



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 21, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-22

J. Michael Willard
Willard & Arnold Communications, Inc.
405 Capitol Street
Suite 809
Charleston, WV 25301

Dear Mr. Willard:

This responds to your letters of June 23 and July 10, 1987, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to providing public opinion polls to candidates, or potential candidates, before such polls are made public.

You state that Willard & Arnold Communications, Inc. ("WACI"), is a for-profit stock corporation held entirely and equally by yourself and Linda Arnold. It engages primarily in advertising, public relations, governmental relations and market research. You indicate that, in an attempt to garner good will and potential clients, WACI plans to occasionally include, or "piggyback", on polls conducted for non-political business clients, questions concerning potential Federal election matchups between candidates and/or potential candidates. In cases where election questions are included, you propose to give the poll results to the candidate or potential candidate free of charge and before the results are made public. It is your intention that the non-political portion of the survey will be paid by the business client while WACI will pay for the political questions contained in the poll. You state that either you or Ms. Arnold will reimburse the corporation for the cost of the political portion of the poll.

In your July 10 letter, you indicate that no officer or stockholder of WACI is currently a paid consultant to any candidate or potential candidate for Federal office. You further state that the questions for the poll will be written entirely by you or Ms. Arnold without input from other clients. You ask under what circumstances may the results of the political portion of the survey

be made available to candidates and potential candidates, prior to public release of the poll, without being in violation of the Act.

The Commission's regulations, at 11 CFR 106.4(b), provide that:

[T]he purchase of opinion poll results by a political committee or other person not authorized by a candidate to make expenditures and the subsequent acceptance of the poll results by a candidate ... is a contribution in-kind by the purchaser to the candidate ... and an expenditure by the candidate.

The regulations further state that the poll results are accepted if the candidate "(1) requested the poll results; or (2) uses the poll results; or (3) does not notify the contributor that the results are refused." 11 CFR 106.4(b)(1), (2) and (3).

You state that WACI will initially finance the political questions on a particular poll and that either you or Ms. Arnold will pay the corporation for the costs incurred. You will then provide to a particular candidate, without receiving a request from that candidate, the results of the poll. The Commission concludes that such an arrangement is permissible under the Act, subject to the contribution limitations. See 2 U.S.C. 441a(a)(1)(A). Assuming the candidate accepts the polling results, a contribution in-kind would result from you or Ms. Arnold to the candidate. The Commission cautions, however, and premises its opinion on the assumption that WACI will not extend credit to you or Ms. Arnold on different terms than it does for other clients in the ordinary course of business and that you and/or Ms. Arnold will pay the usual and normal charge for the services provided. If these conditions are not met, a prohibited corporate contribution from WACI to the recipient candidate may result. See 2 U.S.C. 441b(a); 11 CFR 100.7(a)(1)(iii)(B), 114.1(a)(1), and 11 CFR 114.10. The regulations provide specific methods for computing the amount of the in-kind contribution resulting from giving the poll results to a candidate. See 11 CFR 106.4(e). In addition, you and/or Ms. Arnold, as contributors of poll results, are required to maintain records sufficient to support the valuation of each contribution in-kind and must inform each candidate-recipient of the value of each contribution. 11 CFR 106.4(h).

Finally, you state that the Federal election polling activity will be carried out, at least in part, "for the creation of goodwill." The Commission has previously stated that combining a promotional business purpose with election influencing activity by a corporation does not nullify or avoid application of the Act and Commission regulations. Advisory Opinion 1986-30.

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 1986-30)