



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 11, 1976

AO 1976-96

James J. Butera, Counsel
Savings Bankers Non-Partisan
Political Action Committee
Suite 200, 1709 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Butera:

This letter responds to yours of October 18, 1976, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") to the solicitation of representatives of corporate members of a trade association at the trade association's annual meeting.

In your letter you describe the Savings Bankers Non-Partisan Political Action Committee ("the PAC") as a registered multicandidate committee, connected to a trade association. The trade association is composed of corporate members, and annually conducts a meeting to which representatives ("executive or administrative personnel" within the meaning of 2 U.S.C. §441b(b)(7)) of its corporate members are invited. The meeting lasts two days, and the chairman of the PAC proposes to speak to attendees, approximately ten minutes, regarding political contributions and the solicitation drive the PAC is currently engaged in. You state the majority of the corporations represented would have given their prior approval to solicitations by the PAC; however, there will be some individuals present who represent member corporations "which will not have consented to a solicitation by the connected PAC. "You ask whether such a presentation may be made incidental to a regularly scheduled meeting, if it reaches individuals whom it is impermissible to solicit; if this would be precluded, you ask "what alternatives, short of asking the representatives from non-consenting members to leave the conference hall" there are for communicating with the majority regarding solicitation activities of the PAC.

As you are aware, the Act precludes solicitation by a trade association, or its separate segregated fund, of the executives of corporations that are members of the trade association unless:

such solicitation . . . has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year. (Emphasis added.)
2 U.S.C. §441b(b)(4)(D).

The Commission recently applied the requirements of §441b(b)(4)(D) to a proposed solicitation of members of a trade association by the association at its annual meeting, and concluded that the Act prohibits any solicitation of representatives of corporate members if there has been no prior approval granted by the corporation. Advisory Opinion 1976-27, copy enclosed for your information. In requiring, in AO 1976-27, that any solicitation plan by the trade association be "so designed that only the persons who may be legally solicited are in fact solicited," the Commission noted:

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.

Thus, it is clear that there must be prior approval from the corporate member of the trade association before solicitations by the PAC may be made of the corporate representatives attending the annual meeting of the trade association. See also §114.8 of the Commission's regulations (copy enclosed), which implements the requirements of §441b.

With respect to your specific factual situation, the Commission notes that the legislative history of the Act illustrates that informing persons of a fundraising activity is considered a solicitation. See AO 1976-27, quoting Senators Allen, Cannon, and Packwood. Also, Representative Hays of Ohio, in explaining the corporate and union solicitation provisions of the 1976 Amendments to the Act (now codified at 2 U.S.C. §441b), stated:

[We] determined that any action [that] could fairly be considered a request for a contribution should be treated as a solicitation. 122 Cong. Rec. H3779 (daily ed. May 3, 1976).

The Commission is, accordingly, of the view that if an announcement of PAC activities is made at the meeting, or if the PAC sets up and informs the attendees of a booth on the premises where solicitation materials are available, either event would be a "solicitation" within the meaning of the Act, and would therefore require prior approval from the corporate members.

You ask what alternatives for PAC solicitation exist, if "incidental solicitation" of attendees who may not be properly solicited by the PAC is precluded by the Act. The Commission notes that one possibility would be to hold a separate meeting, inviting only representatives of corporations which had granted solicitation approval.

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

Enclosures [8/25/76 FR reprint and AO 1976-27]