



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1978-21

of

COMMISSIONERS THOMAS E. HARRIS and NEIL STAEBLER

The majority's opinion herein represents a triumph of form over substance. Section 441e of the Act prohibits a foreign national, a term which specifically includes foreign corporations, from making contributions, directly or indirectly, in connection with federal elections. The Budd Company is a wholly-owned subsidiary of a foreign corporation, Thyssen, A. G. Thyssen, A. G. is prohibited by our Act from setting up a political action committee and from using that committee to make contributions to federal candidates. The Commission majority, however, has decided that Budd Company, Thyssen's subsidiary, may have such a political action committee and make such contributions because it is a domestic corporation organized under the laws of Pennsylvania. The majority's reasoning makes little sense. The issue is not whether Budd Company is a foreign national but whether a foreign national, Thyssen, A. G., will be permitted to spend money in connection with federal elections. The result reached by the majority facilitates an evasion of the prohibitions of Section 441e by making it possible for Thyssen, A. G. to contribute to federal candidates through the PAC of its wholly-owned, completely controlled subsidiary, Budd Corporation.^{1/} Thus, the majority's conclusion will permit Thyssen, A. G. to do indirectly what it cannot do directly. So too, the rationale adopted by the majority would permit any foreign government, for example, the Korean government, to make.

July 13, 1978

^{1/} The majority has assumed for purposes of this opinion that the activities of the Budd Company PAC will not be dictated or directed by its parent, Thyssen, A. G. This assumption, in my opinion, defies reality contributions to federal candidates through the device of purchasing a domestic corporation with a political action committee. Obviously, this was not intended by Congress in enacting Section 441e.