



NATIONAL EDUCATION ASSOCIATION

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1201 16th Street, N.W.
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John L. Wilson, Executive Director

January 4, 2001

John D. Gibson
Assistant Staff Director
Reports Analysis Division
Federal Election Commission
999 E Street, NW
Room 709
Washington, DC 20463

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Dear Mr. Gibson:

On January 2, 2001, Judy Anderson, business manager of the Delaware State Education Association (DSEA"), received a letter from you dated December 27, 2000, which informed her that she "may have failed to file the [30 day Post-General] report of receipts and expenditures as required by the Federal Election Campaign Act, as amended." Your letter adds that Ms. Anderson was "previously notified of the due date for this report," and that "[f]ailure to timely file this report may result in civil money penalties, an audit or legal enforcement action." Ms. Anderson has requested that I represent DSEA and her in this matter. For the reasons outlined below, I believe that DSEA has no such reporting obligation under the Federal Election Campaign Act, as amended ("FECA"), and indeed, Ms. Anderson had already received similar advice from Federal Election Commission ("FEC") staff before receiving your December 27 communication.

By way of background, DSEA is a labor organization that represents education employees in the state of Delaware, and is affiliated with the National Education Association ("NEA"). Members of DSEA are also members of NEA. DSEA neither receives contributions made for the purpose of influencing federal elections, nor makes contributions or expenditures in connection with federal elections. DSEA does not even have a separate segregated fund ("SSF") that makes contributions or expenditures in connection with federal elections; rather, it relies on the SSF of NEA -- The NEA Fund for Children and Public Education -- to make such contributions or expenditures on its behalf. Nevertheless, DSEA recognizes that as a membership organization, it may be subject to reporting requirements under 2 U.S.C. § 431(9)(B)(iii) and 11 C.F.R. § 104.6. Accordingly, on October 24, 2000, DSEA filed a Form 7 report with the FEC, disclosing the costs of communications to its members in which it expressly advocated the election of candidates for federal office. Ms. Anderson signed the Form 7 report.

In late November, Ms. Anderson received a memorandum from the FEC's Information Division dated November 14, 2000, and addressed to "Committee Treasurers of PACs and Party Committees." The topic of the memorandum was "Correction: General Election Report Notice: 30 Day Post-General Election Reporting Form." Since Ms. Anderson is the business manager of DSEA and not the treasurer of a PAC or party committee, she contacted the Information Division on or about December

6 to find out why she had received this memorandum. Both Gary Mullen, of the Information Division, and Edward Ryan, of the Reports Analysis Division, opined that DSEA would not need to file the 30 Day Post-General report ("Form 3X report) or register as a political committee with the FEC. Ms. Anderson subsequently requested advice from me, and I concurred with the opinions of Messrs. Mullen and Ryan. Subsequently, however, she received your December 27 communication.

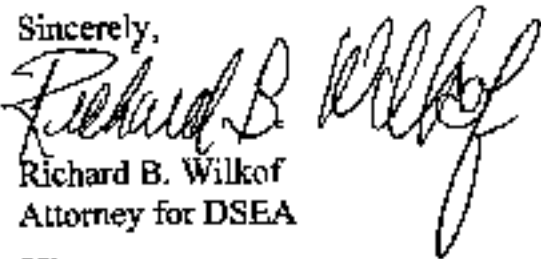
The mere fact that DSEA filed a Form 7 report with the Commission does not lead to the conclusion that it must register as an SSF and file a Form 3X report. The reporting requirements for a membership organization making express advocacy communications to its members are distinct from the reporting requirements for an SSF. Section 104.6(a) imposes reporting requirements on "[e]very membership organization or corporation which makes disbursements for communications pursuant to 11 CFR 100.8(b)(4) and 114.3." (Emphasis added.) Accordingly, those reporting requirements apply regardless of whether a membership organization has an SSF that has registered with the FEC.

Moreover, by its very nature, DSEA would not qualify as a political committee, as that term is defined in 11 C.F.R. § 100.5. Other than for the aforementioned internal communications, DSEA makes no disbursements in connection with federal elections. Neither does it receive contributions in connection with such elections. Finally, it is not an SSF; rather, it is affiliated with the connected organization (*i.e.*, NEA) of an SSF.

In sum, there is no basis under the PECA to treat DSEA as an SSF or any other type of political committee. On the other hand, there is some basis for believing that the FEC erred when entering DSEA into its database following receipt of DSEA's Form 7 report, and that the error has resulted in the subsequent treatment of DSEA as a political committee. A review of the financial disclosure report database on the FEC's Web site shows that DSEA is listed as a Type "N" Committee on the basis of its October 24, 2000 filing. A Type "N" designation refers to "a non-party non-qualified" committee. However, as explained above, DSEA does not qualify as a political committee of any type. The only designation that conceivably would appropriately reflect its Form 7 report would be Type "C," which refers to "communication cost."

We hope you will be able to remedy this situation quickly, so that DSEA will not be held liable for an infraction that it could not possibly have committed. If you wish to discuss this matter further, please feel free to contact me at 202-822-7035. Thank you for your consideration.

Sincerely,


Richard B. Wilkof
Attorney for DSEA

cc:

Judy G. Anderson

Federal Election Commission

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