



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 12, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-72

Miles J. Alexander
Kilpatrick & Cody
3100 Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303

Dear Mr. Alexander:

This responds to your letter dated June 6, 1980, requesting an advisory opinion on behalf of the law firm of Kilpatrick & Cody, ("the Partnership") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to a political contribution plan that the Partnership wishes to establish.

You state that the Partnership wishes to encourage members of the partnership to contribute to candidates for public office and to establish a means for sharing information about such contributions." Since the firm does not wish to exercise any supervision or control over any aspect of such contributions, the partnership proposes to institute a plan whereby each member of the partnership who wishes to contribute to candidates for public office may establish a voluntary special bookkeeping account with the firm in which the member will set aside a budgeted amount for such contributions. A firm member who wishes to make a personal political contribution would withdraw funds from the balance of his or her individual account and write a personal check to the candidate or political committee of the member's choice. Any special account funds not contributed to candidates would be refunded at the end of the year to the individual who set aside the funds.

You explain that records of the special accounts and any political contributions made from these accounts will be maintained by the firm bookkeeper at negligible cost to the partnership. Information regarding contributions from the special accounts will be made available to all participating members. You ask specifically whether establishment of the

proposed plan would subject the law firm to the registration and reporting requirements applicable to political committees under the Act and Commission's regulations.

The Commission concludes that the proposed voluntary political contribution plan would not subject the partnership to the registration and reporting requirements of the Act. The term "expenditure" is defined by the Act to include "any purchase, distribution, loan, advance, deposit or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(9)(A)(1). Payment by the partnership of the negligible bookkeeping costs involved in establishing and maintaining individual special accounts for participating members and making withdrawal information available to such members is not made for the purpose of "influencing any election for Federal office." Rather, the purpose of such payment by the partnership appears to be to encourage members of the partnership to voluntarily budget funds for personal political contributions by members to candidates of their choice on a regular basis. Thus, payment by the firm of the necessary bookkeeping costs to facilitate use of the plan is not an "expenditure" under the Act.

A "political committee" is defined by the Act to mean "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 in a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. 431(4). Since, in the factual situation presented, the incidental partnership expenses relating to the special account program are not "expenditures," neither the program nor the participating members of the partnership, nor the partnership as a whole, would become a "political committee" subject to the registration and reporting requirements of the Act.

The nature of the proposed activity further indicates that a political committee will not be created. Although all individuals who may choose to participate in the proposed program are members of one partnership, it is clear that each member will deposit only his or her personal funds into his or her individual political contribution account. Any decision to withdraw funds from an individual's political contribution account with the firm and to make a contribution with those funds may be made only by that member. Thus, the proposed accounting arrangement would not result in political committee status for the partnership or the program. See, by analogy, 11 CFR 114.11.

With respect to implementing the described program, the Commission cautions that certain aspects of the program may result in political committee status. In particular, as you have indicated in your request, information on individual accounts maintained by the firm's bookkeeper will be available to all of the participants in the program so that they will have "current data as to the candidates who had already received donations from others in the firm." In addition, you explain that:

Availability of such information would enable members of the firm to consider spreading their contributions more broadly among various candidates and races as a factor in their individual contribution decisions. It would also assist individuals who wished to solicit donations for candidates to identify fellow partners with unused funds which had been budgeted for political contributions.

The program would become a political committee if the partnership incurred expenses (exceeding \$1,000 in a calendar year) for distribution of information within the firm as to the identity of participating partners or the amounts and candidate recipients of their contributions. In that event, the purpose of the partnership expenditures would be influencing the making of contributions for Federal elections, rather than merely facilitating the management of personal funds of participating partners. A purpose of influencing an election would also be apparent if participation in the program is conditioned on any formal or informal agreement to make, or refrain from making, contributions to any particular candidate or class of candidates. Moreover, if the program includes any delivery arrangement whereby contributions are accumulated for the same candidate and forwarded at the same time, a purpose of influencing would be present. Compare facts and conclusions in Advisory Opinion 1976-51, copy enclosed.

This response constitutes an advisory opinion concerning 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 yours,

(signed)

Max L. Friedersdorf
Chairman