



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 26, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-11

Richard P. Schweitzer
Legislative Counsel
Private Truck Council of America, Inc.
2022 P Street, N.W.
Washington, D.C. 20036

Dear Mr. Schweitzer:

This responds to your letter of March 6, 1985, requesting an advisory opinion on behalf of the Private Truck Council of America, Inc., concerning application of the Federal Election Campaign Act of 1971 as amended ("the Act") and Commission regulations to the proposed creation of a new class of "personal members" in the Council and solicitation of these individuals for contributions to the Council's separate segregated fund.

You state that the Private Truck Council of America ("the Council") is a trade association with a membership that includes corporations and unincorporated entities which operate private (not-for-hire) truck fleets and truck and driver leasing companies.¹ Such organizations are eligible to become "organizational members" of the Council, having the right to vote on Council business and the obligation to pay dues. In addition you indicate that the Council also has non-voting "associates" who are suppliers of goods and services to private fleet owners.

The Council proposes to create an additional class of "personal members" who would not be eligible to vote on Council business, but who would have a duty to pay dues and would have other rights to participate in Council activities. You state that any executive or administrative employee² of an organizational member would be eligible to become a personal member upon application for membership, election by the Board of Directors, and payment of dues. You ask whether these proposed personal members may permissible be solicited for contributions to the Council's separate segregated fund. You also ask whether the organizational members may pay

the annual dues for their employees who have become personal members, or reimburse them for dues they have paid to the Council.

The Commission first considers whether the personal membership class as proposed in your request has sufficient indicia of membership to be eligible for solicitation as members. Commission regulations provide that "members" means all persons who are currently satisfying the requirements for membership in a membership organization or trade association. 11 CRF 114.1(e). The Supreme Court of the United States has held that the right to solicit individuals as members is limited to those persons attached in some way to the organization's corporate structure. FEC v. National Right to Work Committee ("NRWC"), 459 U.S. 197, 103 S.Ct. 552 (1982). Some relatively enduring and independently significant financial or organizational attachment is required to be a "member" under 441b(b)(4)(c). 459 U.S. at 204. The Commission has held that for individuals to have the kind of enduring and significant attachment that would qualify them as members, they must have (1) some right to participate in the governance of the organization and (2) an obligation to help sustain the organization through regular financial contributions of a predetermined amount. Advisory Opinions 1984-33 and 1984-22.

With respect to the right to participate in the governance of nonstock corporations, the Commission has consistently considered and evaluated the extent to which, if at all, a proposed class of members has voting rights in the organization. For example, where an incorporated organization has membership classes who had full or partial voting rights and a class that had no such rights, the Commission stated that such individuals without voting rights were not "members" who could be solicited. See Advisory Opinion 1984-22 and opinions cited therein. Earlier advisory opinions issued before the NRWC decision have reached the same result. See Advisory Opinions 1079-69 and 1977-17. In another pre-NRWC advisory opinion, the Commission held that where a trade association had a class of personal members who were simultaneously executive or administrative employees of member corporations, and had the right to vote on organization business, such personal members were eligible for solicitation provided they were not merely "designated" by their employers and had taken an affirmative step to become members, as individuals, of the trade association. Advisory Opinion 1980-75.³

In your proposal, you state that personal members will not be entitled to vote on any association affairs; voting rights would be held exclusively by organizational members. While it appears that personal members would be eligible for election as Council directors or officers there is no provision that would assure them of any representation in such positions of governance. See proposed Article V. The obvious predominance of the organizational members in the management of the Council through their exclusive voting rights, effectively nullifies any semblance of significant participation in governance that might otherwise exist with respect to the proposed "personal members" class. Accordingly, the Commission concludes that the proposed personal members would lack a sufficient right to participate in the governance of the Council to be considered as members for purpose of the Act and Commission regulations.

Your second question pertains to payment of dues and is predicated on the assumption that the proposed class of personal members in the Council would satisfy the requirements of the Act and regulations as regards membership status. Because the Commission has concluded that

membership status would not result in this situation, the question of whether the "personal member" or his or her employer pays Council dues is not reached in this opinion.

The Commission does note, however, that regardless of who pays their Council dues, the executive or administrative employees of corporate members of the Council that have given prior approval may be solicited for contributions by the Council or its separate segregated fund, provided that the solicitation is carried out in accord with 11 CFR 114.8 of the Commission regulations. 11 CFR 114.7(c). Any corporation that is a member of the Council must separately and specifically approve the solicitation in advance, and the member corporation may not approve solicitation by any other trade association for the same calendar year. 11 CFR 114.8(c)(1)(2). See also 2 U.S.C 441b(b)(D).

This response constitutes an advisory opinion concerning application of the Act, or regulation prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AO 1978-100 and 1978-87)

1. The Council's membership also includes other trade associations and state associations of private truck fleet operators, but this opinion does not address any membership issues with respect to those bodies and their respective memberships since you have not presented specific questions as to them. See generally 11 CFR 114.8(g).
2. The Act and Commission regulations define "executive or administrative personnel" as individuals who are employed by a corporation or labor organization who are paid on a salary rather than on an hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities. 2 U.S.C. 441b(b)(7); 11 CFR 114.1(c).
3. In two other opinions prior to the NRWC decision, the Commission held that voting rights were not in all cases a mandatory requirement for membership status under the Act and Commission regulations. See Advisory Opinions 1982-2 and 1977-67. These two opinions did not, however, present the factual situation of trade association solicitations for contributions to its separate segregated fund from the personnel of corporate members within the purview of 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8(C) AND (D). Moreover, in Advisory Opinion 1977-67 none of the claimed members had any voting rights in the corporation and the opinion necessarily addressed other facts, such as membership opinion survey participation, in determining whether a right to participate in governance was present. For the foregoing reasons,

as well as the reasons set forth in the body of this opinion, the Commission believes that the instant opinion is distinguishable from both Advisory Opinions 1982-2 and 1977-67.