



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR 26 5 00 PM '94

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 *om D M.*
Staff Attorney

SUBJECT: Draft AO 1994-7

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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2
3 CERTIFIED MAIL
RETURN RECEIPT REQUESTED

4 ADVISORY OPINION 1994-7

DRAFT

5 Woodrow W. Ban
6 Senior Corporate Counsel
7 The Geon Company
8 6100 Oak Tree Blvd.
9 Golden, CO 80401

Dear Mr. Ban:

10 This refers to your letters of March 29, and March 8,
11 1994, on behalf of GEON PAC ("the PAC"), concerning the
12 application of the Federal Election Campaign Act of 1971
13 ("the Act") to a matching charitable contribution plan that
14 it proposes to use in its solicitations.

15 The PAC is the separate segregated fund of the Geon
16 Company ("Geon"). You state that the PAC would like to
17 begin a matching charitable contributions plan to encourage a
18 higher level of voluntary participation by Geon employees in
19 the PAC. Under the proposed plan, contributors who, at the
20 end of a calendar year, had contributed at least \$50 to the
21 PAC would have a donation made by Geon to an I.R.C. 501(c)(3)
22 listed charitable organization of the contributor's own
23 choosing. If the PAC contributor made no selection of a
24 charitable organization, no charitable donation would occur.
25 The assistant secretary of the PAC, a clerical employee of
26 Geon, would prepare the necessary forms for the charitable
27 gift match activities and submit those forms to the clerical
28 employee in Geon's Human Resources Department, the department
29 charged with administering the matching gift program. The
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3 employee in this department would, in turn, prepare check
4 requests showing the amount of the check and the payee
5 charity.

6 Your request provides details of the custodial
7 arrangement for the solicitation of what you refer to in your
8 request as the non-restricted employee class; that is,
9 employees who are not executive or administrative personnel
10 or shareholders. You identify the proposed custodian as Mr.
11 Larson, an assistant treasurer of the PAC. In that capacity,
12 Mr. Larson is a non-voting member of the contributions
13 committee of the PAC. He would receive the contributions
14 directly from Geon employees. In addition, he would either
15 log them personally on the spread sheets maintained by the
16 assistant secretary to record contributions, or arrange for
17 the assistant secretary to log the contributions. At the end
18 of the year, both would ascertain which of the non-executive
19 employees had contributed a sum sufficient to trigger
20 charitable gift matching, and would submit the necessary
21 forms to secure the gift match.^{1/}

22 The Act prohibits a corporation from making
23 contributions or expenditures in connection with any Federal
24 election. However, the Act excludes from the definition of
25 "contribution or expenditure," those costs which are paid by
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27 ^{1/} The assistant secretary, you state, customarily handles
28 the deposit of contributions from the executive employee
29 group to the PAC, preparing the deposit slips and logging the
30 contributions from these personnel to the PAC on the
spreadsheet used for purposes of preparing FEC periodic
reports.

3 the corporation for "the establishment, administration, and
4 solicitation of contributions to a separate segregated fund
5 to be utilized for political purposes" by the corporation. 2
6 U.S.C. §441b(b)(2)(C). Although Commission regulations
7 explain that a corporation may use its general treasury
8 monies to pay the expenses of establishing and administering
9 such a fund and of soliciting contributions to the fund, the
10 regulations also provide that a corporation may not use this
11 process "as a means of exchanging treasury monies for
12 voluntary contributions." 11 CFR 114.5(b). In this respect,
13 the regulations further explain that a contributor may not be
14 paid for his or her contributions through a bonus, expense
15 account, or other form of direct or indirect compensation.
16 11 CFR 114.5(b)(1).^{2/}

17 The Act and Commission regulations allow a corporation,
18 or a separate segregated fund established by a corporation,
19 to solicit voluntary contributions to the fund from the
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21 ^{2/} 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 corporation's stockholders, its executive and administrative
4 personnel, and the families of such persons. 2 U.S.C.
5 §441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation of
6 these persons for contributions to the fund must meet certain
7 requirements. See 11 CFR 114.5(a).

8 The Act and regulations also permit two written
9 contribution solicitations in a calendar year to other
10 employees. 2 U.S.C. §441b(b)(4)(B); 11 CFR 114.6(a). The
11 corporation, however, must make such written contribution
12 solicitations by mailing them to an employee's residence and
13 must use a custodial arrangement that ensures the anonymity
14 of those wishing to contribute less than \$50 in any single
15 contribution, or those not wishing to contribute at all. 11
16 CFR 114.6(c) and (d). See also Advisory Opinions 1991-28 and
17 1990-25.

18 The custodian chosen for the custodial arrangement
19 cannot be a stockholder, an officer, or within the executive
20 or administrative personnel group, or an employee of the
21 corporation or its separate segregated fund. The custodian
22 is limited in the degree that he or she may make records of
23 employee contributions available. 11 CFR 114.6(d). As
24 permitted by section 114.6(d)(1) and (5), the treasurer of
25 the SSF may serve as custodian if that person does not hold
26 any position with the corporation, as listed above, and does
27 not participate in the decision making process whereby the
28 separate segregated fund makes contributions and
29 expenditures. See Advisory Opinions 1994-3, 1988-14 and
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3 1977-56.

4 The proposed the PAC plan is similar to those approved
5 by the Commission in the past. See Advisory Opinions 1994-3,
6 1990-6, 1989-9 and 1989-7. These past opinions have all
7 allowed corporations to match contributions made to their
8 separate segregated funds with donations to charities. The
9 Commission has viewed the corporation's matching of voluntary
10 political contributions with charitable donations as
11 solicitation expenses related to fundraising for its separate
12 segregated fund. 2 U.S.C §§441b(a) and 441b(b)(2)(C).
13 Central to this conclusion is that the individual contributor
14 to the separate segregated fund would not receive a
15 financial, tax, or other tangible benefit from either the
16 corporation or the recipient charities, thus avoiding an
17 exchange of corporate treasury monies for voluntary
18 contributions. As long as your own proposal is implemented
19 so that no contributor receives a tangible benefit or premium
20 from either Geon, its PAC, or the charity receiving the
21 matching donation, this requirement will be met.

22 The Commission has recently approved the use of matching
23 charitable contribution plans for employees who are only
24 solicitable under the twice yearly procedures, provided that
25 all other Commission regulations applicable to the
26 solicitation of these personnel are followed. See Advisory
27 Opinion 1994-3.

28 In this regard, however, the Commission notes that your
29 proposal must be modified in order to comply with the
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3 custodial arrangement required by section 114.6(d) and to
4 ensure the anonymity of contributors making contributions of
5 \$50 or less or multiple contributions aggregating \$200 or
6 less in a calendar year. Your request states that the
7 proposed custodian, the assistant treasurer, is employed with
8 Geon as senior corporate counsel and also may own stock in
9 Geon. Under these circumstances, this individual would be
10 prohibited by section 114.6(d) from serving as custodian, and
11 another individual must be chosen to serve as the custodian.^{3/}
12 Similarly, the assistant secretary of the PAC, an employee of
13 Geon, is likewise disqualified from assisting the custodian
14 in processing contributions from the non-executive employee
15 class.^{4/}

16 The Commission therefore concludes that, if the
17 conditions described in this opinion are satisfied and if all
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19 ^{3/} In Advisory Opinion 1988-14, the Commission specifically
20 disqualified the assistant treasurer of a separate segregated
21 fund from serving as a custodian for a solicitation of
22 non-restricted class employees where the assistant treasurer
owned stock in the two affiliated corporations establishing
the fund.

23 ^{4/} The Commission cautions you as to the modifications that
24 were required in the requester's proposal in Advisory Opinion
25 1994-3. In order to comply with section 114.6(d), the
26 Commission required that any review of the list of qualified
27 charities chosen by participating contributors should be
28 conducted in a manner that preserved the confidentiality of
29 those contributing the smaller amounts described above.
30 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 the provisions of section 114.6 are followed, the
4 implementation of the PAC's proposal with respect to
5 all Geon employees would be permissible under the Act and
6 regulations.

7 The Commission expresses no opinion regarding any tax
8 ramifications of the proposed matching charitable
9 contribution plan because those issues are outside the
10 Commission's jurisdiction.

11 This response constitutes an advisory opinion concerning
12 application of the Act, or regulations prescribed by the Com-
13 mission, to the specific transaction or activity set forth in
14 your request. See 2 U.S.C. §437f.

15
16 For the Commission,

17
18 Trevor Potter
19 Chairman

20 Enclosures (AOs 1994-3, 1991-28, 1990-25, 1990-6, 1989-9
21 1989-7, 1988-14 and 1977-56)
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