

TEK:LU:NS:gml

cc: FILES
Mr. Siegel
Mrs. Copeland ✓

DEC 3 1970

MEMORANDUM

FOR HONORABLE THOMAS CHARLES HUSTON
Associate Counsel to the President

Re: Federal laws regulating political activity
of corporations

This is in response to your oral request for an outline of federal laws which regulate corporate political activity.

1. The major restriction imposed by federal law on political activity by corporations is found in section 610 of title 18 (formerly section 313 of the Federal Corrupt Practices Act). It provides in part as follows:

"It is unlawful ... for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000...."

"Contribution" as used in 18 U.S.C. 610 is defined in 18 U.S.C. 591 to include "a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable"; similarly, "expenditure" is defined to include "a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable."

Under 18 U.S.C. 610, therefore, both direct and indirect use of corporate funds in connection with political campaigns of the specified candidates are forbidden in federal (not state or local) elections. For example:

1) Payment of salaries and wages of corporate officers and employees while engaged in political activities, in the interest of the corporation, involving support of a particular candidate for nomination or election to a federal office.

2) Publication in any corporate house organ or other printed document circulated or distributed to the general public of opinion of a political nature, expressed as those of the corporation, in connection with the election of a specified candidate.

3) Purchase of radio or television time or newspaper space for the presentation of political views, as those of the corporation, if the views are expressed in connection with a federal election on behalf of a specified candidate.

4) Public expression of the political views of the corporate management in connection with the election of a specified candidate.

(However, a corporation's nonpartisan effort to persuade voters to register or expressions of opinion about public issues generally would be permissible.)

2. 18 U.S.C. 611 (based on a similar provision of the Hatch Act) applies to political activities by government contractors.

It is not quite clear from the language used ("whoever", etc.) whether 18 U.S.C. all applies to corporate government contractors. However, 18 U.S.C. 591 defines "whoever" to include a "corporation" but only for purposes of specified sections, not including 18 U.S.C. 611, and the Department of Justice has long construed 18 U.S.C. 611 as not applying to corporate government contractors. If 18 U.S.C. 611 is to apply to them, the statute should, as was recommended by the House Committee on House Administration in 1968, be clarified. H. Rept. No. 1593, 90th Cong., 2d Sess., p. 4 (1968). This was also the view of Assistant Attorney General Rehnquist in his testimony of May 6, 1970, before that Committee on H.R. 12773, which embodied such a clarifying amendment.

3. A final restriction on corporate political activity is contained in section 12(h) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 791(h)), which makes it unlawful for any registered holding company or subsidiary thereof:

"(1) to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State ...; or

"(2) to make any contribution to or in support of any political party or any committee or agency thereof."

The term "contribution" is defined in the Act as in 18 U.S.C. 591. The Act provides for a fine of not more than \$10,000 or imprisonment of not more than two years, or both. 15 U.S.C. 79z-3.

It will be noted that 15 U.S.C. 791(h) applies by its terms to both federal and nonfederal elections.

Thomas E. Kauper
Acting Assistant Attorney General
Office of Legal Counsel