



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 7, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-26

Marc R. Jartman
UNC Incorporated
175 Admiral Cochrane Drive
Annapolis, MD 21401

Dear Mr. Jartman:

This responds to your letter dated April 22, 1988, and your supplemental letters of May 27, 1988, and June 7, 1988, requesting an advisory opinion on behalf of UNC Incorporated ("UNC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed political solicitation of pilot simulator training instructors by UNC or its separate segregated fund.

Your letters state that, pursuant to a contract with the U.S. Navy, pilot simulator training instructors who are permanent employees of a UNC subsidiary, Burnside-Ott, give classroom and simulator instruction to student Navy pilots and supervise and assess the students' performance. Company quality assurance or supervisory personnel periodically observe the instructors at work to ensure that the instruction meets contractual requirements and satisfies the company's standards of completeness, accuracy, and quality. Government officials also monitor and evaluate the instructors' performance. Administrative personnel assist the instructors by scheduling classes and obtaining training materials.

Each simulator training instructor working on the Navy contract earns more than \$250 a week. The instructors receive an hourly wage, not a salary, and their compensation is subject to FICA withholding tax.

You ask whether the instructors come within the class of persons described in 11 CFR 114.1(c) from whom UNC or its separate segregated fund, UNC Incorporated Public Responsibility Fund, may solicit voluntary political contributions.

The Act and Commission regulations prohibit a corporation to make contributions or expenditures in connection with a Federal election. 2 U.S.C. 441b(a). A corporation may, however, establish, administer, and solicit voluntary contributions to a separate segregated fund, used for political purposes. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.2 and 114.5. The Act permits a corporation or its separate segregated fund to solicit contributions to the fund at any time from "its stockholders and their families and its executive or administrative personnel and their families." 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1); 11 CFR 114.6.¹ The Act defines "executive or administrative personnel" as "individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities." 2 U.S.C. 441b(b)(7). See also 11 CFR 114.1(c).

Because the pilot simulator training instructors are paid on an hourly basis and not on a salary basis, they fail to meet the second criterion of 2 U.S.C. 441b(b)(7) and 11 CFR 114.1(c). Foreseeing this difficulty, you assert in your June 7th letter that the hourly wage arrangement "was a requirement of our contract[,] which included a Department of Labor Wage Determination prescribed by the Service Contract Act [of 1965]," 41 U.S.C. 351 et seq. You also state that all Burnside-Ott personnel working full-time on the simulator training contract--including persons whom you refer to as "managers"--are paid on an hourly basis. You imply that these considerations should result in suspension of the non-hourly wage criterion.

The Commission notes, first, that 2 U.S.C. 441b(b)(7) and 11 CFR 114.1(c) exclude without ambiguity hourly wage earners from the definition of executive or administrative personnel. These sections contain no language permitting a waiver of the clear exclusion. Second, the Commission points out that the Service Contract Act of 1965 does not require that all persons who furnish services to the United States be paid on an hourly basis. See, e.g., 41 U.S.C. 357 (definition of "service employee," the key statutory term). UNC voluntarily entered into a contract with the U.S. Navy that included an hourly wage provision for UNC Burnside-Ott's simulator training instructors as well as for other UNC personnel.

The Commission concludes that UNC Burnside-Ott's simulator training instructors do not fall within the meaning of "executive or administrative personnel" under the Act and regulations. 2 U.S.C. 441b(b)(7) and 11 CFR 114.1(c).² Thus, UNC or its separate segregated fund may not solicit political contributions from these individuals under 2 U.S.C. 441b(b)(4)(A)(i) and 11 CFR 114.5(g)(1).

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 for the Federal Election Commission

1/ The Act and Commission regulations allow a corporation or its separate segregated fund to make two written solicitations for voluntary political contributions during a calendar year from the corporation's employees who are not executive or administrative personnel or stockholders and from the families of those employees. 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6. The procedures for twice yearly contribution solicitations include several requirements that are more restrictive than the solicitation requirements applicable to restricted class personnel. See 11 CFR 114.6(c), (d).

2/ The Commission rests its decision on the instructors' being paid on an hourly basis. It expresses no opinion whether the work of the simulator training instructors involves any of the four kinds of special responsibilities listed in 2 U.S.C. 441b(b)(7) and 11 CFR 114.1(c).