



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 26, 1985

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-12

Mr. Gary Hong
Director of Political Action
American Health Care Association
Political Action Committee
1200 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Hong:

This responds to your letters of February 20 and March 6, 1985, on behalf of the American Health Care Association Political Action Committee ("AHCA-PAC"), the Commission regulations to a proposed plan which would use membership dues invoices for the solicitation and collection of political contributions.

You state that the AHCA-PAC is the separate segregated fund of its connected organization, American Health Care Association ("AHCA"). AHCA is a nonprofit trade association of licensed nursing homes and allied long-term care facilities, incorporated under the laws of the state of Ohio. As part of your request, you have provided copies of AHCA's constitution and by-laws and its articles of incorporation. Membership in AHCA is granted to state affiliates or associations, each of which is a single group of health care facilities within a state (district, territory, or possession of the United States) that has a program of inspection, licensing, or approval by one or more departments of government. AHCA currently has 48 state associations. Some of these state associations have apparently established their own non-Federal political action committees. All health care facility members must satisfy membership requirements in both AHCA and a state association. They are called "member facilities."¹

You estimate that half of the nation's long-term health care facilities belong to AHCA and its affiliates.² You state that eighty percent of the member facilities are proprietary or for-profit entities and that twenty percent are nonprofit entities. You also indicate that some facilities are owned by their administrators, some by churches, governments, fraternal orders or other

membership groups. Thus, both proprietary and nonproprietary facilities may be operating as incorporated entities or as unincorporated entities. Each member facility is required to pay dues to AHCA and a state association, based on the number of beds licensed at the facility and a rate set by the House of Delegates. You explain that each state "association is responsible for the collection and transmittal of dues to AHCA from each of its member facilities."

You state that AHCA-PAC plans to combine the approval, solicitation, and collection of contributions to AHCA-PAC with the billing and collection of dues by AHCA's state associations of their state political action committees. You explain that AHCA-PAC will seek separate and specific solicitation approval from a corporate member facility by having the state association place an authorization form on the dues statement sent to that corporate member. See Exhibit A. You add that the solicitation and collection of contributions to AHCA-PAC would also be combined with subsequent dues statements sent to those corporate member facilities that had given the prior authorizations. See Exhibit B. The amount of the contribution suggested in these solicitations is also based on the number of beds at the facility.

You add that AHCA-PAC will use this combined dues/contribution statement to encourage an alternate payment method for corporate members. It will advise any corporate member facility that combined dues payments and political contributions should be drawn on individual accounts or nonrepayable drawing accounts or that contributions to AHCA-PAC should be made separately with a personal check. You explain with regard to corporate members that "combined dues/political contribution solicitation statements would be directed to member facilities, not to executive and administrative personnel or shareholders of such facilities." You note that "state affiliates [of AHCA] invoice members by facility not by individuals." You anticipate, however, that in many instances the individual who gives approval to the payment of any combined statement "would be the same person that granted AHCA-PAC prior approval to solicit."

You further state that each state association or its state political action committee would act as the collecting agent for contributions to AHCA-PAC, as it does for dues payments to AHCA. You state that an association receiving combined checks will deposit them in a separate trust account to be used only for separating political contributions and dues. Any contributions included in a combined check drawn on a corporate account would be forwarded to the state association for use as permitted under state and local law. You add that up to fifty percent of the gross proceeds from noncorporate contributions³ will be forwarded to AHCA-PAC by its state associations or their political action committees, acting as collecting agents.

With respect to these facts, you pose these questions:

(1) May AHCA-PAC use an affiliated state association or state political action committee as a collecting agent for the collection and transfer of contributions to AHCA-PAC?

(2) May a state affiliate include authorizations, solicitations, and collection of contributions to AHCA-Pac on its dues statements to member facilities?

(3) Since a state affiliate invoices its members by facility, not by individuals, may solicitations to AHCA-PAC be sent to member facilities rather than individuals?

AHCA-PAC is subject to the requirements of the Act and Commission regulations regarding the solicitation of voluntary contributions to the separate segregated fund of an incorporated trade association. Where the trade association comprises both noncorporate and corporate members, it or its separate segregated fund must distinguish these two groups when soliciting contributions. See 2 U.S.C. 441b(b)(4)(C) and (D); 11 CFR 114.7(c). The trade association or its separate segregated fund may solicit contributions directly from its noncorporate members and their families under 11 CFR 114.7. It may not solicit contributions from its corporate members, but it may solicit contributions from the stockholders and executive and administrative personnel (and their families) of corporate members if such corporate members have properly approved such solicitations under 11 CFR 114.8. See 11 CFR 114.8(b) and (c), see also 11 CFR 114.7(b) and (c). Solicitations of a trade association's noncorporate members and the approved class of personnel of corporate members must also meet the requirements of 11 CFR 114.5(a) regarding a proper solicitation. See 11 CFR 114.7(g) and 114.8(4).

Commission regulations permit certain entities to act as collecting agents for the collection and transmittal of contributions to separate segregated funds to which the collecting agents are related. 11 CFR 102.6(b)(1). Such collecting agents are not required to register and report provided: (1) they follow the procedures of 11 CFR 102.6(c); and (2) they do not engage in other activities such as making contributions or expenditures for the purpose of influencing Federal elections. 11 CFR 102.6(b)(2). With regard to your first question, the Commission concludes that, on the facts you have presented, AHCA's state associations and their state political action committees are sufficiently related to AHCA and AHCA-PAC to permit them to act as collecting agents for contributions to AHCA-PAC. See 11 CFR 102.6(b)(1) and Advisory Opinions 1983-46 and 1977-44.

Both your second and third questions relate to Commission regulations at 11 CFR 102.6(c) regarding the solicitation of contributions to a separate segregated fund by a collecting agent. The relevant provision states:

A collecting agent may include a solicitation for voluntary contributions to a separate segregated fund in a bill for membership dues or other payments such as conference registration fees or a solicitation for contributions to the collecting agent. The collecting agent may only solicit contributions from those persons permitted to be solicit contributions from those persons permitted to be solicited under 11 CFR Part 114. The solicitation for contributions must meet all of the requirements for proper solicitations under 11 CFR 114.5.

11 CFR 102.6(c)(2).

Noncorporate members of AHCA are among "those persons permitted to be solicited under 11 CFR Part 114" for contributions to AHCA-PAC. See Advisory Opinion 1981-52. Accordingly, with regard to noncorporate members, a collecting agent for AHCA-PAC may combine a solicitation for contributions to AHCA-PAC with a bill for membership dues or a solicitation for contributions to the collecting agent. See 11 CFR 102.6(c)(2) and Advisory Opinions 1982-55, 1982-11, 1981-4, 1979-19, 1978-42, and 1977-44. Corporate members of AHCA, however, are

not among those persons who may make or who may be solicited for contributions to AHCA-PAC. See 11 CFR 114.7(b) and 114.8(b) and Advisory Opinion 1979-19.⁴ Accordingly, with regard to corporate members, a collecting agent for AHCA-PAC may not combine a solicitation for contributions to AHCA-PAC with a bill for membership dues in the manner represented by Exhibit B.

Neither the Act nor the regulations, however, would preclude a collecting agent from combining a request for prior authorization to solicit a corporate member's stockholders, executive and administrative personnel (and their families) for contributions to AHCA-PAC with a bill for membership dues⁵ in the manner represented by Exhibit A,⁶ provided the requirements for such authorization under 11 CFR 114.8(d) are otherwise met. Cf. Advisory Opinion 1984-61. Once such a solicitation authorization is given, AHCA-PAC or its collecting agent may solicit the stockholders, executive and administrative personnel, and their families of such a corporate member in accordance with 11 CFR 114.8(e).⁷ A corporate member may not use a payroll deduction or checkoff system for executive and administrative personnel contributing to AHCA-PAC. See 11 CFR 114.8(e)(3). Furthermore, a corporate member may not reimburse or otherwise compensate a stockholder, executive and administrative personnel, or their family members for contributions to AHCA-PAC. See 11 CFR 114.5(b)(1).

As noted above, all solicitations for contributions to AHCA-PAC must meet the requirements for a proper solicitation under 11 CFR 114.5(a), whether made by AHCA, AHCA-PAC, or a collecting agent. See 11 CFR 102.6(c)(2), 114.7(g) and 114.8(e)(4). Assuming a billing statement such as Exhibit B is addressed only to noncorporate member facilities of AHCA, the paragraph of the solicitation message under the heading of "AHCA-PAC Contribution" will satisfy the requirements of 11 CFR 114.5(a). Advisory Opinions 1982-55 and 1982-11. These statements must also appear on each written solicitation, including any combined dues statements, addressed to those noncorporate members of AHCA who may be solicited for contributions to AHCA-PAC. See 11 CFR 114.5(a)(5) and Advisory Opinion 1984-61. Similar requirements would also apply to any separate solicitation of the stockholders, executive and administrative personnel, and their families of corporate members. 11 CFR 114.8(e)(4).

The Commission also notes that the use of a trust account by a collecting agent for the transmittal of contributions must meet the requirements of 11 CFR 102.6(c)(4). See also Advisory Opinion 1982-55. Also, a collecting agent must comply with the requirements regarding the transmittal of contributor information and the retention of records under 11 CFR 102.6(c)(5) and (6). The requirements regarding checks combining contributions and dues payments under 11 CFR 102.6(c)(3) apply to such checks from noncorporate members as well as the stockholders, executive or administrative personnel, and their families of corporate members.

Furthermore, AHCA-PAC has the responsibility of ensuring that these requirements regarding its collecting agents are met. See CFR 102.6(c)(1). It must also keep a record of all transmittals from its collecting agents. See 11 CFR 102.6(c)(6).

AHCA-PAC must also report contributions transmitted by its collecting agents as received from the original contributor to the extent required by 11 CFR 110.1(e) and Advisory Opinions 1981-52, 1980-132, and 1980-89. All contributions to AHCA-PAC, including those transmitted by a

collecting agent, are subject to the Act's limitations under 2 U.S.C. 441a and its prohibitions on contributions by government contractors and foreign nationals or in the name of another at 2 U.S.C. 441c, 441e and 441f.⁸

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)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1984-61, 1984-31, 1983-46, 1982-55, 1982-11, 1981-52, 1981-4, 1980-132, 1980-89, 1979-19, 1978-42, and 1977-44).

1. Each state association selects two or more members of AHCA's House of Delegates, which sets AHCA's budget and policies. The House of Delegates in turn elects AHCA's national officers. AHCA policies are implemented by its Board of Directors, which includes the national officers, the presidents of each affiliated association, and each of 13 regional vice presidents. Each regional vice president is chosen by the House of Delegates members from those state associations comprising that region.

2. According to one reference, approximately 8,000 such facilities are members of AHCA. See 1 Gale Research Co., Encyclopedia of Association 1066 (19th ed. 1985).

3. It appears that the balance of the noncorporate contributions would be retained by the state associations for use in connection with state and local elections.

4. This prohibition applies to "any corporation whatever" whether for profit or not for profit, public or private, stock, or nonstock, municipal or charitable. 2 U.S.C. 441b(a); 11 CFR 114.2(b); see also FEC v. National Right to Work Committee, 459 U.S. 197 (1982).

5. Although a collecting agent may send such a combined dues statement/authorization request or form, Commission regulations require a trade association or its separate segregated fund to maintain a copy of each approved request for three years from the year for which the approval is given. See 11 CFR 114.8(d)(2).

6. Exhibit A refers to authorization to solicit contributions from "trustees" of member facilities of AHCA. It is not apparent whether such personnel would be executive and administrative personnel of a corporate member of AHCA. Additional facts would be necessary for the Commission to address that issue.

7. Since the corporate members of AHCA may include both parent corporations and subsidiaries of corporations, the requirements of 11 CFR 114.8(f) should also be noted.

8. The Commission notes that an AHCA member facility would not be considered a government contractor merely because its residents may receive Medicare or Social Security benefits or may assign such benefits to the facility. Cf., H.R. Rep. No. 93-1348, 93d Cong., 2d Sess. 68 (1974), reprinted in Legislative History of Federal Election Campaign Act Amendments of 1974, 1012 (GPO 1977) See 11 CFR Part 115.

EXHIBIT A

Statement

December 1, 1985

MISSOURI HEALTH CARE ASSOCIATION

St. Louis Nursing Center
234 West Maple Street
St. Louis, Missouri 65102

The amount due January 1, 1986 for 1986 MHCA dues: 50.00

Please check method of payment:

- Annual
- Semi-Annual (Jan & May)
- Semi-Annual (5 equal payments - Jan 1 through May 1)
- Four Payments (40%-20%-20%-20%)

P.O. Box 874/Jefferson City, Missouri 65102/Phone (314)635-9283

*** AHCA-PAC PRIOR APPROVAL ***

The PAC of AHCA and AHCA on behalf of the PAC of AHCA is hereby authorized to solicit executive or administrative personnel & trustees/shareholders as defined by 2 USC 44b(b)(7) and 11 CFR 114.1(c) of the _____

Facility Name	City	State
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for the years 1985, 1986, 1987 and 1988 and only one federal PAC is so authorized.

1985 _____
CEO, on behalf of, Facility Corporate Name

1986 _____
CEO, on behalf of, Facility Corporate Name

1987 _____
CEO, on behalf of, Facility Corporate Name

1988 _____
CEO, on behalf of, Facility Corporate Name

EXHIBIT B

Statement

December 1, 1986

MISSOURI HEALTH CARE ASSOCIATION

St. Louis Nursing Center
234 West Maple Street
St. Louis, Missouri 65102

The amount due January 1, 1987 for 1987 MCHA dues: 50.00

Please check method of payment:

Annual

Semi-Annual (Jan & May)

Semi-Annual (5 equal payments - Jan 1 through May 1)

Four Payments (40%-20%-20%-20%)

MHCA-PAC Contribution (\$1.00 per bed) 75.00

AHCA-PAC Contribution (\$1.00 per bed) 75.00

TOTAL AMOUNT 200.00

AHCA-PAC Contribution

The American Health Care Association Political Action Committee (AHCA-PAC) collects personal donations from AHCA members to be used for contributing money to candidates for the U.S. Senate and House of Representatives. Contributions are voluntary and are not required for AHCA membership. The contribution requested is only a suggested amount. An AHCA member may contribute more or less than that amount or make no contribution whatsoever. AHCA will not look upon with favor or disfavor any member by reason of the amount of their contribution or their decision not to contribute. If not contributing, or if contributing an amount different than that shown on the face of the statement, make the appropriate addition or reduction from the total amount shown as due.

IMPORTANT

If you conduct business as a corporation, then the combined dues payment and political contributions should be drawn on an individual account or on a non-repayable drawing account which you maintain with the corporation OR your MHCA dues and MHCA-PAC contribution can be paid with corporate funds, while your AHCA-PAC contribution is made with a personal check. Federal election law prohibits AHCA-PAC from accepting corporate funds.

CONTINUING CONTRIBUTIONS

The long term effectiveness of AHCA-PAC and MHCA-PAC depend on a steady, predictable flow of funds. The suggested amount will automatically appear on your dues statement until you notify us to change the amount shown.