

10 Sep 1976

Re: AOR 1976-19

Mr. Mitchell Melich
Treasurer of First Pac
Suite 400, Desert Building
Salt Lake City, Utah 84111

Dear Mr. Melich:

This responds to your letter of May 20, 1976, requesting an advisory opinion on the question of whether First Security Corporation, its State bank subsidiaries and its non-banking subsidiaries, may contribute treasury funds to First Pac, the separate segregated fund established by First Security Corporation, if those funds are used only to make contributions to candidates seeking nomination or election to State or local office.

As you know, the Supreme Court held in Buckley v. Valeo, 424 U.S. 1 (1976), that the Commission as then constituted lacked the power to issue advisory opinions. From the date of the decision on January 30 until reconstitution of the Commission on May 21, 1976, advisory opinions were not issued. Moreover, since May 21 the Commission has been required to give priority to the consideration of proposed regulations which must be submitted to Congress under 2 U.S.C. §438(c). We apologize for the unavoidable delay in responding to your request.

Your letter states that First Security Corporation (Security) is a registered bank holding company, whose subsidiaries include national and State banks, as well as several non-banking subsidiaries. Security has established a separate segregated fund (First Pac) and inquires as to whether Security, or any of its non-national bank subsidiaries, would be considered "national banks" and thus be barred by 2 U.S.C. §441b from making contributions to First Pac to be used in support of candidates seeking nomination or election to State or local office.

Security is regarded as a corporation in its own right and may establish a separate segregated fund pursuant to 2 U.S.C. §441b and Part 114 of the Commission's proposed regulations (copy enclosed). Neither Security, its State bank subsidiaries, nor its non-banking subsidiaries would be regarded as a national bank for purposes of the prohibition on contributions or expenditures by national banks in 2 U.S.C. §441b(a).

However, as a separate segregated fund, First Pac must be administered and established in a manner consistent with 2 U.S.C. §441b and Part 114 of the proposed regulations. Consequently, neither First Pac nor Security may solicit, accept, or receive funds that could not be contributed or expended in connection with a Federal election. Specifically First Pac may not solicit or receive contributions from national banks,

corporations "organized by authority of any law of Congress," other corporations, labor organizations, government contractors (2 U.S.C. §441c), or any other person barred by the Federal Election Campaign Act of 1971, as amended, from making a political contribution. This is because First Pac, which will receive contributions and make expenditures in connection with a Federal election, is restricted as to the persons who may be solicited. These persons are limited to the stockholders of Security as well as the "executive or administrative personnel" (and their families) of both Security and its subsidiaries. 2 U.S.C. §441b(b)(4)(B). See also §114.6 of the proposed regulations.

An additional reason why First Pac may not solicit or accept contributions from corporations is because under 2 U.S.C. §441b(b)(3)(A) it is unlawful for First Pac to make a contribution using monies obtained "in any commercial transaction." Corporate funds received from Security's subsidiaries would presumably have been obtained by them in commercial transactions. See §114.5(a) of the proposed regulations. In this connection §102.6 of the Commission's proposed regulations would also preclude First Pac from receiving and retaining corporate funds since a "political committee" may receive or retain only those funds which could have been lawfully contributed to it in the first place.

Security or any of its non-national bank subsidiaries may, of course, establish separate committees, not within the purview of the Act, which may solicit and accept corporate donations in connection with a State or local election. A national bank subsidiary may not make contributions in connection with Federal, State or local elections but may establish a separate segregated fund subject to §441b and Part 114 of the proposed regulations.

Lastly, we note that any "political committee" (2 U.S.C. §431(d)) established by Security, together with all such committees established by its subsidiaries, branches or divisions, are considered a single committee and subject to a single contribution limit under 2 U.S.C. §441a(a). See Part 110.3 of the Commission's proposed regulations.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion because it is based in part on proposed regulations which are subject to Congressional review. The proposed regulations were submitted to the Congress on August 3, 1976, and may be prescribed by the Commission in final form only if neither the House nor the Senate disapprove within thirty legislative days of their receipt of those regulations. 2 U.S.C. §438(c).

In view of the described circumstances no further action on your inquiry appears to be needed. If you have further questions that are not answered by the proposed regulations, which were published in the Federal Register on August 25, 1976, please do not hesitate to contact us. Thank you for your cooperation.

Sincerely yours,

/ s /

Vernon W. Thomson
Chairman for the
Federal Election Commission