



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 16, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-18

Richard C. Semack
Office of Government Affairs
Automobile Club of Michigan
17000 Executive Plaza Drive
Dearborn, Michigan 48126

Dear Mr. Semack:

This responds to your letters of April 30 and May 20, 1985, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to proposed Federal election activity by the Automobile Club of Michigan Political Action Committee (ACPAC).

You state that ACPAC was created by the Board of Directors of the Automobile Club of Michigan in 1981. You indicate that ACPAC did not register as a political committee pursuant to 2 U.S.C. 433, and that it has never made any contributions to Federal candidates; nor has it made expenditures to influence any Federal election. ACPAC presently has a cash balance of approximately \$17,500. You request an advisory opinion whether ACPAC may expand its operations by making contributions to candidates for Federal office and whether its cash on hand balance may be used for this purpose. You have also raised a preliminary issue regarding application of the 10-day registration requirement in view of ACPAC's organization in 1981 and its fundraising activity since that time.

With respect to this preliminary issue your request notes that original solicitation materials indicated that ACPAC would "also be used for federal campaigns." You have also provided excerpts from the minutes of the ACPAC organizing meeting held on March 18, 1981, and affidavits from ACPAC officers. These materials indicate that the initial purpose of ACPAC was "to offer support to State level political candidates" and that it has not been "involved in any federal [election] matters until the present time." The contributions made by ACPAC since 1981

have, as indicated in your request, been limited to candidates for State and local offices and have not been made to candidates for Federal office, or to political committees as defined in the Act.

The Act provides that a separate segregated fund established under 441b(b) is a political committee and is required to register within 10 days after its establishment. 2 U.S.C. 431(4)(B), 433(a). Commission regulations further explain, however, that the registration requirement does not apply to a separate segregated fund established solely for the purpose of financing political activity in connection with State or local elections. 11 CFR 102.1(c). In addition, 102.1(c) provides that one example of an event which reflects the establishment of a separate segregated fund is a vote by the board of directors of a corporation to create such a fund "to be used wholly or in part for federal elections...".

In this case the original 1981 solicitation brochure (exhibit II with the April 30 letter) contains several indirect and vague references to Federal elections: (1) "What voice do... members have in Lansing and Washington about who is elected to office?" (2) "ACPAC is needed since federal and state laws prohibit the use of corporate funds to support candidates for political office." (3) "Contributions and sponsors will be reported in compliance with federal and state laws and regulations." However, other materials, summarized above, indicate that the original purpose of ACPAC and its organizing personnel was limited to Michigan state elections. In addition, the 1981 articles of association for ACPAC refer generally to its purpose "to promote good citizenship through the personal and financial participation of individuals in the elective process and to influence the nomination or election of candidates... to the extent permitted by law." The actual operations of ACPAC from 1981 until the present time have been limited to State and local elections which is consistent with and confirms the original intent of its organizers to establish only a State political fund, rather than a separate segregated fund pursuant to the Act. Accordingly, given the factual materials presented in this request, the Commission concludes that ACPAC's initial fundraising activities as described in your request do not result in the receipt of contributions, as defined in the Act, and do not require that ACPAC register as a political committee.

With respect to ACPAC's proposed conversion to political committee status at this time and the use of its cash on hand for making contributions to influence Federal elections, the Commission concludes that such a conversion and use of ACPAC funds is permissible subject to the following discussion.

Assuming that upon receipt of this opinion ACPAC officers decide to implement their proposal to establish ACPAC as a separate segregated fund under the Act and Commission regulations, the treasurer must file a Statement of Organization on FEC Form 1 no later than 10 days after that decision and before any contributions are made. 2 U.S.C. 432 and 433, 11 CFR 102.1(c) and 102.2. Upon registration ACPAC is required to begin filing periodic reports of its receipts and disbursements pursuant to the prescribed schedule and other requirements of the Act and regulations. 2 U.S.C. 434, 11 CFR 104.5.

Your request indicates that ACPAC wishes to operate as a "combined fund rather than [to] establish two distinct funds." Such a combined Federal and State committee is specifically permitted by Commission regulations, but all contributions received are subject to the limits and

prohibitions of the Act. 11 CFR 102.5(a), also see 2 U.S.C. 441a. Note also the requirements for contribution solicitations for such a combined political committee. 11 CFR 102.5(a)(2). Since ACPAC would become the separate segregated fund of a corporation, the solicitation limitations and other requirements of 2 U.S.C. 441b would also apply. See generally, 11 CFR Part 114 and, in particular, 11 CFR 114.5 and 114.7.

With respect to the use for Federal election purposes of ACPAC's previously received donations, Commission regulations permit political committees to have cash on hand at the time of their registration under the Act. 11 CFR 104.12. The regulation also imposes reporting requirements and limits the sources of such cash on hand to contributions that are permissible under the Act. In addition, the regulation includes a rule for ascertaining the composition of the cash balance: it is assumed to be those contributions that the committee most recently received prior to its date of registration. The Commission has held that the cash on hand regulation cited above applies to political committees that are separate segregated funds. Advisory Opinions 1984-31, 1983-3, 1982-40, and 1981-34.

The Commission has also indicated in these opinions that in order to come into compliance with 11 CFR 102.5(a)(2) and 114.5(a), the donors in some circumstances must be given both notice of the proposed change in the use of funds, if originally donated for a different purpose, and an opportunity to object to such a use. See Advisory Opinion 1981-34 and compare Advisory Opinion 1982-40. In this case your request indicates that all donations were made for political purposes by individuals and in amounts that did not exceed \$260 per year from any individual donor. The request also indicates that solicitations for donations to ACPAC were made only to members of the Automobile Club of Michigan, a non-profit corporation organized under Michigan law. Furthermore, you have proposed a procedure for notifying ACPAC donors of ACPAC's intent to become a combined Federal and State separate segregated fund, that contributions are voluntary and will not affect membership (or employment) status, and that donors of unspent funds can receive a return of such funds if requested. Exhibit IV with April 30 letter.¹

The Commission concludes that the foregoing procedure and the notice, as contained in exhibit IV (April 30 letter), will satisfy the requirements of the Act and regulations in the circumstances presented here. Of course all future ACPAC contribution solicitations, including payroll deduction authorizations for employee/members, must comply with all requirements of the Act and regulations.²

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

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1984-31, 1983-3, 1982-40, and 1981-34)

1. Exhibit IV refers to a form that will be sent with the described donor notice. Although this form was not included with the request, the Commission understands from a telephone conversation between you and a member of its legal staff that the form will be comprised of two separate sections (or lines): one for consenting donors to indicate their approval of ACPAC's use of their unspent donations for expanded purposes, including Federal elections, and the other for objecting donors to request a refund of their unspent donations.

2. Commission regulations provide that a written solicitation may suggest a contribution amount provided the solicitation informs potential contributors that the guideline is merely a suggestion and that an individual is free to contribute more or less without fear of discriminatory treatment. 11 CFR 114.5(a)(2). A solicitation directed toward an employee or member must inform that individual of the political purpose of the fund. 11 CFR 114.5(a)(3). Any person soliciting an employee or a member must inform the potential contributor of the rights to refuse to contribute without fear of reprisal. 11 CFR 114.5(a)(4).