



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 9, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-48

A. Thomas Wurst
Wurst & Carroll
1512 First National Bank Building
Minneapolis, Minnesota 55402

Dear Mr. Wurst:

This responds to your letter of April 21, 1980 requesting an advisory opinion on behalf of Mid-States Distributing Company, Inc. ("Mid-States"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the solicitation of political contributions from Mid-States' member-stockholders.

You state that Mid-States is organized as a cooperative under Title X of Chapter 10-15 of the North Dakota Code, governing Cooperative Associations.¹ Under its Articles of Incorporation, Mid-States may engage in any activity within the purposes for which cooperatives may be organized², and all such activities shall be deemed within its purposes. All of its capital stock consists of common voting stock having a par value of \$40 per share and all of the common stock is membership stock. Each stockholder shall and may only own 12 shares of membership common stock, and each stockholder is entitled to only one vote at any annual, regular or special meeting of the stockholders. Mid-States does not have any members or patrons who are not stockholders of the corporation. Stockholders are either individuals, partnerships or corporations. You note that Mid-States is contemplating "establishing an unincorporated and non-profit political action committee." In the event that Mid-States does establish such a political action committee, you ask several questions. These questions are restated as follows:

¹ A "Cooperative" is defined under North Dakota Law as "an association incorporated under this chapter." N.D. Code §10-15-01

² Cooperatives may be organized for any lawful purpose except banking, insurance, and building or operating public railroads, but are subject to statutes relating to the organization or operation of specified kinds of corporations or associations. N.D. Code §10-15-02.

- (1) whether the "connected organization" (i.e. Mid-States) would be considered a corporation or a cooperative; and
- (2) whether the political action committee may solicit contributions from the individual shareholders of the corporate member-stockholders of Mid-States and, if so, whether there is any limit as to the number of such solicitations.

In response to your first question, the Commission concludes that since Mid-States is incorporated and is a "cooperative" under North Dakota law, it would be treated as both a corporation and a cooperative for purposes of the Act and Commission regulations. See, in particular, 2 U.S.C. 441b and 11 CFR 114.7. Accordingly, since Mid-States is both a cooperative and a corporation, any PAC established by Mid-States is required to characterize its connected organization as both a cooperative and a corporation. 2 U.S.C. 431(7), 433(b)(2).

In response to your second question the Commission concludes that Mid-States, or a political action committee established by Mid-States, may solicit its individual member-stockholders, but would be prohibited from soliciting the stockholders of any corporation that is a member-stockholder of Mid-States.

Under 11 CFR 114.7(a), cooperatives³ may solicit contributions to a separate segregated fund established by the cooperative from members of the cooperative. The term "member" is defined as "all persons who are currently satisfying requirements for membership in a ... cooperative." 11 CFR 114.1(e). The Act defines the term "person" to include both individuals and corporations. 2 U.S.C. 431(11). The Commission has previously recognized that corporate "persons" are distinct from the individual stockholders of the corporation for purposes of the Act, and this is true even in closely held corporations. Compare Advisory Opinion 1979-52, copy enclosed. Further, it has been held that sufficient indicia of a membership relation must exist before an incorporated membership organization (like a cooperative) may solicit a particular individual. See Federal Election Commission v. National Right To Work Committee, ___ F. Supp._____, Civ. Action No. 77-2175, April 24, 1980.

In the situation here there does not exist a sufficient membership relation between the individual stockholder of a member corporation of Mid-States and Mid-States itself since those individuals, who have a distinct legal existence separate from the corporate member, do not "stand in the shoes" of the corporation and otherwise do not share the same type of membership relationship as do those individuals who in their personal and individual capacities are stockholders of Mid-States. See the definition of "stockholder" in 11 CFR 114.1(h). The relationship which does exist between the stockholders of a member corporation of Mid-States

³ North Dakota Law requires the net earnings of Mid-States to be distributed to its stockholders (see N.D. Code §10-15-33). Therefore, Mid-States may not be treated as a trade association since one of the elements in the Commission's definition of "trade association" is that no part of the organization's net earnings may inure to the benefit of any member. 11 CFR 114.8(a). If Mid-States were a trade association, it would be permitted to solicit the executive and administrative personnel and the stockholders of its corporate members subject to separate and specific approval by that member corporation. 2 U.S.C. 441b(b) (4) (D).

and Mid-States itself is an indirect one by virtue of their stock holdings in the member corporation. Furthermore, the statutory context (2 U.S.C. 441b) in which the term "stockholder" is used consistently includes the families of the stockholders as well, thereby indicating that natural persons, i.e. individuals, are contemplated rather than other types of "persons."

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)

Max. I. Friedersdorf
Chairman for the
Federal Election Commission

Enclosure (AO 1979-52)