



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 20, 1978

AO 1978-39

Matthew J. Lambert, Jr.
3742 Lamar Avenue
Memphis, Tennessee 38118

Dear Mr. Lambert:

This responds to your letter of June 22, 1978, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations as to whether the political action committee sponsored by the International Association of Holiday Inns, Inc. (INN/PAC) should or should not be considered affiliated with that of Holiday Inns, Inc. (HI/PAC).

Holiday Inns, Inc. (hereinafter "Holiday") owns and operates some 260 Holiday Inns worldwide. Additionally, Holiday has entered into license agreements that grant franchises to others for operation of Holiday Inns. The International Association of Holiday Inns, Inc. (hereinafter "Association") was instituted in 1955, and is comprised of persons who hold Holiday Inn franchises. Included in the Association's membership are those Holiday Inns owned and operated by Holiday itself.

In your letter you state that there appears to be a close affiliation between the two entities in that the names are similar, both organizations "are concerned with the operation of Holiday Inns," and both share the same address. However, you state that there are "militating" factors against the appearance of affiliation between the Association and Holiday. According to your letter, the Association is a "separately incorporated body", is financially independent from Holiday in that its operating expenses are paid for by dues assessments of its members and, most importantly, the two entities hold opposing views relative to certain pieces of legislation and support or withhold support of certain legislators based on those views.

You have requested an opinion as to whether INN/PAC, which is sponsored by the Association, must be regarded as an affiliated political committee of HI/PAC, which is sponsored by Holiday.

The Act's anti-proliferation provision in 2 U.S.C. 441a(a)(5) states:

For purposes of the limitations provided [in 441a(a)(1) and (a)(2)], all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee.

Section 110.3(a)(1)(ii) of the Commission's regulations provides specific examples of the application of the "anti-proliferation rule" (taken from the Conference Report, H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 58, which accompanied the 1976 Act). Section 110.3(a)(1)(iii) provides:

[I]ndicia of establishing, financing, maintaining, or controlling may include---

(A) Ownership of a controlling interest in voting shares or securities;

(B) Provisions of by-laws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity;

(C) The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity;

(D) Similar patterns of contributions;

(E) The transfer of funds between committees which represent a substantial portion of the funds of either the transferor or transferee committee, other than the transfer of funds between the committees which jointly raised the funds so transferred. (Emphasis added.)

Under the Act and Commission regulations, a political committee established by a membership organization (including a trade association) and a political committee established by a corporate member of that organization (or trade association) are not in every case treated as being affiliated. Compare 110.3(a)(1)(ii) and 114.8(g)(1) of the Commission's regulations. However, the described manifestations of corporate authority enjoyed by Holiday as to the purpose and functions of the Association are what make the situation presented here unique in comparison to the typical relationships between a trade association and its corporate membership. It is apparent here that in several significant respects Holiday has authority over and ability to direct and influence the Association.

Specifically, and according to the By-laws and Charter of the Association and the Policy Statement of Holiday (dated October 7, 1976) which you submitted, the license agreements to which each member (who is a franchisee of Holiday) of the Association is party authorize the Association to be formed for the purpose of making recommendations to Holiday "with respect to rules of operation, advertising, expenditures, and other appropriate matters." The board of directors of Holiday has the authority to appoint two of its members to the board of the Association as well as the authority to appoint committee members of the Association. Also, Holiday is permitted to act as a collection agent to facilitate payment to the Association of dues and assessments, and Holiday is permitted to charge the Association for such services. Holiday

has the authority to limit or restrict the Association in the use of any official trademark, seal, or other insignia as Holiday deems appropriate. Each licensee member of the Association is required to pay to Holiday certain assessments for advertising, marketing and other related activities, reservation sales offices and training. Furthermore, Holiday in the case of certain unresolved disputes with a licensee, has the authority to render the final decision concerning the dispute.

The provisions of the quoted regulation, which sets forth indicia of affiliation between either the connected organizations that establish political committees or between the committees themselves (see Advisory opinion 1976-104), apply to this situation. The by-laws and charter of the Association as well as Holiday's Policy Statement indicate that Holiday does, in fact, have the authority to direct and influence the Association and its membership who are franchisees of Holiday in several significant ways.

Therefore, it is the opinion of the Commission that given the relationship between Holiday and the Association, their respective political committees are affiliated within the meaning of the Act and Commission regulations. Accordingly, both INN/PAC and HI/PAC are required to share a single contribution limit with respect to their contributions to candidates for Federal office and political committees; contributions to INN/PAC and Hi/PAC* would be regarded as contributions to a single committee for limitation purposes. 2 U.S.C. 441a(a). Transfers between the two committees would be unlimited. Advisory Opinion 1977-21, copy enclosed. The Statements of Organization filed by INN/PAC and HI/PAC must be amended to identify each other as affiliated political committees. See 102.2(b)(1) of Commission regulations.

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 (AO 1977-70, AO 1978-61, AO 1976-104, AO 1977-21)

* As you know, it is unlawful for a foreign national, directly or through any other person, to make a contribution of money or other thing of value in connection with an election to any political office. 2 U.S.C. 441e.