



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 10, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-9

Gary Voigt Roy
L. Beavers
KAMO Power
P.O. Box 577
Vinita, OK 74301-0577

Dear Mr. Voigt and Mr. Beavers:

This responds to your letters of December 4, 1991, January 3 and February 20, 1992, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a planned solicitation and raffle to be conducted by KAMO Power ("KAMO") in connection with its annual meeting to be held April 10, 1992.

You state that KAMO is a nonprofit wholesale cooperative owned by other nonprofit retail cooperatives. It is incorporated under the laws of Oklahoma as a "rural cooperative." You further describe KAMO as a "generating and transmitting" ("G&T") rural electric cooperative. You state that KAMO generates power to 17 distribution cooperative systems (all members of KAMO) who, in turn, sell the power at the local retail level. It is these member cooperatives who "connect through the meter in the home to the ultimate consumer/member." You state that the local consumer is also a member of the local co-op.

You have provided the Commission with various documents including KAMO's bylaws. These bylaws provide that formal membership in KAMO requires the acceptance of an application for membership by the Board of Trustees, the payment of a membership fee of \$100 and an agreement to be bound by the KAMO's articles of incorporation, bylaws and any other rule adopted by KAMO's Board of Trustees. Article VIII, section 2, of the bylaws also describes the concept of patronage-- members provide the capital to run the cooperative on a nonprofit basis and use its power.

The 17 patron members are a majority of KAMO's membership. There are two additional cooperative members beyond the 17 member-patrons who own KAMO. Associated Electric Cooperative and Arkansas Valley Electric Cooperative are formally members of KAMO, but are not patrons. You describe Associated Electric Cooperative as a G&T cooperative which is partly owned by KAMO and sells a portion of its power to KAMO. You indicate that Arkansas Valley Electric Cooperative is one of the original founders of KAMO. It no longer purchases power from KAMO, but has retained formal membership because of the possibility that it may someday need to resume wholesale purchases.

Like the 19 cooperatives which form it, KAMO is governed by a Board of Trustees. KAMO's board consists of 19 Trustees with each member cooperative entitled to have one KAMO board member as its representative. According to the bylaws, the person selected by a member cooperative to represent it on KAMO's board must also be a member of that cooperative's own board of trustees. Each member cooperative is entitled, however, to additional representation and is authorized to send its general manager as a nonvoting, alternate board member.^{1/}

You state that KAMO wishes to hold a raffle at KAMO's upcoming annual meeting to benefit KAMO's separate segregated fund, KAMOPAC, founded in 1991. The prize will be a shotgun donated by KAMO. In preparation for the raffle you wish to send out a solicitation letter, an example of which you have provided, to KAMO's "restricted" and "non-restricted" employee groups as part of its permitted twice yearly solicitation.^{2/}

You state that KAMO Power has 130 employees. Thirty of these you describe as KAMO's restricted class which consists of all the 19 voting board members, the alternate board members, salaried management of KAMO, administrative personnel who directly support activities of management and family members of the above. The remaining 100 employees are unsalaried and, along with their family members, you consider them outside of KAMO's restricted class.

While the solicitation letter would be sent by mail, the actual purchase of tickets and raffle would be conducted at the annual meeting. You state that you considered selling the tickets only by mail; however, you anticipate that most solicitees will want to view the prize at the raffle before deciding whether to participate by making a contribution via a purchase of a raffle ticket.

The expected attendance at the annual meeting is apparently extensive. In your description the attendees include various groups:

This meeting is attended by most of the KAMO Power employees, including virtually all of the restricted class and more than half of the non-restricted class. Attendance is not mandatory. Employees are invited to attend but "attendance" is not recorded in any way. About 80% of all employees normally attend. Virtually all board members (plus additional board members of the retail level cooperatives) and virtually all managers of the retail level cooperatives are likely to attend. With family members of all of the above, plus other invited guests (e.g. the media, industry VIPs, etc.) the total attendance may reach 300.

To comply with the requirements of the Act and Commission regulations, you plan to take various steps while conducting the raffle. Tickets would be sold up to the time when the raffle winner is selected. You assume that raffle tickets will be purchased by both members of the restricted and non-restricted classes. You explain that the drum containing the raffle tickets already purchased would be placed on the same table where more tickets will be sold; however, there will be an outside "third party" to handle the actual ticket purchase.^{3/} Among the options you are considering is a matching number arrangement for the identification of the ticket, rather than requiring the actual name. Nonetheless, you state that you intend to announce the winner, thereby compromising the anonymity of that person, but you will explain this possibility to your non-restricted employees in the solicitation letters they receive.

You ask whether the foregoing procedures constitute a lawful raffle under the Act and Commission regulations.

I. The Solicitation Letters

The Act and Commission regulations allow a non-stock, cooperative corporation, or a separate segregated fund established by the corporation, to solicit contributions to the fund from the corporation's members, its executive and administrative personnel, and the families of such persons. 2 U.S.C. 441b(b)(4)(A)(i), 441b(b)(4)(C); 11 CFR 114.5(g)(1) and 114.7(a). The Act and regulations also permit two written solicitations in a calendar year to other employees. 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6(a). The corporation, however, must make such solicitations in writing to an employee's residence and pursuant to a custodial arrangement that ensures the anonymity of those wishing to contribute less than \$50 in any single contribution or those not wishing to contribute at all. 11 CFR 114.6(c) and (d).

The individuals KAMO wishes to solicit by letter would appear to include some KAMO personnel who are generally solicitable at any time and some who are only solicitable twice a year in a writing sent to their residences. The Commission also notes KAMO's intent to solicit the 19 members of its Board, including their 19 alternates who are the general managers of the member cooperatives. The Commission has concluded that while the Act contemplates solicitation of executive or administrative personnel and stockholders of corporate members of trade associations, subject to prior approval by such member, there is no parallel treatment for the personnel of cooperatives that are themselves members of the soliciting cooperative. See Advisory Opinions 1981-23 and 1980-48. Your situation is distinguishable, however, from these past advisory opinions in that, by serving as KAMO trustees and their alternates, these individuals vote and/or otherwise participate in the meetings of KAMO's Board which is authorized to exercise virtually all the powers of the cooperative. Accordingly, they are a formal part of KAMO's governing structure. To the extent they receive a stipend for acting on behalf of KAMO, they would qualify as "executive or administrative personnel" under 11 CFR 114.1(c). Cf. Advisory Opinions 1985-35, 1984-55 and 1977-18. Thus, in this specific situation, the 19 individual KAMO trustees and their alternates may be included in the raffle solicitation.

In summary, the Commission concludes that your proposal to send solicitation letters advertising the raffle to KAMO employees as one of its twice yearly solicitations authorized by section 114.6(a) is permissible under the Act. The solicitation letters may also be sent to the members of

KAMO's Board of Trustees, their alternates, and to KAMO's executive or administrative personnel.

II. The Raffle at the Convention

In the past, the Commission has concluded that the requirements for permissible solicitations apply to the convention environment. See Advisory Opinions 1981-41, 1978-17, 1976-96 and 1976-27. In this respect, the raffle conducted by KAMO at the annual meeting, no less than the solicitation letter, must comply with all the cited rules and regulations.^{4/} As noted, section 114.6 requires that such contribution solicitation to an employee who is not an executive or administrative employee must be in writing and sent to an employee's residence. This form of solicitation is required in order to protect the anonymity of the employees who are not solicitable in person. Advisory Opinion 1991-28. This requirement, however, would not be met if the contribution solicitation is directed to non-restricted employees at the convention site, or if the contribution (by purchase of a raffle ticket) is made by such an employee in the presence of other employees (restricted or non-restricted).

The Commission has previously concluded that a corporation may act as a passive conduit providing information regarding a separate segregated fund's activities. Such a limited message would not be a solicitation under section 441b. Advisory Opinions 1991-3, 1983-38, 1982-65, and 1979-66. Any promotional message, however, that encourages convention attendees to support KAMO's separate segregated fundraising activities or facilitates making contributions to it would be viewed as a solicitation. See Advisory Opinion 1979-13.^{5/} This would include any statements made commending the participation of employees in the raffle. Id.^{6/} Likewise, providing a table to sell raffle tickets at the KAMO annual meeting facilitates the making of a contribution and would thus be a solicitation for a contribution.

The expected extensive attendance at the annual meeting creates additional difficulties. Your proposed written solicitation states "all KAMO employees (and their immediate family) will be eligible to purchase raffle tickets." Conducting your raffle at the convention itself, however, poses problems due to the attendance of individuals who are not generally solicitable by KAMO. These include the possible attendees whom you describe as employees of KAMO's member cooperatives, other "invited guests," and family members of non-KAMO employees. No PAC solicitation, written or oral, may be directed to these individuals. The procedure you outline in your request fails to provide safeguards that might avoid an improper solicitation of these individuals. See Advisory Opinion 1981-41.

Therefore, the Commission concludes that your procedures for conducting the raffle at the annual meeting are not permissible under the Act and Commission regulations.

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)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1991-28, 1991-3, 1985-35, 1984-55, 1983-38, 1982-65, 1981-41, 1981-23, 1980-48, 1979-66, 1979-13, 1978-17, 1977-18, 1976-96 and 1976-27)

ENDNOTES

1/ In your December 4, 1991 letter, you describe the Board of Trustees as consisting of 19 members--the voting delegates. Your subsequent letters indicate your view that the general managers play an important adjunct role on the board. The authority granted to them under the bylaws gives them what could be categorized as ex officio status. Your subsequent letters and KAMO's bylaws indicate that alternate board members are authorized to attend and participate in board meetings in their own right, independent of whether they are substitutes for a voting member. Further, you state that they do, in fact, participate in the board's deliberations on a regular basis. Their attendance is noted in the minutes of all board meetings. You indicate that board members receive a stipend and travel expenses from KAMO in connection with KAMO business and that general managers who are alternates may be paid a stipend and travel expenses by KAMO when acting on KAMO business.

2/ For purposes of this opinion, the Commission assumes that your use of the term "restricted" employees means these KAMO personnel who qualify as executive or administrative personnel, and who may therefore be solicited for voluntary contributions to KAMOPAC at any time by any lawful method under the Act and Commission regulations. 2 U.S.C. SS441b(b)(4)(A)(i), 441b(b)(7); 11CFR 114.1 (c), 114.5(a), 114.7(a), 114.7 (e). By contrast, your use of the term "non-restricted" employees is assumed to mean those KAMO employees who may only be solicited twice per year for voluntary contributions to KAMOPAC and, even then, only under specific restrictions prescribed by the Act and Commission regulations. 2 U.S.C. s441b(b)(4)(B), 11 CFR 114.6.

3/ You state that you are considering a third party such as one of the local banks or accounting firms. You estimate that the cost of each ticket would be \$10, and you do not expect that any person will buy more than five.

4/ Commission regulations provide that, when a raffle with a valuable prize is used as a fundraising device by a corporation for its separate segregated fund, the cost to the corporation for the prize should not exceed one-third of the contributions made to enter the raffle. 11CFR 114.5(b)(2). This regulation would apply to KAMO's shotgun raffle.

5/ In addition, although Commission regulations permit a separate segregated fund to accept an unsolicited contribution from a non-solicitable person (assuming it is otherwise lawful), informing any person of that right is a solicitation. 11CFR 114.5(j); Federal Election Commission Regulations, Explanation and Justification, House Document 95-44, 109; Advisory Opinion 1984-55 and 1983-38.

6/ In that advisory opinion, the Commission conclude that statements in Raymond International's company newsletter were solicitations since they described RAYPAC's (Raymond International's separate segregated fund) activities and encouraged employee participation in RAYPAC by commending the enthusiasm of employees participating in RAYPAC.