



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 5, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-59

Ralph W. Holmen
Associate Counsel
National Association of Realtors
430 North Michigan Avenue
Chicago, Illinois 60611

Dear Mr. Holmen:

This responds to your letter dated December 16, 1981, requesting an advisory opinion on behalf of the National Association of Realtors and its separate segregated fund, Realtors Political Action Committee, concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act"), and Commission regulations to certain proposed fundraising and collection procedures.

You explain that the National Association of Realtors is a not-for-profit incorporated trade association whose members are state and local real estate associations as well as individuals involved in the real estate industry. You explain that the National Association's separate segregated fund, Realtors Political Action Committee ("RPAC"), is an unincorporated multi-candidate political committee organized to support candidates for election to Federal office and is registered with the Commission. Similarly, each of the fifty member state associations has established a State political action committee ("State PAC") organized and operated exclusively for the support of candidates for state and local office.

Fundraising campaigns between RPAC and the State PACs have, in the past, been conducted in accordance with a written agreement which provided that all voluntary non-corporate contributions received as a result of this fundraising activity would be divided between RPAC and the State PACs on a 40%-60% basis. The division of the fundraising proceeds has been achieved in either of two ways: through the escrow method or by direct deposit of funds into RPAC's account.

You state that the amount of funds currently maintained in State PAC accounts exceeds the need for political funds for use in state and local election activity and similarly, the portion of funds received by RPAC as a result of the agreed upon allocation formula is "less than RPAC would like to devote to support of candidates for Federal office." Thus, in order to apportion the proceeds between RPAC and the state PACs without causing the state PACs to become "political committees" as a result of transfers to RPAC under 11 CFR 102.6, you ask for Commission approval of the following two "fund transfer procedures." You indicate that the proposed procedures would allow state PACs to remain non-federal political committees, would insure that all individual contributors know how much of each contribution will be charged against 2 U.S.C. 441a limits and would insure complete reporting to the Commission of all contributions made to RPAC. Both procedures would provide that "any apportionment shall require that RPAC receive at least 40% of all contributions."

The first proposed fund transfer procedure provides that the full amount of all contributions received from these fundraising activities would be forwarded to and deposited by RPAC into its account within the appropriate time limits. RPAC would then report as a contribution from each donor, the entire amount of the contribution. The contributor would be advised that the total amount of each contribution made is chargeable against the contributor's applicable 441a contribution limits. As contributions are received, RPAC would forward a portion of the proceeds to each State PAC, the exact amount to be determined by the State PAC or by agreement between RPAC and the State PAC. All funds forwarded in this manner would be reported on a monthly basis in RPAC's reports to the Commission.

The Commission concludes, based on the description provided in your letter, that the first fund transfer procedure, whereby all fundraising proceeds are deposited in RPAC's account and a portion of those funds is forwarded to State PAC accounts, is permissible under the Act and Commission regulations.

The second proposed fund transfer procedure is designed for use by State PACs currently using the escrow method to forward to RPAC its portion of fundraising proceeds. The "escrow method" was the subject of Advisory Opinion 1977-20 in which the Commission considered and approved the use of a special bank escrow account to divide proceeds between RPAC and the State PACs on a fixed allocation of 40%-60%, respectively. The fund transfer procedure proposed by your current request, however, provides that escrow instructions will "designate and authorize" an appropriate State PAC officer to establish the percentage of contributions received and deposited in the escrow account that will be forwarded to the State PAC and RPAC. The allocation formula to be established by a State PAC officer, or by agreement between the State PAC and RPAC, will provide that at least 40% of contributions received and deposited in the escrow account will be forwarded to RPAC and the balance will be forwarded to the State PAC.

You state that each donor will be advised at the time of making a contribution that at least 40% of his or her contribution will be forwarded to RPAC for the support of Federal candidates and that such amount is chargeable against the appropriate contribution limits of 2 U.S.C. SS 441a. You state further, that if more than 40% of each contribution is forwarded to RPAC, the State PAC will publish a notice directed to all contributors advising them of the additional percentage so forwarded, and that such additional amounts are also chargeable against the

appropriate contribution limits of 2 U.S.C. 441a. The described notice will be published in a State Association publication which is distributed to all members of the State Association. Non-members who have made unsolicited contributions will be given "special notification."

Finally, RPAC will insure that no individual makes contributions to RPAC in excess of \$5,000 by verifying that the portion of any donor's contribution forwarded to RPAC, aggregated with the donor's previous contributions to RPAC during the calendar year, does not exceed \$5,000. In the event that a donor exceeds his or her contribution limit, you indicate that either the allocation formula will be revised so that the donor's contributions do not exceed \$5,000 for the calendar year, or the excess over \$5,000 of the donor's contribution will be refunded to the State PAC.

The Commission concludes that the second proposed fund transfer procedure would be permissible under the Act and Commission regulations provided certain modifications with regard to notice to contributors are implemented.

The Commission is of the opinion that it is RPAC's responsibility not that of the State PACs, to notify contributors of the amount of their contributions actually forwarded to RPAC's account. RPAC could discharge its duty to notify contributors of this information through a State PAC, as the agent of RPAC, however, the ultimate responsibility of notifying contributors lies with RPAC.

With regard to the method of notifying contributors of the actual allocation of contributions between RPAC and the State PACs, the Commission, in conformity with its approach in AO 1977-20, holds that all solicitation materials used under this method must state that more than 40% of contributions received may be forwarded to RPAC's account and how RPAC intends to notify contributors of this increase. Thus, the solicitation materials used must identify the State Association publication in which contributors may expect to find information about the actual post-contribution allocation formula, as well as an approximate time period in which contributors may expect to find such notice.* In this connection, the Commission approved a flexible apportionment plan proposed by a corporation to facilitate changes in the apportionment of contributions between the corporation's separate segregated fund and its non-Federal committees. See Advisory Opinion 1981-14, copy enclosed.

The Commission notes that the transmittal of contributions to RPAC and the reporting of those contributions by RPAC under the proposed procedures are subject to the transmittal and reporting requirements of 11 CFR Parts 102, 103 and 104. The Commission also notes that this opinion is issued with respect to implementation of the described procedures for future fundraising by RPAC. Accordingly, it should not be construed as expressing any opinion regarding transfers to RPAC of funds held in any State PAC account. See Advisory Opinion 1981-6, copy enclosed.

* The allocation formula used herein is that which was set out in your request. However, the Commission notes that the allocation formula itself may be changed and that a change in the allocation formula might obviate the necessity for any post-contribution allocations discussed herein. In either event, all solicitation materials must give notice to contributors of the agreed upon allocation and inform contributors of the means whereby they will be notified of any changes in the allocation formula.

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,

(signed)

Frank P. Reiche
Chairman for the
Federal Election Commission

Enclosures (AOs 1981-14, 1981-6)