



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 5, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-41

Mary E. Downs
Secretary and Senior Attorney
Air Transport Association of America
1709 New York Avenue, N.W.
Washington, D.C. 20006

Dear Ms. Downs:

This responds to your letter of October 27, 1986, requesting an advisory opinion on behalf of the Air Transport Association of America concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to an employed compensation proposal.

You state that the Air Transport Association of America ("ATA") is an unincorporated, nonprofit trade association. Its members include 28 major domestic air carriers. You add that two foreign air carriers are associate members of ATA but are not represented on ATA's board of directors and are not entitled to votes in the governance of ATA. You explain that all of ATA's annual budget and programs, including employee compensation, are funded through the membership dues paid to ATA by its air carrier members. You further state that ATA "has a political committee which is registered with the Commission as an unconnected committee."¹

With regard to this committee ("ATA PAC"), you ask these questions:

¹ ATA-PAC was previously registered with the Commission as the separate segregated fund of ATA. It amended its Statement of Organization on April 28, 1986, to change its registration to that of a nonconnected political committee after it became aware of Commission opinions that distinguished between incorporated and unincorporated associations with respect to connected and nonconnected political committees. ATA PAC's reference is apparently to Advisory Opinion 1985-24, issued September 23, 1985.

(1) Can ATA provide additional compensation to some of its employees in recognition of certain social and civic demands placed upon them for political or other contributions² with the understanding that any additional sum given to employees in recognition of such demands are the personal funds of the employees to be used or not used as the employee chooses?

(2) Can any employee who receives such additional compensation contribute all or part of such compensation to ATA PAC if he or she chooses?³

(3) Can the Commission advise ATA of any guidelines for the establishment of a compensation augmentation program to enable employees to respond to requests for political or other contributions within the boundaries of the Act?

The Act permits certain persons, including individuals, to make contributions to Federal candidates and political committees but places limitations on the aggregate amounts of such contributions. See 2 U.S.C. 441a(a).⁴ The Act further provides, however, that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." 2 U.S.C. 441f.

This section serves to insure disclosure of the source of contributions to Federal candidates and political committees as well as compliance with the Act's limitations and prohibitions. As Commission regulations explain, a "contribution in the name of another" includes "[g]iving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, see 110.6."⁵ 11 CFR 110.4(b)(2)(i). It follows that the prohibition of section 441f includes the

² This opinion responds to your questions only with respect to contributions to Federal candidates or political committees since questions regarding other types of donations by ATA's employees are outside the Commission's jurisdiction.

³ Reports filed by ATA PAC for 1985 and the first nine months of 1986 disclose the receipt of approximately \$2,647 in contributions, of which \$817 was itemized. All of these itemized contributions were made by officers and employees of ATA.

⁴ Other persons including corporations, labor organizations, Federal contractors, and foreign nationals are prohibited from making contributions. 2 U.S.C. 441b, 441c, and 441e.

⁵ See also, U.S. Dept of Justice, Federal Prosecution of Election Offenses (4th ed.) at 38 (1984).

augmentation of compensation paid to an employee, in any manner, where such augmentation is done to effect a contribution in the employee's name to Federal candidates or political committees.⁶

According to your letter, ATA plans to pay additional compensation to certain employees to enable such employees to meet demands on them for contributions to ATA PAC and presumably to Federal candidates and other political committees. In these circumstances, the Commission concludes that ATA's payment to an employee for such purposes would constitute the making of a contribution in the name of another and is prohibited by section 441f. This responds to all three of your questions.

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

Enclosure (AO 1984-52)

⁶ The prohibition of section 441f, as noted, applies to any person (including any incorporated or unincorporated entity) who gives money to another to effect a contribution in the second person's name. Where the person giving such money is otherwise prohibited from making a contribution or gives money in excess of the limitations, an additional violation may also result. For instance, corporations are prohibited from making contributions in connection with a Federal election. See 2 U.S.C. 441b(a). Commission regulations pursuant to this section explain that a corporation may not use its treasury monies to pay any contributor for his or her contribution "through a bonus, expense account, or other form of direct or indirect compensation." 11 CFR 114.5(b)(1). See, e.g., Advisory Opinion 1984-52. Similarly, a foreign national is prohibited from making any contribution in connection with any election either directly or "through any other person." See 2 U.S.C. 441e(a). Although you indicate that the funds used to compensate ATA employees are derived from dues paid by foreign and domestic air carriers which are presumably corporations, you have not provided sufficient facts for the Commission to address whether any of these additional prohibitions would also apply to your proposed activity.