July 31, 1979

LEWIS B. THURSTON, III
Executive Director
Election Law Enforcement Commission
28 West State Street—11th Floor
Trenton, New Jersey 08608

FORMAL OPINION NO. 14—1979

Dear Mr. Thurston:

The Election Law Enforcement Commission has asked whether N.J.S.A. 19:34-45 prohibits a bank from establishing a political action committee for its employees. This inquiry was prompted by information received by the Commission from a national bank indicating that the bank intends to use its own funds for the establishment and administration of a political committee, the officers and members of which will be the bank's employees and the purpose of which is to solicit voluntary contributions from the employees. The contributions are to be maintained in a separate fund and will be used by the committee to influence the nomination or election of certain candidates for federal, State and local public office. The members of the committee will consist of its "organizers and such other individuals as may thereafter be admitted to membership." For the following reasons, you are advised that while N.J.S.A. 19:34-45 does not absolutely prohibit the establishment of such a committee, it does preclude the use of the bank's own monies to establish and administer a political action committee, and/or to solicit contributions from its employees.

Originally enacted in 1911 as part of a comprehensive election corruption practices act, N.J.S.A. 19:34-45 provides in pertinent part:

> No corporation carrying on the business of a bank . . . shall pay or contribute money or anything of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party.

The statute plainly prohibits direct contributions of money or other thing of value by a bank for political purposes.

There is no legislative history of this statute which would shed light upon your inquiry. Its federal counterpart, 2 U.S.C. §441b (formerly 18 U.S.C. §610), orginally enacted in 1907, however, has an abundance of congressional history which has been examined by the Supreme Court of the United States. The federal law provides in pertinent part:

> It is unlawful for any national bank, or any corporation organized by any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever to make a money contribution in connection with the election at which Presidential and Vice-Presiden-

> tial elections or a Senator or Representative in . . . Congress is 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. . . . [2 U.S.C. §441b.][1]

In 1971, the statute was amended to define "contribution and expenditure." In doing so, Congress specifically excluded from such definition the "establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes . . ." but only if the contributions are given voluntarily and with knowledge of their intended political use.

The scope of the federal law as proscribing the establishment of political committees or funds both prior and subsequent to the 1971 amendment was examined by the Supreme Court of the United States in *Pipefitters Local Union No. 562 v. United States,* 407 U.S. 385, 92 S.Ct. 2247, 33 L.Ed. 2d 11 (1972). In that case, a union and three of its officers were convicted of conspiracy to violate 18 U.S.C. §610, the predecessor of 2 U.S.C. §441b, by maintaining a separate political fund to which union members and union employees contributed. Upholding the convictions, the Court of Appeals characterized the political fund as a "subterfuge" through which the unions made political contributions of union monies. The 1971 amendments, which expressly legalized the union activity involved, became effective after oral argument in the Supreme Court. In reversing the Court of Appeals and remanding for a new trial on the issue of voluntariness of contributions to the fund, the Court observed that the congressional purpose in enacting 18 U.S.C. §610 was not only to destroy the influence over elections exercised by holders of large aggregates of capital through financial contributions but also to prevent corporate or union officials from using corporate or union funds for contributions to political parties without the consent of the shareholders or union members. After an examination of these purposes and the extensive congressional history of the statute, it concluded that the law as originally enacted was never intended to prohibit a corporation from making, through the medium of a political fund organized by it, political contributions or expenditures so long as the monies expended were volunteered by those asked to contribute. 92 S.Ct. at 2257. However, the Court further held that:

> [N]owhere . . . has Congress required that the political organization be formally or functionally independent of union [or corporate] control or that union [or corporate] officials be barred from soliciting contributions or even precluded from determining how the monies raised will be spent. . . . When Congress

1. As applied to national banks, 2 U.S.C. §441b extends its proscriptions to political contributions affecting local and state elections as well as federal. *See United States v. Clifford,* 409 F.Supp. 1070, 1073 (E.D. N.Y. 1976). However, 2 U.S.C. §453 provides that the federal law and regulations thereunder ". . . supersede and preempt any provisions of State law with respect to election to Federal office." Thus, state laws, such as N.J.S.A. 19:34-45, which proscribe contributions to state elections are not preempted. *Cf.* 11 C.F.R. §114.2(a)(1).

> prohibited labor [or corporate] organizations from making contributions or expenditures in connection with federal elections, it was, of course, concerned not only to protect minority interests within the union [or corporate] but to eliminate the effect of aggregated wealth on federal elections. But the aggregated wealth it plainly had in mind was the general union [or corporate] treasury—not the funds donated by union [or corporate] members of their own free and knowing choice. . . . [92 S.Ct. at 2264-2265.]

Thus, the political fund need not be formally or functionally independent of union or corporate control, but the monies comprising the fund must be segregated and the contributions from members and employees must be voluntary and with the knowledge of their intended political use. 92 S.Ct. at 2264. The 1971 amendment to the Corrupt Practices Act specifically authorizing the establishment of a separate political fund was held to merely codify what was existing law and congressional intent. 92 S.Ct. at 2262.

Pertinent to your inquiry, the Court did, however, observe that the 1971 amendment appeared to make one substantive change in the prior law by authorizing the use of union or corporate monies for the establishment, administration, and solicitation of contributions for a political fund. In light of the congressional emphasis upon protecting minority union or shareholder interests and maintaining a strict segregation of monies found to be a significant motivating factor for the enactment of the original statute, "the evidence is strong . . .," observed the Court, that prior to 1971 ". . . Congress believed the costs of organization of new union political funds had to be financed [exclusively from voluntary contributions] . . . ." 92 S.Ct. at 2271.

It has been suggested that the congressional concern for protecting minority stockholders and union members from nonconsential expenditure of corporate or union funds for political purposes was at best a secondary concern. *Cort v. Ash,* 422 U.S. 82, 95 S.Ct. 2080, 2089, 45 L.Ed. 2d 26 (1975). It has also been suggested that the nature of the relationship between unions and their members may be different from that between corporations and stockholders. *Id.* However, the congressional history of the 1907 act, which did not extend to labor unions until 1943, analyzed by the Supreme Court in *Pipefitters,* does appear to support the conclusion that the 1907 act was not intended to proscribe the establishment of a voluntary political committee or fund, so long as the fund was created and supported by volunteered, noncorporate monies.

This balanced approach attributed by the Court in *Pipefitters* to Congress in fashioning the 1907 Corrupt Practices Act recognizes a sensitivity towards a need for controlling the potential corruptive use of corporate or union funds by corporate or union officials without consent of shareholders, union members or employees as well as the constitutionally required deference to the First Amendment rights of the individuals and corporate and union organizations involved. It is this balanced approach which has guided the Supreme Court of the United States in construing the scope of the 1907 act not only in *Pipefitters* but in other cases as well.

Thus, in *United States v. C.I.O.,* 335 U.S. 106, 68 S.Ct. 1349, 92 Law Ed. 1849 (1948), the Court held that the Corrupt Practices Act did not prohibit the publication of a union newspaper at the union's expense which contained a statement urging the election of a particular candidate and which was distributed to union members. On the other hand, in *United States v. International Union United Auto, etc., Workers,* 352 U.S. 567, 77 S.Ct. 529, 1 L.Ed. 2d 563 (1957), the Court held that the use of union funds to sponsor a commercial television broadcast designed to reach the general public to influence the electoral process constitutes a violation of the federal Corrupt Practices Act.

Enacting N.J.S.A. 19:34-15 three years after the 1907 federal Corrupt Practices Act, it is reasonable to assume that the New Jersey Legislature operated under the same objectives as did Congress.[2] We therefore conclude that N.J.S.A. 19:34-45 was not intended to prohibit the establishment of a separate political fund contributed to voluntarily by members of a political action committee with knowledge of the intended political use of the fund. It is further concluded, however, that a bank's corporate funds may not be used to establish, administer or solicit contributions for the political fund.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ERMINIE L. CONLEY
Assistant Attorney General

2. It is significant that following the lead of Congress, several states have recently amended their corrupt practices laws to specifically authorize the use of corporate funds to establish and maintain a political fund. *See* Pa. Stat. Ann. Tit. 25, §3225(c); Tex. Elec. code Ann., Art. 14.06(A)(C). *See also* N.Y. Elec. Law, Art. 14, §14-116(b).

August 2, 1979

ANGELO R. BIANCHI, *Commissioner*
Department of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 15—1979

Dear Commissioner Bianchi:

You have inquired whether, pursuant to the statutory provisions which establish the Office of Administrative Law, hearings held on applications for the issuance of a charter to a capital stock association[1] should be conducted by administrative law judges rather than by Departmental hearing officers. You are advised that such hearings should be conducted by administrative law judges under the provisions of that Act.

1. A capital stock association is any insured State savings and loan association as defined by N.J.S.A. 17:12B-244(a).