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FEDERAL ELECTION COMMISSION
Washington, DC 20463

CONCURRING OPINION IN ADVISORY OPINION 1985-3

of

COMMISSIONER FRANK P. REICHE

Advisory Opinion 1985-3, which was approved by the Federal Election Commission on February 28, 1985, contains a statement of the current law governing political contributions by U.S. corporations with foreign ties. In this case the Requestor, a locally elected official in California, questioned whether a campaign contribution received by him from a Delaware corporation that was a wholly-owned subsidiary of a Canadian corporation was permissible under 2 U.S.C. 441e of the Federal Election Campaign Act which prohibits foreign nationals from making contributions in connection with an election to any political office. The Opinion states that "a corporation organized under the law of any state within the United States whose principal place of business is within the United States is not a foreign principal and, accordingly would not be a 'foreign national' under 2 U.S.C. 441e." The Opinion further notes two qualifications to the above statement of existing law. The first would have the effect in this case of prohibiting the parent Canadian corporation from directly or indirectly providing the funds for such a political contribution. The second would prevent the parent Canadian corporation from having any decision-making role or control with respect to the making of said contribution. My difficulty with the Opinion relates to the fact that although it provides a detailed description of the applicable law, it does not then apply such law to the facts presented by the Requestor. Specifically, it does not attempt to determine whether the second of these two qualifications applies even though the Requestor implicitly raised this issue by referring, in his statement of facts, to the composition of the Board of Directors of the contributing corporation. While the Commission has thus legally protected itself should facts subsequently disclose foreign involvement in this contribution, I believe the Commission has a responsibility not only to recite the law, but also to determine the impact of its application to the facts submitted by the Requestor. During the Commission's consideration of this Opinion, I suggested that we seek additional information regarding the possible involvement of the parent Canadian corporation in the making of such contribution, since I did not believe that the Requestor recipient of this contribution had provided sufficient information on which the Commission could make an informed judgment. In stating my concerns, I emphasized that I was not being at all critical of the Requestor, who had apparently provided all the information available to him on this point, but rather that I concluded this was an issue

that should be addressed by the Commission and required further evidence. Interestingly enough, the Requestor had invited the Commission to seek more information regarding the U.S. subsidiary-contributor and included in his request the name, address and telephone number of both the President of the corporation and its Sacramento, California representative. Thus, it would not have been difficult for the Office of General Counsel to make an inquiry of the type I suggested. Indeed, the Office of General Counsel has on other occasions, frequently at the behest of the Commission, made similar inquiries concerning possible foreign involvement in political contributions by U.S. corporations or their political action committees. What therefore troubles me is the absence of information on this point as contrasted with the Commission's historic interest in establishing the extent of foreign involvement before rendering opinions in related matters (e.g. Advisory Opinion 1983-31 and 1982-10). The additional information to which I refer would include data on the composition and operations of the Board of Directors of the contributing corporation as well as information reflecting the possible participation of the parent foreign corporation in the making of decisions regarding these political contributions. In this particular case, it does not appear that Congressional fears over foreign participation in American elections will be realized if such a corporate contribution is permitted in this local campaign. Thus, I decided to concur in the result. I would not want my concurrence, however, to be construed as carte blanche approval of political contributions by U.S. corporations with foreign ties without the Commission first seeking to establish the nature and extent of foreign national involvement in such matters. My approval of this Opinion is therefore limited to the facts of this case.