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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 17-03-A**  
**AGENDA ITEM**  
**For meeting of January 25, 2017**

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*  
Acting General Counsel

Adav Noti *AN*  
Associate General Counsel

Neven F. Stipanovic *NFS by AN*  
Acting Assistant General Counsel

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Attorney

Subject: AO 2016-25 (Mike Pence for Indiana) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on January 24, 2016.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2016-25

2

3 Matthew E. Morgan, Esq.

4 Barnes & Thornburg LLP

5 11 S. Meridian Street

6 Indianapolis, IN 46204-3535

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8 Dear Mr. Morgan:

**DRAFT A**

9           We are responding to your advisory opinion request on behalf of Mike Pence for Indiana  
10 concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the  
11 “Act”), and Commission regulations to the requestor’s spending of nonfederal funds for certain  
12 expenses related to winding down its state campaign operations. The Commission concludes  
13 that the requestor may spend the nonfederal funds in its campaign account for these activities as  
14 long as such spending is consistent with state law.

15 ***Background***

16           The facts presented in this advisory opinion are based on your letter received on  
17 December 12, 2016 and publicly available information filed with the Commission and the  
18 Indiana Secretary of State.

19           Michael Pence is the Vice President of the United States and a former Governor of  
20 Indiana. Until July 15, 2016, he was a candidate for re-election as Governor, with the requestor  
21 as his campaign committee organized under state law.<sup>1</sup> Advisory Opinion Request (“AOR”)  
22 at 1. Upon Mr. Pence’s nomination for federal office, according to the request, the requestor  
23 ceased raising funds, paid all expenses it had accrued up to that point, and applied a reasonable  
24 accounting method to determine the amount of remaining funds that were federally permissible  
25 in amount and source. *Id.* These federally permissible funds were contributed to other

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<sup>1</sup> Pence, Michael Richard, Indiana State Form 4604, Amend, at 1 (Jan. 16, 2014),  
<https://campaignfinance.in.gov/INCF/TempDocs/7265ac92-34b9-4628-a50c-46c1f722bed8.pdf>.

1 committees and refunded to eligible donors, and no such funds remain in the campaign account.

2 *Id.* The requestor has retained a surplus of “nonfederal funds”—those that were raised consistent  
3 with state law but fall outside the Act’s contribution limits and source restrictions, *see* 52 U.S.C.  
4 § 30125(e)—in its state campaign account.<sup>2</sup> *Id.*

5 ***Questions Presented***

6 1. *May the requestor use nonfederal funds in its state campaign account to pay for the*  
7 *storage of nonfederal campaign assets that are solely owned by the requestor, such as*  
8 *files, filing cabinets, desks, chairs, and a vehicle—not to be used by any active state*  
9 *or federal campaign—before being disposed of properly under the Act?*

10 2. *May the requestor use nonfederal funds in its state campaign account to pay for*  
11 *either legal or accounting expenses necessary to comply with Indiana campaign*  
12 *disclosure requirements applicable to state campaign committees?*

13 3. *May the requestor use nonfederal funds in its state campaign account to pay for the*  
14 *legal and accounting expenses typically associated with winding down a campaign*  
15 *committee following the distribution or disposal of assets?*

16 ***Legal Analysis and Conclusion***

17 Yes, the requestor may use nonfederal funds in its state campaign account to pay for the  
18 storage of state campaign assets, legal or accounting expenses necessary to comply with state

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<sup>2</sup> Indiana differs from federal law by, for instance, permitting candidates to accept certain contributions from corporations and unlimited contributions from individuals. *See* Ind. Code § 3-9-2-3 (providing that certain corporations “may make a contribution to aid in the . . . election or defeat of a candidate”); Indiana Election Division, 2016 Indiana Campaign Finance Manual (October 2015) at 66, [http://www.in.gov/sos/elections/files/2016\\_Campaign\\_Finance\\_Manual\\_Complete.pdf](http://www.in.gov/sos/elections/files/2016_Campaign_Finance_Manual_Complete.pdf) (noting that, “[u]nder Indiana law, individuals may make an unlimited amount of contributions to candidates”).

1 disclosure requirements applicable to state committees, and legal or accounting expenses for  
2 winding down the state campaign, provided that such spending is consistent with state law.

3 A federal candidate or officeholder, or an entity directly or indirectly established,  
4 financed, maintained, or controlled by, or acting on behalf of, a federal candidate or officeholder  
5 may solicit, receive, or spend funds in connection with a state election “only in amounts and  
6 from sources that are consistent with State law, and that do not exceed the Act’s contribution  
7 limits or come from prohibited sources under the Act.” 11 C.F.R. § 300.62; *see* 52 U.S.C.  
8 § 30125(e)(1)(B). The Act provides an exception, however, in certain circumstances where a  
9 federal candidate or officeholder “is or was also a candidate for State or local office.” 52 U.S.C.  
10 § 30125(e)(2). Such a candidate or officeholder may solicit, receive, or spend nonfederal funds  
11 as long as that solicitation, receipt, or spending: (1) is “solely in connection with such election  
12 for State or local office”; (2) “refers only” to him or her, to other candidates for that same state or  
13 local office, or both; and (3) is permitted under state law. *See id.*; 11 C.F.R. § 300.63. The  
14 Commission has explained that this rule is intended “to provide an equitable basis for a Federal  
15 officeholder or candidate to conduct his or her campaign for non-Federal office so that he or she  
16 is not financially disadvantaged when competing with a non-Federal opponent who may raise  
17 and spend funds without the same restrictions that [the Act] imposes on Federal candidates and  
18 officeholders.” Advisory Opinion 2007-26 (Shock) at 6; *see also* Advisory Opinion 2009-06  
19 (Risch) at 3 (concluding that federal candidate may solicit nonfederal funds to retire debts of  
20 previous state campaign); Advisory Opinion 2007-01 (McCaskill) at 4 (same).

21 Here, the restrictions of section 30125(e)(1)(B) apply to the requestor because it is an  
22 entity established, financed, maintained, or controlled by Mr. Pence, a federal officeholder.  
23 *See* Advisory Opinion 2006-38 (Casey) (noting application of provision to state campaign

1 committee of federal officeholder). But the Commission concludes that the activities described  
2 in your request satisfy the elements of the exception in section 30125(e)(2). First, the requestor's  
3 proposed spending—for storing “non-federal campaign assets,” legal or accounting expenses to  
4 comply with “Indiana campaign disclosure requirements imposed on state campaign  
5 committees,” and legal or accounting expenses to wind down the state campaign—are solely in  
6 connection with Mr. Pence’s campaign for Governor. Second, the proposed spending does not  
7 “refer” to any candidate, let alone a candidate other than Mr. Pence or his opponent. Third, the  
8 request states that the funds were raised in compliance with applicable Indiana law, and the  
9 Commission assumes without deciding that the spending of the funds as proposed would also be  
10 compliant with Indiana law.<sup>3</sup> Thus, the requestor may use nonfederal funds in the state  
11 campaign account to pay for the activities as described in the request.

12 This response constitutes an advisory opinion concerning the application of the Act and  
13 Commission regulations to the specific transaction or activity set forth in your request.  
14 *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts  
15 or assumptions presented, and such facts or assumptions are material to a conclusion presented in  
16 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
17 proposed activity. Any person involved in any specific transaction or activity which is  
18 indistinguishable in all its material aspects from the transaction or activity with respect to which  
19 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
20 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
21 affected by subsequent developments in the law including, but not limited to, statutes,

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<sup>3</sup> The Commission expresses no view regarding the application of Indiana law to these funds or transactions.

1 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
2 on the Commission's website.

3 On behalf of the Commission,

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Steven T. Walther  
Chairman