



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 8, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-48

Joyce Hamilton
Manager, Government Relations
National-American Wholesale Grocer's Association, Inc.
201 Park Washington Court
Falls Church, VA 22046

Dear Ms. Hamilton:

This responds to your letter dated October 18, 1988, in which you request an advisory opinion on behalf of the National-American Wholesale Grocers' Association, Inc. ("NAWGA"), and its separate segregated fund concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to NAWGA's proposed matching of voluntary political contributions made to the fund with equivalent donations to charities.

Your letter and enclosures reveal that NAWGA is a national trade association¹ incorporated in New York and comprised of grocery wholesale distribution companies that primarily supply and service independent grocers throughout the United States and Canada. NAWGA provides research, technical, educational, and government relations programs for its 400 members, who operate nearly 1200 distribution centers nationwide and employ more than 350,000 people. NAWGA's food service division, the International Foodservice Distributors' Association, represents member firms that sell food and related products to the institutional, away-from-home food service market.

The National-American Wholesale Grocers' Association Political Action Committee ("NAWGA-PAC") is a separate segregated fund of NAWGA. To encourage participation in NAWGA-PAC, NAWGA proposes to "match all voluntary individual personal contributions with equal amounts to be given to charitable organizations. The plan . . . would allow each individual NAWGA member to designate any 501(c)(3) charity as the recipient of a 1989 NAWGA contribution equal to the sum of the member's 1989 contributions to NAWGA-PAC."²

You state that NAWGA-PAC intends to offer this plan only to those persons whom the fund may lawfully solicit for voluntary political contributions to the fund.³ You also state that “the individual contributor[s] would not receive any financial, tax, or tangible benefit” as a result of NAWGA's making the charitable donations. You inquire whether the Act and Commission regulations permit NAWGA-PAC to implement its proposed matching charitable donations plan.

The Act prohibits a corporation, including an incorporated trade association or an incorporated membership organization, from making contributions or expenditures in connection with any Federal election. The Act excludes from the definition of “contribution” or “expenditure,” however, “the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes” by a corporation, including an incorporated membership organization. 2 U.S.C. 441b(a) and 441b(b)(2)(C). Although Commission regulations explain that a corporation may use its general treasury monies to pay the expenses of establishing and administering such a fund and of soliciting contributions to the fund, the regulations also provide that a corporation may not use this process “as a means of exchanging treasury monies for voluntary contributions.” 11 CFR 114.5(b). In this respect, the regulations further explain that a contributor may not be paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1).

The plan that you outline resembles one approved by the Commission in Advisory Opinion 1986-44, which allowed a corporation to match contributions made to its separate segregated fund with donations to charities. The Commission viewed the corporation's matching of voluntary political contributions with charitable donations as a solicitation expense related to its separate segregated fund, an expense, as previously noted, that the Act expressly permits. 2 U.S.C. 441b(a) and 441b(b)(2)(C). Similarly, NAWGA's matching of contributions with donations to charities would be a permissible solicitation expense related to its separate segregated fund. Because the individual member-contributors to NAWGA-PAC will not be paid for their voluntary contributions through this process and will not receive any other financial or tangible benefit, including any tax benefit,⁴ it does not appear that NAWGA will be exchanging treasury monies for voluntary contributions. See also Advisory Opinion 1987-18.

The Commission concludes, therefore, that the NAWGA-PAC plan is lawful under the Act and the regulations. This opinion assumes that the charitable donees in fact qualify as section 501(c)(3) entities under the Internal Revenue Code and that the matching plan will be limited to the class you describe in your letter, namely, solicitable noncorporate NAWGA members. See note 3, *supra*.

In reaching its conclusion, the Commission makes no determination regarding any tax ramifications of NAWGA-PAC's proposed activity. Tax matters are outside the Commission's jurisdiction.

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)

Danny L. McDonald
Vice Chairman for the Federal Election Commission

Enclosures (Advisory Opinions 1987-18 and 1986-44)

1) Commission regulations define a trade association as “a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member.” 11 CFR 114.8(a).

2) Article VIII of NAWGA's bylaws provides that “[m]embership in the Association shall be limited to persons, firms, partnerships and corporations who, in the opinion of the Board of Governors, are engaged in the food distribution business.”

3) An incorporated trade association and its separate segregated fund may not solicit the association's corporate members. 11 CFR 114.7(b) and 114.8(b). They may solicit noncorporate members as often as they wish. 11 CFR 114.7(c) and (e). They may also solicit at any time the trade association's executive or administrative personnel and their families. 11 CFR 114.5(g) and 114.8(i)(2). See also 11 CFR 114.7(a). Other trade association employees may be solicited only under the conditions set out in 11 CFR 114.6 (twice yearly solicitation). See also 11 CFR 114.5(g). To solicit the stockholders and the executive or administrative personnel of member corporations, a trade association or its separate segregated fund must follow the two-step procedure specified in 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8(c), (d), and (e). See also 11 CFR 114.7(c).

4) A forbidden benefit would include any premium, award or other tangible benefit provided to NAWGA-PAC contributors by the charitable entities that receive NAWGA's donations pursuant to the matching charitable donations plan. Advisory Opinion 1986-44 n.4.