



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

JUL 13 9 22 AM '95

July 13, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina *John C. Surina*
Staff Director

FROM: Lawrence M. Noble *Lawrence M. Noble*
General Counsel

N. Bradley Litchfield *N. Bradley Litchfield*
Associate General Counsel

Jonathan M. Levin *JM*
Senior Attorney

SUBJECT: Draft AO 1995-19

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 20, 1995.

AGENDA ITEM
For Meeting of: JUL 20 1995

DRAFT
JUL 13 3 22 AM '95

1
2
3 **ADVISORY OPINION 1995-19**

4 **Subodh Chandra, Treasurer**
5 **Indian-American Leadership Investment Fund**
6 **3939 Rio Grande Blvd. #57**
7 **Albuquerque, NM 87107-3153**

8 **Dear Mr. Chandra:**

9 **This responds to your letter dated May 25, 1995,**
10 **requesting an advisory opinion on behalf of the Indian-**
11 **American Leadership Investment Fund ("the Fund") concerning**
12 **the application of the Federal Election Campaign Act of 1971,**
13 **as amended ("the Act"), and Commission regulations to the**
14 **disposition of contributions received by the Fund that may be**
15 **unlawful under the Act.**

16 **The Fund is a nonconnected political committee which has**
17 **been registered with the Commission since August 16, 1993.**
18 **You state that, on April 27 and 28, 1995, you met with a**
19 **reporter from the Baltimore Sun who informed you that he had**
20 **conducted an investigation of contributors to the Fund from**
21 **the Baltimore area. The reporter indicated that some of**
22 **these individuals "did not appear to have the financial**
23 **means" to make contributions in the amount that they gave.**
24 **The reporter also suggested that some of these contributors**
25 **had been improperly reimbursed for making contributions. You**
26 **state that the "specificity and seriousness of the reporter's**
27 **allegations" led you to notify the Commission by facsimile**
28 **transmission, sent on April 28, that there may have been**
29 **violations of the Act. The Commission's Office of General**
30 **Counsel informed you that your letter will be treated as a**

3 sua sponte submission, subject to investigation by the
4 Commission.

5 An article by the reporter containing these allegations
6 appeared in the May 4 issue of the Baltimore Sun. This
7 article referred to the fact that \$34,900 in contributions
8 from the Baltimore area were received by the Fund in one day.
9 It contains specific assertions by some contributors
10 identified in the Fund's reports that they were reimbursed
11 for their donations. The article also contains specific
12 information as to the conduct of the alleged original
13 contributor and other circumstances surrounding some of the
14 donations.

15 All of the contributions to the Fund from contributors
16 in Maryland were transmitted to you by a Baltimore attorney.
17 You assert that, when the contributions were received, you,
18 as treasurer, examined them for evidence of illegality and
19 found that the contributions did not present a question of
20 their legality. The contributions were thus deposited in the
21 Fund's account and drawn upon. You state that, as yet, you
22 "have no information verifying the illegality of any of these
23 contributions" other than what was ultimately reported in the
24 Baltimore Sun. You note that the Federal Bureau of
25 Investigation has asked you for information and documents,
26 which you have provided.

27 In view of Commission regulations addressing refunds by
28 a political committee of unlawful contributions, you propose
29 two alternative courses of action for the Fund. Under your
30

3 first proposal, the Fund would mail letters to Maryland
4 contributors describing the proper criteria for
5 contributions, including the invalidity of reimbursed
6 contributions. The letter would also request a signed
7 statement "confirming the legality of contributions made."
8 The second proposal provides that the Fund would obtain the
9 telephone numbers of all the Maryland contributors, contact
10 those contributors by phone, and request their oral
11 confirmation of the legality of the contributions. You, as
12 treasurer, would memorialize these conversations in a written
13 memorandum.

14 You ask whether either or both of the proposed courses
15 of action are required or permitted by Commission
16 regulations. You also ask whether it is "advisable" for the
17 Fund to undertake either course of action. Finally, you ask
18 if there are any additional courses of action that would be
19 required, permitted, or advisable.

20 A contribution by a person who is reimbursed in advance
21 or afterward by another person or entity is unlawful under
22 the Act because it is a "contribution in the name of
23 another." 2 U.S.C. §441f; 11 CFR 110.4(b)(1)(i). It is also
24 unlawful for a committee to knowingly accept such a
25 contribution. 2 U.S.C. §441f; 11 CFR 110.4(b)(1)(iii).

26 Commission regulations prescribe the obligations of a
27 committee treasurer upon receipt of a contribution that
28 appears unlawful or presents genuine questions of illegality
29 when received, or upon discovery of the contribution's
30

3 unlawful nature at a later date.

4 Contributions that, when received, present genuine
5 questions as to whether they were made by corporations, labor
6 organizations, foreign nationals, or Federal contractors may
7 be either deposited into a campaign depository or returned to
8 the contributor within ten days of the receipt. If such a
9 contribution is deposited, the treasurer must make his or her
10 best efforts to determine the legality of the contribution.
11 The treasurer must make at least one written or oral request
12 for evidence of the legality. Such evidence includes, but is
13 not limited to, a written statement from the contributor
14 explaining why the contribution is legal, or a written
15 statement by the treasurer memorializing an oral
16 communication from the contributor to that effect. If the
17 contribution cannot be determined to be legal, the treasurer
18 must refund it to the contributor within thirty days of its
19 receipt. 11 CFR 103.3(b)(1).

20 If the treasurer determined at the time the contribution
21 was received and deposited that it did not appear to be from
22 an unlawful source or made in the name of another, but "later
23 discovers that it is illegal based on new evidence not
24 available to the political committee at the time of receipt
25 and deposit," the contribution must be refunded to the
26 contributor within thirty days of the discovery of the
27 illegality. If the committee does not have sufficient funds
28 to refund the contribution at the time the illegality is
29 discovered, it must make the refund from the next funds it
30

3 receives. 11 CFR 103.3(b)(2).

4 In several opinions, the Commission has reviewed
5 situations involving the requirement to subsequently refund
6 contributions made in the names of others. See Advisory
7 Opinions 1991-39, 1989-5, and 1984-52. In Advisory Opinions
8 1989-5 and 1984-52, the Commission addressed circumstances in
9 which the corporation that actually contributed the funds at
10 issue or its corporate employees (or both) had pled guilty to
11 criminal charges related to the making of the contributions.
12 As stated in Advisory Opinion 1991-39, those two opinions,
13 however, did not limit to guilty pleas the circumstances in
14 which a refund obligation can be said to arise.

15 Advisory Opinion 1991-39 presented a situation in which
16 a political committee received a letter from the Department
17 of Justice indicating that contributions, reported by the
18 committee as received from several persons, had actually been
19 made by one individual who had been indicted by a Federal
20 grand jury. Upon receipt of the DOJ letter, the committee
21 had determined that there was a basis for the appearance of
22 illegality and "segregated" the funds by depositing an amount
23 sufficient to cover the questioned contributions so that the
24 amount would be available if and when the Commission
25 determined that a committee disbursement was warranted. The
26 indicted individual asserted his innocence.

27 Noting that the Federal evidentiary test for a grand
28 jury indictment was whether there was probable cause to
29 believe the accused had committed the crime, the Commission
30

3 determined that the DOJ letter and the indictment "provided
4 sufficient basis to question the lawfulness" of the
5 contributions under 11 CFR 103.3(b). The Commission
6 concluded that, because the committee could not, under the
7 circumstances, determine the identity of the original
8 contributor, the funds should be disbursed at that time for a
9 lawful purpose unrelated to any Federal campaign, committee,
10 or candidate; to the Federal government, a state or local
11 governmental entity, or a charitable organization qualified
12 under 26 U.S.C. §170(c).

13 The Commission notes the logical and appropriate
14 application of standards set out in 11 CFR 103.3(b)(1) to
15 situations arising under 11 CFR 103.3(b)(2) where the issue
16 of illegality arises sometime after the receipt of a
17 contribution. Such a situation calls for the taking of
18 ameliorative action where there is a sufficient basis to
19 question the lawfulness of a contribution. In this regard,
20 the Commission does not need to consider whether, by itself,
21 a newspaper article containing general allegations as to
22 contributions in the name of another would necessarily
23 provide a sufficient basis to question the lawfulness of a
24 contribution. However, you note the "specificity" of the
25 allegations presented to you in meetings with the reporter.
26 In addition, the May 4 article contains specific information
27 briefly described above as to some of the contributions. The
28 Commission concludes that these circumstances present a
29 sufficient basis for you to question the legality of at least
30

3 some of the contributions at issue. You must, therefore,
4 take steps that would constitute best efforts to determine
5 the legality of those contributions.

6 Based on information you may have received from the
7 reporter, there may be some contributions (from the Maryland
8 contributors) that may not present a genuine question of
9 legality to you at this time. Nevertheless, the Commission
10 advises exercising best efforts at determining the legality
11 of those contributions as well. During the course of a
12 Commission investigation, the Commission may determine that
13 there is culpability on the part of the recipient committee,
14 and that the culpability pertains to those contributions as
15 well. The Commission often views the expeditious refund or
16 disgorgement of unlawfully accepted contributions as a
17 mitigating factor in determining an appropriate civil
18 penalty.

19 Either one of your proposed courses of action would
20 comply with the best efforts requirements set out in 11 CFR
21 103.3(b)(1).^{1/} The amounts of those contributions for which
22 the identified donors do not provide confirmation of legality
23 should be disbursed for any of the lawful purposes listed in
24 Advisory Opinion 1991-39, and not for a purpose related to
25 any of the Fund's activities. Disbursements should be made
26

27
28 ^{1/} The Commission assumes that, in connection with your
29 second proposal, i.e., the written memorialization of
30 contributions with the Maryland contributors, the Fund will
describe to the contributors the proper criteria for
contributions, as provided for in the first proposal.

3 in this way because the individual alleged to have reimbursed
4 the contributors denies having done so. See Advisory Opinion
5 1991-39. The disbursements should be made, from committee
6 funds on hand, within thirty days of this opinion. If the
7 Fund does not have sufficient monies on hand to make the
8 disbursements, it should make the disbursements from the next
9 funds it receives. 11 CFR 103.3(b)(2).

10 The Commission also advises, but does not consider
11 mandatory, an additional course of action. If the Fund has
12 information as to a specific contributor indicating that his
13 or her contribution may have been in the name of another, but
14 that person has provided the aforementioned confirmation of
15 legality, it may segregate the particular contribution amount
16 in a separate bank account to be set up solely for such
17 situations.^{2/} If, upon receipt of further information as to
18 the source of the contribution, the Fund can verify that the
19 contribution was lawful, it may transfer the amount back to
20 the account used for committee transactions. If the Fund
21 receives further information verifying that the contribution
22 was not lawful in origin, it should disburse the amount as
23 described above, plus any interest accrued on that amount.

24 The Commission expresses no opinion as to any
25 ramifications resulting from any investigation or other
26

27

2/ The bank where such an account is held must be
28 designated as a committee depository on an amended statement
29 of organization if the account is not in an already existing
30 committee depository. See 2 U.S.C. §§432(h)(1) and
433(b)(6); 11 CFR 103.1, 103.2, 102.2(a)(1)(vi), and
102.2(b).

3 review of your situation by the FBI or any other government
4 agency.

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

9 Sincerely,

10
11 Danny L. McDonald
12 Chairman

13 Enclosures (AOs 1991-39, 1989-5, and 1984-52)
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30