



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 13, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-39

Mr. Douglas C. Manditch
Senior Vice President
National Bank of New York City
38th Avenue & 138th Street
Flushing, New York 1135

Dear Mr. Manditch:

This responds to your letter of November 19, 1985, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to proposed payments by a national bank for advertising space in the journal of a political club.

According to your request, which includes your letter dated October 10, 1985, to the Office of the Comptroller of the Currency, the National Bank of New York City ("the Bank") wishes to take advertising space in a journal that would be published for a political club. You state that these journals are occasionally used at dinners honoring political figures. The Commission assumes from your request that the proposed advertisement would be commercial in nature and would not contain any political message or endorsement. You ask whether the Bank may pay for this advertising space. You also ask whether an individual may pay for such an advertisement on behalf of the Bank, with the understanding that the advertisement would use the Bank's name.

Under 2 U.S.C. 441b, the term "contribution or expenditure" includes any "direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value...to any...political party or organization..." 2 U.S.C. 441b(b)(2). Commission regulations similarly state that a contribution under 441b includes any direct or indirect payment by a national bank in connection with any election for any political office. 11 CFR 114.1(a), 114.2(a).

The Commission has previously concluded that 441b prohibits payments by corporations, labor organizations, or national banks for the purpose of funding ads in journals published by political

organizations including political party clubs and political committees. See Advisory Opinions 1981-33, 1981-3, and 1978-46. Accordingly, the Bank's proposed payment for advertising space would be prohibited. The Commission notes that this conclusion applies if the Bank's payments would be used by the club in connection with any election, including a primary election, political convention or caucus held to select candidates for any political office. The Bank may pay for journal ads if the payments for the ads will not be used, directly or indirectly, in connection with any election or nominating procedure for any public office. See 2 U.S.C. 441b(a) and 11 CFR 114.2(a).

With respect to your second question, the Commission concludes that payments by an individual for the ads would not be prohibited, provided that applicable contribution limitations are observed if the club is a political committee as defined in the Act. See 2 U.S.C. 431(4), 441a(a). Any such payments must be made with the individual's funds and must not be reimbursed by the Bank by means of a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1). To avoid any appearance of Bank sponsorship, the Commission suggests that ads paid for by individuals contain a notice stating that no Bank funds were used to pay for the space. Finally, if the political club sponsoring the journal is a political committee under the Act, any payments by individuals should be reported by the political committee as contributions from such individuals. See 2 U.S.C. 434(b)(2), (b)(3).

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)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AO 1981-33, 1981-3, 1978-46)