FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 30, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-46

Terry A. Montagne, Labor Relations Counsel
Collins Foods International, Inc.
12655 West Jefferson Boulevard
Los Angeles, California 90066

Dear Mr. Montagne:

This responds to your letters dated September 2 and October 17, 1988, in which you request an advisory opinion on behalf of Collins Foods International, Inc. ("Collins"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of certain classes of persons by a separate segregated fund that Collins proposes to establish.

You explain that Collins, a publicly owned corporation, has 14,000 employees and is primarily engaged in the food service industry. Collins wholly owns two divisions and owns 63 percent of Sizzler Restaurants International, Inc. ("Sizzler"), a public company that operates its own restaurants and also provides franchises pursuant to a license agreement.

Collins intends to establish a separate segregated fund. You ask whether the Act and Commission regulations will permit the separate segregated fund to solicit and accept voluntary political contributions (1) from both Collins's and Sizzler's executive and administrative employees and (2) from Sizzler's licensees and those licensees' executive and administrative employees. You further inquire whether the executive and administrative personnel of Collins and of Sizzler may make their contributions by payroll deduction.

As you know, 2 U.S.C. 441b provides that a corporation may establish and administer a separate segregated fund for the purpose of receiving and making political contributions to influence Federal elections. Such a fund and its sponsoring corporation may solicit at any time voluntary contributions from the corporation's executive or administrative personnel [1] and their families and from the corporation's stockholders and their families. 2 U.S.C. 441b(b)(4)(A)(i). Collins

and its separate segregated fund may, therefore, solicit the executive or administrative personnel of Collins.

The regulations implementing the Act permit a corporation also to "solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families." 11 CFR 114.5(g)(1). Under this provision, Collins and its separate segregated fund may solicit at any time the executive or administrative personnel of its wholly owned divisions. The provision also encompasses the executive and administrative personnel of Sizzler. Collins owns 63 percent of Sizzler's stock--effective control--and the two corporations share headquarters and view their relationship as that of a parent and subsidiary. See Advisory Opinion 1978-61.

Collins and its separate segregated fund may solicit the licensees of Collins's subsidiary, Sizzler, and the licensees' executive or administrative personnel only if the licensees are "affiliates" of Sizzler and thus of Collins. 11 CFR 114.5(g)(1). See generally Advisory Opinions 1987-34 and 1983-48. Also see Advisory Opinion 1978-61. Because the regulations do not define "affiliate" in this context, the Commission has turned for guidance to the "antiproliferation" and the limitations provisions of the Act and the regulations. 2 U.S.C. 441a(a)(1), (a)(2), and (a)(5); 11 CFR 100.5(g)(2), 110.1, 110.2, and 110.3. Cf. Advisory Opinion 1988-14.

Under the standard license agreement between Sizzler and its licensees, licensees must operate Sizzler restaurants in strict accordance with certain standards and policies, most of which are set out in various manuals known collectively as "the Management Guide." These standards and policies "provide for the uniform operations of all Sizzler restaurants, including . . . serving only approved food and beverage products, using only equipment and architectural design and layouts approved by LICENSOR and strictly adhering to LICENSOR's prescribed standards of quality, service and cleanliness." The agreement also states that Sizzler "shall have the right at all times to supervise and control the use by the LICENSEE of the trademark, trade names, service marks, methods of operation and unique design, decor and style of the SIZZLER restaurant licensed herein." Sizzler's filed inspectors periodically visit licensees' restaurants to check compliance with Sizzler standards. Failure to comply with the Management Guide or with other Sizzler directives is deemed a breach and may lead to the termination of the license agreement.

Sizzler covenants to "provide assistance and advice in the promotion of the general business welfare" of each licensee. Sizzler offers ongoing training programs for its licensees, their managers, and their staffs. It also keeps licensees abreast of marketing research and other relevant information through bulletins and newsletters, and it helps coordinate advertising.

The license agreement imposes restrictions upon the transferability of licenses. Sizzler's prior written approval is necessary for any assignment or transfer of a license during the term of the agreement or after the licensee's death.

The control exercised by Sizzler over the operations of its licensees is similar to that described in Advisory Opinion 1979-38. The Commission there concluded that the restaurant licensor-franchisor's "continuing control and direction over the business policies, practices, and procedures of its licensees, as well as the nature and extent of the licensees' contractual obligation to the Corporation, make Hardee's and its licensees affiliates within the meaning of

the Act and Commission regulations." The same conclusion applies to Sizzler and its licensees.[2] Also see Advisory Opinions 1978-61 and 1977-70, which involve other well-known restaurant licensors-franchisors who, by contract, exercise extensive control over the operations of their licensees or franchisees. Contrast Advisory Opinion 1985-7, where the degree of influence exercised by a brewer over its wholesalers was insufficient to meet the Commission's affiliation standards.

In light of these prior opinions and Commission regulations, Collins or its separate segregated fund may solicit voluntary political contributions from the executive and administrative personnel of Sizzler's licensees.[3] The fund may also solicit contributions from the licensees themselves if they are not corporations, e.g., if they are individuals or partnerships. See generally Advisory Opinion 1983-48. The class of solicitable licensees excludes corporations because a corporation may not lawfully make contributions or expenditures in connection with Federal elections. 2 U.S.C. 441b(a); 11 CFR 114.2(b).

Your final question concerns the use of payroll deductions. The regulations would allow this method for voluntary contributions to the Collins separate segregated fund by the executive and administrative personnel of Collins and Sizzler. 11 CFR 114.5(k) and Advisory Opinion 1987-34.

This response constitutes an advisory opinion concerning application of the Act or regulations prescribed by the Commission to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Thomas J. Josefiak
Chairman for the Federal Election Commission

Enclosures (Advisory Opinions 1988-14, 1987-34, 1985-7, 1983-48, 1979-38, 1978-61, and 1977-70)

1) The term "executive or administrative personnel" is defined in 2 U.S.C. 441b(b)(7) and 11 CFR 114.1(c) Under prescribed conditions, a separate segregated fund (or its sponsoring corporation on its behalf) may solicit political contributions from other corporate employees only twice a year. 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6.

2) The standard license agreement prepared by Sizzler states that 'the LICENSEE is not an affiliate of LICENSOR'; the agreement instead characterizes the relationship between Sizzler and each of its licensees as that of two independent contractors. The agreement's characterization does not control this advisory opinion. First, the Commission, not a requesting party, has the authority to determine whether two or more political committees, corporations, or other entities

are “affiliates” for purposes of the Act and Commission regulations. Second, the context in which the statements occur strongly suggests that Sizzler as licensor is attempting to foreclose a licensee's being regarded as Sizzler's agent and 'creat[ing] obligations or debts which would be binding' on Sizzler. The agreement's insurance and indemnity clauses further support this interpretation.

3) In conducting its solicitations of the executive and administrative personnel of Sizzler's licensees, Sizzler, and Collins, the separate segregated fund must conform to the procedures set forth in 11 CFR 114.5(a). Should any licensee of Sizzler establish a separate segregated fund or a political committee, the rule against proliferation of political committees, 2 U.S.C. 441a(a)(5), and Commission regulations on contributions of affiliated committees would apply. See 11 CFR 110.3.