



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 4, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-3

Mr. Rod Diridon, Supervisor
Fourth District, Santa Clara County
P.O. Box 621
Santa Clara, CA 95052

Dear Mr. Diridon:

This responds to your letter of January 10, 1985, and other letters you submitted with it, in which you request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your proposed acceptance of a contribution from UTDC, Inc. (USA), a wholly-owned subsidiary of UTDC-Canada.

You indicate that you are the Supervisor for the Fourth District of Santa Clara County, California, which is an elected office under California law. Your earlier letter to the California Fair Political Practices Commission indicates that on February 27, 1984, your campaign committee received a contribution of \$1,000 from UTDC, Inc. (USA), which is a subsidiary of UTDC-Canada. Your letter explains that UTDC, Inc. (USA), is a Delaware corporation with headquarters in Detroit, Michigan, and with a Board of Directors which is "wholly or substantially comprised of U.S. citizens." You further stated that this corporation is a "separate profit center from UTDC-Canada and its financial involvement within the United States is substantial." In your letter of January 10, 1985, you ask whether it will be permissible for you to receive similar contributions in the future.

As a preliminary matter, the Commission notes that California law does not prohibit corporate contributions to candidates for state and local office, and that the prohibition against corporate contributions in 2 U.S.C. 441b does not apply in your case.

Under the Act and Commission regulations, foreign nationals are prohibited from making contributions, directly or through any other person, in connection with any election to any

political office. 2 U.S.C. 441e; 11 CFR 110.4(a). Unlike most of the other provisions of the Act, 441e applies to any election for any political office, including state and local offices as well as Federal offices. The term "foreign national" is defined by 2 U.S.C. 441e(b)(1) to mean a "foreign national" as this term is defined specifically by 22 U.S.C. 611(b). Section 611(b) defines a "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 of any State or other place subject to the jurisdiction of the United States and has its principal place of business in 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 and, accordingly would not be a "foreign national" under 2 U.S.C. 441e. Advisory Opinions 1983-31, 1982-10, and 1981-36; also see opinions cited therein. The Commission concludes, therefore, that UTDC, Inc. (USA), a discrete corporate entity organized under the law of Delaware with its principal place of business in the United States, is not a foreign national, and therefore not subject to the prohibition of 2 U.S.C. 441e.

Since, however, 441e prohibits contributions by a foreign national through any other person, and since the parent Canadian corporation is both a person, 2 U.S.C. 431(11), and a foreign national by application of 22 U.S.C. 611(b)(3), it follows that a contribution by UTDC, Inc. (USA), may only be made or accepted under certain conditions. Specifically, the parent Canadian corporation may not directly or indirectly provide the funds for such a political contribution. See Advisory Opinion 1981-36. Nor may that corporation or any other person who is a foreign national under 2 U.S.C. 441e have any decision-making role or control with respect to the making of any political contribution by UTDC, Inc. (USA). See Advisory Opinion 1983-31.

The Commission expresses no opinion regarding application of any other Federal statute or any state statute to the proposed transaction, since any issues thereunder are not within the Commission's jurisdiction.

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)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1983-31, 1982-10, 1981-36, 1980-111, 1980-100, 1978-21)