



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 9, 1982

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-12

Alan P. Dye, Esq.  
Webster, Chamberlain & Bean  
1747 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Dye:

This responds to your letter of January 12, 1982, supplemented by your letter of February 23, 1982 and the information you provided on March 22, 1982, requesting an advisory opinion on behalf of the National Club Association ("NCA") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") to solicitation by NCA of contributions to its separate segregated fund from the individual members of NCA's member corporations.

In your request, you state that the National Club Association is an incorporated trade association exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1954. Its membership is comprised of private clubs throughout the United States, including golf clubs, downtown men's clubs, yacht clubs, athletic clubs, and the like, and its activities are undertaken in the common business interest of its members. The majority of NCA's member clubs are incorporated.

You state that three types of organizational structure predominate among NCA's corporate members. Some members are proprietary clubs, the stock of which is owned by a few individuals. A second type of club involves member ownership of the club through ownership of stock. A member may typically purchase stock upon becoming a member. The stock is usually transferable or may be redeemed by the club. On the death of the member, the stock in the club passes through his estate or is redeemed by the club. The members/shareholders control the club by voting for its officers and are entitled to a pro rata share of the club's assets upon liquidation.

In the third type of organizational structure, the club is owned by the members. The members do not, however, own shares of stock but have an equity interest in the club in that they must share

expenses and upon liquidation are entitled to share in the assets distributed. In this type of arrangement, club memberships are not transferable and are not passed through to the member's heirs upon his death. The members control the club by electing the governing body of the organization and are entitled to a pro rata share of the proceeds on liquidation.<sup>1</sup>

The NCA proposes to establish a separate segregated fund under the provisions of 2 U.S.C. 441b(b)(2)(C). You state that the NCA believes that it may solicit contributions pursuant to 2 U.S.C. 441b(b)(4)(D) from the executive and administrative personnel and shareholders of those of its corporate members which give the NCA exclusive written permission to solicit contributions to its separate segregated fund. The specific question posed in your request is whether, upon meeting the requirements of Section 441b(b)(4)(D), the NCA or its separate segregated fund may solicit contributions to the fund from the individual members of NCA's corporate members which are non-stock corporations.

As you note in your request, 2 U.S.C. 441b prohibits corporations from making any contribution or expenditure in connection with Federal elections. However, the Act specifically permits a trade association or its separate segregated fund to solicit contributions to the fund from the stockholders and executive or administrative personnel of the trade association's member corporations. See 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c). Although the Act and the regulations do not expressly authorize solicitation of the individual members of a trade association's non-stock corporate members, the statutory scheme and legislative history reflect Congress' intent that members of non-stock corporations be accorded the same treatment as stockholders of corporations with stock. In amending the Act in 1976 to allow membership organizations, cooperatives or corporations without capital stock to establish separate segregated funds and solicit their members (see 2 U.S.C. 441b(b) (4) (C)), Congress recognized that the members of such organizations "still make up the corporation" in the same sense as do stockholders. See 122 Cong. Rec. S6477-78 (daily ed. May 4, 1976) (remarks of Sen. Allen); 122 Cong. Rec. S3811-12 (daily ed. Mar. 18, 1976) (remarks of Sen. Allen).

Accordingly, the Commission concludes that the NCA may solicit contributions to its separate segregated fund from the individual members of its non-stock member corporations to the same extent that it may solicit the stockholders of its member corporations with stock, provided that 1) the member corporations annually give NCA their exclusive consent to such solicitations, 2) NCA solicits only the members of its member corporations,<sup>2</sup> and 3) such solicitations are otherwise conducted in accordance with 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8.

---

<sup>1</sup> Representative of this type of organization is the Country Club of Rochester which, according to its Certificate of Incorporation and By-Laws, is a New York membership corporation.

<sup>2</sup> See 11 CFR 114.1(e) and Advisory Opinions 1982-2, 1980-75, 1980-48, 1979-69, 1977-67, 1977-17, 1976-79, copies enclosed. Of course, as you note in your request, NCA may also solicit contributions from its own executive or administrative personnel (and their families) and from those of its members who may lawfully make contributions under the Act. See 2 U.S.C. 441b(b)(4)(A), 441b(b)(4)(C).

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)

Frank P. Reiche  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1982-2, 1980-75, 1980-48, 1979-69, 1977-67, 1977-17, 1976-79)