



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-23

Richard H. Magnuson
Vice President/General Counsel
Land O'Lakes, Inc.
P.O. Box 116
Minneapolis, Minnesota 55440

Dear Mr. Magnuson:

This responds to your letter of May 1, 1981, with attachments, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation by Land O'Lakes of contributions to its separate segregated fund from individual members of the member associations of Land O'Lakes.

According to your request, Land O'Lakes is an agricultural cooperative corporation which has four classes of membership represented by four classes of common stock. Class A common stock is only held by associations of producers of agricultural products operating as cooperatives. These cooperatives are organized as corporations, and you refer to them as "indirect" members.¹ Class B common stock may be held by individuals who are actively engaged in the production of agricultural commodities. Class B members you refer to as "individual" members. From the context in which it is used in your request, the Commission understands "individual" or "individual member" to be a natural person.² Depending on where it is used, it would be either a natural person member of Land O'Lakes or a natural person member of an association member of Land O'Lakes. You say that since only holders of Class A and Class

¹ Your request included articles of incorporation and bylaws for three Class A members of Land O'Lakes, which you characterize as "representative" of Class A members. The Commission thus assumes for purposes of this opinion that all Class A members are corporations having stockholders or members, or both.

² Article IV, Section 2, of the Articles of Incorporation of Land O'Lakes, Inc., states that Class B stock may also be issued to corporations engaged primarily in farming operations and subject to certain conditions, but you have limited your request to individuals who hold Class B stock.

B stock are entitled to vote in the affairs of Land O'Lakes, Class C and Class D members are not relevant to your request.

Specifically, you propose and ask whether Land O'Lakes may lawfully solicit contributions to the Land O'Lakes, Inc., political action committee ("the PAC") from the individual members (or stockholders) of the Class A members, that is, from individuals who are members of associational members of Land O'Lakes.

As background to our request, you have provided extensive information as to the operation and organization of Land O'Lakes. You explain that to retain membership in Land O'Lakes, both an individual and a Class A member must continue to adequately patronize Land O'Lakes, that is, to transact a minimum volume of business, the amount being established by the board of directors. Similarly, each Class A member requires that its members continue to patronize that association to retain membership. In regard to voting, you explain that each Class A member has multiple votes based on its annual volume of business with Land O'Lakes in relation to the average volume of business with Land O'Lakes by an individual Class B member. The volume of business necessary to earn a vote is adjusted yearly. Each Class A member appoints a delegate to cast its multiple votes. Class B members each have one vote. Although these members may be grouped into voting units by the Board and a delegate would be chosen by that voting unit to cast all its votes, an individual member has the right to appear at any meeting and cast his or her vote. In that instance the individual vote cast is subtracted from those represented by the voting unit delegate. You explain further that each Land O'Lakes Class A member is structured and operates in essentially the same manner as Land O'Lakes. That is, the articles of incorporation of each Class A member require its members to patronize the cooperative association to retain membership and provide that only agricultural producers may vote. Each individual member receives one vote in the affairs of the association.

It is the opinion of the Commission that Land O'Lakes may not solicit contributions to its PAC from the individual members (or stockholders) of its Class A association members. As set forth in 2 U.S.C. 441b(b)(4)(C) and 11 CFR 114.7, a membership organization, cooperative, corporation without capital stock or a separate segregated fund established by such an incorporated organization may solicit contributions to a separate segregated political fund from the members of the organization. Commission regulations at 11 CFR 114.1(e) define "members" in the context of 2 U.S.C. 441b to mean:

all persons who are currently satisfying the requirements for membership in a membership organization... cooperative, corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, ' national or international union is affiliated...

Thus, under both the Act and regulations it is clear that Land O'Lakes may solicit its direct, or Class B, individual members as long as they are satisfying the conditions of membership in Land O'Lakes. However, the language of 441b(b)(4)(C) and Commission

regulations indicate that Land O'Lakes may not solicit their "indirect" members, that is, individual members of Class A member associations. The Act contemplates solicitation of personnel and stockholders of corporate members of trade associations³ but gives no parallel treatment for individuals who are members of corporate cooperatives that are, in turn, members of the soliciting corporate cooperative. Also, the quoted definition of "members" in 11 CFR 114.1(e) makes only a single exception to the general requirement for a direct membership relation, as contrasted to a derivative or indirect membership status. This exception is made for union members who are considered members of the national or international union of which the members' local is a part; as well as members of any labor federation with which their local or national (or international) union is affiliated. Since there is no similar specific regulation language applying to individual members of associations that are themselves members of an umbrella-like organization, such as a cooperative, those individuals who do not have a direct membership relation with the umbrella-like organization pursuant to its organizational documents would not be considered members of that organization for purposes of the Act.

Additionally, as stated in Advisory Opinion 1980-48, copy enclosed, although "person" is used in the definition of "members" and the Act defines "person" to include both individuals and corporations, as well as other group entities, 2 U.S.C. 431(11), the Commission is of the view that, for purposes of the Act, corporate persons are distinct from the individual stockholders of the corporation. This follows for the composition of the Class A association members of Land O'Lakes since from the exhibits submitted and discussion in the request, the associational, Class A members are corporations, either with capital stock or with members based on patronage of the incorporated cooperative.

Moreover, as discussed in Advisory Opinion 1980-48, sufficient indicia of a direct, membership relation between the incorporated membership cooperative and an individual must exist before the corporation may solicit that particular individual. Although it appears that such relationship exists between individual Class B members of Land O' Lakes and Land O'Lakes, it does not appear to exist with regard to individual members of Class A members of Land O'Lakes. In your request you contend that "indirect" members do possess indicia of membership in Land O'Lakes. However, the discussion in the request makes apparent that any rights and obligations which an individual member of a Class A member has regarding Land O'Lakes are indirect at best. For instance, any financial obligation imposed upon an individual member of a Class A member is imposed by the Class A member itself, not Land O'Lakes. In addition, the obligation of the individual member of the association member of Land O'Lakes is only to that Class A member, not to Land O'Lakes. The patronage of the Class A member by an individual member of the Class A member does not control the status of that Class A member with Land O'Lakes. For example, a member of a Class A member could maintain its required patronage of the Class A member, yet, if that Class A member reduces its patronage of Land O'Lakes below a certain level, the Class A member could lose its status as such with Land O'Lakes. That loss could occur regardless of the fact that such member (of the Class A member) has not reduced its patronage of the Land O'Lakes Class A member. Termination by Land O'Lakes of a Class A member can thus occur without regard to any act (or failure to act) of the member of the Class A

³ The definition of trade association in 11 CFR 114.8(a) is clearly inapplicable to Land O'Lakes, since it engages in a form of business enterprise, and part of its net earnings inure to its membership.

member. In this respect as well, it is apparent that members of Class A members of Land O'Lakes have too distant and indirect a relationship to Land O'Lakes to permit their characterization as members of Land O'Lakes for purposes of the Act and Commission regulations.

As for the right to exercise control over Land O'Lakes, only direct or Class B members have the right to one vote per member and to cast their own vote directly. The individual members of the Class A members do not have their own votes as regards Land O'Lakes affairs. Rather, the number of votes of Class A members are determined by the business volume of those members with Land O'Lakes, not by the business volume with their own members. The votes are cast by the one delegate of the Class A member, not the delegate of the member of the Class A member. In contrast to the situation of the individual Class B member, it is not the individual member of the Class A member association who has a vote in Land O'Lakes which he or she may exercise.

Thus, as previously stated, the Commission concludes that individual members of the Class A associational members of Land O'Lakes are not solicitable by Land O'Lakes or its PAC under the Act or Commission regulations.

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)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure (AO 1980-48)

P.S. Commissioners Aikens and Thomson voted against approval of this opinion and will submit a dissenting opinion at a later date.