



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 27, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1978-102

Willard A. Esselstyn
Secretary Treasurer
Coal Miners Political Action Committee
900 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Esselstyn:

This responds to your letter of December 15, 1978, as supplemented by your letter of February 12, 1979, requesting an advisory opinion on behalf of the Coal Miners Political Action Committee concerning the applicability of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the financing of television and radio announcements encouraging members of the United Mine Workers ("UMW") to vote in the November 1978 elections.

According to your letter, during the period preceding the 1978 general election the United Mine Workers of America used general union treasury funds to finance television and radio announcements which were broadcast in several states. You state that these announcements were directed to UMW members "encouraging them to get-out-and-vote." In some cases these announcements mentioned and advocated support of specific candidates for State office. In other cases you say that the announcements were "non-partisan" in nature and did not advocate any particular party or candidate. In no instance were candidates for Federal office mentioned.

Enclosed in the February letter were transcripts of the radio and television get-out-the-vote advertisements as well as a tape recording of the radio announcements (1 minute). According to the transcripts (and the tape) the ads which you describe as nonpartisan did not mention, or indicate pictorially, support or opposition to any particular political party or candidate. Rather, in general terms the announcement talks to labor, advocates unity amongst union members, states that much was accomplished with the help of "friends" in political office, suggests that without union votes those "friends" could lose and then urges union members to vote on election day. In contrast to this general appeal, those spots which urged support of

certain candidates for State office identified the "friends" of labor by mentioning their names, the offices for which they were running, and ultimately appealed for a vote for each of those candidates on November 7.

Specifically you ask the following:

1) Was it proper for us to consider this non-partisan activity permissible? If not, may we transfer voluntary funds from our political action committee (in the proper amount allocable to the Federal portion of the election) into our general treasury to come into compliance with the Act?

2) If allocation is necessary, may we apportion our costs by a simple ratio of the number of Federal elections per state in relation to the number of state and local elections, since our announcements would apply to all such elections?

The Commission considers the announcements supporting specific State candidates as outside the scope of the Act since, as to labor organizations, the prohibitions of §441b extend only to contributions and expenditures connected with an election of candidates to Federal office. Also, relevant definitions in 2 U.S.C. 431 are limited to influencing the nomination or election of persons to Federal office. See 2 U.S.C. 431(a) through (f).

The Act's general definition of "expenditure" specifically excludes "nonpartisan activity designed to encourage individuals to register to vote, or to vote." 2 U.S.C. 431(f)(4)(B). The statute in §441b, however, subjects corporations and labor unions to stricter standards than individuals when Federal elections are concerned. Section 441b provides, in part, that it is unlawful for "any labor organization to make a contribution or expenditure in connection with" any Federal election - and although 441b(b)(2)(B) specifically contains an exemption for the use of general treasury funds to conduct nonpartisan registration and get-out-the-vote campaigns, the exemption is restricted to a campaign aimed at the labor organization's members and their families.

Accordingly, 114.4 of the Commission regulations which addresses nonpartisan communications places a labor organization under special constraints when engaging in nonpartisan activities connected with Federal elections restricted not restricted to its members and their families. Section 114.4(d) specifically addresses nonpartisan registration and get-out-the-vote drives and permits a labor organization to support such a drive if, the labor organization jointly sponsors the drive with a civic or other nonprofit organization which does not support or endorse candidates or political parties and which conducts the nonpartisan voting drive.

Since the get-out-the-vote campaign in question which reached the general public was sponsored solely by UMW, the activity was not conducted in conformance with Commission regulations. To be in compliance with the Act and regulations it is necessary that the cost of the get-out-the-vote announcements which did not specify a State candidate be allocated on a reasonable basis between Federal and non-Federal elections. (See Advisory Opinions 1978-50, 1978-28, and 1978-10 copies enclosed.) In this situation the Commission in of the opinion that a

reasonable basis for allocation would be to determine the ratio of the number of Federal candidates seeking election in the areas reached by the announcement, to the total number of all 1978 candidates-- Federal, State, and local--in that same area who were endorsed by the UMW or its PAC either to the general public or internally to union members. The resulting percentage should then be used to compute the portion of the expenses (only for those spots that did not identify any particular candidate, i.e. the "non-partisan" spots) that are regarded as Federal-election related. This amount should then be transferred from your political action committee (separate segregated fund) into the general treasury of UMW from which the full cost of the announcements was originally paid.

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)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures