



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 19, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-50

Mr. James M. Peirce
President
National Federation of Federal Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Your reference: PAC-JC-06

Dear Mr. Peirce:

This responds to your letters of August 29, 1979, requesting advisory opinions concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contribution solicitations by the Public Affairs Council ("PAC") which is a separate segregated fund of the National Federation of Federal Employees ("NFFE"), a labor organization.

Your letters state that NFFE has approximately 100 employees throughout the United States who are not all members of NFFE although some are members of other labor organizations. These nonmember employees are aware of the PAC and may read of its activities in the NFFE newspaper, The Federal Employee. You state that many employees at national NFFE headquarters have special awareness of the PAC since they are registered lobbyists. In the past some of these nonmember employees have made unsolicited contributions to the PAC. You ask whether they may be solicited for PAC contributions.

Secondly, you ask whether The Federal Employee may include contribution solicitations for the PAC and articles about PAC activities. This newspaper is published monthly and distributed to NFFE members. In addition, you state that the newspaper is distributed to approximately 8,000 (15% of circulation) persons who are not NFFE members. These people are Members of Congress, senior officials of certain Federal agencies, news media representatives, and "potential members." Your proposal to solicit contributions to the PAC through the newspaper indicates that:

Accompanying each advertised solicitation and article which could reasonably be read as a solicitation will be a caveat stating, "Federal law prohibits PAC from receiving* donations from other than members of NFFE and their immediate families. All donations from other than members of NFFE and their immediate families will be returned forthwith." This caveat will be included in a rectangle and printed in type which contrasts with the print type of the solicitation. In addition, all donations which we believe were solicited inadvertently from persons other than those legally eligible to donate to PAC will be returned.

You ask whether the Commission would apply Advisory Opinion 1978-97 in your situation and permit newspaper solicitation for the PAC in view of your stated policy to make an immediate return of contributions from nonsolicitable persons and the fact that 15% of the circulation is to nonmembers.

In response to your first question regarding contribution solicitations to employees of NFFE who are not NFFE members, the Commission concludes that the Act and regulations do not permit such solicitation except under the twice yearly procedure set forth in 114.6 of Commission regulations. See 2 U.S.C. 441b(b)(4)(B). The Commission has viewed the language of 441b(b)(4)(A)(ii) as clearly limiting the class of persons who may be solicited for voluntary contributions to a separate segregated fund of a labor organization. The stated class is members of the labor organization and their families. In developing regulations to carry out 441b, the Commission considered whether employees of a labor organization should be solicitable on the same basis as its members, but rejected that approach as unsupported by the statutory language.

See the Explanation and Justification of the Commission's regulations, House Doc. No. 95-44, 95th Cong., 1st Sess. pg. 108 (1977).

Commission regulations do allow labor organization employees, who are not members, to be solicited for contributions to the labor organization's separate segregated fund under the twice yearly solicitation provisions. 11 CFR 114.6. These solicitations may be made only twice a year and only by mail addressed to employees at their residences; all contributions received must be handled through a custodial arrangement. See 11 CFR 114.6(c) and (d). The PAC is not barred by the Act or regulations from accepting unsolicited voluntary contributions from NFFE employees who are not members. 11 CFR 114.5(j).

The second question you pose is similar to one posed in a previous advisory opinion, AO 1978-97. In that opinion, the Commission ruled that a labor organization could publish a solicitation in a publication for its membership even though three percent of the circulation (approximately 1,000 persons) went to individuals who were not members and therefore could not be solicited for contributions under the Act.

The solicitation you propose, however, would reach 15 percent of NFFE's newspaper circulation (approximately 8,000 persons).

* The Act prohibits contribution solicitations of nonmembers of the NFFE, rather than receipt of contributions from nonmembers. 2 U.S.C. 441b(b)(4)(A)(ii), 11 CFR 114.5(g)(2), 114.5(j)

Despite the fact that the solicitation would include a caveat, and that the PAC would return all contributions received from non-members, the Commission concludes that your proposed solicitation would be prohibited by the statute. Unlike the solicitation proposed in AO 1978-97, the percentage and number of persons receiving the newspaper solicitation would not be de minimus.

The Commission expresses no opinion as to possible application of 18 U.S.C. 602, 603, and 607 to contributions solicited and made to the PAC since those statutes are within the purview of the United States Department of Justice rather than 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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures (AO 1978-97, AO 1979-15, House Doc. No. 95-44, 95th Cong., 1st Sess.,
pg. 108 (1977)).