



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 11, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-40

Barbara E. Wixon
Williams & Jensen
1155 21st Street N.W.
Washington, D.C. 20036-3308

Dear Ms. Wixon:

This responds to your letters dated October 17, November 7, and November 30, 1995, requesting an advisory opinion on behalf of Continental Airlines ("Continental") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed disaffiliation of two separate segregated funds.

In a previous advisory opinion, the Commission reviewed the relationship between Continental and Eastern Airlines ("Eastern"). Advisory Opinion 1990-10. At the time that opinion was issued, Continental (then known as Texas Air) owned 100% of the stock of Eastern Air. Both Eastern and Continental each operated their own separate segregated funds: Continental Holdings Political Action Committee ("Continental PAC") and Eastern Airlines PAC ("Eastern PAC"). Eastern was undergoing bankruptcy proceedings and control and management of Eastern had been taken from Continental and placed in the hands of an independent trustee. Because of this circumstance, Continental requested that the Commission find that Eastern PAC and Continental PAC were no longer affiliated. However, the Commission, citing the continued sole ownership of Eastern stock by Continental, concluded that the two separate segregated funds were affiliated.

Continental believes that changed circumstances now warrant a different conclusion; namely, that Continental PAC and Eastern PAC are no longer affiliated committees. You include as new information, a copy of an Order of Abandonment of Estate Property issued by the United States Bankruptcy Court for the Federal District of Delaware. The order, which identifies Continental as a "debtor in possession," states that as of December 26, 1991, all debtors "shall

not be deemed to hold or own any stock or equity in Eastern Air Lines, Inc., nominally, beneficially or otherwise."¹

You also represent that there are no common directors, officers or administrative personnel between the two entities.² Furthermore, there have been no infusions of capital or cash by Continental into Eastern, and Continental has not guaranteed any of Eastern's pension retirement programs or any other Eastern obligation.³

With respect to the SSFs themselves, you assert that there has been no transfer of funds between the two committees and that Continental has no involvement in the operations of Eastern PAC.⁴

The Act and Commission regulations provide that committees, including separate segregated funds, that are established, financed, maintained or controlled by the same corporation, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. Contributions made to or by such committees shall be considered to have been made to or by a single committee. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii).

Where one entity is not a subsidiary of another entity, as in 11 CFR 110.3(a)(2)(i), Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one company is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J). These factors include: (A) the ownership by one sponsoring organization of a controlling interest in the voting stock or securities of another sponsoring organization; (B) the authority or ability of one sponsoring organization to participate in the governance of another sponsoring organization through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) the authority or ability to hire, demote or otherwise control the decision makers of another sponsoring organization; (E) common or overlapping officers or employees, indicating a formal or ongoing relationship between the sponsoring organizations; (F) members, officers, or employees of one sponsoring organization who were members, officers, or employees of another organization which indicates a formal or ongoing relationship or the creation of a successor entity; and (I) an active or significant role by one sponsoring organization in the formation of another. 11 CFR 110.3(a)(3)(ii)(A), (B), (C), (E), (F), and (I).

The Commission notes that the basis of the previous opinion was the per se affiliation of the committees resulting from Continental's continued ownership of Eastern. The facts as presented today indicate that the ownership relationship has been severed. The Commission notes the specific and unusual circumstances of this opinion. The severance of the relationship between the parent and the subsidiary was accomplished not through a typical business re-organization, but through a lengthy bankruptcy proceeding culminating in a judicial order ending the parent corporation's legal ownership of stock in its former subsidiary. See, by comparison, Advisory Opinion 1995-36.

Your representations also indicate the absence of factors which, if present, would show a continuing connection between Eastern and Continental. The Commission therefore concludes in these special circumstances that Eastern Airlines is disaffiliated from Continental Airlines. Thus, Continental PAC and Eastern Airlines PAC are no longer affiliated committees.

Because the committees are no longer affiliated, Continental PAC and Eastern PAC should amend their Statement of Organizations to delete mention of the other PAC as an affiliated committee. The amendments should be filed with the Commission no later than 10 days after your receipt of this opinion. 2 U.S.C. 433(c); 11 CFR 102.2(a)(2).

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

Enclosures (AOs 1995-36 and 1990-10)

1 In a December 12, 1995, phone conversation with Commission staff, you explained that ownership of such stock was transferred to the Court-appointed trustee of Eastern.

2 You explain that Eastern Airlines continues its existence through the person of the bankruptcy trustee. You also state that there are no members currently serving on the Board of Continental who also served as directors during the time the two airlines were affiliated.

3 You explain that the Pension Benefit Guaranty Corporation, which is the guarantor of certain of Eastern's pension program obligations, asserted a claim against Continental that was settled as part of Continental's plan of reorganization in bankruptcy. You affirm that all other such claims were similarly resolved as part of Continental's plan of reorganization and Continental is not now liable for and has not guaranteed any subsequent obligations of Eastern.

4 In your request, you point out that Eastern PAC is administered by the law firm of Verner, Lipfert, which has no relationship with either Continental or its separated segregated fund.