



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 16, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-38

E. Rogers Pleasants, Secretary
DuPont Good Government Fund
E.I. duPont de Nemours & Co., Inc.
Wilmington, DE 19898

Dear Mr. Pleasants:

This responds to your letter of October 21, 1983, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to an announcement of the establishment of the DuPont Good Government Fund ("DGGF") that would appear in a company publication distributed to all employees.

According to your request, DGGF is a separate segregated fund established by E.I. duPont de Nemours and Company ("DuPont") and empowered by the corporation to solicit political contributions only from executive and administrative employees within the meaning of the Act. However, the Charter for DGGF, you state, will not preclude DGGF from accepting contributions from any employees otherwise permitted by law to make contributions to it. You explain that one reason the solicitation will be so restricted is Dupont's desire to avoid the special obligations and limitations associated with twice-yearly solicitation pursuant to 2 U.S.C. 441b(b)(4)(B) and 11 CFR 114.6. You also state that, faced with the possibility that the formation of DGGF could be referred to in some public communication, or that your employees might be misinformed about it by other sources, you would prefer to use a company-wide, internal publication to announce the organization of DGGF and to explain the basic elements of separate segregated fund activity.

You ask for an opinion whether the proposed articles would constitute a solicitation under the Act and Commission regulations. The articles would appear in the DuPont News, a 12-page tabloid newspaper that DuPont publishes about ten times a year to provide corporate news,

information, and comment to virtually all DuPont employees and pensioners. You state that it has a circulation of 149,000.

You propose to include one of the following two articles in the "News In Brief" section of a future issue. The articles are identical except for the underlined portions in each.

"The Company Board of Directors on October 17 approved the organization and operation, pursuant to federal law, of a political action committee called the DuPont Good Government Fund. It would solicit funds only from DuPont employees who hold high-level administrative, executive or managerial responsibilities in the U.S. The funds would be used to make contributions to candidates for federal office. Under the law, the amounts that may be contributed to and by a PAC are limited, and steps must be taken to ensure that employee contributions to the Fund are strictly voluntary and without coercion. A committee of DuPont Company employees will decide what federal candidates merit consideration."

"The Company Board of Directors on October 17 pursuant to federal law, of a political action committee called the DuPont Good Government Fund. Initial participation would be limited to DuPont employees who hold high-level administrative, executive or managerial responsibilities in the U.S. Their funds would be used to make contributions to candidates for federal office. Under the law, the amounts that may be contributed to and by a PAC are limited, and steps must be taken to ensure that employee contributions to the Fund are strictly voluntary and without coercion. A committee of DuPont Company employees will decide what federal candidates merit consideration."

The Act allows a corporation, or a separate segregated fund established by a corporation, to solicit contributions to the fund from the corporation's stockholders and executive or administrative personnel. 2 U.S.C. 441b(b)(4)(A), 11 CFR 114.5. The Act also permits two written contribution solicitations per year to other employees, but they may only be made in writing to an employee's residence and pursuant to a custodial arrangement that ensures the anonymity of those wishing to contribute less than \$50 in any single contribution or not to contribute at all. 2 U.S.C. 441b(b)(4)(B) and 11 CFR 114.6. As these statutory provisions and regulations indicate, any communication by a corporation that constitutes a contribution solicitation must be limited to the solicitable class; and in the context of a twice yearly solicitation, may invoke certain obligations with respect to contribution solicitation on behalf of the political fund of a labor organization that represents members employed by the corporation. See 11 CFR 114.6(e). Accordingly, you have asked whether the proposed articles are contribution solicitations.

The Commission has previously concluded that information contained in similar internal publications of limited circulation, which neither encourages readers to support a separate segregated fund's activities nor facilitates their making contributions to it, would not be considered an improper solicitation. Advisory Opinions 1982-65, 1980-65, and 1979-66 (copies enclosed). In addition, while Commission regulations permit a separate segregated fund to accept

an unsolicited contribution from a nonsolicitable person (assuming it is otherwise lawful), the explanation underlying the regulation states that informing any person of that right is a solicitation. 11 CFR 114.5(j) see Explanation and Justification of Part 114, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶923, p. 1604.

The Commission believes your proposed articles are very similar to the article discussed in Advisory Opinion 1979-66. The articles discussed in that opinion, and in your request, each contain factual matters about the political fund and necessarily imply that solicitations will occur. Your proposed articles also indicate some of the legal requirements that apply to solicitations under 11 CFR 114.5(a), i.e. the voluntary nature and political purpose of the fund. While your articles may engender some inquiries about DGGF from readers who are not DuPont executives (or other solicitable personnel), their content is limited to an announcement of the establishment of DGGF, and the articles provide merely factual, historical or statistical information about DGGF and the legal requirements that apply to its activities. Significantly, the articles do not praise employees for making contributions, encourage their participation, or facilitate the making of contributions. Moreover, they do not inform the reader that unsolicited contributions from nonexecutive DuPont employees or retirees will be accepted by DGGF.

Accordingly, the Commission concludes that the one time publication in the DuPont News of either proposed article would not be a contribution solicitation under the Act and Commission regulations in the circumstances presented.

This response constitutes an advisory opinion concerning the 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

Enclosure (AOs 1982-65, 1980-65 and 1979-66)