

**CONCURRING OPINION OF COMMISSIONER JOAN D. AIKENS
TO ADVISORY OPINION 1992-9**

I voted to approve draft opinion 1992-9 in order to provide the requester, KAMO, a rural electric cooperative, guidance on their solicitation and raffle for the annual convention scheduled to be held April 10, 1992.

While I agreed with the major portion of the response, I do not agree with the language that was added at the table which would allow solicitation of the alternate Board members (who are general managers of the member cooperatives) only if they receive a stipend for acting on behalf of KAMO. According to the opinion's response, this receipt would then qualify these managers as "executive and administrative personnel" eligible to be solicited. In my opinion, this places an unnecessary and unwarranted restriction on the individuals who, as general managers of the member cooperatives, should be solicitable as either "members" or "executive" personnel.

For purposes of this advisory opinion, I strongly concur with the General Counsel's position in their draft that these

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alternative members are a formal part of KAMO's governing structure and may be viewed as members of KAMO. See Advisory Opinion 1987-31 (nominees of members of incorporated committees' Exchange, who are qualified to act for their organizational members of the Exchange, are members themselves for purposes of the Act.) I would also concur with Commissioner Elliott's position, as outlined in her concurring opinion to the reconsideration of Advisory Opinion 1987-31, that an individual does not need to satisfy a two pronged test of having both an "independently significant financial and organizational attachment" to the organization. That if either of these standards are met by an individual, then they would be considered a member under the Act. FEC v. National Right to Work Committee, 459 U.S. 197, 202 (1982). Therefore, the obvious "organizational attachment" these individuals have with KAMO would clearly, in my mind, enable them to be considered part of KAMO's solicitable class without the additional requirement imposed in this opinion that they receive a stipend.

I fully understand that KAMO is a cooperative and that in past decisions the Commission has said cooperatives are not technically "membership" organizations under the Act. I believe this position should be reconsidered.

Moreover, I must reiterate my concern, as I have in many prior advisory opinions, that cooperatives have been unfairly excluded from many of the solicitation rights and privileges accorded unions, corporations, trade associations and membership organizations under the Federal Election Commissions' advisory opinions and regulations on the subject.

Cooperatives were introduced into the FECA by Senator Allen in the floor debate on March 18, 1976. The amendment he presented permitted membership organizations, cooperatives and corporations without capital stock to establish separate segregated funds and to solicit contributions to such funds from members of "such organization, cooperative or corporation without capital stock". Senator Allen stated in the floor debate that the reason for the amendment was that these organizations should have the same rights as corporations:

"Take, for example, a local REA, which has possibly hundreds or thousands of members but which does not have any capital stock. ... The amendment I have would allow cooperatives, nonstock corporations, and membership organizations to set up the same type of segregated

fund as a corporation with stock and stockholders or labor organizations."

"It would allow corporations that do not have stock but have a membership organization, such as a cooperative...to solicit its members."

**Legislative History of Federal Election Campaign Act
Amendments of 1976 at 463, 464 (1976).**

Many cooperatives are organized in a manner similar to international unions such as the AFL-CIO. They also possess many of the organizational attributes of trade associations and membership organizations. Furthermore, many cooperatives consist principally, if not exclusively, of corporate members. Cooperatives are, however, considered under the FECA to be neither "fish nor fowl" and are thus prohibited from availing themselves of some of the defined fundraising provisions accorded to these other organizations.

These distinctions, for both legal and equitable reasons, should not exist to the detriment of cooperatives. Therefore, I would urge the Commission to amend the regulations to follow the intent of the Congress as set forth in Senator Allen's amendment, and extend the same

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privileges to cooperatives as are applicable to stock corporations, labor organizations, membership organizations and trade associations without adding unnecessary restrictions.

Joan D. Aikens
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Commissioner

April 23, 1992