

Representing, Educating and Promoting the Restaurant/Hospitality Industry

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November 17, 2003

Mr. John C. Vergelli
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

2003 NOV 18 P 3:33
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Notice of Availability: Petition for Rulemaking on Payroll Deductions by Trade Associations

Dear Mr. Vergelli:

The National Restaurant Association ("NRA") encourages the Federal Election Commission to undertake a formal rulemaking in connection with the Petition for Rulemaking on Payroll Deductions filed by America's Community Bankers ("ACB"). There are several compelling reasons for undertaking such a rulemaking.

First, the Federal Election Campaign Act of 1971, as amended ("FECA") does not prohibit payroll deductions by member corporations of trade associations. FECA contains no restrictions on the means of soliciting contributions from the stockholders and executive or administrative personnel of a member corporation for a trade association's PAC. Rather, the only restriction found in FECA on trade associations is that they must first obtain the separate and specific approval of the member corporation to engage in solicitations on behalf of the trade association's separate segregated fund. 2 U.S.C. § 441b(b)(4)(D). This provision underscores that had Congress wanted to further limit the ability of trade associations to solicit contributions from the restricted class of the member corporation it could easily have written the restriction into the law. However, as the ACB petition indicates, payroll deductions are not mentioned in FECA, or in its legislative history as it pertains to trade associations. In fact, as further highlighted in the ACB Petition, the 1976 draft FEC regulations would have permitted such payroll deductions.

Second, the Explanation and Justification in support of this regulation identifies no policy or legal reason for excluding payroll deductions from the otherwise permissive regulation. Instead, both the regulation and the Explanation are internally inconsistent, on the one hand stating that "[t]here is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use" and on the other hand stating that payroll deductions by member corporations are not permissible, without explanation as to why. 11 C.F.R. § 114.8(e)(3), and Explanation and Justification of Regulations, H.R. Doc. No. 95-44 (1977).

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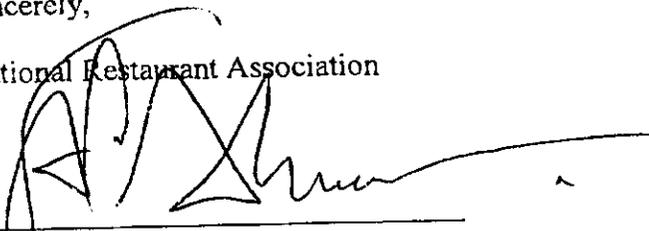
Third, since the FEC passed this regulation, there is a long line of Advisory Opinions starting with FEC Advisory Opinion 1980-59, Fed. Election Camp. Fin. Guide (CCH) ¶ 5515 (1980) permitting a corporate member of a trade association to make direct and in-kind payments to the trade association to help defray the establishment, administrative, and solicitation costs of the trade association PAC, as well as to specifically facilitate the making of contributions to the trade association PAC. Further, these Advisory Opinions appear to go out of their way to distinguish between the prohibition on payroll deductions by member corporations and any other type of facilitation by the member leading one to infer that but for this unexplained restriction on payroll deductions by member corporations, the Commission would now permit such a means of facilitating contributions to the trade association PAC.

Finally, in considering whether to undertake a formal rulemaking, NRA believes the FEC must take into consideration its responsibilities pursuant to the Administrative Procedures Act to provide the requisite justification for the restriction. At present, there is no stated legal or policy reason for the restriction and it is unlikely to withstand scrutiny.

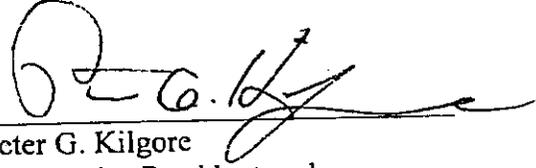
Thus, NRA fully supports ACB's Petition for Rulemaking and herein requests the FEC to undertake a formal rulemaking on this matter.

Sincerely,

National Restaurant Association

by 

Steven C. Anderson
President and Chief Executive Officer

by 

Peter G. Kilgore
Senior Vice President and
General Counsel