



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

10 AUG 1976

Re: AOR 1976-47

O. R. Crawford, Chairman
Metro Contract Services, Inc.
9225 Katy Freeway, Suite 110
Houston, Texas 77024

Dear Mr. Crawford:

This letter is in response to yours of June 24, 1976, concerning the twice yearly solicitation provision of the Federal Election Campaign Act of 1971, as amended. You ask for clarification of 2 U.S.C. §441b(b)(4)(B) as applicable to the contributor of \$50 or less who requests the contribution to be made through payroll deduction.

As you know, §441b(b)(4)(B) provides that a corporation, labor organization or their separate segregated fund may make two written solicitations for contributions per year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. However, such a solicitation may be made only by mail addressed to such persons at their residence and "shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of \$50 or less as a result of such solicitation and who does not make such a contribution."

The Commission has sought to implement this statutory provision regarding disclosure by giving final approval to the following proposed regulation:

A corporation or labor organization or the separate segregated fund of either may not use a payroll deduction plan, a checkoff system, or other plan which



deducts contributions from an employee's paycheck as a method of facilitating the making of contributions under this section.*/

This proposed regulation would make it clear that a corporation or labor union could not use an overall plan to provide a payroll deduction option to employees and others under the twice yearly solicitation. I note that §114.6(e)(1) does not specifically address the question of an isolated employee spontaneously asking that a deduction be made from his paycheck, and the Commission has not addressed it in the context of an advisory opinion request. The proposed regulations in §114.5(j) do permit a separate segregated fund to accept a contribution otherwise lawful.

You do not describe in any detail the conditions under which payroll deductions have been requested in your situation. Therefore, this letter should be regarded as informational only and not advisory since an advisory opinion must be in response to a "specific factual situation" calling for the application of a general rule of law stated in the Act or a regulation duly prescribed by the Commission. 2 U.S.C. §437f(a).

In any event, I wish to draw your attention to §114.12(d) of the Commission's proposed regulations which reads as follows:

A corporation which, prior to May 11, 1976, had solicited employees other than stockholders or executive or administrative personnel for voluntary contributions to its separate segregated fund and had offered such employees the opportunity to enroll in a payroll deduction plan may, until

*/ Note that this rule applies only to twice yearly solicitations of employees and others. Methods such as payroll deductions are allowed when a corporation solicits only its stockholders or executive and administrative personnel, if the method is made available to the appropriate labor organizations. See §114.5(k) of the Commission's proposed regulations.

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December 31, 1976, unless the employee withdraws before that date, continue to deduct contributions from the checks of employees who signed up prior to May 11, 1976. Any solicitation of such employees after May 11, 1976, is subject to the provisions of 2 U.S.C. §441b(b)(4)(B) and §114.6 when prescribed. [Emphasis added.]

The proposed regulations quoted above were submitted to Congress on August 3, 1976 and may be prescribed in final form by the Commission only if not disapproved either by the House or the Senate within thirty legislative days from the date received by each body. 2 U.S.C. §438(c). I hope this response is helpful for purposes of your inquiry.

Sincerely yours,

/s/

Benjamin M. Vandegrift
Assistant General Counsel (Acting)

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