



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 7, 1977

Re: AOR 1976-109

Richard L. Reppert, Esquire  
Thompson, Hine and Flory  
National City Bank Building  
Cleveland, Ohio 44114

Dear Mr. Reppert:

This letter responds to your request of December 6, 1976, for an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment by Society National Bank of Cleveland ("Society National"), a national banking institution, of the Society Political Action Committee ("SOPAC") and the Society for Better Government Association ("the Association").

You state that Society Corporation is a registered bank holding company, existing under Ohio law, which owns the stock of Society National, in addition to the stock of eleven affiliated banks ("the Affiliates") located in Ohio. Society National has established SOPAC as a separate segregated fund for the purpose of supporting candidates for Federal office. SOPAC has been organized to function under the Act; you characterize SOPAC as "a voluntary, non-profit, unincorporated political association composed of its members who shall be individuals." Membership is limited to individuals who are "officers"<sup>1</sup> of Society National, Society Corporation, or the Affiliates, and you state that contributions will be solicited solely from such officers.

Society National has also established the Association,<sup>2</sup> for the purpose of "encouraging the voluntary participation of its members, individually and collectively, in general governmental and political affairs;" membership in the Association is similarly limited to individuals who are officers of Society National, Society Corporation, or the

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<sup>1</sup> For purposes of this response, the Commission assumes that an "officer" would qualify under the definition of "executive or administrative personnel" in 2 U.S.C. §441b(b)(7). See also §114.1(c) of the Commission's proposed regulations.

<sup>2</sup> The Association is a "voluntary, non-profit, unincorporated, continuing association . . .".

Affiliates. Officers who choose to become members “pay dues”<sup>3</sup> in an unfixed amount to the Association, which are deposited in a “separate segregated fund.” The activities of the Association, as stated in your letter and the enclosed amended Articles of Organization of the Association, include, inter alia, the making of contributions to influence the nomination for election, and election “of candidates for elective public office.” Although this rather broad language could include contributions to both Federal and non-Federal candidates, your letter further states that the Association has not and will not make contributions to candidates for Federal office; this was confirmed in a subsequent telephone conversation on January 4, 1977, with an attorney in the General Counsel’s office. The Association has filed reports of its activities with the Ohio Secretary of State, and with appropriate county Boards of Election where local contributions were made, but has not registered or filed reports with the Commission.

You request the Commission’s opinion with respect to four questions concerning SOPAC and the Association:

1. Is the participation of Society National in the establishment of, and the participation of Society National, Society Corporation, and the Affiliates in the maintenance of SOPAC, including the defraying of costs and expenses incurred in the establishment and administration of, and in the solicitation of voluntary contributions to SOPAC legally permissible under the provisions of the Act?
2. Is SOPAC, as a registered, reporting political committee under Federal law, required to file reports with any official, agency, or department of the State of Ohio or its municipal subdivisions except as required by the Act?
3. Is the participation of Society National and those affiliates which are national banks in the establishment and/or maintenance of the Association, including the defraying of costs and expenses incurred in the establishment and administration of, and in the solicitation of voluntary contributions to, the Association legally permissible under the provisions of the Act?

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<sup>3</sup> Based on representations in your letter and the Association’s Articles of Organization, it appears that the term “dues” is used to refer to voluntary “contributions” to the Association from individual members. Of course, all contributions to a separate segregated fund established under 2 U.S.C. §441b must in fact be voluntary. 2 U.S.C. §441b(b)(3).

4. Is the Association required to register as a political committee with the Federal Election Commission and to file reports of contributions and expenditures with the Federal Election Commission?

Based on the representations in your letter, the Articles of Organization of both entities (as submitted with your request), and subject to the discussion which follows, the Commission answers questions one and three in the affirmative and questions two and four in the negative. The rationale for the conclusions is discussed below.

Under the Act, a national bank is prohibited from making a contribution or expenditure in connection with Federal, State, or local elections, and a corporation is prohibited from making a contribution or expenditure in connection with Federal elections; however, both may establish “separate segregated funds,” composed of voluntary contributions, to be utilized for political purposes. 2 U.S.C. §441b. Accordingly, if not precluded by other applicable Federal law outside the jurisdiction of the Federal Election Commission, Society National may establish, administer and solicit contributions to SOPAC, in accordance with the provisions of 2 U.S.C. §441b(b), for the sole purpose of making contributions to Federal candidates and committees. Furthermore, since Society Corporation and the Affiliates may also establish “separate segregated funds” for purposes of making contributions in connection with Federal elections, and all such funds would be subject to a single contribution limit with respect to contributions to Federal candidates and committees, see 2 U.S.C. §441a(a)(5), Society Corporation and the Affiliates may therefore participate with Society National in defraying the costs of the establishment and maintenance of a single fund, SOPAC, for Federal political purposes. As a “political committee,” see 2 U.S.C. §431(d), SOPAC is subject to the provisions of the Act, including its limitations, prohibitions, and recordkeeping and reporting requirements. Accordingly, the filing by SOPAC of reports with the Commission, with copies filed with the Secretary of State of Ohio as provided in 2 U.S.C. §439, will discharge the reporting obligations of SOPAC. 2 U.S.C. §453.<sup>4</sup>

With respect to the permissibility of the establishment of the Association, 2 U.S.C. §441b provides that although national banks may not make contributions or expenditures in connection with State and local elections, they may establish, administer, and solicit voluntary contributions to a “separate segregated fund to be utilized for political purposes.” See §114.2(a) of the regulations. Thus, if not prohibited by other provisions of Federal or State law, Society National and its national bank affiliates may, through the vehicle of a separate segregated fund, engage in State and/or local political activity. In this connection, so long as funds of the Association are not contributed to Federal candidates or political committees,<sup>5</sup> and none of the Association’s receipts or

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<sup>4</sup> For a discussion in the legislative history of the Act of the preemption of State law relating to Federal elections, see 122 Cong. Rec. H2662-63 (daily ed. April 1, 1976).

<sup>5</sup> Although the Association may contribute to local or State committees of a political party, you state that care will be taken to restrict such payments for State and local

disbursements fall respectively within the definition of “contribution” or “expenditure” under 2 U.S.C. §431(e) and (f), the Association would not be a “political committee” under the Act. 2 U.S.C. §431(d). Accordingly, except for 2 U.S.C. §441b and Part 114, the Association would not be subject to the provisions of the Act and the Commission’s proposed regulations; therefore, any reporting obligations of the Association would arise, not from the Act, but from applicable provisions of State law. 2 U.S.C. §453.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission. These proposed regulations were formally adopted by the Commission and serve as interpretative rules of the Commission as to the meaning of the pertinent statutory language. The proposed rules were originally transmitted to the Congress on August 3, 1976, and resubmitted on January 11, 1977. See 2 U.S.C. §438(c). For your information I enclose a copy of a Commission policy statement regarding those rules.

Sincerely yours,

(signed)  
Vernon W. Thomson  
Chairman for the  
Federal Election Commission

Enclosure

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election purposes as distinguished from Federal election purposes. See §102.6 of the proposed regulations concerning the separation of funds by party committees involved with both Federal and non-Federal elections.