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O/R #714

Mr. Robert O. Lehrman
Chairman of CEPAC
Four Irving Place
New York, New York 10003

Dear Mr. Lehrman:

This responds to your letter of August 3, 1976, requesting an advisory opinion as to whether the establishment and operation of a separate segregated fund by Consolidated Edison of New York in the manner indicated in your letter and bylaws which you submitted would conform to the Federal Election Campaign Act of 1971, as amended ("the Act").

I must advise you that the advisory opinion procedure is appropriate only with respect to specific factual situations rather than as a method to review the general program of a political action committee (PAC). See 2 U.S.C. §437f. The proposed regulations submitted to the Congress on August 3 and published in the Federal Register on August 25, 1976, may be relied on as an expression of Commission policy in your evaluation of the organization and operation of you PAC. For your information, we offer several comments on certain aspects of your program.

Your letter indicates that a payroll plan may be used for soliciting your employees. Section 114.6(c) of the Commission's proposed regulations prohibits the use of a payroll deduction plan to solicit employees generally, although it is permitted with respect to the solicitation of stockholders who are individuals and executive or administrative personnel and their families.

You state in your letter that earmarked contributions received by your PAC shall be disbursed in accordance with the designation of the respective contributors. Section 441a(a)(8), Title 2 U.S.C., requires intermediaries or conduits to report the original source and the intended recipients. See §110.6 of the Commission's proposed regulations. Under certain circumstances

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where a conduit or intermediary exercises control over an earmarked contribution it counts as a contribution from both the original donor and the conduit. See §110.6(d) of the proposed regulations.

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You state that CEPAC is a nonprofit unincorporated committee maintained as a separate segregated fund to be utilized for political purposes, and that it will accept and distribute funds solicited by it or on its behalf in support of the nomination or election of individuals who are candidates for Federal, State, and local elective offices. Section 102.6 of the Commission's proposed regulations requires any political committee which has solicited or received contributions for or on behalf of any candidate for Federal office to either establish a separate Federal campaign committee which shall establish a segregated Federal account and shall register as a political committee, or establish a single committee with a single account to make contributions to Federal and non-Federal candidates. The latter alternative is only available if all contributions received are proper under the Act and contributors are informed that all contributions are subject to the limits of the Act. The described committees:

(1) may not receive contributions other than contributions designated for the Federal committee or account, contributions received as a result of a solicitation which expressly states that the contribution will be used for Federal elections, or contributions from contributors who are informed that all contributions are subject to the limitations of §§110.1 110.2 and 110.5; or

(2) may not receive transfers from an account or committee established by a State committee, subordinate committee of a State committee, or another political committee, except from a committee or account set out in (i) and (ii).

You further state that CEPAC intends to solicit the employees of Con Edison and their families. Section 441(b)(4)(B), Title 2 U.S.C., allows a separate segregated fund established by a corporation to make two written solicitations for contributions during the calendar year to employees who are not executive or administrative personnel. These solicitations must be made by mail addressed to the employees at their residence. See §114.6 of the Commission's proposed regulations. Stockholders and executive or administrative personnel of Con Edison (and their families) may be solicited for contributions to CEPAC as often as desired either orally or in writing. See §114.5 of the proposed regulations.

The proposed regulations of the Commission may be prescribed in final form only if they are not disapproved either by the House or Senate within thirty legislative days from the date they received them. 2 U.S.C. 5438(c). As mentioned previously, the proposed regulations were submitted to Congress on August 3, 1976.

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, please do not hesitate to contact us.

Sincerely yours,

N. Bradley Litchfield

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Assistant General Counsel

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