



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 27, 1978

AO 1977-2

J. Richard Sewell, Treasurer
Constructive Congress Committee
1701 K Street, N.W., Suite 503
Washington, D.C. 20006

Dear Mr. Sewell:

This refers to your request for an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the Constructive Congress Committee ("CCC").

Specifically you request an opinion as to whether or not CCC is "connected" with the National Association of Electric Companies ("NAEC"), a trade association, and therefore required to conduct its solicitation activities in accordance with 2 U.S.C. 441b(b)(4)(D) and Part 114 of the Commission's regulations. Your original advisory opinion request was supplemented by letters of March 7 and August 3, 1977 which responded to questions posed in letters from the legal staff of the Commission dated respectively January 31 and June 3, 1977.

On the basis of information provided by letter as well as reports filed by CCC under the Act and other relevant information obtained by Commission staff, it is the opinion of the Commission that CCC is a "separate segregated fund" established and administered by NAEC to which political contributions are solicited. Thus CCC and NAEC, the connected trade association of CCC, are subject to the requirements of 2 U.S.C. 441b(b)(4)(D) and Part 114 of the Commission's regulations, in particular 11 CFR 114.8.

Under 2 U.S.C. 433 a political committee is required to include in its statement of organization the name, address and relationship of any "affiliated or connected organization." See also 11 CFR 102.2(a)(2). A connected organization is defined in 100.15 of the Commission's regulations to mean "any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports the registrant such as a corporation . . . membership organization . . . or trade association." The existence of a connection with an organization subject to 2 U.S.C. 441b means that the solicitation limitations of 441b would apply. A determination of whether a connection exists between a trade association and a political committee requires review of the operational interaction between the trade association and

political committee as well as analysis of the extent to which individuals having a relationship with the trade association or its members are also involved in "directly or indirectly" establishing, administering or financially supporting the political committee in question.

The enclosures with the letter of August 3, 1977, from Counsel of CCC include two solicitation letters sent in January 1976 which were sent to officials of NAEC members. The first solicitation letter dated January 7, 1976, was signed by the Chairman and Treasurer of CCC and invited participation in a CCC fundraiser on February 3 to be held "prior to an NAEC meeting."¹ A followup letter of January 23 was addressed: "Dear NAEC Member" and was signed by three executives of NAEC member companies. This letter referred to the prior letter from CCC and identified the Chairman and Treasurer of CCC as representatives of NAEC member companies. This solicitation activity occurred during the first two months of CCC's existence when its establishment as "representative of the nation's electric utility industry" was critical to achieving its stated aim of creating "a favorable climate for the investor-owned utility business."² The identity of the persons signing the second fundraising letter, the reference in that letter to the connection of CCC's officers with members of NAEC, and the fact that the January 23 letter was sent exclusively to representatives of NAEC member companies, indicate that CCC exploited its special access to NAEC personnel with the result that its establishment was thereby assured.

During the first 3 months of its existence in 1976 CCC received approximately 1/3 of all its 1976 receipts, and its solicitations for those contributions were directed only to personnel of NAEC members.³ In addition, a review of contributor records (supplied with August 3, 1977 letter) and reports filed by CCC indicates that 75% of all donors during the first quarter of 1976 were: (i) executives of member companies of NAEC; (ii) separate segregated funds of member companies of NAEC; (iii) executives of NAEC itself. When contributor records for all 1976 contributions are considered the result is that 42% of contributions to CCC are from executives of NAEC member companies, employees of NAEC itself or EEI⁴, or from registered lobbyists (or their employees) of NAEC (as disclosed on its reports filed under the Federal Regulation of Lobbying Act).⁵

Subsequent solicitation letters sent in April, July and August 1976 were addressed to NAEC members as well as to Friends of EEI End to "Electric Utility Friends". A solicitation letter of July 1, 1976, addressed to NAEC members, made specific reference to a "recent" NAEC legislative conference where CCC had distributed a "coupon ticket" book evidently used to solicit contributions to CCC. This same letter invited NAEC members to suggest candidates who

¹ The fundraiser was held as a coffee hour preceding an NAEC meeting at the same location as the NAEC meeting although not in the same room. CCC officers were given permission by NAEC's managing director to conduct the solicitation in connection with NAEC's meeting. See CCC letters of March 7 and August 3, 1977.

² See solicitation materials for February 3, 1976, event enclosed with the letter of August 3, 1977.

³ Some personal solicitation of non-NAEC personnel who were otherwise associated with the electric utility industry occurred at the February 3, 1976 fundraiser since these persons were attendees at the NAEC meeting which followed the fundraiser. See paragraphs 5 and 7 of the enclosure to CCC's letter of August 3, 1977.

⁴ The Edison Electric Institute, another trade association with membership from the electric utility industry.

⁵ Of the eight persons identified as lobbyists on reports of NAEC filed pursuant to Lobbying Act, six are contributors to CCC. In addition, seven attorneys of the firm Reid and Priest which is identified on NAEC lobbying reports as consultants, made contributions to CCC.

CCC "might assist" with political contributions and was signed by the Chairman and Treasurer of CCC.

The letters in April and August to Electric Utility Friends and EEI Friends were signed by executives of member companies of NAEC. The names of CCC's chairman and treasurer appear on the materials with identification of their companies which are both members of NAEC. This continuing pattern of directing solicitations to personnel of NAEC members, the ready access to NAEC member personnel enjoyed by CCC, CCC's invitation to NAEC members for suggestions on CCC contribution recipients, and the coincidence of CCC fundraising activity with NAEC meetings further substantiate the connection between CCC and NAEC.

The foregoing relationship and facts confirm that NAEC "directly or indirectly establishes, administers, or financially supports" CCC. Therefore CCC must be regarded as the separate segregated fund of NAEC for purposes of the Act and relevant Commission regulations and must identify NAEC as its connected trade association on FEC Form 1. See also Advisory Opinion 1975-143 wherein the Commission concluded that the involvement of the same individuals in activities of both a political committee and its parent organization precluded an opinion holding that the political committee was separate or independent from the parent organization.

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

Sincerely yours,

(signed)

Thomas E. Harris
Chairman for the
Federal Election Commission