



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 17, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-10

Mr. James F. Fitzpatrick
Mr. John M. Quinn
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Dear Messrs. Fitzpatrick and Quinn:

This responds to your letters of February 9 and February 27, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment and operation of a political contribution plan.

According to the information provided by you, Arnold & Porter ("the Partnership") is a law firm organized as a partnership under the laws of the District of Columbia. The Partnership has contracted to provide legal services to an agency of the United States, and is consequently a "Federal contractor" as defined at 11 CFR 115.1(a)(1). The Partnership wishes to establish a voluntary political contribution plan under which participating partners could make contributions to candidates for Federal office.

Under the plan, contributions would be made by checks drawn on the general partnership account used by the firm for its day-to-day operations. Individual partners are not authorized to issue checks drawn on this account to pay personal expenses. Rather, check-issuing authority is vested in a limited number of persons such as the firm's Comptroller and Administrative partner. The amount of any contribution made in the name of a participating partner would be charged against his or her personal firm account and an equivalent sum would be deducted from the partner's subsequent quarterly income distribution. The plan does not involve use of personal checks by participating partners.

Partnerships receive special treatment under the Act and Commission regulations. On one hand, a partnership is a "person" under 431(11). Consequently, partnerships may make contributions for the purpose of influencing any election for Federal office, if not otherwise

unlawful under the Act. On the other hand, partnership contributions are attributed to each individual partner pursuant to 110.1(e) of Commission regulations.

The Commission has approved partnership political contribution plans similar to the one you seek to establish. See Advisory Opinions 1981-50, 1982-13 (copies enclosed). These approved plans differ, however, in one crucial respect from the plan proposed in your request in that these partnerships did not indicate their "Federal contractor" status and, accordingly, the Commission did not address that issue. Because your partnership is a Federal contractor, the availability of such a plan must be determined by reference to 2 U.S.C. 441c and 115.4 of Commission regulations. Section 441c(a)(1) makes it unlawful for any person:

who enters into any contract with the United States or any department or agency thereof...directly or indirectly to make any contribution ... to any political party, committee, or candidate for public office or to any person for any political purpose or use....

As previously stated, a partnership is expressly included in the Act's definition of "person." The use of the general partnership checking account for transmitting contributions under your proposed plan violates the 441c prohibition against direct or indirect contributions by Federal contractors.

Commission regulations parallel 441c(a)(1). In particular, 115.4(a) provides that "the assets of a partnership which is a Federal contractor may not be used to make contributions or expenditures in connection with Federal elections." Individual partners may, however, make contributions in their own names from their personal assets. 11 CFR 115.4(b). The account from which the Partnership proposes to make contributions is inaccessible to individual partners and cannot be used for their personal expenses. The Commission is of the opinion that the funds paid from such an account must be characterized as Partnership assets. Consequently, those funds would not constitute personal assets from which contributions could be made under 115.4(b).

Moreover, it should be noted that 115.4(b) incorporates the Commission's position expressed in Advisory Opinion 1975-31. Explanation and Justification of Part 115, 1 Fed. Election Camp. Fin. Guide (CCH) §937 (Sept. 11, 1980). Advisory Opinion 1975-31 (copy enclosed) sets forth two requirements that, when met, enable a partner of a Federal contractor partnership to make a contribution. First, the contribution must be made in his or her own name. Second, the contribution must be made out of the partner's personal funds on a personal check. Your proposed plan fails to satisfy these requirements.

Accordingly, the Commission concludes that the Partnership may not establish a political contribution plan under which contributions are paid by checks drawn on any Partnership checking account because of the firm's Federal contractor status.

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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)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AO 1975-31, 1981-50 and 1982-13)