



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 20, 1988

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-18

James I. Singer  
Schuchat, Cook & Werner  
The Shell Building, Suite 250  
1221 Locust Street  
St. Louis, Missouri 63103-2321

Dear Mr. Singer:

This responds to your letter of April 4, 1988, requesting an advisory opinion on behalf of Local 36, Sheet Metal Workers International Association, AFL-CIO, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the unlawful use of funds contributed by Local 36 to aid State and local candidates.

Your letter explains that Local 36 may contribute funds from its regular accounts, which contain dues monies, to State and local candidates and to local party organizations. The union intends that the donees use the funds for State and local election purposes only, because the Act and Commission regulations prohibit Local 36 as a labor organization, and any of its officers, from making or consenting to any contribution from union treasury funds, including dues monies, in connection with Federal elections. 2 U.S.C. 441b(a), (b)(2); 11 CFR 100.5(b), 114.2(b) and (c), 114.5(b). The Act also forbids a candidate or political party knowingly to accept or receive any prohibited contribution. 2 U.S.C. 441b(a). See 11 CFR 114.2. Missouri law, in contrast, permits a labor organization to make political contributions from its own funds, including dues monies. See, e.g., Campaign Finance Disclosure Law, MO. REV. STAT. §130.029 (1986).

You ask the Commission, in responding to your query, to make three assumptions.

1. Local 36 has complied with and will continue to comply with all relevant Missouri laws, including those laws governing the use of union dues to make political contributions.

2. Local 36 will communicate to its donees its intention to contribute money for State and local political matters only, that is, the union will earmark or designate its contributions.
3. Local 36's intended donees must comply with 11 CFR 102.5, which describes accounting practices for organizations that contribute both to non-Federal and to Federal elections.\*

Although no prior advisory opinion is directly on point, several offer guidance here. All concern responsibilities imposed by the Act and Commission regulations on persons who receive contributions that were made by others in violation of the Act.

Advisory Opinion 1978-53 indicates that candidates who, when they received labor organization PAC contributions, had no knowledge of the illegal procedure used to collect the contributions need not return the money, provided that the contributions were otherwise lawful. By contrast, in Advisory Opinion 1984-52, a congressional candidate was required to refund contributions, ostensibly from corporate employees, once he learned that the corporation itself had used illegal employee bonuses to provide the funds. The Commission emphasized that the Act and the regulations together create a mandatory and detailed scheme of obligations for recipients. Among these obligations is the duty to scrutinize the source and legality of contributions received. See 11 CFR 103.3(b).

Advisory Opinion 1982-38 rests heavily on the Act's imposition of affirmative obligations. A principal campaign committee inquired whether it might accept contributions from various county Democratic committees in a state whose laws permitted corporations to make political contributions from their corporate treasuries. The Commission concluded that the Act barred the committee from accepting contributions from those county committees that had failed to comply with the accounting procedures specified in 11 CFR 102.5(b)(1)(ii). The county committees' lack of actual knowledge that their treasuries had insufficient appropriate funds would not make their accounting practices acceptable. "Application of an 'actual knowledge' standard falls short of fulfilling the affirmative obligation imposed on both the contributor/non-political committee and the recipient/political committee to ascertain whether the contributor had received sufficient funds when the contribution was made."

These Advisory Opinions suggest the answer to your question whether Local 36 would be found in violation of the Act, particularly 2 U.S.C. 441b, if, without Local 36's prior knowledge, the union treasury funds it contributed to aid State and local candidates were instead used by the donees to influence the election of Federal candidates. To avert its own possible violations of the Act in the circumstances presented, Local 36 should continue its prudent policy and procedure of making written designations with its contributions to State and local candidates and to local political party organizations. These designations should clearly convey Local 36's directions that the funds contributed are restricted to influencing the elections of State and local candidates only. If the union, as your letter indicates, intends to support a particular State or local candidate or is interested in a particular State or local election, the union may provide more detailed instructions. For example, the union may write the name of the specific candidate or specific

election on its check (or other written instrument) or it may achieve the same end by attaching a signed statement to its check with the information.

The Commission expresses no opinion concerning the application of any Missouri statute or regulations that may govern the union's State and local political activity.

This response constitutes an advisory opinion concerning application of the Act or regulations prescribed by the Commission to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Thomas J. Josefiak  
Chairman of the Federal Election Commission

Enclosures (AOs 1984-52, 1982-38, and 1978-53)

\* Organizations that qualify as political committees under the Act and that finance political activity in connection with both Federal and non-Federal elections must choose one of two accounting plans outlined in subsection (a) of 11 CFR 102.5. Organizations that do not qualify as political committees but that also contribute both to Federal and to non-Federal elections must choose one of two accounting plans described in subsection (b) of 11 CFR 102.5.