



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 15, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-27

Mr. Leigh Snell
Public Affairs Support Services
401 Wythe Street
Suite 2-A
Alexandria, VA 22314

Dear Mr. Snell:

This responds to your letter of May 4, 1988 and your supplement of June 3, 1988, requesting an advisory opinion on behalf of Medivision, Inc. ("Medivision") concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations to the payment of expenses for a Medivision PAC fundraising event.

You explain that Medivision, Inc., the manager of one of the largest networks of eyecare centers in the country, sponsors the separate segregated fund, Medivision PAC. Medivision PAC intends to hold a reception and dinner within one hundred and twenty days before the November election that will inform invitees of Medivision's Federal relations efforts. You state that Medivision PAC plans to invite to this event only Medivision's one hundred and thirty stockholders. These individuals live in eighteen different states with approximately one quarter of these individuals living in Massachusetts.

You explain that Medivision PAC would also like to invite a member of Congress to speak at its event. You state that although Medivision PAC has not selected this featured speaker, the potential invitee will be a Congressman or Senator who has announced his or her candidacy for reelection and who is familiar with Medivision and its activities. "Such familiarity could be either the result of a strong constituent relationship between Medivision or its affiliates and the member, or as a result of the member's service on a committee with jurisdiction over an issue of particular concern to Medivision." Medivision will pay an honorarium directly to the speaker or the speaker's designated charity, but "in no event does Medivision intend to pay an honorarium to the speaker's authorized campaign committee." In addition to the honorarium, Medivision

PAC may make a contribution to the speaker's Federal election campaign. Medivision, however, will not enter into an explicit or implied agreement to make a contribution from Medivision PAC to a speaker's Federal election campaign as consideration for participation in a planned fundraising activity. Moreover, Medivision or Medivision PAC will not make an effort, in connection with a speaker's appearance at a fundraising event, to "solicit or direct or control" contributions from attendees to the speaker's reelection campaign.

You also indicate that the invitation to the event will clearly state the political purpose of Medivision PAC and the name of the member of Congress featured as speaker. The invitation will also indicate that the event will raise funds for Medivision PAC and that payment of the ticket price to the event will constitute a contribution to Medivision PAC. Finally, the invitation will state that an invitee may refuse to purchase a ticket without reprisal.

Given these facts, you ask whether Medivision may pay for all the reception and dinner's expenses, including the cost of printing and mailing invitations and the cost of the room, food, and service personnel. Additionally, you ask whether Medivision may pay an honorarium to the member of Congress invited to speak at the fundraising event.

The Act prohibits a corporation from making any contribution or expenditure in connection with Federal elections. 2 U.S.C. 441b. Contributions include direct or indirect payments or gifts of money or any services, or anything of value, to any candidate for Federal office. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). This general prohibition excludes from its definition "the 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(b)(2)(C) and 11 CFR 114.1(a)(2)(iii); see also 2 U.S.C. 431(8)(B)(vi) and 431(9)(B)(v); 11 CFR 100.7(b)(10) and 100.8(b)(11). Commission regulations further define "establishment, administration, and solicitation costs" to mean the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in setting up and running a separate segregated fund. 11 CFR 114.1(b). Moreover, the general prohibition against corporate contributions and expenditures has an exception that allows a corporation to communicate with its executive and administrative personnel and their families and stockholders and their families on "any subject" including partisan electioneering messages. 2 U.S.C. 441b(b)(2)(A); 11 CFR 114.1(a)(2)(i) and 114.3.

Your request indicates that Medivision intends to invite only members of its restricted class to its dinner and reception. This dinner and reception is a fundraising event for Medivision PAC. Accordingly, the Commission concludes that Medivision may pay for the costs associated with sponsoring the fundraiser, including printing invitations, renting a room, supplying food and paying for service personnel, in order to administer and solicit contributions for Medivision PAC. Medivision may also solicit contributions from its invitees to the PAC, including the payment of the ticket price for the dinner and reception.¹

The Act also exempts from the definition of contribution any honorarium paid to an elected or appointed officer or employee of the Federal Government for any appearance, speech or article. 2 U.S.C. 431(8)(B)(xiv) and 441i(a), and 11 CFR 110.12. In Advisory Opinion 1978-32, the Commission concluded that a payment to a candidate's campaign committee that was made for

the purpose of influencing the candidate's election would be a contribution under the Act, even if such payment was made in conjunction with a speech by the candidate.

The Commission has also concluded, however, that events in which Federal officeholders participate in the performance of their duties as officeholders are not campaign-related simply because the officeholders may be candidates for election or reelection to Federal office, and that payments or donations associated with the expenses of such events are not contributions to that officeholder's campaign, absent any campaign-related activity at the event. See Advisory Opinions 1980-89 and 1980-22. In advisory opinions involving public appearances by candidates for Federal office, the Commission has considered the nature and purposes of an event to determine if it is campaign-related so as to implicate the making of contributions or expenditures by those sponsoring or financially supporting the event. The Commission has stated that if an event involves (i) the solicitation of political contributions or (ii) the express advocacy of a candidate's election or defeat, then the event would be viewed as a campaign event for the purpose of influencing a Federal election; the Commission has also concluded that the absence of express advocacy or solicitations will not preclude a determination that public appearances are campaign-related. See Advisory Opinions 1988-22, 1986-37, 1984-13, 1982-50, and 1982-16.

With respect to your proposed payment of an honorarium to the member of Congress invited to speak as part of your PAC fundraising event, you indicate: that Medivision PAC will select a featured speaker on the basis of the member's familiarity with Medivision through their work as a public officeholder; that Medivision will pay the honorarium directly to the speaker or the speaker's designated charity, and not to the speaker's election campaign; that neither Medivision nor Medivision PAC will "solicit or direct or control" contributions to a featured speaker's election campaign from invitees, either at the event or in the invitations; and that any contribution that Medivision PAC may make to the speaker's Federal election campaign will not be in consideration for the speaker's participation in the PAC event. Based on these facts, the Commission assumes that the speech will be made in the performance of the speaker's duties as an officeholder, including a discussion of legislative issues or the encouragement of contributions to Medivision PAC, and will not be related or in reference to the speaker's campaign for Federal office. The Commission concludes, therefore, that any payment by Medivision to the featured speaker will constitute an honorarium under 2 U.S.C. 441i and not a contribution.

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

Enclosures (AOs 1988-22, 1986-37, 1985-28, 1984-13, 1982-50, 1982-16, 1980-89, 1978-32, and 1977-22).

1/ The Commission notes that the payment of the ticket price will constitute a contribution from the invitee to Medivision PAC for the full cost of the ticket. See Advisory Opinions 1985-28 and 1977-22.