



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1981-34

of

COMMISSIONER THOMAS E. HARRIS

I regretfully reach the conclusion that NARFE should not be permitted to use funds solicited for and left over from a special lobbying project to make contributions and expenditures to influence the nomination or election of persons to Federal office.

The persons who contributed to the special lobbying fund did so with the understanding that their donations would be used in an effort to prevent the passage of legislation that might threaten the amount of their own retirement benefits. The matter was apparently of critical concern to NARFE's members, as the lobbying fund collected a great deal of money - far more, it should be noted, than NARFE was able to collect for its political contributions fund.

Although the original solicitation for the lobbying fund did not notify the retirees that their donations would be used to make political contributions or expenditures as required by 11 CFR 114.5(a), the Commission is permitting NARFE to cure the solicitation's defect by notifying the donors - some three years after the fact - that their donations will be used for political purposes. Unless the retirees notify NARFE of their disapproval, their donations will be transferred to the political fund.

I do not believe that there is any legal basis for allowing the belated curing of the defective solicitation. While I recognize that in *FEC v. National Education Association*, the Court did allow a labor organization's separate segregated fund that had collected political funds through an impermissible "reverse check-off" plan to come into compliance with the Act by seeking belated approval from contributors, that matter is distinguishable from the case at hand. In *NEA* the funds collected in an impermissible manner were at least initially raised for and placed in the political fund. In the present case, however, the funds in question were not raised as political contributions; rather, the solicitation was a plea to retired federal employees for funds to combat what was perceived to be an attempt to weaken the Federal Retirement System. Moreover, in *NEA* the contributions of those who expressed an objection to the use of their donations for political purposes were refunded to the contributors. In the *NARFE* situation, however, even if the retirees are successfully contacted after the intervening years have passed

since their donations were made, the likelihood that any of them will register disapproval of the proposed transfer of funds is most unlikely, since no refunds will be made, but instead their donations will simply be left in the special lobbying fund.

To permit an organization to make an appeal for such funds, only to later transfer some of the receipts to its financially less successful political committee, invites other organizations to do the same under materially indistinguishable conditions. See 2 U.S.C. 437f(c).