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OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

May 18, 1976

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(R76-26)
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ATTORNEY GENERAL

76-154

Honorable Thomas N. Goodwin
Arizona State Representative
State Capitol, House Wing
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Representative Goodwin:

You have asked this office for its opinion on the following questions:

1. Does A.R.S. § 16-471(A) prohibit an Arizona corporation from creating, pursuant to 18 U.S.C. § 610, a political action committee for the purpose of participating in elections for federal offices?
2. Does A.R.S. § 16-471(A) prohibit an Arizona corporation from creating a political action committee for the purpose of participating in elections for state and local offices?
3. If a political action committee is permissible under A.R.S. § 16-471(A), may a corporation expend general corporate funds for the costs of administration of such a committee?

Two separate provisions of Arizona law bear upon the questions asked. Article 14, Section 18, of the Arizona Constitution reads as follows:

"It shall be unlawful for any corporation organized or doing business in this State, to make any contribution of money or anything of value for the purpose of influencing any election or official action."

A.R.S. § 16-471(A) reads as follows:



Honorable Thomas N. Goodwin
May 18, 1976
Page Two

"It is unlawful for a corporation organized or doing business in the state to make any contribution of money or anything of value for the purpose of influencing an election."

1.

Your first inquiry is whether these provisions prohibit an Arizona corporation from establishing a so-called 610 committee for the purpose of participating in elections for federal offices. See FEC Advisory Opinion, 1975-23 (Sun Oil Company) Fed. Register, p. 56584, Dec. 3, 1975. Recent decisions have established that the financing of Federal election campaigns has been preempted by Congress. Oregon v. Mitchell, 400 U.S. 112 (1970); Buckley v. Valeo, U.S., #75-436 (1976). Accordingly, Arizona corporations may establish 610 committees pursuant to Federal law for participation in Federal election campaigns.

2.

Your second question asks whether an Arizona corporation may establish a political action committee for participation in state and local election campaigns. The prohibitions of Article 14, Section 18, and A.R.S. § 16-471.A extend to "any contribution of money or anything of value for the purpose of influencing any election . . ." Thus, in the absence of any corporate contribution, there would not appear to be any prohibition upon creation of a political action committee identified with a corporation but operated free of any corporate support. Conceivably, an argument could be made that such a committee would be the alter ego of the corporation so as to extend the prohibition to the committee itself. However, given the plain language of the statute, we do not believe that such an argument would be sustained by a court. The Congressional and judicial arguments against the alter ego theory are set forth in the context of similar Federal legislation in Pipefitters Local No. 562 v. United States, 407 U.S. 385, 92 S.Ct. 2247 (1972).

3.

Your third inquiry is whether committees formed to participate in state and local elections can be supported by corporate contributions for overhead and administration. On

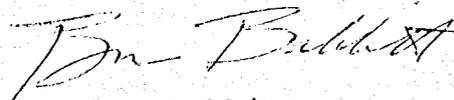
Honorable Thomas N. Goodwin
May 18, 1976
Page Three

its face, Article 14, Section 18, of the Arizona Constitution would appear to preclude any such support, unless the provision were read very narrowly to mean only contributions made for the specific purpose of directly influencing an election. In Pipefitters, supra, the Supreme Court skirted, without directly confronting, the question whether the Taft-Hartley Act, which governed prior to the 1971 Campaign Reform Act, prohibited union administrative support for a union campaign committee in federal elections and, if so, whether such a prohibition would constitute an unconstitutional prohibition against First Amendment rights of speech and association. See Buckley v. Valeo, supra. Further, even assuming that the First Amendment may protect administrative contributions by unincorporated associations, there remains a further question as to what extent corporations are considered to be persons entitled under the Equal Protection Clause to First Amendment rights. See Grossjean v. American Press Co., 297 U.S. 233 (1936); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

Therefore, given the uncertain outlines of First Amendment constitutional limitations, and the absence of any case law interpreting the prohibition of Article 14, Section 18, of the Arizona Constitution, we cannot give any definitive response to your third question. It has always been a policy of this office that, except in obvious cases, we should not render opinions on constitutional questions.

Please let me know if we can be of further assistance.

Sincerely,



Bruce E. Babbitt
Attorney General

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