



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1982-54

of

COMMISSIONER LEE ANN ELLIOTT

I dissent from the Advisory Opinion adopted by a majority of the Commission for reasons that it improperly cites the Act rather than confining its authority merely to the SS 114.8 Regulations. The pertinent statutory provision at 2 U.S.C. SS 441b(b)(4)(D), which is an exemption to the general prohibition of corporate contributions states,

. . . that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

Clearly, this provision enables a trade association to solicit the executive and administrative personnel and stockholders of the corporate member provided that two conditions are initially met: (1) Specific approval is obtained by the trade association from the corporate member; and (2) the member corporation does not approve any such solicitation authorization to more than one trade association in any calendar year. Reference to "calendar year" in the statute is intended to act as a quantitative limitation upon the number of associations which are able to solicit the employees of corporate members. It is not intended to limit the time in which the solicitation authorization is required to be obtained. Indeed, in support of this, the legislative history reflects the limitation of authorizing one trade association per year to solicit the corporate members was to avoid numerous trade associations from soliciting a single corporate member. During the floor debate on May 3, 1976, Senator Packwood posed the question:

**SENATOR PACKWOOD:** Then, on the trade association and the requirement that a business can only be solicited by one trade association, in what manner does the corporation give that assent? Can they file a letter once a year and say that X Trade Association can solicit it, or how does it work?

**SENATOR CANNON:** We do not prescribe here what the manner of consent ought to be. I would assume that perhaps the FEC would prescribe a rule that would apply generally to all trade associations. The purpose there was that if you

had a number of organizations that belonged to a number of different trade associations, they would not be subjected to a barrage of solicitations. But the corporation can say, this trade association we belong to, is the one designated which can make the solicitation under the provisions of the Act.

**SENATOR PACKWOOD:** I understand the barrage and I agree with it.

Thus, there was not a concern that a single trade association would obtain the solicitation authorization in the preceding calendar year or years. For once that authorization was granted, the trade association to which the authorization was granted was exclusively entitled to solicitation rights until the authorization terminated. The integrity of the legislative policy is maintained even though that authorization may be granted during the preceding calendar year. The 114.8(d) (4) regulation which amplifies the aforementioned statutory provision was written in an overly restrictive manner, in light of the statutory boundaries and the underlying legislative policy. The regulations state, ". . . a separate authorization must be obtained each year." Although I disagree with the extent to which the regulations have broadened the restrictive nature of when the authorization must be obtained, I recognize that the opinions of the Commission must coincide with the Act and the regulations. In this case, the Advisory Opinion is accurate in that it follows the mandate of the 114.8(d) (4) regulation. However, in the second to last paragraph of the Opinion, it states,

Multiple year solicitation approvals and post-dated approvals are not permitted by the Act or regulations in that they contravene the requirement for an approval to be received in the year of the actual solicitation.

It is improper to cite to the Act as authority for prohibiting the multi-year solicitation, for the statute is not that restrictive in nature. Had the Opinion merely relied upon the regulations as its authority for reaching this conclusion, I would have agreed with the majority.