



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 24, 1978

AO 1978-16

Richard J. Dean, Manager
Federal Government Affairs
Whirlpool Corporation
Benton Harbor, Michigan 49022

Dear Mr. Dean:

This refers to your letters of January 20 and February 28, 1978, requesting an advisory opinion on behalf of the Whirlpool Political Action Committee (WPAC) concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a payroll deduction program utilized by executive and administrative employees of Whirlpool corporation to make contributions to WPAC.

Your letters explain that WPAC solicited political contributions from executive and administrative employees of Whirlpool during the last quarter of 1977 and has given those employees the option of making their contribution by cash or through semi-monthly payroll deductions. You state that the payroll deduction program is designed to be "open-ended" (no specified date for expiration of the period for which a deduction is authorized), and the authorized deduction may be cancelled by the contributor at any time. Executive employees who have authorized payroll deductions for WPAC may terminate or change the amount of their deduction contribution upon notification to the payroll department. Your letter indicates that WPAC's year and report for 1977 does not itemize the amount of each contribution, authorized to be made by payroll deduction, as outstanding debts owed to WPAC.

You ask whether the employees' authorization of payroll deductions would in itself be a contribution before the proceeds are actually distributed to WPAC with the result that WPAC may be required to report the proceeds of an authorized deduction as an outstanding promise or pledge owed to WPAC.

The term "contribution" is defined in 2 U.S.C. 431(e)(2) to include a written promise whether or not legally enforceable to make a contribution for the purpose of influencing the nomination or election of any person to Federal office. Regulations of the Commission at 11 CFR 100.4(a)(3) explain that contribution includes a written promise or agreement "such as a signed pledge card, whether or not legally enforceable, to make a contribution." The cited

regulation further provides that the written promise "shall be reported as a debt owed to the . . . committees until it is honored."

In this case, the authorization is subject to termination at any time; no certain total amount is assured nor can one be identified. Therefore, the authorization does not constitute a contract, promise or agreement, hence the authorization does not count as a contribution. As the proceeds are remitted to WPAC, they would then be required to be disclosed on WPAC's reports with full identification of the contributor when his or her contributions to WPAC aggregate over \$100 for the calendar year. 2 U.S.C. 434(b)(2) and 11 CFR 104.5(b). The Commission notes that a reporting obligation relating to the written payroll deduction authorization itself would arise upon the signing of the authorization if (i) the executive employee specified in the signed authorization that it would be effective over a definite period of time, and (ii) the aggregate amount of the promised contribution over that period of time exceeded \$100 for a calendar year.

Finally, the Commission emphasizes that all contributions facilitated by means of a payroll deduction system used by executive and administrative employees of Whirlpool must be otherwise lawful under the Act, and contributions collected via the system must have been solicited and obtained in a manner which complies with 2 U.S.C. 441b(b)(3) and 114.5(a) of the Commission's regulations. See also 11 CFR 114.1(i).

This response constitutes an advisory opinion concerning application of a general rule of law stated in the Act or prescribed as a Commission regulation to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Thomas E. Harris
Chairman for the
Federal Election Commission