



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 19, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-19

J. Eugene Marans, Esq.
Cleary, Gottlieb, Steen & Hamilton
1752 N Street, N.W.
Washington, D.C. 20036

Dear Mr. Marans:

This responds to your letter of July 12, 1983, requesting an advisory opinion on behalf of AMAX Inc. concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment and operation of a separate segregated fund by Alumax Inc., a joint venture 50 percent owned by AMAX.

You state that AMAX Inc. ("AMAX"), a New York corporation, is engaged in a joint venture known as Alumax Inc. ("Alumax"), a Delaware corporation in which AMAX owns 50 percent of the voting shares. You state that the remaining voting shares are owned 45 percent by Mitsui & Co., Ltd., a Japanese corporation, and its American subsidiary ("Mitsui"), and five percent by Nippon Steel Corporation ("Nippon"). Your letter also states that AMAX currently maintains a separate segregated fund, the AMAX Concerned Citizens Fund ("the AMAX Fund"), but that Alumax does not yet have such a fund.

You state that Alumax now proposes to establish a separate segregated fund (hereinafter referred to as "Alumax PAC") that would solicit contributions only from the executive and administrative personnel (and their families) of Alumax and its subsidiaries. Your request indicates that AMAX has proposed providing administrative services to Alumax in the establishment and administration of Alumax PAC. According to your request, Alumax would compensate AMAX for all out-of-pocket expenses (e.g., printing and postage) incurred by AMAX in providing these administrative services. In addition, you state that Alumax would also pay AMAX a separate administrative fee for, these services. You note, however, that the fee may be insufficient to compensate AMAX for the full value of the overhead that would be absorbed by AMAX. You

ask whether this proposed arrangement is permissible under the Act and Commission regulations, and whether Alumax PAC would be considered affiliated with the AMAX Fund and thus qualify immediately upon registration as a multicandidate committee (assuming the AMAX Fund is now so qualified).

Initially, the Commission considers another issue raised by your request: whether Alumax, as a joint venture incorporated in Delaware and partially owned by a Japanese corporation, is permitted to establish a separate segregated fund under 2 U.S.C. 441b(b)(2)(C).

Under the Act, foreign nationals are prohibited from making contributions, directly or through any other person, in connection with any election to any political office. See 2 U.S.C. 441e. The term "foreign national" is defined by 2 U.S.C. 441e(b)(1) to mean a "foreign principal" as such term is defined specifically by 22 U.S.C. 611(b). Section 611(b) defines "foreign principal" as including:

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

Under 22 U.S.C. 611(b), a corporation organized under the law of any state within the United States whose principal place of business is within the United States is not a "foreign principal" and hence not a "foreign national" under 2 U.S.C. 441e. The Commission concludes, therefore, that Alumax's existence as a discrete corporate entity organized under the laws of Delaware, with its principal place of business in the United States, would permit it to establish the Alumax Fund as proposed in your request. The Commission reaches this conclusion on the basis of its understanding that no foreign national will play any decision-making role in, or exercise any control over, the proposed separate segregated fund, and that no contributions to the Alumax Fund will be solicited or accepted from persons who are foreign nationals. See Advisory Opinions 1980-100, 1980-111, and 1982-34; see also Advisory Opinion 1981-36.

With respect to the issue of affiliation between Alumax PAC and the AMAX Fund, the Commission notes that under the Act, all committees (including all separate segregated funds) established, financed, maintained or controlled by the same corporation and any of its subsidiaries or divisions are affiliated. 2 U.S.C. 441a(a)(5) and 11 CFR 100.5(g)(2)(i)(A) and 110.3(a)(1)(ii)(A). The Commission's regulations state that indicia of establishing, financing, maintaining or controlling another organization include, inter alia, the authority, power, or ability to influence the decision of the officers or members of another entity. 11 CFR 100.5(g)(2)(ii)(C). Under the circumstances presented here, where AMAX owns a 50 percent interest in Alumax, a

joint venture corporation, the Commission concludes that the AMAX Fund and the proposed Alumax PAC would be affiliated committees. See Advisory Opinion 1979-56.

The Commission notes that as a consequence of this conclusion, both the AMAX Fund and Alumax PAC will be required to identify the other as an affiliated political committee on their respective statements of organization. 2 U.S.C. 433(b)(2), 11 CFR 102.2(b)(1). In addition, the committees will be considered separate entities for purposes of filing reports under the Act. 2 U.S.C. 434(a)(4) and 11 CFR 104.1

You also ask whether Alumax PAC would qualify as a multicandidate committee under 2 U.S.C. 441a(a)(4) and 11 CFR 100.5(e)(3) as a result of its affiliation with the AMAX Fund, assuming the latter is now so qualified. Commission records indicate that the AMAX Fund has qualified as a multicandidate committee under these provisions. Since all affiliated committees share a single contribution limit and may make unlimited transfers among themselves, 2 U.S.C. 441a(a)(5), the Commission concludes that Alumax PAC would qualify immediately upon registration as a multicandidate committee under 2 U.S.C. 441a(a)(4) and 11 CFR 100.5(e)(3). See Advisory Opinion 1980-40.

Finally, you ask whether AMAX would be permitted to pay a portion of the establishment and administration costs of the proposed Alumax PAC. Under 2 U.S.C. 441b(b)(2)(C), a corporation is permitted to use its general treasury funds to pay for the costs of establishing, administering, and soliciting contributions to its separate segregated fund. The payment of such expenses is also explicitly excepted from the Act's definitions of "contribution" and "expenditure." 2 U.S.C. 431(8)(B)(vi), 431(9)(B)(v).

In previous opinions the Commission has concluded that the costs of establishing, administering, or soliciting contributions to a corporation's separate segregated fund may be shared by several corporations whose affiliated relationships are such that executive and administrative personnel of any of the corporations are solicitable by the political fund sponsored by one (or more) of those corporations. In Advisory Opinion 1982-34, the Commission permitted subsidiary corporations to pay the expenses of a payroll deduction plan that facilitated the making of voluntary contributions by executive personnel of those subsidiary corporations to the political fund of the parent corporation. Also, in Advisory Opinion 1980-18, the Commission concluded that four affiliated corporations that jointly sponsored one-separate segregated fund could allocate the fund's exempt administrative expenses among themselves. Accordingly, given the described relationship between AMAX and Alumax, and the resulting affiliated committee status of the AMAX Fund and Alumax PAC, the Commission concludes that AMAX may pay a portion of the administration and establishment costs of Alumax PAC. Of course, such costs must come within the scope of the exception in 2 U.S.C. 441b(b)(2)(C) and Commission regulations at 11 CFR 114.1(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 1979-56, 1980-18, 1980-40, 1980-100, 1980-111, 1981-36 and 1982-34)