



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 12, 1994

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-7

Woodrow W. Ban  
Senior Corporate Counsel  
The Geon Company  
6100 Oak Tree Blvd.  
Golden, CO 80401

Dear Mr. Ban:

This refers to your letters of March 29, and March 8, 1994, on behalf of GEON PAC ("the PAC"), concerning the application of the Federal Election Campaign Act of 1971 ("the Act") to a matching charitable contribution plan that it proposes to use in its solicitations.

The PAC is the separate segregated fund of the Geon Company ("Geon"). You state that the PAC would like to begin a matching charitable contributions plan to encourage a higher level of voluntary participation by Geon employees in the PAC. Under the proposed plan, contributors who, at the end of a calendar year, had contributed at least \$50 to the PAC would have a donation made by Geon to an I.R.C. 501(c)(3) listed charitable organization of the contributor's own choosing. If the PAC contributor made no selection of a charitable organization, no charitable donation would occur. The assistant secretary of the PAC, a clerical employee of Geon, would prepare the necessary forms for the charitable gift match activities and submit those forms to the clerical employee in Geon's Human Resources Department, the department charged with administering the matching gift program. The employee in this department would, in turn, prepare check requests showing the amount of the check and the payee charity.

Your request provides details of the custodial arrangement for the solicitation of what you refer to in your request as the non-restricted employee class; that is, employees who are not executive or administrative personnel or shareholders. You identify the proposed custodian as Mr. Larson, an assistant treasurer of the PAC. In that capacity, Mr. Larson is a non-voting member of the contributions committee of the PAC. He would receive the contributions directly from Geon employees. In addition, he would either log them personally on the spread sheets maintained by

the assistant secretary to record contributions, or arrange for the assistant secretary to log the contributions. At the end of the year, both would ascertain which of the non-executive employees had contributed a sum sufficient to trigger charitable gift matching, and would submit the necessary forms to secure the gift match.<sup>1/</sup>

The Act prohibits a corporation from making contributions or expenditures in connection with any Federal election. However, the Act excludes from the definition of "contribution or expenditure," those costs which are paid by the corporation for "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes" by the corporation. 2 U.S.C. 441b(b)(2)(C). Although Commission regulations explain that a corporation may use its general treasury monies to pay the expenses of establishing and administering such a fund and of soliciting contributions to the fund, the regulations also provide that a corporation may not use this process "as a means of exchanging treasury monies for voluntary contributions." 11 CFR 114.5(b). In this respect, the regulations further explain that a contributor may not be paid for his or her contributions through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1).<sup>2/</sup>

The Act and Commission regulations allow a corporation, or a separate segregated fund established by a corporation, to solicit voluntary contributions to the fund from the corporation's stockholders, its executive and administrative personnel, and the families of such persons. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation of these persons for contributions to the fund must meet certain requirements. See 11 CFR 114.5(a).

The Act and regulations also permit two written contribution solicitations in a calendar year to other employees. 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6(a). The corporation, however, must make such written contribution solicitations by mailing them to an employee's residence and must use a custodial arrangement that ensures the anonymity of those wishing to contribute less than \$50 in any single contribution, or those not wishing to contribute at all. 11 CFR 114.6(c) and (d). See also Advisory Opinions 1991-28 and 1990-25.

The custodian chosen for the custodial arrangement cannot be a stockholder, an officer, or within the executive or administrative personnel group or an employee of the corporation or its separate segregated fund. The custodian is limited in the degree that he or she may make records of employee contributions available. 11 CFR 114.6(d). As permitted by section 114.6(d)(1) and (5), the treasurer of the SSF may serve as custodian if that person does not hold any position with the corporation, as listed above, and does not participate in the decision making process whereby the separate segregated fund makes contributions and expenditures. See Advisory Opinions 1994-3, 1988-14 and 1977-56.

The proposed PAC plan is similar to those approved by the Commission in the past. See Advisory Opinions 1994-3, 1990-6, 1989-9 and 1989-7. These past opinions have all allowed corporations to match contributions made to their separate segregated funds with donations to charities. The Commission has viewed the corporation's matching of voluntary political contributions with charitable donations as solicitation expenses related to fundraising for its separate segregated fund. 2 U.S.C 441b(a) and 441b(b)(2)(C). Central to this conclusion is that the individual contributor to the separate segregated fund would not receive a financial, tax, or

other tangible benefit from either the corporation or the recipient charities, thus avoiding an exchange of corporate treasury monies for voluntary contributions. As long as your own proposal is implemented so that no contributor receives a tangible benefit or premium from either Geon, its PAC, or the charity receiving the matching donation, this requirement will be met.

The Commission has recently approved the use of matching charitable contribution plans for employees who are only solicitable under the twice yearly procedures, provided that all other Commission regulations applicable to the solicitation of these personnel are followed. See Advisory Opinion 1994-3.

In this regard, however, the Commission notes that your proposal must be modified in order to comply with the custodial arrangement required by section 114.6(d) and to ensure the anonymity of contributors making contributions of \$50 or less or multiple contributions aggregating \$200 or less in a calendar year. Your request states that the proposed custodian, the assistant treasurer, is employed with Geon as senior corporate counsel and also may own stock in Geon. Under these circumstances, this individual would be prohibited by section 114.6(d) from serving as custodian, and another individual must be chosen to serve as the custodian.<sup>3/</sup> Similarly, the assistant secretary of the PAC, an employee of Geon, is likewise disqualified from assisting the custodian in processing contributions from the non-executive employee class.<sup>4/</sup>

The Commission therefore concludes that, if the conditions described in this opinion are satisfied and if all the provisions of section 114.6 are followed, the implementation of the PAC's proposal with respect to all Geon employees would be permissible under the Act and regulations.

The Commission expresses no opinion regarding any tax ramifications of the proposed matching charitable contribution plan because those issues are outside the Commission's jurisdiction.

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.

For the Commission,

(signed)

Trevor Potter  
Chairman

Enclosures (AOs 1994-3, 1991-28, 1990-25, 1990-6, 1989-9 1989-7, 1988-14 and 1977-56)

#### ENDNOTES

1/ The assistant secretary, you state, customarily handles the deposit of contributions from the executive employee group to the PAC, preparing the deposit slips and logging the contributions from these personnel to the PAC on the spreadsheet used for purposes of preparing FEC periodic reports.

2/ The Commission's conclusion regarding matching charitable contributions by SSF's is consistent with the Internal Revenue Code's treatment of the tax consequences of such programs. The Internal Revenue Service has concluded that "a Charity/PAC matching program grant to an IRC 501(c)(3) organization should not be recharacterized as payment of compensation to the employee, and a subsequent payment by the employee to the IRC 501(c)(3) organization." Judith E. Kindell and John F. Reilly, Election Year Issues, IRS publication, 441 (1992); see also Rev. Rul. 67-137, 1967-1 C.B. 63. The Internal Revenue Service has also concluded that the corporation may not receive a tax deduction for the matching charitable donation it makes. Because the corporation receives a substantial benefit or quid pro quo in return for its donation to the employee designated charity, the donation cannot be viewed as a true "gift" from the corporation. Kindell and Reilly, at 444.

3/ In Advisory Opinion 1988-14, the Commission specifically disqualified the assistant treasurer of a separate segregated fund from serving as a custodian for a solicitation of non-restricted class employees where the assistant treasurer owned stock in the two affiliated corporations establishing the fund.

4/ The Commission cautions you as to the modifications that were required in the requester's proposal in Advisory Opinion 1994-3. In order to comply with section 114.6(d), the Commission required that any review of the list of qualified charities chosen by participating contributors should be conducted in a manner that preserved the confidentiality of those contributing the smaller amounts described above. Furthermore, the Commission required that letters sent to charities regarding the participants making the smaller contributions should be prepared and sent only by the custodian and should not give the actual name of the participant. Letters of appreciation from the charity could be conveyed to these participants through the custodian. See Advisory Opinion 1994-3.