



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 15, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-56

John J. Duffy, Esq.
Joseph M. Sellers, Esq.
Pierson, Ball & Dowd
1000 Ring Building
1200 18th Street, N.W.
Washington, D.C. 20036

Dear Messrs. Duffy and Sellers:

This responds to your letter of December 14, 1981, requesting an advisory opinion on behalf of Satellite Business Systems concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") to the establishment of a separate segregated fund by a partnership of corporations. Specifically, your request poses three questions:

1. May a partnership of corporations establish a separate segregated fund to solicit voluntary contributions from the partnership's executive or administrative employees?
2. May such a partnership solicit all of its employees or, in the alternative, only its executive or administrative employees for contributions to a separate segregated fund of a trade association to which the partnership belongs?
3. May a trade association to which such a partnership belongs, and which has the consent of the partnership, solicit the partnership's executive or administrative employees for voluntary contributions to the trade association's separate segregated fund?

Your request sets forth the following facts:

Satellite Business Systems ("SBS") is a partnership composed of three unrelated corporations. The partners are Comsat General Business Communications, Inc., a subsidiary of Comsat General Corporation; Information Satellite Corporation, a subsidiary of International Business Machines Corporation (IBM), and Aetna Satellite Communications, Inc., a Subsidiary of the Aetna Casualty and Surety Company. (The parent company of a partner in SBS is referred to in your request as the "sponsor" of that partner.)

Managerial control of SBS rests in a partners' committee, which acts unanimously or by majority vote depending upon the matter under consideration. The partners' committee has nine members. Each partner appoints three members, and the appointees of each partner collectively cast the single vote to which the partner they represent is entitled. No director, officer or employees of any of the partners, or their sponsors or affiliated companies may be an officer or an employee of SBS.

SBS is a general (full) member of the Ad Hoc Committee for Competitive Telecommunications (ACCT), which is a non-profit corporation exempt from taxation under 26 U.S.C. 501(c)(6).¹ None of SBS's partners, nor their sponsors, are members of ACCT. ACCT intends to establish a separate segregated fund and solicit contributions from the executive or administrative employees of its members. Provided that SBS annuity gives ACCT its consent, ACCT proposes to solicit SBS's executive or administrative employees for contributions to ACCT's separate segregated fund.

In response to your first question, the Commission concludes that SBS may not defray the expenses of establishing a separate segregated fund to solicit contributions from SBS's employees. The Act provides only that a corporation, labor 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.² Accordingly, because SBS 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 subject to the limitations and prohibitions of the Act. See California Medical Association v. Federal Election Commission, 101 S. Ct. 2712, 2724 (1981), Advisory Opinion 1981-54 and the Commission's response to Advisory Opinion Request 1976-102 (copy enclosed). Compare Advisory Opinions 1980-18, 1979-77, 1979-56, 1979-44, 1979-38, 1978-75, 1978-61, 1977-70, copies enclosed. Moreover, because the partners in this case are corporations, and because a contribution from a partnership is attributed to the partners, the 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 SBS of administration and solicitation costs of a political committee represents a corporate contribution prohibited under the Act, the partnership may not lawfully use its partnership funds to establish and maintain a separate segregated fund or any other type of political committee. Compare Advisory Opinions 1981-50 and 1980-132, copies enclosed.

¹ The Commission presumes but does not decide that ACCT is a trade association within the meaning of the Act. See 11 CFR 114.8(a).

² 2 U.S.C. 441b(b)(2)(C) exempts from the definition of "contribution or expenditure" for purposes of 441b the payment of costs by a corporation for the "establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation..." (emphasis added).

The Commission notes, however, that each corporate partner of SBS, or its sponsor corporation, may defray the costs of establishing a separate segregated fund and solicit voluntary contributions to such a fund from its own stockholders, executive and administrative personnel and their families. See 2 U.S.C. 441b(b)(4)(A) - (B). Moreover, the Act and Commission regulations would not prohibit SBS's employees from establishing a political committee independent of, rather than merely segregated from, SBS's treasury and partnership funds.³ See Bread Political Action Committee v. Federal Election Commission, 635 F.2d 621 (7th Cir. 1980), (en banc); rev'd on juris. grounds, No. 80-1481 (March 8, 1982); see also Advisory Opinions 1981-54 and 1979-31, copies enclosed. Although, as noted above, SBS may not make any type of contribution to such a committee, SBS may support the committee pursuant to the exceptions from the definitions of contribution and expenditure for legal and accounting services. To come within that exception SBS 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), (9)(B)(vii); 11 CFR 100.7(b)(14), 100.8(b)(15) and 114.1(a)(2)(vii). Also, see Advisory Opinions 1981-54, 1980-137 and 1979-77, copies enclosed. Any payments by SBS for these services are reportable by the political committee. 11 CFR 104.3(h).

The Commission considered alternative responses to questions 2 and 3 of your request but was unable to answer those questions by the required affirmative vote of 4 members of the Commission. 2 U.S.C. 437c(c), 11 CFR 112.4(a).

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

Enclosure (AOs 1981-54, 1981-50, 1980-137, 1980-132, 1980-18, 1979-77, 1979-56,
1979-44, 1979-38, 1979-31, 1978-75, 1978-61, 1977-70 and
Re: AOR 1976-102)

³ A political committee of this type would be permitted to solicit and accept otherwise lawful contributions from any person and would not be limited to the classes of solicitees set forth in 2 U.S.C. 441b(b)(4). See Advisory Opinion 1979-31.