



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 1, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-20

Mr. James S. Eastham
Rexnord, Inc.
P.O. Box 2022
Milwaukee, Wisconsin 53201

Dear Mr. Eastham:

This responds to your letter of February 28, 1980, in which you request reconsideration of Advisory Opinion 1979-48 which was issued on October 18, 1979, in response to an advisory opinion request submitted by Rexnord, Inc.

Based on additional analysis of the issues presented in Advisory Opinion 1979-48 and re-evaluation of the points presented in the current advisory opinion request, the Commission believes that the issues posed in Advisory Opinion 1979-48 warrant further examination. The specific issue raised is whether it is permissible under the Act and Commission regulations for Rexnord, Inc., to pay for an advertisement in a general circulation newspaper which would read "Please Register To Vote" with "Rexnord, Inc." printed in the lower corner of the advertisement.

The Commission now concludes, and therefore overrules its conclusion in AO 1979-48, that Rexnord is not prohibited by the Act and Commission regulations from paying for the described newspaper advertisement out of general corporate funds. As you know, 441b(a) prohibits any corporation from making a "contribution or expenditure in connection with any election" for Federal office. For purposes of 441b, contribution or expenditure includes, in part, any "direct or indirect payment" or any gift of money or anything of value "to any candidate, campaign committee, or political party or organization, in connection with any election to"

Federal office.¹ 2 U.S.C. 441b(b)(2).

The enumeration of these statutory categories of contribution or expenditure recipients underscores the frequently stated purpose of 441b(a) and its predecessor 18 U.S.C. 610, that is, to prohibit the "use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." United States v. International Union Auto Workers, 352 U.S. 567, 589 (1957); also see United States v. CIO, 335 U.S. 106, 113 (1948) and Pipefitters v. United States, 407 U.S. 385, 416 (1972).

Section 441b(b)(2) also contains significant and specific exceptions to its definition of "contribution or expenditure." The exceptions set forth certain types of electioneering activity which would not give rise to a prohibited political contribution or expenditure by a corporation or labor organization. In its regulations to amplify 441b, the Commission has sought to explain the permissible bounds of corporate and labor organization activity connected with Federal elections which, given its relation to the Federal election process, would entail a prohibited contribution or expenditure unless the activity was specifically permitted.

The regulation dealing with nonpartisan communications, 11 CFR 114.4, is relevant to the issue presented. Section 114.4(c)(2) specifically allows corporations to finance non-partisan communications with the general public relating to voter registration. Section 114.4(c)(1) states that a corporation may, by posters or in newsletters or other communications, urge any of the corporation's employees to register to vote (or to vote) provided the communication mentions no political affiliation and information about particular candidates or political parties is not included in the communication. In contrast, communications which urge individuals to register with a particular party may be financed by a corporation from treasury funds only if the communications are aimed at the corporation's stockholders and executive and administrative personnel. Even in this context, assistance in registering "may not be withheld or refused on a partisan basis." 11 CFR 114.3(c)(4).

It is significant that these regulations distinguish between mere communication and personal services to assist the public. Registration and get-out-the-vote drives which involve physically assisting persons to register such as by transporting voters to the polls, and providing babysitting service to enable persons to register or go to the polls, are distinguished from a simple communication which urges individuals to register or to vote. Drive activity involves personal services financed by the corporation and thus requires joint sponsorship through a non-partisan civic or nonprofit organization, while financing a communication urging only nonpartisan participation in the political process does not involve any elements of personal services and thus would not require joint sponsorship. See 11 CFR 114.4(d); also see the

¹ Commission regulations at 11 CFR 114.1(a)(1) expand the category of possible recipients of corporate contributions or expenditures to include any "organization, or any other person" in connection with a Federal election. However, the purpose of this regulation is "to make clear that corporations or labor organizations may not make independent expenditures on behalf of Federal candidates." Explanation and Justification of Commission regulations, House Doc. No. 95-44, 95th Cong., 1st Sess. 101 (1977). The proposed advertisement by Rexnord does not require analysis under the "independent expenditure" criteria since it does not mention a "clearly identified candidate," nor does it constitute a communication containing a message "expressly advocating" election or defeat. 2 U.S.C. 431(17) and Commission regulations at 11 CFR 109.1.

Explanation and Justification of Commission regulations, H.R. Doc. No. 44, 95th Cong., 1st Sess. 105-106 (1977).

While 114.4 describes a variety of permissible activities having election related aspects, the regulation is not to be read as reflecting a Commission interpretation that 441b prohibits other materially indistinguishable activity, and the expenditures incident thereto. The facts here present such a situation. The Rexnord advertisement lacks any direct or indirect suggestion that the reader designate any political party preference when registering to vote.² Moreover, the ad makes no appeal for the participation of any identifiable group in the Federal election process to assure their political well-being. (Compare facts and conclusions in Advisory Opinion 1978-102, copy enclosed.) In addition, placement of the advertisement in a newspaper of general circulation indicates, as you assert, that Rexnord has not made any effort to determine the political party preference of those who may receive the communication. Accordingly, the Commission concludes that 441b does not prohibit payment for the described advertisement by Rexnord, Inc.

In view of the preceding discussion of the original issue presented in AO 1979-48 and in Rexnord's current advisory opinion request, the Commission declines to respond to the additional questions presented.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosure (AO 1978-102)

² Wisconsin law make no provision for party registration. See Wisconsin Election laws, §633.