



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 3, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-44

Mr. Robert H. Chanin  
Deputy Executive Director and General Counsel  
National Education Association  
1201 16th Street, N.W.  
Washington, D.C. 20036

Dear Mr. Chanin:

This responds to your letter of April 18, 1980, as supplemented by your letter of May 12, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to a proposal by the National Education Association ("NEA") concerning procedures for collecting contributions to NEA's Political Action Committee ("NEA-PAC") through payroll deduction.

According to the request, NEA is a nationwide employee organization with a unified membership structure, that is, a member of NEA must also be a member of the appropriate state and local affiliates and pay dues to all three organizations. NEA also has a political committee, NEA-PAC. You state that a majority of NEA members have chosen to pay their dues and make their NEA-PAC contributions through payroll deduction. Thus, an NEA member signs a form that authorizes the school board to deduct from the member's salary during a membership year, unified dues and a NEA-PAC contribution and to transmit the amounts deducted to the NEA local affiliate. The school board divides the member's total annual financial obligation by the number of payroll deductions to be made during that year and deducts an equal portion from each paycheck.

You explain that although the authorization form is silent as to how the contribution is to be deducted, currently NEA uses an "equal installment approach to payroll deduction." That means that each payroll deduction check that is received from the school board is treated as

containing a portion of the NEA member's annual NEA-PAC contribution, e.g. if there are 10 payroll periods, 1/10 of the NEA-PAC contribution is deducted each period.

The request explains that when a payroll deduction check is received from the school board, the local NEA affiliate deducts its entitlement and forwards the remaining amount to the relevant NEA state affiliate. The state affiliate deducts its entitlement and sends a check to NEA for dues and a check to NEA-PAC for contributions. You say that this procedure results in each transaction being subject to the timely transmittal requirements set forth in 2 U.S.C. 432(b) and is therefore both time-consuming and costly. To remedy these problems the request suggests modifications which would result in four collection procedures each of which proceeds on the assumption that deductions from one payroll check of an NEA member will cover the entire annual contribution made to NEA-PAC by that member. You note that in implementing these procedures, NEA will comply with all relevant legal requirements in regard to the solicitation, collection and transmission of the NEA-PAC contributions. You proceed to ask whether the following four procedures would be permissible under the Act.

Under the first procedure no change would be made in the current payroll deduction form which authorizes the school board to deduct, from the member's salary during a particular membership year, unified dues and a NEA-PAC contribution. NEA would, however, abandon the "equal installment" assumption via-a-vis unified dues and NEA-PAC contributions and draw the full amount of the NEA member's annual NEA-PAC contribution from the first payroll deduction check. This means that on or about October 1 of a given membership year the full amount of the NEA-PAC contribution would be obtained whereas deduction of some portion of the NEA unified dues would be deferred. Moreover, it is suggested that the Act's timely transmission requirements would apply only in regard to the first-payroll deduction check.

The second procedure is similar to the first in that there will be no change in the current authorization form and that the equal installment assumption will be abandoned. It differs from the first in that a payroll deduction check will be deemed to include NEA-PAC contributions only after unified dues have been fully paid. This procedure would be implemented so that the timely transmission requirements would be relevant only to the last payroll deduction check of the membership year.

The third procedure is identical to the first except that the payroll deduction authorization form would be changed to provide expressly that the NEA-PAC contributions are to be drawn in their entirety from the first payroll deduction check.

The fourth and final proposed procedure is the same as the second except that the authorization forms would be changed to provide expressly that the NEA-PAC contributions are to be drawn in their entirety from the last payroll deduction check of the membership year.

The Commission concludes that procedures one and three are not permissible; procedures two and four are permissible. As a labor organization, NEA is subject to the provisions of 2 U.S.C. 441b and the corresponding Commission regulations in Part 114. Section 441b(b) defines a "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of... anything of value" made by a corporation or labor organization to a political organization.

Currently NEA uses an "equal installment" approach to payroll deduction. Procedures one and three would provide that rather than in equal installments, the total NEA-PAC contribution would be taken from the first payroll deduction check of those contributing to NEA-PAC. In effect, NEA and its state and local affiliates would defer receipt of a portion of NEA dues so that NEA-PAC may receive the total yearly contribution from NEA members who contribute to NEA-PAC. Deferred receipt of NEA dues which facilitates receipt of contributions to NEA-PAC is something of value, if not an advance by NEA to NEA-PAC, and as such would be a prohibited contribution from NEA to NEA-PAC.

Not only are dues monies deferred, but the NEA member who does not contribute to NEA-PAC is, in effect, subsidizing the contributor to NEA-PAC. The fact that the deferred receipt results in a prohibited contribution is not altered by the NEA member signing an authorization card which expressly agrees to such arrangement, since it is NEA who is providing and approving this mechanism for deferred receipt.

Procedures two and four would be permissible. In contrast to procedures one and three, the deferred receipts would be those of NEA-PAC rather than NEA. Deferred receipt by NEA-PAC does not result in a prohibited transaction under 441b or any other section of the Act. Here it should be noted that the request states that in implementing any of these procedures NEA will comply with all legal requirements in regard to the solicitation, collection, and transmission of the NEA-PAC contributions.

The timely transmission requirements of 2 U.S.C. 432(b)(2)\* and 11 CFR 102.8(b)(1) would apply when the payroll deduction for the NEA-PAC contribution is made. If either procedure two or four is implemented it appears that the requirements would come into play with the last payroll deduction check of the membership year. Again, this operates on the assumption that a deduction from one check (for the last payroll period in NEA's membership year) will cover the amount of the NEA-PAC contribution.

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\* Section 432(b)(2) requires that every person who receives a contribution for a political committee which is not an authorized committee shall (A) if the amount of the contribution is \$50 or less forward to the treasurer such contribution no later than 30 day after receiving the contribution; and (B) if the amount is in excess of \$50 forward the contribution, name, address and date of receipt no later than 10 days after receiving the contribution.

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)

Max L. Friedersdorf  
Chairman for the  
Federal Election Commission