



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 17, 1987

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-5

Frederick T. Spahr, Ph.D.  
Treasurer  
American Speech-Language-Hearing Association  
Political Action Committee  
10801 Rockville Pike  
Rockville, MD 20852

Dear Dr. Spahr:

This responds to your letters of November 13, 1986, and January 14, 1987, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed solicitation of life members of the American Speech-Language-Hearing Association ("ASHA" or "the Association") for contributions to ASHA's separate segregated fund, ASHA-PAC.

You state that the Association has a membership of approximately 46,000 individuals, of whom 95.6% are speech-language pathologists and audiologists who are certified by the Association. The remaining 4.4% of ASHA members are either speech-language pathologists or audiologists who are not engaged in the supervision or provision of clinical services, or who are trained in an allied profession. You note that in addition there are approximately 4,000 certified speech-language pathologists who are non-members. You state that ASHA is recognized by major public agencies, such as Medicare and Medicaid, as the national certifying agency for this group of education and health professionals. You add that since 1980, it has not been necessary for individuals to obtain or maintain membership in the Association in order to be certified.

You state that your request for an advisory opinion concerns a small class of the Association's members known as "life members." This class is composed of 997 individuals (2.2% of ASHA's total membership) who have been regular dues paying members for at least 10 consecutive years immediately preceding the year they attain 65 years of age or older.\*/ According to your request, life members retain all the privileges of regular members, including full voting rights in the

affairs of the Association. Life members are not obligated, however, to pay annual membership dues to maintain their standing in the Association. You ask whether life members of the Association are eligible for solicitation by ASHA-PAC.

Under the Act, an incorporated membership organization (or corporation without capital stock), or a separate segregated fund established by such corporation, may solicit contributions to the fund from individual members of the organization. 2 U.S.C. 441b(b)(4)(C). The Commission's regulations define the term "members" to mean "all persons who are currently satisfying the requirements for membership in a membership organization...or corporation without capital stock." 11 CFR 114.1(e).

In FEC v. National Right to Work Committee, 459 U.S. 197 (1982), the United States Supreme Court considered the requirements for inclusion in the restricted class of members of a connected organization (corporation) who may be solicited for contributions to its separate segregated fund. The Court noted that the statutory provisions of 2 U.S.C. 441b limit solicitation by nonprofit corporations "to those persons attached in some way to it by its corporate structure." 459 U.S. at 202. After reviewing the statute's legislative history, the Court concluded 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." Id. 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' under 441b(b)(4)(C)." Id. The Court noted that in determining this question it was "entirely permissible" for the Commission to consider the corporation's charter and by-laws. Id. at 205.

In determining if a class of membership has the requisite "enduring" and "independently significant" financial or organizational attachment, the Commission has considered whether such persons have any interests and rights in the organization through some 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 Opinions 1984-22, 1982-2, 1979-69, 1977-67, and 1977-17. In the situation you have presented, the Commission concludes that ASHA's life members satisfy the standard set forth in FEC v. National Right to Work Committee. First, life members have the requisite organizational attachment to ASHA by virtue of their right to full voting participation in the activities of the organization. According to ASHA's bylaws, life members retain all the privileges of the Association's regular members. See ASHA Bylaws, Article III, Section 1(d) and Section 5. Second, those, who qualify as life members will have been dues paying members of the organization for at least 10 consecutive years (25 years beginning on January 1, 1991), and within that period will also have attained the age of 65 years. These individuals will have made a substantial financial commitment to the Association, effectively prepaying a lifetime dues obligation by the payments they made in the 10 (or 25) year qualifying period.

For these reasons, the Commission concludes that such life members would be within the restricted class of individuals who may be solicited for contributions to ASHA-PAC. Any such solicitation of ASHA's life members must comply in all respects with the Act and Commission regulations. See 11 CFR 114.5 and 114.7.

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)

Scott E. Thomas  
Chairman for the Federal Election Commission

Enclosures (AOs 1984-22, 1982-2, 1979-69, 1977-67, and 1977-17)

\*/ You note that beginning in 1991, only those individuals who have been regular dues paying members for at least 25 consecutive years will qualify for life membership. You state that this change in eligibility is occasioned by the vast increase in the number of older members in the organization and the negative budgetary impact of waiving dues to an ever expanding group.