FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 15, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-29

Timothy W. Jenkins
O'Connor & Hannan
Suite 800
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20036-3483

Dear Mr. Jenkins:

This refers to your letter dated December 21, 1990, requesting an advisory opinion on behalf of Joseph E. Seagram & Sons, Inc. ("Seagram") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the deposit of certain funds into Seagram's separate segregated fund.

Joseph E. Seagram & Sons, Inc. Political Action Committee ("JESPAC" or "the Federal Account") is Seagram's separate segregated fund. It registered with the Commission on May 18, 1981. You state that, in late 1989, Seagram established JESPAC for Arizona, a committee engaged in non-Federal election activity. JESPAC for Arizona ("the State Account") was funded by a $5,000 transfer from the Federal Account made on November 27, 1989. At the time of the transfer, Arizona law permitted deposits of out-of state funds into state committee accounts. You explain that, on August 9, 1990, less than a year after the establishment of the State Account, the office of the Arizona Secretary of State "issued an order establishing a new policy precluding the transfer of out-of-state political committee funds into a state political committee account."[1/] You state that notice of the policy was included with report forms sent to state committee officials, but that there was no reference in those materials to an effective date for the policy, nor was there "any guidance as to the most efficient means of ensuring retroactive and/or future compliance with the order."

Upon receipt of the order, Seagram officials asked the Secretary of State's office about the effect of the new policy on the funds that had been transferred from the Federal Account. Because the Arizona officials were unable to offer any alternative recommendations for the operation of the

committee, Arizona and Seagram officials agreed that "the most prudent and efficient means of assuring compliance" with the new policy was to close the State Account and seek refunds or reimbursement of any contributions.

During its brief existence, the State Account had made only one contribution, a $2,000 disbursement to the Arizona Senate Democratic Constituents Communications Account, apparently made in June, 1990. This contribution was refunded on October 8, 1990. The only other disbursement made was a $21 payment to its bank for committee checks. No funds had ever been solicited for the State Account. On November 20, 1990, the State Account was terminated and its funds totalling $4,979 ($5,000 minus the disbursement for the checks) were transferred to the Federal Account. After making an inquiry to the Commission and determining that the funds could not remain on deposit in that account, the funds were transferred, on December 10, 1990, to a separate escrow account which was opened under the name of Seagram Employees Escrow Account.

You ask whether all or any of the funds now held in escrow may be deposited in the Federal account. If the Commission concludes that the funds may not be deposited in the Federal Account, you wish to know what Seagram should do to remain in compliance with the Act.

Commission regulations provide that an organization which finances political activity in connection with both Federal and non-Federal elections and which qualifies as a political committee has two options. It may establish a political committee which receives only contributions subject to the limitations and prohibitions of the Act regardless of whether such contributions are for use in Federal or non-Federal elections. 11 CFR 102.5(a)(1)(ii). In the alternative, it may establish separate accounts for Federal and non-Federal activity, as Seagram had done. Only funds subject to the prohibitions and limitations of the Act may be deposited in the Federal account, and all disbursements in connection with any Federal election must be made from that account. No funds may be transferred to such an account from the other, non-Federal accounts of the organization. 11 CFR 102.5(a)(1)(i).[2/]

The Commission has permitted a transfer from a non-Federal election account to the Federal account of an organization under certain specific conditions. In Advisory Opinion 1984-31, the Commission concluded that funds consisting of 48 small contributions from directors and others within the solicitable class of a corporation could be transferred from a corporation's state committee to its Federal committee under certain circumstances. The Commission required that the state committee receive written authorizations from the original contributors stating their intent to make a contribution to the Federal account and that the funds of any contributor not doing so would either be refunded or remain in the state account.[3/] The Commission also premised its conclusion on the legality, under the Act, of the funds received.

Analogously, the Commission, in Advisory Opinion 1981-34, permitted a membership organization to transfer funds originally collected for lobbying purposes to the organization's Federal political committee based on certain conditions. The Commission noted that the solicitation of these funds went only to members and indicated that the funds would be used for political purposes. The solicitation also made clear that donations would be entirely voluntary. In addition, the organization had kept the funds separated from other general treasury funds. The

Commission required that each donor be provided with a convenient means of disapproving the transfer of his or her portion of unspent funds, and that all funds transferred would have to consist of donations by a solicitable member within the contribution limits of the Act.

The Commission's decision to allow the transfer of non-Federal election funds to a Federal account in specific situations is premised largely on the legality, under the Act, of the transferred funds. The funds that were originally transferred to the State Account were funds that were raised from solicitations subject to the Act, that were intended by contributors for the Federal Account, and that presumably consisted of funds from permissible sources. Of these funds, $2,000 was contributed to a state committee and returned by that committee apparently within a four month period. Although, in strict accounting terms, the recipient state committee did not return the same funds that were contributed, the limitations and prohibitions of Arizona law are largely consistent with those of the Act. See Arizona Revised Statutes §16-901 et seq. Therefore, it is unlikely that the funds returned to the State Account originated from impermissible funds. In addition, the State Account received no funds other than the original transfer and the refund of the contribution.

The Commission further notes that this situation arises from an order by the State of Arizona that disqualified, for use in Arizona elections, funds which were initially transferred by the Federal Account to the State Account and were not then in violation of State law. Thus, the redeposit of such funds into a new state account would not remedy the problem presented. In addition, as you point out, the deposit of funds into a Seagram corporate treasury account would contravene the apparent intent of the original contributors to the Federal Account "to participate in the JESPAC fundraising effort."

Based on the combination of factors set out, the Commission concludes that the $4,979 presently in the escrow account may be transferred to the Federal Account.

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,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1984-31 and 1981-34)

1/ The notice, entitled, "Information for Campaign Committees Transferring Funds Between Committees," states that "Federal or out-of-state campaign committees not registered in Arizona cannot transfer or contribute funds to campaign committees registered in Arizona which give to state and local candidates." It also notes that Federal committees which register in Arizona must

comply with Arizona campaign finance laws, specifically the reporting of the names and addresses of all persons contributing $25 or more.

2/ Recently revised regulations of the Commission, effective January 1, 1991, provide exceptions to this prohibition in some specific circumstances not relevant here, e.g., the allocation of certain expenses for mixed Federal and non-Federal election activities. See 11 CFR 106.5(g) and 106.6(e).

3/ The Commission did not require the state committee to register but noted that there was a Federal account already and the state account could be construed to be acting as a collecting agent.