FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 16, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1999-14

Elizabeth Kingsley
Harmon, Curran, Spielberg & Eisenberg
1726 M Street, N.W.
Suite 600
Washington, D.C. 20036

Dear Ms. Kingsley:

This responds to your letter dated May 25, 1999, on behalf of the Council for a Livable World ("the Council"), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of supporters for testamentary bequests.

The Council, which was originally organized as an unincorporated association in 1962, has been registered as a political committee since 1972 and is a non-connected multicandidate committee.[1] In order to provide for long-term financial stability, the Council's Board of Directors has decided to set up a planned giving program soliciting supporters for testamentary bequests. The Council will request that its supporters include in their wills a provision bequeathing an amount up to $100,000 to the committee.

The Council will deposit all funds received from any bequests that exceed $5,000 into an interest-bearing savings or other investment account to be held in escrow. A separate segregated escrow account will be created for each bequest. You state that the Council will not pledge, assign, or otherwise obligate the escrow account balances in any manner to augment other Council funds. The Council will annually withdraw no more

[1] You state that the Council is affiliated with another political committee, Peace PAC. The Commission notes that any conclusions in this opinion referring to what the Council may or may not do are meant to include Peace PAC as part of the Council.

than $5,000 from each escrow account, and these funds will be deposited into its general account to be used for political purposes. If the contribution limit at 2 U.S.C. §441a(a)(1)(C) is raised or lowered in the future, the Council will adjust the transfer amount to conform with the new limit.[2] The Council asks whether its proposal would constitute the solicitation and acceptance of excessive contributions.

The Act sets a limit of $5,000 in a calendar year on contributions by any "person" to a political committee other than an authorized candidate committee or a political committee established and maintained by a national political party. 2 U.S.C. §441a(a)(1)(C). The Act also provides that no political committee shall knowingly accept a contribution in violation of the Act's provisions. 2 U.S.C. §441a(f). The Act defines "person" to include "an individual" but makes no specific reference to an individual's testamentary estate. See 2 U.S.C. §431(11). Because the Act includes no express or implied prohibitions on contributions from a decedent's estate, the Commission has concluded, in previous opinions, that a testamentary estate is the successor legal entity to the testator and qualifies as a person under the Act that would be subject to the same limitations and prohibitions applicable to the decedent in the decedent's lifetime. Advisory Opinions 1988-8, 1986-24, and 1983-13.

In those opinions, the Commission addressed a lump sum bequest in excess of $5,000 to a political committee from the estate of a decedent individual, either by direct gift from the estate or through a testamentary trust. In each opinion, the Commission concluded that the distribution of the funds would not constitute an excessive contribution provided that the committee placed the funds in a separate escrow account from which it withdrew no more than $5,000 in any calendar year until the escrow account balance was reduced to zero. The opinions also provided that the account would have to be administered and drawn upon only in a manner whereby the committee would not realize any augmentation of, or benefit to, its other funds by reason of any funds on deposit in the escrow account. For example, the committee could not pledge, assign, or otherwise obligate the escrow funds to provide anything of value to the committee, its connected organization, or any affiliated entities. Moreover, although interest could be earned on the escrow funds, that interest would become part of the principal for purposes of the $5,000 annual limit on withdrawals by the committee's general account. [3]

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[2] You state that the solicitation language will be similar to the following:

> Leo Szilard originally funded the Council by asking the directors and key supporters to pledge two percent of their incomes. This method has given way to periodic appeals for funds. In order to continue Leo Szilard's vision for the Council and to endow the organization as a permanent institution, we respectfully call upon all members of Council for a Livable World's Board of Directors -- and all friends of the Council -- to place in their wills a provision to bequeath $100,000 to the Council. Should your estate not be sufficient to sustain this level, please choose an alternative amount. Your estate contribution will be placed in a special escrow account from which the Council can withdraw $5,000 annually under present law.

[3] In those opinions, the Commission also delineated the recipient committee's reporting requirements based on such an arrangement. The amounts remaining in the escrow account were to be treated as analogous to an obligation owed to the committee.

Upon further review of the concepts underlying bequests from decedent's estates, the Commission has determined that the committee escrow plan as described above would not be permissible under the Act. Although actual withdrawals for deposit into the general account would be limited to $5,000 per year, the entire amount of the bequest would constitute a contribution at the time the funds were distributed by the estate. Commission regulations provide that, for the purposes of the limits, a contribution is considered to be made when the contributor relinquishes control over the contribution; this would be when it is delivered to the political committee or its agent. 11 CFR 110.1(b)(6). Not only would the estate relinquish control of all the funds at the time of the delivery or distribution, but the committee would exercise control over the funds upon its receipt, and this control would not be negated by placing the funds in an escrow account. The committee would have the power to decide which investments were best for the escrowed funds and to modify these investments in order to maximize growth. The committee could also decide to withdraw less than $5,000 in a particular year as part of an investment strategy. The Commission concludes, therefore, that the Council's proposal may be implemented only to the extent that the solicitee's bequest is no more than $5,000 and not more than $5,000 is deposited in any committee accounts. To the extent that Advisory Opinions 1988-8, 1986-24, and 1983-13 would permit the implementation of the Council's plan for amounts exceeding $5,000, those opinions are hereby superseded.

The Commission understands that other political committees or other individuals may have made arrangements, based on the above three opinions, for the deposit of bequested funds, in excess of the Act's limits, into committee escrow accounts. The Commission concludes that if a committee is already drawing bequested funds from such an escrow account, or an individual has already died and the bequested funds will be distributed to the committee pursuant to a will, such arrangements may continue so long as there is no material distinction from the situations presented in the three opinions. See 2 U.S.C.§437f(c)(1)(B) and 11 CFR 112.5(a)(2).

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

Sincerely,

(signed)

Scott E. Thomas
Chairman

Enclosures (AOs 1988-8, 1986-24, and 1983-13)