FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 16, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-13

Wright H. Andrews, Jr.
Sutherland, Asbill & Brennan
1666 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Andrews:

This responds to your letters of February 23, and March 15, 1982 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment and operation of a political contribution plan.

Your February 23 letter states that Sutherland, Asbill & Brennan ("the Partnership") is a law firm which operates as an unincorporated partnership. You note that as of March 1, 1982, the Partnership has 78 partners, with approximately equal numbers in its Washington, D.C. and Atlanta, Georgia offices. All of the partners are unincorporated individuals. The Partnership and/or individual attorneys receive numerous solicitations for political contributions to Federal, state and local candidates and political committees. You state that in many cases the Partnership has determined that it is in its best interest to make partnership political contributions to such candidates and committees. You add that to comply with the Commission's regulations and to ensure that all partners bear a fair share of contribution costs, a Partnership political contribution plan ("the Plan") has been established by agreement of the partners.

Under the Plan, each fiscal year the partners will agree on an amount to be budgeted for partnership political contributions. Each active partner agrees to contribute his or her proportionate share of this amount.[1] Partners whose income is determined by a percentage of the

[1] Active partners, whose incomes are based on a guaranteed salary, agree to contribute their individual share at the same level as a percentage partner whose income projection for the fiscal year would equal the salaried partner's guaranteed salary.

profits agree to contribute their individual share based on their percentage of the Partnership profits. Associate attorneys and non-attorneys employed by the Partnership do not participate in the Plan.

You assert that in accordance with its regular practice of delegating matters of Partnership management and administration to various partners, the Partnership has delegated the operation of the Plan to four partners. You note that these partners report to, and are ultimately responsible to, the entire Partnership with respect to all decisions made by them. The partners who administer the Plan will consider all contribution requests and authorize partnership political contributions within the Plan's budget in those instances where they believe the Partnership should make such contributions. Contributions may be made by a partnership check or by a personal check of a partner. When a specific contribution is authorized, it is then attributed[2] to a particular partner or partners and charged to his or her personal firm account, to the extent it does not exceed his or her agreed yearly contribution amount. The amount in then deducted from that partner's monthly income distribution.[3]

The partners who administer the Plan are responsible for maintaining internal bookkeeping records and for ensuring that no contributions are made in violation of applicable contribution limits or other legal restrictions. These partners give notice, either orally or in writing, to individual partners that particular contributions will be attributed to them unless they object to a particular attribution. Each partner may then elect, before a contribution is made, to have none of the Partnership's contribution to a particular candidate or political committee attributed to him or her.

Each partner who makes contributions in addition to those he or she makes through attribution under the Plan is to notify the Partnership of such contributions, so that an attribution of a Partnership contribution will not be made which would cause the partner to exceed contribution limits under applicable law. In addition, your March 15 letter indicates where an individual partner makes a contribution on a personal check which is authorized by the Partnership, the recipient of the contribution would be advised that the contribution in considered a partnership contribution under the Plan. The partner making such a contribution would then receive credit under the contribution Plan for the amount contributed. You ask whether the described Plan complies with the requirements of the Act and Commission regulations for partnership contributions and whether it does so without making the Partnership or the Plan into a "political committee" for purposes of the Act. Your March 15 letter also asks specifically whether an individual partner may make a contribution, authorized by the partnership, on a personal check

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[2] It appears from your request, and the Commission assumes for purposes of its conclusion, that the recipient is notified as to how a partnership contribution is to be attributed among the partners for reporting purposes. See 2 U.S.C. 434 and 11 CFR 104.3.

[3] As explained in your letter of March 15, a contribution made by personal check of a partner is considered a Partnership contribution for purposes of the partner's participation in the Plan, however, such a personal contribution is not charged to the partner's personal firm account or deducted from that partner's monthly income distribution.

with notice to the recipient of the contribution that such a contribution is also made under the Partnership Plan.

With respect to the issue of whether the Plan complies with the requirements of the Act and Commission regulations, the Commission is of the opinion that the described method of attributing a Partnership contribution is permissible. Under the Act, no person (including a partnership) may make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $1,000. 2 U.S.C. 441a(a)(1)(A). While a partnership contribution is subject to contribution limitations (because it in a "person"), Commission regulations require that such a contribution be attributed to each partner in direct proportion to each partner's share of the partnership's profits, or be attributed to individual partners by agreement of such partners. 11 CFR 110.1(e).

In the situation presented here, the partners have reached an agreement as to the aggregate amount of money each of them will donate for partnership contributions, and accordingly, how each of the contributions made by the partnership will be attributed to them. This method of attributing a partnership contribution (i.e. by agreement of the partners) is one of the alternative requirements under Commission regulations. Moreover, the Plan, by permitting a partner to object to having any amount of a particular contribution attributed to him or her, does not require any partner to contribute to any particular candidate or class of candidates. See Advisory Opinion 1981-50, copy enclosed. Furthermore, nothing in the Act or Commission regulations would prohibit a contribution by means of an individual partner's personal check payable to a candidate or political committee if the contribution is otherwise lawful under the Act. The fact that a partner using a personal check gets “credit” under the Plan is immaterial for purposes of the Act and Commission regulations.

The second issue raised in your February 23 letter is whether the Partnership by providing bookkeeping services and otherwise administering the Plan is a “political committee,” or would cause the Plan to become a political committee, for purposes of the Act and Commission regulations. The Commission answers this in the negative. In previous advisory opinions the Commission has recognized that where the articles of partnership (or partnership agreement) set forth the type of activity to be engaged in by the partners, such as the practice of law, the Commission has never characterized any partnership as a political committee. See Advisory Opinions 1981-50, 1975-104 (copies enclosed). As both the Act and Commission regulations indicate, a partnership as a person may make a contribution, if not unlawful under the Act. Such contributions are treated as both a contribution from the partnership as a person and from the individuals who make up the partnership. 11 CFR 110.1(e), also see Advisory Opinion 1980-132, copy enclosed. The fact that the partnership may make separate contributions of up to $1,000 each to several candidates for Federal office (which total over $1,000 in a calendar year) is not viewed as a basis for converting the partnership into a political committee for purposes of the Act. AO 1981-50. The incidental Partnership expenditures to implement the Plan are not made for the purpose of influencing any election to Federal office but rather to ascertain whether any particular partner wishes to share in the Partnership contribution. Under such circumstances the Commission would not view the administration of the Plan as giving rise to “political committee” status for the Plan or the Partnership. See 2 U.S.C. 431(4), and compare AO 1981-50.

The Commission expresses no opinion with respect to the application of any state law to use of the Plan for contributions to candidates for nonfederal offices and to committees that are not political committees under the Act, since issues raised as to application of those laws are outside the purview of the Commission.

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)

Frank P. Reiche
Chairman for the
Federal Election Commission

Enclosures (AOs 1975-104, 1980-132, 1981-50)