



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 17 3 11 PM '94

June 17, 1994

MEMORANDUM TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *LN*
General Counsel

N. Bradley Litchfield *NBL*
Associate General Counsel

Jonathan M. Levin *JL*
Senior Attorney

SUBJECT: Draft AO 1994-16

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for June 23, 1994.

Attachment

SUBMITTED LATE
AGENDA ITEM
For Meeting of: JUN 23 1994

DRAFT

1
2
3 ADVISORY OPINION 1994-16

4 Carlyle C. Ring, Jr.
5 Vice President and General Counsel
6 Atlantic Research Corporation
7 1577 Spring Hill Road
8 Vienna, VA 22182

9 Dear Mr. Ring:

10 This responds to your letter dated May 10, 1994,
11 requesting an advisory opinion on behalf of the Atlantic
12 Research Corporation ("ARC") concerning the application of
13 the Federal Election Campaign Act of 1971, as amended, and
14 Commission regulations to the retention or transfer of funds
15 by ARC's separate segregated fund, ARC PAC.

16 ARC PAC was established in 1987. During that year, ARC
17 acquired ORI Group, Inc. ("ORI"), which became a wholly owned
18 subsidiary of ARC. ORI had an existing separate segregated
19 fund, ORI PAC (established in 1986), which was "left in
20 place" after the acquisition. Subsequently, ORI's name was
21 changed to ARC Professional Services Group ("ARC PSG") and
22 the name of its PAC was changed to ARC PSG PAC.

23 As of May 1, 1990, ARC PSG PAC was merged into ARC PAC.
24 This merger occurred to ensure compliance with the
25 contribution limits and "to effect certain reporting and
26 control efficiencies." However, ARC PAC maintained two "sub
27 funds" for internal accounting purposes to track the activity
28 of the aerospace segment (the original ARC PAC) and the
29 professional services segment (the former ARC PSG PAC). The
30 administrators of ARC PAC considered separate recommendations
of contributions to be made by the respective sub funds,

3
4 based on the often differing legislative interests of these
5 two business segments.

6 At the end of 1993, ARC PSG was sold to Computer
7 Sciences Corporation ("CSC"), which has a separate segregated
8 fund, CSC PAC. At that point, contributions to ARC PAC by
9 ARC PSG employees were stopped. Approximately \$30,000 which
10 had been contributed by ARC PSG employees remained in ARC
11 PAC. Those funds have been held in the separate internal
12 account, pending a decision as to their disposition.

13 ARC PAC believes that the funds contributed by the
14 former ARC PSG employees should be used "to advance the
15 interests" of those persons and that, presently, the agenda
16 of CSC PAC, not ARC PAC, will coincide with those interests.
17 You, therefore, ask whether ARC PAC may transfer directly to
18 CSC PAC the funds remaining from contributions made by former
19 ARC PSG employees, who are now CSC employees.^{1/}

20 In the event that this approach is determined to be
21 impermissible, ARC PAC wishes to know if it can make refunds
22 to the individual contributors who are now employees of CSC,
23 presumably on a "last contributed/first returned" basis. In
24 the alternative, you ask whether ARC PAC may transfer the
25 funds directly to CSC for refund to the employees.

26 In the event neither of the first two transfer
27 procedures are permissible, you ask whether it is permissible
28 for ARC PAC to retain and utilize the funds contributed by

29
30 ^{1/} You state that CSC also endorses this approach.

4 the former ARC PSG employees, even though ARC PAC may
5 contribute those funds to different candidates than would CSC
6 PAC.

7 With respect to the first question, the Commission
8 concludes that ARC PAC may not directly transfer the \$30,000
9 to CSC PAC. Transfers between affiliated committees may be
10 made without limit. 11 CFR 102.6(a)(1). ARC PAC and CSC
11 PAC, however, are not affiliated committees, so any transfer
12 from ARC PAC to CSC PAC would be a contribution subject to
13 the limits on contributions by a multicandidate committee to
14 any other political committee. 2 U.S.C.-§441a(a)(2)(C); 11
15 CFR 110.2(d)(1). Thus, ARC PAC would be limited to
16 contributions of \$5,000 per calendar year to CSC PAC.

17 A similar request was made in Advisory Opinion 1989-16.
18 In that situation, a new bank corporation ("Corporation B")
19 was formed by severing most of the subsidiary banks from a
20 pre-existing bank corporation ("Corporation A") which had a
21 separate segregated fund. Corporation A's PAC contained
22 contributions made via payroll deduction and other means by
23 employees of Corporation B when they were employees of
24 Corporation A. Corporation B also created a PAC.
25 Corporation A and Corporation B mutually agreed on a
26 procedure to allocate contributions (then held by Corporation
27 A's PAC) between the two PACs, and Corporation A's PAC would
28 transfer the agreed amount to Corporation B's PAC. Because
29 the committees were not affiliated, the Commission concluded
30 that the proposed transfer would be a contribution subject to

the \$5,000 limit.

The Commission concludes that ARC PAC may refund the stated amount in the ARC PSG sub fund to the former ARC PSG employees (who are now CSC employees). Any refund letter, however, should avoid any contribution solicitation message from ARC PAC or ARC on behalf of CSC PAC. This would constitute participation by ARC or ARC PAC in a solicitation of contributions from employees of an unaffiliated entity who are no longer in its restricted class. Such activity would not be within the exception to the corporate contribution ban permitting solicitation of a corporation's own executive and administrative employees for contributions to the corporation's separate segregated fund. 2 U.S.C. §441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). See also 2 U.S.C. §441b(b)(2)(C) and Advisory Opinion 1989-16. In addition, ARC PAC's solicitation messages for an unaffiliated PAC would be impermissible under 11 CFR 114.5(i) which prohibits communications by a separate segregated fund that solicit contributions to any separate segregated fund, except as permitted under 11 CFR 114.5(g).

You propose to use a last contributed/first returned method of refunding contributions to the CSC employees. Normally, a political committee that is not an authorized committee of a candidate may expend its funds as it chooses, as long as it does so for any lawful purpose consistent with the Act and regulations. Advisory Opinions 1991-21 and 1986-32. However, in view of ARC's knowledge that these

funds may well be used by the payees for contributions to CSC, it is important that, if the refunds are made, they are disbursed to the actual contributors in amounts no greater than the amount of each donor's share of the funds on hand. Otherwise, those CSC employees who receive the refunds and then use the proceeds to make new contributions to CSC PAC may be at risk for using funds that were not their own when they make the contributions. Such conduct is contrary to the prohibition against making, or knowingly facilitating the making of, contributions in the name of another at 2 U.S.C. §441f. 11 CFR 110.4(b)(1)(i) and (iii). Advisory Opinion 1989-26. See Advisory Opinion 1986-41.

The proposed last contributed/first returned approach is comparable to the last in/first transferred approach set out at 11 CFR 104.12 and applied in advisory opinions involving transfers between affiliated committees, e.g., Advisory Opinions 1991-12 and 1982-52. This entails the assumption that the cash on hand of a committee at any given date is composed of those contributions most recently received by the committee. This approach applies to the cash on hand of a committee, not to its internal book accounts. Nevertheless, it appears that ARC PAC tracked the receipt and disbursement activities of the sub fund itself. Therefore, ARC PAC may apply a last contributed/first returned approach in order to ascertain the donors of contributions in the sub fund.

You inquire as to whether ARC PAC may transfer the funds directly to CSC for refund to the individual CSC employees.

4 Because the refunds may be made directly to the employees,
5 this alternative is unnecessary. In addition, it would
6 result in the commingling of these funds with corporate funds
7 before being remitted to individuals with the expectation
8 that they or many of them would then contribute the funds to
9 CSC PAC. 2 U.S.C. §441b(a). See, by analogy, Advisory
10 Opinions 1992-28 and 1981-17. Compare 11 CFR 102.6(b) and
11 (c) [rules for collecting agents].

12 In response to your last inquiry, the Commission notes
13 that it is permissible for ARC PAC to retain and utilize the
14 contribution funds collected from the former ARC PSG
15 employees when they were still employed by ARC PSG. See 11
16 CFR 114.5(d) [a corporation may exercise control over its
17 separate segregated fund]. These funds, presumably were
18 lawfully solicited and accepted under the rules set out at 11
19 CFR 114.5, 102.5, and other relevant provisions of the Act
20 and Commission regulations.

21 This response constitutes an advisory opinion concerning
22 application of the Act, or regulations prescribed by the
23 Commission, to the specific transaction or activity set forth
24 in your request. See 2 U.S.C. §437f.

25 For the Commission,

26 Trevor Potter
27 Chairman

28 Enclosure (AOs 1992-28, 1991-21, 1991-12, 1989-26, 1989-16,
29 1986-41, 1986-32, 1982-52, and 1981-17)
30