



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-18

Judith Westlund Rosbe, Esquire
The Stop and Shop Companies
P.O. Box 369
Boston, Massachusetts 02101

Dear Ms. Rosbe:

This responds to your letter of June 14, 1983, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the earmarking of contributions made through one trade association political action committee (PAC), but designated for another trade association's PAC.

Your letter states that Stop and Shop Companies, Inc. ("Stop and Shop"), is a Massachusetts corporation comprised of several retail divisions which are not separate corporations. Stop and Shop does not have its own PAC, but has authorized the PAC of the Food Marketing Institute ("FMI") trade association to solicit contributions from Stop and Shop corporate and divisional officers during 1983. Some of the operating division officers would like to contribute to the PACs of the trade associations in the industries of the operating divisions; for example, the officers of the drug store division of Stop and Shop would like to contribute to the PAC of the National Association of Chain Drug Stores. Because under 2 U.S.C. 441b(b)(4)(D), a corporation can authorize only one trade association PAC per year to solicit contributions, the operating divisions, which are not separate corporations, cannot authorize the trade association PACs for their industries to solicit contributions.

You ask whether the Stop and Shop divisional officers can make contributions through FMI's PAC that are designated or earmarked for another trade association PAC. The Commission concludes that the described contributions may be made by Stop and Shop divisional officers provided that such contributions have not been solicited by or on behalf of the recipient PACs of the other trade associations; moreover, any such contribution received by FMI-PAC must be forwarded in a timely manner to the designated recipient PAC.

A separate segregated fund established by a trade association may solicit contributions from the stockholders and executive and administrative personnel of a member corporation of a trade association if the member corporation has separately and specifically approved the solicitation and has not approved solicitation by more than one trade association in any calendar year. 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8(d). In this case, Stop and Shop as a corporate member of FMI has given solicitation approval for 1983 to FMI PAC. Therefore, other separate segregated funds of other trade associations may not solicit contributions from the officers of Stop and Shop operating divisions. Other trade association PACs separate segregated funds) may, however, accept unsolicited¹ and otherwise lawful contributions from any person. 11 CFR 114.5(i). In addition, while Stop and Shop may inform its divisional officers generally that their contributions for other PACs may be earmarked through FMI PAC, it may not suggest directly or indirectly that specific trade association PACs be designated by those officers. See Explanation and Justification for Commission regulation 11 CFR 114.8(e), Fed. Elec. Camp. Guide (CCH) ¶ 923, p. 1609.

Assuming the described contributions are not unlawfully solicited, the question then arises whether the earmarked nature of the contributions poses other problems under the Act or Commission regulation. The Act provides for the earmarking of contributions "made by a person, either directly or indirectly, on behalf of a particular candidate. . ." 2 U.S.C. 441a(a)(8). Neither the Act nor Commission regulations specifically address contributions earmarked to political committees that are not authorized committees of candidates. See 11 CFR 110.6. The Commission has held that this omission does not bar such earmarking, but that it would be subject to other regulations concerning the receipt of contributions by any person on behalf of a political committee. Advisory Opinion 1981-57, copy enclosed.

Commission regulations allow any person to receive contributions for a political committee as long as the person receiving the contribution properly forwards it to the designated political committee donee. 11 CFR 102.8(b). The person receiving the contribution must forward it to the donee committee's treasurer within 30 days of receipt if it is \$50 or less, and within 10 days if greater than \$50. Certain other information must also be forwarded with a contribution over

¹ The Commission notes several previous advisory opinions which state that a "solicitation" includes not only an explicit request for contributions, but also providing information to individuals about fundraising activity. See Advisory Opinions 1981-41, 1980-65, and 1978-17, copies enclosed. As the Commission stated in Advisory Opinion 1978-17:

[o]ne significant underlying purpose of the solicitation restriction's on trade association political action committees is to control their access to the same persons who might otherwise be solicited and contribute to several political committees connected to separate trade associations. By requiring advance solicitation approval, and limiting approval by corporate members of a trade association to one trade association per year, the fundraising potential of the trade association committee is limited.

\$50.² See 11 CFR 102.8(b)(2). Since FMI PAC as a political committee is a "person," as defined in 2 U.S.C. 431(11), it may receive and forward unsolicited contributions that are made by officers of Stop and Shop divisions and designated by them for other trade association PACS. These unsolicited donor-designated contributions would not be counted for 441a limit purposes as contributions to FMI PAC, nor would they be considered as contributions by FMI PAC to the donor-designated political committees that receive them via FMI PAC.

While the foregoing discussion indicates that FMI PAC may receive and forward contributions designated for other political committees, the cited regulations do not require that it do so. Furthermore, the Act and Commission regulations do not otherwise confer on contributors the right to earmark or designate contributions through any committee that is unwilling to receive and forward them. See generally 11 CFR 102.8, 110.6. If FMI PAC declines to follow the donor's designation instructions, it should reject the designated contribution and return it to the donor without depositing it. The rejection and return of contributions is envisaged, and in some cases required, by Commission regulations. See 11 CFR 103.3(b).

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 (AOs 1981-57, 1981-41, 1980-65 and 1978-17)

² This information should be utilized by the designated donee committee in properly reporting the contribution from the donor. If designated contributions are deposited in an FMI PAC bank account, they must also be reported by FMI PAC as other receipts and other disbursements. See footnote three in Advisory Opinion 1981-57.