



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 24, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-16

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

Dear Mr. Ring:

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

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

As of May 1, 1990, ARC PSG PAC was merged into ARC PAC. This merger occurred to ensure compliance with the contribution limits and "to effect certain reporting and control efficiencies." However, ARC PAC maintained two "sub funds" for internal accounting purposes to track the activity of the aerospace segment (the original ARC PAC) and the professional services segment (the former ARC PSG PAC). The administrators of ARC PAC considered separate recommendations of contributions to be made by the respective sub funds, based on the often differing legislative interests of these two business segments.

At the end of 1993, ARC PSG was sold to Computer Sciences Corporation ("CSC"), which has a separate segregated fund, CSC PAC. At that point, contributions to ARC PAC by ARC PSG employees were stopped. Approximately \$30,000 which had been contributed by ARC PSG

employees remained in ARC PAC. Those funds have been held in the separate internal account, pending a decision as to their disposition.

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

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

In the event neither of the first two transfer procedures are permissible, you ask whether it is permissible for ARC PAC to retain and utilize the funds contributed by the former ARC PSG employees, even though ARC PAC may contribute those funds to different candidates than would CSC PAC.

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

A similar request was made in Advisory Opinion 1989-16. In that situation, a new bank corporation ("Corporation B") was formed by severing most of the subsidiary banks from a pre-existing bank corporation ("Corporation A") which had a separate segregated fund. Corporation A's PAC contained contributions made via payroll deduction and other means by employees of Corporation B when they were employees of Corporation A. Corporation B also created a PAC. Corporation A and Corporation B mutually agreed on a procedure to allocate contributions (then held by Corporation A's PAC) between the two PACs, and Corporation A's PAC would transfer the agreed amount to Corporation B's PAC. Because the committees were not affiliated, the Commission concluded 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. Because the refunds may be made directly to the employees, this alternative is unnecessary. In addition, it would result in the unlawful commingling of these funds with corporate funds before being remitted to individuals with the expectation that they or many of them would then contribute the funds to CSC PAC. 2 U.S.C. 441b(a). See, by analogy, Advisory Opinions 1992-28 and 1981-17. Compare 11 CFR 102.6(b) and (c) [rules for collecting agents].

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

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)

Danny L. McDonald
Vice Chairman

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

Endnotes

1/ You state that CSC also endorses this approach.