



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 29, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-60

Mr. F. Coulter deVries
Suite 918
V.F.W. Building
406 West 34th Street
Kansas City, Missouri 64111

Dear Mr. deVries:

This responds to your letters of October 4 and 19, 1979, in which you request an advisory opinion concerning application to the Federal Election Campaign Act of 1971, as amended, ("the Act"), to certain proposed activities of the Hoisting and Portable Engineers Local Union 101 ("the union") and its political action committee, the 101 Political Fund.

You explain in your letter that the union is preparing to implement a funding plan in connection with its political action committee. Local Union 101 represents heavy equipment operators employed in the Commercial building and heavy construction industry. In order to solicit funds from union members for the 101 Political Fund the union proposes to allow an individual union member to sign an authorization card permitting the deduction of 5 cents per hour worked from vacation fund monies. These vacation monies are paid automatically to the union as trustee for each union member by the employing contractors, pursuant to the collective bargaining agreements in effect in the area.

You state that the vacation fund is in no way connected with union dues, assessments or any other general treasury funds of the union. It is a separate escrow account supervised and collected by the union on behalf of its membership, and the 75 cents per hour deduction which is deposited in the account for each union member is paid out to each member annually including interest earned on his portion of the account. You state that "transfers from the vacation fund would be made directly from the vacation fund account to the separate segregated fund maintained by the 101 Political Fund."

You state that the authorization card contains "a clear and complete disclosure of the political nature of the Political Action Committee's activities, and would assure that the member

signing the authorization card was aware of the fact that his participation in this Political Action Committee solicitation was entirely voluntary." The authorization card provides for termination of authorization in writing by the union member at any time prior to the expiration date indicated on the card.

You ask specifically whether the union's proposed funding plan to solicit voluntary contributions from union members through the use of deduction authorization cards satisfies the requirements to the Act and Commission regulations dealing with permissible political activity of labor organizations.

The Act and Commission regulations prohibit a separate segregated fund of a labor union from making a contribution or expenditure utilizing money secured by "dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment...." 2 U.S.C. 441b(b)(3)(A); 11 CFR 114.5(a)(1). In the factual situation presented by your request it is clear that the Vacation Fund from which deductions will be authorized is compensation earned by union members, withheld by the contractor/employer, and remitted to the union as trustee for each union member. According to your letter, the fund is not connected with union dues, assessments or any other union funds. The Commission concludes, therefore, that the Vacation Fund is a permissible source of voluntary contributions using a deduction authorization plan.

The Act also requires any solicitation of union members by a labor organization on behalf of its separate segregated fund to contain a clear statement informing each potential contributor of the political purposes of the fund at the time of the solicitation. 2 U.S.C. 441b(b)(3)(B); 11 CFR 114.5(a)(3). The sample authorization card attached to your advisory opinion request contains a clause alerting potential contributors that the funds to be withheld from the Vacation Fund will be paid into the 101 Political Fund and, will be used for political purposes.

Finally, the Commission's regulations provide that a guideline for contributions may be suggested by a labor organization or its separate segregated fund as long as the solicitation informs potential contributors that: (a) the guidelines are merely suggestions, (b) that an individual is free to contribute more or less than the guidelines suggest, and (c) that the labor organization will not favor or disadvantage anyone because of the amount of their contribution or their decision not to contribute. 11 CFR 114.5(a)(2).

Although the sample deduction authorization card contains a clause informing union members that they will not be penalized if they exercise their right not to contribute in this manner, the form does not give contributors the option to contribute more or less than the amount of 5 cents per hour worked and reported. On the basis of the sample form it would appear that a union member wishing to authorize a deduction of 3 cents per hour or 7 cents per hour would be precluded from participating in the proposed deduction plan.

The Commission concludes that the funding plan proposed by the Hoisting and Portable Engineers Local Union 101 and the 101 Political Fund would be permissible under the Act only if the sample deduction authorization card were modified to state that the amount of 5 cents per hour is only a suggested deduction and that members may authorize the deduction of an amount

more or less than the suggested 5 cents per hour. Assuming these changes are made in accordance with 11 CFR 114.5(a)(2), and that contribution deduction authorizations are otherwise obtained from union members in a manner that assures their voluntariness, the Commission concludes that the proposed funding plan would be permissible.

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