



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 28, 1978

AO 1977-49

Robert R. Walsh, Secretary
Kerr-McGee Corporation Political Action Committee
Kerr-McGee Center
Oklahoma City, Oklahoma 73125

Dear Mr. Walsh:

This refers to your letter of September 21, 1977, with enclosures, requesting an advisory opinion on behalf of the Kerr-McGee Corporation Political Action Committee ("KMPAC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to political fundraising solicitations of Kerr-McGee personnel by KMPAC.

You pose several questions on which you request an advisory opinion. They are set forth and discussed in the same sequence asked except for your first question which the Commission discussed but was unable to answer by an affirmative four vote majority. See 2 U.S.C. 437c(c).

- (2) Do the Act and Regulations permit a bank to act as the custodian under the custodial arrangement required for the twice yearly solicitations of employees other than stockholders, executive or administrative personnel and their families where the bank holds stock or Kerr-McGee as a fiduciary for others and not for its individual account? May such bank also be retained as the independent mailing service to make the mailing for both the corporation and labor organization under the twice yearly solicitation provisions?

This question is answered in the affirmative. The regulations in 114.6(d)(1) disqualify certain persons from serving as custodian for a separate segregated fund with respect to the twice yearly solicitations. Those persons disqualified are stockholders, officers, or employees of the corporation and officers or employees of its separate segregated fund. Other persons are not so disqualified and could serve as custodians. The fact that the proposed bank custodian holds Kerr McGee stock as a fiduciary for others would not prevent it from serving as custodian. The crucial consideration is that anonymity be preserved by the custodian with respect to solicited persons who wish not to contribute or who contribute in amounts which do not trigger recordkeeping or reporting requirements under the Act and regulations. 11 CFR 114.5(d).

While the regulations contemplate the use of a commercial mailing house as an independent mailing service for purposes of twice yearly solicitations, a bank is not precluded from performing the mailing. However, since any mailing service used under 114.6 must be retained by both the corporation and labor organization, it is essential that both agree upon the mailing service to be selected unless the labor organization decides that it does not want to make any solicitations under 114.6.

- (3) Do the Act and Regulations require Kerr-McGee to disclose to a labor organization the names and addresses of the stockholders of Kerr-McGee (or to make the same available to an independent mailing service if Kerr-McGee does not wish to disclose such names and addresses) if K-M PAC solicits only employees (including employees who are stockholders of Kerr-McGee)?

Your letter explains that KMPAC is considering the solicitation of employees of Kerr McGee (including executive or administrative personnel), but is not considering solicitation of all stockholders as a class. Kerr McGee is required to make the names of its stockholders available to a labor organization (or independent mailing service) for 441b solicitation purposes only if KMPAC or Kerr McGee solicits employees under the twice yearly provisions of 2 U.S.C. 441b(b)(4)(B) and 11 CFR 114.6. See 11 CFR 114.6(e)(3)(iii) and the Commission's response to Advisory Opinion Request 1976-23. If KMPAC or Kerr McGee solicits only its executive and administrative personnel, and stockholders (including any employees who may also be stockholders) it has no obligation under the Act to make the names of such persons or other employees available to any labor organization. See the definitions in 11 CFR 114.1(c) and (h). However, any method (for example, payroll deductions) used by KMPAC or Kerr McGee for soliciting or facilitating voluntary contributions from its executive and administrative personnel or stockholders, is required to be made available to relevant labor organizations for soliciting or facilitating voluntary contributions from their members to the separate segregated funds of those labor organizations. See 11 CFR 114.5(k).

- (4) If Kerr-McGee furnishes the independent mailing service a computer run of labels for mailings on behalf of a labor organization, is it entitled to be reimbursed its costs?
- (5) Is the labor organization responsible for paying the independent mailing service for the mailing of its solicitation material or must Kerr-McGee bear such costs? If the labor organization is to pay such costs, who is responsible for negotiating the contract terms and provisions pertaining to the mailing on behalf of the labor organization and if they are unable to agree upon mutually satisfactory terms and conditions, will this payment the use of such service by K-MPAC for its mailing?

The independent mailing service is required to be used only in connection with the twice yearly solicitation and then only if Kerr McGee does not wish to disclose the names and addresses of its stockholders or employees to a labor organization. Since Kerr McGee would

only incur the cost of preparing a list for an independent mailing service because of its desire to keep its stockholders' identity confidential, Kerr McGee should bear the cost of preparing the list. However, the costs of producing labels to affix to the labor organization's solicitation mailings and the other expenses incident to such mailings are required to be paid by the relevant labor organizations.

The expenses of preparing and mailing the labor organization's solicitation materials are within the discretion of the labor organization since it alone decides the quantity of materials to be sent and whether its mailing should go to all persons on Kerr McGee's list. Thus, the labor organization should expect to bear those costs and assume full responsibility for the mailing of its solicitation materials. The Act neither requires nor precludes other agreements for paying the mailing expenses. See generally 11 CFR 114.6(e).

- (6) To avoid possible solicitation of foreign nationals as defined by the Act and Regulations, K-M PAC will not solicit employees of subsidiaries incorporated abroad and employees of Kerr-McGee or its domestic subsidiaries who are known to be foreign nationals. In addition, should K-M PAC solicit stockholders it will not solicit those with foreign addresses. Is Kerr-McGee required under the Act to nevertheless make the names and addresses of such employees and stockholders available to the independent mailing service?

This question is answered in the affirmative. It is the opinion of the Commission that 114.6(e)(3)(ii) of the regulations requires a corporation electing use of an independent mailing service to submit the names and addresses of all stockholders and employees regardless of the corporation's decision to refrain from soliciting those persons on the list who may be foreign nationals as defined in 2 U.S.C. 441e. Thus Kerr-McGee is required to make its complete list of stockholders and employees available to the independent mailing service if it wishes to make solicitations under the twice yearly provisions without otherwise disclosing the names and addresses of its stockholders or employees.

- (7) May the solicitation material of K-M PAC advise that under the Act and Regulations Kerr-McGee must make the names and addresses of its employees and stockholders (if required) available to an independent mailing service for the mailing of solicitation by the political action committee of a labor organization representing employees of Kerr-McGee and its subsidiaries and that (assuming it to be the case) one or more of such labor organizations have indicated they intend to make a solicitation of employees and stockholders?

Under 114.6(e)(2) of the Commission's regulations, the twice yearly solicitations may be used by Kerr McGee or KMPAC only for soliciting contributions to KMPAC and not "for any other purpose." 11 CFR 114.6(e)(2). This language would not, however, prohibit KMPAC from

including in its solicitation materials, mailed pursuant to 114.6, pertinent quoted excerpts from the Act and regulations or advisory opinions of the Commission.

- (8) Is the local of an international union and the international union each a labor organization within the meaning of the Act where the local and international union are both signatories to a labor agreement?
- (9) If some or all of the labor organizations do not agree on a joint written solicitation, may those not agreeing each solicit contributions to its separate fund?

These questions are not posed in a specific factual context and therefore an advisory opinion responding to them is not appropriate. See 11 CFR 112.1(b). Several sections of the Commission's regulations appear relevant to the questions. See 11 CFR 114.1(d), (a) and 114.6(e)(4), (5). In its Explanation and Justification for 114.6(e)(5) the Commission stated;

Subsection (e)(5) incorporates the conference report language in that regardless of the number of labor organizations which represent members at a given corporation, only two letters requesting contributions for labor organizations' separate segregated funds may be sent to employees who are not members of that union and the stockholders of the corporation and their families. Since the various labor organizations all have the right to make a solicitation, 114.6(b), the Commission focused on the fact that any given employee or stockholder could receive only two mailings per calendar year from labor organizations. Consequently, this subsection allows several labor organizations to join together, and a single mailing may contain requests for contributions to each of the labor organization's separate segregated fund.

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 not forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission