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Washington, DC 20463

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April 13, 2006

MEMORANDUM

AGENDA ITEM
For Meeting of: 4-20-06

TO: The Commission

THROUGH: Robert J. Costa *AK*
Acting Staff Director

FROM: Lawrence H. Norton *(by (Costa))*
General Counsel

James A. Kahn *JK*
Deputy General Counsel

Rosemary C. Smith *RC*
Associate General Counsel *MS*

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Assistant General Counsel

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Attorney

Subject: Draft AO 2006-12

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 20, 2006.

Attachment

1 ADVISORY OPINION 2006-12
2
3 Laurence E. Gold, Esq.
4 Michael B. Trister, Esq.
5 Lichtman, Trister & Ross, PLLC
6 1666 Connecticut Avenue, N.W., Fifth Floor
7 Washington, D.C. 20009
8

DRAFT

9 Dear Messrs. Gold and Trister:
10

11 We are responding to your advisory opinion request on behalf of the International
12 Association of Machinists and Aerospace Workers (“IAM”) and the Transportation
13 Communications International Union/IAM (“TCU/IAM”) regarding whether, under the
14 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
15 regulations, IAM and TCU/IAM are affiliated during the current transition period
16 pending a full merger of IAM and the Transportation Communications International
17 Union (“TCU”).¹ If IAM and TCU/IAM *are* affiliated, you also ask a number of
18 questions regarding their contributions, solicitations, and separate segregated funds
19 (“SSFs”).

20 The Commission concludes that, under the Act and Commission regulations, IAM
21 and TCU/IAM are affiliated labor organizations during this transition period of the
22 pending full merger between IAM and TCU. As such, IAM’s SSF, the Machinists Non-
23 Partisan Political league (“MNPL”), and TCU/IAM’s SSF, the Responsible Citizens
24 Political League, a Project of the Transportation Communications International Union
25 (“RCPL”), must aggregate any contributions made or received by either SSF. Further,
26 because IAM and TCU/IAM are affiliated, IAM, TCU/IAM and their SSFs may
27 undertake all of the activities described in your request.

¹ TCU/IAM is the organization resulting from a July 6, 2005, Merger Agreement between IAM and TCU.

1 ***Background***

2 The facts presented in this advisory opinion are based on your letters received on
3 February 14 and March 2, 2006, and the attachments thereto.

4 1. ***IAM***

5 IAM is a labor organization as defined in the Act and Commission regulations.
6 2 U.S.C. 441b(b)(1); 11 CFR 100.134(b). IAM has 400,000 active members who work
7 throughout the United States in many industries, with significant concentrations in the
8 transportation, aerospace, forest products and automotive industries, and in government.
9 IAM is organized in an integrated hierarchical structure, governed by an Executive
10 Council. Its affiliates are assigned to four geographic territories, plus a nationwide
11 Transportation territory that reflects the size and national focus of that occupational
12 sector. Within the territories, IAM includes 62 intermediate district lodges comprised of
13 representatives elected by local lodges. IAM has more than 1,200 local lodges whose
14 officers are elected by the members they serve.

15 IAM established MNPL in 1947. MNPL is an SSF registered with the
16 Commission. MNPL and IAM solicit contributions to MNPL from IAM members and
17 their household family members. IAM solicits these contributions through various means
18 including its national member magazine, *IAM Journal*.

19 2. ***TCU***

20 Prior to the current transition period pending a full merger between IAM and
21 TCU, TCU was a labor organization as defined in the Act and Commission regulations.
22 2 U.S.C. 441b(b)(1); 11 CFR 100.134(b). TCU had approximately 46,000 members
23 actively employed primarily in the railroad industry. TCU's highest governing board was

1 its Executive Council with 13 intermediate boards and 254 districts and lodges (or locals)
2 throughout the United States.

3 TCU established RCPL in 1972. RCPL is an SSF registered with the
4 Commission. TCU and RCPL solicited contributions to RCPL from TCU members using
5 various means including the TCU member magazine, *Interchange*.

6 3. *Merger of IAM and TCU*

7 On July 6, 2005, IAM and TCU entered into an agreement (“Merger Agreement”)
8 committing IAM and TCU to a “full merger.” IAM and TCU also signed two side letters
9 pertaining to the Merger Agreement. The merger is to be accomplished in two phases:
10 (1) a “transition period” lasting until January 1, 2012, at the latest,² and (2) a completed
11 “full merger.” The Merger Agreement does not permit either labor organization to
12 unilaterally terminate or change the agreement and resulting relationship. Therefore,
13 absent mutual agreement, completion of the full merger is a certainty.

14 Pursuant to the Merger Agreement, IAM and TCU/IAM have already undertaken
15 the following actions:

16 1) IAM has chartered TCU/IAM as a new “affiliate.” IAM now expects to create
17 a “Rail Division” composed of TCU/IAM and a pre-existing IAM district that
18 engages in collective bargaining in the railroad industry. The Rail Division
19 will operate as part of IAM’s Transportation Territory.

² TCU/IAM may accelerate the full merger upon consultation with the IAM International President if TCU/IAM finds it advantageous to do so.

- 1 2) Effective August 1, 2005, TCU/IAM pays IAM a monthly per capita tax of
2 \$7.00/member.³
- 3 3) IAM and TCU/IAM have embarked on a process of integrating their
4 governance, ending with voting rights in IAM for TCU/IAM's members upon
5 full merger.
- 6 4) An Integration Team has begun work to integrate the two labor organizations'
7 operations and resources.
- 8 5) IAM and TCU/IAM have undertaken a combined communications program,
9 including the merger of their two member publications. The resulting
10 publication, sent to all members of IAM and all members of TCU/IAM, is a
11 magazine containing at least two pages of TCU/IAM news.
- 12 6) IAM and TCU/IAM have merged the TCU Staff Retirement Plan with the
13 IAM Grand Lodge Pension Plan.

14 *Questions Presented*

- 15 1. *Are IAM and TCU/IAM affiliated for purposes of the Act during the current*
16 *transition period pending a full merger between IAM and TCU?*
- 17 2. *If IAM and TCU/IAM are affiliated, (a) must MNPL and RCPL aggregate*
18 *contributions made and received by the two SSFs for purposes of the Act's limits;*
19 *(b) may IAM pay the administration and solicitation costs for RCPL; (c) may IAM*
20 *and MNPL solicit contributions to MNPL from TCU/IAM's restricted class, and*

³ For the months of August to December 2005, the combined per capita tax amounted to nearly \$1.5 million. It is estimated that such per capita tax payments by TCU/IAM to IAM will reach \$3.86 million for 2006. On January 1 of each year, through 2011, the per capita tax will increase to a rate of the previous year's per capita plus an annual IAM Grand Lodge increase/per member. In 2012, the per capita tax will be equal to the full IAM Grand Lodge per capita tax.

1 *may TCU/IAM and RCPL solicit contributions to RCPL from IAM's restricted*
2 *class; (d) may IAM and TCU/IAM pay for communications to each other's*
3 *restricted classes where the communications expressly advocate the election or*
4 *defeat of a clearly identified candidate; and (e) may MNPL and RCPL be merged*
5 *into a single SSF?*

6 ***Legal Analysis and Conclusions***

7 *Question 1. Are IAM and TCU/IAM affiliated for purposes of the Act during the*
8 *current transition period pending a full merger between IAM and TCU?*

9 Yes, IAM and TCU/IAM are affiliated labor organizations for purposes of the Act
10 and Commission regulations during the current transition period.

11 Under the Act and Commission regulations, political committees, including SSFs,
12 that are established, financed, maintained or controlled by the same corporation, labor
13 organization, person or group of persons, including any parent, subsidiary, branch,
14 division, department or local unit thereof, are affiliated. 2 U.S.C. 441a(a)(5); 11 CFR
15 100.5(g)(2) and 110.3(a)(1)(ii). Political committees' sponsoring organizations are also
16 considered to be affiliated with each other when such organizations are established,
17 financed, maintained or controlled by the same corporation, labor organization, person, or
18 group of persons. 11 CFR 100.5(g)(4) and 110.3(a)(3).

19 In the absence of *per se* affiliation set out at 11 CFR 100.5(g)(3), the factors set
20 forth at 11 CFR 100.5(g)(4) are used to determine affiliation between political
21 committees or between their sponsoring organizations.⁴ *See also* 11 CFR 110.3(a)(3).

⁴ The same factors are also used to determine affiliation between two SSFs, or between a sponsoring organization and the SSF of another organization. 11 CFR 110.3(a)(3)(i).

1 These factors – which pertain to the relationship between sponsoring organizations as to
2 governance; common officers, employees, or members; financing; and the formation of
3 the organizations – are to be examined in the context of the overall relationship between
4 the sponsoring organizations. 11 CFR 100.5(g)(4) and 110.3(a)(3).

5 In this instance, the Merger Agreement itself and the actions taken by IAM and
6 TCU (now TCU/IAM) during the transition period, demonstrate a formal and ongoing
7 relationship between the two organizations. For example, IAM played a significant role
8 in the formation of TCU/IAM by chartering TCU/IAM, effectively folding the former
9 TCU into its hierarchical structure. 11 CFR 100.5(g)(4)(ii)(I). Additionally, the
10 significant monthly per capita tax that TCU/IAM currently pays to IAM is strong
11 evidence that the two organizations are affiliated. 11 CFR 100.5(g)(4)(ii)(G) and (H).

12 Further, IAM and TCU/IAM have overlapping employees, including TCU/IAM
13 employees who are now shared with IAM. 11 CFR 100.5(g)(4)(ii)(E). Additionally,
14 IAM has hired some former TCU employees to further the integration of the two
15 organizations. 11 CFR 100.5(g)(4)(ii)(F).

16 Therefore, the Commission concludes that IAM and TCU/IAM are currently
17 affiliated for purposes of the Act and Commission regulations.

18 *Question 2. Activities of Affiliated Entities.*

19 If IAM and TCU/IAM are affiliated, you also ask a number of questions regarding
20 their contributions, solicitations, and SSFs; all of which are typical actions undertaken by
21 affiliated entities.

1 (a) *Must MNPL and RCPL aggregate contributions made and received by the two*
2 *SSFs for purposes of the Act's limits?*

3 Yes, because IAM and TCU/IAM are affiliated entities, their SSFs (MNPL and
4 RCPL, respectively) must share contribution limits under the Act and Commission
5 regulations. 2 U.S.C. 441a(a)(5); 11 CFR 110.3(a)(1).

6 (b) *May IAM pay the administration and solicitation costs for RCPL?*

7 Yes. A labor organization is permitted to use its general treasury funds to pay for
8 the costs of establishing, administering, and soliciting contributions to its SSF. 2 U.S.C.
9 441b(b)(2)(C); 11 CFR 114.5(b). Additionally, the payment of such expenses is
10 explicitly excepted from the Act's definitions of "contributions" and "expenditures."
11 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v). Accordingly, because IAM and TCU/IAM are
12 affiliated, IAM may pay RCPL's administration and solicitation costs. *Cf.* Advisory
13 Opinion 2001-7 (Nuclear Management Company Political Action Committee).

14 (c) *May IAM and MNPL solicit contributions to MNPL from TCU/IAM's restricted*
15 *class, and may TCU/IAM and RCPL solicit contributions to RCPL from IAM's restricted*
16 *class?*

17 Yes. The Act and Commission regulations permit a labor organization to solicit
18 contributions to the labor organization's SSF from its members and executive or
19 administrative personnel, and their families. 2 U.S.C. 441b(b)(4)(A); 11 CFR 114.1(j)
20 and 114.5(g)(2). Accordingly, because IAM and TCU/IAM are affiliated labor
21 organizations, IAM and MNPL may solicit contributions to MNPL from TCU/IAM's
22 restricted class, and TCU/IAM and RCPL may solicit contributions to RCPL from IAM's

1 restricted class. *Cf.* 11 CFR 114.5(g)(1) (corporations permitted to solicit the restricted
2 classes of affiliated entities); *see also* Advisory Opinion 2001-18 (BellSouth).

3 (d) *May IAM and TCU/IAM pay for communications to each other's restricted*
4 *classes where the communications expressly advocate the election or defeat of a clearly*
5 *identified candidate?*

6 Yes. The Act and Commission regulations permit a labor organization to pay for
7 express advocacy communications to its restricted class. 2 U.S.C. 441b(b)(2)(A);
8 11 CFR 114.3. Accordingly, because IAM and TCU/IAM are affiliated labor
9 organizations, each may pay for express advocacy communications to the restricted
10 classes of both organizations. *Cf.* Advisory Opinion 1993-18 (Southwestern Bell
11 Corporation) at note 3.

12 (e) *May MNPL and RCPL be merged into a single SSF?*

13 Yes, MNPL and RCPL may be merged into one SSF because they are treated as
14 one political committee for purposes of limits on contributions they make or receive
15 under 2 U.S.C. 441a(a)(5) and 11 CFR 110.3(a)(1), and because they may transfer funds
16 to one another that are not limited in amount. 2 U.S.C. 441a(a)(5)(C); 11 CFR 102.6(a)
17 and 110.3(c)(1).

18 This response constitutes an advisory opinion concerning the application of the
19 Act and Commission regulations to the specific transaction or activity set forth in your
20 request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any
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1 of the facts or assumptions presented, and such facts or assumptions are material to a
2 conclusion presented in this advisory opinion, then the requestor may not rely on that
3 conclusion as support for its proposed activity.

4

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Sincerely,

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9

Michael E. Toner
Chairman

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12 Enclosures (AOs 2001-18, 2001-7 and 1993-18)