FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 10, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-63

Terry D. Garcia
Manatt, Phelps, Rothenberg & Tunney
811 West Seventh Street, Twelfth Floor
Los Angeles, California 90017

Dear Mr. Garcia:

This responds to your letter of December 13, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment of a contribution "check-off system."

Your letter states that Manatt, Phelps, Rothenberg & Tunney ("the Firm") is an unincorporated law firm. The Firm is comprised of 37 partners of whom 18 are professional corporations. The Manatt, Phelps, Rothenberg & Tunney Political Action Committee ("the PAC") is a political committee as defined under 2 U.S.C. 431(4)(A).* You state that the PAC solicits voluntary contributions from each of the Firm's noncorporate partners as well as from the employees of each of the Firm's professional corporations.

In order to facilitate the making of contributions to the PAC, the Firm proposes to institute a "check-off system." Specifically, you propose to permit noncorporate partners to authorize the Firm to withhold a specified amount from their share of Firm profits and to transfer said amount directly to the PAC. In the case of professional corporations, it is proposed that the employee of each corporation be permitted to direct the contribution to the PAC. To further expedite this transfer, the corporation would, in turn, authorize the Firm to deduct the amount of the proposed contribution from the corporation's share of Firm profits and transfer said amount directly to the PAC on behalf of the professional corporation's employee. You ask whether the Firm may offer this check-off system to its noncorporate partners, as well as to the employee of each professional corporation/partner.

Your questions pose a threshold issue regarding the application of 2 U.S.C. 441b to the Firm and to the 18 partners that are professional corporations. As your request indicates, the PAC is not registered or operated as a separate segregated fund under 2 U.S.C. 441b(b)(2), (3) and (4). This

means, among other things, that the PAC is not restricted as to the categories of Firm personnel who may be solicited for contributions. Advisory Opinion 1979-77, copy enclosed. At the same time, however, the PAC may not receive unlimited assistance, in kind or in financial contributions, from the Firm since the 441b(b) exceptions for expenses of establishment, administration, and solicitation of contributions to a separate segregated fund are only available to national banks, corporations, labor organizations, including also certain corporate organizations specifically mentioned: membership organizations, cooperatives, nonstock corporations, and trade associations. Advisory Opinions 1981-56 and 1981-54, copies enclosed; see California Medical Association v. Federal Election Commission, 453 U.S. 182, 101 S. Ct. 2712 (1981). Partnerships are not mentioned or otherwise covered under 441b except to the extent that by operation of Commission regulations, 11 CFR 110.1(e), a partnership comprised of corporations may not make contributions which are attributed to the corporate partners. Advisory Opinions 1981-56, 1981-54, and 1980-132. Accordingly, any expenses paid by the Firm on behalf of the PAC, as well as any unreimbursed use of Firm facilities, supplies, or personnel, would constitute a contribution of anything of value to the PAC by the Firm. 11 CFR 100.7(a)(1)(iii).

As an alternative to the Firm making contributions of administrative support to the PAC as discussed above, the PAC may pay the Firm for such support using the funds the PAC receives from its contributors. To avoid a contribution, these payments by the PAC must equal the "usual and normal charge" for the goods and services provided by the Firm. See 11 CFR 100.7(a)(1)(iii). Payments by the PAC to the Firm for these purposes must be reported by the PAC as operating expenditures. 2 U.S.C. 434(b)(4), (b)(5) and 11 CFR 104.3(b)(1), (b)(3)(i).

While contributions of administrative support may be made by the Firm to the PAC, assuming they are exclusively attributed to and made only by noncorporate partners of the Firm under an agreement as provided in 11 CFR 110.1(e), they would be limited to $5,000 per calendar year as to the partnership 2 U.S.C. 441a(a) (1) (C). They would also be charged to the individual noncorporate partners and subject to each individual partner's $5,000 per year limit on contributions to the PAC. 2 U.S.C. 441a(a)(1)(C) and 11 CFR 110.1(e).

In addition, the PAC would be required to report lawful contributions whether in kind or monetary; such contributions aggregating in an amount or value in excess of $200 within the calendar year are required to be itemized. 2 U.S.C. 434(b)(3); 11 CFR 104.3(a)(4), 104.13(a). The PAC may also receive services rendered by individuals who are compensated by the Firm for those services if the compensated services are solely for the purpose of ensuring the PAC's compliance with the Act and Commission regulations, and if the Firm is the "regular employer" of those individuals. 2 U.S.C. 431(8)(B)(ix)(II), 11 CFR 100.7(b)(14). Amounts paid by the Firm for these services are required to be reported under Commission regulations at 11 CFR 104.3(h). The amounts paid are not subject to the limits or prohibitions of the Act and would not have to be allocated to any Firm partners under 110.1(e) of Commission regulations. See 11 CFR 114.1(a)(2)(vii).

With respect to your specific questions, the Commission concludes that the Firm may offer the described check-off PAC contribution system to its noncorporate partners and to the employees of its corporate partners. The Firm's implementation of the system requires that all its

unreimbursed costs and in kind assistance in connection with operating the system--including any use of Firm facilities, equipment, supplies, personnel, or other goods or services for which no charges are assessed and paid (or to the extent PAC payments are less than "usual and normal charge")-- shall be treated as contributions by the Firm and shall be attributed, by agreement of the partners under 11 CFR 110.1(e), only to noncorporate partners of the Firm. See discussion and citations above.

The noncorporate partners in making a PAC contribution through the system would be required to take a deduction in their share of Firm profits, or an increase in their share of Firm losses, which is in direct proportion to their interest in partnership profits or which is determined according to some other agreement of the partners. 11 CFR 110.1(e). Employees of professional corporations in the Firm must take a deduction from the salaries they receive from their respective corporations. In addition, the corporation's authorization of a deduction from its share of Firm profits may not have the effect of reducing any portion of Firm profits (payable to the corporation) that the corporation would use for purposes other than payment of the contributing employee's salary. Nor may the employee's salary be established or in any way altered on the basis of his or her contributions to the PAC. See 11 CFR 114.5(b)(1). These conditions are necessary to assure that corporate partners do not indirectly make contributions to the PAC in violation of 2 U.S.C. 441b.

The situation here is distinguishable from earlier advisory opinions involving partnership "contribution plans." In those opinions, the partnerships never undertook to establish and maintain a separate political committee; rather, they proposed to make partnership contributions to candidates under various types of administrative mechanisms. In this case, the PAC is registered with the Commission as a nonconnected political committee, under 2 U.S.C. 431(4)(A), which is located on Firm premises and operated by Firm personnel; it makes contributions to candidates as a separate political committee, not as a partnership. Compare Advisory Opinions 1982-13, 1981-50, 1975-104 and 1975-17; also see Advisory Opinions 1980-72 and 1979-77, and the Commission's response to Advisory Opinion Request 1976-102, copies enclosed.

The Commission expresses no opinion with respect to the tax ramifications of the described check-off system since those issues are not within its purview.

This 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. 2 U.S.C. 437f.

Sincerely yours,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1982-13, 1981-50, 1980-72, 1979-77, Re: AOR 1976-102, 1975-104, and 1975-17)

* Section 431(4)(A) defines the term "political committee" to include "any, committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year." This type of political committee is distinct from a separate segregated fund (which is also a "political committee under 431(4)(B)) established pursuant to 441b(b).