



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 29, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-55

James F. Clements
Dukes, Clements, Callahan & Greenwald
Suite 603
11700 Beltsville Drive
Beltsville, Maryland 20705

Dear Mr. Clements:

This responds to your letter of September 23, 1982, requesting an advisory opinion on behalf of the Prince George's County Board of Realtors, Inc. ("the Board"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use by the Board of a combined dues/political contribution plan.

Your letter states that the Board wishes to use a billing statement which would allow the dues paying members to send one check for payment of both Board dues and contributions to the Realtors Political Action Committee ("RPAC").¹ Upon receiving such a combined check from a dues-paying member, the Board would deposit the check in a Board of Realtors Trust Account

¹ The proposed billing statement (marked as "Exhibit B" with your September 23rd letter) has four lines describing the inclusive and separate charges for various dues, allotments, and fees payable to the county, state, and national units of the Realtors organization. A fifth line reads: "VOL RPAC CONT. 25.00". Just to the right of this line is an amount presented as a "Balance" that includes the various charges as well as the political contribution amount. Immediately below the fifth line is a notice stating:

"The RPAC contribution is voluntary. The amount is only suggested, feel free to give more or less than suggested. 40% of contributions will be used by RPAC in Federal election campaigns and is charged against your Federal limit under 2 USCS SS441A. [sic] Corporate funds may not be used in Federal Elections and will be used only in Maryland State campaign. Personal check requested. If not contributing, deduct RPAC amount from total due."

("Trust Account"). The Trust Account would be separate from any other Board accounts and would be used only for the purpose of "separating the monies to go to the Board for dues and the remaining to go to RPAC." In addition to separating political contributions from membership dues, the Trust Account would also be used to separate and forward to the Board's State and local political fund, any combined dues and contribution payment received from a corporation. You state that only funds from non-corporate members would be used in connection with Federal elections. Under these circumstances, you ask whether the Act permits the Board to use the described billing statement and Trust Account for separating dues and political contributions whether received from individuals or corporations.

Under the Act, a corporation is prohibited from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b. While corporate contributions are prohibited under the Act, the Commission has previously concluded that a properly structured and administered combined dues/political contributions plan would not violate that prohibition. Advisory Opinions 1982-11, 1981-4, 1978-42, copies enclosed. Such plans are required to comply with the Act and Commission regulations. In particular, when a guideline for contributions is used on the dues statement and contribution solicitation, the corporation (or labor organization) that suggests the guideline must inform the person being solicited that the guideline is only a suggestion, that the individual is free to contribute more or less than the guideline suggests, and that the corporation or labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute. See 11 CFR 114.5(a)(2) and Advisory Opinion 1982-11.

In the situation presented here, the billing statement which the Board proposes to use indicates that the guideline amount is only a suggestion, that the contributor may give more or less than the suggested amount, and that if the member of the Board does not wish to make a contribution, he or she should deduct the suggested contribution amount from the total shown on the billing statement. It is the opinion of the Commission that the notice on the statement satisfies all the requirements of 11 CFR 114.5(a)(2) except one, that is, the requirement to state that the Board will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute. Accordingly, the Commission concludes that the proposed billing statement would be permissible under the Act so long as it is modified to include language indicating that a member will not be favored or disadvantaged by reason of the amount of their contribution, or their decision not to contribute. See Advisory Opinion 1982-11.

Another issue raised in your request is whether 2 U.S.C. 441b would prohibit use of the Trust Account for separating combined dues/political contributions made by corporations, as opposed to individuals (or other noncorporate entities), where the political contribution portion will be disbursed from the Trust Account to a State and local election account and not used in connection with any Federal election. In previous opinions the Commission has addressed the possible commingling of monies for dues (paid to a corporation) and political contributions, and concluded that use of a special transmittal account to separate the two types of payments in a timely fashion would not result in a violation of 2 U.S.C. 441b. Advisory Opinions 1978-42 and 1979-19. In those opinions, however, the transmittal account was used to separate dues and contributions paid in one check by individuals from personal funds; they did not involve combined payments by corporations. Also in those opinions, the issue of political fundraising for

both Federal and nonfederal elections was not involved. Accordingly, the Commission did not address the use of a transmittal account to separate two types of payments made by two types of payors: (1) separation of membership dues, paid by individuals, from contributions to influence Federal elections and (2) separation of membership dues, paid by corporations, from contributions for State and local elections.

As is apparent from past opinions, and the discussion above, the use of the Trust Account as a transmittal account to separate dues and contributions paid by individuals is permissible under the Act and regulations. In addition, the Commission concludes that use of the Trust Account as a transmittal account for separating combined corporate dues payments and corporate contributions for State and local elections is permitted under the Act.²

In the situation presented here, checks drawn by a corporate payor that are deposited in the Trust Account would be separated into the dues and political contribution portions, and the political contribution portion of such corporate payments would be forwarded to another account for use in Maryland elections for State and local office. This use of the Trust Account is consistent with the established purpose of a transmittal account, and is not materially distinguishable from the procedure approved by the Commission in previous Advisory Opinions. Moreover, Commission regulations at 11 CFR 102.5(a)(1) specifically permit a political committee that finances political activity in connection with both Federal and State (or local) elections to establish a separate Federal account that is used for all its receipts and disbursements in Federal elections. At the same time, such a committee may finance its nonfederal election activity from another account without regard to the disclosure requirements and contribution limits of the Act and Commission regulations.³ Using the Trust Account to separate contributions permitted to be received into RPAC's Federal account from those contributions which the Federal account may not receive thus enables the Board to insure that no contributions prohibited under the Act are forwarded to RPAC's Federal account as required by 11 CFR 102.5.

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)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AOs 1982-11, 1981-4, 1979-19 and 1978-42)

² Such contributions for State and local elections would, of course, be subject to relevant State and local law.

³ The Act does prohibit contributions in connection with any election by national banks, corporations organized by authority of any law of Congress, or foreign nationals. 2 U.S.C. 441b(a); 441e.

