



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 18, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-20

James K. Wilkens
Bradbury, Bliss & Riordan
431 West 7th Avenue
Suite 201
Anchorage, AK 99501-3583

Dear Mr. Wilkens:

This refers to your letter dated August 21, 1990, requesting an advisory opinion on behalf of the law partnership of Bradbury, Bliss & Riordan and the Bradbury, Bliss & Riordan Political Action Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of general partnership funds for contributions to the committee.

Bradbury, Bliss & Riordan is a law firm organized as a partnership under the laws of Alaska. A small portion of the partnership's case load entails representing the Federal Deposit Insurance Corporation ("FDIC") and the Resolution Trust Corporation ("RTC") in foreclosures, bankruptcies, and other financial actions. The FDIC is an independent agency of the United States Government which, among other duties, is responsible for insuring the deposits of banks and savings associations and acting as a conservator or receiver for depository institutions. See 12 U.S.C. 1811 and 1821(c). The RTC is an agent of the United States which, among other duties, "manage[s] and resolve[s]" cases of savings associations in conservatorship or receivership. The FDIC is the "exclusive manager" of the RTC, authorized to "perform all responsibilities of the [RTC]." See 12 U.S.C. 1441a(b)(1) and (b)(3).

The partnership sponsors a political committee named Bradbury, Bliss & Riordan Political Action Committee. Thus far, the partners in the firm have contributed to the committee from their personal funds, but, under 11 CFR 115.4, the firm has refrained from making contributions from the general partnership funds because, at some point in the future, the committee may contribute to a Federal candidate. The committee registered with the Commission on August 6,

1990. Your firm would like to make contributions to the committee from its "general partnership fund" if such contributions are permissible. Therefore, you wish to know whether the firm is a Federal contractor by virtue of its representation of the FDIC and the RTC.

Under the Act and Commission regulations, a Federal contractor is prohibited from making, directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure, to any political committee or other person for any political purpose or use. 2 U.S.C. 441c(a)(1); 11 CFR 115.2. This prohibition does not apply to contributions or expenditures in connection with state or local elections. 11 CFR 115.2(a). Although the assets of a partnership that is a Federal contractor may not be used to make contributions or expenditures in connection with Federal elections, Commission regulations permit individual partners to make contributions or expenditures in their own names from their personal assets. 11 CFR 115.4(a) and (b).^{1/}

A Federal contractor is defined to include any person who enters into a contract with the United States or any department or agency thereof for the rendition of personal services and whose compensation is paid in whole or in part from funds appropriated by Congress. 2 U.S.C. 441c(a)(1); 11 CFR 115.1(a)(1)(i) and (a)(2). The answer to your question appears to depend upon whether your firm is compensated for its services with Congressionally appropriated funds.

The Federal Deposit Insurance Corporation normally does not receive Congressionally appropriated funds. Instead, it receives its funding from such sources as assessments on insured banks and savings institutions and interest income from the funds invested by it. There are portions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRRE Act") providing for future or contingent funding from Congressionally appropriated funds. To provide sufficient funding for the Savings Association Insurance Fund ("SAIF"), a fund administered by the FDIC, the Secretary of the Treasury, for each of the fiscal years 1992 to 1999, shall pay the amount by which \$2 billion exceeds the amounts in SAIF and shall pay, for each of the fiscal years 1991 to 1999, any amount necessary to maintain the minimum net worths for SAIF required in the statute. 12 U.S.C. 1821(a)(6)(E), (F), and (J). FIRRE Act also provides that if the nonappropriated sources of funds listed for the FSLIC Resolution Fund, which is administered by the FDIC, are not adequate to satisfy the liabilities of the Fund, the Secretary of the Treasury shall pay the necessary amounts to the Fund. 12 U.S.C. 1821a(c).

The Resolution Trust Corporation receives appropriated funds from the Treasury. FIRRE Act set out an initial appropriation of \$18.8 billion for FY 1989 and the RTC continues to operate partially on appropriated funds. See 12 U.S.C. 1441a(b)(14)(A).

If your firm is representing the FDIC or RTC, its Federal contractor status would depend upon whether the firm is being compensated from funds paid by entities such as insured banks or savings institutions, or from funds comprised in part of Congressional appropriations. If your firm is paid exclusively from funds that are not appropriated by Congress, it would not be a Federal contractor. The source of funds used to compensate your firm may depend upon the type of legal or financial action involved and the role your firm assumes in such action.

It appears, therefore, that your firm may be a Federal contractor in certain circumstances. If your firm is a Federal contractor, contributions to the political committee may not be made from general partnership funds. 11 CFR 115.4(a). This prohibition also applies to the use of your firm's partnership funds for the committee's establishment, administration, and solicitation costs. The Act does not extend to a partnership the ability granted to corporations to set up a separate segregated fund and conduct itself as a connected organization. Thus, payments for such costs would be contributions, rather than exempt costs. Advisory Opinions 1982-63, 1981-56, and 1981-54; see also California Medical Association v. Federal Election Commission, 453 U.S. 182 (1981).

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
Chairman for the Federal Election Commission

Enclosures (AOs 1982-63, 1981-56, and 1981-54)

1/ Commission regulations also permit an employee of a Federal contractor partnership to make contributions or expenditures from his or her personal assets. 11 CFR 115.4(c).