



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 26, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-13

Richard Mayberry
Law Office of Richard Mayberry & Associates
Suite 202
1055 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

Dear Mr. Mayberry:

This responds to your letters of March 23 and May 13, 1987, requesting an advisory opinion on behalf of the Group Health Association of America, Inc., Political Action Committee ("GHAA/PAC") concerning application of the Federal Election campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of contributions.

You state that GHAA/PAC is the separate segregated fund of the Group Health Association of America, Inc. ("GHAA"), which is an incorporated trade association whose voting member organizations are organized, prepaid health care systems. You state that prepaid health care systems that are eligible for membership in GHAA are defined as health maintenance organizations ("HMOs") and/or Competitive Medical Plans ("CMPs"). These organizations provide basic health services to enrolled participants through physicians with which the HMO or CMP has made prior arrangements. You state that HMOs and CMPs may arrange care through physician employees (staff model), independently contracting physicians (individual practice model), or organized groups of physicians (group practice model).

You ask whether physicians operating as partnerships in the group practice model may be solicited for contributions to GHAA/PAC.

The Commission notes initially that an incorporated trade association which qualifies as a membership organization may solicit its noncorporate members for contributions to its separate segregated fund. 11 CFR 114.7(c), 2 U.S.C. 441b(b)(4)(C). Commission regulations define the

term "members" to mean "all persons who are currently satisfying the requirements for membership in a membership organization [or] trade association...." 11 CFR 114.1(e).

In Federal Election Commission v. National Right to Work Committee, 459 U.S. 197 (1982), the Supreme Court stated that "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. In determining whether a class of members 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 1987-5, 1985-11, 1984-33, 1984-22, 1979-69, and 1977-17.

According to your request, the "group practice" partners whom GHAA/PAC wishes to solicit are under contract with GHAA-member HMOs to provide physician services to the HMOs' membership. These physicians have no obligation to pay dues to GHAA. Furthermore, although the physician partners are eligible to serve on GHAA's Board of Directors, they have no inherent right to participate in GHAA's governance in their capacity as independent contractors with HMO's that are members of GHAA. Moreover, GHAA does offer direct membership status to individuals with concomitant financial obligations and rights to participate in governance. GHAA Bylaws, Articles C and D. The physicians you describe, however, have not chosen to join GHAA on an individual basis. Because of this remote relationship between the "group practice" partnerships and GHAA, the Commission concludes that physician partners under contract with the HMOs described in your request would not be considered "members" for purposes of solicitation by GHAA/PAC under 2 U.S.C. 441b(b)(4)(C) and 11 CFR 114.7(c).

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,

(signed)

Scott E. Thomas
Chairman of the Federal Election Commission

Enclosures (AO's 1987-5, 1985-11, 1984-33, 1984-22, 1979-69, and 1977-17)