



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 25, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-57

Mr. Sam Church, Jr.
Coal Miners Political Action Committee
United Mine Workers' Building
900 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Church:

This responds to your letter of December 10, 1981, which resubmits your prior request for an advisory opinion by letter dated September 28, 1981. (You withdrew your September request by letter dated October 20, 1981.) Your request is made on behalf of the Coal Miners Political Action Committee ("COMPAC") and concerns application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a payroll deduction plan that would permit union members to make earmarked contributions to candidates and political committees through COMPAC.

COMPAC is the separate segregated fund of the United Mine Workers of America ("UMWA"), a labor organization. You state that under COMPAC's plan, a member of UMWA would authorize his or her employer to deduct from the member's paycheck a specified amount to be transferred to COMPAC as an earmarked contribution to a named candidate or political committee.¹ Individual members could use the earmarked check-off procedure for any candidate or political committee, and they will be so informed by the union. COMPAC will be bound by the individual's earmarking decision and simply will transmit the contribution to the intended recipient. You add that this plan would permit the individual contributor to make arrangements for earmarking at the time of the initial check-off authorization or at any subsequent time. The contributor, of course, would retain the right to revoke the authorization at any time. You ask whether the proposed plan is permissible under the Act and Commission regulations.

¹ For purposes of this opinion the Commission assumes that your use of the terms "candidate" and "political committee" refer respectively to candidates for Federal office and committees that are required to register as political committees under the Act and Commission regulations. See 2 U.S.C. 431(2), 431(4), and 433.

The Act and Commission regulations permit the use of a payroll deduction plan for contributions to the separate segregated fund of either a corporation or a union. 2 U.S.C. 441b(b)(5), and 11 CFR 114.5(1). Moreover, an individual contributor may " earmark " contributions to a candidate through a conduit or intermediary (including another political committee) so long as the intermediary or conduit reports the original source and the intended recipient of such contribution to the Commission and to the intended recipient, 2 U.S.C. 441a(a)(8) and 11 CFR 110.6. While 441a(a)(8) does not specifically address the earmarking of contributions to a political committee (other than the authorized committee of a candidate), Commission regulations recognize that one person can receive contributions for another person so long as the person (in this case COMPAC) who receives such a contribution properly forwards the contribution to the designated political committee donee. The contribution must be forwarded within 30 days of receipt if it is \$50 or less, and within 10 days if it is over \$50. Certain information must also be forwarded if the contribution is over \$50. 11 CFR 102.8.

The Commission has approved earmarking plans that involve funds collected for political purposes via payroll deduction, paid over to a separate segregated fund, and then forwarded to the candidate for whom they are earmarked by the original donor. See Advisory Opinion 1981-21. In AO 1981-21, the Commission permitted the separate segregated fund of a corporation (which utilized a payroll deduction plan) to obtain the consent of its executive and administrative personnel to the transfer of funds from ledger accounts maintained for them by the corporation's state PAC, to similar accounts maintained for them by its Federal PAC. Moreover, the opinion concluded that the donor could earmark a contribution to a candidate through those Federal PAC accounts. The earmarked contribution would be charged only to the donor's limits as regards that candidate, provided the corporation exercised no direction or control over the donor's selection of the candidate recipient. Similarly, in Advisory Opinion 1980-46 (see copy enclosed), the Commission stated that an earmarking plan in which the conduit or intermediary exercised direction or control over the donor's selection of the recipients of the earmarked contributions would result in a contribution being made by the conduit or intermediary, as well as by the original donor.

In the situation presented here, you indicate that COMPAC would exercise no control or direction over the donors' selections of the recipients of the earmarked contributions. You state that COMPAC "will be bound by the individual contributor's decision and simply will transmit the contribution to the intended recipient." UMWA members contributing to COMPAC would be advised that they may earmark their contributions to any candidate or political committee.² Moreover, in obtaining payroll deduction agreements from potential contributors, COMPAC would not limit such a contributor to a particular candidate or group of candidates. Under these circumstances the Commission concludes that so long as COMPAC properly reports the earmarked contributions to the Commission and the recipient candidate's authorized campaign committee, nothing in the Act or Commission regulations would prohibit COMPAC from using

² You do not ask, and accordingly the Commission does not reach, the question of whether, if separate communications were made to UMWA members urging those members to earmark for particular candidates, COMPAC would be exercising direction or control over such contributions. See the Commission's response to Advisory Opinion Request 1976-92, copy enclosed.

the described earmarking plan.³ Furthermore, the Commission concludes that if UMWA and COMPAC do not exercise any direction or control over the UMWA member's selection of candidate recipients of earmarked contributions, contributions made under the earmarking plan would not count against COMPAC's contribution limit under 2 U.S.C. 441a. See 11 CFR 110.6(d).

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 R. Reiche
Chairman for the
Federal Election Commission

Enclosure (AOs 1981-21, 1980-46 and Re: AOR 1976-92)

³ If the contribution is earmarked by the UMWA member to a political committee that is not an authorized committee of a candidate for Federal office, COMPAC would not be subject to the special reporting provisions for earmarked contributions as contained in 2 U.S.C. 441a(a)(8) and 11 CFR 110.6(d) since those provisions only apply to contributions earmarked for a candidate or a candidate's authorized committee(s). COMPAC would be required to forward the contribution to the donor-designated political committee within 30 or 10 days of when COMPAC receives it. 11 CFR 102.8. Also, since these contributions will be handled through COMPAC's bank account(s), they must be included in COMPAC's reports as miscellaneous receipts with an explanation that they are earmarked by the original donors for noncandidate political committees. 11 CFR 104.3(a)(2)(viii), 104.3(a)(4)(vi).