



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 23, 1989

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-17

Dan Messamore
Assistant Vice President/Operations
Ford Bank Group, Inc.
P.O. Box 5240
Lubbock, Texas 79417-5240

Dear Mr. Messamore:

This responds to your letters dated August 16, 1989, August 29, 1989, and October 2, 1989, requesting an advisory opinion on behalf of Ford Bank Group, Inc., concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of the restricted class of employees of banks controlled by Gerald J. Ford and related parties.

You state that Ford Bank Group, Inc. ("FBG") is a multibank holding company controlled by Mr. Ford and "related parties," which you also refer to as "the control group." Mr. Ford, who is the Chairman of the Board of Directors, owns or controls 57.62% of the issued and outstanding common stock of FBG, pursuant to Shareholder Agreements (the Investor Agreements, the Employee Agreements, and the Bank Holding Company Agreements). The control group consists of Mr. Ford and seventeen individuals who are parties to either the Investor Agreements or the Employee Agreements. Pursuant to the Shareholder Agreements, Mr. Ford has the exclusive right to vote these shares which are owned beneficially by him and the other members of the control group.¹ According to the "Proxy Statement for Annual Meeting of Shareholders" submitted by you, the ownership of the common stock by the investors and the employees and their families and the provisions of the Shareholder Agreements "may have the effect of delaying, deferring or preventing a change in control of [FBG] and may make [FBG] a less attractive target for a takeover bid opposed by the Board of Directors or Gerald J. Ford."

FBG currently owns four subsidiary banks, i.e., First National Bank at Lubbock; First National Bank of Plainview; Yoakum County State Bank, Denver City; and First National Bank of Post.²

You state that Mr. Ford and the related parties "control" four "affiliate" banks. These banks are: (1) the First National Bank of Borger ("FNB Borger"), a wholly owned subsidiary of First Borger Bancshares which is controlled 46.05% by FBG, 20% by Mr. Ford, and 33.95% by other members of the control group; (2) the First National Bank in Canyon ("FNB Canyon"), a wholly owned subsidiary of First Canyon Bancorporation which is controlled 34.04% by Mr. Ford, 17.97% by Gary Fletcher, a member of the control group, a director of FBG, and Chairman of Plainview Bank's Executive Committee, and 19.95% by other members of the control group; (3) First State Bank of Crane ("FSB Crane"), a wholly owned subsidiary of Permian Financial Corporation which is controlled 37.34% by Mr. Ford, 19.22% by Robert Nichols, a member of the control group and a director of FBG, and 13.45% by other members of the control group; and (4) the United National Bank, Dallas ("UNB Dallas") which is owned by 68 investors, with 10.51% of the shares owned by Mr. Ford, who is the Board Chairman, and 16.63% of the shares owned by other members of the control group. Mr. Ford is the largest shareholder in the Dallas bank, and the next largest shareholder controls 5.8% of the stock. With respect to FNB Canyon and FSB Crane, you state that "[t]here is no formal shareholder agreement with the control group of these two banks other than common ownership with Mr. Ford throughout the system and common goals." With respect to UNB Dallas, you state that its relationship with FBG "involve[s] the sharing of FBG resources with UNB Dallas including management and purchasing resources."

You state that the first three affiliates are scheduled to be merged into FBG on December 31, 1989, and will operate as FBG subsidiaries. At that point, FBG will own and control, "directly or indirectly," 100% of the banks. UNB Dallas will not be merged into FBG but will remain as an FBG affiliate.

The members of the control group appear to have interests in common throughout the group of banks over which FBG claims control. Each person is either an officer or director of FBG, an officer or director of a subsidiary bank, an officer or director of an affiliate bank, a holder of shares in FBG or one or more of the controlled banks, or holds a combination of these positions.

You state that FBG is forming Ford Bank Group Political Action Committee, Inc. ("FBG PAC"), but that none of the other banks plan to form a political committee. FBG will be paying all establishment, administration, and solicitation costs incurred by FBG PAC. You ask whether FBG PAC may solicit contributions from the executive and administrative personnel of the three affiliate banks scheduled to become subsidiaries of FBG on December 31, 1989, and from the executive and administrative personnel of the remaining affiliate bank. You also ask how these affiliates should be reported on FBG PAC's Statement of Organization.

A corporation, or a separate segregated fund established by a corporation, may solicit contributions to such a fund from its executive and administrative personnel, its stockholders, and the families of such persons. 2 U.S.C. 441b(b)(4)(A)(i). Commission regulations provide that a corporation's solicitable class extends to the executive and administrative personnel of its "subsidiaries, branches, divisions, and affiliates and their families." 11 CFR 114.5(g)(1). The term "affiliates" is not defined in the regulations. In determining whether entities are affiliates of each other or of another corporation for solicitation purposes, the Commission has considered whether the separate segregated funds of all those entities, if they had such funds, would be

affiliated. See Advisory Opinions 1988-14, 1984-36, 1983-48, and 1980-18. A variety of relationships may serve as a basis for such affiliation. Advisory Opinions 1988-14 and 1983-48. Such relationships can involve ownership of a controlling interest in voting shares or securities; provisions in governing documents that give one entity the authority, power, or ability to direct another entity; and the authority, power, or ability to appoint, remove, or otherwise influence the decisions of officers or members of an entity. See 11 CFR 100.5(g)(2)(ii) and 110.3(a)(1)(iii).

The Commission concludes that FBG and FBG PAC may solicit the restricted classes of the three banks scheduled to become subsidiaries and UNB Dallas both before and after December 31, 1989.

Beginning on December 31, 1989, FNB Borger, FNB Canyon, and FSB Crane will be subsidiaries owned and controlled by FBG and, hence, the executive and administrative personnel and the families thereof will be solicitable for contributions to FBG PAC. See Advisory Opinion 1985-27. Prior to that point, those banks still qualify as affiliates of FBG for the purposes of 11 CFR 114.5(g)(1). You present a situation involving interests in common in the management and control of the described banks among Mr. Ford and the other members of the control group. At the present time, FNB Borger is 100% controlled by FBG, Mr. Ford, who is FBG's Chairman and holder of majority voting power, and the control group. FNB Canyon and FSB Crane are controlled 71.96% and 70.01% respectively by Mr. Ford and other members of the control group. Effectively, FBG, through Mr. Ford and those in its control group, has substantial majority control over these banks.

The information presented by you indicates that the controlling personnel of FBG in UNB Dallas have the authority or ability to direct or influence the decisions of that bank's officers. Mr. Ford is the largest shareholder, among 68, of UNB Dallas and holds almost twice as many shares as the next largest shareholder. Mr. Ford and other members of the control group together hold 27.14% of the shares in the bank. The authority and influence of the control group is further manifested in the governance of the bank by virtue of the fact that Mr. Ford is Chairman of the Board of Directors and four members of the control group, including Mr. Ford, serve on the sixteen-person Board of Directors. One of the UNB directors from the control group, Tom C. Nichols, is FBG's President and Chief Financial Officer, and another UNB director, Robert Nichols, is also a director of FBG.

Although the executive and administrative personnel of the aforementioned banks are solicitable, the Act and regulations do not require a political committee to list the entities that are subsidiaries, branches, divisions, or affiliates of the connected organization. The Act requires the listing of FBG as the connected organization of FBG PAC and, if any of the subsidiaries or affiliates form their own separate segregated funds, the listing of those funds as affiliated committees. 2 U.S.C. 433(b)(2); 11 CFR 102.2(a)(1)(ii) and 102.2(b)(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,

(signed)

Lee Ann Elliott
Vice Chairman for the Federal Election Commission

Enclosures (AOs 1988-14, 1985-27, 1984-36, 1983-48, and 1980-18)

1/ According to the "Proxy Statement for Annual Meeting of Shareholders" submitted by you, a total of 1,636,088 shares of common stock are subject to the Shareholder Agreements, 574,937 of which are owned of record by Mr. Ford. The Investor Agreements cover 1,283,373 shares and the Employee Agreements cover 173,886 shares. The Bank Holding Company Agreements, which were entered into by Ford and two affiliated bank holding companies, cover 178,829 shares.

2/ FBG owns 100% of the common stock of the first three banks and 99% of the common stock of the last bank.