FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 10, 1996

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-13

J. Steven Hart
Townhouse Associates, L.L.C.
1155 21st Street
Suite 300
Washington, D.C. 20036-3308

Dear Mr. Hart:

This responds to your letter dated March 29, 1996, requesting an advisory opinion on behalf of Townhouse Associates, L.L.C. ("TA") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the campaign-related use of a townhouse owned by TA.

You state that TA is a limited liability company ("LLC") organized under the laws of the District of Columbia.[1] Among other purposes, TA is organized to hold the investments of its members and to purchase property in the District of Columbia. TA has 12 members, all of whom are natural persons and U.S. citizens. All twelve members of TA are also members of Williams & Jensen, P.C., an incorporated law firm ("the Firm"); however, the Firm has two additional members who are not members of TA. TA has no interest holders other than its members. TA is capitalized by equal initial cash contributions from the personal funds of each of its members.[2]

TA recently acquired a townhouse located in the Capitol Hill area of the District of Columbia. The townhouse has three floors - a basement, a first floor consisting of the living room, dining room, kitchen, and patio, and a second floor consisting of three bedrooms. Eighty percent of the basement has been rented to a third party individual who pays monthly rent to TA. The Firm is leasing a bedroom on the second floor for use as an office (approximately 25 percent of the second floor) and 20 percent of the basement space for storage, and it has access to the common areas on the first floor. TA's proposed lease with the Firm provides that TA may rent out (on an

hourly, daily, or weekly basis) part or all of the first floor subject to (1) TA's notice to the Firm and (2) the availability of space.

TA intends to rent the remaining two bedrooms and living space as overnight accommodations. TA also plans to rent the kitchen, patio, dining room, and living area to event caterers. Given the townhouse's location, you expect that business, charitable, and service organizations will regularly utilize the space for events. TA holds no other assets and has no intention of acquiring any other properties in the District of Columbia.

Subject to the lease with the Firm and to availability, TA wishes to offer space in the townhouse to campaign committees for fundraisers from time to time. With respect to these events, TA intends to charge the campaign committee the fair market value for use of the space, or to donate the space as an in-kind contribution to the campaign committee. You ask two questions related to your proposal. First, you ask whether TA, as an LLC "standing alone," would fall within the category of "any other organization or group of persons" under 2 U.S.C. 431(11) and be subject to the contribution limits applicable to a "person" under the Act. Second, you ask whether the circumstances surrounding the leasing of space in the townhouse to the Firm would affect the status of TA and its ability to make contributions. Your questions raise the issue of whether TA would be subject to the contribution limits of 2 U.S.C. 441a(a)(1), rather than the prohibitions on corporate contributions at 2 U.S.C. 441b(a).

The term "contribution" includes a "gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing" a Federal election." 2 U.S.C. 431(8)(A); 11 CFR 100.7(a)(1). See 2 U.S.C. 441b(b)(2) and 11 CFR 114.1(a)(1). Commission regulations provide that the term "anything of value" includes all in-kind contributions. The provision of goods and services, including facilities, equipment, and supplies, at less than the usual and normal charge for such goods and services is a contribution in the amount of the difference between the usual and normal charge and the amount charged the political committee. 11 CFR 100.7(a)(1)(iii)(A). See 11 CFR 100.7(a)(1)(iii)(B).

Under the Act, the term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. 431(11); 11 CFR 100.10. The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(b). Contributions by persons whose contributions are not prohibited by the Act are subject to the limits set out in 2 U.S.C. 441a.[3] More particularly, contributions by partnerships are permitted, although limited by 2 U.S.C. 441a(a). Partnership contributions are also attributed proportionately against each contributing partner's limit for the same candidate and election. 11 CFR 110.1(e).[4]

You refer to Advisory Opinion 1995-11 in which the Commission addressed the applicability of the Act to contributions by an LLC organized under Virginia State law. The Commission reviewed the attributes of LLCs under the State law and concluded that the company was neither a corporation nor a partnership under the Act or Commission regulations. The company, instead, fell within the language "any other organization or group of persons," which is part of the Act's definition of "person." Hence, as a person, but not a corporation, the company was subject to the

Act's contribution limits rather than its prohibitions. In addition, contributions from the company's general operating accounts or treasury would not be attributed to any of its members.

In a manner similar to the Virginia law on LLCs, the law of the District of Columbia distinguishes LLCs from corporations or partnerships. A "limited liability company" is defined as "an entity that is an unincorporated association, without perpetual duration, having 2 or more members that is organized and existing under this chapter." D.C. Code Ann. 29-1301(16) (1995). D.C. law indicates the distinction of LLCs from partnerships by specifically prescribing that certain steps must be taken to convert a general or limited partnership into an LLC. D.C. Code Ann. 29-1313. Moreover, D.C. law prohibits an LLC from including the terms "Corporation," "Incorporated," "Limited Partnership," or the abbreviations for such terms in its name. D.C. Code Ann. 29-1304(b)(1). Under D.C. law, an LLC shares the corporate attribute of limited liability for all owners. D.C. Code Ann. 29-1314. However, LLCs, in general, lack certain characteristics associated with corporations such as the free transferability of interests and continuity of life. D.C. Code Ann. 29-1306(a)(2), 29- 1347 to 1350, and 1335 to 1337.[5]

The provisions of the D.C. Code governing LLCs are similar in all material respects to the Virginia statutory provisions on LLCs used by the Commission as a basis for determining that the requesting LLC was not a corporation or partnership for purposes of the Act and Commission regulations. In addition, TA's Operating Agreement reflects the attributes discussed above and set out in detail in footnote 5. The term of the company began on January 2, 1996, and will continue until December 31, 2025, unless its existence is terminated due to certain events. Operating Agreement ("OA"), Article 2.4. The OA specifies events of dissolution that correspond to some of the events described in the D.C. law. OA, Article 7.1. The OA severely restricts the transferability of interests. OA, Article 6.1.

Based on the foregoing, TA, standing alone as a limited liability company in the District of Columbia, is not a corporation or partnership under the Act or Commission regulations. In determining how TA should be treated under the Act and regulations with respect to the rental of space to political committees, the Commission examines the lease transaction referred to in your second question. The lease specifically provides, in pertinent part, that the Firm has the right of first refusal with respect to the use of the rooms on the first floor. From time to time, TA may, "with the prior consent of" the Firm, use the first floor for receptions and events. In addition, TA's lease of the basement apartment to an individual (from time to time), and the access of other second floor tenants to the first floor, are subject to the Firm's right of first refusal. Lease Agreement, Clauses 4, 4A, and 4B. Other information, including the OA, indicates a close relationship with the Firm which seems to suggest that in-kind contributions by TA would actually be considered as made by the Firm itself. One factor is the nearly complete overlap between the members of the Firm and the members of TA. In addition, no member of TA may resign from TA unless the member is also resigning his or her membership in the Firm. OA, Article 6.2. Moreover, included in TA's "Purpose" described in the Operating Agreement is loaning funds from time to time to the Firm or pledging funds on behalf of the Firm. OA, 2.3. Finally, TA and the Firm are located at the same address.

Although the Firm exercises some control over the ability of TA to conclude a transaction, TA is the party contracting with the political committee, and TA is the owner of the resources being

used. In addition, the close relationship of the two entities does not convert any in- kind contribution of space to a campaign committee into a contribution by the Firm. The Commission recognizes that individuals or groups of individuals do business in different forms, and that persons doing business in one form may be able to make a political contribution from the funds of one of their businesses, e.g., a partnership, while funds from one of that same group's incorporated businesses may not be so used. For example, in response to a request from Congressman Bart Stupak, who wished to rent office space and equipment to his principal campaign committee, the Commission distinguished between different forms of ownership. A building co-owned by the candidate and his spouse could be rented to the committee for less than the usual and normal charge so long as half of the amount less than the usual and normal charge (i.e., the amount attributable to the spouse) did not exceed the limits of 2 U.S.C. 441a(a)(1)(A). On the other hand, in renting equipment from the candidate's professional corporation, Bart T. Stupak, P.C., the committee would have to pay the usual and normal charge in order to avoid making an impermissible corporate contribution. Advisory Opinion 1995- 8.

The Commission also notes that the close relationship does not implicate any ownership of TA by the Firm that would necessitate treating in-kind contributions by TA as impermissible under 2 U.S.C. 441b(a). The financing of TA is by the individual Members of TA from their personal funds, not from the Firm's funds.[6] Moreover, it appears from TA's stated purpose that it will provide financing to the Firm, rather than the other way around.

From the information you have presented, the Commission concludes that the circumstances surrounding the leasing of space to the Firm, as well as other pertinent circumstances of the relationship of the two business entities, do not negate TA's ability to make in-kind contributions under the Act. TA may therefore make in-kind contributions of space in the townhouse to political committees, subject to the limits at 2 U.S.C. 441a(a)(1).[7]

You indicate that TA intends to rent space for events by business, charitable, and service organizations, as well as political committee events. The Commission cautions TA as to the degree of disbursements by TA that would entail in- kind contributions to political committees and for other campaign events or activities. The term "political committee" means any committee, club, association, or other group of person which receives contributions aggregating in excess of $1,000 during a calendar year, or which makes expenditures aggregating in excess of $1,000 during a calendar year. 2 U.S.C. 431(4)(A). When determining if an entity should be treated as a political committee, i.e., as a committee, club, or association, rather than as only a person, the standard used is whether the organization's major purpose is campaign activity; that is, making payments or donations to influence any election to public office. See 26 U.S.C. 527(e)(1) and (2); Advisory Opinions 1996-3 and 1995-11; and *Akins v. Federal Election Commission*, No. 92-1864 (D.D.C. March 30,1994), *appellate court judgment vacated, rehearing en banc granted*, No. 94-5088 (D.C. Cir. Jan. 26, 1996). See also *Federal Election Commission v. Massachusetts Citizens for Life, Inc.* ("*MCFL*"), 479 U.S. 238, 262 (1986) (where the Court stated that, if MCFL's independent expenditures "become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee."). Absent any further information, the Commission reaches no conclusion that making in-kind contributions will be TA's major purpose. See Advisory Opinion 1995-11.8

The Commission expresses no opinion regarding any tax ramifications of your proposal, because these issues are not within its jurisdiction. See Advisory Opinion 1995-11, n. 11.

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

Sincerely,

(signed)

Lee Ann Elliott
Chairman

Enclosures (AOs 1996-3, 1995-11, and 1995-8)

1 The members of TA entered into TA's Operating Agreement on January 2, 1996.
2 You state that no member of TA is required to contribute additional capital. It is expected that rental payments from TA properties will be sufficient to fund TA "on a going forward basis."
3 The Act prohibits contributions by several entities: corporations, labor organizations, Federal contractors, and foreign nationals. 2 U.S.C. 441b, 441c, and 441e; 11 CFR 114.2(b), 110.4(a), and 115.2.
4 A corporate partner may not participate in a partnership contribution or accept any attribution of any portion of the contribution through a reduction of its share of partnership profits or an increase of its share of partnership losses. 11 CFR 110.1(e).
5 An LLC's articles of organization must set forth the last date on which the company is to dissolve. D.C. Code Ann. 1306(a)(2). It will also dissolve under other conditions such as the termination of the membership of a member (e.g. upon death, retirement, resignation, expulsion, bankruptcy) unless there are at least two remaining members (or one remaining member and the admission of a new member) and there is unanimous consent of the remaining members, within 90 days of the terminating event, to continue the LLC or there is compliance with procedures in the articles of organization or operating agreement for continuing the LLC. D.C. Code Ann. 29-1347(3). Although a member may assign his financial rights, the assignee thereby receives that member's share of profits and losses and the member's distributions only, and this does not empower the assignee to become a member or exercise governance rights, unless otherwise provided in the LLC's governing documents. D.C. Code Ann. 29-1335. A member may assign his full membership interest by simultaneously assigning all of his financial and governance rights, but a member's governance rights are assignable only to a person who is not already a member if those members (other than the assigning member) with voting rights holding at least a majority of the interest in the LLC's profits consent to the assignment. D.C. Code Ann. 29- 1336. See also D.C. Code Ann. 29-1337. For a discussion of principal corporate attributes in an analysis of LLCs, see Nicholas G. Karambelas, *Limited Liability Companies: Law, Practice & Forms* (Clark, Boardman, Callaghan, 1994), at 11:02-11:07.
6 The Commission assumes that none of the individual members of TA are Federal contractors or foreign nationals. The participation of corporations, Federal contractors, or foreign nationals

as members in an LLC would raise the issue of prohibited contributions or expenditures which are prohibited by 2 U.S.C. 441b, 441c, and 441e. Advisory Opinion 1995-11, n. 9 .

7 The question of how the Firm's relationship with TA affects the nature of TA's in-kind contributions is distinguishable from the affiliated relationship that may exist between Williams & Jensen, P.C. Political Action Committee ("W & J PAC"), a political committee registered with the Commission, and any committee for the support of candidates that might be sponsored by TA. See 2 U.S.C. 441a(a)(5); 11 CFR 110.3(a)(2)(v) and (a)(3).

8 If TA were to become a political committee, the affiliation regulations at 11 CFR 110.3 would be applicable to contributions by TA and W & J PAC.