



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 18, 1977

AO 1977-18

Daniel J. Manelli, Treasurer
The Proprietary Industry Political Action Committee
Suite #700
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Manelli:

This responds to your letter of April 15, 1977, which requests an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a proposed solicitation of the directors of the Proprietary Association ("the Association") by its political committee, the Proprietary Industry Political Action Committee ("PIPAC"). Specifically, you ask whether PIPAC may solicit members of the Association's Board of Directors even though they are also executive or administrative personnel of the Association's member corporations and such corporations have not granted PIPAC permission to make such solicitation.

Your original request, as supplemented by a letter of August 1 (in reply to a letter from our legal staff dated June 13) explains that the Association is an incorporated trade association¹ whose active members are engaged in the manufacture of non-prescription medicines.² You state that, to your knowledge, all members of the Association are corporations. The Association is governed by a 43-member Board of Directors "which possesses full powers to do any and all things necessary or desirable in managing or conducting the business of the Association." None of the directors receives compensation or reimbursement of expenses for their services to the Association.³

¹ Subsequent to the date of your original request the Association was incorporated; the opinion is issued on that factual basis.

² The by-laws explain that active members are "persons, firms, or corporations who or which own or control any proprietary article" (non-prescription medicines); inactive members are those persons or businesses which are "otherwise interested in the manufacture, distribution or promotion of proprietary articles." Only active members may vote or be elected to the Association's Board of Directors.

³ Reimbursement of expenses for the Chairman of the Board is authorized but no such payments have been made according to your letter of August 1, 1977.

As a corporation to its own right, and as an organization with corporate members, the Association is subject to 2 U.S.C. 441b which prohibits any direct or indirect corporate "contribution or expenditure" in connection with a Federal election. The cited 441b provides further, however, 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. 2 U.S.C. 441b(b)(2)(C). Persons who may be generally solicited for contributions to the separate segregated fund of a corporation are limited by 441b(b)(4)(A) to stockholders, executive and administrative personnel, and the families of those persons.

In addition to the solicitation rights outlined above, the Association may also solicit contributions from the stockholders and executive or administrative personnel of its member corporations provided that such member corporations separately and specifically consent to such solicitation. 441b(b)(4)(D). However, your letter indicates PIPAC desires to solicit members of its Board of Directors who are employed by member corporations who have not consented to a 441b(b)(4)(D) solicitation. Absent such consent, the Directors in question may only be solicited by PIPAC if they are either shareholders, or executive and administrative personnel of the Association itself. 441b(b)(4)(A). Our 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). The dictionary defines "salary" as "fixed compensation periodically paid to a person for regular work or services."

According to your letter of August 1, 1977, your Directors do not receive any salary for their services to the Association. Therefore your Board members do not fall within the class of persons who could be described as the executive or administrative personnel of the Association. Accordingly, PIPAC may not solicit members of the Association's Board of Directors under 441b(b)(4)(A) nor under 441b (b)(4)(D), without permission of the member corporations.

This response constitutes an advisory opinion concerning the 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