FEDERAL ELECTION COMMISSION
Washington, DC 20463

CONCURRING OPINION IN ADVISORY OPINION 1996-13

of

VICE CHAIRMAN JOHN WARREN McGARRY and COMMISSIONERS DANNY LEE McDONALD and SCOTT E. THOMAS

We write this concurring opinion for two reasons. First, we wish to underscore that Advisory Opinion 1996-13 does not address the issue of whether multiple limited liability companies ("LLCs") controlled by the same person or substantially same group of persons are subject to one, shared contribution limitation. Indeed, the requester of this Opinion neither directly asks this question nor presents a factual setting which indirectly raises the legal issue. Accordingly, nothing in Advisory Opinion 1996-13 provides precedent for or lessens the ability of the Commission to decide this issue as a matter of first impression if raised in some future context.

Second, it is important to point out the large and damaging loophole created to the contribution limitations if multiple LLCs are considered not affiliated. Under 2 U.S.C. 44la, each person is entitled to one contribution limitation. However, if one person could establish and control multiple LLCs--each of which would have its own contribution limitation--that one person could use those LLCs to make a number of contributions to the same federal committee and, thus, could easily evade the contribution limitations.

In our opinion, the statutory language compels the treatment of multiple LLCs as affiliated entities subject to one, aggregated contribution limit. Section 441a indicates that "[n]o person shall make contributions" in excess or certain limitations. 2 U.S.C. 441a (emphasis added). The statute defines the term person" to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons..." 2 U.S.C. 431(11)(emphasis added). Thus the reach of the statutory term "person" would plainly include an affiliated "group of persons" such as multiple LLCs established, financed, maintained or controlled by the same entity. Indeed, in passing the affiliation provision found at 2 U.S.C. 441a(a)(5), Congress explained in the accompanying Conference Report that "[t]he anti-proliferation rules established by the conference substitute are intended to prevent corporations, labor organizations, or other persons or groups of persons from evading the contribution limits of the conference substitute." H.R. Conf. Rep. No.94-1057, 94th Cong., 2d Sess. 58 (1976) (emphasis added).

Moreover, it would not be unusual for the Commission to apply affiliation concepts to non-committee entities for aggregated contribution limit purposes. In the past, for example, the Commission has routinely applied affiliation principles to non- committee entities for the purpose or determining cross- solicitation eligibility. See, e.g., Advisory Opinion 1989-8, 2 Fed. Elec. Camp. Fin. Guide (CCH) 59S9 ("In past opinions, the Commission has concluded that the executive and administrative personnel or a partnership affiliated with the connected organization of a separate segregated fund may be solicited for contributions to that fund") (emphasis added) (citing Advisory Opinions 1987-34 and 1983-48 at 2 Fed. Elec. Camp. Fin. Guide (CCH) 5920 and 5749, respectively).

The legal concept of LLCs is relatively new. In Advisory Opinion 1996-13, the Commission only answered the specific questions raised by the requester regarding the application of the statute to a single LLC. The Commission did not address the application of the contribution limitations to affiliated, multiple LLCs. Because we understand that Commission consideration and resolution of that important matter remains open for another day, we concur with the result reached in Advisory Opinion 1996-13.

6/18/96