

December 17, 1976

AO 1976-73

Mr. Philip A. Hutchinson, Jr.
Counsel, Political Committee
for Design Professionals
P.O. Box 993
Washington, D. C. 20014

Dear Mr. Hutchinson:

This responds to your letter dated August 23, 1976, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the proposed designation of a pre-existing political action committee as such a committee of another organization.

The material facts relating to your inquiry as stated in your letter and in a subsequent meeting as well as telephone conversations with attorneys in the General Counsel's Office, are as follows:

The Political Committee for Design Professionals ("the Committee"), a registered political committee, was designated, on October 28, 1975, as the political committee of the American Consulting Engineers Council ("ACEC"), an incorporated trade association with corporate and noncorporate members. The Professional Engineers in Private Practice ("PEPP"), an unincorporated division of the National Society of Professional Engineers ("the Society"), itself an incorporated nonprofit membership organization with no corporate members, would now like to designate the Committee as its separate segregated fund. The questions posed by your letter are (1) may one political committee serve as the separate segregated fund of two or more unaffiliated entities and (2) is a division of an incorporated membership organization an entity which may establish and administer a separate segregated fund?

In response to your first question, the Commission concludes that the language in 2 U.S.C. SS 441b(b)(2)(C) and §441b(b)(4) does not permit one political committee to serve as the separate segregated fund of more than one sponsoring corporation or labor organization. It is significant that under the 1976 Amendments to the Act the class of persons who may be solicited by either the sponsoring corporation (or labor organization) or the separate segregated fund, i.e., political committee, established by the corporation (or labor organization) is restricted to specified classes of individuals. 2 U.S.C. §441b(b)(4)(A)(i). Joint sponsorship of one separate segregated fund by several corporations (or labor organizations) would contravene the cited statutory language which restricts solicitations by a corporation (or labor organization), as well as its separate segregated fund, to the specifically identified constituency of the sponsoring corporation. In this case solicitations by the Committee, ACEC, or both would be

restricted to noncorporate members of ACEC; stockholders and executive or administrative personnel of member corporations of ACEC (and the families of such persons) could also be solicited if solicitation of those persons was separately and specifically approved by member corporations of ACEC. 2 U.S.C. §441b(b)(4)(D); see §114.7(c) and §114.8 of the Commission's proposed regulations to implement 2 U.S.C. §441b.

With regard to your second question, it is the Commission's opinion that a division of an incorporated membership organization which is not itself separately incorporated is not an appropriate entity to establish and administer a separate segregated fund unless that fund is a fund designated for the corporation since under general principles of corporate law, such a division has no separate legal existence. Were PEPP a division of the Society separately incorporated, it could establish and administer a separate segregated fund, except that for purposes of the contribution limits of 2 U.S.C. §441a and §110.3 of the Commission's proposed regulations, any fund established by PEPP and any other funds established by the Society, its divisions, or any other affiliated committee would be deemed to be one committee.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. 2 U.S.C. §437f.

Sincerely yours,

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

Enclosure