



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

January 21, 1988

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-33

Rodney D. Joslin  
The Lawyers for Better Government Fund—Federal  
Jenner & Block  
One IBM Plaza  
Chicago, IL 60611

Dear Mr. Joslin:

This responds to your letter of December 10, 1987 on behalf of the Lawyers for Better Government Fund--Federal ("FUND") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the employment status of one of the FUND's contributors.

You state that the Lawyers for Better Government Fund-Federal is a nonconnected political action committee that contributes to candidates for Federal office. Although the FUND is sponsored by the law firm, Jenner and Block, it is not a separate segregated fund. According to your request, partners and employees of Jenner and Block contribute to the FUND on a voluntary basis.

One of Jenner and Block's partners may receive an appointment to the Council on Employee Welfare and Pension Benefit Plans ("Council"). The Council, established pursuant to the Employee Retirement Income Security Act of 1974, offers advice and makes recommendations to the Secretary of Labor. 29 U.S.C. 1142(b). The Council must meet at least four times a year and at the discretion of the Secretary. 29 U.S.C. 1142(b). Council members receive compensation equivalent to the annual rate of pay in effect for grade GS-18 for each day during which the member is engaged in actual duties. 29 U.S.C. 1142(d). You state your understanding that the Department of Labor views Council members as part-time employees.

You ask whether an individual partner of Jenner and Block, who is appointed as a member of the Advisory Council on Employee Welfare and Pension Benefit Plans, would be considered a

government contractor under 2 U.S.C. 441c. If so, you ask whether Jenner and Block would itself become a government contractor by virtue of the partner's appointment.

The Act and regulations prohibit a government contractor from making, directly or indirectly, any contribution of money or other thing of value to any political committee or other person for any political purpose or use. 2 U.S.C. 441c(a)(1), 11 CFR 115.2.<sup>1</sup> Any person who enters into a personal services contract with the United States or one of its agencies is a government contractor if compensation is paid from funds appropriated by Congress. 2 U.S.C. 441c(a), 11 CFR 115.1(a). A contract includes "...a written (except as otherwise authorized) contract, between any person and the United States or any of its departments or agencies, for the furnishing of...personal services." 11 CFR 115.1(c)(2).

The application of the government contractor prohibition in the circumstances presented in your request should be determined, at least in part, with reference to the Federal employee status of the partner who may be appointed to the Council. You state that the Department of Labor views persons appointed to the Council as part-time Federal employees. This characterization is supported by the definition of "employee" in Federal personnel statutes and also by the statutory provisions under which members of the Council are appointed and paid.

Under 5 U.S.C. 2105(a), a person is a Federal government employee if that person receives appointment from the President or from another person who is an employee; performs a Federal function; and if the person, while performing this Federal function, receives supervision from the President or one of his appointees to Federal employment.<sup>2</sup> The Secretary of Labor appoints and supervises individuals who serve as Council members. 29 U.S.C. 1142(a). Council members offer advice and make recommendations to the Secretary concerning employee welfare and pension benefit plans. 29 U.S.C. 1142(b). For their services, these members receive compensation on a per diem basis at a rate of pay prescribed by statute. 29 U.S.C. 1142(d). Council members do not negotiate a contract (written or otherwise) regulating the terms of their employment, but instead are subject to the terms of their appointment which, along with the amount of their compensation, is governed by Federal statute.

Accordingly, in the circumstances presented, the Commission concludes that Council members are not government contractors for purposes of the Act and regulations. Therefore, a partner at Jenner and Block who is appointed as a Council member is not a government contractor by virtue of that position and is not precluded by 2 U.S.C. 441c or related regulations from making contributions to the FUND, or from engaging in other activities within the purview of the Act and Commission regulations.

In view of the Commission's conclusion with respect to the partner's noncontractor status, it follows that the partnership would not be viewed as a government contractor solely on the basis of the appointment of a partner to the Council. Compare Advisory Opinion 1984-10 wherein the Commission concluded that the government contract held by the partnership barred individual partners from making contributions to influence Federal elections through the use of any partnership account.

This opinion does not address the Hatch Act or any other provisions that restrict or prohibit government employees from participating in political activity because any issues arising under those provisions are not within the jurisdiction of the Commission.

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)

Thomas J. Josefiak  
Chairman for the Federal Election Commission

Enclosure (AO 1984-10)

1/ These regulations also provide that the prohibition does not apply to contributions or expenditures in connection with State or local elections. 11 CFR 115.2(a).

2/ Moreover, Commission regulations, at 11 CFR 110.12(b)(1), define an employee to include any person appointed to a position of responsibility or authority in the United States Government who receives a salary, compensation, or reimbursement from the United States Government.