



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 29, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-3

John R. McKay
Kurrus & Kirchner
1055 Thomas Jefferson St., N.W.
Washington, D.C. 20007

Dear Mr. McKay:

This responds to your letter of January 21, 1988, which supplements your letters of July 8 and 17, 1987, requesting an advisory opinion on behalf of the American Pilots' Association ("APA") concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the solicitation of individual pilots who are members of incorporated and unincorporated APA member associations. Your January letter also responded to several questions set forth in a July 31, 1987 letter from the Office of General Counsel.

In your request you state that the APA is an incorporated trade association representing licensed marine pilots who are members of 59 separate state or local pilot associations. These associations constitute the membership of APA. Each pilot association is required to pay dues to the APA based on the number of pilots in the association and the annual earnings of the pilot association with the highest income in the previous year. See APA By-Laws, art. XIV, §3. The APA is governed by a Board of Trustees which is composed of one representative appointed by the pilot association or associations from each state in which there are pilot associations. APA By-Laws, art. IV. The American Pilots' Association Political Action Committee ("APA PAC") is a separate segregated fund established by APA and registered with the Commission as a multicandidate political committee. The APA member associations are formally organized in a variety of ways, some are incorporated, with or without capital stock, and some are unincorporated.

Because many of these member associations differ from one another in organization and structure, you recognize that it is impractical for the Commission to determine the solicitability of individual pilot members for each APA member association. Therefore, in response to the request of the Office of General Counsel, you provided the articles of incorporation or charter

documents for three APA member associations: the Crescent River Port Pilot's Association ("Crescent Pilots Association"), the San Francisco Bar Pilots Benevolent and Protective Association ("San Francisco Pilots Association"), and Pilots' Association of the Bar River Delaware ("Delaware River Pilots Association"). These pilot associations represent the largest pilot memberships in the Gulf, Pacific, and North Atlantic states respectively. This advisory opinion will, therefore, address the solicitability of individual pilot members of these three APA member associations.

The Crescent Pilots Association is a non-profit corporation under Louisiana law in which each pilot member holds one non-transferable share of stock. The San Francisco Pilots Association is a California corporation in which its classes of pilot members hold property rights, voting privileges, and dues paying obligations. The Delaware River Pilots Association is an unincorporated association of pilot members who are licensed and operate under Pennsylvania and Delaware laws.¹ This Association operates on a guild-type basis with individual pilots sharing the expenses of services and facilities used by pilots jointly. The Delaware River Pilots Association bills and collects these expenses by deducting a pilot's share from the pilotage fees prior to distribution of the pilot's net earnings share.

In your request you ask two primary questions. First, whether the APA, through APA PAC, may solicit contributions from individual pilots who are stockholders of APA member corporations. Second, whether APA, through APA PAC, may solicit contributions from individual pilots who are members of unincorporated APA member associations.

Commission regulations provide that APA PAC, as a separate segregated fund of an incorporated trade association with a membership that is made up of corporate and noncorporate members, is subject to 11 CFR 114.8 when soliciting any stockholders or executive or administrative personnel of corporate members, and to 11 CFR 114.7 when soliciting members that are not corporations. As a separate segregated fund, APA PAC must also comply with the solicitation requirements set forth at 11 CFR 114.5 to assure that all contributions received are voluntary. Moreover, any contributions to or by APA PAC are subject to the contribution limitations under the Act. See 2 U.S.C. 441a(a).

Member Corporations

The Act and regulations provide that a trade association or a separate segregated fund established by a trade association may solicit contributions from the stockholders of the member corporations of such trade association provided the member corporations separately and specifically approve the solicitation and have not approved the solicitation of another trade association for the same calendar year. 2 U.S.C. 441b(b)(4)(D), 11 CFR 114.8(c). The Commission has previously concluded that this right to solicit stockholders extends to members of nonstock corporations who have an equity interest in a member corporation of a trade association. Advisory Opinion 1982-12.

Both the Crescent Pilots Association and the San Francisco Pilots Association are incorporated members of APA. The individual pilot members of Crescent Pilots Association are stockholders, and the individual pilot members of the San Francisco Pilots Association hold specific equity

interests. Therefore, the Commission concludes these pilot members are solicitable provided the Crescent Pilots Association and the San Francisco Pilots Association have granted prior and exclusive approval to the APA to solicit their pilot members during the calendar year.

Unincorporated Member Association

A trade association may solicit contributions to its separate segregated fund from its noncorporate members without prior approval or limit as to the number of solicitations. 2 U.S.C. 441b(b)(4)(C), 11 CFR 114.7(c); see also Advisory Opinion 1981-52 and Re: Advisory Opinion Request 1976-63. The Commission concludes that APA and APA PAC may not solicit contributions from individual pilot members of the Delaware River Pilots Association because those individuals are not members of APA. According to APA bylaws, only the Association is a member of APA. Therefore, because it is not a corporate entity, APA PAC may solicit the Association itself.

Contributions from an unincorporated membership organization are generally attributed, if otherwise lawful, only to that organization. Advisory Opinions 1979-28 and 1978-51. In a situation, however, where individuals had beneficial interests in an unincorporated member organization of a trade association, the Commission concluded that the organization's contribution to the trade association's separate segregated fund had to be attributed to both the individuals and the unincorporated entity. Advisory Opinion 1981-52. Compare Advisory Opinion 1978-7. Unlike the facts in Advisory Opinion 1981-52 where the members were business trusts established for investment purposes to provide income to beneficial owners of the trusts, the Delaware River Pilots Association primarily operates as an administrative support entity to assist its individual pilot members in the pursuit of their occupation. Thus, the Commission will not require that contributions to APA PAC by the Delaware River Pilots Association be attributed to individual pilot members of the Association. Such contributions would be attributable only to the Association.²

Any advisory opinion rendered by the Commission may be relied on by any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the advisory opinion is rendered. 2 U.S.C. 437f(c)(1)(B). Accordingly, the APA may rely on the conclusions of this opinion to determine the solicitability of individual pilots in other pilot association members of APA to the extent the factual situations presented by those entities are indistinguishable in all material aspects from the APA member organizations specifically addressed in this advisory opinion.

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)

Thomas J. Josefiak

Chairman for the Federal Election Commission

Enclosures (AOs 1982-13, 1982-12, 1981-52, 1979-28, 1978-51, 1978-7; Re: AOR 1976-63)

1/ For purposes of this opinion, the Commission assumes that pilot members of the Delaware River Pilots Association have membership status as individuals and not as corporations. Accordingly, this opinion makes no conclusions as to those pilot members of the Delaware River Pilots Association who have membership status as corporations and not as individuals.

2/ This advisory opinion does not address whether the Delaware River Pilots Association would itself become a political committee under the Act, subject to the registration and reporting requirements of 2 U.S.C. 433 and 434, if the Association makes contributions to APA-PAC or any other political committee that exceed the aggregate amount of \$1,000 in a calendar year. See Advisory Opinion 1978-51. Compare Advisory Opinion 1982-13.