



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 4, 1990

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-4

Amy L. Pomplin, Program Specialist  
American Veterinary Medical Association Political Action Committee  
1023 15th Street, N.W.  
Suite 300  
Washington, D.C. 20005-2602

Dear Ms. Pomplin:

This responds to your letters dated March 12, 1990, and June 5, 1989, requesting an advisory opinion on behalf of the American Veterinary Medical Association ("AVMA") and AVMA Political Action Committee ("AVMAPAC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to combined dues and political contribution payments by AVMA members using major bank credit cards.

AVMA is a membership organization incorporated in Illinois. AVMAPAC is registered with the Commission as the separate segregated fund of AVMA and is located in Washington, D.C. You state that one of the methods by which AVMA members contribute to AVMAPAC is in conjunction with their payments of annual dues to AVMA. The dues payment and the contribution to AVMAPAC may be included in one noncorporate check. Members who pay dues by corporate practice check are asked to use a separate personal check for the contribution.

AVMA now proposes to allow members to pay their dues and make a contribution to AVMAPAC by using a major bank credit card. You state that the majority of the combined dues and contribution payments will be from individuals but that, due to the nature of the veterinary profession, there is the possibility that cards issued to corporations will be used. You state that the dues notice will indicate the amount of the contribution to AVMAPAC and whether the contribution is personal or corporate. Your March 12 letter further states: "All contributions made from personal accounts are transferred to and deposited in an AVMA holding account with the headquarters." Once a week, a check drawn on that account for the amount of noncorporate money contributed to AVMAPAC is to be sent to the Washington, D.C. office and deposited into

an AVMAPAC account. If there is a question as to whether the contribution is made from a personal or corporate account, there will be three letters requesting verification, followed by a phone call if there is no response from the letters. All corporate money will be deposited into a corporate AVMAPAC account and used only for administrative purposes.

You state that AVMA is working with the American Bank Card Center and a bank in the Chicago metropolitan area to establish this service. You indicate that AVMA will absorb all transaction fees of the bank it uses for the credit card transactions. Such fees will amount to 1.45 percent of the amount charged to the card holder plus a charge of \$.20 per transaction.

You ask how credit card payments would affect the lawfulness of contributions to AVMAPAC. Specifically, you ask if contributions made to AVMAPAC in combination with dues payments to AVMA through the use of credit cards may be accepted or if a separate personal check for the contribution must be used. Subject to the following discussion and conditions, the Commission concludes that AVMAPAC may accept otherwise lawful contributions made pursuant to credit card authorizations.

The Commission has previously recognized that the Act and regulations allow lawful contributions to be made not only by personal check, but also in other ways, including properly documented contributions by credit card. Advisory Opinions 1978-68; see also Advisory Opinions 1989-26 and 1984-45.

Your proposal entails activity whereby AVMA collects and transmits contributions to its separate segregated fund, AVMAPAC, thus functioning as a collecting agent under 11 CFR 102.6(b)(1)(ii). Commission regulations specifically permit a collecting agent to include a solicitation for voluntary contributions to its separate segregated fund in a bill for membership dues. 11 CFR 102.6(c)(2).<sup>1/</sup> According to 11 CFR 102.6(c)(3), when a contributor writes a combined check for dues and a contribution, the check must be drawn on the contributor's personal account or a non-repayable corporate drawing account of the contributor. By providing that combined credit card payments drawn on corporate accounts will be separated and that corporate funds are not forwarded as contributions to AVMAPAC, your proposal conforms to 2 U.S.C. 441b which prohibits corporate contributions and is, in part, the statutory basis for this requirement.

Subsections 102.6(c)(4) and (5) require the transmittal to a separate segregated fund of the full amount of each contribution collected on its behalf by a collecting agent within the time requirements of 11 CFR 102.8. Contributions of \$50 or less shall be forwarded to AVMAPAC no later than 30 days after AVMA's receipt. 11 CFR 102.8(b)(1). Contributions in excess of \$50 shall be forwarded no later than 10 days after AVMA's receipt, along with the name and address of the contributor, the date of receipt, and, if the contribution exceeds \$200, the contributor's employer and occupation. 11 CFR 102.8(b)(2). Contributions by credit card are considered as received upon the date that AVMA receives the member's authorization to charge his or her AVMA dues and AVMAPAC contribution to the member's credit card account. Inasmuch as such authorizations may be presented to AVMA's bank in order to credit AVMA's account, the receipt of such an authorization is the equivalent of the receipt of a check that may be deposited and, thus, the date this occurs is the date upon which AVMA obtains possession of the

contribution. See 11 CFR 102.8(b)(2). Therefore, to the extent that Advisory Opinion 1978-68 states that the date of receipt for credit card contributions is the date when the donee committee receives a credit or deposit of proceeds from its depository bank, that opinion is hereby superseded.

The regulations present four options as to the transmittal of contributions received by collecting agents when such contributions are not in the form of a check made out to the separate segregated fund. 11 CFR 102.6(c)(4)(ii). You have provided for the deposit of the credit card authorizations from personal accounts into an AVMA holding account, the drafting of a check drawn from that account in the amount of the total of contributions to AVMAPAC, and the transmittal of that check to the Washington, D.C. office to be deposited in an AVMAPAC account. This procedure is consistent with the option presented in 11 CFR 102.6(c)(4)(ii)(B) which permits the collected contributions to be deposited in the collecting agent's treasury account provided the agent keeps separate records of all receipts and deposits that represent contributions to the separate segregated fund. AVMA must ensure that its procedures for AVMA's receipt of its members' credit card authorizations, and its deposits in AVMAPAC's account, conform to the time requirements discussed above.

You state that all contribution payments coming from corporate accounts will be deposited into a "corporate" AVMAPAC account and will be used for administrative purposes. Although the Act prohibits corporations from making any contribution or expenditure in connection with a Federal election, the term "contribution or expenditure" does not include "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock." 2 U.S.C. 441b(a), 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). Commission regulations further provide that incorporated membership organizations "may use general treasury monies, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment, administration, and solicitation of contributions to its separate segregated fund." 11 CFR 114.5(b). The Act and Commission regulations require that the "corporate" AVMAPAC account not be used for the purpose of influencing Federal elections, but permit it to function as a treasury account of AVMA. The Commission has previously held that members of an incorporated trade association may donate funds or merchandise to the association or a separate administrative account of the association's separate segregated fund in order to defray the administration and solicitation expenses of that fund. Advisory Opinions 1986-13, 1982-36, and 1980-59. The Commission has also applied this principle to the professional corporation accounts of individual members of a membership organization, permitting donations from such accounts to defray the administrative costs of the membership organization's separate segregated fund. Advisory Opinion 1982-61. Accordingly, funds from a professional corporation controlled by an individual AVMA member may be deposited into an administrative account to be used solely for purposes permitted under the exceptions cited above.

You have made reference to the transaction fees to be absorbed by AVMA. Such payments by a collecting agent are permitted under 11 CFR 102.6(c)(2)(i) as costs incurred in soliciting and transmitting contributions to the separate segregated fund. Such payments are also considered to be administrative costs exempt from the definition of contribution. See 11 CFR 102.6(c)(2)(ii).

This response constitutes an advisory opinion concerning the application of the Act or regulations prescribed by the Commission to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Lee Ann Elliott  
Chairman for the Federal Election Commission

Enclosures (AOs 1989-26, 1987-17, 1987-6, 1986-13, 1984-45, 1982-61, 1982-36, 1980-59, and 1978-68)

1/ The collecting agent may only solicit contributions from those persons permitted to be solicited under 11 CFR Part 114 and the solicitation for contributions must meet all the requirements for proper solicitations under 11 CFR 114.5. Id. Thus, AVMA may continue to send combined dues notices and solicitations to its individual members. (The fact that individual members may do business in a corporate form does not preclude the solicitation of such members as individuals. See, e.g., Advisory Opinion 1982-61.) The solicitation must inform the member of the political purposes of AVMAPAC and of the member's right to refuse to contribute without fear of reprisal, and, if guidelines are listed, that such guidelines are merely suggestions and that the corporation will not favor or disadvantage anyone for contributing more or less than the guidelines, or nothing at all. 11 CFR 114.5(a), 114.7(g), and 114.8(e)(4). See Advisory Opinions 1987-17 and 1987-6.