FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 4, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-29

Theodore (Ted) L. Jones, Esquire
3081 Teddy Drive
Post Office Box 65122
Baton Rouge, Louisiana 70896

Dear Mr. Jones:

This responds to your letter of September 4, 1983, requesting an advisory opinion on behalf of the John Breaux Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed loan arrangement involving the Committee and various individuals and political committees.

You state that the John Breaux Committee is the principal campaign committee of Congressman John B. Breaux, a candidate for the United States Senate from the State of Louisiana. You state that the Committee plans to solicit contributions from individuals, partnerships, and political action committees to further the nomination and election of Mr. Breaux to the Senate.

As part of its fundraising efforts, the Committee proposes to obtain two different types of loans from individuals and political committees. One type of loan would be made directly in the form of a check drawn by the contributor to the Committee. The other type of loan would be made in the form of an interest-bearing, negotiable promissory note signed by the contributor and made payable to the Committee. The contributor, by executing the note, would also promise to pay interest at ten per cent per annum from the date of the note until the face amount of the note was paid (loaned) in full by the contributor. This promissory note would be secured by a 24-month irrevocable and assignable letter of credit.

The letter of credit would be obtained by the contributor and issued by a Louisiana bank or similar financial institution with the Committee as beneficiary. Each letter of credit would correspond to the face amount of the note that it secured. Both types of loans, you explain, would be within the applicable contribution limitations of the Act. In exchange for the cash loans or the

negotiable promissory notes (with letters of credit), the Committee would give the contributor a non-negotiable, non-recourse, no personal liability promissory note, in an amount equal to the amount of the loan. These Committee notes would be payable on or before March 1, 1987, with interest at ten per cent per annum until paid. You also state that the Committee intends to use the secured notes of contributors as security or collateral to obtain its own loans from its regular banking sources. Your materials make specific reference to the Baton Rouge Bank and Trust Company as the possible source of a loan of $4.5 million.

You ask for an advisory opinion as to whether the interest provision of a contributor's promissory note would, when combined with the principal ($1,000 or $5,000 in the case of a multicandidate committee lender) of the note, cause the contributor to exceed the applicable contribution limitation. You also ask for "comments on the concept contained" in the forms and sample agreements you furnished with the request.

As a preliminary matter the Commission emphasizes that this opinion does not address any issues with respect to the Committee's use of the described loan program to obtain a bank loan from the Baton Rouge Bank and Trust Company or any other bank. You have not requested an opinion on such issues. Furthermore, no bank has joined in this request or provided a complete description of all relevant facts in connection with making a loan to the Committee that would be secured by promissory notes and letters of credit obtained from individuals and other contributors. See 11 CFR 112.1(a), (b), and (c). The Act and Commission regulations also preclude the Commission from offering any "comments on the concept" presented in your request since opinions are limited to the issues raised by the specific activity presented and may not reach general questions of interpretation, hypothetical situations, or the activities of third parties. 11 CFR 112.1(b), see 2 U.S.C. 437f(a), 437f(b).

In view of the foregoing this opinion is limited to the specific question you have asked. In response to that question and in the circumstances presented, the Commission concludes that the payment of interest on a promissory note, which is executed by a contributor and made payable to the Committee, constitutes a contribution subject to the limits of the Act whether paid to the Committee or any other person holding the note.

Under the Act and Commission regulations, the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i). Commission regulations also state that a non-exempt loan is a contribution and that a loan includes a guarantee, endorsement, and any other form of security. 11 CFR 100.7(a)(1)(i). In addition, contribution includes a loan of money, and money includes "any other negotiable instrument payable on demand." 11 CFR 100.7(a)(1)(ii).

According to your request, loans in the form of cash or promissory notes secured by irrevocable and assignable letters of credit will be made by individuals and political committees to the John Breaux Committee. Since either type of transaction would constitute a loan to the Committee, the Commission concludes that either a cash loan or a promissory note secured by a letter of credit with the Committee as beneficiary[1] would constitute a contribution to the Committee.[2]

Furthermore, the Commission notes that as set forth in your request, the contributor's promissory note secured by an irrevocable letter of credit is proposed for use as collateral or security for a loan in the form of a line of credit that the Committee will receive from its banking sources. Thus, in the situation you present, the maker of the promissory note would apparently be a guarantor of the Committee's loan in the amount of the face value of the promissory note. Since the Commission's regulations define a guarantor or endorser of a loan as a contributor, 11 CFR 100.7(a)(1)(i), a contribution to the Committee necessarily results to the extent the Committee uses the secured promissory note as collateral for an otherwise lawful loan from its bank.[3]

According to your request, each contributor's promissory note will contain a promise to pay interest at ten percent per annum, from the date of the note until it is paid in full. This interest provision is not part of the letter of credit that secures the promissory note. Accordingly, the Commission views the interest provision as an unsecured promise to the Committee. Since the Act's definition of the term "contribution" does not include a written contract, promise or pledge, the mere promise of the contributor to pay interest on the note is not a contribution.[4] The Commission concludes, however, that any actual payment of interest by the contributor would constitute a contribution to the Committee.

Although such an interest payment would apparently be made to the Committee's bank as the endorsee of the promissory note, the payment will actually satisfy the Committee's repayment obligation pursuant to its own loan agreement with the bank (since the promissory notes were used as collateral). For this reason, any actual interest payment by a contributor would be viewed as a contribution since it defrays an obligation of the Committee.[5] Moreover, Commission regulations that address payments of interest in political committee loan transactions grant an exemption from the definition of contribution only in the situation where the committee lends money to another, not where it borrows money from an individual or political committee as in this case. See 11 CFR 100.7(a)(1)(i)(E).

On the basis of the foregoing discussion then, a prohibited contribution would result if the contributor's combined total of interest payments and principal payments (including the execution of promissory notes secured by issued letters of credit) exceed the applicable $1,000 or $5,000 limitations. 2 U.S.C. 441a(a)(1)(A), 441a(a)(2)(A). It also follows, however, that to the extent a contributor's loan is repaid directly by the Committee, or the contributor's promissory note with letter of credit is forgiven or extinguished (pursuant to Committee documentation delivered to the contributor), the original contribution would be reduced for purposes of the Act. 11 CFR 100.7(a)(1)(i)(B). Accordingly, but only to the extent of such repayments or documented forgiveness by the Committee, the contributor could make new contributions to the Committee if otherwise lawful under the Act.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosure (AO 1981-42)

1. Under the Commercial Laws of Louisiana a letter of credit means an engagement by a bank at the request of its customer that the bank will honor drafts or other demands for payment according to the terms of the letter of credit. LSA-R.S. 10:5-103(1)(a). A credit is established "as regards the beneficiary when he receives a letter of credit or an authorized written notice of its issuance." LSA-R.S. 10:5-106(1)(b). Thus, a contribution results in this situation as soon as the John Breaux Committee (the beneficiary) receives a letter of credit (or authorized written notice of its issuance) from a contributor's bank.

2. The Commission assumes from your request, and the documents attached thereto, that any letter of credit issued by a contributor's bank will be issued in the face amount of its accompanying promissory note. Assuming this is the case and that such an amount, when combined with other contributions to the Committee made by the contributor, does not exceed the applicable limitations, no excessive contribution would result at that time.

3. As explained above, the Commission is not expressing any opinion at this time whether any bank loan to the Committee meets the requirements of the Act. See 2 U.S.C. 431(8)(B)(vii) and 11 CFR 100.7(b)(11).

4. Prior to January 8, 1980, the Act defined contribution to include "a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution. However, the Federal Election Campaign Act Amendments of 1979, Pub.L. 96-187, repealed that portion of the contribution definition while retaining similar definitional language for the term "expenditure." 2 U.S.C. 431(9)(A)(ii). The effect of such a repeal is that a mere promise to make a contribution is not by itself subject to the Act as a contribution. Where, however, a debt or obligation is incurred by a contributor for the benefit of a political committee and for the specific purpose of providing a valuable and enforceable property right to a political committee, a contribution of something of value is made when such an obligation is conveyed to the committee. See footnote one and Commission regulations at 11 CFR 100.7(a)(1)(i), (ii).

5. The Commission has previously recognized that a contribution would result where a person pays an outstanding debt of a political committee unless the person (not a lender to the committee) was found liable on such debt by court judgment. Advisory Opinion 1981-42. The Act also includes a definition of contribution that has relevance here although its primary application occurs in factual scenarios other than payment of a political committees interest obligations. This provision states that a contribution occurs where one person pays compensation for the services of another that are rendered without charge to a political committee. 2 U.S.C. 431(8)(A)(ii), 11 CFR 100.7(a)(3).