



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 30, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-33

Thomas F. Kelley III, Manager
NRA-PAC
National Restaurant Association
311 First Street, N.W.
Washington, D.C. 20001

Dear Mr. Kelley:

This responds to your letter of July 9, 1984, as supplemented by your letters of October 10 and October 15, 1984, requesting an advisory opinion on behalf of the National Restaurant Association Political Action Committee ("NRA-PAC"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the underwriting by allied members of the National Restaurant Association ("NRA"), of a fundraising event for NRA-PAC.

According to the by-laws you submitted, NRA is a nonprofit, incorporated trade association, organized under the laws of Illinois. It is the connected organization of NRA-PAC, which is registered with the Commission as a multi-candidate political committee. You state that NRA-PAC plans to hold a major fundraising event in connection with NRA's annual trade show in Chicago on Saturday, May 18, 1985, at a location away from the trade show premises. You state that admission to the event will be by invitation only and that invitations to this event will be mailed to only the key person of each current organization member of NRA. According to the by-laws, this class of membership is limited to for-profit firms directly engaged in the food service industry. Organization members pay annual dues of a predetermined minimum amount, according to their sales volume, and have a right to vote for the officers and directors of NRA. You also state that the invitation sent to each organization member will serve as the ticket of admission to the fundraising event and will carry a reproduction of NRA's standard one-year solicitation authorization form. You add that the authorization on the ticket must be signed in order for its bearer to participate in the fundraising event. The ticket will also note that the cost of admission to the event serves as a contribution to NRA-PAC.

You propose to ask one or more corporate allied members of NRA to partially or fully underwrite the costs of this fundraising event. According to the by-laws, allied membership is

limited to firms that are directly engaged in a business activity which supplies goods and services to the food service industry. Allied members pay annual dues of a predetermined minimum amount, according to their sales volume, and receive NRA services. They do not, however, have a right to vote for the officers and directors of NRA and are not eligible for election to such positions, although twenty to twenty-five allied members serve on the exhibitors advisory committee. Also, two of the 29 positions as board advisors are filled by allied members. The allied members selected to underwrite the fundraising event would use their general treasury monies to reimburse the NRA general account for the complete or partial cost of the event. NRA normally pays solicitation costs of NRA-PAC from NRA's general corporate account. It does not maintain a separate account for payment of NRA-PAC expenses. NRA will directly pay any third-party vendors with respect to this event. You state that the products served at this event will not necessarily be those of the sponsoring allied members unless they require exclusive use of their products. You add, however, that sponsoring allied members will be so identified on the invitation/solicitation card and on various directional easel cards or signs at the event. You add that various NRA members sponsor the annual trade show and some events such as dinners and receptions.

You ask whether allied members of NRA may underwrite the cost of NRA-PAC's fundraising event.

The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a). The prohibition applies to nonprofit, as well as for-profit, corporations. FEC v. National Right to Work Committee, 459 U.S. 197 (1982). The Act states, however, that the term "contribution or expenditure" does not include "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock." 2 U.S.C. 441b(b)(2)(C). See also 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v). Commission regulations provide that membership organizations or corporations without capital stock "may use general treasury monies, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment, administration, and solicitation of contributions to its separate segregated fund." 11 CFR 114.5(b).

In Advisory Opinion 1980-59, the Commission concluded that a corporate member of a nonprofit corporate trade association could contribute funds, over and above its membership dues obligation, to defray the administrative and solicitation expenses of the association's separate segregated fund. The opinion reasoned that once these funds were placed in the association's general treasury, the association could use them to pay expenses of its separate segregated fund. Similarly, in Advisory Opinion 1982-36, the Commission concluded that a trade association's separate segregated fund could accept merchandise from corporate members of the association for use in fundraising, such as for raffle, door, and lottery prizes, subject to certain restrictions. In Advisory Opinion 1983-24, however, the Commission concluded that corporations that were vendors to the members of a professional association (but that were not themselves members of the association) could not pay the expenses of a reception for contributors to the association's separate segregated fund. Thus, a response to your request depends, initially, on whether allied members have the type of relationship with NRA that would

enable them to utilize the exception of 2 U.S.C. 441b(b)(2)(C) in the manner described in Advisory Opinions 1982-36 and 1980-59.

Commission regulations define the term "members" to include "all persons who are currently satisfying the requirements for membership in a membership organization...or corporation without capital stock." 11 CFR 114.1(e). The U.S. Supreme Court has stated that members of nonstock corporations "were to be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions." FEC v. National Right to Work Committee, 459 U.S. at 204, 103 S.Ct. at 557. The Court added that the "analogy to stockholders and union members suggests that some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'." Id. In making this determination, the Commission considers whether such persons have a right to participate in the governance of the organization and an obligation to help sustain the organization through regular financial contributions of a predetermined minimum amount.¹ See Advisory Opinion 1984-22.

In this advisory opinion, the Commission concluded that a category of persons who were eligible for election as an officer or director of an organization and served on all committees, including disciplinary panels, had sufficient rights to participate in the governance of the organization, although they lacked a right to vote for the organization's officers and directors. Similarly, in Advisory Opinion 1982-2, the Commission concluded that a category of associate members had sufficient rights to participate in the governance of an organization because they were eligible for nomination and election to the board of directors as a director-at-large and could serve on the organization's committees. In the circumstances presented in this request, allied members have neither a right to vote for the officers or directors of NRA nor eligibility for election to such positions. They fill only two of 29 positions as board advisors and serve on the exhibitors advisory committee. The Commission finds that the right of allied members of NRA to participate in its governance is significantly less than the rights of those membership categories treated in Advisory Opinions 1984-22 and 1982-2. The relationship of allied members to NRA is akin to that found insufficient in Advisory Opinion 1983-24 and distinguishable from the relationships in Advisory Opinions 1982-36 and 1980-59. Therefore, the Commission concludes that allied members of NRA lack sufficient attachment to that organization to permit them to underwrite the costs of any fundraising event for NRA-PAC.

The standard authorization form you submitted, which will be printed on the ticket to your proposed event, also raises an issue that needs to be addressed. Commission regulations provide that a trade association or its separate segregated fund may solicit contributions from the stockholders and executive or administrative personnel, and their families, of member corporations only if the member corporation has "separately and specifically" approved the solicitation and if it has not approved a solicitation by any other trade association for the same year. 11 CFR 114.8(c). The member corporation must grant such approval prior to any solicitation of its stockholders and executive or administrative personnel. 11 CFR 114.8(d)(3).

¹ The dues structure for allied members of NRA, set out in the NRA board policies that you submitted, show that this financial obligation requirement is met.

The request for approval may include one copy of the solicitation materials that will be used if approval is granted. Id. The request for approval may be addressed to the designated representative of the member corporation with whom the trade association regularly corresponds. Once authorization is granted, the association or its separate segregated fund may solicit the persons approved by the member corporation. 11 CFR 114.8(e).

Although you state that the invitation to the fundraising event will be addressed to the "key person" of each organization member, it is not clear that use of the ticket for attendance at the event will be limited to such key persons. In this context, the sample authorization form does not appear to meet the requirements of 11 CFR 114.8. The language of the form, such as the use of personal pronouns, suggests that individual authorization, rather than corporate authorization, is permissible or sought. Also, the form does not explain that only the person authorized by the member corporation may grant the necessary authorization. See Advisory Opinion 1980-65. As presently written, your authorization form could permit any stockholder or executive or administrative employee who obtains a ticket to self-authorize a solicitation by NRA-PAC. Also, the box and statement to request billing for a specific pledged contribution does not conform to the required two-step procedure set out in the regulations of first obtaining authorization and then soliciting contributions. See Advisory Opinion 1980-75. This discussion regarding the authorization form would not apply to the solicitation of individuals who are NRA members solely in an individual capacity, and not by designation of a corporate member. See Advisory Opinion 1980-75 and 11 CFR 114.7(c).

Finally, all solicitations of contributions by NRA or NRA-PAC at this fundraising event, or in any other manner, must also meet the notice and other requirements of 11 CFR 102.5(a)(2) and 114.5(a). See Advisory Opinion 1984-31. All contributions to NRA-PAC are, of course, subject to the limitations and prohibitions of the Act. See 2 U.S.C. 441a, 441b, 441c, 441e, and 441f.

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