FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 4, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-20

Dale V. Cunningham
General Counsel
Sunkist Growers, Inc.
P.O. Box 7888
Van Nuys, California 91409

Dear Mr. Cunningham:

This responds to your letter of April 14, 1981, which seeks reconsideration of Advisory Opinion 1981-6 pursuant to Commission regulations at 11 CFR 112.6. As you know, the Commission's Office of General Counsel has reviewed your April 14th letter and determined that because the facts presented therein involve a joint investment of funds (rather than a loan of funds as was the case in AOR 1981-6) that the April 14th letter constituted a new request for an advisory opinion.

Your letter states that Sunkist Growers, Inc. is a cooperative association which is organized as a nonprofit corporation under the Food and Agricultural Code of the State of California. Sunkist has established a separate segregated fund ("Federal PAC") under the terms of the Federal Election Campaign Act of 1971, as amended ("the Act"), and has also established a recipient committee pursuant to the California Political Reform Act of 1974, as amended, to support candidates for California state and local office ("State PAC"). Unlike the parallel Federal law, California law permits corporate contributions to political committees.* You state that funds for each account are raised separately in accordance with either Federal or California law and that funds in the state and Federal PAC accounts are not commingled.

Both the Sunkist Federal and the Sunkist state political committees had funds remaining following the 1980 general election. Rather than permitting these funds to remain in checking or savings accounts, the Federal PAC and the State PAC desire to invest the funds in a treasury bill

* According to the facts you presented in Advisory Opinion Request 1981-6, the State PAC has solicited and received corporate contributions.

so that both PACs may realize a higher rate of return. Since neither the state nor the federal political committee has sufficient funds with which to make such investment alone, Sunkist proposes to invest the funds from both committees in a single treasury bill. Sunkist plans to purchase the treasury bill in the following manner:

(1) Each PAC will issue a check made payable to an appropriate bank;

(2) Under an agreement with the bank which will act as depository, the bank will issue a treasury bill in the name of Sunkist Federal/State PACs;

(3) Upon maturity the bank will be instructed to issue two separate checks, one to each PAC, for the principal plus the interest accrued on that principal only.

You add that at no time will the Federal PAC money and the State PAC money be commingled or passed through the bank account of either PAC before, during or after the term of the treasury bill. You ask whether the investment of the Federal PAC's funds in this manner is permissible under the Act and Commission regulations.

As you know, the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value..." made directly or indirectly by a corporation or labor organization in connection with any election to Federal office. 2 U.S.C. 441b(b)(2)(A), emphasis added. As noted above, the facts you presented in AOR 1981-6 indicate that the State PAC's funds are comprised, partially, of corporate contributions. Thus, the State PAC, under 441b, is prohibited from making a contribution directly or indirectly in connection with a Federal election.

In the situation presented here, neither the Federal PAC nor the State PAC, by themselves, has sufficient funds with which to make the investment in the treasury bill. In effect, therefore, the State PAC is giving to the Federal PAC the ability to satisfy the minimum requirement for the treasury bill which, in turn, will permit the Federal PAC to earn more interest on its funds than would otherwise be the case if those same funds were invested elsewhere in an institution or fund which has no minimum requirement and thus pays less interest. Where the State PAC, by combining with the Federal PAC to meet the treasury bill minimum requirement, provides to the Federal PAC the ability to earn higher interest on the Federal PAC Funds, the State PAC has given a thing of value to the Federal PAC and, thus, has made a "contribution" to the Federal PAC within the meaning of 2 U.S.C. 441b(b)(2)(A).

Accordingly, the Commission is of the opinion that the joint investment of the funds in the manner described in your request is not permitted under the Act unless the State PAC divests itself of the corporate funds in its account and otherwise complies with the Commission's determination in Advisory Opinion 1981-6. Furthermore, while your request raises the issue of whether this joint investment proposal constitutes a prohibited commingling of funds, in light of the fact that the joint investment proposal represents a prohibited corporate contribution, the Commission does not need to reach the commingling issue. See and compare Advisory Opinion 1981-19, 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)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure (AO 1981-19)