



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 29, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-65

Mr. Robert L. Ackerly  
Sellers, Conner & Cuneo  
1575 Eye Street, N.W.  
Washington, D.C. 20005

Dear Mr. Ackerly:

This responds to your letter of May 20, 1980 requesting an advisory opinion on behalf of the National Tire Dealers and Retreaders Association ("NTDRA") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") to the publication of an authorization request.

Your letter states that NTDRA is a national trade association having some 5300 members, including corporations, partnerships and sole proprietors. NTDRA publishes a bimonthly magazine entitled Dealer News. This magazine is distributed to 7000 readers, including all members of NTDRA as well as others who are not members. NTDRA would like to publish the request for authorization to solicit the personnel of corporate members<sup>1</sup> in the Dealer News. You state that the purpose of publishing the authorization request is to secure a corporate executive's signature on the forms which would allow NTDRA's separate segregated fund (i.e. TIDE PAC<sup>2</sup>) to solicit the personnel of that corporate member of NTDRA. You point out that the authorization request specifically states the requirement for corporate member approval and that the corporate member may not approve solicitation by NTDRA or TIDE PAC if it has previously approved solicitation by any other trade association during the calendar year. You add that there

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<sup>1</sup> Commission regulations require a trade association, or a separate segregated fund established by a trade association to obtain specific approval from the member corporation before soliciting the corporation's executive or administrative personnel and its stockholders. 11 CFR 114.8.

<sup>2</sup> The Act requires the name of any separate segregated fund established under 441b(b) to include the full name of its connected organization. 2 U.S.C. 432(e)(5). See also 11 CFR 102.14 of Commission regulations, 45 Fed. Reg. 15108, March 7, 1980, effective April 1, 1980 and Advisory Opinions 1980-23 and 1980-10, copies enclosed. An appropriate change in TIDE PAC's name must be made in 10 days. 2 U.S.C. 433(a) and 11 CFR 102.1.

will be no solicitations without such prior written approval from persons authorized by their respective corporations to give such approval.

Under the above-described circumstances you ask whether it is permissible for NTDR to include such an authorization request in the Dealer News. This question raises the following issues:

- (1) Whether the authorization request constitutes a solicitation so as to preclude NTDR from including it in the Dealer News; and
- (2) Whether the authorization request is sufficiently specific so that the individual recipient of the request is fully apprised of the nature and purpose of the request.

With respect to the first issue of whether the authorization request constitutes a solicitation under the Act, the Commission's most recent advisory opinions considering the question of the types of communications constituting solicitations for purposes of 2 U.S.C. 441b offer a basis for addressing your factual situation. In the specific factual context of Advisory Opinion 1979-66 (see copy enclosed) the Commission held that a notice regarding a PAC's financial activity would not constitute a "solicitation" under the Act. The notice included a report stating the number of contributors and solicitation authorizations provided to the trade association's PAC. It also included the amount of contributions received and made by the PAC. The notice did not expressly encourage support of the PAC's activities nor did it provide readers with information on how they could contribute to the PAC. The result in AO 1979-66 was distinguished from an earlier opinion, Advisory Opinion 1979-13 (copy enclosed), where the Commission concluded that a proposed article in a corporate newsletter which described the activities of the corporation's separate segregated fund was a solicitation for voluntary contribution. The article described the fundraising activities of the separate segregated fund and contained a quotation from the chairman of the fund commending the enthusiasm of employees who had participated in fund activities during the past year.

The Commission concludes that the situation presented here is analogous to that presented in Advisory Opinion 1979-66. It is also analogous to the situations presented in Advisory Opinions 1978-17 and 1978-83 (see copies enclosed), where the Commission permitted different trade associations to maintain booths at their respective conventions to obtain the written approval from the corporate members for solicitations by the trade association's separate segregated fund. The booths themselves were not considered to be improper contribution solicitations of executive personnel of member corporations who had not given prior solicitation approval. The prior solicitation authorization is a requirement of 2 U.S.C. 441b(b)(4)(D) and Commission regulations at 11 CFR 114.8. In attempting to secure such required authorization by means of a return coupon in a trade publication circulated to corporate (and other) members, NTDR is utilizing an established means of communicating with its membership. Moreover, any possible solicitation aspects of publication of the proposed solicitation form are no more evident than was present where booths at trade association conventions were used to obtain solicitation approvals from representatives of member corporations who had not previously authorized solicitation of their personnel. AO 1978-83 and 1978-17. Thus, the inclusion of a solicitation authorization request form, in NTDR's Dealer

News which is specific and otherwise sufficient under 11 CFR 114.8 would not itself be a contribution solicitation for purposes of the Act and Commission regulations.

As to the second issue of whether the authorization request is sufficiently specific, the Commission concludes that the proposed authorization form does not adequately explain the purpose and use to be made of the form.

Under the Act a trade association, or a separate segregated fund established by a trade association, is permitted to solicit the executive or administrative personnel and stockholders of its member corporations provided that such solicitation has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year. 2 U.S.C. 441b(b)(4) (D). Commission regulations provide that solicitation approvals be made in writing and preserved for 3 years by the trade association or its fund. 11 CFR 114.8(d). Any request for authorization must specifically indicate the requirement for corporate approval and that the corporate member may not approve solicitation by the trade association or its political fund if it has previously approved solicitation by any trade association during the calendar year. 11 CFR 114.8(d)(3). Solicitation approvals in writing may be obtained only from those persons duly authorized by their respective corporations to give such written approval.

In particular, the first paragraph of the authorization request<sup>3</sup> creates an ambiguity as to the purpose of NTDRA's request and its inclusion in the form results in the authorization form not being specific enough to meet the requirements of 11 CFR 114.8. The use of personal pronouns improperly suggests that individual rather than corporate solicitation approvals are being sought. Accordingly, the authorization form should explain that only a member corporation of NTDRA may authorize solicitation of its executive or administrative personnel and stockholders since, as you have indicated, some 1700 persons who are not members of NTDRA receive the Dealer News. These persons may not be solicited for contributions; nor may they approve such solicitations. Furthermore, corporations who are not NTDRA members would not become members solely by virtue of the fact that they returned an authorization form signed by one of their officers. As explained above, the Act prohibits NTDRA and TIDE PAC from soliciting contributions from non-members under any conditions.

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<sup>3</sup> The paragraph states "I, the undersigned, wish to be identified with the Tire Dealers Political Action Committee (TIDE PAC). I want to receive periodic reports on the activities of this committee and evaluations of candidates for Congress."

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 L. Friedersdorf  
Chairman for the  
Federal Election Commission

Enclosures