



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 16, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-111

Mr. Stephen A. Herman
Mr. John S. Logan
Kirkland & Ellis
1776 K Street, N.W.
Washington, D.C. 20006

Dear Gentlemen:

This responds to your letters of September 19 and 26, 1980, requesting an advisory opinion on behalf of the Portland Cement Association ("Association") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment of a political action committee ("PAC") by the Association.

The Association is an incorporated trade association whose members are corporations involved in the Portland cement industry. The Association is an American corporation whose general office and principal place of business is located in Skokie, Illinois. The Association presently has under consideration the establishment of a separate segregated fund. In accordance with the Commission's regulations, the Association would pay from its general treasury funds the costs associated with establishing, administering, and soliciting contributions to the PAC. General treasury funds used to pay these expenses for the PAC would be derived from the dues of member corporations.

Of the 45 member corporations in the Association, 34 are United States corporations and 11 are Canadian corporations. Members of the Association pay dues that are included in the general treasury funds of the Association. As of September 1, 1980, the Association employed 367 persons in the United States and 39 persons in Canada. In addition to its general headquarters, the Association maintains eight regional offices in the United States, including an office in Washington, D.C. The Canadian headquarters of the Association are located in Ottawa, Ontario. The Association maintains five regional offices in Canada.

The proposed Articles of Association and Bylaws for the PAC provide that the members of the PAC shall be United States citizens. Decision-making authority with respect to contributions will rest with three members of the PAC. Immediate responsibility for oversight of the PAC, including the power to amend the Articles of Association and Bylaws for the PAC, will rest with the Washington Affairs Committee of the Association. If the PAC is established as anticipated, the Washington Affairs Committee, by resolution, will provide that only members of the Washington Affairs Committee who are United States citizens will have a vote in matters relating to the oversight and administration of the PAC. Additionally, no personnel of Canadian member corporations, even United States citizens, would be solicited for contributions to the PAC.

You ask whether it is permissible under the Act for the Association to establish and maintain the PAC in the manner described in your request. This question raises the issue of whether the Association's payment, from its general funds (partially comprised of dues payments from foreign corporations), of the administrative and solicitation costs of the PAC constitutes a contribution from a foreign national prohibited by 2 U.S.C. 441e.

The term "foreign national" is defined by 2 U.S.C. 441e(b)(1) to mean a "foreign principal" as such term is defined specifically by 22 U.S.C. 611(b). Section 611(b) defines "foreign principal" as including:

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States; and
- (3) a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

Under 611(b) a domestic corporation whose principal place of business is within the United States is not a "foreign principal" and hence not a "foreign national" under 2 U.S.C. 441e. The Commission is therefore of the opinion that the continuing existence of the Association as a discrete corporation organized under the laws of the United States, with its principal place of business in the United States, places the Association outside the definition of "foreign national" for purposes of 441e notwithstanding the fact that the Association has offices and member corporations which are located in a foreign country.

While the Association itself is not a foreign national, the question presented here is whether the Association may use general treasury funds, which are partially derived from dues payments by foreign nationals, to support the PAC. Under 2 U.S.C. 441b(b)(2)(C) payments by a corporation for the "establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation," are exempt from the

general prohibition against corporate contributions in connection with a Federal election. While the Commission has held that this exemption does not extend to a foreign corporation or a foreign national for purposes of 2 U.S.C. 441e (see Advisory Opinion 1977-53, copy enclosed), the Commission has determined that a domestic corporation whose principal place of business is in the United States may establish a separate segregated fund even though the corporation is a wholly owned subsidiary of a foreign national. See Advisory Opinions 1978-21, and 1980-100, copies enclosed. The facts presented in those opinions indicated that the general treasury funds of the corporation may have been made up in part by monies derived from foreign nationals or foreign corporations. Thus, the distinction drawn by the Commission in determining whether the 441b(b)(2)(C) exemption was available to the corporation (i.e. whether the corporation could permissibly pay for the administration expenses of the separate segregated fund) was whether the corporation was a foreign national under 441e. Where, as here, the corporation which maintains the fund is not a foreign national, payments by the corporation for that purpose are not "contributions" under the Act and the question of a contribution by a foreign national does not arise.

Accordingly, the Commission concludes that because the Association is not a foreign national under 441e, payments by the Association for the establishment, administration and solicitation of contributions to the PAC are permissible under the Act and that contributions by the PAC do not violate the prohibitions of 441e. The Commission reaches this conclusion on the basis of your representation that the individuals who will exercise decision-making authority with respect to PAC activities will not be foreign nationals and that contributions to the PAC will not be solicited or accepted from persons who are foreign nationals as otherwise specified under 2 U.S.C. 441e. Of course, any solicitations for contributions, as well as contributions to and expenditures by the PAC, must conform with all other applicable provisions of the Act and Commission regulations. Finally, the Commission notes its audit authority with respect to activities of the PAC and emphasizes that, pursuant to the audit or other authority under 2 U.S.C. 437d and 438, the process and personnel involved in PAC decision-making is subject to Commission scrutiny.

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 for the
Federal Election Commission

Enclosures (AOs 1977-53, 1978-21, 1980-100)