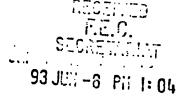
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IDA ELIZABETH BOND
ROY F. SATTERWHITE III

June 3, 1993

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

RE: Congressman John J. Duncan, Jr.

Dear Mr. Noble:

AOR 1993-08

We are representing Congressman John J. Duncan, Jr. in the incorporation of his re-election campaign for liability purposes only. However, there is an issue that needs to be resolved before this can be accomplished.

The name of the proposed corporation would be Duncan For Congress, Inc. It would be a non-profit corporation, but would not be tax exempt. A copy of the proposed charter is enclosed. The present campaign funds are held in the account of <u>Duncan For Congress</u>. If incorporated, these funds would be transferred to <u>Duncan For Congress</u>, Inc.

In accordance with 11 CFR 113.2 and T.C.A. §§2-10-114 and 2-10-115, copies of which are enclosed, Congressman Duncan makes contributions from the excess campaign funds to the Republican party on national, state and local levels.

Section 441b of the Federal Election Campaign Laws, 11 CFR 113.4, 11 CFR 114, and T.C.A. §2-19-132(a), prohibit the use of corporate funds in connection with a political campaign, and prohibit corporations from making contributions in connection with any election to any political office. However, T.C.A. §2-19-132(b) states that this prohibition shall not apply to a contribution made by a national committee of a political party which has incorporated in accordance with 11 CFR 114.12(a). Under 11 CFR 114.12(a), a political committee may incorporate, and not be subject to the provisions of part 114, if it incorporates for liability purposes only.

Pursuant to 11 CFR 112.1, we are requesting an advisory opinion on the issue of whether the contributions to the Republican party may still be made by Congressman Duncan, if he incorporates his re-election campaign and places the campaign funds in the corporate account.

Ξ

Mr. Lawrence M. Noble June 3, 1993 Page Two

We appreciate your help and assistance in this matter.

Best personal regards,

James H. London

JHL:mjt

Enclosures

#### CHARTER

OF

## DUNCAN FOR CONGRESS, INC.

The undersigned, acting as the incorporator of a corporation under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such corporation:

- 1. The name of the corporation is Duncan for Congress, Inc.
- 2. This corporation is a public benefit corporation.
- 3. The street address of the initial registered office of the corporation is 1716 Clinch Avenue, Knoxville, Knox County, Tennessee 37916, and the initial registered agent for the corporation at that office is James H. London.
  - 4. The name and address of the incorporator is:

<u>James</u>	з Н.	<u>Londo</u>	<u>n</u>	<del></del> -	
1716	Clin	ch Ay	enue		

## Knoxville, Tennessee 37916

- 5. The street address of the principal office of the corporation is 815 S. Central Avenue, Knoxville, Tennessee 37902, and the mailing address of the corporation is Darrell Akins, Treasurer, P.O. Box 15171, Knoxville, Tennessee 37901.
  - 6. The corporation is not for profit.
  - 7. The corporation will not have members.
- 8. Upon dissolution, after all creditors of the corporation have been paid, its assets shall be distributed according to the applicable federal and/or state laws.

DATED	this		day	of		1993.
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(E) The date of such inspection.

(2) Any person making an inspection of such files, statements or records shall present evidence of identification and state the name of the person or

organization he represents, if any.

(b) Such record shall be available for public inspection during the normal business hours of the registry of election finance or county election commission. [Acts 1980, ch. 861, § 12; 1984, ch. 683, §§ 4, 7; 1989, ch. 585, § 20; 1990, ch. 943, §§ 5, 6; 1990, ch. 1048, § 4.]

Attorney General Opinions. Record and disclosure of inspection, OAG 89-112 (9/5/89).

### 2-10-112. [Repealed.]

Compiler's Notes. Former § 2-10-112 (Acts 1986, ch. 780, § 1), concerning contributions repealed by Acts 1989, ch. 585, § 32.

2-10-113. December reports — Reporting period — Filing deadline. — Notwithstanding any other provision of law, rule or regulation to the contrary, if any report is required to be filed in December under the provisions of this part, the date of the reporting period for such report shall end on December 31, and the report shall be filed not later than January 31 of the following year. [Acts 1992, ch. 809, § 1.]

Effective Dates. Acts 1992, ch. 809, § 2. April 29, 1992.

- 2-10-114. Campaign funds Allocation of unexpended contributions Use of funds [Effective January 1, 1993]. (a) Any candidate for public office in this state with an unexpended balance of contributions after the election shall elect one (1) or a combination of the following for allocation of such funds within sixty (60) days of such election:
- (1) The funds may be retained or transferred to any campaign fund pursuant to Tennessee reporting requirements;
- (2) The funds may be returned to any or all of the candidate's contributors in accordance with a formula or plan specified in the candidate's disclosure of the allocation;
- (3) The funds may be distributed to the executive committee of the candidate's political party;
- (4) The funds may be deposited in the volunteer public education trust fund established under title 49, chapter 3, part 4;
- (5) The funds may be distributed to any organization described in 26 U.S.C. § 170(c);
- (6) The funds may be distributed to an organization which has received a determination of exemption from the United States internal revenue service pursuant to subsection (3) or (4) of 26 U.S.C. § 501(c) if such organization is currently operating under such exemption; and
- (7) The funds may be used to defray any ordinary and necessary expenses incurred in connection with the office of the officeholder. Such expenses may

include, but are not limited t and donations to community

- (b) Except as provided in su use any campaign funds eithcandidate's own personal fine as defined by federal internal Class two (2) offense as defi
- (c) If the allocation made: the post-election report require cation shall be filed within to with the same information as 1992, ch. 932, § 1.]

Effective Dates. Acts 1992, ch. January 1, 1993.

- 2-10-115. Allocation of un January 1, 1993]. (a) Any unexpended balance of contricombination of the following i of such election:
- (1) The funds may be retai ant to Tennessee reporting
- (2) The funds may be retur in accordance with a formula the allocation;
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- (4) The funds may be deposestablished under title 49, c
- (5) The funds may be dis U.S.C., § 170(c);
- (6) The funds may be distributed determination of exemption repursuant to subsection (3) or currently operating under so
- (7) The funds may be used incurred in connection with t include, but are not limited and donations to community
- (b) Except as permitted in: use any campaign funds eith candidate's own personal finas defined by federal internal Class two (2) offense as def
- (c) If the allocation made the post-election report requication shall be filed within t

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- Filing deadline. — gulation to the conder the provisions of shall end on Decemy 31 of the following

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which has received a smal revenue service such organization is

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include, but are not limited to, the cost of advertisements, membership fees, and donations to community causes.

- (b) Except as provided in subsection (a), no candidate for public office shall use any campaign funds either prior to, during or after an election for such candidate's own personal financial benefit or any other nonpolitical purpose as defined by federal internal revenue code. A violation of this subsection is a Class two (2) offense as defined in § 2-10-110(a)(2).
- (c) If the allocation made in accordance with subsection (a) is made after the post-election report required by § 2-10-105(c)(4), then a report of the allocation shall be filed within twelve (12) calendar days at the same office and with the same information as required in § 2-10-107 for expenditures. [Acts 1992, ch. 932, § 1.]

Effective Dates. Acts 1992, ch. 932, § 5. January 1, 1993.

- 2-10-115. Allocation of unexpended election contributions [Effective January 1, 1993]. (a) Any candidate for public office in this state with an unexpended balance of contributions after the election shall elect one (1) or a combination of the following for allocation of such funds within sixty (60) days of such election:
- (1) The funds may be retained or transferred to any campaign fund pursuant to Tennessee reporting requirements;
- (2) The funds may be returned to any or all of the candidate's contributors in accordance with a formula or plan specified in the candidate's disclosure of the allocation:
- (3) The funds may be distributed to the executive committee of the candidate's political party;
- (4) The funds may be deposited in the volunteer public education trust fund established under title 49, chapter 3, part 4;
- (5) The funds may be distributed to any organization described in 26 U.S.C., § 170(c);
- (6) The funds may be distributed to an organization which has received a determination of exemption from the United States internal revenue service pursuant to subsection (3) or (4) of 26 U.S.C., § 501(c), if such organization is currently operating under such exemption; and
- (7) The funds may be used to defray any ordinary and necessary expenses incurred in connection with the office of the officeholder. Such expenses may include, but are not limited to, the cost of advertisements, membership fees, and donations to community causes.
- (b) Except as permitted in subsection (a), no candidate for public office shall use any campaign funds either prior to, during or after an election for such candidate's own personal financial benefit or any other nonpolitical purpose as defined by federal internal revenue code. A violation of this subsection is a Class two (2) offense as defined in § 2-10-110(a)(2).
- (c) If the allocation made in accordance with subsection (a) is made after the post-election report required by § 2-10-105(c)(4), then a report of the allocation shall be filed within twelve (12) calendar days at the same office and

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with the same information as required in § 2-10-107 for expenditures. [Acts 1992, ch. 978, § 1.]

Effective Dates. Acts 1992, ch. 978, § 8. January 1, 1993.

2-10-116. Acceptance of honorarium by public official [Effective January 1, 1993]. — (a) The acceptance of an honorarium by a public official in such person's capacity as a public official is prohibited. "Honorarium" means a payment of money or any thing of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article.

(b) Acceptance of an honorarium for an appearance, speech or article by a public official in such person's capacity as a private business person, professional or tradesperson is not prohibited. [Acts 1992, ch. 978, § 4.]

Effective Dates. Acts 1992, ch. 978, § 8. January 1, 1993.

#### PART 2—REGISTRY OF ELECTION FINANCE

2-10-201. Short title. — This part shall be known and may be cited as the "Registry of Election Finance Act of 1989." [Acts 1989, ch. 585, § 1.]

2-10-202. Legislative intent. — It is the intent of the general assembly to provide adequate financial disclosure by public officials, candidates for public office, and lobbyists. Furthermore, it is the intent of the general assembly to establish a registry of election finance to ensure enforcement of these statutes. [Acts 1989, ch. 585, § 2.]

2-10-203. Registry of election finance — Creation — Appointments — Qualifications - Administration. - (a) There is hereby created as an independent entity of state government a Tennessee registry of election finance. The registry shall be composed of seven (7) members appointed as provided herein. Appointments shall be made to reflect the broadest possible representation of Tennessee citizens. Of the seven (7) members appointed, at least one (1) shall be a female and one (1) shall be black. However, a black female shall not satisfy the requirement of one (1) female and one (1) black. Each member shall have been a legal resident of this state for five (5) years immediately preceding selection. Members shall be at least thirty (30) years of age, registered voters in Tennessee, not announced candidates for public office, not members of a political party's state executive committee, shall not have been convicted of an election offense, and shall be persons of high ethical standards who have an active interest in promoting fair elections. Gubernatorial appointees shall be subject to confirmation by joint resolution of the general assembly. Such appointees shall have full power to serve until any vote of nonconfirmation.

(b)(1) For administrative purposes, the registry shall be attached to the department of state for all administrative matters relating to receipts, dis-

bursements, expense autonomy of the regi: secretary of state shai registry.

... (2) No person perform including the executive

- (A) Be allowed to public office as der
  - (B) Be an officer
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- (c) Members of the as follows:
- (1) The governor si appointed from a list committee of the malist of three (3) nomi minority party. One Before making this a at least one (1) organ in fair elections and replies shall be publisuch nominations. Tone (1) year;
- (2) The senate share chosen by the member be chosen by the mer tees shall serve init
- (3) The house of remember to be chosen(1) member to be chosenhouse appointees sh
- (d) Vacancies shall office was originall:
- (e) The registry sl ship. The chairman eligible for reelectio have all the power:
- (f) The registry sh duly recorded in its present. Special medinitiative or on the ceive seven (7) days

Code Commission Notes. Portions of this section have been rewritten by the executive secretary to the Tennessee code commission to implement Acts 1989, ch. 591, § 113, effective November 1, 1989, which requested that the executive secretary amend this section by de-

leting the penalty provision and inserting language to indicate violation of the section is a Class C misdemeanor.

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-132. Corporate funds — Improper use in election. — (a) It shall be unlawful for the executive officers or other representatives of any corporation doing business within this state, to use any of the funds, moneys, or credits of the corporation for the purpose of aiding either in the election or defeat in any primary or final election, of any candidate for office, national, state, county, or municipal, or in any way contributing to the campaign fund of any political party, for any purpose whatever.

(b) The prohibition of subsection (a) shall not apply to a contribution made by a national committee of a political party as defined in 2 U.S.C. § 431(14) and (16), which has incorporated in accordance with 11 C.F.R. § 114.12(a), when such committee contributes to a state political party executive committee, established by chapter 13, part 1 of this title, if the funds contributed do not contain any corporate contributions to the national committee of the political party. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1932; Acts 1989, ch. 357, § 1; 1990, ch. 841, § 1.]

Attorney General Opinions. Constitutionality, OAG 85-081 (3/14/85); OAG 86-36 (2/18/86).

Application to corporation whose charter has been revoked, OAG 87-16 (1/27/87).

Corporate contributions for inaugural festivities, OAG 87-38 (3/11/87).

Insurance company, trade association politi-

cal campaign contributions, OAG 88-63 (3/21/88).

Corporate administrative expenses in deducting union dues used partly for campaign contributions, OAG 88-96 (4/25/88).

Legality of corporate contributions to political action committees, OAG 90-97 (10/12/90).

2-19-133. Penalty for improper use of corporate funds. — Every executive officer, agent, or other representative of any corporation, doing business within this state, who knowingly consents to, approves, or aids in the use of the funds of a corporation, for any of the purposes mentioned in § 2-19-132(a) commits a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1933; Acts 1989, ch. 591, § 113; 1990, ch. 841, § 2.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Attorney General Opinions. Application

to corporation whose charter has been revoked, OAG 87-16 (1/27/87).

2-19-134. Coercing or directing employees to vote for measure, party, or person — Penalty. — (a) It is unlawful for any person to coerce or direct any employee to vote for any measure, party or person who may be a candidate for any office, or for any person who may be a candidate for nomination for any office, to threaten the discharge of such employee if he votes or does not vote for any such candidate for nomination or for office, or for any particular policy or measure.

(b) It is unlawful to discharge any employee on account of his exercise or failure to exercise the suffrage, or to give out or circulate any statement or report calculated to int for any candidate or : (c) A violation of this § 1; T.C.A., § 2-1934:

**Code Commission Note:** section have been rewritten secretary to the Tennessee c implement Acts 1989, ch. 59 November 1, 1989, which r executive secretary amend 1

2-19-135. Threaten: Class C misdemeanor tion or primary provic factory, workshop, min place where his employ their employment, an notice or information t shall not be elected. v part, or the wages or ni or implied, intended or of the employees. Act 591, § 113.]

Code Commission Note section have been rewritter secretary to the Tennessee c implement Acts 1989, ch. 5 November 1, 1989, which r executive secretary amend

2-19-140. Penalty 8 tion offending against it and its officers thro and the officers impr:

(b) Any corporation § 2-19-134 shall in add state. (Acts 1972, ch.

Cross-References. § 2-19-102.

2-19-142. Knowing Class C misdemeanor published or distribut date in any election is allegation, or other ma false. [Acts 1974, ch.