



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 13, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-69

Mr. James F. Clark
Robertson, Monagle, Eastaugh and Bradley
P.O. Box 1211
Juneau, Alaska 99802

Dear Mr. Clark:

This responds to your letter of October 15, 1979, as supplemented by your letters of March 5 and 14, 1980, requesting an advisory opinion on behalf of the Alaska Loggers' Association/Clarence Kramer Political Action Committee ("ALA/PAC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to solicitations by ALA/PAC.

ALA/PAC is the separate segregated fund of the Alaska Loggers' Association, Inc. ("ALA"). You indicate that ALA is an incorporated trade association devoted to the enhancement of the logging industry in the State of Alaska. It has two forms of membership. "Members" are those business concerns directly related with the logging industry in Alaska. "Associate Members" are other businesses, organizations or individuals not directly participating in the logging industry in Alaska but who are supportive of the industry and the goals of the ALA. The associate members are not loggers but the members of the Association are.

In response to the November 30, 1979, letter from the Commission's General Counsel requesting additional information and clarification of your request, your letter of March 14, 1980, enclosed copies of ALA's Bylaws. Under section 11 of Article 6 of the Bylaws, the ALA's Board of Directors, upon application, may grant associate membership to persons, firms and corporations engaged in any field of forest products when in the board's judgment "such non-participation category... [is] established." However, section 1 to 9,^{*} of Article 6 do not apply to such associate membership. Associate members do not have a right to vote at any meeting or have any voice in the affairs of the Association or control over its officers. Dues for associate membership are fixed by the Board of Directors.

^{*} These sections set forth, among other things, the voting rights, membership fees, terms of membership, and notice of meetings that are accorded to "members" of the ALA.

Your original request for an advisory opinion, dated October 15, 1979, posed two questions for consideration by the Commission:

1. Whether or not Alaska Lumber and Pulp Co., Inc., and similarly situated businesses, by reason of their bidding for and purchase of timber cutting rights on U.S. Forest Service land from the U.S. Government by and through the U.S. Forest Service, are federal contractors for purposes of FEC Regs. 115.1-6; and
2. Whether or not the ALA/Clarence Kramer Political Action Committee may solicit contributions from its "associate members," as defined for these purposes, and if so, what limitations other than those outlined in FEC Regs. 114.8 would apply.

Your subsequent letter of March 5, 1980, withdrew Question 1, and asked the Commission to respond only to Question 2.

Under the Act, a trade association or a separate segregated fund established by a trade association may solicit contributions to such fund from the stockholders and executive or administrative personnel of the member corporations of such trade association to the extent such solicitation has been separately and specifically approved by such member corporation involved, and such member corporation does not approve any such solicitation by more than one trade association in any calendar year. 2 U.S.C. 441b(b)(4)(D). A membership organization, including a trade association with noncorporate members, is permitted to solicit contributions to its separate segregated fund from those noncorporate members. 2 U.S.C. 441b(b)(4)(C). See also 11 CFR 114.7(c). Commission regulations define the term "member" as all persons who are currently satisfying the requirements for membership in a membership organization, or trade association. 11 CFR 114.1(e).

In Advisory Opinion 1977-67 the Commission addressed the requisite relationships and attributes of membership by individuals in incorporated membership organizations, as well as the issue of how the definition of "member" is to be applied when used in the Act and Commission regulations. The Commission observed that sufficient indicia of a membership relationship must exist between an organization and a group of persons in order for those persons to be considered "members" and thus solicitable under the Act.

Moreover, the United States District Court for the District of Columbia recently concluded in Federal Election Commission v. National Right To Work Committee, F. Supp. D.C.D.C., 1980), Civ. Action No. 77-125, April 24, 1980, that corporations without capital stock are permitted to solicit "members" who stand in a similar relation to non-stock corporations as shareholders stand to stock corporations. The court went on to explain that the term "member" encompasses persons who have interests and rights in an organization, assume some right to participate in the organization's direction, and an obligation to help sustain the organization through regular financial contributions. It is significant in this context that the court rejected the National Right to Work Committee's claim that the term "member" included those who merely "associate" with the soliciting organization.

Under Article 6, Section 2 of the ALA Bylaws, members of the ALA are granted the right to vote and to otherwise participate in the affairs of the association. On the other hand, Article 6, Section 11 specifically creates a distinct class of membership (i.e. "associate members") which does "not have the right to vote at any meeting or have any voice in the Association or any control over its officers." The Commission concludes that associate members are not "members" of the ALA under 11 CFR 114.1(e). See Advisory Opinion 1977-17, copy enclosed. Accordingly, since a trade association or membership organization subject to 2 U.S.C. 441b is permitted to solicit only its members, the ALA is prohibited from soliciting contributions to ALA/PAC from "associate members" of ALA.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosure