



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 28, 1978

AO 1977-67

Thomas J. Schwarz, Esq.
Daniel J. Piliero, II, Esq.
Skadden, Arps, Slate, Meagher & Flom
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Schwarz and Mr. Piliero:

This refers to the letter of November 28, 1977, requesting an advisory opinion on behalf of the Public Service Political Action Committee ("PSPAC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"). In that letter, PSPAC asks whether it may solicit political contributions from persons it refers to as "members" of its sponsoring corporation, Public Service Research Council ("PSRC"), pursuant to 2 U.S.C. 441b(b)(4)(C). A copy of PSRC's Articles of Incorporation was included with the advisory opinion request.

By letter dated January 23, 1978, former counsel for PSPAC was informed that the Commission needed more information to a specific factual situation, as required by 2 U.S.C. 437f. Consequently, we requested responses to several questions set forth in that letter. In a letter dated March 1, 1978, you attempted to answer the questions previously posed and submitted nine exhibits for Commission consideration. The exhibits included samples of PSRC's membership solicitation material, a copy of a membership survey, a resolution of the Board of Directors, and three annual reports of PSRC. After receiving this material, a Commission staff member talked to PSPAC's attorney, Daniel Piliero, II, by telephone several times to gather more information.

The information you have submitted shows that PSRC is a corporation without capital stock incorporated under the laws of Virginia. The corporation's Articles of Incorporation, as amended January 1977, state in Article Eight:

The Corporation shall have members who shall be persons who voluntarily support the purposes of the organization and are accepted as members by the Board of Directors of the Corporation under procedures established by the Board.

No members shall have any voting or property rights or have, or acquire any vested right, title, or interest in or to the property of this Corporation or any vested right in the exercise of any privileges of membership in this Corporation or any vested right in the continuation of any of its purposes, policies or activities.

Every member in good standing shall have the right to receive such privileges as may be prescribed under rules and regulations adopted from time to time by the Board of Directors.

The Board of Directors shall have the sole authority to establish the proposes and goals and direct the activities of the Corporation.

According to a resolution of PSRC's Board of Directors (Exhibit E), members of PSRC are those persons who have "been accorded membership privileges based on their substantial involvement with the organization's activities . . ." In your March 1, 1978, letter you explain that "PSRC membership rolls include 1,035,699 individuals." You further state that this number includes "each individual who has indicated that he or she wants to join in the work of PSRC by making a contribution or [by responding] affirmatively to a PSRC mailing." Your letter also explains that in general only members who have contributed money to PSRC during the preceding year are solicited by PSPAC. The lack of a formal dues structure was explained as being necessitated by the desire not to deprive those "unable to contribute of an opportunity to express their views."

Among the rights or privileges (you uses those terms interchangeably) afforded members of PSRC is the right to "indicate by responses to a membership survey the nature of those issues in which the membership is most interested and the position taken by the membership on each issue of interest to the organization." According to your March 1st letter, the membership survey is conducted at least yearly and the results of the survey are presented to the governing board by the President for consideration at the board's regular annual meeting. You further explain that the membership recommendations "are discussed as an integral part of the President's recommendations for the organization's activities for the coming year and are formally acted upon by the Board in its meeting." Other privileges of membership in PSRC include receiving notification by PSRC of developments "affecting public sector employer-employee relation policies" and being provided with "specific action-oriented information and material to assist [members] in effectively expressing their views in legislative matters in which they have previously expressed an interest." Your letter also states that the privileges are communicated to members in numerous ways.

The resolution of the Board of Directors states that the Board may accept for membership "those persons who support the purposes of the organization and have so indicated either orally or in writing." You have also submitted four samples of materials issued by PSRC to solicit persons for membership in the organization. The first two sets of materials (Exhibits A and B) only ask for a financial contribution and the solicitee's support on specific issues. The membership solicitation material found in Exhibit A also includes a poll of the solicitee's views on a specific issue, while the material found in Exhibit B includes a card the person is requested

to send to his or her congressman. Neither letter mentions becoming a member in PSRC. The other two sets of membership solicitation material (Exhibits C and D) provide the solicitee with a membership card and specifically request that the person become a member of Americans Against Union Control of Government ("AAUCG"), a division of PSRC.¹ As with the first two letters, contributions are again requested. The materials in Exhibits C and D also include a card for the solicitee to send back to the organization to affirm the person's desire to become a member.

The Commission's regulation defining the term "member" for the purpose of 2 U.S.C. 441b(b)(4)(C) is found at 11 CFR 114.1(e), which states:

"Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock...

This definition, along with 441b(b)(4)(C), assumes that certain threshold requirements must be met for a corporation to have members. As a threshold matter, the quoted regulation assumes that there are, in fact, requirements for membership in the organization. Obviously, a person can only be considered a member of an organization if he or she knowingly has taken some affirmative steps to become a member of the organization. Moreover, as regards a corporation without capital stock which is created and defined by its Articles of Incorporation, the corporation's formal documents must not preclude it from having members. See Advisory Opinion 1976-79.

These basic requirements are premised on the existence of a membership relationship between the organization and the person solicited pursuant to 441b(b)(4)(C). The solicitation of political contributions from members of an organization derive from the special relationship that the organization has to its members (see the remarks of Representative Hansen, 117 Cong. Rec. 43380) and accordingly, the membership relationship must be evidenced by the existence of rights and obligations vis-a-vis the corporation. In each instance where members do not have direct and enforceable participatory rights in the organization - such as those held by a shareholder or union member - facts must be examined before a determination can be made that a membership relationship exists.

On the facts that you initially presented it would be impossible for the Commission to state whether all 1,035,699 of the individuals you claim as members of PSRC are members of the corporation for purposes of the Act. For example, membership based solely on a response to the material found in Exhibits A and B would not seem to be sufficient to establish a membership relationship if that response was merely a contribution or a statement of support. Moreover, an oral statement of support would also not seem to provide a sufficient nexus between the organization and the person to make that person a member for purposes of the Act. For the same reason, a person not already a member of PSRC who received an unsolicited membership card and did not take affirmative action to notify the organization in some way that he or she wished

¹ In telephone conversation with a Commission's staff member, you have informed the Commission that AAUCG is an operating division of PSRC. The membership cards found in Exhibits C and D refer to membership in AAUCG. The Commission will assume for purposes of this opinion that there is no difference in membership in PSRC and AAUCG.

to accept membership could not be considered as a member. In addition, the material you provided did not make clear whether a person once expressing a desire to become a member of PSRC is always considered as a member for purposes of political solicitations. If the membership relationship is to continue it must be subject to periodic renewal.

However, the Commission notes that while your membership policy appears flexible and somewhat ambiguous, there do appear to exist indicia of a membership relationship which may serve establish certain persons as members of PSRC depending on the specific facts relative to those persons. For example, you state that persons considered as members of PSRC have the right to complete membership surveys which the governing board considers in setting policy. In addition, those persons who receive the solicitation material in Exhibits C and D were expressly requested to become (or remain) members of PSRC. These persons were provided with a card to return to PSRC which could serve as an affirmative declaration of the person's desire or application for PSRC membership. Finally, you also state that, in general, the only persons solicited by PSPAC are those who contributed to PSRC during the previous year.

As the determination that any given person is a member would depend on the indicia of such a relationship that existed in relation to that person, a general statement on the status of all of the persons PSRC claims as members cannot be made. Nevertheless, since you have expressly asked the Commission to state its view on the status of certain people as members of PSRC for purposes of the Act, the Commission has asked you to be more specific in setting forth the factual situation.

In a letter dated May 19, 1978, from Mr. Piliero, it was explained that based on conversations with his client, he was authorized to represent that PSPAC wished an advisory opinion with regard to the solicitation of a certain class or portion of the persons PSRC considers as members. These persons have the following rights and obligations: they have affirmatively expressed a specific and unambiguous desire to become, or join as, a member of PSRC by either writing to the organization or returning a card or notice which evidences a specific and unambiguous desire to accept membership; they are given the right and opportunity to participate in a membership opinion survey conducted at least yearly and the results of which are taken into consideration by the governing board; they must pay dues or contributions to the organization at regular intervals (though the President of PSRC has the authority to waive the dues requirement for an individual when it is in the interest of the organization), and their membership status in the organization must be renewed by them at periodic intervals.

In regard to this group of persons and in light of the foregoing discussion relating to your exhibits, the Commission believes that sufficient indicia of a membership relationship exists for these people to be solicited pursuant to 2 U.S.C. 441b(b)(4)(C), if two further conditions are met: first, there is a predetermined minimum amount for dues or contributions; and second, the waiver of the dues or contributions requirement is granted on the basis of predetermined specific criteria.² Of course, this opinion is based only on the facts set forth in the original advisory opinion request, as explicated in the specific exhibits you have submitted. Moreover, in so

² This opinion does not reach the question of membership status for persons on whose behalf the waiver authority may be exercised. A fully explained specific factual situation would need to be presented in order for the Commission to render an opinion on that issue.

stating, the Commission does not pass on the question of whether 441b(b)(4)(C) permits PSRC's solicitation of persons with any lesser rights or obligations vis-a-vis the corporation. As to any other class of persons, the Commission will be able to render an opinion only if the specific methods of solicitation of persons to become members and the specific rights and obligations of that class of persons are defined. The present request for an advisory opinion, without the clarification provided, did not set forth sufficient facts relative to specific persons to allow the Commission to state whether any of PSRC's claimed members, other than the group described above, are members for purposes of the Act.

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
Chairman for the
Federal Election Commission