



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 15, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-1

Mr. Hank Parkinson  
President  
Parkinson & Associates  
1640 30th Street, N.W.  
Washington, D.C. 20007

Dear Mr. Parkinson:

This responds to your letter of January 3, 1980, on behalf of the Farmers Mutual Hail Political Action Committee (FMH-PAC) concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to solicitations by FMH-PAC.

FMH-PAC is the separate segregated fund of Farmers Mutual Hail Insurance of Iowa (hereafter the "Company"). You state that FMH-PAC wishes to solicit contributions from the agents who represent the Company. The agents are paid on a commission basis for the policies they sell. You add that nothing is withheld according to Internal Revenue Service (IRS) regulation 26 CFR 31.3401(c)-1; however, a significant share of their total yearly remuneration comes from the Company. You ask whether, under these circumstances, it would be permissible for the Company to solicit these agents for contributions to FHM-PAC. Your letter also raises the issue of whether such agents are eligible for "membership" in FMH-PAC.

Under the Act, a corporation, or a separate segregated fund established by a corporation, may solicit contributions to such a fund from its stockholders and their families and its executive and administrative personnel and their families. 2 U.S.C. 441b(b)(4)(A). Commission regulations define executive or administrative personnel as "individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities." 11 CFR 114.1(c). Individuals paid on a commission basis may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and "if the individuals are employees, within the

meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under the Internal Revenue Code of 1954, §3402." 11 CFR 114.1(c)(3). Because the agents that the company wishes to solicit are not employees within the meaning of 26 CFR 31.3401(c)-1, the Commission concludes that solicitation by the Company or FMH-PAC of those agents is not permissible under the Act.

Commission regulations permit a separate segregated fund to accept contributions from persons otherwise permitted by law to make contributions. 11 CFR 114.5(j). Thus, while the Company may not solicit agents for contributions to FMH-PAC, FMH-PAC is permitted to accept contributions from any person, including agents of the Company, otherwise permitted by law to make contributions. While a corporation may provide that persons who contribute a certain amount to its separate segregated fund will become "members" of its separate segregated fund, "membership" in a separate segregated fund does not give the corporation or the fund any greater right of communication or solicitation than the corporation would otherwise have. 11 CFR 114.5(c) Accordingly, while the Company may designate agents who have made unsolicited contributions to FMH-PAC as "members" of FMH-PAC, the Company and FMH-PAC are nevertheless prohibited from soliciting those agents for any contributions.

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