



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 25, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-14

Frank M. Northam
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Northam:

This responds to your letter of March 29, 1984, requesting an advisory opinion on behalf of the United States Defense Committee ("USDC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations, to the activities proposed in Advisory Opinion Request 1983-43.

In your March 29 letter, you incorporate by reference the information provided in your earlier advisory opinion request -- AOR 1983-43. The Commission assumes, therefore, that USDC remains a non-profit, nonstock membership corporation which is exempt from Federal income taxation under §501(c)(4) of the Internal Revenue Code. The Commission further assumes that USDC seeks to educate the public on defense and national security issues and to become involved in the legislative process by engaging in the activities described in AOR 1983-43. In addition, as was stated in AOR 1983-43, the Commission notes your representation that USDC is not associated with any political party, committee, or candidate for elective office.

As summarized in Advisory Opinion 1983-43, issued on January 26, 1984, those activities are set forth:

In furtherance of these purposes, USDC plans to collect information on the positions of candidates for public office by examining voting records of incumbents, public statements, and responses to USDC questionnaires. The questionnaires will be sent to all candidates for Federal offices, and will seek yes/no/no response answers to questions concerning the candidates' positions on issues of interest to USDC. To encourage candidates to respond to these questionnaires, USDC will contact members of the public believed to agree with its position on defense issues and will encourage them to urge the candidates to respond.

You state that USDC plans to compile and publish responses (or non-responses) to its questionnaires, and that publication will take the form of print media advertising, press releases, pamphlets and fliers, as well as mailings to the general public. You also state that such publications will contain information about USDC and its positions on national security and foreign policy issues. You add that publication of candidate responses will be done at some time before the primary or general election in which the candidates surveyed are running, may contain the candidates' party affiliations, and may indicate the percentage, number of times, or specific respects in which a candidate's responses comport with USDC's views. You note that the publications will use no words expressly advocating the election or defeat of any candidate.

In addition to publishing the results of its questionnaires, USDC intends to disseminate to the public information concerning the voting records of incumbent Federal officeholders on specific pieces of legislation of interest to USDC. You state that the dissemination of this information may occur at or around the date for elections, and that USDC may characterize certain votes or voting records as being in accord with or against the position of USDC. The incumbents' party affiliations may be given for identification purposes. You state that, as with the publication of questionnaire results, no words expressly advocating the election or defeat of any incumbent will be used.

Finally, you note that all of the proposed activities will be financed from USDC's general treasury, which is composed of both voluntary dues payments from members and contributions. In light of the facts presented in your request, you ask whether the Act and regulations prohibit expenditures from USDC's general treasury for the proposed programs.

The Commission's analysis and conclusions in Advisory Opinion 1983-43 were as follows:

Under 2 U.S.C. 441b, it is unlawful for any corporation whatever to make an expenditure in connection with a Federal election. Commission regulations, however, permit a corporation to distribute voter guides or other types of brochures describing candidates and their positions provided that the materials do not favor one candidate or political party over another and provided that the materials are obtained from a civic or other non-profit organization which does not endorse or support or is not affiliated with any candidate or political party. 11 CFR 114.4(c)(3)

With respect to that part of your request that concerns voter guides, it appears that most of the proposed materials, while designed to advocate issue positions, do not favor one candidate or political party over another. To the extent this is so, such activities would not be for the purpose of influencing a Federal election, and expenditures to support these activities would not be prohibited by 2 U.S.C. 441b. Some of the materials submitted with your request, however, seem

to favor particular candidates by referring to "right" and "wrong" answers to survey questions and by asking USDC supporters to contact candidates in an impending election who answered "wrong" and to urge them to support the USDC position. Because favoring one candidate over another in the context of an election indicates an election-influencing purpose, inclusion of these and other similar references would take the materials outside the regulations at 11 CFR 114.4(c)(3).

With respect to USDC's proposal to compile and disseminate to the general public information concerning the voting records of incumbent Federal officeholders on specific legislation, the Commission notes that as a membership corporation, USDC is permitted to make partisan communications with its members. Accordingly, any such information about voting records, even if for the purpose of influencing an election, may be communicated to USDC members. With respect to the general public, however, USDC may not distribute voting records for the purpose of influencing a Federal election. Some of the language in the draft letters suggests such a purpose. For example, Item IX of the attachments to your November 30 letter refers to a congressman's "weak voting record" and advises the recipient that an officeholder is "easier to convince . . . when he's looking for votes than . . . after he's safely in office." Because such language evinces an election-influencing purpose, the Commission concludes that expenditures for such activities are not permissible under 2 U.S.C. 441b (footnotes omitted).

In this request you ask the Commission whether the foregoing activities are lawful under recently prescribed revisions to Commission regulations at 11 CFR 114.4(b). The revised regulations, prescribed on March 5, 1984, at 49 Fed. Reg. 7981 (1984), provide in pertinent part:

Voting Records. A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election. 11 CFR 114.4(b)(4).

Voter Guides.

(i) A corporation or labor organization may prepare and distribute to the general public nonpartisan voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions. The following are factors that the Commission may consider in determining whether a voter guide is nonpartisan:

(A) The questions are directed to all of the candidates for a particular seat or office, giving the candidates equal time to respond...

(B) The voter guide reprints verbatim the responses of each candidate to whom questions were sent, without any additional comment, editing, or emphasis...

(C) The wording of the questions presented does not suggest or favor any position on the issues covered;

(D) The voter guide expresses no editorial opinion concerning the issues presented nor does it indicate any support for or opposition to any candidate or political party;

(E) The sponsor may ask each candidate to provide biographical information...

(F) The voter guide is made available to the general public in the geographic area in which the sponsoring organization normally operates.

(ii) A corporation or labor organization may distribute voter guides or other types of brochures describing the candidates or their positions which are obtained from a nonprofit organization which is exempt from Federal taxation under 26 U.S.C. 501(c)(3) or (4) and which does not support, endorse or oppose candidates or political parties. Publications obtained from such nonprofit organizations need not comply with the guidelines set forth at 11 CFR 114.4(b)(5)(i), but they may not favor one candidate or political party over another. 11 CFR 114.4(b)(5).

Given your representation of USDC as a nonprofit, tax exempt organization which does not support, endorse or oppose candidates or parties, USDC may distribute voter guides that do not comply with the factors enumerated in 114.4(b)(5)(i). Although these factors do not apply in this instance, the voter guides may not favor one candidate or political party over another. In Advisory Opinion 1983-43, the Commission examined USDC's proposed voter guide materials and concluded that:

Some...seem to favor particular candidates by referring to "right" and "wrong" answers to survey question and by asking USDC supporters to contact candidates in an impending election who answered "wrong" and to urge them to support the USDC position.

Because some of the materials submitted by USDC favor certain candidates over others by asking USDC supporters to contact candidates to advocate USDC policy positions, the Commission concludes that the materials do not comply with the requirements set forth at 11 CFR 114.4(b)(5)(ii). Accordingly, expenditures for such activities are prohibited by 2 U.S.C. 441b.

Subsection 114.4(b)(4) of Commission regulations permits organizations such as USDC to prepare and distribute voting records of Members of Congress to the general public "as long as the preparation and distribution is not for the purpose of influencing a Federal election." The Commission reviewed the material submitted by USDC in Advisory Opinion 1983-43 and concluded that some of the materials had an election-influencing purpose. The Commission is of

the opinion, therefore, that USDC's voting record materials, as submitted, fail to comply with the regulatory requirement that preparation and distribution may not be made for the purpose of influencing a Federal election. Accordingly, USDC expenditures for the voting records are prohibited by 2 U.S.C. 441b.

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)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosure (AO 1983-43)