



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 24, 1983

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-3

John J. O'Connell, Chairman  
J. William Siefert, Treasurer  
Philadelphia Electric Company Political Action Committee  
2301 Market Street  
P.O. Box 8699  
Philadelphia, Pennsylvania 19101

Dear Messrs. O'Connell and Siefert:

This responds to your letter of January 11, 1983, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed transfer of funds from a committee that supports state candidates to a registered political committee supporting Federal candidates.

Your letter states that on July 26, 1982, the Philadelphia Electric Company ("the company") established two committees for political purposes: the Philadelphia Electric Company State Political Action Committee ("State PAC") and the Philadelphia Electric Company Federal Political Action Committee ("Federal PAC"). The Federal PAC registered as a political committee with the Commission on August 2, 1982. The State PAC is not a registered political committee under the Act.

You state that the Federal PAC and the State PAC operate under separate sets of bylaws. You further state that the first eight members of each committee were appointed by the Chief Executive Officer of the company, and that the individuals appointed to serve on the State PAC were also appointed to serve on the Federal PAC. Finally, you note that while the two committees are known collectively to employees as "PECoPAC," the company has emphasized to employees the separateness of the PACs for the purpose of donations. Having presented these facts, you ask several questions:

- (1) Whether the State PAC and the Federal PAC are "affiliated committees" under the Act;
- (2) Whether the State PAC may make unlimited transfers to the Federal PAC; and
- (3) Whether the State PAC is required to disclose to its potential contributors that transfers will be made to the Federal PAC.

Assuming the State PAC actually transfers funds to the Federal PAC and thus becomes a political committee (see discussion below), the Commission answers the first question in the affirmative. If, on the other hand, no such transfers occur, the committees would not be considered "affiliated committees" under the Act as the State PAC would not be a political committee. See 11 CFR 100.5(g)(2).

With respect to your second question, Commission regulations state that transfers of funds may be made without limit between affiliated committees. 11 CFR 102.6(a). For this reason, the State PAC would be permitted to make unlimited transfers to the Federal PAC. The Commission notes, however, that, as a consequence of transferring any funds from the State PAC to the Federal PAC, the State PAC would become a political committee under 2 U.S.C. 431(4) and 11 CFR 100.5. See Advisory Opinion 1982-46, copy enclosed. Under the Act, a separate segregated fund becomes a political committee whether it contributes or transfers \$1 or \$1,000 to another "political committee." See Advisory Opinion 1982-46; see also, Explanation and Justification of 11 CFR 102.6, 45 Fed. Reg. 15084 (March 7, 1980). Thus, because there is no monetary threshold triggering political committee status for separate segregated funds, any amount transferred to the Federal PAC from the State PAC would cause the latter to become a political committee. See Advisory Opinion 1981-6, copy enclosed. As a political committee, it would be required to register with the Commission and file periodic reports of receipts and disbursements.<sup>1</sup> 2 U.S.C. 433(a) and 434(a)(4). Furthermore, in its first report the State PAC would be required to disclose amounts (as cash on hand) received prior to becoming a political committee, even if such amounts were not received during the current reporting period. Advisory Opinion 1982-46; 11 CFR 104.3(a) and 104.12.

Finally, if the State PAC makes the contemplated transfers to the Federal PAC and thereby becomes a political committee, it must comply with all of the requirements regarding contributions and solicitations set forth at 11 CFR 102.5 and 114.5. With respect to contributions, this means that the State PAC must either: 1) establish a separate Federal account which is treated as a separate political committee and must comply with the requirements of the Act; or 2) establish a single political committee which may receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. 11 CFR 102.5. In addition, regardless of which of the foregoing options is chosen, the State PAC must comply with the solicitation requirements set forth at 11 CFR 114.5, including the requirement that if a contribution guideline is used, the

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<sup>1</sup> If the State PAC were established and operated solely for the purpose of financing activity in connection with state and local elections, and were to make no transfers to the Federal PAC, no such registration and reporting obligations would apply. 11 CFR 102.1(c).

persons solicited be informed that any such guideline is merely a suggestion, and the requirement that the persons solicited be informed of the political purposes of the fund and of their right to refuse to contribute. Since your request does not indicate that the State PAC has already made any solicitations for funds or accepted any donations, the Commission does not reach the question whether any remedial measures would be necessary to correct solicitations made prior to the possible transfer of funds from the State PAC to the Federal PAC. See Advisory Opinion 1982-40 copy enclosed; compare Advisory Opinion 1981-34, copy enclosed.<sup>2</sup>

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)

Lee Ann Elliott  
Vice Chairman for the Federal Election  
Commission

Enclosures (AOs 1982-46, 1982-40, 1981-34 and 1981-6)

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<sup>2</sup> In Advisory Opinion 1981-34, an incorporated membership organization with funds that were originally collected from members for use in a lobbying effort was permitted to transfer the funds to its political action committee only after informing each original donor of the proposed transfer and providing him or her an opportunity to disapprove any transfer of the unspent portion of his or her donation.