



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-50

Mr. Barry Hodge
United Merchants & Mfrs. Inc.
Manufacturing Division Committee for Responsible Government
P.O. Box 2148
Greenville, South Carolina 29602

Dear Mr. Hodge:

This is in response to your letter of April 24, 1980, supplemented by your letters of May 27, 1980 and June 18, 1980, requesting an advisory opinion on behalf of the United Merchants and Manufacturers, Inc. Manufacturing Division, Committee for Responsible Government ("UM&M PAC") concerning certain proposed payments by United merchants and Manufacturers, Inc. ("the Corporation") in connection with meetings structured to introduce UM&M PAC to employees of the Corporation.

In your request, you state that UM&M PAC is a separate, segregated fund established by the Corporation and that participation in the PAC is restricted to executive and administrative employees of the Corporation. You would like to introduce the concept of UM&M PAC to such employees at a breakfast or luncheon meeting which would involve discussion by founding members of the PAC of its structure, philosophy, and purposes, including a description of the contribution mechanism available to interested individuals. No specific candidacies or issues would be addressed. You anticipate receiving contributions as a direct result of the meeting, although such contributions would not be made at the meeting itself but would be collected later, either at separate production facilities or on a direct mail basis at the PAC headquarters. The meeting would be held in Greenville, South Carolina, where the Corporation's divisional offices are located. Eligible participants are employed at production facilities in various parts of North Carolina, South Carolina, and Georgia, all within a radius of approximately two hundred miles from Greenville. The Corporation intends to absorb directly the costs of the breakfast or luncheon, as well as transportation expenses for those in attendance. The total cost per individual

would vary, depending on the distance traveled, and is expected to range from approximately \$9 to \$22 per person.

The Commission notes that in your supplemental letter dated May 27, 1980, you state that the proposed meeting would take place during regular working hours. The total amount of time spent traveling to and attending the meeting would be three and one-half to ten hours, depending on the amount of time required to transport employees from regional offices to the division offices. All employees attending would be "salary exempt" employees* who do not receive additional compensation for overtime and who are expected to perform all necessary job elements regardless of the total hours necessary to do so or the scheduling of these hours. In some cases, though probably not all, attendance at a meeting during regular working hours would require additional hours of work by employees; however, the Corporation would not absorb additional expenses to ensure that necessary work was performed. The Commission further notes that you state in your supplemental letter of June 18, 1980 that attendance at the meeting by eligible participants would be on a voluntary basis.

Specifically, your request raises the following questions:

1. Whether the described meeting would be classified as a "fundraising device" under 11 CFR 114.5(b)(2) such that UM&M PAC would be expected to reimburse the Corporation for costs which exceed one-third of the money contributed?
2. If the described meeting is so classified, whether the concept of a "reasonable" period for accumulation of contributions for the necessary bookkeeping would be appropriate given that no contributions are anticipated at the time of the event itself? If the concept of such a "reasonable" period is appropriate, then what time period would be considered "reasonable"?
3. Whether the Corporation's payments for expenses relating to the described meeting would more properly be considered as costs of the establishment, administration and solicitation of contributions under 11 CFR 114.1(a)(2)(iii) and 114.1(b)?
4. Whether, under the circumstances set forth above, the Corporation's payment of employee salaries during time spent attending the meeting constitutes a permissible expenditure in connection with establishment, administration and solicitation of contributions under 11 CFR 114.1(a)(2)(iii) and 114.1(b)?
5. Assuming the payment of employee salaries is not within 114.1(a)(2)(iii) and 114.1(b):

* For purposes of this opinion the Commission assumes, but does not decide, that the employees in question would be executive and administrative personnel as defined in 11 CFR 114.1(c).

(a) Whether such payment would be permissible if all employees attending were required to perform additional hours of work which would be subject to adequate documentation?

(b) Whether the proposed meeting would be permissible on a day other than a regularly scheduled work day?

Under 2 U.S.C. 441b, corporations are expressly prohibited from making any contributions or expenditures in connection with any Federal election. However, 2 U.S.C. 441b(b)(2)(C) carves out an exception to this broad prohibition by excluding from the definition of the terms "contribution or expenditure" a corporation's payment of the costs incurred in the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation. See also 11 CFR 114.1(a)(2)(iii). The terms "establishment, administration and solicitation costs" are, in turn, defined in the regulations as, "...the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in setting up and running a separate, segregated fund established by a corporation..." (emphasis added). 11 CFR 114.1(b). Section 114.5(b)(2) permits corporations to utilize a raffle or other fundraising device which involves a prize, so long as State law so permits and the prize is not disproportionately valuable. Dances, parties, and other types of entertainment may also be used as fundraising devices. However, when using raffles or entertainment to raise funds, a reasonable practice to follow is for the separate segregated fund to reimburse the corporation for costs which exceed one-third of the money contributed.

In response to your first question, the Commission concludes that the proposed payments for the breakfast or luncheon and for travel expenses, which you estimate would amount to \$9 to \$22 per person, do not fall within the meaning of a "raffle or other fundraising device which involves a prize" for the purposes of 114.5(b)(2) of the regulations. The proposed meeting and travel thereto do not confer upon the participants a sufficient benefit beyond that conferred by the information imparted so as to bring them within the meaning of a "raffle", "prize", "dance", "party", or "other type of entertainment" as set forth in 11 CFR 114.5(b)(2). Compare Advisory Opinion 1979-72, copy enclosed. Therefore, UM&M PAC need not reimburse the corporation for costs which exceed one-third of the money contributed. Accordingly, the Commission does not reach your second question.

In response to your third question, the Commission concludes that the Corporation's payment of the costs of transporting the participants to a meeting designed to introduce them to the PAC concept falls within the meaning of "expenses incurred in setting up and running a separate, segregated fund" under 114.1(b) of the regulations. See Advisory Opinion 1978-13, copy enclosed. Similarly, the Commission concludes that the Corporation's payment of the costs of the breakfast or luncheon is of a character traditionally associated with "fundraising and other expenses" as contemplated by 11 CFR 114.1(b).

In reference to questions 4 and 5(a), the Commission considered a proposed response but was unable to approve an advisory opinion on those questions by the required 4 vote majority. See 2 U.S.C. 437c(c). In response to the fifth question, part (b), the Commission concludes that

no prohibited expenditure would result if UM&M PAC were to hold the meeting on a day other than a regularly scheduled work day.

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

Enclosure (AO 1979-72)