



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 5, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-21

Mr. Glenn E. Watts
Chairman
CWA-COPE PCC
1925 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Watts:

This is in response to your letter of May 3, 1979, as supplemented by letter of August 22, 1979, requesting an advisory opinion on behalf of the Communications Workers of America COPE Political Contributions Committee ("PCC"), the separate segregated fund of the Communications Workers of America ("CWA"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the payment of the costs of a payroll deduction program to be established to facilitate the making of voluntary contributions to PCC by members of District #1 CWA who are employees of the New York Telephone Company ("the Company").

The Commission's understanding of the factual basis* of your request is as follows: The New York Telephone Company is making payroll deduction privileges available to certain levels of its management employees to facilitate the making of voluntary contributions to the separate segregated fund established by the Company. Since the Company is required by law to make the same solicitation method available to a labor organization representing any members who are employees of the Company, District #1 CWA is currently negotiating with the Company to establish a payroll deduction program for facilitating the making of contributions to PCC by CWA members who work for the Company. It is PCC's position that the Act would not preclude a corporation and a labor organization from agreeing that the corporation will not require reimbursement of the costs incurred in establishing and administering such a program. However, it is the Company's current policy that the costs involved in making such a method available to CWA members be billed to CWA on a regular basis. Accordingly, District #1 CWA intends to

* The Commission draws these facts from your letters of May 3 and August 22, 1979, as well as a comment received regarding your request from the New York Telephone Company dated July 19, 1979.

make the issue of reimbursement of these costs a matter for discussion during the negotiations. Your request states that District #1 CWA can only bring the issue to the bargaining table if it can be assured that the Act would permit the Company to accept something less than full reimbursement for the costs of establishing and administering the payroll deduction program for CWA members. Thus, you seek an advisory opinion as to the permissibility of District #1 CWA's proposal.

As you know, the section of the Act which is relevant to your request is 2 U.S.C. 441b(b)(6), which states;

Any corporation,... that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, ...

PCC contends that the limiting phrase in the above-quoted language, "...at a cost sufficient only to reimburse the corporation for the expenses incurred thereby,..." sets forth the maximum charge that a corporation may require for the services provided but does not prohibit the parties from agreeing that the corporation will not require such reimbursement. The Commission disagrees with this interpretation of the reimbursement requirement contained in 441b(b)(6). The prohibition on the use of corporate and union treasury funds in connection with Federal elections contained in 2 U.S.C. 441b is a broad one and the exceptions to that prohibition are intended to be read narrowly. Section 441b(b)(2)(C) permits a corporation or a labor organization to pay for the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized by the corporation or labor organization. The Commission's regulations similarly state that a corporation or labor organization is permitted to use general treasury funds for "the establishment, administration, and solicitation of contributions to its segregated fund." 11 CFR 114.5(b). Accordingly, the Commission believes that payment by a corporation of costs incident to maintaining a payroll deduction system for facilitating the making of voluntary contributions by employee-union members to a union's separate segregated fund would be prohibited by 441b.

The legislative history of 441b(b)(6) supports this conclusion. Senator Packwood, who originally introduced the reimbursement language which later became part of 441b(b)(6), stated upon its introduction:

"What we are simply trying to do here is that if the corporation uses a checkoff to collect political funds, if it is legal, that they must make that available to the union.

This simply says that if the union chooses to exercise its privilege to use that checkoff, they shall have to pay the cost incurred in making the lists available to them and using the checkoff." (emphasis added) 122 Cong. Rec. 7900 (March 24, 1976) (Remarks of Senator Packwood).

In response to the introduction of Senator Packwood's amendment, Senator Cannon, then-Chairman of the Senate Committee on Rules and Administration which reported the bill, stated:

We already have in the bill the provision that same system has to be made available to a labor organization representing any members working for the corporation. This would simply say they pay the cost attributable to making that method available.

I am willing to accept the amendment. (emphasis added) Id. (Remarks of Senator Cannon)

Accordingly, the Commission concludes that District #1 CWA is required to reimburse New York Telephone Company for the expenses incurred in making the described payroll deduction plan available to PCC.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission