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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 16-57-B
AGENDA ITEM
For meeting of November 17, 2016
SUBMITTED LATE

November 16, 2016

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AW*
Acting General Counsel

Adav Noti *AW*
Associate General Counsel

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Acting Assistant General Counsel

Esther D. Gyory *EDG*
Attorney

Subject: AO 2016-20 (Mlinarchik) Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on November 17, 2016.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2016-20

2

3 Christoph Mlinarchik, JD, CFCM

4 4624 Tarpon Lane

5 Alexandria, VA 22309

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8 Dear Mr. Mlinarchik:

DRAFT B

9 We are responding to your advisory opinion request concerning the application of the
10 Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 (“the Act”), and Commission
11 regulations to your proposal to make contributions as the sole member of a limited liability
12 company (“LLC”) that is a federal contractor. The Commission concludes that you are not a
13 federal contractor prohibited from making contributions.

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received on
16 September 29, 2016 and your comment received on November 16, 2016.

17 You are a U.S. citizen and the sole member of Christoph LLC, a single-member Virginia
18 LLC that has not elected to be treated as a corporation under the Internal Revenue Code. You
19 state that Christoph LLC is not a sole proprietorship, but its profits are attributable to you and are
20 reported on your individual federal income tax returns because Christoph LLC is a disregarded
21 entity under federal tax law. You also state that Christoph LLC has a separate bank account and
22 legal status apart from you. Christoph LLC provides advice and consulting in government
23 contracts. Christoph LLC negotiates and signs contracts performed by Christoph LLC, and all
24 payments for them are made to Christoph LLC and its business banking account. Christoph LLC
25 is registered in the federal government’s System for Award Management; you are not registered.
26 Christoph LLC “has commenced negotiations and is considering a future contractual relationship
27 with the federal government.” Christoph Mlinarchik, Comment at 1.

1 ***Question Presented***

2 *As a U.S. citizen who is the 100% owner of a Virginia single-member LLC that is treated*
3 *as a disregarded entity for federal income tax purposes and that is negotiating a contract with*
4 *the federal government, may you make a contribution from your personal funds to a political*
5 *party, political committee, or candidate for federal office under part 115 of the Commission’s*
6 *regulations?*

7 ***Legal Analysis and Conclusion***

8 Yes, as a U.S. citizen who is the 100% owner of a Virginia single-member LLC that is
9 treated as a disregarded entity for federal income tax purposes and that is negotiating a contract
10 with the federal government, you may make a contribution from your personal funds to a
11 political party, political committee, or candidate for federal office under part 115 of the
12 Commission’s regulations because you are not a federal contractor.

13 The Act prohibits federal contractors from “directly or indirectly” making contributions
14 to any political party, political committee, or federal candidate. 52 U.S.C. § 30119(a)(1); *see*
15 *also* 11 C.F.R. § 115.2(a). A federal contractor includes any person who is negotiating or
16 performing a contract with the federal government or its agencies for certain enumerated
17 purposes, including the “rendition of personal services.” 52 U.S.C. § 30119(a)(1); 11 C.F.R.
18 § 115.1(a). The Act defines “person” to include “an individual, partnership, committee,
19 association, corporation, labor organization, or any other organization or group of persons.” 52
20 U.S.C. § 30101(11); *see also* 11 C.F.R. § 100.10. Individual partners and employees of a
21 partnership that is a federal contractor may make contributions, 11 C.F.R. § 115.4, as may
22 stockholders and officers of a corporation that is a federal contractor, 11 C.F.R. § 115.6. But

1 individuals or sole proprietors who are federal contractors may not make contributions “from
2 their business, personal, or other funds under their dominion or control.” 11 C.F.R. § 115.5.

3 The federal contractor provisions in the Act and Commission regulations do not explicitly
4 address LLCs.¹ Commission regulations do provide, however, that the federal contractor
5 prohibition does not apply to contributions by the “employees, officers, or members” of an
6 unincorporated association, cooperative, membership organization, labor organization, “or other
7 group or organization which is a Federal contractor,” from their personal assets. 11 C.F.R.
8 § 115.6.

9 You are the sole member of Christoph LLC. You state that Christoph LLC is registered
10 in the federal government’s procurement database, and you are not; any business related to
11 federal contracts is conducted solely through Christoph LLC, and not through you; and all
12 contracts performed by Christoph LLC are signed and negotiated as such, with all payments
13 going to Christoph LLC and its business account. Unlike a sole proprietor, you and Christoph
14 LLC are separate entities under applicable state law.² Thus, the Commission concludes that, as a

¹ An LLC, generally, is a “non-corporate business [form] that provides its members with limited liability and allows them to participate actively in the entity’s management.” Mark A. Sargent & Walter D. Schwidetzky, *Limited Liability Company Handbook* § 1:3 (Thomson Reuters ed., 2014-2015 ed. 2014) (citing Keatinge, et al., *The Limited Liability Company, A Study of the Emerging Entity*, 47 BUS. LAW. 378, 384 (1992)); *see generally* Treatment of Limited Liability Companies under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,398 (July 12, 1999). Further, “[a] limited liability company has an existence separate from its members and managers A manager of a limited liability company is similar to an officer or director of a corporation and a member of a limited liability company is similar to a shareholder of a corporation.” 51 Am. Jur. 2d Limited Liability Companies § 1 (2016 update) (footnotes omitted).

² *See* Va. Code Ann. § 13.1-1019 (“[N]o member, manager, organizer or other agent of a limited liability company, regardless of whether the limited liability company has a single member or multiple members, shall have any personal obligation for any liabilities of a limited liability company.”); *Jeb Stuart Action Servs. LLC v. West American Ins. Co.*, 122 F. Supp. 3d 479, 484 (W.D. Va. 2015) (internal quotation marks and citations omitted) (“An LLC is an entity that, like a corporation, shields its members from personal liability based on actions of the entity. . . . The LLC structure would have no meaning if single-member LLCs were one and the same with the single member.”); *Mission Residential, LLC v. Triple Net Properties, LLC*, 275 Va. 157, 162 (2008) (“Like a corporation, a limited liability company is a legal entity entirely separate and distinct from the shareholders or members who compose it.”). *Cf. Recalde v. ITT Hartford*, 492 S.E.2d 435, 438 (Va. 1997) (concluding that “a sole proprietorship

1 member of an organization that is a federal contractor under 11 C.F.R. § 115.6, you are not
2 subject to the federal contractor prohibition. Accordingly, you may make contributions in your
3 personal capacity from your personal assets.³

4 The Commission’s attribution rules for contributions by LLCs do not apply here. *See* 11
5 C.F.R. § 110.1(g). The attribution rules provide that “[a] contribution by an LLC with a single
6 natural person member that does not elect to be treated as a corporation” by the IRS “shall be
7 attributed only to that single member.” 11 C.F.R. § 110.1(g)(4). The Commission has
8 previously considered the attribution rules in concluding that expenditures by a single-member
9 LLC that is funded and controlled exclusively by its individual member are attributable to that
10 individual member and subject to the limitations and disclosure requirements that apply to that
11 member. *See* Advisory Opinion 2009-02 (True Patriot Network). Here, by contrast, Christoph
12 LLC does not propose to make either a contribution or an expenditure. Accordingly, the
13 attribution rules do not apply.

14 This response constitutes an advisory opinion concerning the application of the Act and
15 Commission regulations to the specific transaction or activity set forth in this advisory opinion
16 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of
17 the facts or assumptions presented, and such facts or assumptions are material to a conclusion
18 presented in this advisory opinion, then you may not rely on that conclusion as support for your
19 proposed activity. Any person involved in any specific transaction or activity which is
20 indistinguishable in all its material aspects from the transaction or activity with respect to which

is not a legal entity separate and distinct from the individual owner doing business in that name”).

³ *See Wagner v. FEC*, 793 F.3d 1, 29 (D.C. Cir. 2015) (*en banc*) (internal quotation marks and citations omitted) (stating that “statutory regime” is not “fatally undermine[d]” if “individuals who control LLCs that contract with the federal government can make contributions”).

1 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
2 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
3 affected by subsequent developments in the law including, but not limited to, statutes,
4 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
5 on the Commission's website.

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On behalf of the Commission,

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Matthew S. Petersen
Chairman