



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 1, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-72

Mr. Herbert S. Colton  
Colton and Boykin  
1133 Fifteenth Street, N.W.  
Washington, D.C. 20005

Dear Mr. Colton:

This responds to your letter of November 27, 1979, on behalf of the Build Political Action Committee ("build-PAC") requesting an advisory opinion on the applicability of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Build-PAC's acceptance of reimbursement for solicitation costs.

Build-PAC is the separate segregated fund established by the National Association of Home Builders ("NAHB"), a nonprofit corporation. Your letter states that during the NAHB Convention-Exposition, held in January of 1979, a "Build-PAC Star Spectacular" was produced which featured various entertainers and which included a door prize, in the form of an automobile, awarded by drawing ticket stubs from a drum. Tickets for this event ranged in price from \$25 to \$100 and were sold exclusively to individuals who were builder and associate members<sup>1</sup> of NAHB. You state that gross revenues from the Star Spectacular were \$296,147 and that total costs (including the actual costs of solicitation of \$13,524.79) amounted to \$138,443.46. On August 15, 1979, Build-PAC made a payment of \$45,109.54 to NAHB pursuant to Commission regulations at 11 CFR 114.5 (b)(2).<sup>2</sup>

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<sup>1</sup> Your request does not present the question of, nor do you seek guidance as to, the class of individuals that may be solicited for contributions to Build-PAC. Therefore, the Commission does not reach or express any opinion whether the solicitation and sale of tickets to these classes of NAHB members was permissible under the Act. See 11 CFR 114.1(e) and Advisory Opinion 1977-17.

<sup>2</sup> 11 CFR 114.5(b)(2) provides that a corporation may utilize a raffle or other fundraising device which involves a prize, so long as state law permits and the prize is not disproportionately valuable. This regulation further provides that when raffles or entertainment is used for political fundraising: "a reasonable practice to follow is for the separate segregated fund to reimburse the corporation or labor organization for costs which exceed one third of the money contributed."

The computations made by Build-PAC in determining the total costs of the Star Spectacular, and hence the amount of the August 15 payment to NAHB, included solicitation costs. If solicitation costs are not included in the total cost of the Star Spectacular, Build-PAC's payment to NAHB, using the 114.5(b)(2) formula would be \$26,203. (See footnote 2) You point out that if such solicitation costs are not included, your August 15 payment to NAHB exceeds the amount Build-PAC would otherwise have owed to NAHB by \$18,906.54. In light of these circumstances, you ask whether the solicitation costs associated with the Star Spectacular may be excluded from the total costs of the event for purposes of determining Build-PAC's payment obligation under 11 CFR 114.5(b)(2). If the solicitation costs may be excluded, you ask whether NAHB may remit \$18,906.54 to Build-PAC. This amount is the difference between Build-PAC's August 15 payment (\$45,109.54) and the \$26,203 it otherwise would owe NAHB.

Under the Act, a membership corporation, or a separate segregated fund established by a membership corporation, may solicit contributions to such a fund from members of the organization. 2 U.S.C. 441b(b)(4)(C). Commission regulations further explain that a membership corporation may use general treasury monies to pay the costs of establishing, administering, and soliciting contributions to its separate segregated fund. 11 CFR 114.5(b). Because NAHB may pay the solicitation costs for Build-PAC, the Commission concludes that Build-PAC need not have included the solicitation costs associated with the Star spectacular in determining the total costs of that event.

The second question you have raised is whether NAHB may remit to Build-PAC the \$18,906.54 overpayment made by Build-PAC as a result of Build-PAC's mistaken inclusion of solicitation costs in computing its August 15 payment.

While a corporation is permitted to pay for the establishment, administration, and solicitation of contributions to its separate segregated fund, the corporation is not permitted to use that process as a means of exchanging treasury monies for voluntary contributions. 11 CFR 114.5(b). As the Commission concluded above, however, NAHB could have paid for the solicitation costs of the Star Spectacular directly; and Build-PAC's inclusion of solicitation costs in computing the total costs of that event for purposes of payment under 11 CFR 114.5(b)(2) was not required. The fact that Build-PAC, under mistaken belief, included such solicitation costs in computing its payment to NAHB does not change the character of those costs, and payment of those costs by NAHB would not constitute an exchange of treasury monies for voluntary contributions.

The Commission has previously held in similar situations involving an error that a union could reimburse its separate segregated fund in the exact amount of an administrative cost inadvertently paid by the fund which could have been paid initially by the union. See Advisory Opinion 1979-33 and Re: AOR 1976-111, copies enclosed. In the situation presented here, Build-PAC's mistaken inclusion of solicitation costs in determining the total costs of the Star Spectacular resulted in an overpayment to NAHB. Thus the Commission concludes that since NAHB could have paid the solicitation costs of the Star Spectacular directly, Build-PAC need

not have included that amount as part of Build-PAC's total costs in computing its original payment to NAHB. Accordingly, NAHB may remit to Build-PAC the \$18,906.54 overpayment which resulted from this error.

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 1979-33, Re: AOR 1976-111, AO 1977-17)