



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 9, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-36

Denise Hansen
Miller Mori and Ota
One Wilshire Building, Suite 2600
626 South Grand Avenue
Los Angeles, California 90017

Dear Ms. Miller:

This responds to your letter of August 10, 1981, as supplemented by your letter of October 13, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"). You ask whether contributions of general corporate funds by the Japan Business Association of Southern California ("JBA"), to a proposed political action committee would constitute contributions from a foreign national.

JBA, a non-stock issuing domestic corporation with its principal place of business situated in California and incorporated under California law, is a trade association whose primary purpose is the extension and promotion of international trade and commerce between the United States and Japan. JBA's membership is comprised of four groups. The first group consists of dues paying and voting members which are primarily California domestic corporations wholly or partially owned by Japanese corporations and California corporations owned by domestic parent corporations in other states. The second group is composed of dues paying but non-voting individuals, 5% of whom are foreign nationals. The third and fourth categories consist of non-voting, non-dues paying honorary and special members, all of whom are foreign nationals.

JBA proposes the formation of a PAC, the Japan Business Association Political Action Committee ("JBAPAC") that will be active in city, county and state elections held in California. JBAPAC will not contribute or participate in any Federal elections. JBA plans to contribute corporate funds from its general treasury to JBAPAC and asks whether such contributions would be considered contributions from a foreign national.

The Act prohibits foreign nationals from making contributions, directly or through any other person, in connection with any election to any political office. It is also unlawful to solicit or accept contributions from a foreign national. 2 U.S.C. 441e. The term "foreign national" is defined in 2 U.S.C. 441e(b)(1) to mean, inter alia, a "foreign principal," as that term is defined by 22 U.S.C 611(b). Under 611(b), "foreign principal" includes:

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

A domestic corporation with a principal place of business within the United States is not considered a foreign principal under 22 U.S.C. 611(b). JBA, incorporated under California law with its principal place of business situated in California, is not a foreign principal, hence, it is not a foreign national under 2 U.S.C. 441e. Thus, JBA is not prohibited by 2 U.S.C. 441e from contributing its general corporate funds to JBAPAC for use in non-federal elections.

While JBA is not a foreign national and is not prohibited by 441e from directly contributing its general corporate funds to JBAPAC for use in city, county and state elections in California, your request raises an additional question: whether future contributions by JBAPAC would be viewed as contributions by the foreign national members of JBA through JBAPAC, rather than as contributions by JBAPAC. This issue arises since 441e prohibits foreign nationals from making contributions "through any other person," as well as directly. In past opinions the Commission has considered situations where foreign national corporations had wholly owned domestic corporate subsidiaries that maintained separate segregated political funds and where a domestic trade association with foreign corporate members had such a political fund. Advisory Opinions 1978-21, 1980-100, and 1980-111, copies enclosed. While allowing those funds to operate pursuant to 2 U.S.C. 441b, the Commission indicated its concern that they should not become vehicles for indirect contributions by foreign nationals and thus conditioned its approval on the exclusion of any foreign nationals from any decision making role or control with respect to the political fund.

In your supplemental letter of October 13, 1981, you state that JBAPAC will be governed by six persons, two of whom will be foreign nationals. Although the other four officers of JBAPAC will be U.S. citizens, the Commission concludes that such an arrangement is inconsistent with the provisions of 2 U.S.C. 441e. Foreign nationals cannot, through the direction or control of a PAC, make contributions in connection with any election. It is insufficient for a majority of JBAPAC to be comprised of non-foreign nationals. The Commission has consistently

held that the decision making authority of such a PAC cannot rest with foreign nationals. Under your proposed arrangement it is possible that the decisions made by JBAPAC could not only be heavily influenced by the two foreign nationals but the votes of the foreign nationals could be crucial to the decisions of JBAPAC. Along with the prohibition against foreign nationals exercising decision-making authority with respect to JBAPAC, the Commission further concludes that no other foreign national, including a foreign national member of JBA, may dictate or direct the decisions of JBAPAC. See Advisory Opinion 1978-21.

In summary, the Commission concludes that because JBA is not a foreign national, as defined by 2 U.S.C. 441e, it is not prohibited by 441e from contributing general corporate funds to JBAPAC provided that JBAPAC restricts its activities solely to state elections. However, no foreign nationals may serve in decision making positions on JBAPAC; nor may the decisions of JBAPAC be dictated or directed by any foreign nationals.

The Commission expresses no opinion as to any applicable state law or regulation of the Fair Political Practices Commission. In addition, if JBAPAC ever decides to make contributions in connection with Federal elections, its use of corporate funds would be subject to 2 U.S.C. 441b.

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,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures (AOs 1980-111, 1980-100 and 1987-21)