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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

Advisory Opinion 1991-3 - Concurring Opinion

COMMISSIONER THOMAS J. JOSEFIAK

The result and reasoning in Advisory Opinion 1991-3 is consistent with the Commission's prior decisions regarding PAC communications and related matters. The opinion recognizes political action committees have an interest in discussing their PAC activity and communicating views on public issues to persons beyond their "restricted class" of solicitable employees, that they may wish to do so without necessarily intending to solicit contributions to the PAC, and that a statement disclaiming their acceptance of contributions from outside the restricted class serves to negate any subtle or indirect solicitation effect such communications might carry.

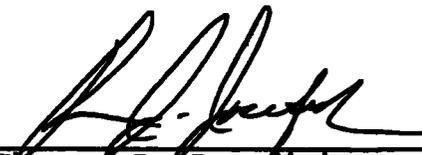
Here, the majority concluded the informational content of the newsletter did not constitute a solicitation for contributions to the PAC. The Dissent to this opinion is apparently unhappy the majority did not concede the disclaimer itself pushed the communication into solicitation territory.

I fail to see, however, how a properly amended disclaimer, effectively saying 'We will not accept a contribution from you' to those outside the restricted class, can be viewed as an invitation to them to contribute. With such a disclaimer on acceptance of contributions, in a newsletter not otherwise encouraging the making of contributions, any solicitation vaguely attributable here would be to those within the restricted class, to whom the corporation is

entitled to direct solicitations anyway. To the extent the disclaimer may have that obscure effect, there is no identifiable FECA interest in discouraging that hint of solicitation to (or in prohibiting the receipt of contributions from) members of the restricted class merely because the communication's non-soliciting, informational message goes to a wider audience. The presence of the disclaimer does not deserve to be exaggerated into a pointless "Catch-22."

Requiring further statements in the newsletter, such as 'this is not a solicitation,' provides no real or additional protection and would seem to make any backhanded solicitation effect more explicit. Whatever desire to contribute to the PAC the disclaimer may be said to subconsciously encourage is fully constrained by the stated policy of not accepting contributions from outside the solicitable class.

5/22/91



Thomas J. Josefiak