FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 12, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-6

Frances Morgan
Coors PACE
Coors Brewing Co. NH510
Golden, CO 80401

Dear Ms. Morgan:

This refers to your letters of March 25, and March 17, 1994, on behalf of Political Action Coors Employees ("PACE"), concerning the application of the Federal Election Campaign Act of 1971 ("the Act") to a matching charitable contribution plan that it proposes to use in its solicitations.

PACE is the separate segregated fund of the Coors Brewing Company ("Coors"). You state that PACE would like to begin a matching charitable contributions plan to encourage a higher level of voluntary participation by Coors' employees in PACE. Under the proposed plan, each person making a voluntary contribution to PACE would have 25 cents of each dollar of the contribution matched by a donation to a charity designated by PACE. You state that the matching funds would come from Coors rather than from PACE. PACE's proposed plan would be open to all of Coors' employees, including the non-executive and non-administrative employees of its subsidiaries, divisions or branches. These individuals are referred to in your request as the "Expanded Class."

As an alternative to giving participants only one choice, you also propose to offer them the possibility of choosing from a list of up to four charities that could receive the matching donation. You also propose, as an alternative, that PACE would designate a single charity donee to receive the Coors donation, unless the contributor to PACE expressly makes his or her own choice from the list of charities.

The Act prohibits a corporation from making contributions or expenditures in connection with any Federal election. However, the Act excludes from the definition of "contribution or expenditure," those costs which are paid by the corporation for "the establishment,

administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes" by the 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 contributions through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1).[1/]

The Act and Commission regulations allow a corporation, or a separate segregated fund established by a corporation, to solicit voluntary contributions to the fund from the corporation's stockholders, its executive and administrative personnel, and the families of such persons. 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).

The Act and regulations also permit two written contribution solicitations in a calendar year to other employees. 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6(a). The corporation, however, must make such written contribution solicitations by mailing them to an employee's residence and must use a custodial arrangement that ensures the anonymity of those wishing to contribute less than $50 in any single contribution, or those not wishing to contribute at all. 11 CFR 114.6(c) and (d). See also Advisory Opinions 1991-28 and 1990-25.

The proposed PACE plan is similar to those approved by the Commission in the past. See Advisory Opinions 1994-3, 1990-6, 1989-9 and 1989-7. The Commission has recently approved the use of matching charitable contribution plans for employees who are only solicitable under the twice yearly procedures, as long as all other Commission regulations applicable to the solicitation of these personnel are followed. See Advisory Opinion 1994-3.[2/]

These past opinions have all allowed corporations to match contributions made to their separate segregated funds with donations to charities. The Commission has viewed the corporation's matching of voluntary political contributions with charitable donations as solicitation expenses related to fundraising for its separate segregated fund. 2 U.S.C 441b(a) and 441b(b)(2)(C). Central to this conclusion is that the individual contributor to the separate segregated fund would not receive a financial, tax, or other tangible benefit from either the corporation or the recipient charities, thus avoiding an exchange of corporate treasury monies for voluntary contributions. Your proposal meets this requirement by stating that charities selected under the proposal will not be permitted to provide a tangible benefit or premium to PACE contributors in return for their donation. Having met this requirement, the number of charitable donee choices offered to PACE contributors, or the lack of choice, is not, by itself, a distinguishing factor from past opinions. Therefore, the Commission concludes that subject to all other applicable provisions of the Act and regulations, the PACE matching plan would be permissible under the Act and regulations.

The Commission expresses no opinion regarding any tax ramifications of the proposed matching charitable contribution plan because those issues are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Com- mission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

For the Commission,

(signed)

Trevor Potter
Chairman

Enclosures (AOs 1994-3, 1991-28, 1990-25, 1990-6, 1989-9 and 1989-7)

ENDNOTES

1/ The Commission's conclusion regarding matching charitable contributions by SSF's is consistent with the Internal Revenue Code's treatment of the tax consequences of such programs. The Internal Revenue Service has concluded that "a Charity/PAC matching program grant to an IRC 501(c)(3) organization should not be recharacterized as payment of compensation to the employee, and a subsequent payment by the employee to the IRC 501(c)(3) organization." Judith E. Kindell and John F. Reilly, Election Year Issues, IRS publication, 441 (1992); see also Rev. Rul. 67-137, 1967-1 C.B. 63. The Internal Revenue Service has also concluded that the corporation may not receive a tax deduction for the matching charitable donation it makes. Because the corporation receives a substantial benefit or quid pro quo in return for its donation to the employee designated charity, the donation cannot be viewed as a true "gift" from the corporation. Kindell and Reilly, at 444.

2/ In that opinion, the Commission required the modification of the requester's proposal in order to comply with the custodial arrangement set forth in section 114.6(d) and to ensure the anonymity of contributors making contributions of $50 or less or multiple contributions aggregating $200 or less in a calendar year. The Commission required that any review of the list of qualified charities chosen by participating contributors should be conducted in a manner that preserved the confidentiality of those contributing the smaller amounts described above. Furthermore, the Commission required that letters sent to charities regarding the participants making the smaller contributions should be prepared and sent only by the custodian and should not give the actual name of the participant. Letters of appreciation from the charity could be conveyed to these participants through the custodian. See Advisory Opinion 1994-3.