

APR 28 9 50 AM '94



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1994

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael Marinelli
Staff Attorney

SUBJECT: Draft AO 1994-6

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for May 5, 1994.

Attachment

AGENDA ITEM
For Meeting of: MAY 5 1994

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COMMISSION
SECRETARIAT

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-6

Frances Morgan
Coors PACE
Coors Brewing Co.
NH510
Golden, CO 80401

DRAFT

Dear Ms. Morgan:

This refers to your letters of March 25, and March 17, 1994, on behalf of Political Action Coors Employees ("PACE"), concerning the application of the Federal Election Campaign Act of 1971 ("the Act") to a matching charitable contribution plan that it proposes to use in its solicitations.

PACE is the separate segregated fund of the Coors Brewing Company ("Coors"). You state that PACE would like to begin a matching charitable contributions plan to encourage a higher level of voluntary participation by Coors' employees in PACE. Under the proposed plan, each person making a voluntary contribution to PACE would have 25 cents of each dollar of the contribution matched by a donation to a charity designated by PACE. You state that the matching funds would come from Coors rather than from PACE. PACE's proposed plan would be open to all of Coors' employees, including the non-executive and non-administrative employees of its subsidiaries, divisions or branches. These individuals are referred to in your request as the "Expanded Class."

As an alternative to giving participants only one

3 choice, you also propose to offer them the possibility of
4 choosing from a list of up to four charities that could
5 receive the matching donation. You also propose, as an
6 alternative, that PACE would designate a single charity donee
7 to receive the Coors donation, unless the contributor to PACE
8 expressly makes his or her own choice from the list of
9 charities.

10 The Act prohibits a corporation from making
11 contributions or expenditures in connection with any Federal
12 election. However, the Act excludes from the definition
13 of "contribution or expenditure," those costs which are paid
14 by the corporation for "the establishment, administration,
15 and solicitation of contributions to a separate segregated
16 fund to be utilized for political purposes" by the
17 corporation. 2 U.S.C. §441b(b)(2)(C). Although Commission
18 regulations explain that a corporation may use its general
19 treasury monies to pay the expenses of establishing and
20 administering such a fund and of soliciting contributions to
21 the fund, the regulations also provide that a corporation may
22 not use this process "as a means of exchanging treasury
23 monies for voluntary contributions." 11 CFR 114.5(b). In
24 this respect, the regulations further explain that a
25 contributor may not be paid for his or her contributions
26 through a bonus, expense account, or other form of direct or
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3 indirect compensation. 11 CFR 114.5(b)(1).^{1/}

4 The Act and Commission regulations allow a corporation,
5 or a separate segregated fund established by a corporation,
6 to solicit voluntary contributions to the fund from the
7 corporation's stockholders, its executive and administrative
8 personnel, and the families of such persons. 2 U.S.C.
9 §441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation of
10 these persons for contributions to the fund must meet certain
11 requirements. See 11 CFR 114.5(a).

12 The Act and regulations also permit two written
13 contribution solicitations in a calendar year to other
14 employees. 2 U.S.C. §441b(b)(4)(B); 11 CFR 114.6(a). The
15 corporation, however, must make such written contribution
16 solicitations by mailing them to an employee's residence and
17 must use a custodial arrangement that ensures the anonymity
18 of those wishing to contribute less than \$50 in any single
19 contribution, or those not wishing to contribute at all. 11

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21 ^{1/} The Commission's conclusion regarding matching
22 charitable contributions by SSF's is consistent with the
23 Internal Revenue Code's treatment of the tax consequences of
24 such programs. The Internal Revenue Service has concluded
25 that "a Charity/PAC matching program grant to an IRC
26 501(c)(3) organization should not be recharacterized as
27 payment of compensation to the employee, and a subsequent
28 payment by the employee to the IRC 501(c)(3) organization."
29 Judith E. Kindell and John F. Reilly, Election Year Issues,
30 IRS publication, 441 (1992); see also Rev. Rul. 67-137,
1967-1 C.B. 63. The Internal Revenue Service has also
concluded that the corporation may not receive a tax
deduction for the matching charitable donation it makes.
Because the corporation receives a substantial benefit or
quid pro quo in return for its donation to the employee
designated charity, the donation cannot be viewed as a true
"gift" from the corporation. Kindell and Reilly, at 444.

3 CFR 114.6(c) and (d). See also Advisory Opinions 1991-28 and
4 1990-25.

5 The proposed PACE plan is similar to those approved by
6 the Commission in the past. See Advisory Opinions 1994-3,
7 1990-6, 1989-9 and 1989-7. The Commission has recently
8 approved the use of matching charitable contribution plans
9 for employees who are only solicitable under the twice yearly
10 procedures, as long as all other Commission regulations
11 applicable to the solicitation of these personnel are
12 followed. See Advisory Opinion 1994-3.^{2/}

13 These past opinions have all allowed corporations to
14 match contributions made to their separate segregated funds
15 with donations to charities. The Commission has viewed the
16 corporation's matching of voluntary political contributions
17 with charitable donations as solicitation expenses related to
18 fundraising for its separate segregated fund. 2 U.S.C
19 §§441b(a) and 441b(b)(2)(C). Central to this conclusion is

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21 2/ In that opinion, the Commission required the
22 modification of the requester's proposal in order to comply
23 with the custodial arrangement set forth in section 114.6(d)
24 and to ensure the anonymity of contributors making
25 contributions of \$50 or less or multiple contributions
26 aggregating \$200 or less in a calendar year. The Commission
27 required that any review of the list of qualified charities
28 chosen by participating contributors should be conducted in a
29 manner that preserved the confidentiality of those
30 contributing the smaller amounts described above.
Furthermore, the Commission required that letters sent to
charities regarding the participants making the smaller
contributions should be prepared and sent only by the
custodian and should not give the actual name of the
participant. Letters of appreciation from the charity could
be conveyed to these participants through the custodian. See
Advisory Opinion 1994-3.

3 that the individual contributor to the separate segregated
4 fund would not receive a financial, tax, or other tangible
5 benefit from either the corporation or the recipient
6 charities, thus avoiding an exchange of corporate treasury
7 monies for voluntary contributions. Your proposal meets this
8 requirement by stating that charities selected under the
9 proposal will not be permitted to provide a tangible benefit
10 or premium to PACE contributors in return for their donation.
11 Having met this requirement, the number of charitable donee
12 choices offered to PACE contributors, or the lack of choice,
13 is not, by itself, a distinguishing factor from past
14 opinions. Therefore, the Commission concludes that subject
15 to all other applicable provisions of the Act and
16 regulations, the PACE matching plan would be permissible
17 under the Act and regulations.

18 The Commission expresses no opinion regarding any tax
19 ramifications of the proposed matching charitable
20 contribution plan because those issues are outside the
21 Commission's jurisdiction.
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3 This response constitutes an advisory opinion concerning
4 application of the Act, or regulations prescribed by the Com-
5 mission, to the specific transaction or activity set forth in
6 your request. See 2 U.S.C. §437f.

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8 For the Commission,

9
10 Trevor Potter
11 Chairman

12 Enclosures (AOs 1994-3, 1991-28, 1990-25, 1990-6, 1989-9
13 and 1989-7)
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