



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 9, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-36

Thomas M. Gould
Gould, Reichert, Strauss & Cissell
2510 Carew Tower
Cincinnati, Ohio 45202

Dear Mr. Gould:

This responds to your letter of April 27, 1982, requesting an advisory opinion on behalf of the National Audio-Visual Association, Inc. ("NAVA"), and the Audio-Visual Communications Fund ("AVC Fund") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to the merger of AVC Fund with another political action committee and to the acceptance by the AVC Fund of merchandise from corporate members of the trade association for solicitation purposes.

NAVA is a trade association with a "separate, segregated political action committee" known as the AVC Fund. In your letter you indicate that NAVA and another trade association, the XYZ Association,¹ are negotiating for a merger of the two organizations where members of the XYZ Association will exchange their XYZ membership for membership in NAVA. Once the former members of XYZ become members of NAVA, the XYZ Association will dissolve and distribute its net capital assets to NAVA and/or other 501(c) exempt organizations. The XYZ Association currently has its own separate segregated fund known as XYZ-PAC. In your request you ask whether upon completion of the merger between the XYZ Association and NAVA, NAVA may terminate the activities of XYZ-PAC and distribute the remaining assets to the AVC Fund.

Following the merger between NAVA and XYZ Association, NAVA will be the sole surviving corporate entity. 2 U.S.C. 441a(a)(5) states, in part, that:

all contributions made by political committees established or financed or maintained or controlled by any corporation... or any other person, including any

¹ Because of the sensitive negotiations of the merger, NAVA refers to the other trade association only as "XYZ".

parent, [or] subsidiary... of such corporation,... or any other person, or by any group of such persons, shall be considered to have been made by a single political committee...

Commission regulations further explain that application of this so called anti-proliferation rule means that all political committees set up by the same group of persons are treated as a single political committee. 11 CFR 110.3(a)(1)(ii).

Thus, given the merger of their respective parent associations, AVC Fund and XYZ-PAC would become affiliated political committees subject to a single contribution limit with respect to both contributions made and contributions received. See also 11 CFR 100.5(g)(2). As affiliated committees, AVC Fund and XYZ-PAC may transfer funds to each other without limit including the transfer by XYZ-PAC of all of its funds to the AVC-Fund. 11 CFR 102.6(a). Prior to its dissolution, XYZ-PAC would be required to report the transfer of its remaining funds to the AVC Fund. The XYZ-PAC could make such a disclosure and terminate in the same report. See 11 CFR 102.5.

In your letter you also request an advisory opinion concerning the acceptance by the AVC Fund of merchandise from corporate members of NAVA to be used by AVC Fund for fundraising purposes. You state that the AVC Fund regularly holds a major fundraising event in connection with NAVA's annual convention. For its 1983 fundraising event, the AVC Fund is considering encouraging its corporate members to contribute merchandise that would be used for such fundraising purposes as raffle, door and lottery prizes. This donated merchandise would be used only for solicitation purposes to AVC Fund and not as contributions to candidates for Federal office.

The Act provides that while corporations and labor organizations are prohibited from making contributions or expenditures in connection with any Federal election, they are permitted to establish separate segregated funds to be used for political contributions and expenditures. The Act specifically exempts from the definition of "contribution or expenditure" contained in 2 U.S.C. 441b, those costs incurred by a corporation to establish, administer and solicit contributions to such separate segregated funds. 2 U.S.C. 441b(b)(2)(C), 11 CFR 114.5(b). In Advisory Opinion 1980-59, copy enclosed, the Commission interpreted this provision to permit a corporate member of a trade association to donate funds over and above its membership dues to an administrative fund of the trade association that would be used to defray administrative and solicitation expenses of the trade association's PAC. In the present case, NAVA proposes to encourage its corporate members to make in-kind donations of corporate merchandise to defray its solicitation costs for the AVC Fund.

In light of the exemption for the use of treasury money contained in 2 U.S.C. 441b(b)(2)(C) and Advisory Opinion 1980-59, the AVC Fund may accept merchandise, and such merchandise would not be reportable contributions, from its corporate members to be used for otherwise lawful fundraising on behalf of the AVC Fund. However, the prizes offered by NAVA and the AVC Fund cannot be disproportionately valuable in relation to the contributions generated. While prizes can be offered in return for contributions to separate segregated funds, those prizes cannot be so numerous or valuable in relation to their cost that the fundraising procedure

becomes, in effect, a "trading" money situation. The Commission's regulations provide that a "reasonable practice to follow is for the separate segregated fund to reimburse the corporation or labor organization for costs which exceed one-third of the money contributed." 11 CFR 114.5(b)(2), Advisory Opinions 1981-40 and 1981-7, copies enclosed. The Commission also emphasizes that the described fundraising activity must comply with all the requirements of the Act and regulations and, in particular, those portions applicable to trade association solicitations. See 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8.

The Commission, while approving the proposal presented by this request, cautions the AVC Fund as to future potential affiliation problems with the political committees (separate segregated funds) of NAVA's corporate members. An issue of affiliation may arise where, in addition to paying dues, corporate members donate funds or anything of value to NAVA to defray a significant percentage of the administrative and solicitation costs of the AVC Fund.² As previously discussed, 2 U.S.C. 441a(a)(5) provides that all political committees established, financed, maintained or controlled by one corporation (or a parent or subsidiary of that corporation) are affiliated political committees with one contribution limitation.

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 by your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosures (AO 1981-40, 1981-7, 1980-139, and 1980-59)

² With respect to what might be considered "significant" in this context see, by analogy, Advisory Opinion 1980-139, copy enclosed. In that opinion the Commission concluded that a contribution solicitation reaching an audience of 10% or more who were outside the solicitable class would not be considered de minimis, and thus, would be prohibited by the Act and Commission regulations.