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December 10, 1974

Ms. Beverly Sharp
2502 Gold Cup Lane
Reston, Virginia 22091

Re: Reston Black Focus, Inc.

Dear Ms. Sharp:

I have tried to telephone you in response to your question concerning the possibility of Black Focus involving itself in the selection of a new member of the Fairfax County School Board. As I indicated to you on the telephone, Section 501(C)(3) of the Internal Revenue Code (exempting organizations which are charitable, educational, etc.) absolutely prohibits participation in or intervention in "any political campaign on behalf of any candidate for public office." On the other hand, it is permissible for such an organization to be exempt if "no substantial part" of its activities is carrying on propaganda or otherwise attempting to influence legislation. In other words, the prohibition on political campaigning is absolute, but the prohibition on seeking to influence legislation is limited.

The question here, of course, is whether the appointment of a member of the Fairfax County School Board by the Board of Supervisors is considered a political campaign or a legislative act. Although there are obvious overtones of political campaigning involved, it is my opinion that such an appointment would be considered a function of the legislative body and would therefore fall within the limited privilege to influence legislation which is afforded 501(C)(3) organizations.

The test, then, will be whether or not your efforts in this regard would constitute a "substantial" part of your organization's activities. Neither the Internal Revenue Code nor the Regulations quantify what will be considered "substan-

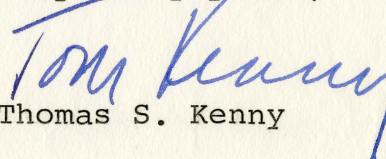
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tial". To my knowledge there has been no judicial establishment of a standard, either. However, as a rule of thumb, if less than five percent of your gross expenditures are expended in such legislative activities, the IRS will not consider such activities to be substantial. Even if you satisfy this test, of course, it would be possible for your activities to be considered substantial if time and materials donated by volunteers for this particular effort result in a very high expenditure of effort relative to other activities of the organization.

Assuming then that the expenditure of funds by Black Focus towards the filling of the school board slot amounts to less than five percent of its gross expenditures for the year, and assuming further that your efforts in this regard do not constitute a substantial portion of the overall effort exerted in all the organization's activities for the year, I am of the opinion that Black Focus can participate in activities designed to influence the Board of Supervisors in its choice of an appointee to sit on the School Board, and still be eligible for exemption from Federal income taxation under Section 501(C)(3) of the Internal Revenue Code.

Please do not hesitate to call me if you have any further questions in this regard.

Very truly yours,


Thomas S. Kenny

TSK:bf