



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 30, 1989

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-9

W.H.L. Mullins, Chairman  
General Dynamics Voluntary Political Contribution Plan  
Pierre Laclede Center  
St. Louis, Missouri 63105

Dear Mr. Mullins:

This responds to your letter dated May 4, 1989, requesting an advisory opinion on behalf of the General Dynamics Voluntary Political Contribution Plan ("GDVPCP") and the General Dynamics Corporation (the "company") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a plan by the company to match contributions made by its employees to GDVPCP with donations to charitable organizations.<sup>1</sup>

In describing the proposed plan, you refer to your letter, dated March 29, 1989, stating certain details of the proposal. Employees of General Dynamics enrolling for the first time in GDVPCP would have their voluntary contributions of \$200 or more matched with a donation by the company to any 501(c)(3)<sup>2</sup> qualified charity of their choice. Currently enrolled employees who increase their support above \$200 would have that increase matched.<sup>3</sup> You state that the objective of the program would be to encourage a higher level of voluntary participation in the GDVPCP and, at the same time, direct a greater percentage of the company's corporate donations to charities of interest to the employees.

You state that GDVPCP presently offers two voluntary methods of participation. These methods are available for "eligible employees, including all executive, professional, and administrative personnel of General Dynamics as defined by law."<sup>4</sup> One method is the "Common Fund" whereby individual contributions made through payroll deduction are pooled together. The other is the "Individual Fund," also using payroll deduction, whereby individual employee accounts are established and withdrawals are only distributed to a political recipient of the employee's choice upon written request, or refunded to the employee upon request. You state that the

matching program will be available to those employees participating only in the Common Fund option. Solicitation of employees will be made no more than twice a year, and no financial, tax, or other incentive or benefit will be provided to the participating employees.

You ask whether the Act and Commission regulations permit General Dynamics and GDVPCP to implement this proposed charitable donation plan.

The Act prohibits a corporation from making contributions or expenditures in connection with any Federal election. 2 U.S.C. 441b(a). The Act excludes from the definition of "contribution or expenditure," however, "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes" by a corporation. 2 U.S.C. 441b(b)(2)(C). Although Commission regulations explain that a corporation may use its general treasury monies to pay the expenses of establishing and administering such a fund and of soliciting contributions to the fund, the regulations also provide that a corporation may not use this process "as a means of exchanging treasury monies for voluntary contributions." 11 CFR 114.5(b). In this respect, the regulations further explain that a contributor may not be paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1).

The Act and regulations provide that a corporation or its separate segregated fund may solicit contributions to the fund at any time from the corporation's executive or administrative personnel and their families and from its stockholders and their families. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation of these persons for contributions to the fund must meet certain requirements. See 11 CFR 114.5(a) and, in particular, 114.5(a)(5).

The plan that you outline resembles one approved by the Commission in Advisory Opinion 1986-44, which allowed a corporation to match contributions made to its separate segregated fund with donations to charities. The Commission viewed the corporation's matching of voluntary political contributions with charitable donations as a solicitation expense related to its separate segregated fund. 2 U.S.C. 441b(a) and 441b(b)(2)(C). See also Advisory Opinion 1988-48. Similarly, the company's matching of contributions with donations to charities would be a permissible solicitation expense related to GDVPCP. Because the individual contributors to GDVPCP will not receive a financial, tax, or other tangible benefit from either the company or the recipient charities, it does not appear that General Dynamics will be exchanging treasury monies for voluntary contributions. See Advisory Opinions 1988-48, 1987-18, and 1986-44, n.4. The Commission concludes, therefore, that the plan presented by GDVPCP and General Dynamics is lawful under the Act and regulations.

The foregoing conclusion assumes that the recipients of the solicitations for this program are all within the class of persons that a corporation may solicit for contributions to its own separate segregated fund at any time. See Advisory Opinion 1986-44, n.3. Furthermore, assuming this same class of recipients, the use of payroll deductions for the collection of voluntary contributions to GDVPCP does not alter the foregoing conclusion. See 11 CFR 114.5(k)(1).

The Commission expresses no opinion regarding any tax ramifications of the proposed charitable donation plan. Such matters are outside the Commission's jurisdiction.

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,

(signed)

Danny L. McDonald  
Chairman for the Federal Election Commission

Enclosures (AOs 1988-48, 1987-18, and 1986-44)

1/ According to Statements of Organization (FEC Form 1) filed by GDVPCP, General Dynamics Corporation is the connected organization of GDVPCP.

2/ See 26 U.S.C. 501(c)(3) (Internal Revenue Code).

3/ Your request refers to employees "enrolled" in GDVPCP. Commission regulations permit a separate segregated fund established by a corporation to provide that persons who contribute to the fund may become "members" of the fund, but the regulations further provide that such classification does not provide the corporation with any greater right of communication or solicitation than it is otherwise granted under the regulations. 11 CFR 114.5(c)(1) and (2).

4/ The Commission assumes that your use of the term "eligible employees" is meant to apply only to those who qualify as executive and administrative personnel pursuant to the definition at 11 CFR 114.1(c). This opinion does not address the issue of whether the categories of General Dynamics personnel participating would qualify under those definitions.