



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 13, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-18

Dan V. Jackson
Texas Industries, Inc.
8100 Carpenter Freeway
Dallas, Texas 75247

Dear Mr. Jackson:

This responds to your letter of May 21, 1987, requesting an advisory opinion on behalf of Texas Industries Political Action Committee ("TXI-PAC"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a plan by Texas Industries, Inc. ("TXI"), to match voluntary contributions made to TXI-PAC with equivalent donations to charities.

TXI-PAC is the separate segregated fund of TXI, a producer of building materials and steel also involved in real estate development. Your request notes that in the past TXI has actively contributed to charities and that most donations are in the form of commodities. You propose a plan to attract contributors to TXI-PAC by matching voluntary contributions made to TXI-PAC with donations by TXI to a charity of the contributor's choice. Such a plan is similar to one proposed and approved by the Commission in Advisory Opinion 1986-44 which allowed a corporation to match contributions made to its separate segregated fund with donations to charities.*/ Your request differs from that opinion in the following ways:

- the charities that may be designated are limited to a group of 5-10 selected by TXI management;
- the matching donations by TXI may be in the form of cash and/or commodities;
and
- the matching donations will be distributed over a two year period after the political contributions are made to TXI-PAC.

While your plan for matching voluntary contributions differs factually from the one previously approved by the Commission in Advisory Opinion 1986-44, these differences do not constitute material distinctions from that opinion. Therefore, your plan is permissible under the Act and regulations subject to the same conditions and qualifications in Advisory Opinion 1986-44 at footnotes 2, 3, and 4.

The Act prohibits a corporation from making contributions or expenditures in connection with any Federal election, but it excludes from the definition of contribution or expenditure "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation... ." 2 U.S.C. 441b(a) and 441b(b)(2)(C). Commission regulations explain that a corporation may use its treasury monies to pay the establishment, administration, and solicitation expenses of such a separate segregated fund, but it may not use this process as a means of exchanging treasury monies for voluntary contributions. 11 CFR 114.5(b). In this respect, Commission regulations further explain that a contributor may not be paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1).

The Act and regulations further provide that a corporation or its separate segregated fund may solicit contributions to such a fund from its stockholders and their families and its executive or administrative personnel and their families. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation to such persons for contributions to such a fund must also meet the requirements of a proper solicitation. See 11 CFR 114.5(a) and, in particular, 11 CFR 114.5(a)(5).

In its previous opinion, the Commission viewed a corporation's matching of voluntary contributions with charitable donations as a solicitation expense related to its separate segregated fund. See Advisory Opinion 1986-44. Such an expense is expressly permitted under 2 U.S.C. 441b(a) which allows a corporation to pay for the establishment, administration, and solicitation of contributions to its separate segregated fund. Thus, TXI matching of contributions with donations to charities is a permissible solicitation expense related to TXI-PAC. Additionally, since the individual contributor to TXI-PAC is not paid for the voluntary contribution through this process and does not receive any financial, tax or tangible benefit, it does not appear that TXI will be exchanging treasury monies for voluntary contributions. Accordingly, your plan is permissible under the Act and regulations subject to the same conditions noted in Advisory Opinion 1986-44.

Since the communication of this plan constitutes a solicitation, TXI and TXI-PAC may offer the plan only to those persons whom it may solicit for contributions to TXI-PAC, and the offer must meet the requirements of a proper solicitation.

The Commission expresses no opinion regarding any tax ramifications of your proposed activity since such issues are outside its jurisdiction.

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,

(signed)

Scott E. Thomas
Chairman for the Federal Election Commission

Enclosure (AO 1986-44)

*/ As was the case in Advisory Opinion 1986-44, the Commission assumes that the charitable donees qualify as 501(c)(3) entities under the Internal Revenue Code.