



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 16, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-15

Mr. David G. Colman
Counsel
Independent Insurance Agents of America, Inc.
65 John Street
New York, New York 10038

Dear Mr. Colman:

This refers to your letter of April 9, 1979, as supplemented by your letter of May 17, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to fundraising solicitations for the National Agents Political Action Committee ("NAPAC") which is the separate segregated fund of the Independent Insurance Agents of America, Inc. ("IIAA").

Your letter explains that IIAA is a "national association¹ of independent property and casualty agents" which is composed of associations in 50 States and the District of Columbia representing over 34,000 insurance agencies (some of which are incorporated) consisting of some 126,000 licensed agents. IIAA's separate segregated fund, NAPAC, has been duly constituted and registered with the Commission. You also state that IIAA publishes a magazine which every member receives. Of the total circulation of this magazine approximately 50.6% is received by personnel of corporate agency members which have not given prior approval to IIAA or NAPAC to solicit contributions from their stockholders and executive or administrative personnel. In addition, the magazine is distributed to approximately 2,000 recipients (approximately 5.5% of circulation) who are not members of IIAA or one of its affiliated State associations. These include insurance companies, schools, libraries, advertising agencies, and Federal and State governmental agencies.

¹ Reports filed with the Commission by NAPAC describe IIAA as a "national trade association." However, it appears from the facts presented that IIAA is rather a "federation of trade associations" as defined in 11 CFR 114.8(g). It also appears from your request that each State association which is a member of IIAA has both corporate and individual members, placing the State associations and IIAA under the purview of both 2 U.S.C. 441b(b)(4)(C) and (D) as well as 11 CFR 114.7 and 114.8.

You explain in your letter that IIAA proposes to solicit contributions for NAPAC in the magazine. You state that accompanying each advertised solicitation will be the following caveats:

"Federal law prohibits NAPAC from soliciting or accepting contributions from individuals who are not members of IIAA and their immediate families. In addition, NAPAC may not solicit or accept contributions from personnel affiliated with a corporate agency member unless the corporate agency has submitted its written approval to NAPAC, as provided below, prior to or simultaneously with the contribution; and the contributor is a stockholder, administrative or executive personnel (as defined in the corporate approval below), or their families. Any contribution submitted by an individual within these prohibited categories will be returned forthwith."

These caveats will be enclosed in a rectangle and printed in a type which contrasts with the print type of the solicitation. As a further measure, you state that all personnel responsible for receiving and accounting for contributions to NAPAC will be instructed to verify that all donations received are either from members of IIAA and their families or, if from individuals affiliated with a corporate agency, that the corporate agency approval form has been received by NAPAC prior to or simultaneously with the donation. You further state that instructions will be given that donations received from "individuals who are not in compliance with the requirements specified in the caveats" be returned immediately.

In light of the fact that the magazine in which the solicitations will appear is distributed to some individuals who are not IIAA members or to individuals affiliated with corporate agencies from which solicitation approval has not been secured by IIAA or NAPAC, you ask whether a solicitation by IIAA conducted in the described manner constitutes a solicitation of persons other than those whom IIAA is permitted by statute to solicit.

2 U.S.C. 441b(b)(4) sets forth the classes of persons which may be lawfully solicited by corporations, labor organizations, trade associations and incorporated membership organizations, or by the separate segregated funds established thereby, to contribute to such separate segregated funds. Section 114.8 of the Commission's regulations governs solicitations by a trade association whose membership is made up in whole or in part of corporations when soliciting stockholders or executive or administrative personnel of member corporations, whereas 114.7 governs a trade association in soliciting its noncorporate members. (See 11 CFR 114.7(c).)²

The Commission has previously discussed the issue of whether a communication considered to be a solicitation, which reached persons not solicitable under 441b(b)(4), is made permissible in view of the conditions under which it is made and the conditions under which

² A federation of trade associations may, subject to certain limitations, "solicit the members of the federation's regional, State, or local affiliates or members..." (11 CFR 114.8(g)(1)) but in so doing is subject to the same restrictions applicable to its member associations when soliciting their lawfully solicitable class. (11 CFR 114.8(g)(2)).

contributions will be and would be returned, and (ii) the organization would accepted. (See Advisory Opinions 1978-97, 1978-83, 1978-17, copies enclosed). In particular, as you are aware, in Advisory Opinion 1978-97, the Commission discussed the issue of whether a labor organization could solicit contributions to its separate segregated fund in the organization's magazine which is circulated to its members and approximately 1,000 nonmembers (representing 3% of circulation). In that opinion, the Commission concluded that such a solicitation method was permissible because (i) along with each magazine solicitation would be published, in contrasting print, a caveat stating that contributions from other than members of the labor organization and their immediate families were not acceptable and would be returned, and (ii) the organization would actually screen and return contribution received from persons who were not solicitable under 441b(b)(4). In essence, these voluntarily self-imposed conditions by the labor organization led the Commission to decide that the proposed communications, which reached 3% beyond the organization's properly solicitable class, would not be viewed as solicitations directed to persons other than those whom the organization was permitted by the Act to solicit.

While the Commission agrees that IIAA's proposed method of solicitation is similar to the method found acceptable in Advisory Opinion 1978-97, certain essential differences in the facts underlying the conclusion reached in that opinion and the subject request exist. For instance, as proposed, IIAA's circulation of the magazine beyond the class presently solicitable could be as high as 56% of total circulation, whereas that in AO 1978-97 was incidental, approximately 3%. (See also, AO 1979-13, copy enclosed). Moreover, that 3% was comprised of individuals who were not members of the organization, could never be solicitable, and whose interest in the publication stemmed from their official status. In the situation presented in your request, 50.6% of the publication's circulation is to persons who are currently not solicitable by IIAA but who could be if solicitation approval were given by their corporate agency. The composition of this "nonsolicitible" class is thus not analogous to the 3% in AO 1978-97.

In addition, in AO 1978-97, if any individual within the 3% were to contribute, the contribution would be returned. From your request, it appears that if solicitation approval were received simultaneously with a contribution from an individual within the 50.6% "nonsolicitible class", such contribution would be accepted by NAPAC. This procedure does not conform with the requirement for prior solicitation approval set forth in 11 CFR 114.8. That section provides that while a request for solicitation approval may contain a copy of solicitation materials which the trade association or its separate segregated fund plans to use if approval is granted, such approval must be granted prior to the time any solicitation is made. In its Explanation and Justification for 114.8(d), House Document No. 95-44, 95th Cong., 1st Sess., pp. 112-113, the Commission stated that it interpreted the statute as requiring a two step process:

- (1) the member corporation must first approve the solicitation; and (2) after the approval has been received, the trade association may solicit the persons approved by the member corporation.

The Explanation and Justification went on to explain that:

The Commission rejected an option which would have provided an exemption from the two step approval/solicitation process for trade associations with corporate members of fewer than ten stockholders or five executive or administrative personnel. Under the option, a trade association could have made a simultaneous request for approval and enclosed materials for solicitations of the stockholders and executive or administrative personnel of member corporations of this size, and if 90% of the corporate members were corporations falling within this size range, the trade association could have used its membership mailing list to make the simultaneous request and solicitation. Although adherence to the two step approval process may cause some administrative burden for trade associations with small corporate members, the Commission could find no legislative history which would have supported the exemption from the statutory requirement for separate approval.

An exception to this rule was suggested in the situation where the principal stockholder or president of a small corporation, who will likely receive the request for approval, is the only stockholder or employee who contributes to the trade association's separate segregated fund. However, it is clear that any solicitation of other stockholders or executive or administrative personnel is subject to the separate approval requirements of 114.8(d). Id.

From the foregoing language it is evident that prior, not simultaneous, approval must be given by the corporation whose personnel will then be properly solicitable. The Commission has stressed the need for prior solicitation approval in two earlier advisory opinions which addressed potential solicitations by trade associations. In both AO 1978-17 and 1978-83 (copies enclosed) the Commission approved informational, fundraising booths at trade association conventions run by the respective political action committees. An overriding factor in reaching the Commission's decision was the condition that no contribution would be accepted from any individual associated with a member corporation (i.e. stockholder or executive or administrative personnel) absent advance solicitation approval by the corporation. Thus, IIAA's proposed policy of refusing contributions absent prior or simultaneous solicitation approval does not provide a basis for treating IIAA's magazine solicitation as directed only to IIAA's lawfully solicitable class.

Moreover, not only does the method proposed in your request solicit contributions from those not properly solicitable due to lack of prior solicitation approval, it also solicits contributions from "members of IIAA and their immediate families". While solicitation of executive and administrative employees, and their families, of corporate members of IIAA is permissible if the corporate member/employer has given solicitation approval, 2 U.S.C. 441b(b)(4)(C) and 114.7 of the regulations do not extend solicitation rights to the families of individual or noncorporate members of IIAA. Hence, IIAA's method solicits another group of persons beyond its permissible class.

In light of the foregoing discussion, the Commission finds that IIAA's proposed use of its magazine does not conform to the Act and Commission regulations regarding contribution solicitations by trade associations or their separate segregated funds. Accordingly, the Commission concludes that the proposed contribution solicitation to be included in the IIAA magazine which currently has a circulation of approximately 56% beyond its lawfully solicitable

class would be viewed as a solicitation directed to persons other than those whom IIAA is currently permitted by the Act to solicit.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures