FEDERAL ELECTION COMMISSION

July 28, 1994

R. Bruce Dickson
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004-2400

Re: AOR 1994-24

Dear Mr. Dickson:

This is in reply to your letter dated July 7, 1994, written on behalf of Chattem, Inc., seeking an advisory opinion as to the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to payments and benefits made to an employee who is running for Federal office.

You state that, on December 23, 1993, Chattem entered into a Separation Agreement with one of its long-standing employees who, prior to departure, held a "senior executive" position. The employee is currently a candidate for the House of Representatives in the August 2, 1994, primary. Research conducted by the Office of General Counsel indicates that the employee is Charles N. Jolly, a former vice president and director of the company, who is running in the Democratic primary for the House seat from Tennessee's Third District. Mr. Jolly filed his statement of candidacy on January 3, 1994.

The separation agreement entailed two principal provisions. The first was a separation payment in the form of a lump sum. The amount was calculated on the basis of 18 months pay at the employee's past annual salary; and an additional payment representing the employee's expected "bonus" under a long-term incentive plan which had been earned in the three-year period ending in November 1993 and which was in accordance with a pre-existing company policy. The second provision entailed the conversion of the employee to an "hourly employee" for the period from January 1, 1994, to May 31, 1994. The employee was entitled to be paid at an hourly rate for hours actually worked or while traveling on the company's behalf. In addition, consistent with company policy, the employee's normal medical benefits were continued through this period. You state that nothing in the separation agreement contemplated rehiring the employee, and the company has no plans to rehire him.

The Act authorizes the Commission to render an advisory opinion in response to a complete written request presenting a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that the request must set forth a specific transaction or activity that the requesting person "plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). The facts you relate appear to concern only past activity.

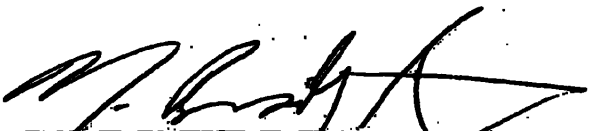
In AOR 1988-31, the Commission considered a request from counsel for two couples pertaining to Federal preemption of a state law which aggregated contributions made by couples to a Federal candidate and thus placed on these couples a state reporting requirement. The request also notified the Commission that the local district attorney believed that the Act preempted the requirement and the couples were informed that no prosecution would result. The Commission approved a letter to the requester which concluded, in part, that the request did not satisfy the requirements for an advisory opinion because the requesters were not proposing their own specific ongoing or future activity and the only future activity referred to was that of the candidate.

Similarly, your request refers to payments already made by your client. The only possible future activity involved, i.e., the reporting of such payments if they were deemed to be contributions under the Act, would be the activities of the candidate and his committee. The latter two are third parties not represented by you. Based on the foregoing, it appears that your letter does not satisfy the requirements of 11 CFR 112.1(b) for an advisory opinion request. The consideration of the subject AOR 1994-24 is therefore concluded.

If you have any questions concerning this letter or the advisory opinion process, please contact the undersigned.

Sincerely,

Lawrence M. Noble
General Counsel

By: 
N. Bradley Litchfield
Associate General Counsel