



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 14, 1978

AO 1976-79

Alan P. Dye, Esquire
Webster & Chamberlain
1747 Pennsylvania Avenue, N. W.
Washington, D.C. 20006

Dear Mr. Dye:

This responds to your amended advisory opinion request of August 31, 1976, requesting an opinion on behalf of the Employee Rights Campaign Committee ("ERCC"), a separate segregated fund, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") to contribution solicitations of persons you refer to as "members" of ERCC's corporate parent, the National Right to Work Committee ("NRWC"). Specifically, your amended request asks whether ERCC can solicit funds from "active and supporting" members of NRWC and have the administrative and solicitation expenses defrayed by NRWC pursuant to 2 U.S.C. §441b(b)(4)(C), which allows a membership corporation, or its separate segregated fund, to solicit contributions to the separate segregated fund from members of the corporation. On or about October 4, 1976, you were informed that the Commission required more information in order to act on the advisory opinion request. The material ERCC deemed relevant to the Commission's consideration of ERCC's request was received by the Commission on October 27, 1976.

After requesting the additional information, but prior to the receipt of your response, the Commission received a complaint alleging that NRWC and ERCC had violated the Act by soliciting contributions to ERCC from the general public. This matter was designated MUR 290(76) and, as you know, is presently the subject of litigation. A response to your advisory opinion request has been delayed as, at first, the Commission did not believe that you had provided all relevant information and because of the prospect that the resolution of the enforcement proceeding, which deals with the same issues raised in your advisory opinion request, would obviate the need for the requested opinion. However, as ERCC has taken the position in the related litigation that it has provided the Commission with all relevant material and that it believes that there is still a need for a response to AOR 1976-79, the Commission hereby responds to ERCC's request for an advisory opinion.

As a corporation, NRWC is subject to 2 U.S.C. §441b which prohibits any direct or indirect corporate "contribution or expenditure" in connection with a Federal election. However, 2 U.S.C. §441b (b)(2)(C) provides that "contribution or expenditure" does not include the use of corporate funds for the establishment, administration, and solicitation of contributions to a separate segregated fund. Persons who may be generally solicited for contributions to the separate segregated fund of a corporation are limited by §441b(b)(4)(A)(i) to stockholders, executive and administrative personnel, and the families of such persons.

Your letter of August 31, 1976, indicates that ERCC believes that it may solicit supporters of NRWC's goals as "members" of NRWC, pursuant to 2 U.S.C. §441b(b)(4)(C).¹ However, that section of the Act only allows a membership corporation, or its separate segregated fund, to solicit the corporation's members. The Commission notes in this regard that NRWC's Articles of Incorporation, Article Seven, explicitly states that the corporation "shall not have members." While this fact was omitted from ERCC's original request and subsequent amendment to the request, the Commission has determined that it is dispositive of the issue raised.

Since NRWC is precluded by its Articles of Incorporation from having members, §441b(b)(4)(C) is not applicable to the present factual situation. Accordingly, neither ERCC nor NRWC may solicit persons other than the executive or administrative personnel, and their families, of NRWC.² Those who you refer to as "members" of NRWC cannot be lawfully solicited unless they also fall within the provisions of 2 U.S.C. §441b(b)(4)(A)(i).³ Of course, any contribution solicitations undertaken by ERCC or NRWC must comply with all other applicable provisions of the Act.

¹ 2 U.S.C. §441b(b)(4)(C) states: "This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock."

² Commission regulations define executive or administrative personnel as "individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities." 11 CFR §114.1(c).

³ The stockholders and their families of a corporation having capital stock may also be solicited under the cited section, but according to its Articles, NRWC is not a stock corporation.

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

Sincerely yours,

(signed)

Thomas E. Harris

Chairman for the

Federal Election Commission