

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

April 17, 1987

Mr. John F. Markes
Treasurer
Detroit Edison Political Action Committee
2000 Second Avenue
Detroit, Michigan 48226

Dear Mr. Markes:

This is in response to your inquiry regarding the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the Detroit Edison Company (Detroit Edison) and the Detroit Edison Political Action Committee (EdPAC).

EdPAC is a separate segregated fund established by Detroit Edison pursuant to section 55 of the Act (MCL 169.255). EdPAC is planning to ask Detroit Edison to match voluntary individual contributions to EdPAC with an equal amount to be given to charity. The proposal "would allow each individual EdPAC member to designate any 501(c)(3) charity as the recipient of a 1988 Company contribution equal to the sum of the members' 1987 contributions to EdPAC." You ask whether the matching plan is permissible under the Act.

Section 54 of the Act (MCL 169.254) prohibits the use of corporate money in candidate elections but allows corporate contributions or expenditures to support or oppose ballot questions. In addition, section 55 provides, in relevant part:

"Sec. 55. (1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.

(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

- (a) Stockholders of the corporation
- (b) Officers and directors of the corporation
- (c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

* * * *

(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than \$5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than \$10,000.00."

Prior to requesting a ruling from the Department of State, you asked the Federal Election Commission for its opinion concerning application of the Federal Election Campaign Act to the plan proposed by Detroit Edison. In the attached Advisory Opinion, dated January 9, 1987, the Commission stated:

"According to your proposed plan, Detroit Edison will make a donation from its treasury funds to a 501(c)(3) charity to match the amount that a solicitable individual has contributed to EdPAC. The contributor to EdPAC will be able to designate the 501(c)(3) charity to receive a donation in an equal amount from Detroit Edison, but such contributor to EdPAC will not receive any tax benefit from Detroit Edison's charitable donation. Under these facts, Detroit Edison's charitable donation is in the nature of a solicitation expense for EdPAC and would otherwise constitute a prohibited corporate contribution or expenditure but for the express exemption permitting a corporation such as Detroit Edison to pay the 'establishment, administration, and solicitation' costs for its separate segregated fund. See 11 CFR 114.1 (b). Furthermore, it does not appear that the EdPAC contributors will be paid for their contribution through this process; nor will they receive any financial, tax, or other tangible benefit from this plan. Thus, it does not appear that Detroit Edison will be exchanging treasury monies for voluntary contributions. Accordingly, your proposed plan is permissible under the Act and Commission regulations. Of course, since the communication of this plan constitutes a solicitation, Detroit Edison and EdPAC may offer the plan only to those persons whom it may solicit for contributions to EdPAC, and the offer of the plan must meet the requirements of a proper solicitation."

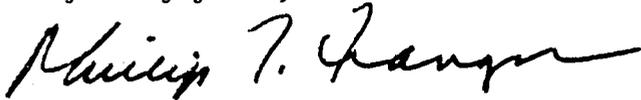
It does not appear from the facts you have presented that Detroit Edison's matching charitable donations will result in the exchange of corporate dollars for voluntary contributions or in impermissible corporate contributions to EdPAC. Moreover, as stated by the Commission, the donations represent a cost of soliciting contributions to the separate segregated fund. Therefore, pursuant to section 55(1), Detroit Edison may use corporate dollars to make charitable

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donations equivalent to individual contributions made to EdPAC, provided (1) the contributions are solicited and received from persons described in section 55(2), and (2) the contributions are not obtained by threat, force or coercion, or as a condition of employment.

Your request for a declaratory ruling did not contain a definite statement of facts, as required by rule 6, 1979 AC R169.6, of the administrative rules promulgated to implement the Act. Accordingly, this response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF:bk

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

J. F. MARKES
JAN 19 1987

January 9, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-44

John F. Markes, Treasurer
Detroit Edison Political Action Committee
2000 Second Avenue
Detroit, MI 48226

Dear Mr. Markes:

This responds to your letter of December 4, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations with regard to a proposed charitable donation plan.

Detroit Edison Political Action Committee ("EdPAC") is the separate segregated fund of Detroit Edison Company, its connected organization, and is registered with the Commission as a political committee. You state that EdPAC is considering plans to ask Detroit Edison to match all voluntary individual personal contributions made to EdPAC with an equal amount to be given to charity. You add that the plan, if adopted, would allow each individual EdPAC member^{1/} to designate any 501(c)(3) charity as the recipient of a 1988 donation from Detroit Edison equal to the sum of the member's 1987 contributions to EdPAC. You add that the proposal is expected to encourage greater participation in

^{1/} 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).

EdPAC and also to cause an infusion of charitable giving^{2/} that is needed "even though the individual would not receive any tax benefit."

You ask whether the Act and regulations permit this specific proposal.

The Act prohibits a corporation from making contributions or expenditures in connection with any Federal election, but it excludes from the definition of contribution or expenditure "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(a) and §441b(b)(2)(C). Commission regulations explain that a corporation may use its treasury monies to pay the establishment, administration, and solicitation expenses of such a separate segregated fund, but it may not use this process as a means of exchanging treasury monies for voluntary contributions. 11 CFR 114.5(b). In this respect, Commission 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 further provide that a corporation or its separate segregated fund may solicit contributions to such a fund from its stockholders and their families and its executive or administrative personnel and their families. 2 U.S.C. § 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation to such persons for contributions to such a fund must also meet the requirements of a proper solicitation. See 11 CFR 114.5(a) and, in particular, 11 CFR 114.5(a)(5).

According to your proposed plan, Detroit Edison will make a donation from its treasury funds to a 501(c)(3) charity to match the amount that a solicitable individual has contributed to EdPAC.^{3/} The contributor to EdPAC will be able to designate the

^{2/} You have not indicated that the proposed matching plan would be used in a factual context where Detroit Edison personnel are obligated or expected, in order to comply with Company policy, to make a specified amount of charitable donations from their own personal funds. Accordingly, this opinion does not reach any issues concerning application of the Act and Commission regulations that may arise in those circumstances.

^{3/} For purposes of this opinion the Commission assumes that the matching plan would be limited to the solicitable categories of personnel specified in the preceding paragraph. Thus, the Commission expresses no opinion as to the use of this plan for EdPAC contributions by employees who would only be solicitable under the twice yearly solicitation procedure. See 11 CFR 114.6 and 2 U.S.C. §441b(b)(4)(B).

501(c)(3) charity to receive a donation in an equal amount from Detroit Edison, but such contributor to EdPAC will not receive any tax benefit from Detroit Edison's charitable donation. Under these facts, Detroit Edison's charitable donation is in the nature of a solicitation expense for EdPAC and would otherwise constitute a prohibited corporate contribution or expenditure but for the express exemption permitting a corporation such as Detroit Edison to pay the "establishment, administration, and solicitation" costs for its separate segregated fund. See 11 CFR 114.1(b). Furthermore, it does not appear that the EdPAC contributors will be paid for their contribution through this process; nor will they receive any financial, tax, or other tangible benefit from this plan.^{4/} Thus, it does not appear that Detroit Edison will be exchanging treasury monies for voluntary contributions. Accordingly, your proposed plan is permissible under the Act and Commission regulations. Of course, since the communication of this plan constitutes a solicitation, Detroit Edison and EdPAC may offer the plan only to those persons whom it may solicit for contributions to EdPAC, and the offer of the plan must meet the requirements of a proper solicitation.

The Commission expresses no opinion regarding any tax ramifications of your proposed activity since such issues are outside its 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 yours,



Scott E. Thomas
Chairman for the
Federal Election Commission

^{4/} The Commission assumes for purposes of this opinion that the plan does not include any premium, award, or other tangible benefit provided to EdPAC contributors by the charitable entities that receive Detroit Edison donations pursuant to the plan.