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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-26-A
AGENDA ITEM
For meeting of June 22, 2017

MEMORANDUM

TO: The Commission

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

Robert M. Knop *RMK*
Assistant General Counsel

Sean J. Wright *SGW*
Attorney

Subject: AO 2017-04 (Lancman for Congress) 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 12:00 pm (Eastern Time) on June 21, 2017.

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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2017-04

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4 Jerry H. Goldfeder, Esq.
5 Stroock & Stroock & Lavan LLP
6 180 Maiden Lane
7 New York, NY 10038-4982

DRAFT A

8

9 Dear Mr. Goldfeder:

10 We are responding to your advisory opinion request on behalf of Rory Lancman and
11 Lancman for Congress (the “Federal Committee”), concerning the application of the Federal
12 Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to the
13 proposed transfer of funds from Lancman 2017 (the “NYC Committee”) to the Federal
14 Committee. The Commission concludes that the proposed transfer is prohibited by 11 C.F.R.
15 § 110.3(d).

16 **Background**

17 The facts presented in this advisory opinion are based on your advisory opinion request
18 received on May 17, 2017.

19 In 2012, Mr. Lancman sought the Democratic nomination for the U.S. House of
20 Representatives for New York’s 6th Congressional District. Advisory Opinion Request at
21 AOR001. He established the Federal Committee as his authorized campaign committee for that
22 election. Mr. Lancman did not win the Democratic nomination in that election. The Federal
23 Committee has been inactive since 2012, but it has not been terminated because it has
24 outstanding debt of \$238,090. *Id.*

25 In 2013, Mr. Lancman was elected as a Member of the New York City Council, and in
26 2016 established the NYC Committee to support his candidacy for re-election to that office or
27 for another New York City office in 2017. Pursuant to New York City campaign finance law,

1 the NYC Committee has raised money from individuals, political committees (provided those
2 committees' contributions to the NYC Committee derived solely from individuals), and union
3 treasury funds. *Id.*

4 In order to pay its outstanding debt and terminate, the Federal Committee wishes to
5 accept a transfer of funds from the NYC Committee. The NYC Committee intends to transfer
6 only funds raised from individuals and would ensure that none of the transferred funds result in
7 excessive contributions to the Federal Committee from any of the contributors. The Federal
8 Committee intends to terminate once its debt is paid. AOR001-002.

9 **Question Presented**

10 *May the Federal Committee properly accept a transfer of funds from the NYC Committee*
11 *solely for the purpose of debt retirement in order to close the Federal Committee, given that such*
12 *transferred funds were raised by the NYC Committee in full compliance with federal law and*
13 *whose transference would not inject into the Federal Committee any funds that were not*
14 *consistent with or not compliant with federal election law?*

15 **Legal Analysis and Conclusions**

16 No, the Federal Committee may not accept the proposed transfer of funds from the NYC
17 Committee.

18 The Act places certain limitations and prohibitions on the sources and amounts of
19 contributions to federal candidates' authorized committees. The Act limits the dollar amount of
20 contributions made by individuals and multicandidate political committees, and prohibits
21 contributions from corporations and labor organizations. *See* 52 U.S.C. §§ 30116, 30118; *see*
22 *also* 11 C.F.R. §§ 110, 114 (implementing sections 30116 and 30118).

1 Many states and municipalities, however, impose fewer restrictions on contributions to
2 campaigns for state and municipal office. For example, New York State and New York City
3 allow individuals to contribute amounts to state and municipal candidates' campaign
4 committees that would exceed the Act's limits if contributed to federal candidates' authorized
5 committees. *See, e.g.*, N.Y. Elec. Law § 14-114; N.Y.C. Admin. Code § 3-703.¹ New York
6 State and New York City also allow corporations, government contractors, and/or labor
7 organizations to make contributions to candidates.² *See* N.Y. Elec. Law § 14-116(2); N.Y.C.
8 Admin. Code § 3-703(1)(f); N.Y.C. Admin. Code § 3-703(1-a).

9 At one time, state and local campaign committees that had excess funds could transfer
10 those funds to a federal campaign committee for the same candidate, provided that the funds
11 being transferred did not contain any impermissible, or “soft money” contributions. *See, e.g.*,
12 Advisory Opinion 1990-29 (Joseph E. Seagram & Sons) at 3 (explaining that “decision to allow
13 the transfer of non-Federal election funds to a Federal account in specific situations [was]
14 premised largely on the legality, under the Act, of the transferred funds”); *see also* Advisory
15 Opinion 1990-16 (Citizens for Thompson); Advisory Opinion 1987-12 (Costello); Advisory
16 Opinion 1985-02 (Shaffer). Such transfers, however, could allow the indirect use of soft money
17 contributions in federal elections if the state or local campaign committees used soft money to

¹ For example, during the 2015-2016 election cycle, the New York State contribution limit for state assembly candidates was \$4,100 per election. *See* N.Y. Elec. Law § 14-114; State Limits on Contributions to Candidates, 2015-2016 Election Cycle, Nat'l Conf. St. Leg., <http://www.ncsl.org/Portals/1/documents/legismgt/elect/ContributionLimitstoCandidates2015-2016.pdf> (last visited June 7, 2017). In New York City, the 2017 contribution limits for borough president and City Council are \$3,850 and \$2,750, respectively. *See* N.Y.C. Admin. Code § 3-703(7); 2017 Limits & Thresholds, N.Y.C. Campaign Fin. Bd., <https://www.nycfb.info/candidate-services/limits-thresholds/2017/> (last visited June 7, 2017).

² New York City campaign finance rules prohibit contributions to candidates from corporations, N.Y.C. Campaign Fin. Bd. Rule 1-04(e) (Contributions), but do not prohibit contributions from labor organizations. The requestor states that the NYC Committee has received funds from “union treasury funds.” AOR001.

1 finance the solicitation of hard money contributions. Transfers of Funds from State to Federal
2 Campaigns, 58 Fed. Reg. 3474 (Jan. 8, 1993). Therefore, in 1993 the Commission revised its
3 regulations on inter-committee transfers to prohibit the transfer of funds from a candidate’s state
4 or local campaign committee to his or her federal campaign committee. *Id.* at 3475 (codified at
5 11 C.F.R. § 110.3(d)).

6 In that rulemaking, the Commission considered an alternative means of prohibiting the
7 indirect use of soft money in federal elections, short of a total ban on transfers from state and
8 local campaign committees to federal campaign committees. That alternative would have
9 prohibited only the transfer of funds that were raised using soft money, but the Commission
10 observed that “certain practical problems could occur” under such a rule. *Id.* at 3474.³ The
11 Commission noted that linking specific funds to be transferred with particular fundraising
12 disbursements would be difficult, due to the differences between local, state, and federal
13 recordkeeping requirements and the use of bank accounts “containing a constantly varying
14 mixture of permissible and impermissible funds.” *Id.* Ultimately, the Commission concluded
15 that “a prohibition on *all* transfers from [nonfederal] to federal campaigns . . . [was] the best
16 way to address [its] concerns.” *Id.* at 3475 (emphasis added).

17 Here, the requestor is proposing to do precisely what the Commission stated it aimed to
18 prevent in promulgating section 110.3(d). Even if the NYC Committee can accurately
19 determine which of its funds originated in contributions from individuals as described in the

³ To clarify the newly promulgated rule, the Commission noted that “[t]he rule applies to transfers from any nonfederal campaign committee, including campaign committees for any state or local office,” and that “the terms ‘nonfederal’ and ‘state’ are interchangeable,” so that where they are used, they also include “campaign committees for any state or local office.” Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 14310, 14311 (Mar. 11, 1993).

1 request, in order to fully prevent the flow of impermissible or soft money contributions into a
2 federal account, it would also have to determine which of those funds were impermissible under
3 the Act, such as contributions from federal contractors, as well as which funds were raised using
4 soft money. *See* Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. at 3475
5 (blanket prohibition of transfers “obviate[s] the need for additional complicated
6 recordkeeping.”). In adopting the rule, the Commission considered and rejected the practicality
7 of requiring such detailed recordkeeping and tracking of funds.

8 The one exception to this prohibition that the Commission has made, in Advisory
9 Opinion 2002-08 (David Vitter for Congress Committee), is factually distinguishable from the
10 proposed transfer. In that advisory opinion, the Commission concluded that funds that had been
11 loaned or transferred from a candidate’s federal committee to his state committee, and not
12 commingled with the state committee’s funds, could be transferred back to the federal
13 committee without violating 11 C.F.R. § 110.3(d). Advisory Opinion 2002-08 (David Vitter for
14 Congress Committee) at 2. The Commission reasoned that because the funds had been initially
15 raised subject to the Act’s requirements and had not been commingled with state committee
16 funds, there was no risk that the funds being repaid would violate the Act’s contribution limits
17 and prohibitions. *Id.* For this reason, none of the recordkeeping concerns applied in that
18 instance, as the requestor could be certain that none of the funds had been raised using soft
19 money or had been received from impermissible sources.

20 The present request, however, proposes to transfer funds from the NYC Committee to the
21 Federal Committee to retire past debt using funds raised by the NYC Committee, AOR001, not
22 to return funds previously transferred from the Federal Committee. *Cf.* Advisory Opinion 2002-

1 08 (David Vitter for Congress Committee); Factual & Legal Analysis at 5, MUR 7109
2 (Portantino) (Mar. 29, 2017), <http://eqs.fec.gov/eqsdocsMUR/17044415960.pdf> (finding no
3 reason to believe that respondent violated section 110.3(d) because allegations related to
4 conduct “materially indistinguishable from those presented in AO 2002-08.”). The Commission
5 concludes, therefore, that the proposed transfer of funds from the NYC Committee to the
6 Federal Committee is prohibited under 11 C.F.R. § 110.3(d).⁴

7 This response constitutes an advisory opinion concerning the application of the Act and
8 Commission regulations to the specific transaction or activity set forth in your request. *See*
9 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
10 assumptions presented, and such facts or assumptions are material to a conclusion presented in
11 this advisory opinion, then the requestors may not rely on that conclusion as support for their
12 proposed activity. Any person involved in any specific transaction or activity which is
13 indistinguishable in all its material aspects from the transaction or activity with respect to which
14 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
15 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
16 affected by subsequent developments in the law including, but not limited to, statutes,

⁴ The request contends that the proposed transfer of funds does not represent “the type of situation to which the regulations at 11 C.F.R. 110.3(d) were intended to apply.” AOR002 (citing Advisory Opinion 2002-08 (David Vitter for Congress Committee) at 2). A review of the Commission’s past application of section 110.3(d) in particular matters, however, yields no evidence to support such a contention, nor does the requestor cite to any. In fact, it shows that the Commission has consistently applied the prohibition at section 110.3(d) to transfers of funds from state to federal committees—especially when the transfer is meant to pay for obligations of the federal committee. *See, e.g.*, Factual & Legal Analysis at 4-5, MUR 5426 (Schultz) (Feb. 17, 2005), <http://eqs.fec.gov/eqsdocsMUR/000045D7.pdf> (finding reason to believe that a state senator violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by directing funds and assets from state committee to pay for expenses related to federal election campaign); *see also* Factual & Legal Analysis at 5-6, MUR 5480 (Levetan) (Aug. 4, 2005), <http://eqs.fec.gov/eqsdocsMUR/00004BF1.pdf> (finding reason to believe that state lawmaker and her state and federal committees violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by using funds from state committee’s non-federal account to pay for polling expenditures directly benefitting federal campaign).

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.