



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 9, 1976

Re: AOR 1976-102

James C. Kellogg, IV, Esquire  
Gifford, Woody, Carter & Hays  
14 Wall Street  
New York, New York 10005

Dear Mr. Kellogg:

This responds to your letter of November 9, 1976, in which you request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the Spear, Leeds, Kellogg Good Government Committee ("the Committee").

From the description of the Committee contained in your letter, it appears that the Committee is a political committee as defined in 2 U.S.C. §431(d) and §100.14 of the Federal Election Commission's proposed regulations. Assuming that the Committee either receives contributions or makes expenditures, as defined in the Act and in §§100.4 and 100.7 of the proposed regulations, in excess of \$1,000, it must register with and report to the Federal Election Commission pursuant to 2 U.S.C. §433 and §434 and Parts 102 and 104 of the proposed regulations. Except as described below, we see no difficulties with the manner in which the Committee proposes to operate.

Although your request is phrased in general term, the Commission believes there are a few matters of which you should be aware. First, you indicate that the Committee would "solicit non-designated contributions from exempt salaried employees and partners of Spear, Leeds & Kellogg who are United States citizens." While the Commission certainly does not object to your so limiting the class of solicitees, we would point out that such requirement, in 2 U.S.C. §441b(b)(4)(A), is limited to corporations and labor organizations. Since the Committee is not the separate segregated fund of either of those kind of organizations, there is no restriction on the class of persons it may solicit,

assuming, of course, that those persons may otherwise make contributions under the Act.\*

Second, you indicate that “all personnel working for the Committee will be partners or employees of Spear, Leeds & Kellogg, and their salaries will be paid by Spear, Leeds & Kellogg regardless of whether they perform any function for Spear, Leeds & Kellogg other than the management of the Committee.” The Commission points out that while the cost of establishing, administering, and soliciting are not considered contributions or expenditures when made by a corporation or labor organization with respect to its separate segregated fund, such is not the case when the committee is connected to a limited partnership. The administrative costs which are absorbed by Spear, Leeds & Kellogg will be considered contributions in-kind from the partnership to the Committee. Accordingly, they may not exceed \$5,000 in a calendar year, and are required to be reported by the Committee under 2 U.S.C. §434. See §104.3 of the proposed regulations. Administrative costs that exceed \$5,000 in a calendar year would have to be defrayed from funds contributed to the Committee; alternatively, administrative services could be provided on an in-kind basis by other persons (assuming contributions from them are not otherwise prohibited) subject to limitation, 2 U.S.C. §441a. You should also review §110.1(e) of the proposed regulations since a contribution from the partnership must also be attributed to the partners including the limited partners.

The proposed Articles of Association for the Committee indicate that it may expend funds in the form of contributions to State and local candidates as well as Federal candidates. In this regard, the Commission refers you to the requirements of §102.6 of the proposed regulations concerning the separation of Federal and non-Federal funds by either establishing a single committee (with a single account) which would be subject in its entirety to the disclosure provisions as well as the limitations and prohibitions of the Act. Note, in particular, the restrictions on contributions which may be accepted under either of the alternative structures permitted by §102.6(b). In specifying the duties of officers for the Committee, your proposed Articles state that “No business of the Commission shall be conducted when the office of Treasurer is vacant.” You will note that under 2 U.S.C. §432(a) contributions and expenditures may not be accepted or made by on or behalf of a committee “when there is a vacancy in the office of Chairman or Treasurer thereof.” See also §102.7(c). The Commission has construed this language to require that the offices of Chairman and Treasurer both be occupied, and by two separate individuals, before contributions or expenditures may be accepted or made.

Finally your indicate that:

Designated or non-discretionary funds that may  
May be given to the Committee will be placed in  
a separate bank account, and the Committee will,

---

\* Your intention to limit the solicitees to United States citizens is, of course, appropriate. See 2 U.S.C. §441e and §110.4(a) of the proposed regulations. You should also review 2 U.S.C. §441c and Part 115 of the proposed regulations.

in turn, make payments directly to the intended beneficiary. There may be instances in which several persons given designated contributions to the Committee for the same beneficiary and, in this case, the Committee would, if time is short, send only one check for the total amount of the designated contributions to the recipient.

The Commission suggests that you review 2 U.S.C. §441a(a)(8) and §110.6 of the proposed regulations in order to properly report the receipt and disbursement of such “designated contributions.

This response related to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission. These proposed regulations were formally adopted by the Commission and serve as interpretative rules of the Commission as to the meaning of the pertinent statutory language. The proposed rules were transmitted to the Congress on August 3, 1976. See 2 U.S.C. §438(c). For your information I enclose a copy of a recent Commission policy statement regarding those rules.

Sincerely yours,

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

Enclosures