



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 14, 1996

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-18

Vincent J. Bollon
International Association of Fire Fighters
1750 New York Avenue, N.W.
Washington, D.C. 20006-5395

Dear Mr. Bollon:

This responds to your letter dated April 23, 1996, requesting an advisory opinion on behalf of the International Association of Fire Fighters ("IAFF") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the transmittal of funds held in a conduit account to the IAFF's separate segregated fund.

The IAFF, a labor organization, has a separate segregated fund ("SSF") that is registered with the Commission and identified as the International Association of Fire Fighters Interested in Registration and Education PAC ("FIREPAC"). IAFF's state affiliate in Wisconsin has recently opened a "conduit account" that is permissible under Wisconsin State election law. You state that, under Wisconsin law, organizations are permitted to establish conduit accounts for the purpose of raising voluntary personal contributions to non-Federal candidates within the State of Wisconsin.

Specifically, a "conduit" under Wisconsin law is:

an individual who or an organization which receives a contribution of money and transfers the contribution to another individual or organization without exercising discretion as to the amount which is transferred and the individual to whom or organization to which the transfer is made.

Wisconsin Statutes Annotated ("WSA") 11.01(5m). Under Wisconsin State law, such conduits are permitted to accept contributions only in the form of personal, voluntary contributions. See WSA 11.38(1)(a)(1). Wisconsin law also provides that the individual who makes contributions to

a conduit account determines how the contribution is disbursed, and a contribution received from the conduit is considered to be a contribution by the individual contributor, not by the conduit. WSA 11.06(11)(c) and 11.26(12m). Under proposed Wisconsin Election Board rules, a conduit account may not disburse an individual's contribution until the contributor provides an authorization. This authorization may be made in writing, or may be made orally if a contemporaneous written record of the oral authorization is made by the conduit administrator. Proposed Rules, Wisconsin Administrative Code, EIBd. 1.855. In conversations with legal counsel for the State of Wisconsin Elections Board, the Commission's Office of General Counsel was informed that, because the funds in the conduit account, which were donated by the individual contributor, are considered the contributor's funds, the contributor can direct the conduit administrator to return some or all those funds to him or her. The conduit account itself is a bank account, and the administrator keeps records of the funds that belong to each individual contributor.

You ask whether an individual member of the IAFF and its Wisconsin affiliate who makes a personal, voluntary contribution to the Wisconsin affiliate's conduit account can subsequently provide written authorization to the conduit account to send a contribution to FIREPAC, with the contribution attributed solely to the individual. For example, a member would contribute \$100 to the conduit account. Then the member would authorize, in writing, that the conduit send a \$50 contribution in the individual's name to FIREPAC and a \$50 contribution to a non-Federal candidate. In your proposal, you also point out that the conduit account has determined to restrict its solicitation efforts to the state affiliate's membership and not accept contributions "from what the FEC would identify as outside [the] restricted class, even though this is permissible under the Wisconsin state election law."¹

The Commission's response to your request requires an analysis of the role of the conduit account, as well as the control the individual donor has with respect to funds he or she donates to the conduit account. At the outset, the Commission notes that the "conduit account" described in your proposal does not correspond to the conduit activity addressed in 11 CFR 110.6(b)(2). See 2 U.S.C. 441a(a)(8). The activity addressed in that regulation involves receiving and forwarding contributions that the individual contributors have earmarked for specific Federal candidates or their authorized campaign committees. Instead, your proposal entails a plan whereby individual IAFF members who set aside funds in the conduit account will be solicited to contribute those funds to FIREPAC. Therefore, the described "conduit account," would not incur any of the reporting obligations described in 11 CFR 110.6(c) [61 *Fed. Reg.* 3550 (February 1, 1996)]. See Advisory Opinion 1981-57, n.3.

The issue of the control that the donor holds over the funds once deposited in the conduit account is relevant to whether the later contribution to FIREPAC would be a contribution from the individual only, or from the conduit account acting as a political committee, e.g., another separate segregated fund of the IAFF, that would have to register and report the receipt and disbursement of the funds. See 2 U.S.C. 431(4)(B). The funds placed in the account remain under the control of the individual donor who alone determines when and how much, if any, of those funds will be contributed to FIREPAC. See Advisory Opinion 1981- 21. The IAFF and FIREPAC do not control the funds received and do not determine when or to whom such funds are disbursed. The conduit, therefore, is not accepting or making contributions for the purposes

of the Act and is not a political committee that would have to report the receipt and disbursement of such funds. Instead, it is simply an accounting process by which funds donated by individual IAFF members are set aside, awaiting their future direction for disbursement as contributions by them to FIREPAC. Compare 11 CFR 114.11(c).

Although the contribution sent to FIREPAC would be a contribution from the individual only and not from the conduit account, the IAFF, as a collecting agent, would incur certain obligations under the Act and Commission regulations once the IAFF member authorizes the conduit account to make a contribution for that member to FIREPAC.² The collecting agent regulations provide that an individual's contribution of \$50 or less shall be forwarded to that committee's treasurer within 30 days of receipt. 11 CFR 102.6(c)(4) and 102.8(b)(1). If the contribution exceeds \$50, the collecting agent must forward the contribution within 10 days of receipt, along with the name and address of the contributor and the date of receipt of the contribution. For contributions over \$200, the contributor's occupation and employer must also be forwarded. 11 CFR 102.8(b)(2) and 102.6(c)(4) and (5).

In the situation presented, it appears that an IAFF member with funds in the conduit account may direct that his or her funds be contributed to FIREPAC beyond 10 days or 30 days from the conduit account's receipt of those funds. As indicated above, the Commission's approach to circumstances where a corporation or labor organization acts as a collecting agent would apply. In Advisory Opinion 1984-31, the Commission considered a situation in which a corporation's state PAC proposed to transfer funds to the Federal PAC. These funds consisted of voluntary donations previously received from persons in the corporation's restricted class. The Commission stated that, since the corporation already had a Federal PAC, the state PAC could avoid triggering political committee status by acting as a collecting agent under 11 CFR 102.6(b) and (c), i.e., by obtaining written authorizations from the individual contributors. Each contribution included in the amount transferred would be reported by the Federal PAC as a contribution from the individual. See 11 CFR 102.6(c)(7). Although the time limits for transmittal were not directly addressed in this opinion, the contributions would be sent to the Federal PAC well after their donation to the state PAC. Implicit in the opinion was the treatment of the donations as contributions to the SSF at the time the state PAC received the contributor's written authorization. Similarly, the IAFF conduit account will meet the requirements of 11 CFR 102.6(c)(4) and (5) and 102.8(b) if it transmits the contribution to FIREPAC, along with the requisite information, within 10 or 30 days (depending upon the amount transmitted) after the individual directs that his or her contribution be made to FIREPAC.

Subject to the foregoing conditions, the Commission concludes that your proposal may be implemented, with the contribution attributed solely to the individual.³ The Commission notes that this opinion does not address questions pertaining to any use of this conduit account for the earmarking of contributions to Federal candidates or authorized committees through FIREPAC since that situation was not presented.

This response constitutes an advisory opinion concerning the 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 1984-31, 1981-57, and 1981-21)

1 You have represented that IAFF will only solicit and accept contributions from its restricted class for contributions placed in the conduit. The Commission assumes this means that the members being solicited for contributions to be placed in the conduit are members of IAFF or of its component local union, according to the requirements of 11 CFR 114.1(e). See, in particular, 11 CFR 114.1(e)(4). The Commission notes, however, that the U.S. Court of Appeals for the D.C. Circuit has determined that the regulations defining membership promulgated in 1993 are too restrictive to accord with the membership standard set out by the Supreme Court in *Federal Election Commission v. National Right to Work Committee* ("NRWC"), 459 U.S. 197 (1982). *Chamber of Commerce of the United States v. Federal Election Commission*, 69 F.3d 600 (D.C. Cir. 1995), *on denial of petition for rehearing*, 76 F.3d 1234 (D.C. Cir. 1996). In pertinent part, the Court in *NRWC* stated that "some relatively enduring and independently significant financial or organizational attachment is required." *Chamber of Commerce*, 69 F.3d, at 605, citing *NRWC*, 459 U.S., at 204.

2 The Commission notes that, although an individual may be a "conduit" under Wisconsin State law, a collecting agent, under Commission regulations, may not be an individual. See 11 CFR 102.6(b)(3)(ii).

3 The Commission notes the importance of ensuring that any contributions solicited for FIREPAC would be voluntary and that no penalty would attach to any person who decides not to make a contribution. 2 U.S.C. 441b(b)(3); 11 CFR 114.5(a).