



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 15, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-40

Robert E. Shenk
Ohio Farm Bureau Federation, Inc.
35 East Chestnut Street
P.O. Box 479
Columbus, Ohio 43216

Dear Mr. Shenk:

This responds to your letter of April 21, 1982, supplemented by your letter of May 24, 1982, requesting an advisory opinion on behalf of the Ohio Farm Bureau Federation, Inc. ("OFBF"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the solicitation of contributions by OFBF from its members, and the use, in Federal elections, of monies previously donated by members for state elections.

In your request you state that OFBF is a membership organization, organized as a non-profit corporation without capital stock. According to its articles of incorporation, OFBF exists to "aid and assist in the betterment of the conditions and welfare of those engaged in agriculture and horticulture." OFBF is comprised of 86 member farm bureau organizations. To become a member of the local farm bureau one must be engaged in agriculture and pay an annual membership fee. The members include cooperatives, farms, individual farm owners and managers, and full-time farm employees. The farm bureaus have corporate and non-corporate members. Membership in the local farm bureau automatically results in OFBF membership. OFBF's articles of incorporation provide that "each individual member of a member farm bureau organization (which itself is a member of this Federation) whose individual dues if required to be paid, are paid, shall be an 'individual member' of this Federation." Any individual member of a farm bureau who is in "good standing" with the bureau has voting rights in that bureau. The farm bureau members elect delegates to represent them in any OFBF meetings. Voting rights in OFBF are restricted to delegates selected by the farm bureaus; individual members of OFBF have no direct voting rights in OFBF.

OFBF currently has a political action fund, the Agriculture Political Education Program ("APEP"), which has been used to support candidates for state office. Donations to APEP are

solicited from individual OFBF members when they are sent their annual membership renewal notices. APEP does not accept donations from corporate members, as corporate contributions are prohibited by Ohio state law.

In this request, you ask a series of questions. These questions are summarized as follows:

- 1) Whether OFBF must establish a separate segregated fund in order to make contributions to Federal candidates?
- 2) Whether APEP, as the separate segregated fund of OFBF, may use its present funds in connection with Federal elections?
- 3) Whether OFBF is considered a trade association under the Act and the Commission's regulations?
- 4) Whether APEP may accept contributions from political action committees unrelated to OFBF?

The Commission answers all of the above questions in the affirmative. In response to the first question, 2 U.S.C. 441b prohibits corporations from making a contribution or expenditure in connection with any Federal election. However, an exception in 441b(b)(2) would permit OFBF as a corporation to use treasury funds to pay for the establishment, administration, and solicitation of contributions to a separate segregated fund. See, generally, 11 CFR 114.1(b), 114.5. OFBF must, therefore, establish a separate segregated fund in order to make contributions in Federal elections.

In response to the second question, APEP may use its present funds in Federal elections. OFBF indicates that its primary method of solicitation of funds for APEP was a \$1 (or more) suggested contribution solicited from its members at the time they received annual membership renewal notices. OFBF states that to the best of its knowledge it has not accepted any contribution from any corporate members. As an incorporated membership organization, OFBF is permitted to solicit all of its noncorporate "members."*/ 11 CFR 114.7(c). In Advisory Opinion 1977-67, copy enclosed, the Commission addressed the requisite relationships and attributes of membership by individuals in incorporated membership organizations, as well as the issue of how the definition of "member" is to be applied when used in the Act and Commission regulations. The Commission observed that sufficient indicia of a membership relationship must exist between an organization and a group of persons in order for those persons to be considered "members" under the Act. See also Advisory Opinions 1982-2, 1980-75, 1980-48, 1979-69, 1977-17, and 1976-79, copies enclosed. Such indicia of membership include, for example, control over the direction of the organization and the taking of an affirmative act to join the organization. Pursuant to OFBF's articles of incorporation all individual members, through voting control in the local farm bureaus, participate in the direction and control of OFBF; they have rights and interests in OFBF, and help sustain the organization through regular dues payments. Thus, the Commission concludes that the solicitation of "members" by OFBF and APEP was proper under the Act and the Commission's regulations.

While all of the literal requirements of 11 CFR 114.5 were not met by APEP's past solicitations, it was in substantial compliance with the regulations. The solicitation made clear that all donations would be entirely voluntary; that a contribution was not a condition for continued membership; and that the money donated would be used for election related purposes, i.e., to support legislators who were "Friends of Agriculture". In addition, the solicitations were restricted to members. Moreover, the suggested contribution guideline of \$1 was of such a minimal amount as to negate any impact on a member's voluntary decision to contribute. In Advisory Opinion 1981-34, copy enclosed, the Commission required a membership organization to take remedial measures to correct its original solicitations prior to using the funds in Federal elections primarily because the original solicitations did not provide members with notice of the political purposes of the fund. The present case is distinguished from that opinion, and thus OFBF need not make any remedial notices, because in OFBF's solicitations members were expressly notified of the political purposes of the fund, that contributions would support legislators who were "Friends of Agriculture." In future solicitations, however, APEP should meet all of the requirements of 11 CFR 114.5.

The Commission's regulations further require, at 11 CFR 104.12, that if at the time of registration a political committee has cash on hand, as is the case of APEP, the source of those funds must be disclosed on the Committee's first report, and the information required by Commission regulation 104.3 must also be included. Section 104.12 also requires that APEP must exclude from funds to be used for Federal elections any contributions not permissible under the Act. Assuming compliance with the above restriction, APEP may use its current funds in connection with Federal elections.

In response to the third question, OFBF is a trade association under the Act and the Commission's regulations. 11 CFR 114.8(a) defines a trade association as:

a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit and no part of the net earnings of which inures to the benefit of any member.

OFBF meets all of those requirements. It is a membership organization comprised of those engaged in agriculture; it is organized to promote agriculture; it is not engaged in a business for profit; and no net earnings inure to the benefit of any members. As a trade association, OFBF may solicit contributions from the stockholders and executive or administrative personnel (and the families of both groups) of its member corporations. The member corporation must approve of the solicitation and may not approve a solicitation by any other trade association during the same calendar year. 2 U.S.C. 441b(b)(4)(D), 11 CFR 114.8. As a membership organization, OFBF may also solicit its non-corporate members for contributions. 11 CFR 114.7(c).

In response to the fourth question, APEP may accept contributions from political action committees unrelated to OFBF provided that the contributions were unsolicited. See 11 CFR 114.5(j) and 114.7(j).

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 1982-2, 1981-34, 1980-75, 1980-48, 1979-69, 1977-67, 1977-17, and 1976-79)

* See the discussion of trade association solicitations in response to question 3.