



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 4, 1981

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-128

Judith K. Richmond  
Assistant General Counsel  
Chamber of Commerce of the United States  
1615 H Street, N.W.  
Washington, D.C. 20062

Dear Ms. Richmond:

This is in response to your letter of October 24, 1980, supplemented by your letter of January 7, 1981, requesting an advisory opinion on behalf of the Chamber of Commerce of the United States ("the Chamber") concerning the application of the Federal Election Campaign Act of 1971, as amended, ("the Act") to the distribution of an "issue paper" to various groups. Specifically, you ask whether the Chamber, a nonprofit corporation which has prepared a study discussing national issues and setting forth the Chamber's positions on such issues, may pursuant to 2 U.S.C. 441b, pay the costs of preparing and distributing this study to the following groups:

- a) to all candidates in a Federal election; or
- b) to a portion of candidates in a Federal election who have been identified as "pro-business" by the corporation's separate, segregated fund without regard to party affiliation; or
- c) to the general public; or
- d) to a combination of the general public and all or some candidates in a Federal election?

Your request sets forth as pertinent the following facts:

The Chamber of Commerce of the United States is a not-for-profit corporation, organized and operated under the law of the District of Columbia. It is a membership organization comprised of more than 100,000 businesses, chambers of commerce, trade associations, and professionals. The Chamber's principal purposes are to promote cooperation among businesses and organizations sharing a mutuality of interest in the nation's economy, to promote consideration of national and international subjects which may affect United States enterprise, and to develop policy which will assist in the decision making process on such subjects.

In August 1980, the Economic Policy Section of the Chamber prepared a study entitled "An Integrated Approach to Fighting Inflation", a copy of which is attached to your request. The study identifies inflation as a major national problem which adversely affects the American people. The study expresses the Chamber's opinion that the government's failure during the past fifteen years to control inflation has led many to believe that the inflation problem is either insolvable or solvable only with drastic policy measures. The study presents the Chamber's view that price stability can be achieved and sustained through a comprehensive set of legislative solutions that address the causes of inflation. The remainder of the study then explains the Chamber's views on the causes of inflation and on specific legislation or policies which the Chamber believes will remedy inflation. At no point does the study call for the election or defeat of a particular candidate or party. Rather, the study asks the candidates to consider the positions set forth and to compare them to their own views.

You state in your letter of October 24, 1980 that the Chamber is about to distribute this study to a selected sample of Congressional candidates in the hope that it will be a meaningful contribution to the national debate on the inflation issue and its cures. Specifically, the Chamber intends to distribute this study to all candidates for House and Senate seats who have been identified as "pro-business" candidates by the National Chamber Alliance for Politics, the separate segregated fund of the Chamber. This designation of "pro-business" is made without regard to party affiliation.<sup>1</sup> Attached to your request is a copy of the cover letter to be sent to these candidates, which underscores the Chamber's position that "viable solutions" to the inflation problem do exist. The letter urges the candidate to read the report carefully and to telephone the signator (who is Vice President, Chief Economist of the Chamber) or his staff for answers to any questions.

Finally, you state that at this time, the Chamber is also considering the possibility of distributing the study to all candidates for House and Senate seats and to the general public. The study would be updated to incorporate new developments regarding the status of the specific legislation discussed. If the Chamber determines that these legislative solutions should be modified or deleted, or that new legislation should be added, then the study would be edited accordingly.

With regard to distribution to the general public, you state in your supplemental letter dated January 7, 1981 that references to "candidates" in the study cover letter would be replaced

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<sup>1</sup> Your initial request was submitted 10 days prior to the November, 1980 elections. It is the Commission's understanding that shortly after submitting this advisory opinion request but prior to the elections, the Chamber distributed the study to those candidates for House and Senate seats in the November elections who have been identified by the National Chamber Alliance for Politics as "pro-business".

with references to the "public" as appropriate. The study would be provided to members and non-members of the Chamber and would either be mailed to the recipient or provided to the recipient, in person, at Chamber functions. The distribution would be made at any time and on more than one occasion. No decision has been made as to whether any copies of the study will be sold. With regard to the Chamber's payment of costs incurred in preparing and distributing the study to Federal candidates identified as "pro-business" without regard to party affiliation, the Commission concludes that such payment would be permissible under the Act. Pursuant to 2 U.S.C. 441b(a), any corporation is prohibited from making a contribution or expenditure in connection with any election for Federal office. For purposes of 441b, the terms contribution or expenditure include, in part, any direct or indirect payment or gift of money or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to Federal office. 2 U.S.C. 441b(b)(2).

As has been noted on numerous occasions, one of the primary purposes of 441b(a) and its statutory predecessor 18 U.S.C. 610 is to prohibit the use of corporation or union funds to influence the public at large in connection with a Federal election. See United States v. International Union Auto Workers, 352 U.S. 567, 589 (1957); United States v. CIO, 335 U.S. 106, 113 (1948); Pipefitters v. United States, 407 U.S. 385, 416 (1972); also see Advisory Opinions 1980-20, 1980-33, 1980-95, 1978-18, copies enclosed. Because the Chamber's distribution of the study to "pro-business" candidates does not, under the circumstances presented in your request, evidence an attempt to influence the general public, such distribution would not constitute a prohibited "contribution" or "expenditure" under 441b(a).

Because the distribution of the study to "pro-business" candidates was made just before the election, a question arises as to whether the Chamber contributed "anything of value" under 2 U.S.C. 441b(b)(2) to those candidates. While there is a possibility that the study may influence the views of a candidate on inflation, this particular study does not appear to be designed for use by a candidate in his or her campaign. Therefore, it is not "anything of value" under 2 U.S.C. 441b(b)(2).

With respect to the Chamber's payment of costs incurred in preparing and distributing the study to the general public, to all candidates in a Federal election, or to a combination of the general public and all or some candidates in a Federal election, the Commission notes that the Chamber may decide to modify or update the study prior to such distribution. You state in your supplemental letter of January 7, 1981 that while the document's format and approach will remain the same, it is impossible to identify specific, rather than generic changes at this time. The Chamber would distribute the study or some modified version thereof to the general public at any time, and on more than one occasion, either by mail or by providing it to recipients in person at Chamber functions. No decision has been made regarding the sale of any copies.

As discussed above, one of the primary purposes of 441b(a) is to prohibit the use of corporate or union funds to influence the general public in connection with a Federal election. Based on the general information provided in your initial request and your supplemental letter as to the methods and circumstances of distribution, it does not appear that the Chamber's distribution of the study to all Federal candidates, to the general public, or to some combination of the general public or all or some Federal candidates would be proscribed by the Act. However,

the Commission must decline to rule that the Chamber's distribution of some modified version of the study to any, all or some combination of these groups, at any time and under varying circumstances, would, per se, be exempt from the prohibition's of 441b. Pursuant to 2 U.S.C. 437f, the Commission may issue an advisory opinion only with respect to a "specific transaction or activity" as set forth in a "written request". Section 437f also limits reliance upon a previously issued advisory opinion to other specific transactions that are "indistinguishable in all ... material aspects from the transaction or activity" described in the issued advisory opinion. 2 U.S.C. 437f(c)(1)(B).

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)

John Warren McGarry  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1980-20, 1980-33, 1980-95 and 1978-18)