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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 19, 1998

**MEMORANDUM**

**AGENDA ITEM**

For Meeting of: 2-26-98

TO: The Commission

THROUGH: John C. Surina *[Signature]*  
Staff Director

FROM: Lawrence M. Noble *[Signature]*  
General Counsel

N. Bradley Litchfield *[Signature]*  
Associate General Counsel

Jonathan M. Levin *[Signature]*  
Senior Attorney

Subject: Draft AO 1997-24

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for February 26, 1998.

Attachment

*Applicated*

**DRAFT**

1 ADVISORY OPINION 1997-24

2  
3 Gerald H. Flamm, M.D., Treasurer  
4 Corporation for the Advancement of Psychiatry  
5 Political Action Committee  
6 1400 K Street, N.W.  
7 Washington, D.C. 20005

8  
9 Dear Dr. Flamm:

10  
11 This responds to your letter dated October 21, 1997, as supplemented by your  
12 letter dated January 15, 1998, on behalf of the Corporation for the Advancement of  
13 Psychiatry ("CAP"), requesting an advisory opinion concerning the application of the  
14 Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission  
15 regulations to the conversion of its separate segregated fund into a non-connected  
16 committee.

17 CAP is a non-stock corporation exempt from taxation under 26 U.S.C. §501(c)(6).  
18 It was incorporated in the District of Columbia in 1981 "to promote social justice and  
19 further human welfare through the advancement of psychiatry and to represent the  
20 interests of psychiatry before legislative and other government bodies." Shortly after its  
21 incorporation, CAP established a separate segregated fund, the Corporation for the  
22 Advancement of Psychiatry Political Action Committee ("CAPPAC").<sup>1</sup> CAPPAC  
23 solicits contributions from the approximately 4,500 dues paying members of CAP.

24 For various reasons, the board of directors of CAP is considering the dissolution  
25 of CAP and the termination of its existence.<sup>2</sup> However, various individuals, most of  
26 whom are CAP members, hope to continue to operate CAPPAC as a non-connected  
27 political committee. CAPPAC proposes to take the following steps upon CAP's  
28 dissolution. First, CAPPAC would amend its bylaws to conform to its new status. For  
29 example, the bylaws would indicate that CAPPAC is no longer the separate segregated  
30 fund ("SSF") of CAP, but rather a non-connected political committee, and that the

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<sup>1</sup> CAPPAC filed its statement of organization with the Commission on December 14, 1981.

<sup>2</sup> You note that "[i]t has become increasingly difficult for small interest groups, such as CAP, to effectively compete for members with the larger mental health organizations and therefore, from a business perspective, dissolution appears to be an appropriate action."

1 individuals who contribute to CAPPAC would be deemed voting members of the PAC  
2 and entitled to participate in its governance. Second, CAPPAC would move its offices to  
3 a new location, and the CAP employee who administered the PAC would become an  
4 employee of the PAC. Third, the PAC would solicit contributions from a broad range of  
5 individuals. According to CAPPAC's 1997 year end report, it had \$80,715 in cash on  
6 hand as of December 31, 1997.<sup>3</sup>

7 In view of the plans of CAP and CAPPAC, you ask four questions, which have  
8 been re-ordered as follows:

9 (1) Upon CAP's termination, may CAPPAC continue in existence as a non-connected  
10 political committee by amending its statement of organization to indicate its new status?  
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12 (2) If CAPPAC may continue its existence as a non-connected committee following the  
13 corporate termination, may it retain the funds contributed to CAPPAC prior to the  
14 corporate termination and use those funds to make contributions and expenditures?  
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16 (3) If CAPPAC may continue its existence as a non-connected committee following the  
17 corporate termination, may it purchase from CAP at fair market value the mailing lists,  
18 personal computer and other equipment that are currently used for PAC administration?  
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20 (4) If CAPPAC may continue in existence as a non-connected political committee  
21 following the corporate termination, may it continue to use the name CAPPAC?  
22

23 In order to respond to your questions, it is necessary to examine the relationship  
24 of a separate segregated fund to its connected organization. The Act and Commission  
25 regulations prohibit a corporation from making a contribution in connection with a  
26 Federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). An exception to the definition of  
27 corporate contribution permits a corporation to expend funds to establish, administer, and  
28 solicit contributions to a separate segregated fund to be utilized for political purposes and  
29 composed of voluntary contributions that were solicited from an eligible group of  
30 personnel as defined by the Act. 2 U.S.C. §441b(b)(2)(C), 441b(b)(3) and 441b(b)(4); 11  
31 CFR 114.1(a)(2)(iii) and 114.5(a). Commission regulations further make clear that

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<sup>3</sup> For the purposes of this opinion, the Commission accepts your representation that CAP is not an affiliate of the American Psychiatric Association or the Washington Psychiatric Society. The Commission also assumes that CAP is not an affiliate of any other incorporated entity. Therefore, there will be no surviving corporation that can continue or attain the status of a connected organization for CAPPAC. See 2 U.S.C. §431(7); 11 CFR 100.6(a) and 110.3(a); see also Advisory Opinions 1996-26 and 1983-19.

1 corporations, including membership organizations, may use general treasury moneys,  
2 including moneys obtained in commercial transactions and dues moneys or membership  
3 fees, for SSF establishment, administration, and solicitation costs, and that the  
4 corporation "may exercise control over" its SSF. 11 CFR 114.5(b) and (d).

5 The nature of the relationship between an SSF and its connected organization has  
6 been discussed by the United States Supreme Court. It has held that an SSF must be  
7 separate from its connected organization "only in the sense that there must be a strict  
8 segregation of its moneys from" general treasury funds. *Pipefitters Local Union No. 562*  
9 *v. United States*, 407 U.S. 385, 414 (1972). The Court stated that, in view of a  
10 sponsoring entity's ability to establish, administer, and solicit contributions to the SSF,  
11 "it is difficult to conceive how a valid political fund can be meaningfully 'separate' from  
12 [the sponsoring entity] in any way other than 'segregated'." 407 U.S. at 426. In *Bread*  
13 *Political Action Committee v. Federal Election Commission*, the Court of Appeals for the  
14 Seventh Circuit, citing *Pipefitters*, stated that "the separate segregated funds are simply  
15 political arms of the parent organizations." 635 F.2d 621, 624, n.3 (7th Cir. 1980) (en  
16 banc), *rev'd on jurisdictional grounds*, 455 U.S. 577 (1982).

17 You state that CAP will dissolve and terminate. Under the law of the District of  
18 Columbia, a non-profit corporation that voluntarily seeks to terminate its existence adopts  
19 a resolution recommending that the corporation shall be dissolved and then ceases to  
20 conduct its affairs, except insofar as is necessary "for winding up." D.C. Code §29-548.  
21 This process includes satisfying the corporation's liabilities and obligations and disposing  
22 of its assets. D.C. Code §29-549. When the the satisfaction of liabilities and obligations  
23 and the disposition of assets have been completed, the corporation files articles of  
24 dissolution with the Mayor and the existence of the corporation ceases upon the Mayor's  
25 issuance of a certificate of dissolution. D.C. Code §§29-552 and 29-553. In view of the  
26 fact that the SSF is a part of the corporation (with merely its funds segregated), the SSF  
27 may no longer exist upon the cessation of the connected organization's existence. Hence,

1 at that point or before, CAPPAC should file a termination report with the Commission  
2 and terminate its existence.<sup>4</sup> See 2 U.S.C. §433(d)(1); 11 CFR 102.3(a)(1)

3 No new non-connected committee formed by the CAP members may use  
4 CAPPAC's cash on hand. Those funds were raised under a statutory exemption from the  
5 general definition of "contribution" that allowed CAP to pay the committee's  
6 establishment, administration, and solicitation costs. 2 U.S.C. §441b(b)(2)(C); 11 CFR  
7 114.1(a)(2)(iii). Therefore, to permit the proposed non-connected committee to retain  
8 those funds to make its own contributions to candidates or other political committees  
9 would be contrary to the statutory scheme that regards as contributions the costs of  
10 supporting a political committee that is not entitled to the exemption. See *California*  
11 *Medical Association v. Federal Election Commission*, 453 U.S. 182, 198-201 (1982); see  
12 also Advisory Opinion 1982-63. Even though the cash on hand was raised from a  
13 restricted class, such funds were raised with the use of corporate moneys. To then allow  
14 a non-connected committee to avail itself of these funds for administrative or other  
15 purposes, such as soliciting more contributions, would contravene the purposes of 2  
16 U.S.C. §441b.

17 In order to terminate, CAPPAC has a number of options as to how to distribute its  
18 funds. In discussing the termination of political committees that were not the authorized  
19 committees of a Federal candidate, the Commission has noted that the rules of 2 U.S.C.  
20 §439a and 11 CFR 113.2 do not apply, and that the committee may expend its funds for  
21 any lawful purpose consistent with the Act and Commission regulations. Advisory  
22 Opinions 1992-10, 1991-21, and 1986-32. CAPPAC may contribute its remaining funds  
23 to other political committees, such as authorized candidate committees, political party  
24 committees, or non-connected political committees, subject to the limits of the Act.<sup>5</sup>  
25 CAPPAC may also donate the funds to CAP before CAP's termination, if permissible  
26 under other applicable law. Advisory Opinion 1986-32. It may also refund the

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<sup>4</sup> The only exception to the necessity for termination would be if there were still outstanding debts owed by the SSF. However, CAPPAC (according to its 1997 year end report) has no outstanding debts or obligations owed by it.

<sup>5</sup> Presumably, CAPPAC would not make contributions to other SSFs because it would not be solicitable by them or their connected organizations (although it may make unsolicited contributions to such committees). 11 CFR 114.5(g), 114.5(j).

1 contributions on hand to the persons who made them, such as on a *pro rata* basis or on a  
2 last contributed, first refunded basis. See Advisory Opinions 1991-21 and 1986-32.

3 To avert the complicated issues that arise if an SSF and a non-connected  
4 committee founded by persons associated with the connected organization exist  
5 concurrently, the Commission assumes that the new non-connected committee will begin  
6 its activities only after the termination of CAPPAC.<sup>6</sup> Thus, the Commission also  
7 assumes that, if CAPPAC decides to refund past contributions, it will do so without any  
8 reference to the formation of a new non-connected committee by the members of CAP. If  
9 CAPPAC proposes to make contribution solicitations for a new non-connected  
10 committee, it should describe that activity in a future advisory opinion request to the  
11 Commission. For your information, however, the Commission notes that, when it  
12 permitted persons associated with corporations to form non-connected political  
13 committees, those corporations did not have separate segregated funds. See Advisory  
14 Opinions 1997-26, 1997-15, 1995-38, 1991-37, and 1984-12. Furthermore, when  
15 presented with a proposal by an unincorporated entity to establish a non-connected  
16 committee where an SSF of an affiliated entity existed, the Commission concluded that  
17 such a committee would be affiliated with the SSF and would have a restricted solicitable  
18 class. See Advisory Opinion 1996-38.

19 The new committee may exist while CAP is engaged in dissolution, and the  
20 Commission anticipates that this will be a very brief period.<sup>7</sup> The new committee may  
21 then purchase from CAP the mailing lists, personal computer, and other equipment that  
22 are currently used for CAPPAC administration as long as it pays the usual and normal

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<sup>6</sup> As a general principle, the concurrent existence of an SSF and a "non-connected" committee, formed for the same political purposes by persons also associated with the corporation that established the SSF, would be problematic. This is because the statutory scheme for the operation of an SSF by a corporation, which must restrict its contribution solicitations to a defined group, does not contemplate the parallel operations of another political committee, comprised of the same personnel, that could solicit contributions from all otherwise lawful sources. See 11 CFR 114.5(g)(1), 114.7(a).

<sup>7</sup> In view of the impending termination of CAP, the brief and transitional nature of the co-existence of CAP and the new committee, and the above-stated representation and assumption that CAP does not have any corporate affiliates (see footnote 3), the Commission will not address the governance aspect of the new committee's non-connected nature under the standards set out in Advisory Opinions 1997-26, 1997-15, and 1984-12. The Commission assumes, however, that CAP will provide no financial support to the new committee, as defined in Advisory Opinion 1997-15.

1 charge for such goods. See 11 CFR 100.7(a)(1)(iii)(A) and (B). This purchase will have  
2 to be made from contributions raised by the new committee itself, e.g., from contributions  
3 by the committee's organizers that otherwise comply with the Act.

4 As to the fourth question, the Commission notes that the Act and Commission  
5 regulations require an SSF to include in its name the full name of the connected  
6 organization. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). The Act or regulations do not  
7 explicitly prohibit a non-connected committee from including the name of a corporation  
8 in its name, but the use of a corporate name may constitute a prohibited corporate  
9 contribution to the new committee. In view of the impending termination of CAP (see  
10 footnote 7), however, the Commission concludes that the new committee may take the  
11 name used by the terminated SSF. Other Federal statutes governing the use of  
12 trademarks or trade names may apply.

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

16 Sincerely,

18 Joan D. Aikens  
19 Chairman

20  
21 Enclosures (AOs 1997-26, 1997-15, 1996-38, 1996-26, 1995-38, 1992-10, 1991-37,  
22 1991-21, 1986-32, 1984-12, 1983-19, and 1982-63)  
23  
24  
25  
26  
27

*first impression -  
Aggregation of contributions*



*Elliott Johnson*

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MAR 23 11 23 AM '98



FEDERAL ELECTION COMMISSION

Washington, DC 20463

March 23, 1998

**MEMORANDUM**

**AGENDA ITEM**

For Meeting of: 4-2-98

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

*I don't like this!*

SUBJECT: Alternative OGC Draft for AOR 1997-24

At the open session meeting on March 12, 1998, the Commission considered two alternative draft responses to Advisory Opinion Request 1997-24, as presented in Agenda Document #98-24. These drafts, representing the views of Commissioner Elliott and Commissioner Thomas respectively, were written as alternatives to the original agenda draft submitted by the Office of General Counsel in Agenda Document #98-18. No draft was approved by the Commission at the March 12 meeting, and the Commission will discuss the request further at its April 2 meeting.

Attached is another draft advisory opinion which retains the same basic conclusions of Agenda Document #98-18, but also contains some modifications. Where the new draft differs from Agenda Document #98-18, the text is marked in bold. This office requests that the attached alternative OGC draft and Agenda Document #98-24 be placed on the Agenda for April 2, 1998.

Attachment

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