



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 22, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-14

Neil C. Taylor, Esquire
Taylor, Moseley & Joyner
501 West Bay Street
Jacksonville, Florida 32202

Dear Mr. Taylor:

This responds to your letter of March 7, 1988, requesting an advisory opinion on behalf of Atlantic Marine, Inc. ("AMI"), and Atlantic Dry Dock Corp., ("ADD"), concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to certain proposed activities.

You state that AMI and ADD together propose to form a separate segregated fund ("PAC") pursuant to 2 U.S.C. 441b, and to solicit contributions¹ to the PAC from a variety of personnel of both companies. You have asked (1) whether AMI and ADD may form a PAC named "Atlantic Marine and Atlantic Dry Dock Separate Segregated Fund;" (2) whether the PAC may solicit contributions from personnel of both corporations; (3) whether a stockholder in both corporations may be the PAC's custodian and conduct twice-yearly solicitations; and (4) whether AMI and ADD are corporate affiliates, for purposes of the Act.

The answers to your first three questions turn on a resolution of the last question. Your request explains that these two corporations share many of the same officers and directors,² that shareholders common to AMI and ADD own approximately sixty percent (60%) of the outstanding shares of each corporation, and that the same corporate officer handles personnel, matters for both corporations. Moreover, from a review of documents relating to AMI and ADD which were submitted along with your request, it is evident that the governing bodies of each corporation overlap and that many of the same people are vested with authority to direct both corporations. It is also clear that the decisions of officers and directors of both AMI and ADD are influenced by substantially the same people.

In the Commission's regulations implementing the contribution limits of the Act, specifically the anti-proliferation language found in 2 U.S.C. 441a(a)(5), the concept of affiliation is applicable to a variety of relationships that may exist with respect to the control, direction or influence between organizations that intend to sponsor or establish political committees. 11 CFR 100.5(g)(2) and 110.3(a)(1). Commission regulations include the relevant factors that are considered in determining whether such affiliation exists: (1) ownership of a controlling interest in voting shares or securities; (2) provisions of by-laws, or other documents by which one entity has the authority, power, or ability to direct another entity; and (3) the authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers of an entity.³ 11 CFR 100.5(g)(2) and 110.3(a)(1); see Advisory Opinions 1988-41 1987-21 1986-42, and 1985-27.

When deciding whether one corporation is affiliated with another corporation for solicitation purposes, the Commission has applied the criteria for determining whether the corporations' PACs (presuming each entity has one) would be deemed affiliated for contribution limitation purposes. See Advisory Opinions 1984-36, 1983-48, 1982-18, 1980-18, 1979-77 and 1979-56. Thus, considering the cited regulation factors in the context of the information provided and otherwise derived from a published corporate directory, the Commission concludes that Atlantic Marine, Inc., is affiliated with Atlantic Dry Dock Corp. for purposes of the Act.

The Act specifically addresses the case of two affiliated organizations each having their own fund or political committee. See, 2 U.S.C. 441a(a)(5). It does not, however, preclude the situation presented here, where corporations deemed affiliated for purposes of the Act intend to jointly sponsor a single political committee or separate segregated fund. See Advisory Opinion 1980-18. Accordingly, AMI and ADD may jointly-establish a single PAC to receive and make political contributions in accordance with the Act and Commission regulations. See, in particular, 2 U.S.C. 441b and 11 CFR Part 114.⁴

Under the Act and Commission regulations, the name of any separate segregated fund must include the full name of its connected organization. 2 U.S.C. 432(e)(5); 11 CFR 102.14(c). While the regulations permit the use of a clearly recognizable abbreviation or acronym, the separate segregated fund must use the complete official name of its connected organization in its Statement of Organization, in all reports filed by the PAC, and in all disclosure notices. See 11 CFR 109.3, 110.11; see also Advisory Opinion 1987-26. Accordingly, because AMI and ADD are joint sponsors of a single PAK, they may establish a PAC with an official name that includes the full name of both corporations. A name that meets the requirements would be: "Atlantic Marine, Inc., and Atlantic Dry Dock Corp. Separate Segregated Fund." That PAC, or AMI and ADD on behalf of the PAC, may solicit otherwise lawful contributions from those individuals and their families who are stockholders or executive or administrative personnel of either AMI or ADD. The personnel who may be solicited for voluntary contributions to the PAC are described below.

A separate segregated fund and its connected corporation(s) are limited as to the categories of personnel who may be solicited for contributions to the PAC. In this case, since AMI and ADD are for-profit corporations, with stock, the generally solicitable class would include the individual stockholders of both corporations and their families, as well as executive and

administrative personnel of AMI and ADD and their families. 2 U.S.C. 441b(b)(4)(A)(i), 11 CFR 114.5(g). The term "stockholder" is defined in Commission regulations. 11 CFR 114.1(h). The term "executive or administrative personnel" is defined in the Act and Commission regulations. 2 U.S.C. 441b(b)(7), 11 CFR 114.1(c).

Finally, with regard to whether an individual who is a stockholder in both corporations may act as the PAC's custodian for purposes of twice-yearly solicitations permitted under the Act, the Commission concludes that such a person may not.

Under prescribed conditions, the PAC, or AMI and ADD on behalf of the PAC, may make written contribution solicitations twice each year to employees of AMI and ADD (other than the corporations' stockholders, executive or administrative personnel and their families). 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6. The regulations at 114.6(d)(1) disqualify certain categories of persons from serving as custodian for a separate segregated fund with respect to the twice yearly solicitations. Those persons disqualified are stockholders, officers, or employees of the corporation and officers or employees of that corporation's separate segregated fund. Other persons are not disqualified under the Commission's regulations, and could serve as custodians. See 11 CFR 114.6(d)(5); see also Advisory Opinion 1977-49. Accordingly, under the Commission's regulations, it is clear that the Assistant Treasurer, who is a stockholder in both corporations, may not be a custodian for purposes of the PAC's twice-yearly solicitations.

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 of the Federal Election Commission

Enclosures (AOs 1988-4, 1987-26, 1987-21, 1986-42, 1985-27, 1984-36, 1983-48, 1983-19, 1982-18, 1980-18, 1979-77, 1979-56 and 1977-49)

1/ The Act prohibits a corporation from making contributions or expenditures in connection with a Federal election, but it excludes from the definition of "contribution" or "expenditure" the costs of 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). See also, 11 CFR 114.1(a) and 114.1(b).

2/The Commission notes that: George W. Gibbs, III, is Chief Executive Officer of AMI and President of ADD; Daniel C. Seller, Jr., is Secretary and Treasurer of AMI and Secretary of ADD; Edward P. Doherty, is President of AMI and an officer of ADD; and that Walter J.

Hartley, Jr., along with Crawford L. Johnston and John P. Rohan, are also officers of both AMI and ADD. See Million Dollar Directory, Dun's Marketing Services, 1987, pp. 309, 310.

3/ Two other factors set out in the regulations are not implicated in this opinion.

4/ Under 2 U.S.C. 441b(b)(2)(c) a corporation is permitted to use its general treasury funds to pay for the costs of establishing, administering and soliciting contributions to its separate segregated fund. The payment of such expenses is not considered a reportable contribution or expenditure under the Act. 2 U.S.C. 431(8)(B)(vi), 431(9)(B)(v). Since joint sponsorship of the PAC is permissible under the circumstances presented, nothing in the Act or Commission regulations would prohibit allocation of the exempt expenses related to the PAC between AMI and ADD. See Advisory Opinions 1983-19 and 1980-18. In addition, because the regulations permit a corporation to control its PAC, including the contributions it makes to candidates, AMI and ADD may jointly or separately control or direct the selection of candidates who will receive PAC contributions subject to the Act's limits. 11 CFR 114.5(d), see 2 U.S.C. 441a(a)(1), (a)(2).