



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 29, 1982

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-10

Jim C. Curlett
Holtzman, Wise & Shepard
755 Page Mill Road, Suite A-230
Palo Alto, California 94304

Dear Mr. Curlett:

This responds to your letter dated February 19, 1982, requesting an advisory opinion on behalf of Syntex (U.S.A.), Inc. concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act"), and Commission regulations to certain proposed activity by Syntex (U.S.A.), Inc. with respect to state and local election activity.

You state that Syntex (U.S.A.), Inc., ("Syntex U.S.A."), is a Delaware corporation with its executive and administrative offices and principal place of business in Palo Alto, California. It is the wholly-owned subsidiary of Syntex Corporation, ("Syntex-Panama"), a corporation organized under the laws of Panama. Syntex-Panama is an international life sciences company that develops, manufactures and markets a wide range of health and personal care products. You state that all members of the Board of Directors of Syntex U.S.A. are either U.S. citizens or have permanent resident status in the United States. The corporate officers of Syntex U.S.A. include one individual who is neither a U.S. citizen nor a permanent resident of the United States.

You ask specifically whether Syntex U.S.A. would be permitted under the Act to make contributions and expenditures in connection with state and local campaigns for political office and in connection with state and local ballot measures. You state that all such contributions and expenditures would be made in compliance with state and local law. In this regard, you state that the proposed contributions and expenditures will be "made independent of, and will not be dictated or directed by, Syntex-Panama or any Directors or officers of Syntex U.S.A. who are foreign nationals."

The issue raised by your request is whether a corporation that is organized under Delaware law with its principal place of business in California, and that is also a wholly-owned subsidiary of a foreign parent corporation, may make contributions and expenditures in connection with non-federal elections.

As you know, the Act prohibits corporations organized by authority of any law of Congress from making contributions and expenditures in connection with any election to any political office. It also prohibits any corporation whatever from making contributions and expenditures in connection with Federal elections. See 2 U.S.C. 441b(a). In addition, the Act prohibits foreign nationals from making contributions, directly or through any other person, in connection with any election to any political office. See 2 U.S.C. 441e.

The term "foreign national" is defined by 2 U.S.C. 441e(b) (1) to mean a "foreign principal" as such term is defined specifically by 22 U.S.C. 611(b). Section 611(b) defines "foreign principal" as including:

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

Under 22 U.S.C. 611(b), a corporation organized under the law of any state within the United States whose principal place of business is within the United States is not a "foreign principal." Thus, such a corporation is not a "foreign national" under 2 U.S.C. 441e. The Commission is, therefore, of the opinion that since Syntex U.S.A. is a domestic rather than a foreign corporation, the Act would not prohibit it from making contributions and expenditures in connection with campaigns for state or local political office and in connection with ballot measures. See Advisory Opinion 1981-36; also see Advisory Opinion 1980-95, copies enclosed. This result also accords with Advisory Opinion 1980-7 where the Commission held that a California corporation which was a wholly-owned subsidiary of a federally chartered corporation (a savings and loan institution) was separate from the parent corporation for purposes of 2 U.S.C. 441b provided that the subsidiary California corporation was not merely an instrumentality or agent of the parent Federal corporation.

This conclusion is based, however, on your representation that no director or corporate officer of Syntex U.S.A. (or Syntex-Panama) who is a foreign national will participate in any way in the decision-making process with regard to making the proposed contributions or expenditures for state and local elections to political office. See Advisory Opinions 1978-21 and 1980-100, copies

enclosed. Such participation is immaterial for purposes of the Act with respect to ballot measure campaigns.

The Commission expresses no opinion with regard to the application of any state law to the factual situation you have presented.

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,

(signed)

Frank P. Reiche
Chairman for the
Federal Election Commission

Enclosures (AOs 1978-21, 1980-95, 1980-100, 1981-36)