



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 30, 1976

Re: AOR 1976-106

Mr. Anthony L. Hodges
Continental Oil Company
P.O. Box 2197
Houston, Texas 77001

Dear Mr. Hodges:

This is in response to your letter dated November 24, 1976, in which you request an advisory opinion as to whether employee/participants in the Continental Oil Company's Employee Stock Ownership Plan (ESOP) may be regarded as stockholders for purposes of the Federal Election Campaign Act of 1971, as amended ("the Act").

According to your letter, the terms of the ESOP provide that every employee of Continental is eligible to participate. Each employee who chooses to participate becomes the owner, without cost, of a certain number of shares of Continental Oil Company stock. These shares are purchased by the company in the open market and deposited into a trust. Although the employees who participate do not receive any cash dividends declared, the trustee takes the cash dividend and purchases additional shares of stock for the proportionate benefit of the participating employees. The employees do have the right to direct how the stock originally purchased, as well as the stock additionally purchased, will be voted. Whenever an employee ceases employment with Continental Oil Company, eligibility to participate in the plan is terminated. At that time the employee has the right to receive all of the stock which has accumulated in his or her account in the ESOP and also has the right to receive all cash dividends directly. You ask whether, under the definition of stockholder in §114.1(h) of the Commission's proposed regulations, the participants in the ESOP may be considered stockholders and accordingly within the class of individuals who may generally be solicited for voluntary contributions to the Company's separate segregated fund pursuant to the Act and the Commission's proposed regulations.

The Commission concludes that the participants in the Continental Oil Company's ESOP do not fall within the definition of stockholder in §114.1(h) of the proposed regulations. That definition states: "Stockholder means a person who has a

vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends." (Emphasis added.) Your letter indicates that, while the cash dividends generated by the stock are reinvested by the trustee for the benefit of the shareholders, these "stockholders" do not receive the dividends directly. A presently enforceable right to receive dividends in the form in which declared by the issuing corporation is one of the Commission's requirements before an individual may be considered a solicitable stockholder. Moreover, although the Commission does not believe the fact that the stock is held in the name of the trustee is particularly relevant, it is significant that the employee does not have a present right to sell his or her interest in the security and that in order to obtain such right the employment relationship must terminate. It is also the Commission's view that to include such employees within the definition of stockholder would significantly broaden the class of persons allowed to be solicited and increase the potential for the kind of coercion in contribution solicitations which Congress sought to eliminate by the 1976 Amendments to the Act.

This response relates 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