



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 5, 1990

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-18

Marshall D. Chinen  
Kaito & Ishida  
888 Mililani Street  
Honolulu, HI 96813

Dear Mr. Chinen:

This refers to your letters dated August 10 and July 5, 1990, requesting an advisory opinion on behalf of the Oahu Educational Employees Federal Credit Union ("OEEFCU") in Honolulu, Hawaii, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment of a separate segregated fund.

You state that OEEFCU is a Federally chartered credit union, Charter No. 1815, with a membership comprised of persons, including teachers and other personnel and their families, who are associated with various school systems in the Honolulu area. You have submitted a copy of OEEFCU's Charter and Bylaws. OEEFCU was chartered as the Oahu Teachers Federal Credit Union in 1936. According to its Bylaws, amended as of January 1990, it is a corporation chartered under the laws of the United States.

The Federal Credit Union Act provides that, upon approval of a credit union's organization certificate by the National Credit Union Administration Board, the certificate "shall be the charter of the corporation." It is further provided that "[u]pon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all of the powers and charged with all of the liabilities conferred and imposed by this Act upon corporations organized hereunder." 12 U.S.C. 1754. See also 12 U.S.C. 1757. In addition, the Federal Credit Union Act provides that a Federal credit union is "a cooperative association organized in accordance with the provisions of this Act for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes." 12 U.S.C. 1752(1).

You ask whether OEEFCU may establish a "separate segregated fund to make monetary contributions in Hawaii elections for federal offices." You state that OEEFCU will use its general treasury funds to pay for costs incurred in establishing and running the fund.

The Act provides that it is unlawful for a corporation organized by authority of any law of Congress to make a contribution or expenditure in connection with any election. 2 U.S.C. 441b(a); 11 CFR 114.2(a). The Act, however, creates an exception to this general prohibition in that a corporation may pay the costs for the establishment of its own separate segregated fund, and may pay the costs for the administration of and solicitation of contributions to that fund to be utilized for political purposes. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). Commission regulations explain that a corporation organized by authority of any law of Congress may engage in activities specifically permitted under Part 114 to the extent the activity is not prohibited by any other law. 11 CFR 114.2(a)(1). Therefore, under the Act, OEEFCU may establish and administer a separate segregated fund for contributions to Federal candidates. See Advisory Opinions 1987-14 and 1980-129.

Commission regulations provide that an incorporated membership organization or incorporated cooperative, or the separate segregated fund of such a corporation, may solicit voluntary contributions to the fund from individual members and executive or administrative personnel, and their families, of the organization. 11 CFR 114.7(a). See also 2 U.S.C. 441b(b)(4)(C). According to Commission regulations, however, contributions to the fund may not be solicited from those sources prohibited by 2 U.S.C. 441b(a) from making contributions, i.e., corporations, national banks, or labor organizations. 11 CFR 114.7(b). A review of the materials submitted by you raises the issue of the solicitability of members of the credit union.<sup>1/</sup>

Commission regulations define members to mean all persons who are currently satisfying the requirements for membership in a membership organization or cooperative. 11 CFR 114.1(e). Opinions by the United States Supreme Court and the Commission have explained the application of this regulation to various organizations. The Supreme Court has suggested comparing members of nonstock corporations to stockholders of business corporations. Federal Election Commission v. National Right to Work Committee, 459 U.S. 197, 204 (1982). Using this standard, the Court determined that members of nonstock corporations must have "some relatively enduring and independently significant financial or organizational attachment." 459 U.S. at 204. The Commission has determined that members possess the requisite attachment if they maintain 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 amount. Advisory Opinions 1988-39, 1988-38, 1987-31, 1985-11, 1984-33, and 1984-22. In determining the solicitability of persons who were "members" of a mutual savings and loan association by virtue of being savings account holders or borrowers, the Commission determined that, because obligations of a financial nature existed between the "members" and the association and because they had sufficient governance rights to be considered attached to the association's corporate structure, such persons were solicitable members. Advisory Opinion 1984-63.

The bylaws submitted by you set out the "field" of persons eligible to be members,<sup>2/</sup> the financial interests of the members, and the governance rights of the members.

According to Article II, section 5, of OEEFCU's bylaws,

[t]he field of membership shall be limited to those having the following common bond: Teachers and employees of elementary, preschool, Community Schools for Adults, Technical Trade and Vocational Schools, Private Schools for Special Education and Special Schools under Administration of the Honolulu District Office licensed by the State of Hawaii, who work in the City and County of Honolulu, Hawaii; employees of the Department of Education who work in the Annex in the City of Honolulu, Hawaii; teachers and employees of all rural schools in the County of Honolulu, Hawaii, spouses of persons who died while within the field of membership of this credit union; employees of this credit union; persons retired as pensioners or annuitants from the above employment; members of their immediate families; full-time registered students of the above schools and their parents living under the same roof in the same household; and organizations of such persons.

According to Article II, a person eligible for membership under section 5 who makes a written application for membership is admitted to membership upon approval of the application by the majority of the directors or a majority of the members of a duly authorized executive committee or by a membership officer, and upon the applicant's subscription to at least one share of the credit union and the payment of the initial installment on that share, and the payment of a uniform entrance fee if required by the Board of Directors. Article II also provides that a member who withdraws all of his shareholdings thereby ceases to be a member and that the Board of Directors may by resolution require persons readmitted to membership to pay another entrance fee.

Article III of the Bylaws provides that the par value of each share will be \$100 and that subscription to such shares are payable at the time of subscriptions or in six monthly installments. The article also provides that a member who fails to complete payment of one share within six months of admission to membership, or within six months of an increase in the par value of shares, or a member who reduces his or her share balance below the par value of one share and does not increase the balance to the par value of one share within six months of the reduction may be terminated from membership. It is provided that shares may be transferred only from one member to another. Dividends may also be declared by the Board of Directors. Article III, section 6, provides that shares may be issued in a revocable or irrevocable trust subject to certain conditions. When shares are issued in a revocable trust, the settler must be a member in his or her own right. When shares are issued in an irrevocable trust, the settler or the beneficiary must be a member in his or her own right. Finally, trust accounts established prior to the effective date of the section "shall not be affected."<sup>3/</sup>

The members have voting and governance rights in the credit union. Each member receives notice of the annual meeting and may attend that meeting. At that meeting, the members vote on the membership of the Board of Directors, which "ha[s] the general direction and control of the affairs of this credit union and shall be responsible for performing all the duties customarily performed by boards of directors." Each member has no more than one vote, regardless of the number of shares he or she holds. Vacancies on the Board are filled by a vote of the directors,

but directors so appointed hold office only until the next annual meeting when the members vote to fill the unexpired terms.

The Board of Directors and the supervisory committee, which is appointed by the Board and which has auditing responsibilities, consist of members of the credit union. The executive officer, assistant executive officers, financial officer, recording officer, and membership officers are chosen by the Board from the Board's membership.

The right to vote for the principal governing organ of the credit union, the Board of Directors, and the right to sit on the Board and the other governing bodies indicates that the members have the requisite governance rights for membership. In addition, although the members do not have a continuous dues obligation, they do have a financial interest closely analogous to shareholders in a corporation with capital stock. Therefore, the Commission concludes that, subject to the following, the individuals who become members of the credit union are solicitable. See Advisory Opinion 1984-63.

The Commission notes that, according to the Bylaws, the field of membership also includes "organizations of such persons," which is defined in Article XVIII as "organizations composed exclusively of persons who are within the field of membership of this credit union." As stated above, contributions may not be solicited from sources prohibited by the Act from contributing. 11 CFR 114.7(b). If an organization falls into such a category, it may not be solicited even though it is a member. In addition, although the Act and regulations provide for solicitation of executive and administrative personnel and stockholders of corporate members of trade associations, they generally, with a few exceptions, do not give parallel treatment for individuals who are personnel, stockholders, or members of organizations that are members of a membership organization.<sup>4/</sup> Such individuals are solicitable only if they themselves satisfy the criteria for an individual solicitable member. See Advisory Opinions 1985-11, 1981-23 and 1980-48. See also Advisory Opinion 1988-38.

The Commission also notes that the field of membership of OEEFCU includes "members of [the] immediate families" of the other persons in the field eligible to become members of the credit union. The Commission assumes that such a family member would have to go beyond mere eligibility and take affirmative steps to join the credit union in order to be a credit union member. The family members who are part of the solicitable membership are those who have been admitted to credit union membership and who have the governance rights and financial interest described above.

As stated above, the Act provides that the families of such members are also solicitable. In Article XVIII of the Bylaws, OEEFCU has defined the immediate family to include "[r]elatives, by blood or marriage, living under the same roof in the same household" and "[d]aughters-in-law, sons-in-law, and grandchildren living under the same roof in the same household with children who are members of this credit union." Based on the legislative history of the Act, the Commission, however, has more narrowly defined the family of a solicitable person to include the mother, father, sons, and daughters who live in the same household. Advisory Opinion 1980-102. See also Advisory Opinion 1983-48. The credit union should follow the Commission definition in soliciting the families of solicitable members.

The Commission notes that all solicitations by OEEFCU or the proposed fund for voluntary contributions to the fund must comply with the Act and Commission regulations, including the solicitation notice required by 11 CFR 114.5(a)(1) through (a)(5).

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)

Lee Ann Elliott  
Chairman for the Federal Election Commission

Enclosures (AOs 1988-39, 1988-38, 1987-31, 1987-14, 1985-11, 1984-63, 1984-33, 1984-22, 1983-48, 1982-12, 1981-55, 1981-23, 1980-129, 1980-102, and 1980-48)

1/ The Commission notes that similar restrictions apply to partisan political communications by a membership organization. 11 CFR 114.3(a)(2), 114.3(c), and 114.7(h). See also 11 CFR 100.8(b)(4) and 104.6.

2/ Under 12 U.S.C. 1759, "Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district."

3/ Because of the variety of circumstances that may occur in trust arrangements, and because your request does not present a complete or specific context, the Commission does not reach any issues with respect to solicitability of trusts. See 11 CFR 112.1(b).

4/ Exceptions to the general rule include members of non-stock corporations that are members of a trade association; members of an organization that is a regional, state, or local member of a federation of trade associations; members of a local union who are considered members of the related national or international union and federation; and auxiliary members or their equivalent, such as franchisees. See Advisory Opinion 1982-12, 11 CFR 114.8(g) and 114.1(e), and Advisory Opinion 1981-55.