



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 21 3 45 PM '94

July 21, 1994

**MEMORANDUM**

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

Subject: Draft AO 1994-23

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 28, 1994.

Attachment

**AGENDA ITEM**  
For Meeting of: JUL 28 1994

ADVISORY OPINION 1994-23

Bradley W. Hertz  
Reed & Davidson  
777 South Figueroa Street  
Suite 3400  
Los Angeles, CA 90017

Jun 21 3 45 PM '94  
**DRAFT**

Dear Mr. Hertz:

This responds to your letter dated June 20, 1994, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed consolidation of payroll deduction operations of two affiliated separate segregated funds.

The Northrop and Grumman Corporations recently merged, creating Northrop Grumman. As separate corporations, Northrup and Grumman maintained their own separate segregated funds. Northrop Grumman is presently maintaining both SSFs separately, but it wishes to consolidate them into a new SSF, Employees of Northrop Grumman PAC ("ENGPAC").

The Northrop SSF and the Grumman SSF intend to send letters to the members of their plans informing them of the formation of ENGPAC and notifying them that their payroll deduction contributions, which had formerly funded the two SSFs, will now fund ENGPAC, unless the employee terminates his or her participation via an enclosed form.

The letter advises the contributor as follows: "Please fill out the enclosed form if you wish to change your contribution or if you wish to terminate your participation. Otherwise, your participation will transfer automatically and your deduction will go directly through to the new PAC." The

form provides options for contributing by check or money order, authorizing a weekly deduction amount, or canceling the payroll deduction.

The letters will be sent in advance of the actual transfers of the deduction authorizations. They will contain all of the appropriate notices pursuant to 2 U.S.C. §441b(b)(3)(B) and (C) and 11 CFR 114.5(a)(1)-(5), including disclosing the political purposes of the fund and the right to refuse to contribute without any reprisal. The solicitation will stress the voluntary nature of an employee's participation and the continuing right to revoke an authorization without reprisal.

You state your belief that so long as the statutory and regulatory requirements set forth above are met and the employees are given the option to revoke their authorizations, new authorizations from those who have already authorized deductions are not necessary.

The Commission considered a situation that, in all material aspects, is indistinguishable from your situation. In Advisory Opinion 1991-19, the Commission was presented with a situation in which Corporation A, which maintained an SSF, acquired Corporation B, which also maintained an SSF, and B became A's wholly-owned subsidiary. At the time of the request, A was operating both PACs, but A planned to consolidate them into one PAC, i.e., A's PAC. The two companies were in the process of combining their payroll deduction operations. This would affect those employees who

4 had previously requested payroll deductions for contributions  
5 to B's PAC, because previously authorized payroll deductions  
6 to B's PAC would now be remitted to A's PAC. Before  
7 implementing the payroll deduction transfer, Company A  
8 planned to send a letter to each individual affected by the  
9 transfer informing that person that the change in payroll  
10 deduction would occur simultaneously with the transfer of  
11 that person's payroll from Company B to Company A. The  
12 letter would contain the appropriate notices from 11 CFR  
13 114.5 and all contributors would be notified of the PAC  
14 merger.

15 The Commission approved this proposal without requiring  
16 the employees of Company B to execute new authorizations.  
17 The Commission required that the letter follow the rules  
18 relating to suggestion of guidelines for contributions and  
19 informing the contributor of the political purposes of the  
20 PAC. 11 CFR 114.5(a)(2)(and (3)). The Commission also  
21 required that the letter be sent in advance of the actual  
22 transfers of the deductions, that they remind the  
23 contributors of the voluntary nature of the contributions,  
24 and that they explicitly notify the contributors of the  
25 continuing right to revoke the authorization without  
26 reprisal. See 11 CFR 114.5(a)(4) and (5).

27 Based on the conditions set out by you, which appear to  
28 comply with Advisory Opinion 1991-19 and with the  
29 requirements of 11 CFR 114.5(a), the Commission approves your  
30 client's plan for sending out the proposed letter and

4 enclosed form. No new authorization is required from those  
5 employees who are not changing their authorized deduction or  
6 canceling their deduction.<sup>1/</sup>

7 This response constitutes an advisory opinion concerning  
8 application of the Act, or regulations prescribed by the  
9 Commission, to the specific transaction or activity set forth  
10 in your request. See 2 U.S.C. §437f.

11 For the Commission,

12  
13 Trevor Potter  
14 Chairman

15 Enclosure (AO 1991-19)  
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28 <sup>1/</sup> The Commission reminds you that payroll deductions for  
29 contributions to a corporation's SSF are only permitted for  
30 the company's executive and administrative employees and for  
those employees who are also stockholders. See 11 CFR  
114.6(e)(1), 114.12(d), and 114.5(k)(1).