



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 26, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-54

Mr. David E. Stoughton
Assistant General Counsel
Fairchild Industries
Germantown, Maryland 20767

Dear Mr. Stoughton:

This responds to your letter of November 20, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment and administration of a political action committee by a joint venture partnership.

Your letter states that Fairchild Industries, Inc. ("Fairchild"), and Continental Telephone Corporation ("Continental"), through wholly-owned subsidiaries of each, have established American Satellite Company ("ASC Partnership") as a joint venture partnership. ASC Partnership's equity is owned 50-50 by American Satellite Corporation ("ASC") and ConTel Satellite corporation ("CSC"). ASC is a wholly-owned subsidiary of Fairchild, and CSC is a wholly-owned subsidiary of Continental.

ASC and CSC are managed by directors drawn from the officers and employees of their respective parent corporations. ASC Partnership is run by a Management Board consisting of four members selected by each partner and a ninth member, jointly selected. You assert that the ASC Partnership Management Board appoints the Chief Executive Officer and other officers. Neither Fairchild nor Continental, individually, has the "authority, power, or ability to direct" ASC Partnership. ASC Partnership employees are administratively separate save for pooling of some specialists to achieve natural economies. ASC Partnership maintains separate books/charts of account and financial records. Administrative and support services are rendered in accordance with requirements of the Federal Communications Commission which specify "arm's length contracts between entities to the extent feasible." Telecommunications services and facilities provided by the ASC Partnership are offered under tariff. Continental and Fairchild share the funding of ASC Partnership's capital and operating cash requirements in equal amounts.

Given the foregoing facts, you ask 5 questions¹ which will be answered in sequence.

1. Can Fairchild and Continental, through their existing duly established PAC's, individually or jointly, solicit, pursuant to 11 CFR Sec. 114.5 eligible employees of ASC Partnership?
2. Can the ASC Partnership establish its own independent PAC to solicit its employees, and, if so, and the ASC Partnership establishes a PAC, could these employees still be solicited by the Fairchild and Continental PACs?
3. If ASC Partnership cannot establish its own PAC, can it establish a political committee to solicit contributions from its employees to be used for political purposes, and, if so, may the ASC Partnership pay the costs of establishment, administration, solicitation of funds, and compliance with the Federal Election Campaign Act?
4. If the ASC Partnership establishes a political committee to solicit its employees, could these employees still be solicited by the Fairchild and Continental PACs?
5. If any of questions 1, 2 and 4 are answered in the affirmative, must employees of ASC Partnership aggregate their contributions to the Fairchild, Continental and ASC Partnership PACs so that the total contributed by ASC Partnership employees to such PACs fall within the limitation on contributions by individuals to a single PAC?

With respect to question 1, the Commission concludes in the negative. The employees of the ASC Partnership may not be solicited by either Fairchild or Continental or their separate segregated funds, for contributions to those funds. Commission regulations at 11 CFR 114.5(g) permit a corporation to solicit voluntary contributions to its segregated political fund from the executive and administrative personnel of its subsidiaries, branches, divisions, and affiliates, and their families. The Commission has permitted contribution solicitations of such personnel in cases where it was clear that if the corporate subsidiary or affiliate whose personnel were to be solicited had established its own separate segregated fund, such fund would be an affiliated fund (i.e. political committee) of the soliciting corporation's fund. Advisory Opinions 1981-55, 1980-18, 1979-77, 1979-44 and 1978-75, copies enclosed. Also, see opinions where executive and administrative employees of the franchisees of a corporation were solicitable by that corporation on behalf of its separate segregated fund. Advisory Opinions 1979-38, 1978-61, and 1977-70, copies enclosed. In this situation, it is not apparent, and you certainly do not concede, that the

¹ The Commission understands that your use of the acronym "PAC" means a separate segregated fund under 2 U.S.C. 441b, since your letter also uses the different term "political committee" in questions 3 and 4. Under the Act and Commission regulations, the term "political committee" includes any separate segregated fund established under 2 U.S.C. 441b(b), and also includes several other political groups. 2 U.S.C. 431(4), 11 CFR 100.5. The acronym "PAC," as commonly used, refers to it political action committee which is not separately defined in the Act or regulations.

joint venture partnership between ASC and CSC constitutes the type of relationship that, pursuant to 2 U.S.C. 441a(a)(5) and Commission regulations 11 CFR 100.5(g), would result in the affiliation of their respective separate segregated funds with each other, and with any political committee established by (or connected with) the ASC Partnership.² Accordingly, the Commission has no basis for concluding that ASC Partnership employees are solicitable by the existing PAC's (separate segregated funds) of Fairchild and Continental.

With respect to question 2, the Commission answers in the negative. The ASC Partnership may not establish a separate segregated fund to solicit its employees. Under 2 U.S.C. 441b(b) (2) (C) only a corporation, labor organization, membership organization, cooperative or a corporation without capital stock may pay the costs of establishing a separate segregated fund without such payments resulting in a contribution or expenditure to the separate segregated fund so established. Accordingly, because ASC Partnership is a partnership rather than a corporation, any funds spent to establish and maintain a political committee would be a "contribution" for purposes of the Act and thus subject to the limitations and prohibitions of the Act. See California Medical Association v. Federal Election Commission, 101 S. Ct. 2712 (1981), and the Commission's response to Advisory Opinion Request 1976-102 (copy enclosed). Moreover, because the partners in this case are corporations, and because a contribution from a partnership is attributed to the partners, ASC Partnership would be prohibited under the Act from making any contribution whatsoever in connection with a Federal election. See 2 U.S.C. 441b(a) and 11 CFR 110.1(e). Since payment by ASC Partnership of administration and solicitation costs of a political committee represents a corporate contribution prohibited under the Act, the ASC Partnership may not lawfully use its general treasury funds to establish and maintain a separate segregated fund or any other type of political committee.

In reply to question 3, the Commission answers in the negative. The ASC Partnership may not pay the costs of establishment, administration, or soliciting funds for a political committee that is organized by or for its employees. See the discussion above in response to question 2. The Act and Commission regulations would not, however, prohibit a group of executive or other employees of the ASC Partnership from establishing and operating a political committee independent of, rather than merely segregated from, the ASC Partnership treasury and partnership funds. See Bread Political Action Committee v. Federal Election Commission, 635 F. 2d 621 (7th Cir. 1980); also see Advisory Opinion 1979-31, copy enclosed. Such a committee may not receive any type of contribution whether for administrative or other purposes, nor in cash or in kind, from the ASC Partnership since both its partners are corporations, and corporations are generally prohibited from directly or indirectly making any contribution in connection with a Federal election. 2 U.S.C. 441b. However, the ASC Partnership may support the political committee pursuant to the legal and accounting services exception. To come within that exception the ASC Partnership must be the regular employer of any person performing the legal and accounting services, and the services must be provided solely to ensure the political committee's compliance with the Act and Commission regulations. 2 U.S.C. 431(8)(B)(ix);

² Although Advisory Opinion 1979-56 also involves a joint venture, the Commission notes that this request poses a question not presented nor decided in Advisory Opinion 1979-56: whether two corporations who are joint venture partners may on behalf of or, through their separate segregated funds, solicit voluntary contributions from the executive and administrative personnel of the joint venture partnership.

11 CFR 100.7(b)(14) and 114.1(a)(2)(vii). Also, see Advisory Opinions 1980-137 and 1979-77, copies enclosed. Any payments by the ASC Partnership for these services are reportable by the political committee. 11 CFR 104.3(h).

In response to question 4, the Commission has concluded in reply to question 1 that ASC Partnership employees may not be solicited by the Fairchild and Continental PACs. Question 5 is not answered since it is predicated on an affirmative answer to questions 1, 2, or 4; all of those questions are answered in the negative.

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)

Frank P. Reiche
Chairman for the
Federal Election Commission

Enclosures (AOs 1981-55, 1980-137, 1980-18, 1979-77, 1979-56, 1979-44, 1979-38, 1979-31, 1978-75, 1978-61, 1977-70, and Re: AOR 1976-102)

P.S. Commissioner McGarry voted against approval of this opinion and will file a dissenting opinion at a later date.