



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 21, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-61

Michael S. Starr
General Counsel
The Association of Trial Lawyers of America
1050 31st Street, N.W.
Washington, D.C. 20007-4499

Dear Mr. Starr:

This responds to your letter of December 16, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use by the Association of Trial Lawyers of America ("ATLA") of a combined dues/political contribution plan.

Your letter states that ATLA is an incorporated voluntary membership association which has established the Attorneys Congressional Campaign Trust ("ACCT") as its separate segregated fund for purposes of soliciting, collecting, and disbursing contributions to candidates for Federal office. All of ATLA's members are individual lawyers. A number of those members conduct the business of their law practices as, or are employed by, professional corporations or professional associations. The annual ATLA dues of some members are paid by checks drawn on the accounts of such corporations or associations.

Under the combined dues/political contribution plan, ATLA proposes to assist ACCT in its solicitation of political contributions by the addition to the annual ATLA dues statements of a suggested, voluntary contribution to ACCT, over and above the regular dues. The amount of the suggested contribution would be shown and would be included in the statement total. The entry on the form would be footnoted. The footnote, in bold-faced type, would read "SEE REVERSE FOR INFORMATION ON ACCT CONTRIBUTION." On the reverse side of the dues statement ATLA would print the following message.

ACCT CONTRIBUTION

The Attorneys Congressional Campaign Trust of the Association of Trial Lawyers of America (ACCT) collects contributions from ATLA members to be used for political purposes. Contributions are voluntary and are not a requirement for membership in ATLA. The contribution requested is only a suggested amount. An ATLA member may contribute more or less than that amount or may make no contribution whatsoever. ATLA will not look upon with favor or disfavor any member by reason of the amount of their contribution or their decision not to contribute. If not contributing, or if contributing an amount different than that shown on the face of this statement, make the appropriate addition or deduction from the total amount shown as due.

Please Note

ACCT MAY NOT ACCEPT CONTRIBUTIONS MADE BY CORPORATIONS. Corporations may make donations to ATLA to defray the expenses of administering ACCT, including the solicitation of political contributions. Donations made by corporate check will be deposited into an administrative fund, established by ATLA for such purposes.

Continuing Contributions

The long-term effectiveness of ACCT depends on a steady, predictable flow of funds. Please check the box below and indicate the amount of your continued support for the ACCT program. Your pledge will automatically appear on your dues statement until you notify us to change the amount shown below or to discontinue your pledge.

Yes! You can count on my continued annual support in the amount of \$ _____. Please include that amount on my subsequent dues notices.

THANK YOU FOR YOUR COMMITMENT.

You state that you anticipate that most members of ATLA who respond affirmatively to the solicitation for ACCT contributions will do so by combining their ACCT contribution with their dues on one check made payable to ATLA. Upon receipt of the combined check, ATLA will examine it and the accompanying remittance advice, if any, for indication of an ACCT contribution. Each combination check will also be examined for indications of having been drawn on a corporate account. All instances of doubt will be settled by determining the questionable check to be corporate.

ATLA will keep separate general ledger accounts on ACCT contributions and corporate donations. Two such accounts will be established solely for that purpose. Individual contributions will be credited to one such account; corporate donations to the other. ATLA will

deposit the checks which combine dues with individual contributions or corporate donations in its depository account, along with all other ATLA receipts.

ATLA will remit to ACCT the collected individual contributions by check drawn on the ATLA depository account. ATLA will also transmit to ACCT all necessary contributor information at the same time. ACCT will deposit individual contributions in its depository account established for the purpose of making contributions to candidates for Federal office.

There are two alternative proposals on how corporate donations for ACCT which are included in ATLA dues checks, and thus deposited in the ATLA depository account, would be handled. You state that ATLA has not yet made a decision on which of these alternative proposals it will employ. Under the first alternative ("Alternative A"), ATLA would remit to ACCT the amount of the corporate donations by separate check drawn on its depository account payable to the "ACCT Administrative Fund." ACCT would deposit such sums so remitted into the ACCT Administrative Fund. The ACCT Administrative Fund would be a separate depository account under the control and direction of the governing body of ACCT; the account would be established by ATLA for the sole purpose of paying operational, administrative, and solicitation expenses incurred by ACCT.

Under the second alternative ("Alternative B"), ATLA would retain in its depository account the corporate donations for ACCT included in ATLA dues checks, would account for those amounts separately, and would use the money to pay, on behalf of ACCT, operational, administrative, and solicitation expenses incurred by ACCT.

In those instances in which the ATLA member has indicated, by marking the reverse side of the dues statement, that he or she pledges the amount designated as a continuing voluntary contribution to ACCT, ATLA will add that amount to the member's renewal statement in each subsequent year until the member instructs otherwise. The amount will be listed in the upper portion of the statement, immediately under the entry for regular membership dues, and will be designated "ACCT PLEDGE ** ". That entry will be footnoted, the footnote reading: "**REMINDER: You have asked us to include this amount on your dues renewal statement as your continuing contribution to the Attorneys Congressional Campaign Trust."

You add that, in light of the fact that the pledge represents a continuation of a voluntary contribution, dues statement forms used to collect such pledges will contain no additional language regarding ACCT contributions.

You ask for an advisory opinion on several questions raised in your request which will be answered in seriatim.

You first ask whether the proposed format and language of the ATLA dues statement, including the solicitation of voluntary contributions to ACCT by use of a suggested amount, is permissible under the Act. The Commission answers this in the affirmative.

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 1982-55, 1982-11, and 1981-4 (see copies enclosed). In this regard, whenever a guideline for contributions is suggested, the corporation (or labor organization) must inform the member being solicited that the guidelines are merely suggestions and that an individual is free to contribute more or less than the suggested amount or not to contribute at all, and that a member will not be favored or disadvantaged by reason of the amount of his/her contribution or his/her decision not to contribute. 11 CFR 114.5(a)(2), and 114.5(a)(5).

The proposed language that ATLA intends to employ on its members' dues statements informs the member that the suggested contribution is only a suggested amount, that the member may contribute more or less than that amount or may make no contribution whatsoever, and that ATLA will not look with favor or disfavor upon any member by reason of the amount of their contribution or their decision not to contribute. Accordingly, the Commission is of the opinion that because the language of the dues statement conforms to the requirements of 114.5(a)(2), ATLA's use of a suggested contribution in its dues statement is permissible under the Act.

Your second question relates to contribution pledges for ACCT and the use by ATLA, once having obtained such a pledge, of a different dues statement which does not contain all of the information contained in the initial dues statement. The Commission concludes that the language of the "pledged dues statement" is insufficient for purposes of 114.5(a)(2) and therefore is not permissible under the Act.

With respect to this issue the Commission notes initially that nothing in the Act or Commission regulations prohibits ATLA from securing a pledge from its members for future contributions. However, Commission regulations require that "any solicitation" for contributions which employs a guideline or suggested amount must contain the information required by 114.5(a)(2). See, 11 CFR 114.5(a)(5). Thus, while the pledge system is not prohibited by the Act, every reminder or notice of a prior solicitation made by ATLA or ACCT which involves use of a suggested contribution amount (even those where a member has previously "pledged" an amount) is itself another solicitation and must contain the information required by 114.5(a)(2).

The remaining questions posed in your request all relate to the accounting, deposit, and remitting of combined dues/political contributions and thus will be answered together.

As previously noted, the Commission has concluded that a properly structured and administered combined dues/political contributions plan is not violative of the Act's prohibition against corporate contributions. In those previous opinions wherein such combined dues/political contributions plans were approved, the Commission has required, as a condition of its approval, that the organization administering the plan will separate and deposit the political contribution portion of each member's check into a checking account of a duly designated bank depository of the separate segregated fund in a timely manner after the check is received by the fund's sponsoring organization. Compare, Advisory Opinions 1982-11, 1981-4, 1979-19, and 1978-42. Moreover, the Commission has also approved the use of a similar transmittal procedure to separate combined dues/political contribution checks paid by individuals from those combined

dues/political contribution checks drawn on accounts of corporations. See, Advisory Opinion 1982-55.

Under the plan proposed by ATLA, all checks from individuals which represent combined dues/political contributions will be deposited in ATLA's depository account, along with all other ATLA receipts. ATLA will then make an appropriate remittance of individual contributions to ACCT along with a list of the contributors involved. Similarly, checks from corporate entities which represent combined dues and donations for ACCT's administrative expenses will be remitted by separate check to the ACCT Administrative Fund (Alternative A) or retained in ATLA's general treasury fund (Alternative B). The Commission is of the opinion that, so long as individual contributions to ACCT are deposited into ACCT's depository account in a timely fashion after receipt by ATLA, then the collection, remittance, and deposit process proposed by ATLA with respect to combined checks from individual ATLA members would be permissible under the Act. See, 2 U.S.C. 432(b)(2) and 11 CFR 102.8(b), 103.3(a). In addition, the procedure for handling combined corporate payments, as set forth in Alternative B, would be permissible under the Act.

As described under Alternative B, ATLA dues paid on corporate checks by ATLA members, who conduct their practices in corporate form, as well as donations for ACCT's administrative and solicitation expenses made via such checks would be deposited into the ATLA general treasury account. The Commission has held that members of a trade association may donate funds to that trade association for the purpose of defraying its costs in administering its separate segregated fund under 2 U.S.C. 441b. See Advisory Opinions 1982-36 and 1980-59, copies enclosed. The types of costs that are within the exception of 2 U.S.C. 441b(b)(2)(C) are set forth in Commission regulations at 11 CFR 114.1(b). See also 11 CFR 114.5(b). Accordingly, the use of ATLA treasury funds according to Alternative B, whether derived from dues payments or members' donations, to defray the administrative costs permitted by Commission regulations, is proper under the Act.

With respect to Alternative A, however, the Commission is of the opinion that direct transmittal of ATLA corporate funds into the "ACCT Administrative Fund," which is under the "control and direction of the governing body of ACCT" as you state in your request, would be impermissible. Commission regulations contemplate that a separate segregated fund be controlled by its sponsoring corporation (or labor organization) and not that the separate segregated fund have control over the funds of its sponsor. The proposal would permit the direct deposit of funds by the non-sponsoring corporation into another organization's separate segregated fund. 11 CFR 114.5(d). See also, California Medical Association v. FEC, 453 U.S. 182 (1981), and AFL-CIO v. FEC. 628 F.2d 97 (D.C. Cir. 1980).

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)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AO 1982-55, 1982-36, 1982-11, 1981-4, 1980-59, 1979-19, and 1978-42)