



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 2, 1976

AO 1976-27

Mr. Robert J. Wager  
Treasurer  
Bread Political Action Committee  
Suite 650  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006

Dear Mr. Wager:

This is in response to your request of June 16, 1976 for an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act").

American Bakers Association ("ABA") is a trade association with both corporate and noncorporate members. BreadPAC is the separate segregated fund established by the ABA. Both the ABA and BreadPAC are subject to the provisions of 2 U.S.C. §441b. As stated in your letter, BreadPAC, has regularly held a fundraising cocktail party at each of the Association's annual meetings. Members of the ABA are notified of this fundraiser approximately three weeks prior to the meetings. In addition, the event is listed in the convention schedule and a BreadPAC information desk, run by the Association and BreadPAC personnel, is set up in the registration area.

At the upcoming meeting the ABA plans to hold two luncheons featuring prominent Congressional and/or Presidential candidates as guest speakers. Each of these luncheons for the entire Association will be preceded by a BreadPAC fundraising cocktail party. Admission to the cocktail party will be a contribution to BreadPAC of \$100 per couple. Attending this convention will be representatives of some member companies which have authorized solicitation; some which have declined to authorize solicitation, some which have not responded at all to BreadPAC's request for authorization; and some representing companies which are not members of ABA.

In your letter, you raise the following specific questions:

(1) In this specific situation, may BreadPAC send out prenotification letters to the ABA's entire membership regarding this fundraiser?

(2) If a BreadPAC contribution/pledge form were attached to the prenotification letter to ABA members, would it be considered a solicitation if the letter merely stated the time, place and featured guest?

(3) May the ABA mention the fundraiser in its convention mailings or on its general schedule of meetings?

(4) Could a sign stating "Ask Us for Information about the BreadPAC Fundraiser" be set up in the Association registration area?

(5) We anticipate an overall attendance of 800 individuals at the Association's convention. Must we search through this list of 800 names for company authorization in order to ask if any individual plans to attend the fundraiser.

A trade association which has corporate members is subject to the provisions of 2 U.S.C. §441b(b)(4)(D) which regulate the solicitation of the stockholders and executive or administrative personnel of the corporate members. A trade association which is a membership organization may solicit its other members, such as individuals and partnerships, under the provisions of §441b(b)(4)(C).

The Act does not prescribe the methods of solicitation which may be used by a trade association in soliciting the stockholders and executive or administrative personnel of its corporate members or in soliciting its noncorporate members. Accordingly, the ABA is not prohibited by the Act from using a cocktail party at a convention as a method of raising contributions for BreadPAC from noncorporate members of the ABA or from stockholders or executive or administrative personnel of corporations that are members of the ABA. However, prior to the time that any solicitation with regard to the cocktail party is made of any stockholders and executive or administrative personnel of the member corporations, ABA must obtain specific approval from the member corporations to solicit their stockholders or executive or administrative personnel.

Under the Commission's proposed regulations, ABA may include in its request for approval a description of the method of soliciting contributions, in this case a cocktail party, and also may include a copy of any solicitation materials it intends to use, either for the cocktail party or other fundraising activities. §114.8(d)(3). The ABA must keep a copy of each approval for three years from the date the approval is given. §114.8(d)(2).

The solicitation process includes asking persons to purchase tickets to fundraisers and providing persons with information about a fundraising activity. The Congressional debate on what in fact constitutes a solicitation is somewhat limited. It is clear, however, from a discussion among Senators Allen, Cannon, and Packwood that informing persons of a fundraising activity is considered a solicitation. Portions of that discussion, which concerned what constituted a solicitation under 2 U.S.C. §441b(b)(4)(B), are as follows:

MR. ALLEN: When they announce setting up the fund, obviously, that is a solicitation right there.

\* \* \*

MR. PACKWOOD: \* \* \* The union sends out a mailing, the corporation does, and says, "Please join our political action committee," that would fit as one of the two solicitations they are entitled to make in a year.

MR. CANNON: If it is sent out in writing in accordance with this provision of the Act, that certainly would constitute one of the two solicitations. 122 Cong. Record §4155 (daily ed. March 24, 1976).

Consequently, ABA or BreadPAC will need the approval of the member corporations prior to the time either may ask the stockholders or executive or administrative personnel of the member corporations to purchase tickets or inform such persons of the fundraising activity.

With regard to the specific questions raised, the activities you mention in questions one through four would be considered solicitations. The prenotification letter could, of course, be sent to the ABA's noncorporate members.

If the attendance at the convention consists of both persons whom ABA or BreadPAC may legally solicit and persons whom BreadPAC may not legally solicit, any solicitation scheme used either prior to or at the convention must be so designed that only the persons who may be legally solicited are in fact solicited. Although the Commission recognized that the statutory restrictions on solicitation may limit the use of fundraisers of this type at conventions attended by persons who may not be legally solicited, the Commission is not empowered to waive the statutory requirements.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

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