



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 15, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-05

Markham C. Erickson
McGuiness & Holch
400 North Capitol Street, N.W.
Suite 585
Washington, D.C. 20001

Dear Mr. Erickson:

This responds to your letter dated March 30, 2000, on behalf of the Oneida Nation of New York ("the Nation"), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to contributions by the Nation totaling more than \$25,000 annually.

The Nation is a Federally-recognized Indian tribe located in central New York State. It is a non-corporate entity which has been recognized by the United States on a government-to-government basis. *See* 65 FR 13298, 13300 (March 13, 2000).¹ The Nation has previously contributed to Federal candidates, following the \$1,000 limit at 2 U.S.C. §441a(a)(1)(A) for contributions by a person to the authorized committees of a Federal candidate. The Nation has also voluntarily limited the total of its contributions to Federal political committees during a calendar year to \$25,000, which is the limit prescribed at 2 U.S.C. §441a(a)(3).

¹ This *Federal Register* document is from the U.S. Bureau of Indian Affairs ("BIA") and lists the Nation, along with numerous other Indian entities, that are "recognized and eligible for funding and services from [BIA] by virtue of their status as Indian tribes." 65 FR at 13298. The "listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes." 65 FR at 13299.

You state that, because 2 U.S.C. §441a(a)(3) applies only to “individuals,” the Nation is considering making contributions this year that would total in excess of \$25,000. You ask the Commission to confirm that this \$25,000 limitation does not apply to the Nation.

The Act defines the term “person” as including an “individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.” 2 U.S.C. §431(11); see also 11 CFR 100.10. The Act also provides that no “person” may contribute in excess of \$1,000 to any Federal candidate and his authorized political committees with respect to any election. 2 U.S.C. §441a(a)(1)(A). In addressing annual contribution totals, however, the Act and Commission regulations provide that no “individual” may make contributions aggregating more than \$25,000 per calendar year. 2 U.S.C. §441a(a)(3); 11 CFR 110.5(b).²

As you indicate, the Commission has long interpreted the Act’s definition of “person” to include unincorporated Indian tribes, and thus their contributions to Federal candidates were subject to the \$1,000 per election, per candidate limits.³ Advisory Opinion 1978-51; see also Advisory Opinions 1999-32 and 1993-12 (where the Commission stated that, as “persons,” unincorporated Indian tribes were subject to the prohibition on contributions by persons with Federal contracts if they are engaged in such contracts). Although the Nation is a person under the Act, it is not an individual and is therefore not subject to the \$25,000 limit on its annual total of contributions.⁴ The Nation may make contributions that are otherwise lawful under the Act and Commission regulations.

The Commission notes your letter of April 26, 2000, commenting on the General Counsel’s proposed draft of this opinion, Agenda Document No. 00-48. Your April 26 letter explains that “the Nation’s political contributions are made from its general treasury funds . . . [and] are not made, either directly or indirectly, from any incorporated entity.” The letter further states: “While the Nation does own several incorporated businesses, it has sufficient funds in its general treasury to make all of its political contributions, subject, of course, to the limitations and prohibitions of the Act.” Since you have not

² The Act and Commission regulations clarify this restriction by adding that, for the purposes of this limit, any contribution made in a non-election year to a candidate or his authorized committee with respect to a particular election shall be considered as made during the calendar year in which such election is held. 2 U.S.C. §441a(a)(3); 11 CFR 110.5(c)(2); *see also* 11 CFR 110.5(c) (3) and (d).

³ The status of an Indian tribe or community as a “government” making a contribution has not been explicitly addressed in previous advisory opinions. As indicated by the language of 2 U.S.C. §431(11), the only government that is specifically construed not to be a person, and therefore not subject to the limitations and prohibitions of the Act, is the Federal Government. For example, the Commission has made clear that State governments and municipal corporations are persons under the Act and are subject to its contribution provisions. Advisory Opinions 1999-7, 1982-26, and 1977-32.

⁴ As indicated in Advisory Opinion 1999-32, the Nation would more precisely fall into the category of “any other organization or group of persons.”

requested an advisory opinion on the sources of funds that may be lawfully used by the Nation in making its contributions in Federal elections, the Commission does not issue an opinion at this time on that issue.

The Commission does not express any views concerning the possible application of other statutes, including the Indian Gaming Regulatory Act, to political contributions made by the Nation, since those issues, if any, are not within the Commission's jurisdiction.

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

Sincerely,

(signed)

Darryl R. Wold
Chairman

Enclosures (AOs 1999-32, 1999-7, 1993-12, 1982-26, 1978-51, and 1977-32)