FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1976

Re: AOR 1976-23

Mr. Anthony L. Hodges
Continental Oil Company
Post Office Box 2197
Houston, Texas 77001

Dear Mr. Hodges:

This refers to your letter of May 21, 1976, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to various operations of the Conoco Employees' Good Government Fund ("the Fund").

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 that decision on January 30 until reconstitution of the Commission on May 21, 1976, no advisory opinions could be issued. Moreover, since May 21 the Commission has been required to give priority to the consideration of proposed regulations which were submitted to Congress as required under 2 U.S.C. §438(c). We apologize for the unavoidable delay in responding to your request.

The response to your questions follows a restatement of your questions.

(1) Does the language contained in 2 USC §441b allow the use of payroll deduction program by this committee in connection with federal elections? If so, does the Act preempt state laws which prohibit the use of payroll deduction?

1. The Act allows a corporation to use a payroll deduction program to facilitate voluntary contributions from the stockholders and executive or administrative personnel of Continental Oil Company to the Fund. The Commission is of the opinion that the Act preempts State laws to the extent that the contributions are in connection with a Federal election.

The preemption provision of the Act is contained in 2 U.S.C. §453:

> The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office. Furthermore, the legislative history makes clear that Federal law was intended to be the sole source of regulation of election to Federal office.

Furthermore, the legislative history makes clear that Federal law was intended to be the sole source of regulation of election to Federal office:

> It is the intent of the committee to make certain that the Federal law is construed to occupy the field with respect to election to Federal office and that the Federal law will be the sole authority under which such elections will be regulated. (Report of Comm. on House Admin., on H.R. 16090, Rpt. No. 93-1239, 93d Cong., 2d Sess., 1974).

Where the Act regulates an aspect of election to Federal office, it is, therefore, the sole source of such regulation. 2 U.S.C. §441b(b) provides for establishment by corporations and labor unions of separate segregated funds, and for facilitating the making of contributions to such funds. Congress intended to allow methods of contribution to separate segregated funds which would facilitate voluntary contributions.

> The House amendment was intended to acknowledge the use by corporations of various methods, such as check-off systems, to solicit voluntary contributions or to facilitate the making of such contributions to separate segregated political funds . . . The House amendment also intended to authorize such methods <u>notwithstanding any other provision of law</u>. Report of Committee on Conference on S-3065, Rpt. No. 94-1057, p. 62, 1976. (The House amendment was adopted.)

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The separate segregated fund allowed for Federal elections by 2 U.S.C. §441b(b) is solely a matter of Federal law. The Act preempts any State provision "with respect to election to Federal office." 2 U.S.C. §453. Consequently, any method of making a contribution to such a fund which facilitates voluntary contributions would be allowable to a corporation or labor organization under the Act. Therefore, State laws regarding payroll deduction plans would not be applicable to separate segregated funds established for the purpose of making contributions or expenditures in connection with Federal elections.

> (2) If the corporate political committee solicits only the shareholders, executive and administrative personnel of the corporate sponsor and provides those individuals with the opportunity to use a payroll deduction program, does

the language of 2 USC §441b require the corporation to establish a payroll deduction program for its union employees to facilitate their making contributions to a union political committee?

2. If the corporate political committee solicits only the stockholders and executive or administrative personnel of the corporate sponsor and provides a payroll deduction program for these persons, the corporation is required to make a payroll deduction program available on written request, to a labor organization(s) representing employees who are members to facilitate the employee/member contributions to the labor organization's separated segregated fund. 2 U.S.C. §441b(b)(6). The plan must be made available to the labor organization(s) at a cost sufficient only to reimburse the corporation for the expenses incurred thereby.

(3) Does the language of 2 USC §441b require this committee to employ an independent fiduciary for the purpose of keeping records and receiving contributions which have been made as a result of the March solicitation even though no solicitation has been made by this committee since the enactment of the 1976 Amendments?

3. Under §114.12(d) of the Commission's proposed regulations payroll deduction plans instituted by a corporation for all its employees may be continued until December 31, 1976. However, the corporation must have established the payroll deduction plan before May 11, 1976 (the effective date of the 1976 Amendments to the Act), the employees must have been solicited and signed up for the payroll deduction plan prior to May 11, 1976, and, finally the payroll deductions may be continued only for those employees who have not withdrawn their authorization for the deduction. The corporation will not be required to employ an "independent fiduciary" to handle these contributions.

However, if the corporation has solicited or plans to solicit any employees (other than stockholders and executive or administrative personnel) after May 11, 1976, the solicitation and collection of contributions must be done under the twice yearly provisions set forth in 2 U.S.C. §441b(b)(4)(B). Any solicitation and collection plan used after May 11, 1976, must be so designed that the corporation, or its separate segregated fund cannot determine who makes a contribution of $50 or less as a result of the solicitation and who does not make a contribution. The Commission's proposed regulations on this solicitation are contained in §114.6. You will note that §114.6(e)(1) prohibits the use of a payroll deduction plan for this type of solicitation.

(4) Does the March solicitation by this committee count as one of the two written solicitations to employees each year allowed by 2 USC §441b?

4. The provisions of 2 U.S.C. §441b(b)(4)(B) apply only to solicitations after May 11, 1976. Accordingly, the March solicitation is not considered one of the two yearly solicitations.

(5) Does the language of 2 USC §441b limit the number of times this political committee can solicit contributions from the stockholders, executives and administrative personnel of its sponsor corporation?

5. There is no limit on the number of times the Fund may solicit contributions from the stockholders, executive or administrative personnel of its sponsor corporation.

(6) Does the language of 2 USC §441b require this corporate political committee to give a union political committee which represents employees of the sponsor corporation or an independent mailing service a complete list of the names and addresses of all corporate employees if this committee solicits only the stockholders, executive and administrative personnel of the sponsor corporation? If not, what information must be given to the union political committee or the independent mailing service if only stockholders, executives and administrative personnel are solicited?

6. The Act does not require the corporation to give either a labor organization representing members employed at the corporation, or an independent mailing service, a list of the names and addresses of all corporate employees if the corporate political committee solicits only the stockholders, and executive or administrative personnel of the sponsor corporation. The statutory requirement is that the method used for such solicitation be made available to the labor organization for a solicitation by the labor organization of its members. See §114.5(k) of the proposed regulations.

If the corporation solicits employees other than stockholders and executive or administrative personnel under the twice yearly provisions (2 U.S.C. §441b(b)(4)(B)), then the corporation is required to make that method of solicitation available to the labor organization for the solicitation of the corporation's stockholders, executive and administrative personnel, and non-member employees. If the corporation does not wish to disclose the names and addresses, the corporation shall make the names and addresses available to an independent mailing service which shall be retained to make the mailing for both the corporation and the labor organization. See §114.6(e) of the proposed regulations.

(7) Does the language of 2 USC §441b require a corporation to conduct its employee education programs jointly with an independent organization which does not endorse any candidate? If so, can an

education program be conducted on company time and on company premises?

The education programs to be conducted consist of a presentation by the local Republican and Democratic chairmen or some other appropriate representative from each party, and the presentation is designed to inform employees about the structure and operating procedures of political parties. All employees of the corporation are eligible to attend the presentation and no solicitation for contributions to the Fund nor partisan communications endorsing any candidate will be allowed. The purpose of the program will be strictly educational and informative.

7. Your final question concerns the corporation's employee education program. As stated in your letter, the education programs to be conducted consist of a presentation by the local Republican and Democratic chairmen or some other appropriate representative of each party. All employees of the corporation are eligible to attend the presentation and no solicitation to the Fund nor partisan communications endorsing any candidate will be allowed.

The Commission has provided for programs of the type you describe in §114.4(b) of the proposed regulations. Under this section a corporation may permit party representatives on the premises to speak to all employees. If the corporation permits representatives of the Republican and Democratic parties to appear, then the corporation must upon request afford "the same opportunity to appear" to representatives of other political parties which had a candidate or candidates on the ballot in the last general election or which anticipate having or will have a candidate or candidates on the ballot in the next general election.

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 which were submitted to Congress as required. The proposed regulations may be prescribed in final form by the Commission only if not disapproved either by the House

or the Senate within 30 legislative days from the date received by them. 2 U.S.C. §438(c). As mentioned previously, the proposed regulations were submitted to the Congress on August 3, 1976.

Sincerely yours,

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

Enclosure