



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 7, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2012-18

James Bopp, Jr., Esq.
The Bopp Law Firm
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510

Dear Mr. Bopp:

We are responding to your advisory opinion request on behalf of the National Right to Life Committee, Inc. ("NRLC"), concerning the application of the Federal Election Campaign Act (the "Act") and Commission regulations to NRLC's payments for the establishment, administration, and solicitation costs of its independent expenditure-only political committee, the National Right to Life Victory Fund (the "Victory Fund"). NRLC asks whether such payments would constitute reportable contributions to the Victory Fund.

The Commission concludes that NRLC's payment of the Victory Fund's establishment, administration, and solicitation costs constitutes a contribution from NRLC to the Victory Fund and must be reported as such.

Background

The facts presented in this advisory opinion are based on your letter received on February 23, 2012, your email received on April 23, 2012, and phone conversations with Commission attorneys.

NRLC is an incorporated non-profit social welfare organization exempt from taxation under section 501(c)(4) of the Internal Revenue Code. It has a separate segregated fund ("SSF"), National Right to Life PAC ("NRLPAC"), and recently established an independent expenditure-only political committee, the Victory Fund. The Victory Fund is organized as a tax-exempt organization under section 527 of the Internal

Revenue Code. Both NRLPAC and the Victory Fund are registered and file with the Commission reports as required. The Victory Fund and NRLPAC share a treasurer.

The Victory Fund will solicit contributions in unlimited amounts from individuals in the general public, other political committees,¹ corporations, and labor organizations for the purpose of financing independent expenditures. The Victory Fund will not make any contributions or transfers of funds to any other political committee or other entity, including NRLC and NRLPAC. Nor will the Victory Fund coordinate any expenditures or make any coordinated communications with any Federal candidate or officeholder, authorized committee, political party committee, or agent of such persons.

The Victory Fund will receive unlimited, reportable contributions from NRLC. In addition, NRLC will finance the Victory Fund's establishment, administration, and solicitation costs.

Question Presented

Must payments by NRLC for the Victory Fund's establishment, administration, and solicitation costs be treated as contributions from NRLC to the Victory Fund?

Legal Analysis and Conclusions

Yes, payments by NRLC for the Victory Fund's establishment, administration, or solicitation costs are contributions from NRLC to the Victory Fund and must be reported as such.

Under the Act and Commission regulations, a corporation's payments for the costs of establishing, administering, or soliciting contributions to its SSF are exempt from the definition of contribution or expenditure and are therefore not usually subject to reporting requirements.² See 2 U.S.C. 431(8)(B)(vi), (9)(B)(v), 441b(b)(2)(C); 11 CFR 100.81, .141, 114.5(b); see also Advisory Opinion 1979-27 (Committee for Thorough Agricultural Political Education). A corporation's payments for the costs of establishing, administering, or soliciting contributions to an independent expenditure-only political committee are not exempt from the definition of contribution or expenditure, because such an independent expenditure-only political committee is not an SSF. See Advisory Opinion 2010-09 (Club for Growth). Such payments therefore must be reported as contributions from the corporation to the independent expenditure-only political committee. *Id.*

¹ The Victory Fund will accept from NRLPAC contributions of up to \$5,000, annually.

² Payments for establishment, administration, or solicitation costs that are initially made by the SSF and subsequently reimbursed by the SSF's connected organization are, however, subject to the reporting requirements of the Act and Commission regulations. See 2 U.S.C. 434(b)(2)(J), (4)(A); 11 CFR 102.6(c)(2)(ii), 104.3(a)(2)(viii), (b)(1)(i), 114.5(b)(3); Advisory Opinion 1983-22 (Northwest Central Pipeline Corporation PAC).

The Victory Fund is not an SSF of NRLC but is instead an independent expenditure-only political committee established by NRLC. As such, NRLC's payments of the Victory Fund's establishment, administration, and solicitation costs are not exempt from the definition of "contribution" or "expenditure" and any such payments by NRLC must be reported as contributions to the Victory Fund. Alternatively, the Victory Fund may pay its own establishment, administration, and solicitation costs. *Id.*

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available on the Commission's website, www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)
Caroline Hunter
Chair
Federal Election Commission