



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 31, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-12

Michael A. Nemeroff, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Nemeroff:

This responds to your letter of March 8, 1984, as supplemented by letter dated May 16, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the creation of a political committee by members of the Board of Directors of an incorporated association.

Your March 8 letter states that the Board of Regents, which functions as the Board of Directors of the American College of Allergists, Inc. (the "College"), has decided not to establish a separate segregated fund pursuant to 2 U.S.C. 441b.¹ Rather, members of the Board, acting in their individual capacity, intend to organize a nonconnected political committee to operate under the name of Independent Allergists Political Action Committee ("IAPAC"). According to the information provided by you, the initial costs of organizing IAPAC will be paid by the individual organizers. IAPAC will be "self-sufficient" in that all of its operational expenses will be paid solely from contributions received by IAPAC. You add that the College will not provide any direct or indirect financial support for the establishment, administration, or operation of IAPAC. To ensure IAPAC's financial independence from the College, the College's certified public accountant will review the financial records of IAPAC and the College.

Your letter further states that IAPAC will maintain an office at the College's headquarters and will receive staff services support from Executive Administration, an independent management firm, which is also under contract with the College and at least two other professional associations. Your letter dated May 16 explains that the College does not own or

¹ The College is a tax exempt organization under 26 U.S.C. 501(c)(3). Such organizations, pursuant to Internal Revenue Service regulations at 26 CFR 1.527-6(g), may not establish or engage in the political campaign activities of a separate segregated fund. Your supplemental letter indicates that counsel has advised the College that it may not establish a separate segregated fund and retain its 501(c)(3) status.

rent any office space, but that its headquarters are maintained at the offices of Executive Administration. IAPAC proposes to pay Executive Administration a management fee at an hourly rate which is its usual and normal charge. IAPAC will also pay any out-of-pocket expenses incurred on its behalf by Executive Administration. You also state:

Executive Administration will charge IAPAC as it charges all of its other clients, and as it would charge any other political committee or association that sought its services. Thus, IAPAC will not be receiving any preferential treatment from Executive Administration and will not be using any facilities that would not be available to any other political committee or association under normal commercial terms.

According to the information contained in your request, the organizational structure of IAPAC is designed to ensure its operational independence from the College. The Bylaws of IAPAC provide, for example, for the election of a governing board by contributors to the political committee. Contributors may include nonmembers of the College since IAPAC will not limit its solicitations to College members. In addition, all IAPAC contributors will be eligible to vote in elections for the IAPAC Board, regardless of their membership status in the College. The Bylaws also do not require that members of the Board of the College serve on the Board of IAPAC.

Under the Act and regulations, an organization such as a nonstock corporation which is not itself a political committee, but which directly or indirectly establishes, administers, or financially supports a political committee, is a "connected organization" of the political committee. 2 U.S.C. 431(7), 11 CFR 100.6(a). An incorporated connected organization and its political committee (i.e. separate segregated fund) are subject to the requirements of 2 U.S.C. 441b, including restrictions as to the category of persons who may be solicited for contributions to the political committee.² By contrast, a nonconnected political committee -- a committee not having a connected organization within the purview of 2 U.S.C. 441b -- may solicit any individual or person for otherwise lawful contributions. The Act and regulations do not prescribe qualifications on the individuals who may establish, organize, and direct a nonconnected political committee; nor do they necessarily prohibit individuals who have some association with a corporation, labor organization, or trade association from such activity. In past opinions, the Commission has indicated that the Act and regulations allow the creation of nonconnected political committees. See Advisory Opinions 1981-56 and 1981-54 (copies enclosed).

You indicate in your request that IAPAC will be established by College Board members acting in their individual capacity. You also indicate that IAPAC will operate and be governed independently of the College, and will not be financially supported by the College. Given these representations, it is the opinion of the Commission that, subject to the following discussion, the

² Your May 16 letter indicates that the College only has two employees, and you believe they would be executive and administrative personnel as defined in Commission regulations at 11 CFR 114.1(c). These employees will likely be terminated from employment in six months, and at that time there will be no employees of the College. Accordingly, you assert, the establishment of IAPAC should not be viewed as a method of avoiding the solicitation rules applicable to corporate employees pursuant to 2 U.S.C. 441b(b)(3).

College will not be the "connected organization" of IAPAC. See 11 CFR 100.6(a), 100.6(c), and 114.1(b). You state that: "It is expected that as IAPAC develops support from physicians, scientists, and others who are not members of the College, the Board of IAPAC will reflect this diversity." Should this anticipated diversity fail to materialize, the question whether the College is the "connected organization" of IAPAC would be subject to reexamination.

The College must exercise extreme caution in its dealings with IAPAC to ensure that no direct or indirect contribution of anything of value is made to IAPAC given the fact that the individuals who separately form the committee are in positions of responsibility in the College. While IAPAC may use the facilities of Executive Administration, that use must be consistent with Executive's relations with organizations other than the College. In particular, IAPAC must pay the "normal and usual rental charge" for the use of any facilities (office space, equipment, telephones, etc). See 11 CFR 114.9(d) and 100.7(a)(1)(iii)(B); see also 11 CFR 114.9(c) (reimbursement required for the use of facilities to produce materials). Moreover, the consideration to be paid by IAPAC for the services of Executive Administration and the certified public accountants must be "commercially reasonable." The charges for such services should be established without reference to the fact that the College retains the same firms for similar services.

The Act and regulations also preclude a corporation from providing any indirect contribution of anything of value to a nonconnected political committee. This requirement prohibits the College from engaging in conduct which favors or appears to favor IAPAC's solicitation activity. For example, it would be improper for the College to allow IAPAC to use its letterhead for solicitation and administrative purposes. It would also be improper for the College to charge IAPAC less than the normal and usual rate, as determined by the market price, for use of its membership list or to provide such list to IAPAC on an exclusive basis. Finally, neither the College nor IAPAC may assert a proprietary interest in or control over use of the name Independent Allergists Political Action Committee, IAPAC, or the words "Allergist" or "Allergists" in the event another political committee were to adopt a similar name, or acronym, in whole or in part.

The Commission does not address the situation in which individuals associated with the control of a corporation, labor organization, cooperative or corporation without capital stock seek to establish a non-connected political committee, and there is the possibility that employees of that organization will be solicited for contributions to that non-connected political committee.

The Commission does not express any opinion regarding the possible ramifications of the organization and operation of IAPAC with respect to the College's tax exempt status under 501(c)(3) of the Internal Revenue Code.

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)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AO 1981-56 and 1981-54)

P.S. Commissioners Aikens and McDonald voted against approval of this opinion and will file dissenting opinions at a later date.