

22 OCT 1976

AO 1975-143

Mrs. Gladys Kessler  
Roisman, Kessler and Cashdan  
1712 N Street, N.W.  
Washington, D. C. 20036

Dear Mrs. Kessler:

This refers to your request for an advisory opinion, AOR 1975-143, concerning application of the Federal Election Campaign Act of 1971, as amended, to publication of information related to the Dirty Dozen Campaign Committee which was established as a separate entity by Environmental Action, "a citizens lobbying group" organized as a D. C. not-for-profit corporation.

You ask whether costs incident to news articles published in Environmental Action's monthly magazine regarding the activities of the Dirty Dozen Campaign Committee (the Committee) constitute an "expenditure" under 2 U.S.C. SS 431(f). You state that the Committee is a separate entity from Environmental Action and "operates on contributions made to it as a segregated, separate fund;" that the Committee receives no funds from Environmental Action; and that Environmental Action "is in no way controlled or operated by the separately funded and operated Dirty Dozen Campaign Committee."

2 U.S.C. §431(f)(4)(A) states:

(f) "expenditure"--

(4) does not include--

(A) any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate. (Emphasis added)

While the Dirty Dozen Campaign Committee clearly does not own Environmental Action, there is nonetheless an issue as to whether or not the Committee "controls" it,

inasmuch as the two entities share certain personnel. Specifically, the volunteer finance chairman of the Dirty Dozen Campaign Committee also functions as the Staff Director of Environmental Action, and Environmental Action's paid bookkeeper also functions as the volunteer treasurer of the Committee. While there is no prohibition in the Act against an officer of a political committee serving as an executive officer or employee of a connected organization, the Commission emphasizes that such interlocking positions could, in a given factual pattern, result in a finding that a "magazine or other periodical or publication is in fact controlled by a political committee.

On the basis of the unsworn record before it, the Commission is unable to conclude that the Committee here does not control Environmental Action or that organization's magazine. On the face of the matter, sensitive executive posts in each organization are occupied by the same individual. The respective organizations' finances are monitored by the same person. A Committee employee contributes material to Environmental Action's magazine, as does the Committee's finance chairman. These linkages are not conclusive, certainly, on the issue of control, but are substantial enough to prevent the Commission from determining that no control exists.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

(signed)  
Vernon W. Thomson  
Chairman for the  
Federal Election Commission