



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1997-13

Timothy W. Jenkins
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006-3483

Dear Mr. Jenkins:

This responds to your letter dated July 8, 1997, on behalf of the United Space Alliance Political Action Committee ("USA PAC"), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the relationship between USA PAC and other political committees.

Your request presents the situation of the establishment of a political committee, USA PAC, by a joint venture limited liability company ("LLC") equally owned by two corporations that are connected organizations of separate segregated funds (SSFs). You ask whether USA PAC would be affiliated with those committees and the effects of any affiliated relationship.

I. Background

United Space Alliance, LLC ("USA") is a Delaware LLC established on November 7, 1995. It was created by a joint venture entered into by Rockwell Space Alliance Company, a wholly-owned subsidiary of Rockwell International Corporation, and Lockheed Martin Space Alliance Company, a wholly-owned subsidiary of Lockheed Martin Corporation ("LMC"). On December 6, 1996, The Boeing Company ("Boeing") acquired some of the interests in Rockwell, including all of Rockwell's interest in USA.¹

¹ USA was established to maximize the ability of its corporate owners to respond to NASA's determination to consolidate contracts relating to the NASA Space Flight Operations Program. Under the joint venture

LMC is the connected organization of the Lockheed Martin Employees Political Action Committee (“LMEPAC”) and Boeing is the connected organization of The Boeing Company Political Action Committee (“BPAC”). Both SSFs are multicandidate committees. USA PAC’s statement of organization, filed on May 1, 1997, denoted that the committee was a non-connected committee affiliated with LMEPAC and BPAC. On May 19, USA PAC amended its statement of organization to indicate that it is an SSF affiliated with LMEPAC and BPAC and that LMC and Boeing are its connected organizations. USA PAC intends to raise funds by soliciting executive and administrative personnel of USA. Employees of LMC and Boeing will not be solicited.

You ask five questions pertaining to the relationship between USA and USA PAC, on one hand, and the two corporations and their respective SSFs, on the other. They are re-ordered as follows:

- (1) Is USA PAC affiliated with LMEPAC and BPAC?
- (2) Are LMC and Boeing both connected organizations of USA PAC?
- (3) May Boeing, LMC, and/or USA pay establishment, administration, and solicitations costs for USA PAC?
- (4) Assuming LMC and Boeing are connected organizations to USA PAC, must the full name of both organizations appear in the name of USA PAC?
- (5) Assuming affiliation with LMEPAC and BPAC, how will contributions by USA PAC be tallied for purposes of the Act’s limitations?

II. *Legal Analysis*

A. Response to Question 1

The Act and Commission regulations provide that committees, including separate segregated funds, that are established, financed, maintained or controlled by the same corporation, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2). Contributions made to or by such committees shall be considered to have been made to or by a single committee. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii). In addition, a corporation may make communications to and solicit the restricted class (i.e., executive and administrative personnel and stockholders, and the families thereof) of its subsidiaries or other affiliates for contributions to the corporation's separate segregated fund. 2 U.S.C. §441b(b)(2)(A) and (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1). The Commission has long held that

agreement, USA is authorized to complete the execution of NASA contracts to which LMC and Boeing are parties, and to perform other contracts for the Space Flight Operations Program.

affiliates may include entities other than corporations, such as partnerships. Advisory Opinions 1996-49, 1994-11, 1992-17, 1989-8, 1987-34, and 1983-48. See also Advisory Opinion 1996-38.

Where an entity is not an acknowledged subsidiary of another entity, as in 11 CFR 110.3(a)(2)(i),² Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one company is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).³ The relevant factors in the situation you have presented are as follows: (A) whether a sponsoring organization owns a controlling interest in the voting stock or securities of another sponsoring organization; (B) whether a sponsoring organization has the authority or ability to direct or participate in the governance of another sponsoring organization through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) whether a sponsoring organization has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees of another sponsoring organization; and (I) whether a sponsoring organization had an active or significant role in the formation of another sponsoring organization. 11 CFR 110.3(a)(3)(ii)(A), (B), (C), and (I).

You state that, based on the presence of factors set out in the Commission regulations, USA PAC “concedes affiliation.” You note that the initial operating budget of USA derives from capital contributions made equally from LMC and Boeing. Thus, each of the corporations (whose wholly-owned subsidiaries are the LLC’s members) owns a 50 percent interest in USA. The approval of LMC and Boeing is required for significant policy determinations of USA, including entering into contracts valued in excess of \$250 million, approving single transactions in excess of \$10 million, and settling litigation claims in excess of \$10 million. The chief executive officer, chief operating officer, chief financial officer, and comptroller are selected by LMC and Boeing officials. These officers are vested with responsibility for managing and supervising day-to-day operations of the company, including most hiring decisions and approving contracts and business transactions below the above-referenced dollar thresholds. The operations of USA are overseen by a seven-member advisory board composed of two individuals appointed by Boeing, two individuals appointed by LMC, and three individuals appointed jointly by LMC and Boeing (but who shall not be employees of either company).

² According to Commission regulations, committees established by a single corporation and its subsidiaries are affiliated *per se*. 11 CFR 110.3(a)(2)(i).

³ Specifically, the regulations, at 11 CFR 110.3(a)(3)(ii), state in part:

The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization.

Although neither LMC nor Boeing has the predominant position in owning or controlling the company, the above information indicates that the assent of each of the two companies is necessary for certain major hiring and governance decisions of USA.⁴ The Commission concludes therefore that USA is an affiliate of each of those companies. This is consistent with prior advisory opinions involving the relationship of a joint venture entity owned 50-50 by two corporations where the Commission concluded that the parent corporations' PACs were affiliated with the joint venture entity's PAC, but not with each other. Advisory Opinions 1992-17 and 1979-56.

Although the Act does not specifically provide for the establishment of SSFs by non-corporate entities other than labor organizations, the Commission has concluded that a PAC established and sponsored by a partnership is affiliated with the SSF of an affiliated corporation. Advisory Opinions 1996-49, 1994-9, and 1992-17. The Commission does not see any material distinction in the situation presented here where a PAC is established and sponsored by an LLC, and concludes, therefore, that USA PAC is affiliated with LMEPAC and BPAC. See Advisory Opinion 1996-13, n.7.

B. Response to Questions 2 and 3

Under 2 U.S.C. §441b(b)(2)(C), a corporation may use its general treasury funds to pay for the costs of establishing, administering, or soliciting contributions to its SSF, without a resultant contribution or expenditure. See also 2 U.S.C. §§431(8)(B)(vi) and (9)(B)(v). A corporation that directly or indirectly establishes, administers, or financially supports a political committee is the connected organization of that committee. 2 U.S.C. §431(7) and 11 CFR 100.6(a). In applying this law in the context of affiliation, the Commission has permitted a corporation that is affiliated with another corporation to pay the administration and solicitation costs of the latter corporation's SSF. Advisory Opinions 1996-26 and 1983-19. Similarly, it has permitted incorporated entities to pay such costs for the political committees of its affiliated entities that are not incorporated. Advisory Opinions 1996-49, 1996-38 and 1992-17. Therefore, Boeing and LMC may pay for the establishment, administration, and solicitation costs for USA PAC.

With respect to the ability of USA itself to establish an SSF, the Commission notes that the Act does not extend to a partnership the ability granted to a corporation at 2 U.S.C. §441b(b)(2)(C) to conduct itself as a connected organization and avail itself of the exemptions. Advisory Opinions 1991-1 and 1990-20. See also *California Medical Association v. Federal Election Commission*, 453 U.S. 182 (1981). Nevertheless, the Commission has treated joint venture partnerships differently as a result of the partnership's ownership by, and affiliation with, corporations. Advisory Opinions 1996-49, 1994-11, 1994-9, 1992-17, and 1987-34, n.2. If a partnership is owned entirely by corporations and affiliated with at least one of them, it may perform the functions of a connected organization for its PAC. Advisory Opinions 1996-49, 1994-11, 1994-9, and 1992-17.

⁴ The Commission also notes, with respect to factor (I), that LMC was one of the creators of USA.

The conclusion does not differ because of the fact that USA is an LLC. In Advisory Opinion 1992-17, the Commission noted that its conclusion was compatible with the dual attribution principle for partnership contributions at 11 CFR 110.1(e). Contributions by partnerships are not only attributed to the partnership as a whole but are also attributed to the partners. The Commission stated that the administrative and solicitation support may be construed as coming from the affiliated corporations. Advisory Opinion 1992-17. In past advisory opinions, the Commission has not applied this same dual attribution principle to LLCs. Advisory Opinions 1997-4, 1996-13, and 1995-11. Nevertheless, in concluding in those opinions that the LLC could make contributions, the Commission stated that it was assuming that none of the LLC's members were corporations (because no support may come from a corporation outside exceptions such as 2 U.S.C. §441b(b)(2)(C)). This is similar to the analysis made with respect to partnerships as to ownership and control resting with the corporations. In this situation, USA, as a joint venture of two corporations, is in a similar posture to that of a joint venture partnership of two corporations. USA is entirely owned by corporations, whose control over USA is essentially the same as corporate joint venture partners, and USA is affiliated with at least one of the corporations. Therefore, USA may pay the establishment, administration, and solicitation costs of USA PAC without a resulting contribution from USA.

Even though the Commission has concluded that an LLC can perform the functions of a connected organization under the above-described circumstances, Commission regulations defining “connected organization” do not include LLCs. 11 CFR 100.6(a). LMC and Boeing would be the connected organizations of USA PAC and would pay for the exempt costs either by themselves or through USA. In other words, if such support is provided by USA itself, the support is still deemed to be from LMC and Boeing by virtue of their relationship to USA. Advisory Opinions 1996-49, 1994-11 and 1992-17.⁵

C. Response to Question 4

According to 2 U.S.C. §432(e)(5) and 11 CFR 102.14(c), the name of an SSF shall include the full name of its connected organization. This full name must appear on the SSF's statement of organization, on all reports filed by the SSF, and in all notices required by 11 CFR 109.3 and 110.11 (i.e., non-authorization notices for independent expenditures and disclaimer notices). 11 CFR 102.14(c). The regulation further provides, however, that an SSF established by a corporation that has subsidiaries need not include the name of each subsidiary in its name and that an SSF established by a subsidiary need not include the name of its parent or another subsidiary of the parent. *Id.*

⁵ USA's amended statement of organization, as described above, is therefore correct in its characterization of USA PAC as an SSF and its indication that LMC and Boeing are connected organizations. See 2 U.S.C. §433(b)(2); 11 CFR 102.2(b)(2).

Although USA is not technically a subsidiary of LME or Boeing, it is owned 50 percent by each company and the assent of each company is necessary for certain major decisions of USA. USA is therefore in virtually the same position as a subsidiary of each of the two companies. Moreover, disclosure of the names of all the connected organizations is required on USA's statement of organization, and the information is thus available to the public. 2 U.S.C. §433(b)(2); 11 CFR 102.2(a)(1)(ii). The Commission concludes therefore that USA PAC need not include the names of LME or Boeing in its name. To the extent that Advisory Opinion 1996-49 requires the inclusion, in the name of a joint venture partnership PAC's name, of the full name of an incorporated joint venture partner in a similar position to that of LME or Boeing, that opinion is hereby superseded.

D. Response to Question 5

Because USA PAC is affiliated with LMEPAC and BPAC, both of which are multicandidate committees, USA PAC qualifies as a multicandidate committee. See Advisory Opinions 1995-12, n.12, 1993-23, and 1991-13. Multicandidate committees are subject to the limits of 2 U.S.C. §441a(a)(2), i.e., \$5,000 to a candidate per election, \$15,000 to a national party committee in any calendar year, and \$5,000 to any other political committee in a calendar year. 2 U.S.C. §441a(a)(2)(A), (B), and (C). However, as indicated above, contributions by affiliated political committees are treated as contributions by one committee and cannot exceed the limits when aggregated with each other. 2 U.S.C. §441a(a)(5); 110.3(a)(1).

In advisory opinions addressing contributions by PACs of joint ventures owned and controlled on a 50-50 basis, the limit of the joint venture PAC was apportioned half to the limit shared with one corporation's SSF and half to the limit shared with another corporation's SSF. Advisory Opinions 1992-17 and 1987-34. This was based on an analogy to the dual attribution concept of 11 CFR 110.1(e) discussed above which includes the apportionment of each contribution on a *pro rata* basis to the partners. See 11 CFR 110.1(e)(1). Although, as indicated above, LLCs are not subject to the same dual attribution treatment as partnerships, USA is still similarly situated to the partnerships in those opinions with respect to corporate ownership and control.⁶ Therefore, contributions by USA PAC should be apportioned half to the limit of LMEPAC and half to the limit of BPAC.⁷ Such apportioned contributions are only permitted to the extent the aggregate §441a(a) limits shared with LMEPAC and BPAC are not exceeded by virtue of USA PAC's contributions.

This modification of the usual manner for aggregating contributions by affiliated committees means that, as among all three committees, there will be two sets of contribution limits available. Thus, the aggregate contributions to the same candidate

⁶ The Commission also gave similar treatment to a labor union that was a local unit of two international unions. Advisory Opinion 1991-13.

⁷ In referring to the contributions made by each of the corporate PACs, the amount considered also includes the amounts contributed by other PACs affiliated with the corporate PAC.

may not exceed \$10,000 per election from all three committees, and may not exceed \$5,000 from any one of the committees. Advisory Opinion 1987-34, n.3. The contributions made by LMEPAC or Boeing will not be aggregated with those of USA PAC for the purposes of USA PAC's \$5,000 limit, but USA PAC's contributions will be aggregated with each of the corporate PAC's contributions on a half and half basis for the purposes of the corporate PACs' \$5,000 limits; thus, USA PAC's contributions may be held under \$5,000 because of a need to avoid the exceeding of the limits by the corporate PACs.

For example, if USA PAC made a \$2,000 contribution to Federal candidate X, \$1,000 would count toward the limit shared with LMEPAC and \$1,000 would count toward the limit shared with BPAC. If LMEPAC subsequently made a \$3,000 contribution to Federal candidate X for the same election, USA PAC could only contribute an additional \$2,000 to X for that election, because \$1,000 of that would be attributed to LMEPAC, bringing the latter up to its \$5,000 limit. Assuming BPAC had not made any contributions to X at that point, BPAC could only contribute \$3,000 because \$2,000 of USA PAC's contributions have already been attributed to BPAC.⁸

As stated in prior opinions, an alternative apportionment may be used in specific cases as long as LMEPAC, BPAC, and USA PAC agree and no excessive contributions result. In that event, USA PAC should provide written instructions to recipient political committees or candidates so those committees can monitor their acceptance of contributions subject to the shared limits of the three contributing committees. 2 U.S.C. §441a(f); 11 CFR 110.9(a). The written instructions should also be maintained as contribution records of USA PAC for three years after the contribution is reported. 11 CFR 104.14(b); see also 11 CFR 102.9(b)(1) and (c). Advisory Opinions 1992-17, 1991-13, and 1987-34.

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

Sincerely,

(signed)

John Warren McGarry
Chairman

Enclosures (AOs 1997-4, 1996-49, 1996-38, 1996-26, 1996-13, 1995-12, 1995-11, 1994-11, 1994-9, 1993-23, 1992-17, 1991-13, 1991-1, 1990-20, 1989-8, 1987-34, 1983-48, 1983-19, and 1979-56)

⁸ The Commission notes that, under this scenario, a combined total of \$10,000 has been contributed (\$4,000 from USA PAC and \$3,000 each from LMEPAC and BPAC) with no PAC exceeding the \$5,000 limit.