



FEDERAL ELECTION COMMISSION
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October 26, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *L.M.N./SEP*
General Counsel

N. Bradley Litchfield *N.B.L./SEP*
Associate General Counsel

Jonathan M. Levin *J.M.L.*
Senior Attorney

Subject: Draft AO 1995-36

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for November 2, 1995.

Attachment

AGENDA ITEM
For Meeting of: NOV 2 1995

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3 **ADVISORY OPINION 1995-36**

DRAFT

4 **Grant S. Cowan**
5 **Frost & Jacobs**
6 **201 East Fifth Street**
7 **P.O. Box 5715**
8 **Cincinnati, OH 45201-5715**

9 **Dear Mr. Cowan:**

10 This responds to your letter dated September 8, 1995, as
11 supplemented by your letter dated October 12, 1995,
12 requesting an advisory opinion on behalf of AK Steel
13 Corporation ("AK Steel") concerning the application of the
14 Federal Election Campaign Act of 1971, as amended ("the
15 Act"), and Commission regulations to the proposed
16 disaffiliation of two separate segregated funds.

17 In Advisory Opinion 1994-9, the Commission addressed the
18 question of whether entities that had been affiliated prior
19 to a business reorganization and recapitalization would still
20 be affiliated after those events. Armco Steel Company, L.P.
21 ("ArmLP") was a joint venture partnership owned equally by
22 Armco, Inc. ("Armco") and Kawasaki Steel Corporation
23 ("Kawasaki"). Pursuant to a multi-step reorganization plan
24 to be implemented in 1994, AK Steel would become the owner of
25 all the assets of ArmLP. ArmLP would become the AK Steel
26 Corporation, with AK Steel Holding Corporation ("AK Holding")
27 as its sole shareholder. Immediately after the
28 reorganization, AK Holding would engage in a recapitalization
29 whereby an initial public offering ("IPO") of stock would be
30 made to the public. After the recapitalization, Kawasaki
would hold approximately 20 percent, and Armco would hold

3 four percent, of AK Holding common stock.

4 Armco was the connected organization of Armco Employees'
5 PAC ("Armco PAC"). AK Steel would be the connected
6 organization of AK Steel PAC. For purposes of its
7 regulations, the Commission concluded that, due to various
8 factors, disaffiliation of AK Steel (or AK Holding) from
9 Armco and Kawasaki would be premature. Hence, Armco PAC and
10 AK Steel PAC would be affiliated.^{1/} The Commission stated
11 that this would "not preclude a different conclusion at a
12 later point in the operations of AK Steel and AK Holding."
13 Advisory Opinion 1994-9. (Hereinafter, AK Steel and AK
14 Holding will be cited jointly as "AK Steel.")

15 AK Steel believes current circumstances warrant a
16 Commission determination that AK Steel PAC and Armco PAC are
17 now disaffiliated; that is, they are no longer affiliated
18 committees. In April and early May of 1995, Armco sold all
19 of its AK Steel stock (its four percent ownership share) and
20 thus no longer has any ownership interest in AK Steel. You
21 believe that this is the most significant change in prior
22 circumstances warranting disaffiliation at this time.

23 You explain that AK Steel and Armco are separate,
24 publicly traded corporations, and that AK Steel is not a
25 subsidiary, branch, division, department, or local unit of
26 Armco. You also note that none of the officers or employees
27 of AK Steel are employed by Armco. At the executive
28 management level, nine of the eleven officers of AK Steel

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^{1/} Kawasaki had no SSF at the time and has none presently.

3 were not formerly employed by Armco.^{2/} The only current
4 overlap exists on AK Steel's ten-person Board of Directors
5 and involves one person. James F. Will, Armco's CEO and a
6 member of Armco's Board, has recently been elected to serve
7 another term on AK Steel's Board. You state that AK Steel's
8 Board members serve at the discretion of AK Steel's
9 shareholders who vote on the members at the company's annual
10 meeting or by proxy. AK Steel recently added three new
11 members to the Board without shareholder approval, expanding
12 the number of Board members from seven (the size of the new
13 Board discussed in Advisory Opinion 1994-9) to ten. However,
14 at the Annual Meeting held on May 17, 1995, the shareholders
voted on and elected all of the ten current Board members.

15 Citing the indicia of affiliation listed in Commission
16 regulations (see discussion below), you also state that
17 neither AK Steel's corporate governing documents, nor its
18 formal and informal practices and procedures, provide Armco
19 with the ability to direct or participate in AK Steel's
20 governance. You further explain that neither Armco nor Armco
21 PAC have the authority to hire, appoint, demote or otherwise
22 control the officers or other decision-making employees of AK
23 Steel or its PAC. See 11 CFR 110.3(a)(3)(ii)(B) and (C).
24 You also state that Armco does not provide funds or goods in
25 a significant amount or on an ongoing basis to AK Steel. See

26 ^{2/} You note that, beginning in June 1992, AK Steel's
27 predecessor (ArmLP) went through significant management
28 changes. Since that time, a substantial number of former
29 Armco personnel in the top salaried positions have been
30 replaced by outside personnel.

3 11 CFR 110.3(a)(3)(ii)(G).^{3/}

4 In emphasizing the separate operations of the two
5 companies, you explain that AK Steel and Armco compete
6 directly with each other in two specific product areas. This
7 competition began in 1992, when AK Steel's predecessor was
8 still half-owned by Armco. AK Steel supplies hot-rolled
9 steel, the most basic of all flat-rolled steel products, from
10 its Middletown, Ohio plant to a wide variety of markets,
11 primarily in the Midwest. Armco, through its Mansfield, Ohio
12 operations, supplies this product to the same geographic area
13 and frequently sells to the same customers supplied by AK
14 Steel or from whom AK Steel solicits business. Armco and AK
15 Steel also produce comparable galvanized sheet steels and
16 sell that product to the same heating, venting and air
17 conditioning markets.

18 With respect to the SSFs themselves, you assert that
19 Armco PAC and AK Steel PAC do not transfer funds to each
20 other and do not conduct any joint fundraising activities.
21 You state that Armco has no involvement in the operations of
22 AK Steel PAC.

23 The Act and Commission regulations provide that
24 committees, including separate segregated funds, that are
25 established, financed, maintained or controlled by the same

26 ^{3/} You note that AK Steel does business with Armco on an
27 arms length basis. This business consists of processing by
28 AK Steel of stainless steel slabs for Armco and periodic
29 purchases by AK Steel of stainless steel coils from Armco at
30 market prices. In addition, AK Steel continues to perform
certain administrative services for Armco for a fee.

3 corporation, person, or group of persons, including any
4 parent, subsidiary, branch, division, department, or local
5 unit thereof, are affiliated. Contributions made to or by
6 such committees shall be considered to have been made to or
7 by a single committee. 2 U.S.C. §441a(a)(5); 11 CFR
8 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii).

9 Where an entity is not an acknowledged subsidiary of
10 another entity, as in 11 CFR 110.3(a)(2)(i), Commission
11 regulations provide for an examination of various factors in
12 the context of an overall relationship to determine whether
13 one company is an affiliate of another and, hence, whether
14 their respective SSFs are affiliated with each other. 11 CFR
15 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and
16 (ii)(A)-(J).

17 In concluding that disaffiliation was premature at that
18 time, Advisory Opinion 1994-9 referred to the following
19 factors: (A) the ownership by one sponsoring organization of
20 a controlling interest in the voting stock or securities of
21 another sponsoring organization; (B) the authority or ability
22 of one sponsoring organization to participate in the
23 governance of another sponsoring organization through
24 provisions of constitutions, by-laws, contracts or other
25 rules, or through formal or informal practices or procedures;
26 (C) the authority or ability to hire, demote or otherwise
27 control the decisionmakers of another sponsoring
28 organization; (E) common or overlapping officers or
29 employees, indicating a formal or ongoing relationship
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3 between the sponsoring organizations; (F) members, officers,
4 or employees of one sponsoring organization who were members,
5 officers, or employees of another organization which
6 indicates a formal or ongoing relationship or the creation of
7 a successor entity; and (I) an active or significant role by
8 one sponsoring organization in the formation of another. 11
9 CFR 110.3(a)(3)(ii)(A), (B), (C), (E), (F), and (I).

10 The opinion noted the representation that, after the
11 IPO, the governing documents would enable neither Armco nor
12 Kawasaki to engage in AK Steels' governance and that the
13 governance and management of AK Steel would be independent
14 from the former joint venturers. Two of the persons sitting
15 on AK Steel's Board of Directors, however, would be a
16 Managing Director of Kawasaki and the aforementioned Mr. Will
17 of Armco. In addition, those directors were two of the three
18 persons choosing the new Board members. The opinion also
19 noted that three Armco former employees were among the seven
20 AK Steel executive officers, all of whom were holdovers from
21 ArmLP. Finally, the opinion observed that Armco and Kawasaki
22 were instrumental in the formation of ArmLP, the predecessor
23 entity. The Commission stated that "[i]n view of the
24 background presented as to the relationships of the
25 companies," the continued presence of the high-ranking Armco
26 and Kawasaki officials on the AK Steel Board lead to a
27 conclusion that disaffiliation was premature.

28 A number of facts discussed in Advisory Opinion 1994-9
29 remain the same. These include the continued presence of the
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Armco CEO on the AK Steel Board and of former Armco employees among the executive officers of AK Steel. Nevertheless, a number of developments since Advisory Opinion 1994-9 have altered the circumstances described just above. Foremost among these developments is Armco's sale of its remaining stock in AK Steel.^{4/} Furthermore, the expansion of the Board and the intervening shareholder election reduce the significance of Armco's earlier role in the reorganization and AK Steel's management. In addition, the passage of time since Armco's interest was reduced through the IPO, along with the continuous separate operations during this time period (including the direct competition),^{5/} further diminishes the effects of the historical relationship between the companies. The Commission concludes, therefore, that AK Steel is disaffiliated from Armco, and that AK Steel PAC and Armco PAC are no longer affiliated committees.

Because the committees are no longer affiliated, AK Steel PAC should amend its Statement of Organization to delete Armco PAC as an affiliated committee, and Armco PAC

4/ Advisory Opinion 1994-9 noted that Armco (along with Kawasaki and another shareholder) agreed not to sell any of its shares for a period of 180 days after the IPO without the prior written consent of representatives of the U.S. Underwriters and managers.

5/ Commission regulations state that the list of ten circumstantial factors indicating affiliation listed at 11 CFR 110.3(a)(3)(ii) is not an exclusive list. Thus, the competition described above may be considered as a factor. Although such competition may not, by itself, indicate a disaffiliation of the companies, these circumstances are certainly relevant to analyzing the relationship, or lack thereof, between the companies.

3 should similarly amend its Statement. The amendments should
4 be filed with the Commission no later than 10 days of your
5 receipt of this opinion. 2 U.S.C. §433(c); 11 CFR
6 102.2(a)(2).

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 Sincerely,

12 Danny L. McDonald
13 Chairman

14 Enclosure (AO 1994-9)
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