



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 1, 1977

RE:AOR 1976-105

Kenneth Bialkin, Esquire
Willkie, Farr & Gallagher
1 Chase Manhattan Plaza
New York, New York 10005

Dear Mr. Bialkin:

This is in response to your letter of November 23, 1976, requesting an opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("The Act"), to a political committee established in accordance with Articles of Organization which you enclosed with your letter.

You state that the American Institute of Certified Public Accountants ("AICPA") is a not-for-profit membership corporation with membership limited to individuals.¹ AICPA desires to establish a separate segregated fund to collect voluntary contributions and make contributions (transfers) to candidates or other political committees. "The Committee" will:

not be affiliated . . . with any
political party, candidate committee
or other organization but shall
be . . . operated on an independent
basis to influence . . . the nomination or election
of . . . [candidates] to elective office . . .²

¹ The fact that membership is limited to individuals was indicated to an employee on the Commission's legal staff in a telephone conversation with Mr. John Fitzsimmons of your firm.

² Article VI of the Committee's Articles of Organization. Since this implies support of both Federal and non-Federal candidates, the Committee should note §102.6 of the Commission's proposed regulations which sets forth two alternative methods for funding Federal and non-Federal political activity.

All contributions to the Committee will be "strictly voluntary" and such contributions will be accepted only from "directors and officers of AICPA, members of the families of directors and officers of the AICPA, and members of the AICPA." You, of course, recognize that the Committee is subject to all the disclosure provisions, contribution limits, and other requirements of the Act contribution limits, and other requirements of the Act and that AICPA itself is subject to all applicable provisions of the Act, including 2 U.S.C. §441b.

The advisory opinion procedure is not appropriate for giving general approval to the effect that the proposed organization and operation of the Committee "would comply with the provisions of the Act." The Commission's review of the Committee's Articles of Organization indicates, however, that specific questions are presented as to persons who may be solicited for contributions to the Committee and the effect of giving certain persons "membership" and "participation" privileges in the Committee.

With regard to the class of persons who may be solicited for voluntary contributions to the Committee, Article VII of the Articles of Organization reads:

[T]he Committee . . . is empowered to solicit
voluntary contributions only from members of AICPA;
and members of the families of full-time salaried officers
of the AICPA . . .³

Under 2 U.S.C. §441b(b)(4)(C) and §114.7(a) of the proposed regulations (copy enclosed), the Committee or AICPA may solicit contributions from individuals who are members of AICPA. There is no limitation on the method of solicitation, the method of facilitating the making of voluntary contributions, or the number of times AICPA or the Committee may solicit AICPA members.⁴ See §114.7(e) and (f) of the proposed regulations. Of course, contributions may not be made to the Committee by corporations, including the corporate employer of any AICPA member; nor may a corporate employer reimburse or otherwise, directly or indirectly, compensate an AICPA member for any contribution to the Committee. See §114.5(b) of the proposed regulations. Furthermore, the Committee or AICPA may solicit contributions to the Committee from executive or administrative personnel of AICPA and their families. 2 U.S.C. §441b(b)(4)(A)(i) and §114.5(g) of the proposed regulations. The term "executive or administrative personnel" is defined in 2 U.S.C. §441b(b)(7) to mean:

. . . individuals employed by a

³ In a subsequent letter dated December 9, 1976, you indicated that an amendment had been made to Article VII. The amended version is quoted above.

⁴ For your information we enclosed a copy of a recent letter from the Commission's legal staff to the Institute of Electrical and Electronics Engineers. The letter was formally reviewed by the Commission and concerns the conversion of membership dues to political contributions.

corporation who are paid on a salary rather than hourly basis and who have policymaking; managerial, professional, or supervisory responsibilities.

See also §114.1(c) of the proposed regulations. If AICPA's "full-time salaried officers" are executive or administrative employees within the cited definitions, they and their families may be solicited by the Committee (or AICPA) under the Act. Other persons who are not AICPA members (see the definition of members in §114.1(e) of the proposed regulations) may not be solicited generally; however, all AICPA employees (and their families) may be solicited twice yearly by mail addressed to the employee's residence under 2 U.S.C. §441b(b)(4)(B) and §114.6 of the proposed regulations.

Article V of the Committee's Articles of Association relates to "membership" and "participation" in the Committee's activities and provides in pertinent part:

Members of the Committee shall consist of the members of its Board of Directors and the officers of the Committee, provided that no person shall be eligible for membership in the Committee unless such person is a director, officer, employee or member of the AICPA.

Participation in the Committee's activities shall be limited to directors and officers of the AICPA, members of the families of directors and officers of the AICPA and members of the AICPA.

The Committee's granting of membership status does not expand the class of individuals to whom the AICPA may make partisan communications funded from its general treasury or who may be solicited by either AICPA or the Committee. See §114.5(c) of the proposed regulations. Similarly, eligibility to participate in the Committee's activities does not expand the class of persons who may be solicited for contributions to the Committee or who may receive partisan communications (in connection with a Federal election) funded by general treasury monies of AICPA. See §114.7 and §114.3 of the proposed regulations.

In this regard Article VII empowers the Committee "to receive voluntary contributions from persons eligible under Article V to participate in the Committee's activities." Article V limits 'participation' to AICPA directors and officers and the families of both, and to AICPA members. We understand that by this language the Committee intends to refuse voluntary, unsolicited contributions from any persons

other than those who are eligible to "participate" in its activities.⁵ Compare §114.5(j) of the proposed regulations which provide:

A separate segregated fund may accept contributions from persons otherwise permitted by law to make contributions.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission. These proposed regulations were formally adopted by the Commission and serve as interpretative rules of the Commission as to the meaning of the pertinent statutory language. The proposed rules were originally transmitted to the Congress on August 3, 1976, and resubmitted on January 11, 1977. See 2 U.S.C. §438(c). For your information I enclose a copy of a Commission policy statement regarding those rules.

Sincerely yours,

(signed)
Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosures [8/25/76 FR reprint 10/5/76 policy statement, OR #812]

⁵ This intent was confirmed in a telephone conversation with Mr. John Fitzsimmons of your firm who also stated that neither the Committee nor AICPA will solicit the families of AICPA directors or officers, but will accept unsolicited contributions from such persons.