



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 22, 1985

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-31

June Edmondson, Esquire  
Williams & Jensen  
1101 Connecticut Ave., N.W.  
Washington, D.C. 20036

Dear Ms. Edmondson:

This responds to your letter of September 20, 1985, requesting an advisory opinion on behalf of CIGNA Corporation Political Action Committee ("CIGNA PAC"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of political contributions to CIGNA Corporation's separate segregated fund, CIGNA PAC, from the stockholders and executive and administrative personnel of COMPAR insurance agencies.

According to your request, CIGNA Corporation ("CIGNA") was formed in 1982 as a result of the merger of INA Corporation and Connecticut General Corporation. Through several subsidiary companies, referred to collectively as the CIGNA Property and Casualty Group, CIGNA sells various types of property and casualty insurance. This insurance is sold through independent agents and brokers, and also by COMPAR agencies.

A COMPAR agency enters into a "Full Service Agency Agreement" with CIGNA and agrees to sell only CIGNA policies except in those instances where CIGNA refuses the business or prior approval has been obtained from CIGNA. A COMPAR agency is given authority to underwrite, price, and direct the issuance of a CIGNA policy. In return, CIGNA invests financial and personnel resources in the COMPAR agency. You state that the term of a COMPAR agreement is perpetual. Termination without cause is available to either party on two years' notice. The contract may be terminated for cause by CIGNA if the COMPAR agent violates the agreement. Termination is automatic if the agency is sold or transferred without CIGNA's prior written approval.

CIGNA, in return, provides the COMPAR agent with marketing services and financial and management assistance. Such assistance includes payment of one half of a COMPAR agency's public relations expenses, payment of sales promotion and advertising expenses based on a percentage of the agency's premium volume for the preceding year, and "media kits" on a quarterly basis. If certain eligibility requirements are met, a COMPAR agency will be provided with a grant up to 50% of a new employee's salary for a year for new employees engaged in marketing or producing new business; loans may be granted at preferred rates, and access to a computerized system provided.

Your letter discusses the contractual differences between a COMPAR agency agreement and a standard independent agency agreement. First, the time period for termination without cause is 90 days for a standard agency agreement and two years for a COMPAR agency agreement. Second, the standard agency agreement requires notification to CIGNA within seven days after the sale or transfer of ownership of the agency; the COMPAR agency may not sell or transfer ownership without the written consent of CIGNA. Additionally, a COMPAR agency must be offered for sale to CIGNA with a 60 day period for acceptance on the same terms as any proposed sale.

Your request contends that this close relationship between CIGNA and COMPAR agencies renders these two entities "affiliates." You cite several advisory opinions which discuss the "legal and practical relationships" between franchise licensee and licensor and state that CIGNA and COMPAR agencies present an analogous relationship. See Advisory Opinions 1979-38, 1978-61, 1977-70.

The Act and regulations permit a corporation to solicit "the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families." 11 CFR 114.5(g)(1), also compare 2 U.S.C. 441b(b)(6). Although the term "affiliate" is not defined, the Commission has followed the indicia of affiliation that are applied in determining the affiliation between political committees for purposes of the anti-proliferation rule in 2 U.S.C. 441a(a)(5). See Advisory Opinion 1983-48. Among the indicia sufficient to establish affiliation are: 1) provisions of by-laws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity; and 2) the authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity. 11 CFR 100.5(g)(2), 110.3(a)(1)(iii).

In the previous advisory opinions cited in your request the Commission has found affiliation to exist on the basis of a corporation's control and direction over business policies of an entity and the nature and extent of the entity's contractual obligations to the corporation. In the facts presented in those opinions, the degree of influence a licensor had over a franchisee or licensee was determined to be sufficient to establish affiliation under the Commission's regulations. However, in Advisory Opinion 1985-7, the Commission held that the degree of influence a corporation, Anheuser-Busch, held over its wholesale distributors was insufficient to establish affiliation. Specifically, the lack of the corporation's power to choose the wholesalers' managers and the ability of the wholesalers to sell other products were highly relevant to the conclusion that they were not affiliates of Anheuser-Busch.

The Commission concludes that the degree of influence CIGNA has with respect to COMPAR agencies is sufficient to meet the standards for affiliation as set forth in Commission regulations and as applied in other opinions.

Under the COMPAR agency agreement, the COMPAR agency may sell only CIGNA insurance except in special cases with the prior written approval of CIGNA.<sup>1</sup> In addition, while CIGNA may delegate to the COMPAR agency the authority to underwrite, price and direct the actual issuance of a policy, CIGNA reviews the COMPAR agency's exercise of this authority and may revoke it. Furthermore, COMPAR agencies are entitled to obtain extensive advisory and management services as well as financial assistance from CIGNA: advice on office operations and fiscal management; planning and sharing of expenses for public relations, sales promotion, and advertising; personnel training for COMPAR agents and their employees; financial grants for 50% of salary of new COMPAR agency employees engaged in marketing or producing new business; preferred rate loans to COMPAR agencies for acquisitions, perpetuation and other purposes.

Therefore, because the COMPAR agencies would constitute affiliates of CIGNA, the stockholders and the executive and administrative personnel of the COMPAR agencies may be solicited for otherwise lawful contributions to CIGNA PAC.<sup>2</sup> Contribution solicitations must be made in compliance with Commission regulations. See 11 CFR 114.5. In addition, the Commission notes that the "affiliate" status of the COMPAR agencies for purposes of 11 CFR 114.5(g)(1) also means that all political committees established or financed or maintained or controlled by them or by CIGNA are affiliated political committees, and all such committees are subject to a single set of contribution limits with respect to contributions received and made. <sup>2</sup> U.S.C. 441a(a)(5), 11 CFR 100.5(g)(2) and 110.3.

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)

Joan D. Aikens  
Vice Chairman for the Federal Election Commission

Enclosures (AO's 1985-7, 1983-48, 1980-1, 1979-38, 1978-61, 1977-70)

1. This exclusive product aspect of the COMPAR agency agreement is a material difference from the wholesale distributor contract in Advisory Opinion 1985-7. That opinion is thus distinguished from the situation presented here.

2. Commission regulations include definitions of the terms "executive or administrative personnel" and "stockholder." 11 CFR 114.1(c), 114.1(h); see also Advisory Opinion 1980-1.