



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 30, 1991

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-24

Arthur L. Herold  
Frank M. Northam  
Webster, Chamberlain & Bean  
1747 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Herold and Mr. Northam:

This responds to your letter dated July 12, 1991, requesting an advisory opinion on behalf of the Credit Union National Association, Inc. ("CUNA"), and the Wisconsin Credit Union League (the "Wisconsin League"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to proposed partisan communications by CUNA and the Wisconsin League to their members regarding certain Federal candidates.

You state that CUNA is a trade association, incorporated in the State of Wisconsin as a non-profit, non-stock corporation with members. You have provided a copy of CUNA's articles of incorporation and bylaws which state that CUNA was organized to, among other things, promote and improve business conditions relative to the operation of state and federal credit unions. You state CUNA also seeks to perfect credit union laws, aids in the training and education of credit unions and publishes a number of periodicals containing information on trends in the credit union industry, including management concepts, statistical studies, and legislative and regulatory matters.

You state that CUNA has 52 members. These 52 members ("leagues") are state trade associations (representing the 50 states, the District of Columbia and Puerto Rico), all of the members of which are state chartered or federally chartered credit unions.<sup>1</sup> Each state league is incorporated and has been recognized as exempt from taxation under section 501(c)(6) of the Internal Revenue Code as is CUNA itself.

The materials you have submitted describe the membership rights which the state leagues have in CUNA. Each member league, not in default of membership dues, is entitled to voting representation on the CUNA National Board through the election or appointment of a specified number of CUNA national directors, the number of such directors being based on the number of affiliated credit union members belonging to each league.<sup>2</sup> All CUNA national board directors have the right to attend conventions and membership meetings and to participate and vote on matters at such meetings. You further state that CUNA leagues receive the publications and other materials produced by CUNA.

You state that all of the state leagues operate in a fashion comparable to CUNA. All credit union members of the leagues have voting rights, have the duty to pay dues, have the right to elect officers and directors of the leagues, have the right to attend and participate in conventions and meetings of their respective leagues, and receive the publications of their respective leagues.

One such member of CUNA is the Wisconsin League. Wisconsin League's bylaws and articles of incorporation, which you have provided, state that it is a non-stock membership organization incorporated in the State of Wisconsin. The bylaws and articles of incorporation also state that the Wisconsin League's purpose is to foster the growth of the credit unions located in Wisconsin and to cooperate with CUNA. You state that all the other member leagues of CUNA have articles of incorporation and bylaws similar to those of the Wisconsin League.

All of the Wisconsin League's members are state or federal chartered credit unions located within the State of Wisconsin.<sup>3</sup> As an example of a federal credit union, you refer to the credit union which was the subject of Advisory Opinion 1990-18.<sup>4</sup>

You state that CUNA proposes to communicate with its league members, including the Wisconsin League, recommending that they support and/or oppose certain Federal candidates and ask that they, in turn, pass on the recommendations to their members to support and/or oppose these candidates. The recipients of the recommendations from CUNA will be the representatives of the incorporated state leagues with whom CUNA normally conducts the association's activities.

Regarding CUNA's communications, you state that they will be made solely at CUNA's expense. They will consist of an expression of CUNA's views and not solely consist of a reproduction in whole or in part of the campaign materials of a candidate's campaign committee, or a candidate's authorized agents. You state that CUNA will not provide a means for the league recipients of the communications to make contributions to any candidate, the candidate's campaign committee, or authorized agents and will not otherwise serve as a conduit for such contributions. Neither will CUNA subsidize the costs of any member league that communicates with its own members in response to CUNA's recommendations.

You further state that upon the receipt of the recommendations from CUNA, the Wisconsin League intends to communicate with its credit union members that they follow the advice from CUNA regarding which Federal candidates to support or oppose. The conduct of the Wisconsin League's communication with its members apparently will parallel that of CUNA's to its members.<sup>5</sup>

You ask the following questions: (1) will CUNA's proposed partisan communications to the Wisconsin League and other league members of CUNA constitute "contributions" or "expenditures" prohibited by 2 U.S.C. 441b; (2) will the Wisconsin League's proposed partisan communications to its credit union members, in response to CUNA's recommendations, constitute "contributions" or "expenditures" prohibited by 2 U.S.C. 441b; (3) may the credit union members of the Wisconsin League disseminate partisan communications to their own members which are based on the communications between CUNA and the Wisconsin League and between the Wisconsin League and its constituent members; and (4) are there any provisions of the Act, other than the reporting requirements of 2 U.S.C. 431(9)(B)(iii) and 11 CFR 100.8(b)(4) that would prohibit use of corporate treasury funds by any of the above organizations in the outlined partisan communications with each of their members.

### I. Definitional Requirements

The Act prohibits corporations from making any contribution or expenditure in connection with Federal elections. 2 U.S.C. 441b. The definition of contribution includes direct or indirect payments, or gifts of money or any services, or anything of value, to any candidate for Federal office. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). This general prohibition, however, has an exception that allows an incorporated membership organization to communicate with its members on "any subject" including partisan electioneering messages. 2 U.S.C. 441b(b)(2)(A).

Commission regulations expressly permit incorporated trade associations and incorporated membership organizations to make partisan communications to their individual members. 11 CFR 114.3(a)(2), 114.3(c), 114.7(h), and 114.8(h). See also Advisory Opinions 1987-29, 1984-23 and 1982-2. A threshold question, however, is whether CUNA and the Wisconsin League qualify as trade associations and whether the Wisconsin League and other state leagues and the credit union members of these leagues qualify as members as defined by the regulations to the Act so as benefit from these provisions.

11 CFR 114.8(a) defines a trade association as  
a membership organization of person engaging in a similar or related line of commerce, organized to promote and improve business condition 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. See also Advisory Opinions 1985-24, 1982-40 and 1982-2.

CUNA and the Wisconsin League appear to meet these requirements. As noted above, CUNA's and the Wisconsin League's articles of incorporation and bylaws provide that they are non-profit membership organizations comprised of leagues and credit unions involved in the credit union industry.<sup>6</sup> CUNA and the Wisconsin League exist for the mutual benefit of their members and no part of their earnings appear to inure to the benefit of any member.<sup>7</sup> To the extent the statements of incorporation and bylaws of the other member leagues of CUNA contain similar provisions, those member leagues are likewise trade associations under the regulations.

Commission regulations define "members" to include persons who are currently satisfying the requirements for membership in a membership organization... or corporation without capital stock." 11 CFR 114.1(e). The U.S. Supreme Court has stated that members of non-stock corporations "were to be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions." FEC v. National Right to Work Committee, 459 U.S. 197, 204 (1982). The Court added that the "analogy to stockholders and union members suggests that some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'." Id. In making this determination, the Commission considers whether such persons have a right to participate in the governance of the organization and an obligation to help sustain the organization through regular financial contributions of a predetermined minimum amount. See Advisory Opinions 1990-18, 1987-13 and 1984-33.

Again reviewing the material you have submitted, the Commission concludes that the voting rights and financial obligation to support CUNA qualify the Wisconsin League and all other member leagues as members under the regulations. Similarly, since the members of the Wisconsin League possess rights and obligations within the Wisconsin League analogous to the rights and obligations of member leagues in CUNA, the credit union members of the Wisconsin League qualify as members thereof under Commission regulations. Further, to the extent that materially indistinguishable rights and obligations are enjoyed by credit union members of CUNA's other state member leagues, they too would qualify under Commission regulations as members of their respective state leagues.

## II. Permissibility of the Communications

Having determined the applicability of 11 CFR Part 114, the Commission considers questions one and two of your request.

Partisan communications permissible under section 114.3 are subject to limitations. Under 11 CFR 114.3(b) such communications may not be the republication or reproduction in whole or in part, of any broadcast, transcript or tape or any written, graphic, or other form of the candidate's campaign material. In addition, the communication may solicit or suggest that the individual member make contributions so long as the corporation limits its activity to communication only and does not actually facilitate the making of the member's contribution to the candidate.<sup>8</sup> See Advisory Opinions 1987-29 and 1982-2.

You have expressly stated that the proposed communications by CUNA and the Wisconsin League will abide by the above restrictions. You have also stated that neither CUNA nor the Wisconsin League will subsidize the subsequent communications made on the basis of their recommendations. On this basis the Commission answers the first and second of your questions in the negative. CUNA's proposed partisan communications to the Wisconsin League and other member leagues of CUNA and the Wisconsin League's own resulting partisan communications to its credit union members would not constitute "contributions" or "expenditures" prohibited by 2 U.S.C. 441b.

An issue of standing prevents the Commission from fully responding to your third question. The Act authorizes the Commission to issue an advisory opinion in response to a "complete written

request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). Inquiries presenting the activities of third parties do not qualify as advisory opinion requests. Your third question concerns proposed actions to be taken by the Wisconsin League's credit union members. Since no credit union member was joined to your advisory opinion request, your third question constitutes a request presenting the activities of third parties.

However, the Commission notes the possible relevance of Advisory Opinion 1990-18 to your inquiry. That opinion indicated that, pursuant to section 441b, federal credit unions may form political action committees. The Commission also determined, on the facts there presented, that those federal credit union members had the requisite governance rights for membership under 11 CFR 114.1(e) and possessed a financial interest closely analogous to shareholders in a corporation with capital stock. Accordingly, those members were solicitable in the same manner as members of an incorporated membership organization or incorporated cooperative. When discussing this issue, in a footnote, the Commission cited 11 CFR 114.7(h) noting that restrictions similar to those involving solicitations applied to the issue of partisan political communications. Under 2 U.S.C. 437f(c)(1), any person involved in activity which is indistinguishable in all its material aspects from the activity which was the subject of a prior advisory opinion can rely on that advisory opinion.<sup>9</sup>

### III. Reporting Requirements

Your final question relates to the other provisions applicable to the proposed communications. You have stated that the proposed communications will urge that certain candidates be supported or opposed for election. The regulations provide that disbursements for partisan communications such as you describe shall be reported "to the extent required by 11 CFR 100.8(b)(4) and 104.6." 11 CFR 114.3(b). These regulations require the reporting of such disbursements if: (1) the costs of the communications exceed \$2,000 for any election and (2) the partisan communication is not part of a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate. See 2 U.S.C. 431(9)(B)(iii); 11 CFR 100.8(b)(4) and 104.6. See also Advisory Opinions 1987-29 and 1984-23. Assuming the disbursements for the proposed partisan communications come within the cited regulations, they must be reported to the Commission on FEC Form 7. See 11 CFR 104.6.

This response constitutes an advisory opinion concerning the 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)

John Warren McGarry Chairman for the Federal Election Commission

Enclosures (AOs 1990-18, 1987-29, 1987-13, 1985-24, 1984-33, 1984-23, 1982-40 and 1982-2)

1/ The complete make up of CUNA's membership is unclear. CUNA's bylaws provide for three categories of members: (1) state leagues (2) credit unions located within the geographic area of the United States but outside the geographic area of member leagues, and (3) credit unions organized and operated under the jurisdiction of the National Credit Union Administration which are serving American military and civilian personnel at overseas installations. Since you state that the 52 members of CUNA are all state leagues, it is uncertain if CUNA, in fact, has any members falling under categories 2 or 3. However, you state that for the purposes of this advisory opinion, CUNA's proposed activity will concern only the 52 state leagues.

2/ According to CUNA's bylaws, the CUNA National Board elects the board of directors which exercises administrative power, sets the amount of dues for membership and has sole power to amend the bylaws.

3/ You state that in addition to members the Wisconsin League, unlike CUNA, has associate members. However, you state that for the purpose of this request, the Wisconsin League's proposed activity will be limited to its credit union members.

4/ You state that the rights and privileges of members of all federally and state chartered credit unions are similar or identical to the rights and privileges of the members of the credit union involved in Advisory Opinion 1990-18. Members of credit unions are, you state, in essence, the owners of the credit union and have full voting and governance rights.

5/ The Wisconsin League will only communicate with the member representatives through which it normally conducts business. The communication will not be solely a reproduction in whole or part of campaign materials. The Wisconsin League will not finance further communications from its member credit unions to their own members nor will it facilitate or act as a conduit for contributions to candidates.

6/ CUNA also seems to be a federation of trade associations as defined in 11 CFR 114.8(g). It appears to be "an organization representing trade associations involved in the same or allied line of commerce." 11 CFR 114.8(g).

7/ Article 3 of the Wisconsin Leagues' articles of incorporation specifically states that the corporation is non-stock and no dividends are to be distributed to members. While Article VI, Section 6.2 of CUNA's bylaws allows the directors to decide the distribution of a surplus "as determined by a two-thirds vote of the Board of Directors," CUNA's bylaws and statement of incorporation do not provide for stockholders or dividends. Therefore, the Commission assumes that this section is not a means to distribute profits to the membership.

8/ Applying this regulation, the Commission concluded in Advisory Opinion 1987-29 that a membership corporation could make communications to its individual members recommending that they support candidates by making contributions to particular candidates or committees. The Commission approved the particular communication proposed since it specifically did not include steps that would assist in making the contributions it proposed. The opinion noted that

the communications would not include envelopes, stamps or other similar items which would assist the member in making his or her contribution to the candidate.

9/ In Advisory Opinion 1990-18, the Commission cautioned that certain classes of credit union members, however, could not be solicited. These included corporations and their personnel (unless such individuals were themselves credit union members).