



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 26, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-19

John C. Biehl
Ashland Oil, Inc.
P.O. Box 391
Ashland, KY 41114

Dear Mr. Biehl:

This refers to your letter dated April 7, 1988, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of voluntary contributions from employees of Ashland Oil, Inc. ("Ashland") who purchase stock through Ashland's Leveraged Employee Stock Option Plan ("LESOP").

According to your request, Ashland is planning to solicit contributions from its employees to its separate segregated fund. You state that while many of these employees may qualify as executive or administrative personnel, as defined by 11 CFR 114.1(c), some may not meet this definition. Because many of these employees participate in Ashland's LESOP, however, you ask whether they may be solicited as stockholders pursuant to 11 CFR 114.1(h).

According to your request, an employee of Ashland, its affiliates, or subsidiaries, is a member of LESOP provided the employee has completed one year of company service, the employee is not compensated on an hourly basis, and is not represented by a collective bargaining unit.

You indicate that in 1986 Ashland purchased and provided to a LESOP Trustee a block of approximately 5.35 million shares of Ashland common stock. The LESOP requires that the Trustee allocate the stock to the account of each participating employee over a ten year period. The Trustee makes the allocation twice yearly in accordance with a formula based on the salaries of all employees. LESOP Plan Document at art. 5; Explanatory Brochure, Allocation of Shares (March 29, 1988).

You explain that an employee becomes vested in the stock allocated to the employee's account based on length of company service. For each complete year of service, ten percent (10%) of the allocated shares becomes vested. LESOP Plan Document at art. 6. Therefore, at the completion of one year of service to Ashland, 10% of the shares allocated to a participating employee's account are vested. Accordingly, a participating employee with more than six but less than seven years of service would be vested in 60% of the allocated shares. Based on Ashland's allocation formula, a participating employee who earns \$10,000 a year is allocated twenty shares each year. Therefore, at the end of an employee's first year of employment, the employee has a vested right in two of these allocated shares.

You also indicate that participating employees are given the right to vote the stock allocated to their accounts as exercised through the Trustee. LESOP Plan Document at Amendment 2, 8.6; LESOP Trust Agreement at §5(d). Before each annual or special meeting of shareholders, the Trustee must send each participating employee a copy of the solicitation material for such meeting, together with a form that requests the employee to provide instructions to the Trustee on how to vote the common stock allocated to the employee's account. LESOP Plan Document at Amendment 2, §8.6.

Finally, the LESOP provides that any dividends paid to the Trust which is allocated to participating employees may be used to acquire common stock or at the direction of Ashland may be distributed to participating employees, provided the Trustee may hold such cash amounts as it deems advisable in accordance with the Trust Agreement. LESOP Plan Document at Amendment 2, 4.5. You explain that Ashland cannot make any representations about its intention or ability to declare dividends on its common stock. To the extent that dividends are declared, however, Ashland intends that LESOP members receive them, as applicable to allocated shares, on a quarterly basis. To date, Ashland has approved and the Trustee has distributed quarterly dividend checks. See letters to Employee-Stockholders/ESOP Participants from John R. Hall, May 16, 1986 and June 15, 1986.

Given these facts, you ask whether employees participating in the LESOP would be considered stockholders under 11 CFR 114.1(h).

Under Commission regulations, a stockholder is defined as a person who (i) has a vested beneficial interest in stock; (ii) has the power to direct how that stock shall be voted; and (iii) has the right to receive dividends. 11 CFR 114.1(h); see also Advisory Opinions 1984-5, 1983-35, and 1983-17.

With respect to vested stock interests, those Ashland employees eligible to participate in the LESOP receive a 10% vested interest in Ashland Common Stock allocated to their account after one year of employment. Therefore, after one year of employment, participating employees would appear to own a vested beneficial interest in at least one share of Ashland common stock.

A participant in the LESOP must also satisfy the requirement that a person has the "power to direct how that stock shall be voted." Before each stockholder meeting, LESOP participants receive background materials and forms from the Trustee that ask the employee participant to direct the Trustee as to how to vote that employee's shares. Accordingly, this right to instruct the

Trustee provides the employee participant with the necessary "power to direct" the voting of shares.

Finally, with respect to employee participants' right to receive dividends, all dividends earned on employees' vested shares have been approved by Ashland and distributed by the Trustee to the employees in cash. Moreover Ashland indicates its intent to continue such a policy in the future. Therefore, as long as Ashland continues this policy, an employee in the LESOP satisfies the dividend requirement.

Accordingly, the Commission concludes that a LESOP participant who has a vested interest in Ashland common stock is a stockholder under 11 CFR 114.1(h). Ashland may solicit voluntary contributions from an employee stockholder, provided, such solicitations meet the requirement for a proper solicitation under the Act and regulations. See, in particular, 11 CFR 114.5(a).

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 yours,

(signed)

Thomas J. Josefiak
Chairman of the Federal Election Commission

Enclosures (AOs 1984-5, 1983-35 and 1983-17)