



FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

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August 1, 1991

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

SUBJECT: Request for Reconsideration of Advisory Opinion  
1991-13

**AGENDA ITEM**  
For Meeting of: August 15, 1991

Background

On May 20, 1991, the Commission issued Advisory Opinion 1991-13 to Richard E. Casagrande, who had made a request on behalf of the New York State Public Employees Federation, AFL-CIO ("PEF"). In that opinion, the Commission concluded, *inter alia*, that a separate segregated fund PEF was proposing to form would be affiliated with the separate segregated funds of the two international unions that jointly controlled PEF. On June 20, 1991, Mr. Casagrande submitted a timely request for reconsideration of that opinion, pursuant to 11 CFR §112.6. A copy of Mr. Casagrande's letter seeking reconsideration was circulated to the Commission on June 24, 1991. This memorandum sets forth and analyzes the bases of Mr. Casagrande's request for reconsideration.

Arguments by Requestor's Counsel

Mr. Casagrande expresses three principal complaints about AO 1991-13. First, he states that "the Opinion is based on erroneous assumptions about the practical relationship between PEF and its international affiliates." Second, he asserts that the Opinion contains a misconception that PEF is seeking to establish a second separate segregated fund. He asks the Commission for "a declaration that for determining federal election campaign contribution limits, PEF's SSF is not affiliated with those established by AFT or SEIU." Finally, he notes that PEF's status is unique in the labor union movement. He argues that a finding that PEF is not affiliated with AFT and SEIU will not create the possibility that PEF-COPE will use

authority or ability of one organization to direct or participate in the governance of another organization.

Specifically, Mr. Casagrande disagrees with the Commission's use of the following facts as evidence of affiliation: reliance on the provision in the Affiliation Agreement for the creation of the Affiliates Advisory Committee; AFT's and SEIU's ability to appoint a trustee; the ability of AFT and SEIU to revoke, terminate, or suspend PEF's charter; and the requirement that PEF submit reports on the status of PEF's collective bargaining negotiations and the administration of labor contracts. In the opinion the Commission used these facts to analyze "[w]hether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures." 11 CFR 100.5(g)(4)(ii)(B); 110.3(a)(3)(ii)(B). That factor is one of the 6 factors relied on by the Commission in its determination that PEF-COPE(II) would be affiliated with both AFT-COPE and SEIU-COPE.

Contrary to PEF's contentions, the affiliation regulations specifically allow the Commission to consider the "authority or ability" of AFT and SEIU to "direct or participate" in PEF's governance. 11 CFR 100.5(g)(4)(ii)(B) and 11 CFR 110.3(a)(3)(ii)(B). So, even if AFT and SEIU have not exercised their rights under the Affiliation Agreement, they have the ability to do so. As noted in the Opinion, the Affiliation Agreement provides that AFT and SEIU have the ability to appoint a trustee or revoke, terminate, or suspend PEF's charter. In addition, the Affiliation Agreement requires the creation of an Affiliates Advisory Committee. It also requires PEF to submit certain reports to AFT and SEIU.

Furthermore, the facts listed by Mr. Casagrande in his request for reconsideration are only some of the facts considered by the Commission as evidence of affiliation. In addition to the facts cited by Mr. Casagrande, the Commission stated that the following facts support its conclusion that PEF-COPE would be affiliated with AFT-COPE and SEIU-COPE: the provision in the Affiliation Agreement stating that PEF was "jointly created and jointly financed" by AFT and SEIU; the overlapping membership between PEF and AFT and SEIU; that PEF members are entitled to most of the benefits of membership in both AFT and SEIU, regardless of which union they belong to; that PEF members can serve as delegates to their international union's convention; that PEF's 5 statewide delegates can attend both AFT's and SEIU's convention; that PEF's President and Secretary/Treasurer are eligible to sit on the Boards of both AFT and SEIU; that PEF's Constitution and Bylaws are subordinate to the Constitution and Bylaws of AFT and SEIU, and cannot be amended without AFT's and SEIU's approval; that certain matters are not subject to referendum, which is the

Casagrande has not asserted any reason to treat PEF differently.

While Mr. Casagrande's request for reconsideration presents no grounds for reversing the outcome of AO 1991-13, we note that the Commission has acknowledged the possibility of disaffiliation where there has been a substantial change in the legal relationship between the entities involved. See, e.g., Advisory Opinion 1983-28. However, as noted in footnote 3 of AO 1991-13, there is no indication here that the relevant relationships have changed. If PEF's relationship with AFT and SEIU should undergo a substantial change, PEF may want to submit another Advisory Opinion Request to the Commission requesting disaffiliation from AFT and SEIU.

#### **RECOMMENDATIONS**

The Office of General Counsel recommends that the Commission deny Mr. Casagrande's request for reconsideration and that he be so informed by forwarding him a copy of this memorandum.

Staff Assigned: Ann Wittik Bravmann