



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 29, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-17

Mr. James Bopp, Jr.  
Brames, Bopp, Haynes & Abel  
P.O. Box 1583  
Terra Haute, IN 47808

Dear Mr. Bopp:

This responds to your letter of April 12, 1984, as supplemented by your letter of May 15, 1984, on behalf of your clients, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the distribution of voting records by the National Right to Life Committee, Inc., ("NRLC") and to the distribution of a voter guide by Right to Life of Greater Cincinnati, Inc.

Although these requests are treated separately, both arise under the same statutory provisions. The Act makes it unlawful for a corporation to make a contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b. It defines "contribution" or "expenditure" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value... to any candidate, campaign committee, or political party or organization, in connection with..." any Federal election. 2 U.S.C. 441b(b)(2).

#### Voting Records

You state that the National Right to Life Committee is a nonprofit corporation with tax exempt status pursuant to 26 U.S.C. 501(c)(4). You add that NRLC engages in educational and lobbying activities relating to the issues of abortion, infanticide, and euthanasia and takes public positions on many bills and amendments to bills on which Congress votes. It has established a separate segregated fund, National Right to Life Political Action Committee. You state that at the end of each legislative session of Congress, NRLC prepares and distributes a compilation of congressional voting records on abortion. NRLC distributes these voting records as an insert in the National Right to Life News, a publication of NRLC which is distributed to 100,000 subscribers every two weeks. NRLC also makes copies of these voting records available for bulk purchases by other right- to-life groups for distribution to their members and the general public.

In this regard, you have submitted two sample voting records as representative examples of those you plan to prepare and distribute in the future. One voting record is dated September 1982 and the other January 1984. Each describes in detail the substance and procedural aspects of various votes in the U.S. Senate, U.S. House, or Senate committees relating to the issue of abortion and sets forth NRLC's assessment and position regarding each vote. It includes all senators, representatives, or committee members, depending on the vote in question, and indicates their party affiliation, state, and (where appropriate) district.<sup>1</sup> Each also indicates how a senator or representative voted, or whether he or she was absent or not a member of Congress at the time of the vote. In some cases, each characterizes a vote as either "prolife" or "pro-abortion" and other times as a vote for a measure or a vote against it.

You ask whether the NRLC may continue to prepare and distribute to the general public voting records, in a format similar to the examples you provided, in compliance with the Act and regulations.

Revised Commission regulations, prescribed on March 5, 1984, at 49 Fed. Reg. 7981(1984), provide that a "corporation...may prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election." 11 CFR 114.4(b)(4).<sup>2</sup>

The Commission notes that the voting records described in your request and represented by the submitted examples are issue-oriented and not election-oriented or candidate-oriented. No senator or representative is referred to as a candidate in any Federal election. Aside from the reference in the September 1982 voting record to the possibility that some district numbers may have changed for the 1982 elections, the examples do not provide any information regarding elections. They do not suggest or urge that anyone vote in any election or consult or use the voting record in making his or her decision regarding any election. They do not explicitly suggest or urge support for any senator or representative based on that person's vote on any issue. They also do not suggest that an officeholder is "easier to convince" of a position on an issue while he or she is a candidate in a forthcoming election, than after the officeholder is "safely" in office. See Advisory Opinion 1984-14. In this respect the voting records you describe are distinguishable from those at issue in Advisory Opinion 1984-14. You further represent that NRLC plans to distribute these voting records at the end of a legislative session.<sup>3</sup> Therefore, the Commission concludes that NRLC's preparation and distribution of this type of voting record would not be for the purpose of influencing a Federal election and, thus, would be permissible under the Act. If NRLC distributes this type of voting record as part of its newspaper or with

---

<sup>1</sup> The September 1982 voting record notes that representatives are listing according to their district number in 1980, which may have changed for the 1982 elections.

<sup>2</sup> Incorporated membership organizations, such as NRLC, are treated as corporations for the purpose of this section. See 11 CFR 114.4(a)(1)(ii).

<sup>3</sup> The Commission notes, however, that the September 1982 voting record was distributed prior to the 1982 general election and prior to the adjournment of the second session of the 97th Congress on December 21, 1982. The Commission understands from your request that future distribution of NRLC's voting records will coincide with the end of a legislative session.

other information, it must insure that the information accompanying the voting record does not give its preparation and distribution the purpose of influencing a Federal election.<sup>4</sup>

### Voter Guides

You state that Right to Life of Greater Cincinnati is a nonprofit corporation with tax exempt status pursuant to 26 U.S.C. 501(c)(4). It also engages in educational and lobbying activities relating to abortion, infanticide, and euthanasia. At this time, it has not established a separate segregated fund. It regularly prepares and distributes a voter guide based upon questionnaires, sent to candidates for Federal and state offices, related to the legislative initiatives with which the organization lobbies. The guide is published as part of the organization's newsletter, which is distributed to its members and to the general public. You have provided a sample voter guide published in October 1982. The three-page voter guide itself stated the questions posed to the candidates, addressed these questions to all candidates for a particular office or offices, reported their response to each question, and included comments from the candidates or noted that the candidate had declined to respond to the questionnaire. This guide was published as part of the organization's newsletter, which also contained a report of candidate endorsements made by an affiliated organization's separate segregated fund. The endorsed candidates were also included in the guide.

The revised Commission regulations permit a corporation to "prepare and distribute to the general public nonpartisan voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions." 11 CFR 114.4(b)(5)(i). The regulation sets out several factors that the Commission may consider in determining if a voter guide is nonpartisan. See 11 CFR 114.4(b)(5)(i)(A) to (F). The regulations, however, also provide that a voter guide need not comply with these guidelines if (1) the guide is "obtained from a nonprofit organization which is exempt from Federal taxation under 26 U.S.C. 501(c)(3) or (4) and which does not support, endorse or oppose candidates or political parties"; and (2) the guide does "not favor one candidate or political party over another." 11 CFR 114.4(b)(5)(ii).

In this regard, you pose three questions: (1) may a qualified nonprofit organization, i.e. as described in 11 CFR 114.4(b)(5)(ii), distribute a voter guide that it has itself prepared; (2) would the establishment of a separate segregated fund by a nonprofit organization make it one that supports, endorses, or opposes candidates or political parties; and (3) does the sample voter guide meet the requirement that it does not favor one candidate or political party over another?

The revised regulation states that "a corporation...may distribute voter guides...obtained from a nonprofit organization... ." You state that Right to Life of Greater Cincinnati, Inc., itself prepares and distributes its voter guide and does not obtain it from another qualified nonprofit

---

<sup>4</sup> The Commission notes that the voting record examples contain a price list for the purchase of the record, either singly or in multiple quantities. This practice raises additional considerations. Sales (or donations) of copies of the voting record at less than these published prices could result in NRLC's making a prohibited in-kind contribution, if purchased or received by a candidate or political committee and used as part of a campaign. See Advisory Opinion 1978-18. The Commission also notes that the manner in which a bulk purchaser distributes the voting record could also make such distribution for the purpose of influencing a Federal election. Whether distribution by a bulk purchaser would be attributable to NRLC would depend on the facts in a specific situation.

organization. The Commission concludes that the regulations permit a qualified nonprofit organization to distribute a voter guide that it has itself prepared and need not obtain the guide from another qualified nonprofit organization or obtain a corporate sponsor to distribute it. See Advisory Opinions 1984-14 and 1983-43.

With regard to your second question, you state that Right to Life of Greater Cincinnati does not support, endorse, or oppose candidates or political parties.<sup>5</sup> But you add that it is contemplating the establishment of a separate segregated fund, which will support and endorse Federal candidates. Commission regulations permit a corporation to control its separate segregated fund. See 11 CFR 114.5(d). This control includes determining the disposition of the monies contributed to the fund. Pipefitters v. U.S., 407 U.S. 385, 426 (1972). Therefore, the Commission concludes that the establishment of a separate segregated fund by an organization, tax exempt pursuant to 26 U.S.C. 501(c)(3) or (4), would make it an organization that supports, endorses, or opposes candidates or political parties. Consequently, if such an organization prepares a voter guide, the guide must comply with the guidelines of 11 CFR 114.4(b)(5)(i)(A) to (F).

With regard to your third question, the Commission notes that Right to Life Greater Cincinnati is a nonprofit organization tax exempt under 26 U.S.C. 501(c)(4) and presently does not support, endorse, or oppose candidates or political parties. Thus, it may prepare and distribute voter guides without complying with the guidelines of 11 CFR 114.4(b)(5)(i)(A) to (F) as long as the guide does not favor one candidate or political party over another. The Commission concludes that the three-page sample voter guide that you have provided meets this requirement. Thus, preparation and distribution by Right to Life of Greater Cincinnati of the sample voter guide would be permissible under the Act and Commission regulations. The Commission also notes that neither the Act nor the regulations prohibit the distribution of a voter guide with other information as long as this additional material does not have the effect of converting an otherwise nonpartisan voter guide into one that does favor one candidate or political party over another. For instance, a nonpartisan voter guide may not characterize candidate responses as right or wrong or suggest that a person contact a candidate whose answers differ from the sponsoring organization's position. See and compare Advisory Opinion 1984-14. Moreover, in this regard, the Commission notes that the 1982 sample voter guide was distributed as part of a newsletter that carried a report of endorsements by another organization of candidates included in the guide and also urged readers to favor those candidates when voting in the November election. By doing so, the distribution of such a guide had the effect of favoring one candidate over another and, thus, would not be permissible under 11 CFR 114.4(b)(5)(ii).

The Commission expresses no opinion as to whether the described activities would have any effect on the tax exempt status of NRLC and the Cincinnati group since those issues are not within the Commission's jurisdiction.

---

<sup>5</sup> The Commission views this representation as relating to future voter guides. It notes, however, that the sample 1982 voter guide you provided was part of a newsletter carrying a report of candidate endorsements by a separate, but affiliated, organization. Nevertheless, the Commission does not view this instance as transforming Right to Life of Greater Cincinnati into an organization that supports, endorses, or opposes candidates or political parties and thus disqualifying it from the safe harbor provision of 11 CFR 114.4(b)(5)(ii).

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Lee Ann Elliott  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1984-14, 1983-43, and 1978-18)