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Limitations on Political Activities of Corporations

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LIMITATIONS ON POLITICAL ACTIVITIES OF CORPORATIONS

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THE RELATIVELY recent, but increasing, development of programs for corporate political activity[1] indicates the awareness of businessmen and corporate management that corporations should, and do, participate in political activities. However, the law regulating means by which corporations may legally take positions on political matters is extremely underdeveloped, with little precedent available to counsel desiring to advise how corporate funds may be used for such activity.

In an effort to delineate the areas in which a corporation may engage in political activity, the following discussion is an analysis of the law, with emphasis on federal statutes, governing that activity by a corporation, giving consideration to the history, purpose and judicial interpretation of such law. Specific conclusions based on such analysis appear at the end of this article.

Probably the most important area of corporate political activity is that which is designed to affect matters before the electorate — the election of candidates or referenda upon certain legislation or questions — as opposed to activity aimed at matters not directly decided at any election, such as legislation. Thus, for the purposes of the following discussion, "political activity" is deemed to fall into two broad categories: (1) activity affecting elections, and (2) activity affecting legislation. So called "political education" — activity affecting governmental policies or political issues — can, of course, fall into either category.

FEDERAL STATUTES — POLITICAL CONTRIBUTIONS AND EXPENDITURES

The pertinent text of Section 313 of the Federal Corrupt Practices Act[2] is as follows:

> It is unlawful for . . . any corporation organized by authority of any law of Congress to make a contribution or expenditure in

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1. See Grossett, Lumb, Wood, *The Role of the Corporation in Public Affairs: a Panel*, 15 BUS. LAW. 92 (1959); Comment, *Corporate Political Affairs Programs*, 70 YALE L.J. 821 (1961).

2. 18 U.S.C. 610.

connection with any election [at which the President or Vice President or member of Congress] . . . are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation . . . which . . . [violates] this section shall be fined not more than $5,000; and every officer or director . . . who consents . . . shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

Some pertinent definitions are as follows:[3]

'Contribution' includes a gift, subscription, loan, advance, or deposit of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable;

'Expenditure' includes a payment, distribution, loan, advance, or deposit of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable;

'Person,' or 'whoever', includes . . . a corporation.

Political contributions by "whoever" enters into certain contracts (generally for rendition of services or supplies) with the United States are also prohibited. They are prohibited during the period of negotiation and performance of the contract.[4] There are no reported cases on this section.

As to publication or distribution of political statements, it is provided that:[5]

Whoever willfully publishes or distributes . . . any card, pamphlet, circular, poster, dodger, advertisement, writing, or other statement relating to or concerning any person who has publicly declared his intention to seek [Presidential or Congressional office] . . . in a primary, general, or special election, or convention of a political party . . . which does not contain the names of the persons . . . and corporations responsible for the publication or

3. 18 U.S.C. 591.

4. 18 U.S.C. 611. This provision is known as the Hatch Act. Its legislative history indicates that corporations are not covered by this prohibition. See Farr, *Political Contributions by Corporations in Federal Elections*, 19 BUS. LAW. 789, 792 (1964).

5. 18 U.S.C. 612. The only reported case under this section is United States v. Scott, 195 F. Supp. 440 (D.C.N.D. 1961), a prosecution against an individual under this section, and holding, on a motion to dismiss, that the section does not violate the first amendment.

distribution . . . and the names of the officers of each such . . . corporation, shall be fined. . . .

While there are no reported corporation cases under this section, it is interesting to note that in commenting on sections of a state statute similar to those above (although "expenditures" by a corporation were not proscribed), the Maryland Supreme Court stated in dictum that the state statute unmistakably declared by implication that a corporation may publish and distribute campaign literature if it contains the name of the corporation and the names of its officers.[6] However, the implicit permission in the federal statute for a corporation to make such an expenditure in a campaign for a federal office conflicts with the prohibition of Section 313.

It is readily apparent that the real deterrent to corporate political activity is Section 313 of the Corrupt Practices Act. It will be noted that it refers to elections involving federal officials only. Further reference herein to "the statute" will be to Section 313 unless otherwise indicated.

LEGISLATIVE HISTORY OF THE STATUTE

As a means of combatting the increasing exercise of political influence by large aggregations of wealth, the Federal Corrupt Practices Act of 1907 prohibited corporations from making "money contributions" in connection with federal elections. In 1925 the Act was amended to change "money contributions" to "contributions," and in 1943 labor organizations were included within its coverage for the duration of the war. Labor unions avoided this interdiction by influencing federal elections with indirect contributions to political campaigns, such as by printing pamphlets, or by advertising and broadcasting, rather than with direct contributions to candidates or parties. The unions made what they called "expenditures," not "contributions." This was thought by some to be a loophole in the Act, and in 1947 Congress enacted Section 304 of the Taft-Hartley Act which amended Section 313 of the Corrupt Practices Act so as to place labor unions permanently within its scope and to prohibit "expenditures" as well as contributions in connection with federal elections. The 1947 amendment also extended the prohibitions of Section 313 to primaries, conventions and caucuses. For a more detailed history of the statute, see *United States v. U.A.W.*[7] and *United States v. Painters Local Union.*[8]

6. Smith v. Higinbothom, 187 Md. 115, 48 A.2d 754 (1946).
7. 352 U.S. 567, 570–83, 77 S.Ct. 529, 530–37 (1957).
8. 79 F. Supp. 516, 519–21 (D. Conn. 1948).

The legislative history of this statute indicates that it has two principal purposes:[9]

(1) to prevent undue influence on federal elections which corporations, and more recently labor unions, are capable of exercising through liberal financial contributions; and

(2) to protect those shareholders or union members who do not have the same political views as the corporate or union officials who control their money in the form of corporate funds or union dues.

The scope and applicability of Section 313 is difficult to determine. What did Congress intend? Where is the line between lawful and unlawful contributions and expenditures? It seems clear that any contribution by a corporation directly to a candidate or to a political party would be unlawful if made in an election year. But what if such a contribution to a political party or committee were made in a non-election year? Would it be "in connection with" any election or any primary, political convention or caucus which was held to select candidates? And what is the effect of the added prohibition against an "expenditure," which apparently was thought unnecessary until labor unions were brought within the interdiction of Section 313?

Specific indications of congressional views concerning these and other questions as to the scope and meaning of the section are found in the Senate debate when the 1947 amendment was under consideration.[10] This amendment placed the section in substantially the same form as it exists today. Opponents of the amendment raised a number of questions concerning its effect on different kinds of corporate and labor union activities. Its supporters, principally the late Senator Taft, answered these questions.

The general objective of the amendment was to plug an apparent loophole by making it clear that indirect political contributions, in the guise of expenditures, as well as direct contributions are unlawful, and to subject labor unions to the same prohibitions to which corporations had been subjected.[11]

In response to questions concerning applications of the proposed amendment to the publication of political endorsements in union newspapers and periodicals, Senator Taft repeatedly expressed the view that it would apply if the periodical or newspaper was supported by funds derived from union dues.[12] A corporation which used a house organ,

9. See 40 CONG. REC. 96 (1924); 65 CONG. REC. 9507 (1924); SEN. REP. 101, 79TH CONG., 1ST SESS. (1945) p. 24; 93 CONG. REC. 6436-41 (1947). Note that protection of union minority members may be afforded under International Ass'n of Machinists v. Street, 367 U.S. 740, 81 S.Ct. 1784 (1961).

10. 93 CONG. REC. 6436-47 (1947).

11. 93 CONG. REC. 6436, 6439 (1947).

12. 93 CONG. REC. 6436, 6437, 6440 (1947).

distributed to employees, to try to elect or defeat a political candidate would, in the Senator's view, be violating the law.[13] However, compare *United States v. C.I.O.*,[14] discussed below.

But he explained that the section would not apply to newspapers or other publications of a corporation or union if the publications were supported by subscriptions and advertisements, even if the publications contained political statements, since there would not be any contribution or expenditure of corporate or union funds. Likewise, the sale of such publications to employees or union members would not be objectionable, if they were voluntary buyers. The giving away of corporate or union owned periodicals containing political endorsements, and not selling them for their money's worth, would be unlawful.[15]

An association, such as a trade association consisting of corporate members, could not publish political endorsements in an organ supported out of membership dues and could not otherwise incur any expenditure in respect to any election. Even if the member corporations did not contribute funds primarily for political purposes, but the association used such funds for such a purpose, it was stated that the member corporations would be violating the law.[16] In this connection the trade association was compared to the former PAC (Political Action Committee) of the C.I.O. If the trade association or PAC got its funds from corporations or from unions, there would be a violation; but not if the trade association, like PAC, were not a corporation and got its contributions from individuals, like PAC.[17] Union political activity is discussed below.

The mere publication of the voting records of members of Congress in a union periodical supported out of union dues (and this should also apply to a corporate periodical) or the broadcasting of such information on a news program sponsored by a corporation would not be unlawful unless such reports were so colored as to amount to an actual contribution to a particular candidate or party.[18]

The purchase of political advertising or of radio broadcast time for a political speech out of corporate or union funds would be a violation.[19] But compare *United States v. U.A.W.*,[20] *United States v. Painters Local Union*,[21] and *United States v. Anchorage Central Labor Council*,[22] discussed below, involving such activity by unions.

13. 93 CONG. REC. 6440 (1947).
14. 335 U.S. 106, 68 S.Ct. 1349 (1948).
15. 93 CONG. REC. 6437, 6440 (1947).
16. 93 CONG. REC. 6438 (1947).
17. 93 CONG. REC. 6439 (1947).
18. 93 CONG. REC. 6447 (1947).
19. 93 CONG. REC. 6439, 6440, 6447 (1947).
20. 352 U.S. 567, 77 S.Ct. 529 (1957).
21. 172 F.2d 854 (2d Cir. 1949).
22. 193 F. Supp. 504 (D. Alaska 1961).

The congressional debate repeatedly emphasized that whether or not a contribution or expenditure was in connection with a federal election is a question of fact. Questions concerning applicability of the proposed amendment to the expression of political views by corporate-sponsored radio commentators or by newspapers indirectly subsidized through corporate advertising caused Senator Taft to take the position that in each case the particular circumstances would be controlling and that there would be questions of degree in borderline cases which should be left to the courts.[23]

This legislative comment, while helpful as some indication of the scope of Section 313, must be considered in light of the available judicial interpretation of the statute.

INTERPRETATIONS BY THE COURTS

Opportunity for judicial answers to some of the questions concerning the section have been presented to the courts, but the answers are not in agreement.

There are only nine judicial opinions which consider Section 313 of the Federal Corrupt Practices Act, involving only six cases. There are two Supreme Court opinions reversing District Court holdings, one Court of Appeals opinion reversing a District Court, and three separate District Court opinions. Most of the decisions deal with sufficiency of the indictment under Section 313 (as opposed to the weight and sufficiency of the evidence), and all of the reversals have been because of differing interpretations of the section as applied to the particular indictment.

In only one of those six cases was a corporation involved in the facts; the other cases involved alleged violations of the section by unions. However, since the statute by its terms proscribes the same activity by corporations and labor unions, and was so intended by the legislature,[24] it is important that the labor union cases also be considered for the courts' views of the statute.

United States v. U.S. Brewers' Ass'n[25] arose under the earlier provision applicable to corporations only and to "money contributions." The association (a corporation) and others were indicted for conspiring to violate the statute then in effect. The purpose for which the alleged "money contribution" was to be used is not explained in the court's opinion. On a motion to quash the indictment, the statute was challenged on constitutional grounds, principally that it was not within

23. 93 CONG. REC. 6439 (1947).
24. 93 CONG. REC. 6436, 6439 (1947).
25. 239 Fed. 163 (W.D. Pa. 1916).

the power of Congress to enact, that it was void as a criminal statute because of vagueness and uncertainty, and that it violated the first amendment by attempting to prohibit or restrict freedom of speech and of press in the discussion of candidates and political questions. The court rejected these contentions and denied the motion. As to freedom of speech and of the press, the court merely stated, without elaboration:

> The section itself neither prevents, nor purports to prohibit, the freedom of speech or of the press. Its purpose is to guard elections from corruption, and the electorate from corrupting influences in arriving at their choice.[26]

In disposing of the argument that the statutory words "money contributions" were vague and uncertain, it is perhaps significant to note that the court stated:

> Whether, in any given case, an *expenditure* by a corporation should be construed as 'a money *contribution* in connection with any election,' within the spirit, intent, and meaning of the act, may become a question for the court or jury in the light of all the circumstances of the case.[27] (Emphasis added.)

The court obviously felt that certain kinds of corporate expenditures, other than direct contributions to a candidate or party, were prohibited by the Act.

In the five cases which follow, the courts have been concerned with the prohibition against any "expenditure" by a labor union in connection with elections.

The first of these situations was the case of *United States v. C.I.O.*[28] C.I.O. President Philip Murray wrote an editorial favoring one and opposing another candidate for Representative in Congress from Maryland, and caused the editorial to be published in the *CIO News*, a union paper, and circulated it to members in the Maryland Congressional District. The publication was paid for with general union funds.

The District Court for the District of Columbia[29] dismissed the indictment, holding Section 313 to be an unconstitutional abridgement of freedom of speech, press and assembly. The Government had conceded that these freedoms were abridged, but only incidentally, which it claimed was permissible under the congressional power to control elections. The Court stated that even though a minority of union members might be opposed to the candidate supported, that did not constitute

26. *Id.* at 169.
27. *Ibid.*
28. 335 U.S. 106, 68 S.Ct. 1349 (1948).
29. 77 F. Supp. 355 (D.D.C. 1948).

such a clear and present danger to the public interest as would justify abridgement of the freedoms guaranteed by the first amendment.

The Supreme Court, in a five to four decision, affirmed the dismissal, but on the grounds that the indictment did not set forth a violation of the statute. The majority of the Court found that the indictment did not allege any expenditures for "free" distribution of the paper to those not entitled to receive it:

> We do not read the indictment as charging an expenditure by the C.I.O. in circulating free copies to nonsubscribers, nonpurchasers or among citizens not entitled to receive copies of the 'CIO News,' as members of the union.[30]
>
> It is our conclusion that this indictment charges only that the CIO and its president published with union funds a *regular* periodical for the furtherance of its aims, that President Murray authorized the use of those funds for distribution of this issue in *regular course to those accustomed to receive copies* of the periodical and that the issue with the statement [of Mr. Murray] . . . violated Section 313 of the Corrupt Practices Act.
>
> . . . We do not think Section 313 reaches such a use of *corporate* or labor organization funds.[31] (Emphasis added.)

In holding that the expenditure was not prohibited, the Court was motivated by a desire to avoid the constitutional question, stating (in language significantly applicable to a corporation and its views on either issues or candidates) that:

> If Section 313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures, or the election to office of men espousing such measures, the gravest doubt would arise in our minds as to its constitutionality.[32]

The Court further explained that:

> Members of unions paying dues and stockholders of corporations know of the practice of their respective organizations in *regularly* publishing periodicals. It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the *regular* course of its publication. It is unduly stretching language to say that the members or stockholders are unwilling participants in such *normal* organizational activities, including the advocacy

30. 335 U.S. 106, 111, 68 S.Ct. 1349, 1352 (1948).
31. *Id.* at 123–24, 68 S.Ct. at 1358.
32. *Id.* at 121, 68 S.Ct. at 1357.

> thereby of governmental policies affecting their interests, and the support thereby of candidates thought to be favorable to their interests.[33] (Emphasis added.)

The concurring opinion of Justice Rutledge took the position that Section 313 clearly was intended to cover the described activity, and that the section must be held unconstitutional as an abridgement of first amendment guarantees. The minority pointed out that freedom of speech, press and assembly are essential to a fair electoral process, as without them the electorate is deprived of information; that if it is an evil for organized groups to have unrestricted freedom to make expenditures for publicizing their political views and information supporting them, it does not follow that a complete prohibition of that right is necessary; and that the restriction of Section 313 is not limitation or regulation but a prohibition.

Within two months of the Supreme Court's decision in *CIO*, Section 313 was before the courts again. In *United States v. Painters Local Union*,[34] a union and its president were charged with expending union funds to pay the cost of an advertisement in a commercial newspaper of general circulation, and the cost of a special public radio broadcast, advocating the defeat of certain persons in connection with a convention to be held to select candidates for a coming federal election. Upon a motion to dismiss the indictment, the District Court, in a comprehensive and able opinion, sustained the constitutionality of Section 313. The *CIO* case was distinguished as involving expenditures to publish an issue of a weekly union periodical and to distribute it to those regularly entitled to receive it.

Upon appeal from a conviction, however, the Court of Appeals reversed[35] and held that this expenditure was not prohibited by Section 313, relying on the *CIO* case. The court noted that the expenditures amounted to $111.14 for the newspaper advertisement and $32.50 for the radio broadcast, and stated:

> It seems impossible, on principle, to differentiate the scope of . . . [CIO] from . . . [this case]. It is hard to imagine that a greater number of people would be affected by the advertisement and broadcasting in the present case than by publication in the union periodical dealt with in the CIO litigation. In a practical sense the situations are very similar, for in the case at bar this small union owned no newspaper and a publication in the daily press or by radio was as natural a way of communicating its views to its members as by a newspaper of its own.

33. *Id.* at 123, 68 S.Ct. at 1357–58.
34. 79 F. Supp. 516 (D. Conn. 1948), *rev'd.*, 172 F.2d 854 (2d Cir. 1949).
35. 172 F.2d 854 (2d Cir. 1949).

> In each instance, it seems unreasonable to suppose that the members of the union objected to its policy in criticizing candidates for federal offices. In the CIO case this was thought to be true because the publication was a 'normal organizational activity.' . . . In the case at bar, the expenditures were authorized by a vote of the union members at a meeting duly held.[36]

The following dictum of the District Court in *Painters Local* is noteworthy:

> The Act does not restrict any exercise of free speech, press or assembly which can be accomplished without expense to a labor organization. Thus a labor organization, just as freely as a corporation, is still left with unrestricted liberty to speak and publish, and even to electioneer in federal elections, through its officers and its multitudinous members and friends insofar as they are willing to speak, write and print without special recompense from the organization. Such material may lawfully be publicized even at incidental expense to the organization in organizational periodicals for distribution to its members, as was held in the C.I.O. case, and if without expense to the organization by the public press and by public broadcasting stations for the benefit of the general public. Indeed, insofar as such publicity material is found to be of sufficient public interest to be newsworthy, there is every practical assurance that it will be published and broadcast without expense to the organization.[37]

Such an interpretation of the statute is probably correct, and it would allow corporate officers to give statements to the press for publication, if the press wished to publish them. However, it should be noted that such a practice could be attacked as an indirect political contribution or expenditure by the corporation which pays the officer's salary. Such an attack would probably be sustained if it could be shown that a certain part of the salary, or other special recompense, was paid for making such statements (or engaging in any other political activity).[38]

In *United States v. Constr. and General Laborers Local Union*,[39] it was held that a labor union's payments to three employees who devoted a considerable portion of their time to political activities, some of which activities, such as registration of voters and taking voters to polls, were for the general benefit of all those who were candidates of either party, and some of which were devoted exclusively to political

36. 172 F.2d 854, 856 (2d Cir. 1949).

37. U.S. v. Painters Local Union, 79 F. Supp. 516, 523 (D. Conn. 1948).

38. Compare Egan v. United States, 137 F.2d 369 (8th Cir. 1943), *cert. denied*, 320 U.S. 788, 64 S.Ct. 195 (1943); United States v. Constr. and General Laborers Local Union, 101 F. Supp. 869 (W.D. Mo. 1951). (Both cases discussed below.)

39. 101 F. Supp. 869 (W.D. Mo. 1951).

interests of one candidate for Congress, were not contributions or expenditures within the meaning of Section 313.

The court touched upon the question raised under the *Painters Local Union* case, as to the possibility that a corporation could be charged with making an indirect expenditure when one of its salaried officers makes a political statement or speech. In support of its conclusion that Congress did not intend the statute to apply to the situation before it, the court noted that if the statute was construed so as to be applicable:

> [T]hen any political activity of any person on the payroll of a labor organization, from its president to janitor, would render that Union and its principal officers liable, if such persons devoted any appreciable time in support of . . . [or in opposition to a candidate for federal office]. If . . . [the] president of a labor organization should draw a salary while making a speech in support of or in opposition to any candidate for federal office, or if any expenses during such time were paid by a labor organization, such an activity would raise a serious question as to whether or not the labor organization and its officers might not be prosecuted. . . . The same would be true of any corporation which permitted one of its employees while on its payroll to spend a few hours hauling voters to a place of registering, to vote, or to engage in any other type of political activity.[40]

In the second Supreme Court interpretation of Section 313, *United States v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America*,[41] (the *UAW* case), it was held, in a 6-3 opinion, that a violation of Section 313 was stated in an indictment which charged a labor union with having used union dues to sponsor commercial television broadcasts designed to influence the electorate to select certain candidates for Congress in connection with the 1954 elections. The Court refused to pass on the constitutional issues, ruling that that was not necessary to a decision and that they could not be decided until after a consideration by the court below and after an adjudication on the merits.

> To deny that such activity, either on the part of a corporation or a labor organization, constituted an 'expenditure in connection with any [federal] election' is to deny the long series of congressional efforts calculated to avoid the deleterious influences on federal elections resulting from the use of money by those who exercise control over large aggregations of capital . . . . [I]t was to embrace precisely the kind of indirect contribution alleged

40. *Id.* at 876.
41. 352 U.S. 567, 77 S.Ct. 529 (1957).

in the indictment that Congress amended § 313 to proscribe 'expenditures.'[42]

In distinguishing the *CIO* case the Court stated:

> Thus, unlike the union-sponsored political broadcast alleged in this case, the communication for which the defendants were indicted in C.I.O. was neither directed nor delivered to the public at large. The organization merely distributed its house organ to its own people. The evil at which Congress has struck in Sec. 313 is the use of *corporation* or union funds *to influence the public at large to vote for a particular candidate or a particular party.*[43] (Emphasis added.)

In avoiding the constitutional questions, the majority noted that allegations of the indictment might not be proved at the trial. The Court then suggested four questions to be resolved upon subsequent trial, "not to imply answers to problems of statutory construction, but merely to indicate the covert issues that may be involved in this case."[44] These questions of the Court present at least some of the factors involved in a determination of whether there has been a violation. They are as follows:

> [W]as the broadcast paid for out of general dues of the union or may the funds be fairly said to have been obtained on a voluntary basis? Did the broadcast reach the public at large or only those affiliated with appellee? Did it constitute active electioneering or simply state the record of particular candidates on economic issues? Did the union sponsor the broadcast with the intent to affect the results of the election?[45]

It has been reported that on remand of the *UAW* case the union was acquitted by a jury, principally because of the District Court's charge made on the questions of source of funds and active electioneering.[46]

The dissenting opinion by Justice Douglas in the *UAW* case felt that the statute as applied violated the first amendment rights of free speech and freedom of assembly, irrespective of the answers to the questions suggested by the majority.[47]

When the *UAW* case was originally before the lower court, the indictment was dismissed on the grounds that it failed to state a violation of the statute.[48] That court found that the case was parallel

42. *Id.* at 585, 77 S.Ct. at 538.
43. *Id.* at 589, 77 S.Ct. at 540.
44. *Id.* at 592, 77 S.Ct. at 542.
45. *Ibid.*
46. Lane, *Analysis of the Federal Law Governing Political Expenditures by Labor Unions*, 9 LAB. L.J. 725 (1958).
47. 352 U.S. 567, 595–96, 77 S.Ct. 529, 543–44 (1957).
48. 138 F. Supp. 53 (E.D. Mich. 1956).

to *Painters Local Union*, and relying on the Second Circuit's opinion in that case held that the union had not made an expenditure on behalf of a political candidate. In view of the Supreme Court's opinion in the *UAW* case, the *Painters Local Union* case, insofar as it found the indictment insufficient, is practically overruled. There is at least substantial doubt as to its authoritative weight. The only distinction, if there is one, is that in the *Painters Local Union* case, the union was small, the expenditures were trifling and communication by a newspaper advertisement and a commercial radio broadcast was the "natural way" to communicate with its members.

Thus, it is not strange to find that the next case, which is very similar to the fact situations in *UAW* and *Painters Local*, dealt with the weight and sufficiency of the evidence, rather than sufficiency of the indictment. In *United States v. Anchorage Central Labor Council*[49] an association of 26 local labor unions was indicted for sponsoring political television programs which were intended to influence both union members and non-union members. In holding that the government's evidence did not establish a violation of the statute, the court emphasized two important facts. First, the particular broadcast involved was paid for by the association largely from special "TV contributions" to the council by member unions for the purpose of financing not only this program but for the entire series of programs conducted over a period of three years. Each member union decided by a vote of its membership whether, and how much, it should contribute. Thus, the contributions were voluntary. Second, the media used in the broadcast was maintained by the union in the regular course as the only means the union had or the council had, or could afford, to communicate with its members. The evidence was that this cost would be considerably less than trying to get out a newspaper to all the members of the 25 member unions. Therefore, the fact that the broadcast was communicated to the general public as well as union members did not bring the activity clearly within the statute because the media was used in the regular course of the union activities upon voluntary contributions by the unions for such purpose.

Thus, we have the few available judicial interpretations of the statute.[50] While those cases lend very little specificity to what can and cannot be done by a *corporation*, they at least provide what case law

49. 193 F. Supp. 504 (D. Alaska 1961).

50. Another union case, believed to be unreported officially, held that the Act does not bar a union's support of federal political candidates with funds derived from a portion of union dues that members, by signing cards, voluntarily designated as available for that purpose. United States v. Warehouse Workers Local 688, 29 U.S.L. Week 2202, Oct. 26, 1960 (E.D. Mo. 1960).

background there is for advising on the legality of any particular political activity by a corporation.

Besides the *Brewers' Association* case, probably the only other reported federal case involving corporate political activity is *Egan v. United States*.[51] Provisions of the Public Utility Holding Company Act prohibit political contributions (the word expenditure is not included) by registered public utility holding companies.[52] In this case, Egan, president of such a company, was convicted of conspiracy to violate that Act and the corporation was convicted of conspiracy and of actual violation. For use in making political contributions, a secret (*i.e.*, not recorded on the books) cash fund of money belonging to the corporation was created by means of cash rebates from attorneys employed by the corporation, from contractors, suppliers, insurance brokers and cash refunds from padded expense accounts of officers of the corporation. Also, Egan was given a $1,500 additional salary from a subsidiary corporation, which he used for making political contributions. These were rather obvious violations, once discovered, and the appeal dealt principally with the elements of the crime of conspiracy. However, there was no argument that the salary to Egan was an "expenditure" and not a "contribution," by the corporation. Such an argument probably would have failed, since the funds actually were finally contributed to candidates or parties and Egan was merely a conduit for the corporation.

In all of the decisions involving Section 313, the courts have been concerned with constitutional problems in its enforcement. Before a summary or conclusion is attempted, it is thus appropriate to at least briefly consider the constitutional issues.

CONSTITUTIONAL ISSUES

The power of Congress to regulate political activities in connection with federal elections is generally recognized under the Constitution.[53] In *Newberry v. United States*,[54] the Federal Corrupt Practices Act was held unconstitutional insofar as it attempted to regulate and control primaries for election to the Senate. But that decision was in effect overruled by *United States v. Classic*,[55] which held that Congress has power to regulate a primary, as well as a general election, where the

51. 137 F.2d 369 (8th Cir. 1943), *cert. denied*, 320 U.S. 788, 64 S.Ct. 199 (1943).
52. Public Util. Holding Co. Act of 1935 § 33, 49 Stat. 838, 15 U.S.C. 79*l* (h) (1935).
53. U.S. Constitution, art. 1, § 4; art. 11, § 1.
54. 256 U.S. 232, 41 S.Ct. 469 (1921).
55. 313 U.S. 299, 61 S.Ct. 1031 (1941).

primary is by law made an integral part of the election machinery for federal office.

Section 313 of the Federal Corrupt Practices Act has been constitutionally attacked principally on two grounds. First, that it abridges the first amendment rights of freedom of speech, press and assembly. Second, that it offends the fifth and sixth amendments in that it is too vague and indefinite to furnish a reasonably ascertainable standard of guilt.

As to the latter contention, it appears that if the issue should reach the Supreme Court, that Court will follow the reasoning in the learned opinion of the District Court in *Painters Local Union.* The District Court there held that by the use of the words "contributions or expenditures in connection with" elections, Congress meant to prohibit expenditures for the purpose of influencing the result of elections, and that as so construed the section is not fatally vague.[56] It will be noted that the Supreme Court, in the *UAW* case, in effect adopted this construction.[57]

The first mentioned contention, regarding violation of first amendment rights, is the one which merits the most serious consideration. Such an argument can also be made against the validity of state corrupt practices acts (discussed below), for the liberty of speech and of the press which the first amendment guarantees against abridgement by the Federal government is within the liberty safeguarded against state action by the Due Process Clause of the fourteenth amendment.[58]

The first amendment argument has been most ardently presented in the labor union cases. As has been noted, the dissenting opinion in both cases before the Supreme Court felt that Section 313 was unconstitutional as abridging first amendment freedoms. The majority in the *CIO* case expressed doubt as to its constitutionality if it were construed as applicable in that case. The District Court in the *CIO* case had held the section unconstitutional, although the District Court in the *Painters Local Union* case held it constitutional. In the *Brewers' Ass'n* case, the District Court merely stated, with little discussion, that the former version of the section did not prevent nor prohibit freedom of speech or of the press. Note that only this latter case involves a corporation, as opposed to a union, asserting the right to free speech.

It seems highly probable that Section 313 will be held unconstitutional as an unjustified interference with the right to freedom of speech if interpreted to prohibit the stating of political views by a labor organization. So far, such as interpretation has been avoided. It

56. 79 F. Supp. 516, 526 (D. Conn. 1948).
57. See quotes from the Court's opinion, *supra*, notes 43 and 45.
58. Gitlow v. New York, 268 U.S. 652, 45 S.Ct. 625 (1925).

should be noted, however, that a labor organization may receive greater or different constitutional protections than a corporation. A preliminary question then is whether a corporation is a person (albeit an artificial person) entitled to freedom of speech. The dissenting opinion in the *CIO* case had this to say:

> The argument for applying and sustaining the section in its presently attempted application has gone largely upon the assumption that it would be valid as applied to similar corporate publications, excepting possibly the regular press. The assumption is one not justified by any decision of this Court, which has the final voice in such matters. There are of course important legal and economic differences remaining between corporations and unincorporated associations, including labor unions, which justify large distinctions between them in legal treatment. But to whatever extent this may be true, it does not follow that the broadside and blanketing prohibitions here attempted in restriction of freedom of expression and assembly would be valid in their corporate applications. Corporations have been held within the First Amendment's protection against restrictions upon the circulation of their media of expression. *Grosjean v. American Press Co.*, 297 U.S. 233. . . . It cannot therefore be taken, merely upon legislative assumption, . . . that restrictions upon freedoms of expression by corporations are valid . . . . [T]hose matters cannot be settled finally until this Court has spoken.[59]

The *Grosjean* case,[60] cited by the dissent, held that a newspaper corporation's first amendment rights were protected against state action, since the corporation is a "person" within the equal protection and due process clauses of the fourteenth amendment. Many cases have been decided since then which have sustained claims by corporations that their freedom of speech had been or would be abridged, and most of the cases seem to take for granted that a corporation may assert such a claim.[61]

While indictments for corporate contributions directly to a political candidate or party may not be subject to the first amendment defense, the freedom of speech afforded to a corporation can be expected to prevail in a clash with Section 313 if the latter is interpreted to prohibit a corporation from using its own funds to make known its own views, formulated by proper corporate action, about political candidates or issues.

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59. United States v. CIO, 335 U.S. 106, 154-55, 68 S. Ct. 1349, 1373 (1948).

60. 297 U.S. 233, 79 S.Ct. 1362 (1936).

61. The movie censorship cases are typical. See, *e.g.* Kingsley Int'l Pictures Corp. v. Board of Regents, 360 U.S. 684, 79 S.Ct. 1362 (1959); Superior Films, Inc. v. Department of Education, 346 U.S. 587, 74 S.Ct. 286 (1954). See also Comment, *Freedom of Speech and the Corporation*, 5 VILL. L. REV. 377 (1959). *Cf.* United States v. Harriss, 347 U.S. 612, 74 S.Ct. 736 (1954), discussed *infra*, note 66.

UNION ACTIVITY

Since labor unions have been involved in the most recent cases concerning Section 313, and because of their known political activity despite the apparent prohibitions of the statute, it will be informative to discuss briefly the activities of labor organizations since those court decisions. The AFL-CIO has organized political committees, currently called COPE (Committee on Political Education), which operate both on national and state levels. COPE relies on voluntary contributions from the membership of member unions, and the national and multi-state committees report contributions and expenditures for federal campaigns to the Clerk of the House of Representatives, as required by law of all political committees. COPE is made up of local and state committees of AFL-CIO members, and a national committee made up of the AFL-CIO Executive Council and officers of member international unions. COPE is voluntarily financed by dollar drives, as were its predecessors, the CIO's PAC (Political Action Committee) and the AFL's LLPE (Labor's League for Political Education). These committees, especially the national one and other large ones, publish brief newspapers (usually weekly) for their affiliates and anyone else who subscribes. They analyze bills before Congress, keep union members informed of the voting records of Congressmen, and prepare and broadcast radio and television programs giving union views of the news. Between elections "education programs" are conducted to inform union members on legislative issues, actions of Congress and voting records of Congressmen on certain legislation. It is felt by union officials and their lawyers that since in these educational programs none of the union's general funds are used in behalf of any particular candidate, the expenses of the program may be borne by general union funds. They also feel that general union funds can be used on behalf of state candidates (in states where labor organizations are not prohibited by statute from making political contributions) and for state registration drives.[62] The labor union cases previously discussed also illustrate various types of union activity.

LOBBYING

Lobbying, the practice of contacting federal or state legislators, or other persons influential in the legislative process, for the purpose of influencing action or inaction on legislation or government policies,

62. See Bicks and Friedman, *Regulation of Federal Election Finances*, 28 N.Y.U.L. Rev. 975 (1953); Brief for United States in the *UAW* case. See also The Philadelphia Evening Bulletin, January 23, 1964, p. 10, col. 1.

is a form of political activity even though the electorate is not directly involved. Many persons, including corporations or associations of which they are members, maintain paid lobbyists to present their views to members of the executive and legislative branches of government.

Certain aspects of lobbying are regulated by the Federal Regulation of Lobbying Act,[63] passed in 1946. The Act requires designated reports to Congress (disclosing the source and amounts of contributions received and the recipient, purpose and amounts of expenditures made) from every lobbyist.[64] It also requires that any person who engages himself for any consideration for the purpose of attempting to influence passage or defeat of any legislation must register with the Secretary of the Senate and the Clerk of the House, and must file similar reports disclosing amounts received and expended, and the recipient and purpose of the amounts expended.[65]

In *United States v. Harriss*,[66] a prosecution against a corporation and two individuals charged with failing to make the reports required by the Act, the Government contended that the Act requires a person to report his expenditures to influence legislation even though he does not collect or receive contributions for that purpose. The District Court had dismissed the case on grounds that the Act was unconstitutional. The Supreme Court, in a five to three decision, reversed and remanded, holding that the Act, as construed by the Court, was not too vague and indefinite and did not violate the first amendment.

The Court held that the Act referred only to lobbying in its commonly accepted sense, that is, to direct communication with members of Congress on pending or proposed federal legislation. The Court construed the disclosure provisions (Sections 264 and 267) as applicable only to "persons" within Section 266[67] and stated that there are three prerequisites to application of Section 266:

(1) the "person" must have solicited, collected or received contributions;

(2) one of the main purposes of such "person" *or* of such contributions must have been to influence the passage or defeat of legislation by Congress; and

(3) the intended method of accomplishing this purpose must have been through direct communication with members of Congress.[68]

Therefore, a corporation may incur expenditures for lobbying purposes and, so long as it does not meet all of those prerequisites, it need

63. 60 Stat. 839–42 (1946), 2 U.S.C. 261–70 (1958).
64. 60 Stat. 840 (1946), 2 U.S.C. 264 (1958).
65. 60 Stat. 841 (1946), 2 U.S.C. 267 (1958).
66. 347 U.S. 612, 74 S.Ct. 808 (1954).
67. 60 Stat. 841 (1946), 2 U.S.C. 266 (1958).
68. 347 U.S. 612, 623, 74 S.Ct. 808, 815 (1954).

not be concerned with the requirements of the Lobbying Act, although its paid lobbyist will probably have to comply with its provisions.

The dissenting opinion in *Harriss* felt that the Act was unconstitutionally vague and that it could not be saved by construction. It will be noted that the majority, in holding that the Act was not a prohibition but merely a reasonable requirement of disclosure of lobbying activities and thus not violative of the freedoms of speech, press and the right to petition the Government, made no distinction between the corporate and individual defendants in this regard.

Thus, the Lobbying Act permits a corporation to lobby for or against legislation affecting its interests. True, in some instances a corporation will have to make certain reports to Congress and possibly register as a lobbyist. However, in the sense that ordinary lobbying is a political activity, it is not prohibited by the Federal Corrupt Practices Act. This conclusion can usually be explained by stating that the expenses of lobbying are not incurred "in connection with any" federal election, but the line becomes very thin when there is direct communication with a member of Congress at a time when he is seeking re-election. Also, in this connection, the existence of the right to lobby and petition for certain types of legislation seems inconsistent with a denial of the right to endorse and support a candidate who favors such legislation. The *CIO* case would seem to permit a corporation to exercise the latter right, on constitutional grounds, as long as the corporation did not evidence such support by direct contributions but by statements in the corporation's regular periodicals.

STATE LAW QUESTIONS

Generally speaking, the question of legality of contributions as a matter of corporation law will be determined from a consideration of the corporation's powers and purposes. Most general or business corporation statutes do not contain express provisions concerning political contributions, and therefore it is a question of implied power of the corporation and the implied authority of its board of directors. There are very few cases or text writings on the question. Two corporation law authorities feel that political contributions are beyond the power of the usual business corporation, at least in the absence of a statutory or charter provision.[69] These two authorities cite a total of only two cases: *People v. Moss*[70] and *McConnell v. Combination Min. & Mill Co.*[71] No other cases on point have been found.

69. BALLANTINE, CORPORATIONS § 85 (rev. ed. 1946); 6 FLETCHER, CYCLOPEDIA OF LAW OF CORPORATIONS § 2939 (rev. ed. 1950).
70. 187 N.Y. 410, 80 N.E. 383 (1907).
71. 30 Mt. 239, 76 Pac. 194 (1904).

The *Moss* case involved a habeas corpus proceeding by an officer of the New York Life Insurance Company who was being detained on a charge of larceny for using corporate funds for a political contribution to the Republican National Committee in 1904 (prior to statutes banning corporate contributions). It was held that no prima facie case of larceny had been established, the court noting that although the purpose for which the money of the company was used was foreign to the chartered purposes of the corporation, that alone did not make it criminal.

The *McConnell* case was a stockholder's action against the directors for an accounting for improper expenditures, one of which was for political purposes. The directors were held liable to the corporation, as contributions for political purposes were considered to be outside of the purposes for which the corporation was created, such a purpose not being enumerated in the statute.

It appears that these two cases rest basically on the proposition that directors and officers cannot give away corporate property without the consent of the shareholders. Even the power of corporations to make contributions for charitable, scientific or educational purposes was a serious issue prior to the passage of a specific statutory power to make such contributions by most states.[72] It is noteworthy that in the *CIO* case the Supreme Court brushed aside the argument that the type of expenditure there involved would be without the knowledge of union members or corporate shareholders.[73]

The power of a corporation to make political contributions, if not stated in its charter, can, it is submitted, be found in statutory grants of "incidental powers." For example, the Pennsylvania Business Corporation Law provides that a corporation shall have power "to have and exercise all of the powers and means appropriate to effect the purpose or purposes" for which it is organized.[74]

Corporations certainly have a legitimate interest in legislation and policies, such as taxes, foreign or domestic trade regulation and labor laws, which affect or regulate corporate activity designed to effectuate the corporate purpose. There is implied recognition of this interest in federal and state regulation of lobbying by corporations as well as by individuals. If there is an interest in certain types of legislation or government policies, it follows that there exists an interest

72. See, *e.g.* 8 DEL. CODE ANN. § 122 (9) (1953); PA. STAT. ANN. tit. 15 § 2852-302 (16) (1958).

73. 335 U.S. 106, 123, 68 S.Ct. 1349, 1357-58 (1948), quoted in text *supra*, at note 33.

74. PA. STAT. ANN. tit. 15 § 2852-302 (14) (1958).

in the public officer (or candidate) who supports or opposes that legislation or policy. Having in mind, also, the extensive political activity of labor unions, which almost forces corporate management to consider countervailing activity, it seems reasonable to conclude that an expenditure for a *lawful* political purpose is within the power of a corporation and the authority of the Board of Directors, especially if some kind of business benefit to the corporation can be expected. A brewery corporation's benefit in opposing local dry laws is an example.[75]

The question of general corporation law is secondary in the many states[76] (approximately 33) which have express statutory provisions purporting to prohibit political contributions by corporations, and because of the federal ban. In addition, numerous states have statutes relative to lobbying activity by corporations.[77]

If a state has no corrupt practices act applicable to corporations, the legality of corporate political activity in those states, in the absence of application of the federal statute, would be controlled by general corporation law, presumably the law of the place of incorporation.

The state corrupt practices acts vary somewhat in phraseology, but their obvious intent is to keep corporations out of politics, although they generally do not prohibit "expenditures." Frequently they do not apply to labor organizations. Direct corporate contributions to political parties or candidates are generally forbidden in express language, and it is not unusual to find a provision prohibiting corporations from publishing or distributing any literature or statements about candidates unless such literature or statement contains the name of the corporation and, perhaps, the names of its officers. Beyond that, the statutes are much less than clear, and there is an extreme lack of court interpretation of these statutes.

Many of the considerations mentioned in connection with the Federal Corrupt Practices Act also apply here: whether expenditures are prohibited and if so, to what extent; whether the statutes apply to support of proposals as well as to support of candidates; and whether the state statute applies when an alleged contribution is made in connection with an election at which both federal and state officers are

75. See State v. Fairbanks, 187 Ind. 648, 115 N.E. 769 (1917) (brewery corporation contribution to influence the success of a township anti-liquor proposition); State v. Terre Haute Brewing Co., 186 Ind. 248, 115 N.E. 773 (1917) (implies that a dry law was being voted on). These cases deal with alleged violations of and the scope of a state corrupt practices act, and do not consider the question of corporate power to make the contribution.

76. See C.C.H., CORP. LAW GUIDE, §§ 5775, 6510, for citations to the various statutes.

77. See, *e.g.*, MD. CODE ANN. art. 40, §§ 5–14 (1951); VA. CODE ANN. §§ 30–20 to 30-28 (1950); W. VA. CODE ANN. § 61-10-6110 (1955).

being elected. The constitutional issues of vagueness and freedom of speech are also present.[78]

The state lobbying acts generally follow the scheme of the federal act, although in some states both the person who employs the lobbyist and the lobbyist must register.

CONCLUSIONS

The effects of the federal prohibition against "contributions" and "expenditures" are by no means settled, either as to a corporation or a labor organization. The statute is deceptively simple, yet it has, in effect, been rewritten by the Supreme Court in the *CIO* case which held that a certain activity, apparently clearly within the express terms and Congressional intent of the statute, was not prohibited. In all of the years that prohibition against corporate contributions has been on the books only one prosecution has resulted and its outcome has not been reported.[79] The prohibition against union activity has been on the books for over 17 years, yet there have been only five prosecutions against labor unions for its violation,[80] and no convictions. Thus, on the basis of the present meager authority, it is difficult to generalize or to make particular conclusions, especially as to corporations.

It has been claimed that the corporate ban has hardly dented corporate influence on federal elections; that the effect of the prohibition has been to obscure the continuing influence of corporate wealth in elections since large gifts are made by corporate officials and their families which exert the same influence as direct contributions by the corporation; and that Section 313 does not restrict corporate contributions to trade associations or national business groups whose activities benefit candidates.[81] The latter groups receive corporate funds either through direct contributions or through the purchase by the corporations of large quantities of literature.[82]

The concern for dissenters has ignored many devices that give corporate interests a powerful political voice.[83] Thus corporations maintain paid lobbyists. Another manner in which corporate funds

78. See People v. Gansley, 191 Mich. 357, 158 N.W. 195 (1916), where the state corrupt practices act was held constitutional as not depriving a corporation of freedom of speech and press, on the ground that these freedoms were not guaranteed to an artificial person.

79. United States v. U.S. Brewers' Ass'n, 239 Fed. 163 (W.D. Pa. 1916).

80. If the *Warehouse Workers Local* case, *supra* note 50, is included, there have been six prosecutions.

81. See Bicks and Friedman, *op. cit. supra,* note 62, 28 N.Y.U.L. Rev. 975 (1953); The Philadelphia Evening Bulletin, January 23, 1964, p. 10, col. 1.

82. Compare remarks of Senator Taft in Senate debate, discussed above, text at note 16; and see 18 U.S.C. § 608(b), *infra* note 84.

83. Bicks and Friedman, *op. cit. supra,* note 62, 28 N.Y.U.L. Rev. 975 (1953).

may be used to further political goals which some shareholders may oppose is by the "public interest" or "good-will" advertisement. These advertisements are said to enable business interests to give support to a candidate or party by paraphrasing speeches or slogans or by presenting views as to legislative policies (such as the corporate advertisements for or against the federal excise tax, right to work laws or privately owned utilities). If such business expenses are allowed as tax deductions, part of the expense is passed along to the Government. Another method of making a corporate contribution has been to purchase "good-will" advertisements in party journals which may be published to mark some occasion such as a state or county political committee dinner.[84]

On the basis of this study of the available authority, some general conclusions or suggestions are as follows. The emphasis is on the federal statutes, but, of course, the possibility of the application of state law to a specific situation must be considered.

It is clear that a corporation may not contribute corporate funds to a candidate for federal office or to his political committee or party. Loans of corporate assets without reasonable compensation, such as making available products manufactured or facilities owned by a corporation, are also prohibited.

In view of the *UAW* case, a corporation cannot expend corporate funds to pay for commercial television or radio political broadcasts which reach the public at large and constitute "active electioneering" with an "intent to affect the results" of a federal election. The same is probably also true with respect to political advertisements in newspapers of general circulation. However, such activity may ultimately be held within the protection of the first amendment.

Expenditures by a corporation for various forms of political education are permissible, although the outer limits of "political education" are as yet undefined. On the basis of the *CIO* case, it seems clear that a corporation may express its political views on issues or candidates in a regularly published house organ going to its shareholders or customers. A more liberal and, it is felt, more acceptable view of the *CIO* case would be that regular corporate periodicals or newspapers financed from corporate funds can legally contain such political material and can be distributed to those accustomed to receiving copies, whether

84. See The Philadelphia Evening Bulletin, January 23, 1964, p. 10, col. 1. However, the latter method appears to be at least a technical violation of 18 U.S.C. § 608(b) which subjects to fine or imprisonment or both:

> Whoever [which includes a corporation] purchases or buys any goods, commodities, advertising, or other articles . . . the proceeds of which . . . directly or indirectly inures to the benefit of or for any candidate for . . . [a federal office] or any political committee or other political organization engaged in furthering . . . the nomination or election of any candidate . . . or the success of any national political party. . . .

they be shareholders, employees, customers or even subscribers. Such publication and distribution would not involve an attempt to reach the "public at large." Thus, shareholders, employees and customers could be advised about economic and political questions of current importance and about candidates. In the case of employees, it would appear desirable to have the material mailed to their homes so that the entire family might read it.

Apparently, an association of corporations could also publish such material for distribution to its corporate members, which in turn could distribute to its shareholders, employees and customers. This would be so even though the member corporations have contributed corporate funds to the association, because the publication remains "in the family" as in the *CIO* case.

Corporations may make expenditures (which would include giving time off with pay to employees) for the purpose of urging shareholders, employees and customers, and possibly the public at large, to register, to vote, and to take a more active part in politics. Here, there is no intent to influence the result of an election, no favoring of one candidate over another. Giving time off with pay to an employee who is a candidate or working for a candidate or party is naturally in a different category, since the compensation subsidizes the favored political party.

A corporation may use its facilities for soliciting voluntary contributions from shareholders or employees to a fund to be donated or used for political purposes, especially (but not only) when the contributor is able to designate the political organization which will receive his contribution. The analogy here is to the *Anchorage Central Labor Union* case, and the practice of labor organizations in using a local union's facilities to solicit contributions via dollar drives. However, such a practice does not appear to be as practical where a corporation is involved as it is with a union local.

Using corporate funds to purchase tickets to fund-raising dinners for the benefit of candidates or their parties would be a violation. The result should be different, however, where the funds raised by the dinners are for non-political purposes, such as for the benefit of some charitable organization, even though sponsored by a political party.

Corporations sometimes purchase advertising space in souvenir programs or other publications published by political parties or candidates. Where the advertisement promotes the corporation and not a candidate — *i.e.*, the corporation or its products are actually advertised in the publication, at a reasonable cost — there should be no violation because the corporation has donated nothing, having received fair value in advertising for its expenditure.

Contributions made in a non-election year, or post-election contributions to help eliminate campaign fund deficits, arguably are not made "in connection with" any election, convention or caucus within the meaning of the statute, nor with an "intent to affect the results of the election" as stated in the *UAW* case. However, since such contributions are, indirectly at least, used in such manner by the recipient, they technically are prohibited. A danger in making contributions to reduce deficits is that the recipient may begin to rely on obtaining them from the corporation, thus raising the implication that the corporation has made a prohibited "promise . . . to make a contribution" or expenditure.

Section 313 of the Federal Corrupt Practices Act does not expressly prohibit corporate contributions or expenditures in connection with state and local elections, but this may be implied when federal offices are filled at the same election. State law is also important here, of course. Labor unions have reportedly taken the position that contributions to state elections are not prohibited, even where federal officers are elected at the same time.[85] Such a course of action for a corporation, as well as for a labor union, does not appear to be wise, unless reliance is placed on the lax enforcement of the section.

The question of whether Section 313 is meant to prohibit expenditures for the purpose of persuading voters on propositions or legislative issues (such as elections involving right to work laws) as well as on candidates for office has not been decided by the federal courts. For state authority that it does not, see *De Mille v. American Federation of Radio Artists.*[86] Such a conclusion appears correct unless the vote on the proposition is cast in the same election at which federal officers are to be elected.

When a proposition or legislative issue is not to be decided by the electorate, expenditures designed to bring the corporation's views before the public are probably permissible. Lobbying, to bring the corporation's views to the legislators, is also permissible when the federal and applicable state statutes are observed.

It is probable that Section 313 of the Federal Corrupt Practices Act will be held unconstitutional if interpreted to prohibit corporate expenditure for the purpose of bringing its views on candidates or political issues before the general public.

As to state law, corporate contributions or expenditures for lawful political purposes should be considered as within a corporation's power where some kind of business benefit to the corporation can be found.

85. See Garrett, *Corporate Contributions for Political Purposes,* 14 BUS. LAW. 365, 374 (1959).
86. 31 Cal. App. 2d 169, 187 P.2d 769 (1947).

There is a striking lack of authority on this point. The state corrupt practices acts apply to domestic or foreign corporations, and probably apply to any election, whether for federal or state officers, held within the state. The same first amendment questions apply to these states acts as apply to the federal act.

In the last analysis, it must be remembered that the question of the extent to which a corporation can participate in political activity has three aspects, since consideration should be given to federal statutes, state corporation law and state statutes. Meager authority on all three of these aspects makes prediction difficult and any degree of certainty almost impossible. It is hoped that the material and suggestions presented here will be helpful in formulating advice to the corporate client with respect to any proposed political activity.

There is undoubtedly a peril to the public interest when federal and state candidates depend on large contributors, but large amounts of money are consumed by modern campaigns and battles over political issues. The desire of corporations and unions to contribute a part of such funds, directly or indirectly, is sure to continue as long as government and politics so directly affect their interests. The various corrupt practices acts are not an adequate solution to the problem.