



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 11, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-3

Richard D. Shore
Covington & Burling
1201 Pennsylvania Avenue, N.W.
PO Box 7566
Washington, D.C. 20044

Dear Mr. Shore:

This responds to your letter of January 10, 1992, requesting an advisory opinion on behalf of the Reynolds Metal Company ("Reynolds") regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Reynolds' continued payment of fringe benefits to an employee who may become a Federal candidate.

You state that an employee of Reynolds has been a member of the Virginia state legislature for six years. During this period, the employee has benefited from Reynolds' long-standing policy for leave relating to elective office. Under that policy for the duration of legislative session, the employee was not paid a salary but received full benefits.^{1/}

You state that this employee may become a candidate for Congress. You anticipate that during the legislative session, while on unpaid leave, the employee will declare her candidacy and begin her campaign activities. At the conclusion of the legislative session and the approved unpaid leave period, you further anticipate that this employee will seek additional unpaid leave (as well as use any compensable earned leave that she may have earned) to pursue her candidacy.

Assuming this occurs, you state that Reynolds would apply to her its general approved leave without pay policy. This policy, which according to your request has been in effect since 1988, permits the continuation of certain employee benefits for 31 days after the employee's last day at work.^{2/} Referring to 11 CFR 100.7(a), you note that Commission regulations exclude from the definition of contribution bona fide compensable, vacation or other earned leave time. You cite,

however, to 11 CFR 114.12(c)(1) which prohibits the payment by a corporation of fringe benefits to an employee-candidate while that candidate is on leave without pay. You ask whether this regulation would bar the 31 day continuation of fringe benefits in her situation.

The Act prohibits a corporation from making any contribution or expenditure in connection with a Federal election and provides in this context that "contribution or expenditure" includes "any direct or indirect payment, distribution . . . or gift of money, or any services, or anything of value . . . to any candidate, [or] campaign committee . . ." in connection with any Federal election. 2 U.S.C. 441b(a) and 441b(b)(2). Furthermore, a corporation may not pay the employer's share of the cost of fringe benefits, such as health and life insurance and retirement, when granting leave-without pay status to any employee who wishes to participate in the political campaign of a Federal candidate. 11 CFR 114.12(c)(1) and Advisory Opinion 1976-70. Under 11 CFR 100.7(a)(3)(iii), however, no contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time.

Your request refers to Advisory Opinion 1976-70. In that opinion, a corporate employer wished to grant paid leave and continued fringe benefits to an employee who was a candidate for Federal office. The corporation in question had "no policy with respect to paid leaves of absence and now wish[ed] to start with respect to candidates." Advisory Opinion 1976-70. The Commission concluded that, absent a pre-existing policy regarding leave, the granting of paid leave to a candidate would be a contribution to the candidate's campaign. The Commission then referred to the proposed (prescribed as final regulations in 1977) regulations contained in section 114.12 to conclude that "other incidental benefits such as life and hospitalization insurance, absent a bona fide policy for employees on leave without pay," if paid for by the employer, would also be a contribution to the employee's campaign. Again, the Commission was careful to note that bona fide accrued vacation or other earned leave time would not be considered a contribution under the Act or Commission regulations. Advisory Opinion 1976-70 and 11 CFR 100.7(a)(3)(iii).

Reynolds' situation is distinguishable. Reynolds, unlike the corporate employer in Advisory Opinion 1976-70, has a pre-existing policy covering fringe benefits and unpaid leave which is generally applicable to all employees. It is apparently not one created for the benefit of a particular employee-candidate. Furthermore, the period of time during which Reynolds will continue to provide fringe benefits is relatively brief. Finally, the described extension of these benefits may be viewed as a form of compensation payable to the employee by Reynolds and as part of "other earned leave time," pursuant to section 100.7(a)(3)(iii).

The Commission concludes that, in the circumstances you have described, the continuation for a limited 31 day period of the employee's fringe benefits would not be prohibited by 11 CFR 114.12(c)(1).^{3/} The limited continuation would not be a contribution to the employee's campaign and would not be prohibited by the Act or Commission regulations.

This response constitutes an advisory opinion concerning the 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,

(signed)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosure (Advisory Opinion 1976-70)

ENDNOTES

1/You describe these benefits to include life and health insurance.

2/Your request quotes the general leave policy from Reynolds' "Employee Handbook" as follows:

"Leave of Absence"

"During an approved leave of absence, your medical dental, vision and life coverages continue for 31 days after your last day at work, provided you continue making any premium payments for voluntary life and AD&D insurance. Sickness and accident, worker's compensation supplement and long term disability coverages stop as of your last day on the job."

3/The Commission notes your statement that the employee may declare her candidacy and commence campaigning during the current session of the Virginia state legislature. According to the Office of the Clerk of Virginia House of Delegates, the current legislative session is 60 days long. If the employee declares her candidacy, continued payment of the employee's benefits during his period would not violate section 114.12. The benefits would accrue to the employee pursuant to Reynolds' leave policy applicable to all employees in similar circumstances and not as a consequence of her seeking Federal office. The Commission, therefore, considers these benefits to be compensation payable to the employee by Reynolds as part of "other earned leave time," pursuant to section 100.7(a)(3)(iii).