



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 4, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-65

Paul H. Suhr
Union Carbide Corporation
Law Department
Old Ridgebury Road
Danbury, Connecticut 06817

Dear Mr. Suhr:

This responds to your letter dated December 16, 1982, requesting an advisory opinion on behalf of the Union Carbide Corporation ("the Corporation") and Union Carbide Corporation Political Action Committee ("UCCPAC") regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the Corporation's providing information on UCCPAC's affairs to stockholders. Your letter presents the following facts:

The Corporation is seeking to accommodate stockholders¹ who desire information pertaining to UCCPAC. The Corporation prefers not to disclose such information in the Corporation's Annual Report but to place in the Annual Report a notice of the availability of the information upon request. Your letter sets forth the following actions which the Corporation proposes to undertake:

1. In its 1982 Annual Report, Union Carbide will insert the following:

"Union Carbide Corporation supports the operation of the Union Carbide Corporation Political Action Committee as authorized by and in accordance with, federal law. Shareholders desiring additional information about the activities of the Committee may write to the Secretary, Union Carbide Corporation, Section D4, Old Ridgebury Road, Danbury, CT 06817."

¹ The Project on Corporate Responsibility, which owns three shares of the Corporation, submitted at the Corporation's 1981 annual stockholders' meeting a proposal seeking disclosure of information on UCCPAC affairs in the Corporation's Annual Report. The stockholders voted down this proposal. Notwithstanding the defeat of this proposal, the Corporation is working with the Project on Corporate Responsibility to arrange a satisfactory procedure for disclosure of information to requesting stockholders.

2. In response to a request for information, a shareholder requestor will be provided a report on the political contributions made by UCCPAC during the most recent calendar year, showing the recipient, the amount of the contribution, as well as the reasons for the contribution. Additionally, the requestor will be provided a list of the current members of the Committee and a statement outlining the contribution guidelines and criteria of the Committee....
3. Should a non-shareholder request information, the requestor will be told to consult the Federal Election Commission for any information on file and which is publicly available.
4. Included in the response to any shareholder requestor will be the following statement:

"The information being provided herein with respect to the Union Carbide Corporation Political Action Committee is being provided for informational purposes only and is not a solicitation by, or an invitation to contribute funds to, the Union Carbide Corporation Political Action Committee. The Union Carbide Corporation Political Action Committee will not accept contributions from shareholders, employees or others in response to this information."

Your request explains that the Corporation's stock is traded on the New York Stock Exchange and is also listed on stock exchanges in several European cities. There are approximately 180,000 individual stockholders of the Corporation. You estimate that 70% of the persons who receive the Corporation's Annual Report are not eligible to be solicited for contributions to UCCPAC.

The questions you raise are whether the proposed insert in the Corporation's 1982 annual report, and the other activities described above, would individually or taken together constitute a solicitation under the Act and Commission regulations.

The Act allows a corporation, or a separate segregated fund established by a corporation, to solicit generally the corporation's stockholders and executive or administrative personnel and to make two written solicitations per year to nonexecutive employees. 2 U.S.C. 441b(b)(4). The Act also provides that a person who is a "foreign national" may not make a contribution in connection with any election and may not be solicited for such a contribution. 2 U.S.C. 441e, 11 CFR 110.4(a). The Commission has previously concluded that a communication regarding a PAC's financial activity is not a 441b solicitation where the information provided would neither encourage readers to support the PAC's activities nor facilitate their making contributions to it. Advisory Opinions 1980-65, 1979-66, and 1979-13.

The proposed insert for the 1982 Annual Report is solely informational. Moreover, the insert, by merely providing notice as to the availability of the PAC information, places the burden on the stockholder or other person to affirmatively request the information. Thus, the shareholder must take the initiative to obtain the information, and the Corporation is the passive conduit of such information. This insert merely informs the requesting stockholder and in no way encourages

support of UCCPAC or facilitates contributions to it. Thus, it is not a solicitation. Accordingly, the Commission concludes that since the proposed insert would not constitute a solicitation, 2 U.S.C. 441d, which requires certain notices to be placed in any public advertisement that solicits political contributions, does not apply.² Similarly, and for the same reasons, the insert would not be viewed as a solicitation for purposes of 2 U.S.C. 441e.

The Corporation's proposal to respond to a requesting shareholder by providing a report on UCCPAC's contributions also merely informs the shareholder without suggesting that a contribution be made. The characterization of the UCCPAC report as a contribution solicitation would also be negated by the notification accompanying such report; this notification would state the report's informational purpose and that contributions in response to the report would be rejected. Additionally, the Corporation's directions to the requesting non-shareholder to consult the public records of the Commission is a neutral act which in no way encourages contributions.

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 by your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1980-65, 1980-71, 1979-66, and 1979-13)

² The Commission has determined that since a contribution solicitation made by a corporation, or a separate segregated fund established by the corporation, to its stockholders and other specified personnel may not be directed to the general public, 441d is not applicable to such permissible solicitation. Advisory Opinion 1980-71. Of course, an improper contribution solicitation by such corporation (or labor union) is prohibited under 441b.