



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 25, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-12

Laurence E. Gold, Esq.
Michael B. Trister, Esq.
Lichtman, Trister & Ross, PLLC
1666 Connecticut Avenue, N.W., Fifth Floor
Washington, D.C. 20009

Dear Messrs. Gold and Trister:

We are responding to your advisory opinion request on behalf of the International Association of Machinists and Aerospace Workers (“IAM”) and the Transportation Communications International Union/IAM (“TCU/IAM”) regarding whether, under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations, IAM and TCU/IAM are affiliated during the current transition period pending a full merger of IAM and the Transportation Communications International Union (“TCU”).¹ If IAM and TCU/IAM *are* affiliated, you also ask a number of questions regarding their contributions, solicitations, and separate segregated funds (“SSFs”).

The Commission concludes that, under the Act and Commission regulations, IAM and TCU/IAM are affiliated labor organizations during this transition period of the pending full merger between IAM and TCU. As such, IAM’s SSF, the Machinists Non-Partisan Political League (“MNPL”), and TCU/IAM’s SSF, the Responsible Citizens Political League, a Project of the Transportation Communications International Union (“RCPL”), must aggregate any contributions made or received by either SSF. Further, because IAM and TCU/IAM are affiliated, IAM, TCU/IAM and their SSFs may undertake all of the activities described in your request.

¹ TCU/IAM is the organization resulting from a July 6, 2005, Merger Agreement between IAM and TCU.

Background

The facts presented in this advisory opinion are based on your letters received on February 14 and March 2, 2006, and the attachments thereto.

1. IAM

IAM is a labor organization as defined in the Act and Commission regulations. 2 U.S.C. 441b(b)(1); 11 CFR 100.134(b). IAM has 400,000 active members who work throughout the United States in many industries, with significant concentrations in the transportation, aerospace, forest products and automotive industries, and in government. IAM is organized in an integrated hierarchical structure, governed by an Executive Council. Its affiliates are assigned to four geographic territories, plus a nationwide Transportation territory that reflects the size and national focus of that occupational sector. Within the territories, IAM includes 62 intermediate district lodges comprised of representatives elected by local lodges. IAM has more than 1,200 local lodges whose officers are elected by the members they serve.

IAM established MNPL in 1947. MNPL is an SSF registered with the Commission. MNPL and IAM solicit contributions to MNPL from IAM members and their household family members. IAM solicits these contributions through various means including its national member magazine, *IAM Journal*.

2. TCU

Prior to the current transition period pending a full merger between IAM and TCU, TCU was a labor organization as defined in the Act and Commission regulations. 2 U.S.C. 441b(b)(1); 11 CFR 100.134(b). TCU had approximately 46,000 members actively employed primarily in the railroad industry. TCU's highest governing board was its Executive Council with 13 intermediate boards and 254 districts and lodges (or locals) throughout the United States.

TCU established RCPL in 1972. RCPL is an SSF registered with the Commission. TCU and RCPL solicited contributions to RCPL from TCU members using various means including the TCU member magazine, *Interchange*.

3. Merger of IAM and TCU

On July 6, 2005, IAM and TCU entered into an agreement ("Merger Agreement") committing IAM and TCU to a "full merger." IAM and TCU also signed two side letters pertaining to the Merger Agreement. The merger is to be accomplished in two phases: (1) a "transition period" lasting until January 1, 2012, at the latest,² and (2) a completed "full merger." The Merger Agreement does not permit either labor organization to

² TCU/IAM may accelerate the full merger upon consultation with the IAM International President if TCU/IAM finds it advantageous to do so.

unilaterally terminate or change the agreement and resulting relationship. Therefore, absent mutual agreement, completion of the full merger is a certainty.

Pursuant to the Merger Agreement, IAM and TCU/IAM have already undertaken the following actions:

- 1) IAM has chartered TCU/IAM as a new “affiliate.” IAM now expects to create a “Rail Division” composed of TCU/IAM and a pre-existing IAM district that engages in collective bargaining in the railroad industry. The Rail Division will operate as part of IAM’s Transportation Territory.
- 2) Effective August 1, 2005, TCU/IAM pays IAM a monthly per capita tax of \$7.00/member.³
- 3) IAM and TCU/IAM have embarked on a process of integrating their governance, ending with voting rights in IAM for TCU/IAM’s members upon full merger.
- 4) An Integration Team has begun work to integrate the two labor organizations’ operations and resources.
- 5) IAM and TCU/IAM have undertaken a combined communications program, including the merger of their two member publications. The resulting publication, sent to all members of IAM and all members of TCU/IAM, is a magazine containing at least two pages of TCU/IAM news.
- 6) IAM and TCU/IAM have merged the TCU Staff Retirement Plan with the IAM Grand Lodge Pension Plan.

Questions Presented

1. *Are IAM and TCU/IAM affiliated for purposes of the Act during the current transition period pending a full merger between IAM and TCU?*
2. *If IAM and TCU/IAM are affiliated, (a) must MNPL and RCPL aggregate contributions made and received by the two SSFs for purposes of the Act’s limits; (b) may IAM pay the administration and solicitation costs for RCPL; (c) may IAM and MNPL solicit contributions to MNPL from TCU/IAM’s restricted class, and may TCU/IAM and RCPL solicit contributions to RCPL from IAM’s restricted class; (d) may IAM and TCU/IAM pay for communications to each other’s restricted classes where the communications expressly advocate the election or*

³ For the months of August to December 2005, the combined per capita tax amounted to nearly \$1.5 million. It is estimated that such per capita tax payments by TCU/IAM to IAM will reach \$3.86 million for 2006. On January 1 of each year, through 2011, the per capita tax will increase to a rate of the previous year’s per capita plus an annual IAM Grand Lodge increase/per member. In 2012, the per capita tax will be equal to the full IAM Grand Lodge per capita tax.

defeat of a clearly identified candidate; and (e) may MNPL and RCPL be merged into a single SSF?

Legal Analysis and Conclusions

Question 1. Are IAM and TCU/IAM affiliated for purposes of the Act during the current transition period pending a full merger between IAM and TCU?

Yes, IAM and TCU/IAM are affiliated labor organizations for purposes of the Act and Commission regulations during the current transition period.

Under the Act and Commission regulations, political committees, including SSFs, that are established, financed, maintained or controlled by the same corporation, labor organization, person or group of persons, including any parent, subsidiary, branch, division, department or local unit thereof, are affiliated. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). Political committees' sponsoring organizations are also considered to be affiliated with each other when such organizations are established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons. 11 CFR 100.5(g)(4) and 110.3(a)(3).

In the absence of *per se* affiliation set out at 11 CFR 100.5(g)(3), the factors set forth at 11 CFR 100.5(g)(4) are used to determine affiliation between political committees or between their sponsoring organizations.⁴ See also 11 CFR 110.3(a)(3). These factors – which pertain to the relationship between sponsoring organizations as to governance; common officers, employees, or members; financing; and the formation of the organizations – are to be examined in the context of the overall relationship between the sponsoring organizations. 11 CFR 100.5(g)(4) and 110.3(a)(3).

In this instance, the Merger Agreement itself and the actions taken by IAM and TCU (now TCU/IAM) during the transition period, demonstrate a formal and ongoing relationship between the two organizations. For example, IAM played a significant role in the formation of TCU/IAM by chartering TCU/IAM, effectively folding the former TCU into its hierarchical structure. 11 CFR 100.5(g)(4)(ii)(I). Additionally, the significant monthly per capita tax that TCU/IAM currently pays to IAM is strong evidence that the two organizations are affiliated. 11 CFR 100.5(g)(4)(ii)(G) and (H).

Further, IAM and TCU/IAM have overlapping employees, including TCU/IAM employees who are now shared with IAM. 11 CFR 100.5(g)(4)(ii)(E). Additionally, IAM has hired some former TCU employees to further the integration of the two organizations. 11 CFR 100.5(g)(4)(ii)(F).

Therefore, the Commission concludes that IAM and TCU/IAM are currently affiliated for purposes of the Act and Commission regulations.

⁴ The same factors are also used to determine affiliation between two SSFs, or between a sponsoring organization and the SSF of another organization. 11 CFR 110.3(a)(3)(i).

Question 2. Activities of Affiliated Entities.

If IAM and TCU/IAM are affiliated, you also ask a number of questions regarding their contributions, solicitations, and SSFs; all of which are typical actions undertaken by affiliated entities.

(a) Must MNPL and RCPL aggregate contributions made and received by the two SSFs for purposes of the Act's limits?

Yes, because IAM and TCU/IAM are affiliated entities, their SSFs (MNPL and RCPL, respectively) must share contribution limits under the Act and Commission regulations. 2 U.S.C. 441a(a)(5); 11 CFR 110.3(a)(1).

(b) May IAM pay the administration and solicitation costs for RCPL?

Yes. A labor organization is permitted to use its general treasury funds to pay for the costs of establishing, administering, and soliciting contributions to its SSF. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.5(b). Additionally, the payment of such expenses is explicitly excepted from the Act's definitions of "contributions" and "expenditures." 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v). Accordingly, because IAM and TCU/IAM are affiliated, IAM may pay RCPL's administration and solicitation costs. *Cf.* Advisory Opinion 2001-7 (Nuclear Management Company Political Action Committee).

(c) May IAM and MNPL solicit contributions to MNPL from TCU/IAM's restricted class, and may TCU/IAM and RCPL solicit contributions to RCPL from IAM's restricted class?

Yes. The Act and Commission regulations permit a labor organization to solicit contributions to the labor organization's SSF from its members and executive or administrative personnel, and their families. 2 U.S.C. 441b(b)(4)(A); 11 CFR 114.1(j) and 114.5(g)(2). Accordingly, because IAM and TCU/IAM are affiliated labor organizations, IAM and MNPL may solicit contributions to MNPL from TCU/IAM's restricted class, and TCU/IAM and RCPL may solicit contributions to RCPL from IAM's restricted class. *Cf.* 11 CFR 114.5(g)(1) (corporations permitted to solicit the restricted classes of affiliated entities); *see also* Advisory Opinion 2001-18 (BellSouth).

(d) May IAM and TCU/IAM pay for communications to each other's restricted classes where the communications expressly advocate the election or defeat of a clearly identified candidate?

Yes. The Act and Commission regulations permit a labor organization to pay for express advocacy communications to its restricted class. 2 U.S.C. 441b(b)(2)(A); 11 CFR 114.3. Accordingly, because IAM and TCU/IAM are affiliated labor organizations, each may pay for express advocacy communications to the restricted

classes of both organizations. *Cf.* Advisory Opinion 1993-18 (Southwestern Bell Corporation) at note 3.

(e) *May MNPL and RCPL be merged into a single SSF?*

Yes, MNPL and RCPL may be merged into one SSF because they are treated as one political committee for purposes of limits on contributions they make or receive under 2 U.S.C. 441a(a)(5) and 11 CFR 110.3(a)(1), and because they may transfer funds to one another that are not limited in amount. 2 U.S.C. 441a(a)(5)(C); 11 CFR 102.6(a) and 110.3(c)(1).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)
Michael E. Toner
Chairman

Enclosures (AOs 2001-18, 2001-7 and 1993-18)