



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 20, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-43

Michael Scott
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Dear Mr. Scott:

This is in reply to your letter dated September 2, 1988, in which you request an advisory opinion on behalf of the American Society of Anesthesiologists, Inc. ("ASA"), whether ASA will incur any duties or liabilities under the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations because two of ASA's incorporated "component societies" have established political committees (separate segregated funds).

You state that ASA is a not-for-profit national membership organization incorporated under the laws of the State of New York and tax-exempt under section 501(c)(6) of the Internal Revenue Code. ASA's 24,000 members are physicians and scientists who practice or are interested in anesthesiology. In general, no individual may be a member of ASA unless he or she is first a member of one of the 48 state component societies chartered by ASA's Board of Directors. To be chartered, a state society must incorporate and must agree to abide by ASA's aims, principles, purposes, and ethical guidelines.

ASA has no separate segregated fund of its own. Further, although ASA's charter, bylaws, and policy statements do not prohibit a component society from establishing a political fund, ASA has never encouraged its component societies to establish such funds. Nonetheless, as ASA recently discovered, two of ASA's incorporated component societies have established separate segregated funds.¹ They did so, you state, without the consent or involvement of the national organization. You assert that "ASA has not participated in, and does not intend to participate in, decisions by the component societies or their political committees as to fund-raising or political contributions. . . . ASA neither has nor seeks knowledge of the decisions of the two committees."

You ask two questions of the Commission. First, do the Act and the regulations impose on ASA itself (as distinct from its component societies) any registration or reporting requirements as a result of the component corporations' establishing separate segregated funds? Second, under the Act or the regulations is ASA obligated to monitor or otherwise receive information from the two component societies with separate segregated funds in order to ensure that the societies comply with the Act's contribution limits?

The Commission concludes that, in the circumstances you describe, ASA has no registration or reporting requirements under the Act or the regulations. Further, ASA has no duty to monitor the two component societies to ensure that their funds comply with the Act's contribution limits.

A separate segregated fund established under 2 U.S.C. 441b(b)(2)(C) is a "political committee." 2 U.S.C. 431(4)(B); 11 CFR 100.5(b). Every political committee must have a treasurer. 2 U.S.C. 432(a); 11 CFR 102.7(a). Cf. 11 CFR 114.6(d)(5). The treasurer is responsible for keeping the committee's records and for filing committee reports required by the Act and the regulations. 2 U.S.C. 432(c) and (d) and 434(a)(1); 11 CFR 102.9 and 104.14. For example, the treasurer is the person who must sign and file a Statement of Organization, the registration document that a separate segregated fund must file no later than 10 days after the fund's establishment. 2 U.S.C. 433(a); 11 CFR 102.1(c).

ASA is not itself a separate segregated fund or a political committee. Nor has it established such a fund or committee. The establishment and administration of separate segregated funds by two societies associated with ASA in the manner described in ASA's bylaws and articles of incorporation do not trigger any registration or reporting duties for ASA. The separate segregated funds of the two component societies--more particularly, the funds' treasurers--bear the burden of registering the funds and reporting their activities.

The treasurers of the separate segregated funds are also responsible under the Act and the regulations for ensuring that the funds, which you characterize as multicandidate political committees, comply with applicable contribution limits. 2 U.S.C. 432(a) and 441a(a)(1), (a)(2); 11 CFR 100.5(e)(3), 102.7, 110.1(b), and 110.2(b). The Act imposes on ASA no duty to review the treasurers' efforts or otherwise to ensure that the separate segregated funds conform to the Act's dictates.²

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)

Thomas J. Josefiak
Chairman of the Federal Election Commission

Enclosures (Advisory Opinions 1987-34 and 1986-42)

1/ The Act prohibits the making of contributions or expenditures by a corporation in connection with a Federal election. 2 U.S.C. 441b. Corporations, including incorporated membership organizations and incorporated trade associations, may, however, use general treasury funds for "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes." 2 U.S.C. 441b(b)(2)(C).

2/ In your letter, you argue that the two separate segregated funds are not "affiliated committees" and thus do not share one contribution limit. 2 U.S.C. 441a(a)(5); 11 CFR 110.3(a)(1)(i) and (a)(1)(ii)(A) and (D). Because ASA has no separate segregated fund and because the state societies that established the two funds have not joined in this request, the affiliation issues are not before the Commission. The Commission, therefore, expresses no opinion on the matter. See 2 U.S.C. 437f(a)(1); 11 CFR 112.1(b). In past opinions where the Commission has held that political committees, including separate segregated funds, are affiliated with each other, it has also explained that such committees must monitor each other's contributions to ensure compliance by both with their shared contribution limits. See, for example, Advisory Opinions 1987-34 and 1986-42.