



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ADVISORY OPINION 2000-07

CONCURRING OPINION OF

**COMMISSIONER SCOTT E. THOMAS
VICE CHAIRMAN DANNY LEE MCDONALD**

At issue in Advisory Opinion 2000-07 was whether a proposed communication by Alcatel USA to its employees constituted a solicitation of contributions to Alcatel's separate segregated fund. The Commission concluded that the proposed communication did not constitute a corporate solicitation of contributions. We agreed with that conclusion because Alcatel has a policy of not accepting contributions from any person outside of its solicitable class. Additionally, Alcatel has conveyed this policy to its restricted class and even publicly announced that participation in its political committee is limited to certain employees.

Whether a corporate communication constitutes a solicitation is significant under the Federal Election Campaign Act of 1971, as amended ("the Act"). Under the Act, it is "unlawful for . . . any corporation . . . to make a contribution or expenditure in connection with any election" for federal office. 2 U.S.C. § 441b. This general prohibition, however, is subject to a limited number of exceptions. One such exception allows a corporation to pay for the costs of "the establishment, administration, and *solicitation of contributions* to a separate segregated fund to be utilized for political purposes by a corporation . . ." 2 U.S.C. § 441b(b)(2)(C)(emphasis added).

The "solicitation exception" is narrow in that a separate segregated fund and its parent organization are restricted as to whom they may solicit for fund contributions. They may not, for example, solicit "the world." Rather, the Act makes it unlawful for a corporation to solicit contributions to the fund from persons other than "its stockholders and their families and its executive and administrative personnel and their families." 2 U.S.C. § 441b(b)(4)(A); ¹ see *FEC v. National Right to Work Committee*, 459 U.S. 197, 201-202 (1982).

¹ Under 11 C.F.R. § 114.5(g), corporations are allowed *unlimited* solicitation of their stockholders and their families and their administrative or executive personnel and their families. There is no restriction on the number of times a corporation may solicit contributions to its separate segregated fund from those in direct relationship to it. Section 441b(b)(4)(B) also gives a limited permission for a corporation to solicit contributions twice yearly from its non-management employees.

There is language in the proposed Alcatel communications that, arguably, suggests or encourages participation in the segregated fund. For example, the website communication mentions that “Alcatel USA, Inc. *supports* the operation of [the separate segregated fund].” Advisory Opinion 2000-07 at 2 (emphasis added). Similarly, the communication encourages “[e]mployees desiring additional information *on their eligibility* or about the activities of [the fund]” to contact the fund at a specific address. *Id.* (emphasis added). On its own, this language may well constitute a solicitation. For example, in Advisory Opinion 1991-3, Fed. Elec. Camp. Fin. Guide ¶ 6012, the Commission explained that “although Commission regulations permit a separate segregated fund to accept an unsolicited contribution from a nonsolicitable person (assuming it is otherwise lawful), *informing any person of that right is a solicitation.*”(emphasis added). At the same time, the Commission also recognized “that a communication regarding a separate segregated fund’s activity is not a solicitation under section 441b where the information provided would neither encourage readers to support a separate segregated fund’s activities *nor facilitate making contributions to it.*” *Id.* (emphasis added)(citations omitted).

In view of other language contained in the Alcatel communications as well as its corporate policies, we agree that these communications did not constitute a solicitation. Significantly, the Alcatel website communication specifically states that “participation in the Alcatel PAC is limited to only those Alcatel USA employees who hold high-level administrative, executive or managerial responsibilities in the U.S.” Advisory Opinion 2000-07 at 2. This language indicates that no other person may participate, i.e., contribute to Alcatel PAC. Likewise, the PAC site itself squarely states that “[a]ny contribution received from any other person *will be returned* to the donor.” *Id.* (emphasis added). Since Alcatel indicated in its communications that it restricts participation in the separate segregated fund only to people in the restricted class and that it would turn away any other contributions, we believe it is appropriate to find that its proposed communications did not constitute solicitations. *Cf.* Dissenting Opinion of Commissioners Thomas and McDonald in Advisory Opinion 1991-3, *supra*, at 11,687 n.3.

6/23/00
Date

6-23-00
Date



Scott E. Thomas
Commissioner



Danny Lee McDonald
Vice Chairman