



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 12, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-74

Mr. Paul E. Gaeng
5913 Hartford Road
Baltimore, Maryland 21214

Dear Mr. Gaeng:

This responds to your letter of June 10, 1980, in which you request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act") to certain proposed activities of Operating Engineers Local 37, Baltimore, Maryland.

You explain in your letter that Operating Engineers Local 37 is preparing to implement a funding plan in connection with the separate segregated funds of its two affiliate labor organizations. Operating Engineers Local 37, Baltimore, Maryland has not formed a political action committee of its own. The named affiliate labor organizations and their respective political committees are: International Union of Operating Engineers, AFL-CIO "Engineers Political Education Committee" (EPEC), and Baltimore Building & Construction Trades Council, AFL-CIO "Building Unions Individual Labor Donation Fund" (BUILD). In order to solicit funds from its members for contributions to the foregoing separate segregated funds, Operating Engineers Local 37 proposes that individual members of the local be allowed to sign an authorization card permitting the deduction of 2 cents per hour worked from vacation fund monies. These vacation monies are paid to the union and employer as trustees pursuant to an Agreement and Declaration of Trust.

You state that at no time would these funds come in contact with any union funds. After the amounts are deducted from the wages of Operating Engineers they are then transmitted to the Administrator of the Vacation Fund by employers via monthly reporting schedules. This money is then held in the account of the Board of Trustees of the Vacation Fund, and accrued amounts, plus interest, are then paid to members of Local 37 on a semi-annual payout schedule by said Administrator. Transfer of funds to the designated political action committees would be made on these payout dates.

You ask whether the proposed procedures for contributions by members of Operating Engineers Local 37, to the separate segregated funds of its affiliates through the use of deduction authorization cards, satisfy the requirements of the Act and Commission regulations dealing with permissible political activity by a labor organization.

An initial issue raised by your request is the solicitability of Local 37 members. The Act makes unlawful the solicitation of contributions to the separate segregated fund of the labor organization unless such persons are members (and/or families of such members) of such labor organization. Commission regulations provide that members of a local labor organization are also considered members of a national or international union of which the local union is a part and of any federation with which the local, national or international union is affiliated. 11 CFR 114.1(e). The members of Operating Engineers Local 37 are members of a local of the International Union of Operating Engineers which is a member of the AFL-CIO Division of Building & Construction Trades (Baltimore Council). Therefore, members of Operating Engineers Local 37 are solicitable by the separate segregated funds of the above mentioned affiliates.

The Act and Commission regulations prohibit a separate segregated fund from making a contribution or expenditure utilizing money secured by "dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment ..." 2 U.S.C. 441b(b)(3)(A); 11 CFR 114.5(a)(1). The facts presented in your advisory opinion request indicate that the Vacation Fund from which deductions will be authorized is compensation earned by union members, withheld by the employer and remitted to the account of the union and employer as trustees for each union member. According to your letter at no time would these monies come in contact with union funds. The Commission concludes therefore, that the Vacation Fund is a permissible source of voluntary contributions using a deduction authorization plan.¹

The Act also requires any solicitation of union members by a labor organization on behalf of its separate segregated fund or the separate segregated fund of its affiliates to contain a clear statement informing each potential contributor of the political purposes of the fund at the time of the solicitation. 2 U.S.C. 441b(b)(3)(B); 11 CFR 114.5(a)(3). The sample deduction authorization card attached to your advisory opinion request contains a clause alerting political contributors that the money withheld from the Vacation Fund will be used for political purposes and will be paid to the separate segregated funds of the union's affiliate labor organizations: Engineers Political Education Committee and Building Union Individual Labor Donation Fund.

Finally, the Commission's regulations provide that a guideline for contributions may be suggested by a labor organization so long as the solicitation informs potential contributors that: (a) the guidelines are merely suggestions, (b) that an individual is free to contribute more or less than the guidelines suggest, and (c) that the labor organization will not favor or disadvantage anyone because of the amount of their contribution or their decision not to contribute. 11 CFR 114.5(a)(2) and (4).

¹ In Advisory Opinion 1979-60, the Federal Election Commission concluded that a Vacation Fund is a permissible source of voluntary contributions. A copy of this opinion is enclosed.

The sample deduction authorization card contains language which advises the prospective contributor that: (a) the guidelines are merely suggestions; (b) that an individual may contribute an amount more or less than the 2 cents per hour worked and reported, though the sample card as presented lacks sufficient clarity as to how the prospective donor should indicate an amount other than the amount set out therein; and (c) that the union will not penalize anyone because of their decision as to the amount of their contribution or their decision not to contribute. Therefore, the Commission concludes that the proposed procedure for contributions by members of Operating Engineers Local 37 to the separate segregated funds of its affiliates is permissible under the Act if the authorization form is modified in a manner so that members who wish to contribute an amount other than the suggested guideline may so indicate. See Advisory Opinion 1980-69, copy enclosed. The Commission notes the applicability of its regulations regarding joint fundraising and the transfer of contributions made in the manner you describe. 11 CFR 102.6, 102.8, 103.3.

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)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosures (AOs 1979-60 and 1980-69)