



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 18, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-75

Mr. Robert Neville
National Restaurant Association
311 First Street, N.W.
Washington, D.C. 20001

Dear Mr. Neville:

This responds to your letters of April 25 and June 11, 1980, requesting an advisory opinion on behalf of the National Restaurant Association ("NRA") and the National Restaurant Association Political Action Committee ("NRAPAC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the solicitation of certain members of NRA.

The NRA is an incorporated trade association whose by-laws permit memberships of six classes: organization, personal, not-for-profit, educational (faculty and student), allied, and honorary*. You note that under the NRA's by-laws, a proprietorship, partnership, corporation, or other form of business organization directly engaged in the food service industry is eligible for an organization membership. The by-laws also provide that any person actively engaged in the food service industry in a supervisory or managerial capacity or any person who has retired from the food service industry after more than ten years of active participation in the industry in such a capacity is eligible for personal membership. The only restriction on such a personal membership is that any such person who is employed by, a partner in, or the owner of a firm in the industry shall not be eligible for personal membership unless the firm is an organization member.

You note that recently the NRA Board of Directors approved a change in membership policy. Under this change, for every \$100 of dues payable by it, an organization member is entitled to designate an individual actively engaged in its management as a "personal member."

* You note that the question you have submitted bears only on the "organization" and "personal" membership categories.

The individual designee you say, is not required to file a separate application for membership under these circumstances. Personal membership status is accorded the designee upon designation by the organization member. Although the application process differs between designated personal members and other personal members, the criteria for membership is identical in that individuals who are employed by, are a partner, or the owner of a firm in the industry are not eligible for personal membership unless the firm or enterprise is an organizational member. Individuals who are employed by an organizational member and are otherwise eligible for membership as management or supervisory personnel are placed on the membership rolls on receipt of their request and payment of dues. You explain that approval by the organizational member of an application for personal membership (non-designated) from one of its management personnel is neither required nor sought. Payment of dues may be by the personal member, be reimbursed by the organizational member, or be paid by the organizational member. Dues are paid annually and their payment, as with any member, is a condition of membership, so the designation would be for one calendar year.

A management person so designated is entitled to all the benefits and privileges of a personal member, including appointment to serve on operational committees of the NRA, the right to vote on the selection of officers and on such organizational issues as fall within the purview of the membership under the NRA's articles of incorporation and by-laws. Once a designated personal membership exists, the corporate employer of the individual is out of the picture as far as the designated personal member's rights, privileges, and communications with the NRA are concerned. For all purposes the personal member so designated has the same rights and privileges of any other personal member of the NRA. However, under certain circumstances the organizational member may withdraw its designation of a particular individual. A failure by the designated organizational member to continue to meet the requirements for eligibility, such as employment in the industry in a managerial or supervisory capacity and by a firm or enterprise that is an organizational member, would be grounds to terminate the personal membership. Where this occurs, the organizational member would be authorized to either recover the individual's voting rights and membership services or designate a replacement personal member from its management employees. From your explanation it appears that although it is unlikely, the organizational member could withdraw its designation in the event of a disagreement over the designee's exercise of his or her voting rights.

The organization member which elects to designate any of its management personnel as "personal members" has the number of votes and membership services to which it is otherwise entitled reduced accordingly so that the total number of votes to which the organization member is entitled is reduced by the number of personal members it designates and a single vote is assigned to each personal member thus designated. The membership services in the form of mailings of NRA publications, including information on governmental actions and proposals, economic reports, and educational and training materials, are then mailed to the designated personal member. The organization member's services are correspondingly reduced by the number of designated personal members. You note that the individual designee is not required to file a separate application for membership. Personal membership status is accorded the designee upon designation by the organization member, and payment of annual dues of designated personal members is the responsibility of the designating organization. You add that under this

type of membership the corporate member voluntarily transfers portions of its membership rights and privileges to individuals of its management personnel.

Under these circumstances, you ask whether individuals holding personal memberships in NRA, including designated personal members, may be solicited for contributions to NRAPAC. This raises the issue of whether NRA may solicit personal members under 2 U.S.C. 441b(b)(4)(C) and 11 CFR 114.7, that is, without prior written approval of the corporation as is otherwise required of solicitations by trade associations under 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8.

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 the trade association to the extent the solicitation has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any solicitation by more than one trade association in any calendar year. 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8. An incorporated 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) and 11 CFR 114.7.

In Advisory opinion 1977-67 (see copy enclosed) the Commission addressed the requisite relations 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.

While it is true that "designated" members of NRA are entitled to all the benefits of membership, they enjoy those benefits solely by virtue of the organization member's (i.e., the corporation's) designation or assignment of the rights and privileges which the organization member would otherwise have. As you have indicated, the corporate member simply "transfers portions of its membership rights" to individuals who are among its management personnel. By doing so, the corporate member permits an individual executive or administrator of the corporation to exercise rights and privileges which the corporation would otherwise enjoy as an organization member and does not thereby create a separate and distinct membership relationship between that executive or administrative employee and NRA. In effect, the designated personal member acts as the representative of the organization member in the exercise of membership rights. Furthermore, while the designated personal member and the non-designated personal member enjoy the same benefits and privileges within NRA, the fact that those benefits and privileges flow from different sources creates a distinction between them. The designated personal member's rights flow from the corporation insofar as membership rights in NRA are created by the corporation when it designates an individual manager as a member. Compare facts and conclusion in Advisory Opinion 1980-48, copy enclosed. The non-designated personal member, on the other hand, makes the affirmative act of applying for membership in NRA and does not rely on the corporation to designate him or her as a member.

Because the designated personal member does not enjoy a membership relationship with the NRA distinct from the organization member's relationship NRA is precluded from soliciting the individual executive or administrator without prior written approval from the member corporation. Accordingly, the Commission concludes that with respect to designated personal members of NRA, NRA is subject to the provisions of 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8 when it solicits those individuals. With respect to the non-designated personal members of NRA, NRA may solicit those individuals subject to the provisions of 2 U.S.C. 441b(b)(4)(C) and 11 CFR 114.7 governing solicitation of noncorporate members of an incorporated membership organization.

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.

Sincerely yours,

(signed)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosures (AOs 1977-67 and 1980-48)