

DISSENTING OPINION
OF
COMMISSIONER LEE ANN ELLIOTT
IN AO 1984-24

I strongly dissent from the majority opinion of the Commission in AO 1984-24. In my view, it goes beyond the plain meaning of the FECA and Commission regulations and places form over substance.

The majority contends it is prohibited for SCOPE to reimburse its connected organization, the Sierra Club, for the value of the services, benefits and administrative costs of a few employees on political assignment because "the initial disbursement of corporate treasury monies is a loan, advance or something of value to both the candidate and SCOPE." This conclusion is not justified by the Act or FEC regulations, in my opinion. If this conclusion was correct, then no candidate's committee or any other political committee could be billed after goods, materials or services were rendered by any corporation or labor union; payment would have to be made up-front. Nothing in the Act or the regulations differentiates a "connected" corporation or labor organization from any other corporation or labor organization as a vendor.

Application

The application of this majority conclusion is ridiculous. Consider this example, which applies equally to corporations and unions:

PAC A cannot rent the cafeteria, phones or pay for the services of a few employees of Corporation A to make calls to the community to aid the campaign of candidate Jones.

Yet, candidate Jones can rent the cafeteria, phones and pay for the services of employees of Corporation A to make calls on his behalf and be billed at a later date.

What's more, PAC A can give candidate Jones the money for the candidate to rent the cafeteria, phones and pay the services of employees of Corporation A. This money can be given before, at billing, or even at a later time.

Further, PAC A can rent the cafeteria, phones, and pay for the services of employees of Corporation B, across the street, to make calls to aid the campaign of candidate Jones and be billed at a later time.

Regulations

FEC regulations at 11 CFR 114.9 clearly anticipate the use of corporate or labor organization facilities.

Subsections (a) and (b) carefully lay out the permitted activities by individual volunteer employees and stockholders of corporations and by officials, members and employees of labor organizations. Both subsections (a) and (b) provide for reimbursement to the corporation or the union if the activity exceeds the one to four hour period which constitutes isolated and incidental use.

If individual employees can reimburse a corporation, the PAC should be able to reimburse the corporation for the employee's time when engaging in PAC candidate related activity. Moreover, the PAC funds used to pay the corporation are funds voluntarily given to the PAC under the provisions of the Act.

Subsections (c) and (d) specifically permit PACs to pay their connected corporations or labor organizations for the use of corporate or labor facilities because these sections clearly state they cover any person. Person is defined identically in the Act at 2 USC 431(11) and in the regulations at 11 CFR 100.10.

"(c) Use of corporate or labor organization facilities to produce materials. Any person who uses the facilities of a corporation or labor organization to produce materials in connection with a Federal election is required to reimburse the corporation or labor organization within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market.

(d) Use or rental of corporate or labor organization facilities by other persons. Persons, other than those specifically mentioned in paragraphs (a) and (b) of this section, who make any use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for

activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of the facilities."

Employees Services

Both subsections (a), (b), and (d) specifically require reimbursement within a commercially reasonable time for the normal and usual charges as defined in 11 CFR 100.7(a)(1)(iii)(B). This provision excludes the services of unpaid volunteers, therefore it must include paid employees. (See also sub-reference 100.7(a)(1)(iii)(A) which makes specific reference to personnel in determining normal and usual charges for goods and services.)

Further, 11 CFR 114.10 extensively lays out the regulations by which a corporation may extend credit to a candidate, political committee or other person. Nothing in this section prevents the extension of credit by a corporation to its political committee.

Summary

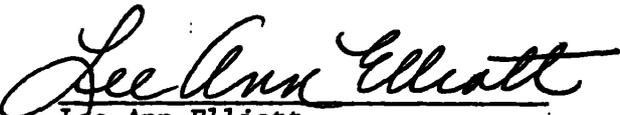
There is nothing in the plain reading of FEC regulations which precludes a connected organization from acting as a vendor to its PAC. In fact, the regulations governing the extension of credit provide safeguards for this activity and the regulations governing reporting put the transactions on the public record for all to see.

The regulations, when read together, indicate that reimbursement for the normal and usual charge would not only include the cost of operating the facility (equipment and space) but also would include the personnel to operate the facility.

The majority's new and more restrictive limitation on PAC activity serves no purpose whatsoever. It invites PACs to do indirectly what they should be able to do directly. To the degree this occurs, the activity is masked on the public record and one of the primary aims of the Act, full disclosure, is unfulfilled.

8-17-84

Date


Lee Ann Elliott

Chairman