



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

CONCURRING OPINION

OF

COMMISSIONER SCOTT E. THOMAS

RE: ADVISORY OPINION 1987-34

I join the Commission's opinion, but write separately to underscore the narrow grounds on which its decision rests and to emphasize what it is not holding. One part of the opinion permits Sprint JV, the joint venture partnership of two corporations, to avail itself of the provision of the statute that allows a corporation or labor organization to pay without limit for the administration and solicitation costs of a separate segregated fund. See 2 U.S.C. §441b(b)(2)(C). Unless limited to this unique set of facts and understood as a very narrow departure from prior Commission rulings, this conclusion could lead to circumvention of the carefully-crafted restrictions carved by Congress, the Commission and the courts.

Until this opinion was issued, those who follow federal election law would have assumed safely that under no circumstances could a partnership pay without limit, and avoid disclosure of, the costs of administering and soliciting contributions to a political action committee. See Advisory Opinion 1982-63, 1 Fed. Elec. Camp. Fin. Guide (CCH), §5704 (1983) (holding that a law firm partnership may not provide unlimited support to its PAC "since the §441b(b) exceptions for expenses of establishment, administration and solicitation of contributions to a separate segregated fund are only available to national banks, corporations, labor organizations, including also certain corporate organizations specifically mentioned . . . ."); Advisory Opinion 1981-56, 1 Fed. Elec. Camp. Fin. Guide (CCH), §5646 (1982) (holding that a partnership (SBS) formed by three corporations could not defray the establishment and solicitation costs of a political committee "because SBS is a partnership rather than a corporation, [and] any funds spent to establish and maintain a political committee would be a "contribution" for purposes of the Act and subject to the limitations and prohibitions of the Act.")

What warrants taking a different course in the opinion at hand, in my view, is the crucial fact that the partnership, Sprint JV, is controlled by a corporate entity which could avail itself of the §441b(b)(2)(C) allowance. Actually, in the unique circumstances here presented involving a 50-50 joint venture, Sprint JV is deemed controlled by two corporations, each of which can utilize the exemption of §441b(b)(2)(C).\*/ Allowing Sprint JV to do what a corporation that controls it could do with respect to payroll deductions does not cause great violence to the statutory scheme.

It is important to note, however, that a partnership that is not controlled by any corporation could not have its PAC's establishment, administration, and solicitation costs paid by a corporation under the §441b(b)(2)(C) provision. See Advisory Opinion 1981-56, supra (none of the corporations that formed the joint venture partnership had a controlling interest).

It is also important to note that Advisory Opinion 1987-34 does not permit any partnership or other unincorporated organization to simply set up a corporation and thereby utilize the exemption at §441b(b)(2)(C) to pay without limit and without disclosure the establishment, administration and solicitation costs of a political committee. The second footnote of the draft opinion considered by the Commission was revised to reverse any such implication.

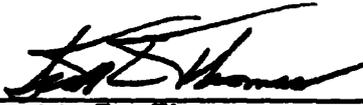
Confined to its facts, the Commission's opinion makes practical sense. It also makes legal sense when it is understood that Sprint JV is merely a controlled "affiliate" of GTE and United, both of which are corporations. The regulatory balance

---

\*/ The Commission's prior rulings leave little doubt that GTE or United, which each control Sprint JV, which in turn controls Telenet, would be permitted to pay for Sprint JV's payroll deduction costs relating to Telenet's PAC. See Advisory Opinion 1983-19, 1 Fed. Elec. Camp. Fin. Guide (CCH), § 5722 (1983) (holding that a corporation owning 50% of a joint venture corporation could pay for the establishment and administration costs of the political committee set up by the joint venture corporation pursuant to the exemption at §441b(b)(2)(C)) and opinions cited therein.

between corporate and labor organizations covered by §441b on the one hand, and partnerships and other unincorporated persons on the other, see California Medical Association v. FEC, 453 U.S. 182 (1981), is largely preserved. One can only hope that the opinion will not be misread and misapplied to disturb that balance in the future.

4/22/88  
Date

  
\_\_\_\_\_  
Scott E. Thomas  
Commissioner