



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 24, 1989

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-3

David Binns, Treasurer  
The Employees Stock Ownership Association Political Action Committee  
1100 17th Street, N.W.  
Suite 310  
Washington, D.C. 20036

Dear Mr. Binns:

This responds to the letter dated March 6, 1989, sent by you and by Joseph Lafferty, Chairman of Branham, Inc., requesting an advisory opinion on behalf of The Employee Stock Ownership Association Political Action Committee ("ESOP PAC") and Branham concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed use of payroll deductions systems by member corporations of The Employee Stock Ownership Association, Inc. ("the ESOP Association").

Your letter explains that ESOP PAC is the separate segregated fund of the ESOP Association, a national non-profit incorporated trade association comprised of 900 regular members and 500 associate members who are individual professionals providing services to ESOPs. Branham is a corporate member of the ESOP Association.

You state that each year since its establishment in 1985, ESOP PAC has requested approval from the Association's corporate members to solicit their executive and administrative personnel and their families. This year ESOP PAC will also solicit the employee stockholders of these corporations and their families. You state that, "[i]f approved by the Commission, the ESOP PAC will suggest to the member corporations that they use a payroll deduction system for those employee stockholders who choose to contribute to the ESOP PAC." According to your request, Branham has approved solicitation by ESOP PAC of its employee stockholders in 1989 and proposes to use a payroll deduction system for the making of contributions.<sup>1</sup> You ask whether

Branham may use a payroll deduction plan to collect contributions from its employee shareholders to ESOP PAC.

Contributions to a corporation's separate segregated fund may generally be solicited from the corporation's "restricted class," composed of the stockholders, executive and administrative personnel, and the families of both groups. 2 U.S.C. 441b(b)(4)(A); 11 CFR 114.5(g)(1). Contributions to the separate segregated fund of a trade association may, under certain conditions, be solicited from the "restricted class" of each corporate member of the trade association. 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c).

The Commission's regulations specifically provide that a member corporation of a trade association "may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association." 11 CFR 114.8(e)(3). The omission of "stockholders" from that subsection could be read to exclude employees who are stockholders from the regulation's bar to the use of payroll deduction methods for contributions to a trade association's separate segregated fund. The Commission interprets this subsection, however, to intend that the same prohibition apply to all of the member corporation's restricted class for which a payroll deduction method would be available, i.e., its solicitable employees. The Commission concludes that the absence of any reference to stockholders in 114.8(e)(3) does not indicate an intentional exemption for employee/stockholders.

In Advisory Opinion 1983-17, the Commission determined that a corporation could use a payroll deduction plan to collect contributions to its own separate segregated fund from employees who qualified as stockholders under 11 CFR 114.1(h). The Commission concluded that such employees, otherwise only solicitable by the corporation under the more restrictive provisions of 11 CFR 114.6, were instead solicitable as stockholders under 11 CFR 114.5, and could, therefore, have their contributions collected by means of the payroll deduction methods permitted other employees within the "restricted class."

As you note in your request, the practical result of Advisory Opinion 1983-17 was to broaden the availability of the use of payroll deduction plans for collecting employee contributions to a separate segregated fund. The circumstances of that opinion involved contributions to the corporation's own fund, however, for which the applicable regulations specifically contemplate the availability of payroll deduction plans for employees in the "restricted class." See 11 CFR 114.5(k)(1). Moreover, the opinion's fundamental result was to treat all employees within the restricted class equally with respect to those contribution collection methods available under the regulations.

Similarly, the Commission here interprets the prohibition of 114.8(e)(3) to bar the use of a payroll deduction plan for contributions to a trade association's separate segregated fund from all employees of a member corporation that may be solicited by the trade association, including stockholders.<sup>2</sup> The Commission concludes, therefore, that Branham may not use a payroll deduction plan to collect contributions from its employee shareholders to ESOP PAC.

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)

Danny L. McDonald  
Chairman for the Federal Election Commission

Enclosures (AOs 1988-36, 1988-19, 1986-13, 1985-37, 1985-12, 1984-5, 1983-35, 1983-17, 1982-36, and 1980-59 and Re: AOR 1976-94)

1/ You specifically state, and the Commission assumes for purposes of this opinion, that the employee shareholders involved qualify as stockholders under 11 CFR 114.1(h) (see Advisory Opinions 1988-36, 1988-19, 1984-5, 1983-35, and 1983-17), and that the member corporations that have approved solicitations by ESOP PAC have not given such approval to any other trade association or its separate segregated fund for the same calendar year, pursuant to 11 CFR 114.8(c).

2/ Because the Commission views your proposed activity as specifically precluded by 11 CFR 114.8(e)(3), the Commission does not address the issue of whether payroll deduction methods, if generally permitted under these circumstances, would constitute "incidental" assistance to the solicitation of contributions to ESOP PAC under 114.8(e). See Commission Response to Advisory Opinion Request 1976- 94. Compare Advisory Opinions 1986-13, 1982-36, and 1980-59.

Furthermore, the individual corporate members of the ESOP Association do not meet any of the disjunctive criteria set out in 11 CFR 102.6(b)(1)(i)-(iv) so as to qualify as "collecting agents" for the Association. See Advisory Opinions 1985-37 and 1985-12.