



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 10, 1978

AO 1978-17

Charles S. Walsh
CABLEPAC
918 16th Street, N.W.
Washington, D.C. 20006

Dear Mr. Walsh:

This refers to your letter of February 28, 1979, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to fundraising solicitations by CABLEPAC which is the separate segregated fund of the National Cable Television Association (NCTA), a trade association.

Your letter explains that CABLEPAC has held fundraising events at past national conventions of NCTA and expects to do so at the forthcoming NCTA convention scheduled for April 30 through May 3, 1978. You state that:

CABLEPAC plans to establish a booth in the general Exhibitor's hall of the convention. The booth would be operated for the purpose of selling T-shirts, caps and buttons to the stockholders and executives and administrative personnel of member companies which have authorized CABLEPAC solicitation for 1978. These items would be inscribed with various slogans dealing with the cable television industry and would be purchased using funds of the NCRA. The funds collected would be allocated to CABLEPAC under the terms of section 114.5(b)(2) of the FEC rules and regulations.

Attendance at the convention will include stockholders, executives and administrative personnel and their families of member companies which have authorized solicitations; personnel of companies which have not yet authorized; and some personnel of companies which are not members of NCTA. Most of the largest member corporations and many smaller members of the NCTA, with employees in attendance, have designated CABLEPAC for solicitation for 1978.

The booth will not be publicized prior to or during the convention in any NCTA release or publicity. The operation of the booth would include: (1) the posting of signs on the booth which will clearly state that only stockholders and employees of designating NCTA member companies using personal funds can purchase articles and that funds collected will go to CABLEPAC; (2) the maintenance of a list of NCTA member companies who have authorized CABLEPAC solicitation for 1978; (3) the instructions of personnel operating the booth to advise employees of non-member companies or non-designating member companies that their purchases cannot be legally accepted; and (4) the maintenance of records of each purchase, the amount and type of purchase, and the company affiliation of the purchaser.

The described fundraising approach has been designed so that only the persons who may be legally solicited are, in fact, solicited." You pose four questions in response to which you request an advisory opinion. The questions will be stated and responded to in the sequence you have asked them.

1) Would the fund-raising booth set up on the Exhibit floor itself constitute a solicitation under the Federal Election Campaign Act, as amended?

The setting up and operation of a fundraising booth according to your description would be a solicitation for contributions to CABLEPAC. Relying on the legislative history of the 1976 Amendments to the Act, the Commission has previously held that the solicitation process includes asking persons to purchase tickets to a fundraising event and providing advance information concerning a particular fundraising activity. See Advisory Opinions 1976-27 and 1976-96 (copy enclosed). Thus a fundraising booth set up by CABLEPAC on the Exhibit floor would be a solicitation since it may fairly be considered as a request to persons visiting the exhibit area to make a contribution to CABLEPAC. The issue of whether the solicitation is made permissible in view of the conditions under which CABLEPAC will accept contributions at the booth, is discussed in responding to questions two and three.

2) If considered a solicitation, would both the signs posted and informed personnel at the booth, notifying convention attendees that purchases may only be made by stockholders or employees of designating member companies, establish the booth as a permissible solicitation within the meaning of the Act?

3) If the specific fund-raising booth, as proposed, is precluded, what additional safeguards could be utilized by CABLEPAC to permit its proposed fundraising booth to constitute a permissible solicitation for example, if CABLEPAC did not accept voluntary contributions from non-member company employees who could not otherwise be solicited?

One significant underlying purpose of the solicitation restrictions on trade association political action committees is to control their access to the same persons who might otherwise be solicited and contribute to several political committees connected to separate trade associations. By requiring advance solicitation approval, and limiting approval by corporate members of a trade association to one trade association per year, the fundraising potential of the trade association committee is limited. The regulations do permit political committees, established by or connected with trade associations regulated by 2 U.S.C. 441b, to accept unsolicited contributions if otherwise lawful. See 11 CFR 114.5(j). However, as discussed above, the Commission has applied the term "solicitation" to many types of communications.

In the circumstances you have described, particularly the fact that only those personnel who are properly solicitable by CABLEPAC or NCTA will be allowed to "purchase" items at the booth, i.e. make contributions to CABLEPAC, and that CABLEPAC will instruct personnel operating the booth not to accept funds from any other person, the Commission concludes that the purpose of the solicitation restriction would be achieved. Thus the fundraising activity is permissible if otherwise conducted in accordance with the Act and Commission regulations. See, in particular, 114.5(a) and (b), 104.2(b)(6), and 102.9. This conclusion is further conditioned on CABLEPAC's adoption of and compliance with a policy of refusing all contributions (including the purchase price of any articles "sold" by CABLEPAC for fundraising purposes) at any time from persons for whom it does not have solicitation approval under 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8

4) At the same convention, totally separate and apart from the fundraising booth, is it permissible to approach appropriate representatives of NCTA member companies in the Exhibit hall and elsewhere to seek authorization for solicitations of its stockholders and executive and administrative personnel for 1978?

The regulations require that solicitation approvals be made in writing and preserved for 3 years by the trade association or its fund. 11 CFR 114.8(d). A trade association is permitted to include one copy of its proposed solicitation materials when it makes a mailing to request solicitation approval. This mailing must specifically indicate the requirement for corporation member approval and that the corporate member may not approve solicitation by the trade association or its political fund if it has previously approved solicitation by any other trade association during the calendar year. See 11 CFR 114.8(d)(3). The reference to mailing the request for solicitation approval obviously means that the request should be in writing (i) to assure that corporate members of a trade association make an informed decision before giving approval and (ii) to create a record which permits the trade association to correlate approvals received with requests made. Accordingly, it would be permissible to approach representatives of NCTA member corporations attending the annual convention, who are the persons with whom NCTA normally conducts its activities, for the purpose of seeking solicitation approval provided the actual request for approval is made in writing. 11 CFR 114.8(d)(3). Solicitation approvals in writing may be obtained from those persons assuming they are duly authorized by their respective corporations to give such written approval. The written approval is otherwise required to be obtained pursuant to 114.8(d) of the regulations and must be provided before contribution solicitations are made.

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