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COMMONWEALTH OF PENNSYLVANIA
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SELECT COMMITTEE ON STATE CONTRACT PRACTICES

October 4, 1974

Memo To: Select Committee on State Contract Practices

From: Stephen F. Freind, Special Counsel, House Select Committee on State Contract Practices
Edward C. Hussie, Assistant Chief Counsel, Pennsylvania House of Representatives
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Re: Bankcon

CORPORATE BANK LOANS TO POLITICAL COMMITTEES

The making of a loan by any corporation, including a bank, constitutes a violation of Section 1605 (b), (25 P.S. 3225 (b)), of the Pennsylvania Election Code. This prohibition lies irrespective of whether the loan is secured or unsecured. Section 1605 (b) provides:

> "No corporation or unincorporated association or officer or agent thereof, whether incorporated or organized under the laws of this or any other state or any foreign country, except those formed primarily for political purposes or a political committee, shall pay, give or lend or authorize to be paid, given or lent, either directly or through any other person,

> or in reimbursement of any such payment, gift or loan by any other person, any money or other valuable thing belonging to such corporation or unincorporated association or in its custody or control, to any candidate or political committee for the payment of any primary or election expenses or for any political purpose whatever. 1937, June 3, P.O. 1333, Art. XVI, § 1605; 1943, June 3, P.L. 851 § 1.

Insofar as banks are corporations under Pennsylvania law, their activities are within the clear contemplation of the statute. Any other construction of the law would permit banks not only to make loans to a candidate, but also to make outright contributions. Illustrative of this conclusion would be the consummate irrationality which would prohibit a publicly owned corporation from making political contributions while, at the same time, openly permitting corporate bankers to make such contributions. The only real issue, therefore, is not whether banks are included within this section, but whether the prohibition against loans set forth therein includes bank loans in the ordinary course of business.

The phrases "lend" and "loan" have never been judicially construed with respect to this section. There is, however, general case law defining the term "loan." In Arbuckle's Estate (324 Pa. 941, (1936) at page 10) the State Supreme Court noted:

> "The conception of loaning money is well understood both in the popular and technical usage. Generally it is the payment of money by one to another to be repaid some future day."

It is a well settled principle of statutory construction that otherwise undefined statutory terms are given their ordinary everyday meaning. As the court said in Gordon v. Continental Casualty Company, (319 Pa. 555), (1935): "Words in a legislative enactment are to be taken in their ordinary and general sense." See also Frazier v. Oil Chemical Company, (407 Pa. 78, (1962) at 85.

It is clear that a secured loan by a bank to a candidate is a loan within the ordinary meaning of that word as set forth in Arbuckle, supra. Reinforcing this conclusion is the absence of any other provision in the Election Code suggesting any alternate use for the term "loan."

The history of recent amendments to the federal campaign law further supports the conclusion that the Pennsylvania provision, not dissimilar to the federal act, prohibits secured loans by banks.

The relevant provisions in the prior federal law were 18 U.S.C. 591 and 18 U.S.C. 610. 18 U.S.C. 591 read as follows:

> "The term 'contribution' includes a gift, contribution, loan, advance or deposit of money or anything of value and includes a contract, promise or agreement to make a contribution, whether or not legally enforceable."

Prior to amendment 18 U.S.C. 610 read as follows:

> "It is unlawful for any national bank or corporation organized by authority of any law of Congress to make any contribution or expenditure in connection with any election to political office . . . "

> Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5000 . . .

The federal election campaign act of 1971 amended 18 U.S.C. 591 dealing with "contribution" to read as follows:

> "Contribution" means (1) a gift, subscription, loan, advance or deposit of money or anything of value, (except a loan of money by a National or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business.)"

The 1971 Election Reform Act also amended 18 U.S.C. 610 to provide as follows:

> "It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election . . .
>
> As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business."

The U. S. Senate Report accompanying the above amendments makes clear the Congressional intent:

> "First, in Section 201 the definition of contribution and expenditure was modified so as to permit candidates for federal office to obtain bona fide bank loans. Under the present law a bank is prohibited from making a contribution or

> expenditure to a political candidate. In the future, banks will continue to be prohibited from making contributions or expenditures to political candidates. However, the committee clarified the law so that ordinary bank loans could be obtained. The reason for this change is obvious. No one wants a federal election law which, in effect, says that only the very wealthy can run for elective office.
>
> As a practical matter, it is often necessary for a candidate to borrow money in order to defray immediate and pressing campaign expenses. Under the present law, there was a real danger in permitting even bona fide loans to political candidates because in the absence of an effective disclosure law it would be very easy for a bank making a loan never to collect it. S. 382, as amended, has rigid and effective disclosure requirements. All bona fide loans made to political candidates must be reported. The candidate must continue to report his loan until it is fully repaid." (As cited in 1972 U.S. Code Congressional Act Administrative News at page 18580, referencing the supplemental views of Senators Prouty, Cooper and Scott.)

It is obvious from these amendments and the accompanying commentary that Congress had deemed fully secured bank loans to be within the prohibition of federal law and felt that such loans could only be made permissable through a specific statutory exemption.

It is equally apparent that the General Assembly of Pennsylvania has not seen fit to exclude such loans from the total, sweeping prohibition contained in Section 1605 (b) of the Pennsylvania Election Code.

For further clarification of the intent behind both the original federal and present State statutes, however, it is necessary to go back to the original

reasons for prohibiting contributions by wealthy corporate entities.

In 1894, Elihu Root urged New York's Constitutional Convention to prevent large corporate campaign contributions. He stated that:

> "The idea is to prevent . . . the great aggregations of wealth from using their corporate funds, directly or indirectly, to send members of the legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public." United States v. Auto Workers, 352 U.S. 567, 571 (1957).

The purpose of both the present Pennsylvania statute and the original Federal statute clearly was to prevent elected officials from being politically obligated to corporations.

The prohibition of loans by corporations, including secured loans by banks, is particularly pertinent to this purpose.

A campaign contribution creates only a political "obligation" to the contributor. Since there is no legal obligation to repay the money, the "obligation" might be discharged in other ways or not at all. In contrast, a loan creates a legal obligation to repay the sum, and since the lender can release or alter the terms of the obligation after the election, the potential bribery is magnified.

The Attorney General of Pennsylvania has argued that secured bank loans to candidates are not within the prohibition of Section 1605 (b) because "the security of the candidate could have been sold in lieu of making a loan and there could be no questions as to the use of the proceeds."

What this rational overlooks is that there is a definite economic advantage in retaining that security.

In many instances a candidate may have assets which do not readily lend themselves to quick conversion into cash. In other cases the candidate may deem it to be to his serious economic disadvantage to convert some highly profitable assets into cash. Under such circumstances the availability of a large loan, even a fully secured loan may be as important to his candidacy as an outright contribution.

In any event it seems obvious that a candidate would not avail himself of a large loan, however fully secured, unless it were to his material advantage to do so. The granting of this material advantage by the corporate bank creates a climate of reliance upon and gratitude towards corporate interests which the Election Code seeks to eliminate.

It is, of course, immaterial whether the loan is secured or not. Collateral merely decreases the risk to a lender in making his loan. But just as a bank might refuse to make an unsecured loan, it might refuse to make a secured loan. More to the point, a bank or a group of banks might refuse loans of all types to one candidate and make loans to another. A candidate with views antagonistic to banks could thus be forced to sell his assets while his opponent could pursue the easier course of borrowing on his collateral. An unfair advantage could thus result creating a political debt which could be repaid later with political favors. It would appear that it is

just such an evil at which corrupt practices legislation is directed and, at least in part, the reason that loans in general are prohibited.

The mere fact that the loan is secured may somewhat lessen, but does not altogether diminish, the reliance of a candidate upon the discretion of the secured party, i.e., the bank. In the event of a default the bank may have recourse to assets of the candidate above and beyond the collateral if it proves insufficient for repayment. See Section 12A P.S. § 9-502 (2) of the Pennsylvania Uniform Commercial Code which provides in part:

> "If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency." (See also 12A P.S. § 9-504 (2). 12A P.S. § 9-501 provides the secured party with various judicial remedies in the event of a default on repayment of the loan.

Furthermore, during the period of time while any principle amount of the loan remains outstanding, the secured party (the bank) may continue to exert influence over the elected official by means of offering to extend, lessen or forgive any payment of principle or interest. This provides the bank with the unhealthy leverage that § 1605 (b) seeks to preclude by prohibiting the use of any corporate funds in a political campaign.

Section 1605 (b) seeks to reduce the powerful influences of corporate money upon the political system. It prohibits gifts or loans by corporations to candidates or political committees. Loans to candidates, even secured loans, by large corporate interests are fraught with many of the same evils intrinsic

to outright corporate contributions. Such loans contain the additional evil that their repayment falls due after the candidate assumes his office and is in a position to confer favors or withhold benefits. Since a prohibition of secured bank loans clearly fall within the public policy underlying Section 1605 (b) and because a finding to the contrary requires a finding that a loan is not a loan, it is submitted that a secured loan by a corporate bank is violative of Section 1605 (b).