion 2004-02 (NCEC) at 3. The Commission clarifies that this means that a contribution made by a testamentary estate is subject to the limitations and prohibitions that would apply to the decedent if he were alive when the estate makes the contribution. For example, if an individual were to die in 2016 and bequeath to a committee a contribution that his estate were to disburse in 2018, the 2018 contribution limit would apply to that contribution. Regarding the Act’s prohibitions, nothing in the instant request suggests that the decedent, Joseph Shaber, was a foreign national or otherwise prohibited from making contributions during his lifetime.

independent third-party escrow agent, and the Committee will have no control over the funds maintained in the escrow account.⁴ Ms. Shaber will direct the escrow agent to disburse annually to the Committee the maximum amount permissible under the Act and Commission regulations until the funds are exhausted.⁵ The Commission, therefore, determines that the proposed method of disbursing the bequest to the Committee through an independent third-party escrow agent is permissible under the Act and Commission regulations.

The Commission expresses no opinion regarding the potential application of tax law or trust and estate law to the proposed activities because those questions are not within the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in this advisory opinion request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for her proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,



Ann M. Ravel
Chair

⁴ The Commission assumes that the fiduciary relationship between the escrow agent and the Committee, and the final terms of the Escrow Agreement, will not be such as to enable the Committee to exercise control over the undisbursed funds.

⁵ The Commission notes that the Committee may not pledge, assign, or otherwise obligate the anticipated contributions before they are disbursed. *See* Advisory Opinion 2004-02 (NCEC) at 2.