

RECEIVED

By Office of General Counsel at 10:03 am, Oct 04, 2022

RECEIVED

By Office of the Commission Secretary at 1:46 pm, Oct 11, 2022

October 3, 2022

BY ELECTRONIC MAIL DELIVERY

Office of General Counsel
Attn: Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: Advisory Opinion Request

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion on behalf of Allen Blue (“the requestor”). The requestor seeks confirmation that a trust established to receive funds from an individual as part of an estate plan is a permissible contributor under the Federal Election Campaign Act of 1971 (the “Act”) and Federal Election Commission (“FEC” or the “Commission”) regulations. The requestor also seeks guidance on how to properly attribute the trust’s contributions if the trustee of the trust has some discretion over the trust’s funds in a manner similar to previous Commission decisions.

I. FACTUAL DISCUSSION

Allen Blue, the requestor, is Chairman of the non-profit Hope Street Group. The requestor supports numerous philanthropic organizations as well as progressive-aligned causes and candidates. The requestor is planning to distribute assets upon his death and is establishing entities now to further these causes. The requestor is over eighteen years of age; is a United States citizen; is not a federal contractor; and is eligible to make contributions to federal candidates and committees.

As part of his estate planning, the requestor plans to establish an irrevocable trust, which prohibits the requestor from amending or terminating the trust after its creation. The trust would share the requestor’s Social Security number, although at a future point in time the trust may obtain a separate Employer Identification Number. All assets would be personally held by the requestor until transferred to the trust. The trust would not solicit nor receive income from any

source other than the requestor and investment income from the transferred assets. The requestor would not be a beneficiary of the trust.

The purpose of the trust would be to support progressive causes. The majority of the trust's disbursements would be for the general support of nonprofit organizations that are not registered as political committees under the Act. The requestor intends that the trust would also contribute to federal candidates for public office, to federal and state political party committees, and to other federally-registered committees. However, those contributions will never become a majority of the trust's grants in any calendar year, and that restriction would be included in the trust's founding documents. The trust would not earmark any of the funds it distributes to nonprofit organizations to be contributed to candidates or political committees or otherwise direct its distributions to non-profits to be used for federal political purposes. The trust would be prohibited from engaging in independent expenditures or electioneering communications, and that restriction would be included in the trust's founding documents. If the trust were to make contributions to federal candidates or committees in the requestor's lifetime, the trust would share its aggregate contribution limits with the requestor.

The trust will have a trustee to administer its disbursements, including its disbursements to candidates for public office. The founding trust documents would name trustees; trustees would also be able to appoint other eligible trustees. Any trustee will be a natural person, who is over eighteen years of age; a United States citizen or lawfully admitted to the United States for permanent residence; is not a federal contractor; and is eligible to contribute to federal candidates and committees.

The trust will make political contributions to designated recipients based on objective criteria set forth in the trust instrument, such as a particular party committee or the Democratic nominee in a particular district or state. The requestor also plans for the trust instrument to allow the trustee discretion to distribute funds for political purposes, by setting standards to guide the trustee. The standards would require the trustees to support only candidates and committees that further Mr. Blue's support for progressive candidates and/or for his support of action to protect the environment, ensure the equality of all persons under the law, and protect the least-well-off among us.

II. QUESTIONS POSED

- (1) The requestor asks the Commission to confirm that a trust established to receive funds from an individual as part of an estate plan may contribute to federal candidates, political party committees, and other federally-registered committees under the Act and Commission regulations.

- (2) The requestor seeks guidance on how to properly attribute the trust's funds when the trustee has discretion over the trust's funds in a manner similar to the discretion approved by the Commission in prior circumstances.
- (3) The requestor seeks confirmation that the indexed contribution limits applicable at the time the contribution is made would apply.

III. LEGAL ANALYSIS

Under Commission precedent, a trust established to receive funds from an individual as part of their estate planning may contribute to candidates for political office because a trust created on these terms qualifies as a "person" under the Act. The trust would not be a political committee under the Act because its major purpose would not be campaign activity. Under prior Commission decisions, the trust can both designate recipients and the trustee could have discretion over the funds so long as the trustee is following the intent of the grantor of the trust.

A. The Trust Is a "Person" Under the Act.

The requestor's proposed trust would constitute a "person" under the Act. The Act limits contributions from any "person."¹ The Act defines a "person" to include "an individual" or "any other organization or group of persons."² Previously, the Commission concluded that the testamentary estate of a decedent is the successor legal entity to the individual testator.³ If an individual was legally qualified at the time of their death to contribute, the individual's testamentary trust can contribute as long as the aggregate contributions to each recipient do not violate the Act.⁴ The Commission has also found that a living trust is a permissible contributor under the Act.⁵

In Advisory Opinion 1996-03 (Breedon-Schmidt Foundation) ("*Breedon-Schmidt Foundation*"), a foundation (the "Foundation") was created to receive a testamentary distribution from a single person, with the goal of advancing the testator's preferred political philosophy.⁶ The Foundation did not solicit nor receive funds from any other source, and the Foundation was not a corporation or a labor union.⁷ Its declaration of trust allowed for "subsidizing publications, establishing and conducting reading rooms, supporting radio, television and the newspaper media and candidates for public office."⁸ While the Foundation's trustees were empowered to make political

¹ 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1.

² 52 U.S.C. § 30101(11).

³ Advisory Opinion 2004-02 (NCEC) at 3; Advisory Opinion 2015-05 (Shaber) at 3.

⁴ Advisory Opinion 2004-02 (NCEC) at 3.

⁵ Advisory Opinion 1999-19 (Ellis) at 2.

⁶ Advisory Opinion 1996-03 (Breedon-Schmidt Foundation) at 1.

⁷ *Id.*

⁸ *Id.* at 2.

contributions, the Foundation did not make political contributions in a great number in absolute terms or in relation to the total distribution of the Foundation.⁹ The Commission determined that the Foundation was not a political committee, since its major purpose was not campaign activity.¹⁰ Yet the Foundation was still a permissible contributor under the Act.¹¹

Here, the requestor is establishing an irrevocable trust as part of his estate planning. If contributions were made to federal candidates or committees during the requestor's lifetime, the trust would consider its contributions aggregated with those the requestor made directly to determine applicable contribution limits.

The proposed trust would be a permissible contributor under the Act. The Act and Commission regulations allow for contributions from every source that is not prohibited.¹² The proposed trust is not a prohibited contributor. The requestor is over eighteen years of age, is not a foreign national, government contractor, or otherwise prohibited from making political contributions. The trust is neither a labor union nor a corporation.

Further, the trust would not need to register as a political committee. The trust's major purpose would not be campaign activity. Its major purpose would be supporting nonprofit organizations that align with the requestor's progressive values.

B. Some of the Trust's Recipients may be Designated and Other Recipients may be Subject to the Trustee's Discretion.

Pursuant to prior Committee guidance, the proposed trust may make political contributions to both designated recipients and may allow the trustee to exercise significant discretion for further contributions.

In Advisory Opinion 2004-02 (NCEC) ("*NCEC*"), the trustee of the proposed testamentary trusts would exercise no discretion over the trust's funds.¹³ Instead, the terms of the trusts dictated where the contributions would be disbursed and limited the trusts to the maximum annual contributions permitted under the Act.¹⁴ In Advisory Opinion 2019-01 (It Starts Today) ("*It*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *See id.*

¹² *See* 11 C.F.R. 110.1(e) (allowing contributions by partnerships); 11 C.F.R. 110.1(g) (allowing contributions by limited liability companies); 11 C.F.R. 110.19 (allowing contributions by minors); 11 C.F.R. 114.2 (prohibiting contributions by banks, corporations, and labor unions).

¹³ Advisory Opinion 2004-02 (NCEC) at 2.

¹⁴ *Id.* at 1-2.

Starts Today”), the Commission allowed an entity to earmark contributions for future Democratic candidates who are not yet identified.¹⁵

In *Breeden-Schmidt Foundation*, the Commission permitted a foundation where the trustees had discretion over the ultimate recipient and amount of the contributions.¹⁶ The Foundation’s purpose was to advance the principles of his preferred political philosophy and causes related to that philosophy.¹⁷ The Commission implicitly approved the broad discretion of the foundation’s trustees when it determined that contributions should be attributed to the testator and the foundation, rather than the trustees.¹⁸

Here, the proposed trust would have a trustee administer its disbursements. Pursuant to the Commission’s opinions in *NCEC*, *It Starts Today*, and *Breeden-Schmidt Foundation*, the terms of the requestor’s trust may include both strict guidelines based on objective criteria as to which candidates for public office receive disbursements and broader guidelines to the trustee of how to ultimately distribute the trust’s funds. The requestor seeks to confirm that in both instances, the contribution should be reported in the name of the trust and not in the name of the trustee.

C. The Contribution Limit Applicable to the Trust Would Be the Contribution Limit at the Time of the Disbursement.

The contribution limit applicable to the proposed trust would be the limit that would apply to the requestor if they were alive at the time the trust made the contribution. If the requestor is alive while the trust operates, the trust and the requestor would share contribution limits.

The Commission has previously clarified that the contribution limit applicable to a testamentary estate would be the limit that would apply to the testator if they were alive when the estate made the contribution.¹⁹ In Advisory Opinion 2015-05 (*Shaber*) (“*Shaber*”), the Commission wrote, “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.”²⁰

The requestor seeks confirmation that the contribution limits set forth in *Shaber* would apply to the proposed trust, even if the trustees have discretion over the funds.

¹⁵ Advisory Opinion 2019-01 (*It Starts Today*) at 3.

¹⁶ Advisory Opinion 1996-03 (*Breeden-Schmidt Foundation*) at 1.

¹⁷ *Id.*

¹⁸ *See id.* at 3.

¹⁹ Advisory Opinion 2015-05 (*Shaber*) at 3 n.3.

²⁰ *Id.*

IV. CONCLUSION

For those reasons, we ask the Commission to confirm that a trust established as part of estate planning is a legally permissible giver under the Act. We further ask the Commission to confirm that if the trustee has discretion, whether the contributions are still attributable to the trust. We also ask the Commission whether the contribution limits are connected to indexing that would apply at the time the contribution is made.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Ezra W. Reese', is written over a horizontal line.

Ezra W. Reese
Emma R. Anspach
Counsel to Allen Blue