



U. S. Department of Justice

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Washington, D.C. 20530

JUL 20 1995

AOR 1995-19
LATE COMMENT
re Agenda Document
#95-74

The Honorable Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Room No. 657
Washington, D.C. 20463

Dear Mr. Noble:

Re: Draft AO 1995-19

This refers to the captioned draft Advisory Opinion defining the duties of innocent recipients of illegal contributions made by others in violation of the Federal Election Campaign Act (FECA) upon learning that they may have accepted such illegal donations.

The Commission's draft opinion concludes that, upon obtaining for the first time evidence that illegal donations were innocently received in violation of the FECA's campaign financing provisions, a recipient must expeditiously conduct a reasonable investigation to confirm or disprove the fact of the underlying FECA violation, and refund any contributions thus determined to have been made in violation of the Act. It is our understanding that this draft opinion is scheduled to be presented to the Commission for a final vote and possible release on Thursday, July 20, 1995.

We have no quarrel with the substance of the advice given in this draft AO. Indeed, we concur with the Commission that the FECA demands that initially innocent recipients of illegal donations make an aggressive attempt to back out those donations once they become aware of facts suggesting the existence of the underlying FECA offense. However, this AO poses potential problems concerning criminal investigations that focus on the laundering of illegal funds to innocent recipients.

Encouraging PAC personnel to conduct their own interviews of conduit contributors in situations where a criminal investigation is pending can present problems to the successful conclusion of a parallel criminal inquiry. For example, it may impede the criminal investigation for the target of the criminal investigation to be

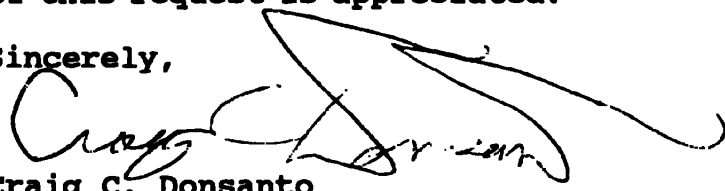
aware that it is being conducted. Moreover, even under the best of conditions, it is essential that interviews of the conduits in FECA-based schemes such as this be conducted by law enforcement personnel -- or by the FEC, rather than by PAC officers who are not trained in the many issues implicated by this sort of violation. This is to ensure that the witness is asked the right questions, to ensure that procedural prerequisites of witness interrogation in criminal matters are respected, and to minimize the unnecessary generation of interviews that implicate the Brady and/or Jencks rules.

If it is necessary to issue this proposed advisory opinion, we request the Commission to insert the following paragraph immediately after the last full paragraph on the penultimate page of the draft so as to ensure that criminal law enforcement interests and strategies are protected in future matters:

"The Commission realizes that in some situations, otherwise innocent recipients of illegal contributions made by others in violation of the FECA may be cooperating with state or federal criminal law enforcement authorities in pending criminal investigations. In such circumstances, the Commission encourages recipients to seek direction from the appropriate criminal investigative agency before conducting the internal inquiries described above in this Opinion. Where a recipient's failure to perform its own inquiry in accordance with the provisions of this Advisory Opinion is rooted in a request from a criminal law enforcement agency, the Commission will take that fact into account in determining penalties for any violation of the FECA that is based on the delays (if any) involved."

The Commission's consideration of this request is appreciated.

Sincerely,



Craig C. Donsanto
Director, Election Crimes Branch
Public Integrity Section
Criminal Division