



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 9, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-13

Brock R. Landry
Keck, Mahin & Cate
1730 Pennsylvania Ave., N.W.
Suite 350
Washington, D.C. 20006

Dear Mr. Landry:

This responds to your letters of March 7 and 26, 1986, requesting an advisory opinion on behalf of the National Tire Dealers and Retreaders Association Political Action Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation and acceptance of funds or merchandise from the association's supplier members and state affiliates for the political action committee's administrative account.

You state that the National Tire Dealers and Retreaders Association Political Action Committee ("TIRE PAC") is the separate segregated fund of the National Tire Dealers and Retreaders Association ("NTDRA") and is registered with the Commission. It has qualified as a multicandidate political committee. A separate administrative account has been established which is used solely to defray TIRE PAC's establishment, administration, and solicitation expenses. You state that no political contributions are made from this account. NTDRA, the connected organization of TIRE PAC, is a nonprofit trade association incorporated in the District of Columbia. It has five classes of members: (1) independent tire dealer or retreader members; (2) supplier members; (3) affiliate members; (4) associate members; and (5) international members. Except as otherwise provided for in NTDRA's by-laws, only independent tire dealer or retreader members are eligible to vote.

Its supplier members are also organized in the Supplier Group, which is part of and affiliated with NTDRA. NTDRA's by-laws also authorize it to recognize state associations and enter into agreements of affiliation with such associations. You state that NTDRA has recognized and entered into affiliation agreements with 35 state and regional tire dealer and retreader associations.

NTDRA's six national officers are elected by its board of directors. Only tire dealer and retreader members, not supplier members, are eligible to become officers of NTDRA. NTDRA's executive committee includes its six officers, eight members of its board of directors appointed by its president, and the chairman and vice chairman of the Supplier Group. NTDRA's board of directors includes (1) one director from each state and the District of Columbia with any state having more than 100 members receiving one additional director for each 50 members, or portion thereof, in excess of 100 members; (2) 10 directors-at-large; (3) two appointed Canadian directors; and (4) the chairman and vice chairman of the Supplier Group plus an additional director for each 50 members over 100 members. The board currently has 110 directors.

Directors representing states or regional areas are elected under either one of two methods. In state or regional areas without a state or regional association recognized by NTDRA, the nominating committee polls the members. It then places in nomination the names of members receiving the greatest number of votes from each state or regional area and the names of candidates for at-large positions. In states or regional areas with a recognized state or regional association, candidates for director are nominated by NTDRA members at the annual state or regional association meeting. The state and at-large directors are elected by the majority vote of members present or represented by proxy at NTDRA's annual meeting. Supplier Group members are not eligible to participate in this election.

The representatives of the Supplier Group on NTDRA's board of directors are elected by a mail ballot of all Supplier Group members. Currently, the Supplier Group is represented on the NTDRA board of directors by its chairman, vice chairman, and four additional directors. Thus, Supplier Group members have elected 6 of the 110 members of the NTDRA board of directors. Although Supplier Group members do not vote in the election of directors representing the states, they are eligible to vote on other matters at NTDRA's annual meeting except those that the president determines should be restricted to voting members only. Supplier Group members also pay annual dues in specified amounts. For jobbers, distributors, manufacturers, and dealer support services, the dues amount varies from \$170 to \$1,020 according to sales volume. For associations, institutes, manufacturer's representatives and exporters, the dues amount is set at \$170. Membership in the Supplier Group and NTDRA is forfeited if dues are not paid within a specified period.

You ask these questions:

(1) May TIRE PAC solicit donations, including prizes for use in fundraising activities, to its separate administrative account to defray its establishment, administration, and solicitation expenses from the corporate members of NTDRA's Supplier Group?

(2) May TIRE PAC accept unsolicited donations to its administrative account from the corporate members of NTDR's Supplier Group?

(3) May TIRE PAC solicit donations to its administrative account to defray its establishment, administration, and solicitation expenses from state and regional tire dealer and retreader associations?

(4) May TIRE PAC accept unsolicited donations to its administrative account from state tire dealer and retreader associations?

The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a). This prohibition applies to nonprofit, as well as for-profit, corporations. See 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 further provide that incorporated 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).

I. Supplier Group

The Commission has previously stated that corporate members of an incorporated trade association, who meet the definition of "members" under the Act and regulations, may contribute funds or merchandise to defray the establishment, administration, and solicitation expenses of the trade association's separate segregated fund. Compare Advisory Opinions 1982-36 and 1980-59 with Advisory Opinions 1984-33 and 1983-24. 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. 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. See Advisory Opinion 1984-33.

The dues structure set out in the by-laws for NTDR's Supplier Group demonstrates that supplier members have an obligation to help sustain NTDR through regular financial contributions of a predetermined minimum amount. Supplier members also vote to elect their representatives on NTDR's board of directors. Two of these representatives, the chairman and

vice chairman of the Supplier Group, also serve on NTDRAs executive committee. Supplier members also have a limited, conditional right to vote on matters at NTDRAs annual meeting. Thus, supplier members also have a right to participate in the governance of NTDRAs.

Accordingly, the corporate members of NTDRAs Supplier Group may donate funds or merchandise to NTDRAs or to TIRE PACs administrative account to defray the establishment administration, and solicitation expenses of TIRE PAC.* NTDRAs or TIRE PAC may solicit such donations from the corporate members of the Supplier Group or may accept such unsolicited donations from these members. This responds to your questions one and two.

II. State and Regional Associations

The Commission has also permitted a membership organization to accept donations of treasury funds from affiliated organizations or local units to defray the establishment, administration, and solicitation expenses of the parent organization's separate segregated fund. See Advisory Opinions 1983-46 and 1979-63.

NTDRAs by-laws specifically provide for the recognition of state and regional associations on petition by NTDRAs members representing the geographical sections of the state and on examination of the state or regional association's proposed by-laws. Compare Advisory Opinion 1983-28 with Advisory Opinion 1985-37. NTDRAs by-laws also set out separate nomination procedures for members of its board of directors from state and regional areas with recognized associations and provide that only NTDRAs members may participate in the nomination of directors from these areas. See Advisory Opinion 1983-46.

NTDRAs has entered into "agreements of affiliation" with 35 state and regional tire dealer and retreader associations. These agreements recognize and memorialize a formal relationship between NTDRAs and the state or regional association and provide for mutual support and coordination of activities to promote their common interests. Each association maintains control over its own affairs including membership and dues, and each can terminate the agreement on written notice. These recognized state and regional tire dealer and retreader associations are, thus, "related State and local entities" of NTDRAs and meet the affiliation criteria of the Act and regulations. See 11 CFR 100.5(g)(2)(i)(D) and 110.3(a)(1)(ii)(D).

* Your request and the documents you submitted are silent with regard to whether the Supplier Group includes corporations that are "foreign nationals" as defined by the Act. See 2 U.S.C. 441e; 11 CFR 110.4(a). Therefore, the Commission assumes that the corporate members of the Supplier Group that are the subject of this opinion are not foreign nationals. Accordingly, the Commission does not reach, in this opinion, the question whether a corporate member of the Supplier Group, which is also a foreign national, may make these donations. See 11 CFR 112.1(b).

Furthermore, TIRE PAC should consult Commission regulations at 11 CFR 114.5(b)(2) regarding the use of prizes in a raffle or fundraising activity. See, e.g., Advisory Opinions 1982-36 and 1979-63.

Accordingly, these 35 state and regional associations with which NTDRA has made agreements of affiliation may make donations from their treasury funds to NTDRA or TIRE PAC's administrative account to defray the establishment, administration, and solicitation expenses of TIRE PAC. NTDRA or TIRE PAC may solicit such donations from these state and regional associations or may accept such unsolicited donations from these associations. This responds to your questions three and four.

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
Chairman for the
Federal Election Commission

Enclosures (AOs 1985-37, 1984-33, 1983-46, 1983-28, 1983-24,
1982-36, 1980-59, and 1979-63)