

Fitzgerald

U. S. SENATE

June 30, 1998

Mr. Lawrence M. Noble, Esq.
Federal Election Commission
Office of General Counsel
999 E. Street, N.W.
Washington, D.C. 20463

AOR 1998-15

JUL 9 3 26 PM '98

RE: Request for Advisory Opinion

Dear Mr. Noble:

I am writing on behalf of Peter Fitzgerald, candidate for the United States Senate in Illinois to request an Advisory Opinion under 2 U.S.C. 437f(a)(1) and 11 CFR 112.1 on whether a contribution from an Illinois limited liability company to Fitzgerald for Senate may be treated as a contribution from a "person" within the meaning of the Federal Election Campaign Act of 1971. The Fitzgerald for Senate campaign would like, and intends, if given permission, to receive contributions from Illinois limited liability companies.

On four previous occasions, the Federal Election Commission has considered the ability of limited liability companies to make contributions in connection with federal elections. See Advisory Opinions 1997-17, 1997-4, 1996-13, 1995-11. The Commission has consistently concluded that limited liability companies are business entities distinct from a corporation or partnership under the statutes of those jurisdictions and therefore fall within the definition of a "person" as contemplated by the Act. 2 U.S.C. 431(11). In doing so, the Commission has specifically noted how state statutes deal with issues of designation, dissolution, limitation of liability for members and limitations on the transferability of interests. On these issues, the L.L.C. law of Illinois is similar to those of Missouri, Pennsylvania, Virginia, and the District of Columbia.

Under Illinois law, an L.L.C. is a distinct business entity from either a corporation or partnership, and is authorized and governed by its own comprehensive statutory framework, the "Limited Liability Company Act." 805 ILCS 180/1-1. First, Illinois L.L.C.'s must use the designation "limited liability company" or "L.L.C." in their name and may not use any of the following terms: "Corporation, Corp., Incorporated, Inc., Ltd., Co., Limited Partnership or L.P." 805 ILCS 180/1-10. Second, Illinois law requires the L.L.C.'s articles of organization to include the "latest date upon which the limited liability company is to dissolve and other events of dissolution, if any, that may be agreed upon by the members..." 805 ILCS 180/5-5. Third, an

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Illinois L.L.C.'s members, and managers, are given limited liability, "to the extent that a shareholder of an Illinois business corporation is liable in analogous circumstances under Illinois law." 805 ILCS 180/15-1. Lastly, the statute provides for limitations on the transferability of interest. See ILCS 180/30-10. A member's assignment of his interest does not entitle the assignee to membership or the attendant management rights, just the right to receive distributions and profits, unless the other members provide unanimous written consent or there is a provision for such assignment in the articles of organization or operating agreement. 805 ILCS 180/30-5, 30-10.

Similarly, in Advisory Opinion 1997-17, the FEC noted that under the Missouri L.L.C. statute, the L.L.C. must be specifically designated as such, the articles of organization must provide for dissolution, the members of the L.L.C. are given limited liability, and there are limits on the transferability of interests. In Advisory Opinion 1997-4, the FEC noted the Pennsylvania L.L.C. statute's requirement of designation, dissolution upon events terminating a person's membership, limited liability for all members and the limit on the transferability of interests. In Advisory Opinion 1996-13, the FEC noted that under the District of Columbia L.L.C. statute an L.L.C. may not use designations indicating incorporation or partnership, owners have limited liability and the statute "lacks certain characteristics associated with corporations such as the free transferability of interests and continuity of life." In Advisory Opinion 1995-11, the FEC noted that the Virginia L.L.C. statute makes a clear distinction between corporations and limited liability corporations and that although the L.L.C. shares the limited liability of corporations, it lacks certain characteristics associated with corporations such as the free transferability of interests and perpetual life.

If we can provide any further information, please call me at (847) 963-1998. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Roggeveen" followed by a small "dw" in the bottom right corner of the signature.

Fitzgerald for Senate, Inc.

By: Richard A. Roggeveen

Its Treasurer

RAG/dw