



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 11, 1978

AO 1977-44

Thomas Hale Boggs, Jr.
Patton, Boggs & Blow
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Boggs:

This responds to your letter of September 13, 1977, requesting an advisory opinion on behalf of the Attorneys Congressional Campaign Trust ("ACCT") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to proposed changes in the administration of and solicitation of contributions to ACCT.

You state that the Association of Trial Lawyers of America ("ATLA") is a nonprofit corporation with a membership composed of individuals. ATLA has official branch trial lawyers organizations in four states and official affiliate trial lawyers organizations in 45 states, Puerto Rico, and the District of Columbia, which elect, in each state, that state's member(s) on the ATLA Board of Governors and ATLA State Committeemen. According to your letter, ACCT is a multicandidate committee formed in 1975, whose organization and operation has been independent of ATLA. However, in response to the Commission's letter of September 2, 1976, ACCT's registration statement was amended in September of 1976 to name ATLA a connected organization as defined in 11 CFR 100.15; you state this was done because encouragement for the organizers of ACCT came from past or present officers, board members, or active and influential members of ATLA, and because the original trustees of ACCT included a former president and board members of ATLA.

Since the organization of ACCT, several branch and affiliate trial lawyers organizations have organized political action committees ("State PAC's"); these State PACs name ATLA and the particular state branch or affiliate as connected organizations, and ACCT as an affiliated committee. Many of the State PACs maintain separate accounts for funds used solely for state elections.*

* In this connection, the Commission points out that establishing two separate accounts for Federal and State elections is not sufficient--if the State PACs wish to accept non-Federal funds (e.g. from prohibited sources under the Act, or which do not count against the Act's contribution limits), separate committees must be established. See 11 CFR 102.6.

You ask five specific questions, which are restated and answered below.

1. May ATLA commence the administration of ACCT and solicitation of contributions to ACCT, pursuant to 2 U.S.C. 441b?

The Act allows a corporation to establish, administer, and solicit contributions to a separate segregated fund to be utilized for political purposes, 2 U.S.C. 441b(b)(2)(C). See also 11 CFR 114.5(b) and (d), regarding the use of a corporation's general treasury funds for these purposes and the exercise of control by a corporation over its separate segregated fund. Accordingly, as ACCT's connected organization ATLA may directly administer and solicit contributions to ACCT.

2. Do you confirm our beliefs that ATLA is a federation of trade associations and that ATLA and its official affiliates may solicit contributions pursuant to 11 C.F.R. 114.8(g)?

According to your letter, each ATLA official affiliate is a "membership organization of trial lawyers organized to preserve and promote the betterment of the profession," which you believe meets the definition of a "trade association" in 11 CFR 114.8(a). The cited definition provides:

A trade association is generally a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business for profit, and no part of the net earnings of which inures to the benefit of any member.

The Explanation and Justification to this section states it is based on the treatment in the tax code of business associations, 26 U.S.C. 501(c)(6). See Treasury Regulation 1.501(c)(6)-1 defining a "business league" (which is exempt from tax under 501(c)(6)) as "an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit."

The question of whether the members of the affiliate trial lawyers organizations are engaging in a similar or related "line of commerce" is answered by the United States Supreme Court decision of Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975). In response to the contention that the learned professions are not "trade or commerce" for purposes of the Sherman Anti-Trust Act, 26 Stat. 209, 15 U.S.C. 1, the Court in Goldfarb stated:

Whatever else it may be, the examination of a land title in a service; the exchange of such a service for money in "commerce" in the most common usage of that word. It is no disparagement of the practice of law as a profession to acknowledge that it has this business aspect. 421 U.S. at 787-788.

Thus, ATLA's affiliate organizations would fall within the definition of "trade associations" in 114.8(a).

You state that ATLA represents its affiliates on a national basis, and the affiliates nominate ATLA's governing body; accordingly, ATLA would be "a federation of trade associations . . . representing trade associations involved in the same or allied line of commerce." 11 CFR 114.8(g)(1). As such a federation, ATLA and its official affiliates may either engage in a joint solicitation of the members of ATLA's affiliated associations, or the affiliated associations may delegate their solicitation rights to ATLA. 11 CFR 114.8(g)(1)(i) and (ii).

3. May the solicitation procedures set forth at 11 C.F.R. 114.8(g) be utilized by ATLA and/or its official affiliates with respect to members of a local (e.g., city or county) trial lawyers organization affiliated with the state organization?

The Commission's regulations provide that a federation of trade associations may solicit "the members of the federation's regional, State, or local affiliates or members," provided that all of the political committees established, financed, maintained, or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for purposes of the Act's contribution limits. Section 114.8(g)(1). For purposes of this section, a local organization affiliated with a state organization, which is in turn affiliated with the national organization, would be considered a "local affiliate" of the national organization; thus members of the local affiliate would be within the permissible class of solicitees of the national organization. Also, members of a local organization affiliated with a state organization could be solicited by the state organization under the same condition stated above. In both cases, the rule against the proliferation of political committees, 2 U.S.C. 441a(a)(5), must be complied with, and the proposed solicitee must be a member of a local organization which is affiliated with a State organization in turn affiliated with ATLA.

4. May ACCT, following its formal affiliation with and the assumption of its administration and solicitation expenses by ATLA, continue accepting contributions from persons who are not members of ATLA or any of its affiliates and who were solicited for contributions only prior to the affiliation of ACCT and ATLA?

The solicitation restrictions of 2 U.S.C. 441b(b)(4) are applicable to ACCT, ATLA, and to ATLA's official branch and official affiliate trial lawyers' organizations in the various states to the extent ATLA or its affiliated organizations are corporations themselves or comprised of corporations that solicit contributions directly or through ACCT in connection with a Federal election. These restrictions, as added by the Federal Election Campaign Act Amendments of 1976, became effective May 11, 1976, and any solicitations thereafter by 441b organizations were required to be conducted in the manner specified in 2 U.S.C. 441b. This advisory opinion does not reach any conclusion with respect to the legality of past solicitations for political contributions by ACCT, ATLA or any of its official branches or affiliates. However, any contributions received from non-members of ATLA or ATLA affiliates as a result of ATLA or ACCT solicitations unlawfully directed to persons other than those solicitable under 2 U.S.C.

441b(b)(4) are required to be returned to the donors or otherwise utilized in a lawful manner that would not constitute a "contribution" or "expenditure" as defined in 2 U.S.C. 431, 441b.

The Commission notes that unsolicited contributions, if otherwise lawful under the Act, may be accepted by a separate segregated fund of a 441b organization. 11 CFR 114.5(j). Informing persons of the permissibility of accepting such contributions would, however, be a solicitation and thus may only be made to the proper class of persons. See Advisory Opinions 1976-96, 1976-27 and the Commission's response to Advisory Opinion Request 1976-113, copies enclosed.

5. Assuming that it is permissible under the applicable state law, may a State PAC (which maintains separate accounts for funds used for the support of candidates for federal and state offices) solicit attorneys, including those who are not members of any trial lawyers association, with a solicitation which informs its recipient that the contribution of a member of the state trial lawyers association will be divided between the federal election and state election accounts, while the contribution of a person who is not a member of the state trial lawyers organization will be deposited solely in the state election account?

This question is not properly presented in this advisory opinion request since it involves solicitations by State PAC's rather than ACCT or ATLA solicitations. As noted previously, a State PAC which wishes to avoid application of the Act and regulations to funds raised for State and local candidates must establish a separate non-Federal committee with its own bank accounts. See 11 CFR 102.6; see also the Commission's response to Advisory Opinion Request 1976-72, copy enclosed. Solicitations exclusively for contributions to a non-Federal State PAC connected with a trial lawyers association at the State or local level would not be subject to the Act or regulations of the Commission. Combined solicitations for both Federal and non-Federal purposes would be subject to the Act and regulations of the Commission.

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)
Joan D. Aikens
Vice Chairman for the
Federal Election Commission

Enclosures