



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 17, 1981

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-14

Henry L. Smith  
The El Paso Company  
2727 Allen Parkway  
P.O. Box 2185  
Houston, Texas 77001

Dear Mr. Smith:

This responds to your letter dated February 19, 1981, requesting an advisory opinion on behalf of the El Paso Company ("the Company") and the El Paso Company Political Action Committee ("the Committee"), with regard to application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to certain proposed activity by the Committee.

You state in your letter that the Committee is a separate segregated fund restricted by its bylaws to activity involving Federal elections. The Company also sponsors other committees which are involved only in non-federal elections.

You indicate that presently, many employees\* of the Company contribute to the Committee through a payroll deduction plan based on written deduction requests signed by each employee. The written authorization states the exact amount that the employee wishes to have deducted. Since the Company sponsors a federal committee as well as other committees involved only in non-federal elections, the written authorization indicates the percentage of each employee's total contribution to be forwarded to each committee sponsored by the Company. It is necessary from time to time for the Company to ask each employee to re-execute his or her

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\* The Commission assumes that the category of employees being considered in this request is that of executive or administrative personnel since non-executive or administrative personnel are not eligible for participation in payroll deduction plans for separate segregated funds. See 11 CFR 114.6(e)(1).

deduction authorization to readjust the percentage of the contribution which goes to each committee if the employee wishes to do so. The Committee asks specifically whether the Act allows the Committee to offer each employee currently using a payroll deduction plan, the option of appointing an agent within the Company who would have authority to change the apportionment of that employee's contribution among the federal committee and the state committees.

Under the proposed arrangement, an employee would have the option of continuing participation in the payroll deduction system as before, or appointing an agent for the purpose of relieving the employee of the burden of repeatedly executing new authorization forms to change the apportionment of the employee's contribution according to the needs of each committee. Employees who appoint agents to adjust the percentages of each contribution will be advised of upcoming changes in apportionment through a general notice printed in the Company's newsletter. Subsequent to any change in apportionment, the agent will inform each affected employee of the new percentage which will determine how much of his or her total payroll deductions will go to each committee. The federal Committee will monitor the incoming contributions to insure that contribution limits of the Act are observed. Any agency relationship created in this manner is revocable at any time by the contributor.

The Commission concludes that as long as the designation of an agent by an employee participating in a payroll deduction plan is not a requirement of participation, such designation is not unlawful under the Act. This conclusion is based on the assumptions that employees who are the subject of this request are executive or administrative personnel of the Company as defined in 11 CFR 114.1(c); and the contributions made by executive or administrative personnel are voluntary as required by 11 CFR 114.5(a). That section provides that a separate segregated fund is prohibited from "making a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination or financial reprisal, or the threat of force...." Thus, any payment arrangement such as a payroll deduction plan as presently used by the Company, must satisfy the voluntariness element contained in 11 CFR 114.5. See 11 CFR 114.1(i).

The issue presented by the proposed activity is whether the voluntariness of an employee's contribution to the Company's committees required by 11 CFR 114.5 is destroyed when the employee appoints an agent with authority to change the amount of his or her contribution to be diverted to each committee. In the factual situation presented, an agency relationship does not destroy the voluntariness of a contribution because the employee may choose whether to continue participation in the payroll deduction system or whether to enter into the described agency relationship. Moreover, the authority of the agent to alter the percentage of the contribution going to each committee may be exercised only after the employee decides initially to make a voluntary contribution as required by the regulations. The employee's continuing right to revoke the original payroll deduction, as well as any agency designation, also means the employee retains sufficient authority with respect to making a contribution so that its continuing voluntariness is assured. Once the employee makes the initial decision to contribute to the committees and does not revoke that decision, the agency arrangement established for the purpose of directing the employee's contribution in the most efficient way, based on the agent's knowledge of the needs of each committee, does not destroy the voluntariness of contributions.

Thus, assuming that the proposed activity is totally optional and revocable at any time if the employee becomes dissatisfied with the arrangement, the Commission concludes that the proposed plan is not unlawful under the Act and Commission regulations.

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 yours,

(signed)

John Warren McGarry  
Chairman for the  
Federal Election Commission