



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 27, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-4

Emmett W. Hines, Jr.
Director, Government Relations
Armstrong World Industries, Inc.
1025 Connecticut Ave., N.W.
Suite 1007
Washington, D.C. 20036

Dear Mr. Hines:

This responds to your letter of January 22, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed corporate-sponsored political contributions program.

Armstrong World Industries ("Armstrong") is a for-profit corporation headquartered in Lancaster, Pennsylvania. According to the Commission's records, Armstrong has not registered any separate segregated fund with the Commission. In your request, you describe a proposed program by which Armstrong seeks to broaden the participation of its executive and administrative personnel in the political contributions process.

You state that personnel from the corporate president's office and the public relations and public affairs office will seek to convince approximately 80 executive and administrative personnel in the United States to participate in a program of making individual contributions to political candidates and committees. These personnel, which you describe as "volunteers," will "not shirk from enthusiastically supporting both the concept of participation and the program" and will seek a commitment or pledge at a specific contribution amount between \$250 and \$500. You estimate that in the first year or two, 50 to 70 executives will make total contributions of \$15,000 to \$25,000.

You state that contributors will be offered four basic categories for contributions: (1) Federal, including incumbent and challenger congressional candidates and Business Industry

Political Action committee (BIPAC); (2) state, including Pennsylvanians for Effective Government (PEG) and candidates for state office; (3) local, including candidates and local parties; and (4) general, for reimbursing Armstrong for the use of its facilities. You expect total contributions will be split one-third to Federal candidates, one-third to BIPAC, and one-third to state and local races with incumbent Members of Congress and PEG being primary recipients. Armstrong executives will be asked to complete a form on which they will indicate their degree of interest in participating, the contribution categories they want to know more about, and the amount of their contribution commitment or pledge by category. This form will be returned to an employee in Armstrong's general office, who will serve as the "volunteer" administrator of the program.¹

The administrator will periodically report to the president's office: (1) an estimate of the total number of participating executive or administrative personnel; (2) an estimate of the total amount of contribution commitments by category; and (3) an estimate of the total amount of contributions made by category. The administrator will not report the amounts contributed by any individual or received by any candidate.

The administrator will also match up contribution opportunities with potential contributors in several ways. In one instance, as the time for a particular event approaches, such as the PEG dinner, the administrator will consult the program's files for those executives interested in this event and supply the names to the public relations and public affairs office which will contact these executives about the events.

In a second instance, a congressman may send an invitation to a fundraiser to Armstrong's Washington office, which will determine if a contribution should be made and if an Armstrong representative should attend. The Washington office will inform the administrator about the timing of the event and a suggested aggregate contribution. The administrator will then canvass Armstrong's executives who have pledged contributions in this category until the suggested total contribution is reached. In addition, the public relations and public affairs office in Washington will prepare annually (and update periodically) a listing of Federal congressional races with supplemental information for potential contributors. An example of such a listing is included as part of the request.

In a third instance, the administrator may receive an inquiry from an Armstrong executive who is interested in contributing to a congressman "who is active in trying to reduce the size of the Federal budget and who has also been helpful to the Company." The administrator will contact the Washington office, which will then respond directly to the executive with factual information to help the executive make a choice regarding his or her contribution.

A contributing executive will make his or her check out to the candidate's campaign committee. Contributions to incumbents will be mailed to the Washington office, which will deliver them to the candidate or his or her committee in connection with Armstrong's participation in the fundraising event. In other instances, contributors will mail their contributions directly to the candidate's committee. You state that no more than \$1,000 in the

¹ You state that the administrator and one or two volunteer assistants will not be employed in either the president's office or in the public relations and public affairs office.

aggregate will be transmitted through Armstrong intermediaries to any one candidate in a calendar year. You also state that the administrator, any intermediary, or any other Armstrong employee (except the original contributor) will not exercise any direction or control over the choice of any recipient candidate.

You further state that the administration of this program will encompass only incidental use of corporate facilities and that access to such facilities will be only on a reimbursable basis. You explain that the incidental use of corporate facilities will be reimbursed for any increased overhead or operating expenses related to the use.² If the administration of this program exceeds incidental use, the corporation will be reimbursed for the total cost of such use at a commercially reasonable rate. The corporation will also be reimbursed at the usual and normal charge for any use of corporate facilities to produce materials in connection with a Federal election. As one way of participating in Armstrong's program, its executive or administrative personnel may choose to provide funds for these reimbursements. You also state that voluntary activity by employees will occur either outside normal working hours or during normal working hours to the extent such time is made up or does not prevent the employee from carrying out his or her compensated duties.

You ask whether the portions of this proposed program that are in connection with Federal elections invoke any registration or reporting requirements under the Act or Commission regulations or violate any such provisions.

As you know, the Act prohibits a corporation from making contributions or expenditures in connection with a Federal election. 2 U.S.C. 441b(a). The Act and Commission regulations provide limited exceptions to this broad general prohibition. See 2 U.S.C. 441b(b)(2); 11 CFR Part 114. Thus, Armstrong's proposed activity will result in a violation of this prohibition unless it comes within one of its exceptions. As explained below, Armstrong may undertake its proposed activity only under the exception for "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).³

Armstrong's proposed activity is a corporate endeavor under Armstrong's imprimatur to support candidates and to solicit and direct contributions to candidates. It is not merely a nonpartisan activity to encourage its executives to participate in the political system as good citizens under 11 CFR 114.4 or a spontaneous activity of individual employees under 11 CFR

² You describe incidental use as use that will not interfere with the organization's normal activity and includes up to one hour per week or four hours per month, whether or not the use will occur during or outside normal working hours.

³ As explained in footnotes 4, 5 and 6, Armstrong's proposed activity does not come within the other exceptions to the Act's prohibition.

Furthermore, this opinion does not address Armstrong's role with respect to contributions by its executives or administrative personnel to BIPAC, since you have not presented a complete description of your proposed activity with regard to these contributions. See 11 CFR 112.1(c).

114.9. Instead, through its president's office and its public relations and public affairs office, Armstrong will direct and supervise this program, making the significant decisions, and will influence or direct contributor decisions regarding how and to whom contributions are made.⁴

Armstrong will actively persuade its executives to participate in its program, will seek specific pledges of contributions from them, and will receive reports to monitor the extent and level of their participation, pledges, and contributions. Its Washington office will distribute, periodically and on request, information concerning Federal congressional races of interest to Armstrong or its executives, and may also include recommendations regarding the amount and the recipient of contributions.⁵ Furthermore, Armstrong's contemplated use of a "volunteer" administrator and assistants relates only to certain ministerial aspects of the program, such as keeping files, preparing reports, and acting as a liaison between the corporation's executives and its Washington office.⁶

In several instances, Armstrong will act as a conduit or intermediary for earmarked contributions and will direct the making of such contributions by its executives. For instance, in

⁴ Armstrong's proposed plan differs from the type of employee participation (or trustee) plan permitted by 11 CFR 114.11 in several important respects. The proposed plan is limited to senior management and includes corporate persuasion to encourage participation. See 11 CFR 114.11(a)(4) and (b). The program includes corporate communications regarding the fundraising needs of specific candidates or political committees directed to specific, selected management personnel. See 11 CFR 114.11(a)(5). The program also includes the collection of contributions to incumbents by the corporation which then transmits them to the candidate or committee. See 11 CFR 114.11(d). Thus, Armstrong's proposed plan does not qualify for this exception to the Act's prohibition on corporate contributions or expenditures.

⁵ The Act does permit a corporation to make communications to its executive or administrative personnel on any subject. 2 U.S.C. 441b(b)(2)(A); 11 CFR 114.3. The Commission has previously stated that this exception permits a corporation to make communications to its executive or administrative personnel that recommend they vote for a particular candidate or make contributions to a particular candidate or committee. Advisory opinion 1982-2. The Commission added, however, that this exception does not also permit a corporation to act as a conduit or intermediary by facilitating the making of contributions, including providing envelopes addressed to the candidate or committee. *Id.* Instead, the Commission has recognized that a corporation's separate segregated fund may act as a conduit or intermediary for earmarked contributions. See 11 CFR 114.3(c)(2); Advisory Opinions 1981-57 and 1981-21. To the extent Armstrong limits its proposed activity to partisan communications permissible under 2 U.S.C. 441b(b)(2)(A) and 11 CFR 114.3, it may still have a reporting obligation. See 11 CFR 114.3(b). The exception in the Act and regulations for nonpartisan communications also does not apply to Armstrong's proposed program, which includes communications that are related to the soliciting and making of contributions to candidates for Federal office and, thus, are communications made for the purpose of influencing a Federal election. See 2 U.S.C. 441b(b)(2)(B); 11 CFR 114.4.

⁶ Because of the Commission's conclusion with regard to Armstrong's proposed activity, Commission regulations at 11 CFR 114.9 will not permit Armstrong to undertake its activity without complying with the Act's registration and reporting requirements. See Communication from the Chairman, H.R. Doc. No. 44, 95th Cong., 1st Sess. 115 (1977) ("These sections are not applicable to a corporation's labor organization's use of facilities for activities specifically permitted to the corporation or labor organization by this Part.").

response to a specific fundraising solicitation, such as from an incumbent Member of Congress, Armstrong will determine whether a contribution should be made, what the aggregate amount of the contribution should be, and whether a company representative should attend. It will then have the administrator canvass Armstrong's executives until the desired aggregate contribution is reached. The administrator will collect these contribution checks, made payable to the candidate's committee, and transmit them to Armstrong's Washington office which will further deliver these contributions to the candidate or the candidate's committee in connection with Armstrong's participation in the fundraising event. Armstrong, not the contributor, will determine the recipient of a contribution, its aggregate amount, and its timing. Compare Advisory Opinion 1980-46. Thus, notwithstanding the representation in your request, Armstrong will, in the totality of these circumstances, exercise direction and control over the making of such earmarked contributions as well as act as the conduit and intermediary for them. Armstrong may undertake such activity only through a separate segregated fund.⁷

Accordingly, if Armstrong undertakes its proposed activity, it will invoke the Act's requirements that Armstrong register a separate segregated fund with the Commission as a political committee and report its receipts and disbursements in accordance with the Act and Commission regulations, including its activity as a conduit or intermediary for earmarked contributions. See 2 U.S.C. 431(4)(B), 432, 433, 434, and 441a(a)(8). In those instances where Armstrong exercises direction or control over the making of an earmarked contribution, such as described above, its separate segregated fund must report such a contribution as a contribution from both the individual who made the original contribution and from Armstrong's separate segregated fund in accordance with 11 CFR 110.6(d) and 104.3(b).

Earmarked contributions in these instances will also be subject to the Act's contribution limitations with respect to both the individual contributor and Armstrong's separate segregated fund. See 2 U.S.C. 441a(a)(1) and (a)(2); see also, 2 U.S.C. 441a(a)(4). Since earmarked contributions over which Armstrong exercises direction and control will also be treated as contributions made by Armstrong's separate segregated fund, the solicitation of such contributions must also comply with the requirements of 2 U.S.C. 441b(b)(3)(A) and 11 CFR 114.5(a)(1) and (2), which apply to contributions made by such a fund. See also 11 CFR 114.5(b)(1).

⁷ The Commission notes that Armstrong's proposed activity is materially indistinguishable from the situation the Commission addressed in its response to Advisory Opinion Request 1976-92. That response dealt with the Civic Pledge Program (CPP), consisting of the executive or administrative personnel of the Boeing Company, for the purpose of making individual contributions to candidates. In this situation, an administrator received requests for contributions, prepared a data sheet on the relevant candidates, and forwarded this information to an advisory group. The group determined if a contribution should be made to such candidate and the amount of the contribution. The administrator then canvassed selected executive or administrative personnel for contributions. The contributors made their checks payable to the candidate or the candidate's committee, but the administrator collected the checks and forwarded them to the candidate. The Commission concluded in its response that Boeing's CPP should register and report as a separate segregated fund. The Commission also concluded that such earmarked contributions were allocable to both the separate segregated fund's contribution limitation and to the individual contributor's contribution limitation. See also, Advisory Opinions 1983-18 and 1981-57.

The Commission expresses no opinion regarding those aspects of Armstrong's proposed activity that relate solely to state and local candidates or committees. See 2 U.S.C. 453 and 11 CFR 102.1(c).

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)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1983-18, 1982-2, 1981-57, 1981-21, 1980-46, and RE: AOR 1976-92)