



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 5, 1978

AO 1978-52

Honorable Allen E. Ertel  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Ertel:

This refers to your letter of June 15, 1978 and related materials sent to us by your Administrative Assistant, Jon Plebanie, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your involvement in the compilation and distribution of materials by the Sun Company.

Your letter states that a Congressional District Profile Program is to be conducted by the Sun Company in selected Congressional districts including the district you represent. The Program, you state, includes the compilation of information about the Congressional district, the incumbent Congressman, and Sun Company's activities in the district. The compiled information relating to you includes reports you filed under the House ethics rules and campaign finance reports filed by your principal campaign committee, the Ertel for Congress Committee. It is also evident from the materials you submitted that the Program will be carried out only "with the general agreement" of the Congressman involved. Also, the materials (prepared by Sun Company) indicate that the purpose of the Program is "to build closer relationships at the district level with Congress" in view of "increasing Federal legislation and regulation affecting Sun's installations . . .". One phase of the Program is to carry out "lobbying" on issues of interest to Sun.

You state your "strong presumption" that certain aspects of this Program may entail the making (and acceptance, if you agree to participate in the Program) of corporate contributions which are prohibited by the Act. The prohibition on political contributions by corporations has a significant exception. The exception permits the use of corporate treasury funds to pay the expenses of communications on any subject by the corporation to its stockholders and executive or administrative personnel and their families. 2 U.S.C. 441b(b)(2)(A); See also 114.3 of the Commission regulations which states in pertinent part;

(a) A corporation may make partisan communications in connection with a Federal election to its stockholders and executive or administrative personnel and their families.

This section further states:

(b) Expenditures for partisan communications which expressly advocate the election or defeat of a clearly identified candidate must be reported in accord with 100.7(b)(5).

Thus, to the extent the Program involves only communications to executive and administrative personnel or stockholders of Sun, or the families of those persons, the proposed distribution by Sun Company of Program literature would not constitute a "contribution" or "expenditure" under the Act. 2 U.S.C. 431(e)(5)(F), 431(f)(4)(H).

Your receipt of the described Program materials from Sun Company would not be a "contribution" or "expenditure" under the Act for two reasons. (This conclusion assumes that only a single copy of Program materials will be provided to you.) First, there is no apparent purpose to influence your nomination or election to Federal office through the distribution only to you. 2 U.S.C. 431(f)(4)(F). Second, the materials relating to your campaign or candidate status which accompanied your request are not things of value which may be "consumed" or utilized by your campaign in a manner that might benefit or influence your candidacy. Before a gift of "anything of value" may be regarded as a contribution, the item or service must have an ascertainable value expressed in terms of a "usual and normal charge." See 100.4(a)(1)(iii) of Commission regulations.

In addition, the predominant nature of the Program appears to be lobbying activity. As such it may be subject to the Federal lobbying statutes which are not within the jurisdiction of the Commission.

This response constitutes an advisory opinion concerning 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