



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-70

Mr. Charles L. Bucy
Assistant General Counsel
The LTV Corporation
P.O. Box 225003
Dallas, Texas 75265

Dear Mr. Bucy:

This responds to your letter of November 27, 1979, and supplement of January 3, 1980, requesting an advisory opinion on behalf of the LTV Corporation Active Citizenship Campaign ("LTV/ACC"), a registered political committee, regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to financing publication of the views of presidential candidates.

According to your request, LTV/ACC proposes to send identical letters to each presidential candidate who, at the time the letter is sent, is qualified for Federal matching funds. You state that the letter will ask each candidate to express his or her views, in a designated number of words or less, on issues of general interest to the public at large and to the business community, LTV, its employees, and shareholders in particular. LTV/ACC then proposes to make the responses public by purchasing space in print media of general circulation and reprinting, without comment, its letter along with the exact text of the candidates' replies.

You ask the following questions:

1. Whether by paying for publication without comment of a compilation of candidates' responses to a letter which LTV/ACC proposes to send to all presidential candidates who qualify for matching funds, in print media of general circulation, LTV/ACC makes a campaign contribution to those candidates; and
2. Whether the LTV Corporation may reimburse LTV/ACC for costs of publishing the compilation of candidates' responses or, alternatively, whether LTV may pay those costs directly.

Section 114.5(i) of the Commission's regulations provides that a separate segregated fund may, using voluntary contributions, communicate with the general public. However, 2 U.S.C. 431(e)(A)(i)^{*} defines a contribution to mean, in part, "any gift... of money or anything of value made by any person for the purpose of influencing any election for Federal office...." Section 100.4(a)(1)(iii) of Commission regulations includes advertising without charge within the meaning of "anything of value." The participation by the candidates knowing that the responses are to be published is one means of advertising or having their views on issues made known to the public. Thus, the Commission concludes that for each candidate who responds to the letter sent by LTV/ACC and whose response is published by LTV/ACC, LTV/ACC will be deemed to have made a contribution. The amount of the contribution to each candidate would be equal to the cost of publishing the letter and responses, divided by the number of responses printed. See 11 CFR 106.1(a).

The Commission answers your second question in the negative, that is, although LTV/ACC may communicate with the general public, the LTV Corporation may neither reimburse LTV/ACC nor pay directly the costs of publishing the communication. The response to your first question concluded that the proposal would result in a contribution by LTV/ACC. By paying the costs of publication either by reimbursement or directly the LTV Corporation rather than LTV/ACC would be making that contribution. 2 U.S.C. 441b provides, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any Federal election. Subsection 441b(b)(2) defines "contribution or expenditure" to include "any direct or indirect payment... or gift of money, or any services, or anything of value to any candidate" in connection with a Federal election.

Both the statute and Commission regulations do, however, contain specific exemptions from the definition set forth in 441b(b)(2). One exemption permits communications by a corporation to its stockholders, executive or administrative personnel and their families on any subject. The expenses of nonpartisan registration and get-out-the-vote campaigns aimed at those same persons are also exempt. Section 114.4 of Commission regulations addresses nonpartisan communications by corporations and allows a corporation to engage in limited nonpartisan activity, which is not restricted to its stockholders and administrative or executive personnel, regarding Federal elections provided certain specific conditions are met.

Commission regulation 114.4(c) specifically addresses nonpartisan voting information. That regulation permits a corporation to distribute voter guides or other types of brochures describing the candidates and their positions if: (i) the materials do not favor one candidate or political party over another; and (ii) the materials are obtained from a civic or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party.

The subject proposal concerns a communication which relates candidate positions to the general public. However, the materials which constitute the communication, that is the original

^{*} The Federal Election Campaign Act Amendments of 1979 have modified the definition of "contribution" as presently codified at 2 U.S.C. 431(e). The newly amended definition is quoted, in part, herein. All of the new definitional provisions are contained in section 101 of the 1979 Amendments. Public Law No. 96-187 (1980).

letters to the candidate and their responses, are not provided by a civic or other nonprofit organization as required by 114.4(c). Rather, the letters are written by LTV/ACC. Thus, the proposed communication would not comport with the regulation permitting corporations to finance distribution of nonpartisan voting information to the general public. Therefore, the Commission concludes that the LTV Corporation may not pay the costs of publishing the candidates' responses. Moreover, the LTV Corporation may not reimburse LTV/ACC for the publishing costs since the Act prohibits indirect payments which, if paid directly, would be unlawful under 2 U.S.C. 441b. See Advisory Opinion 1979-48, copy enclosed.

This response constitutes an advisory opinion concerning application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosure