



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 10, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-20

Frederick T. Spahr, Ph.D.
Executive Director
American Speech-Language-Hearing Association
10801 Rockville Pike
Rockville, MD 20852

Dear Dr. Spahr:

This responds to your letter dated May 27, 1992, as supplemented by letters dated July 1 and July 6, 1992, requesting an advisory opinion on behalf of the American Speech-Language-Hearing Association ("ASHA") and ASHA Political Action Committee ("ASHA-PAC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the acceptance of checks from incorporated practices and incorporated state association accounts for administrative purposes.

ASHA is an incorporated membership organization that you refer to as a professional association. It is the connected organization of ASHA-PAC, a separate segregated fund registered with the Commission. ASHA's membership consists of approximately 64,000 individual members, who are speech- language pathologists and audiologists, most of whom work in hospitals and school settings. Seven percent of the members have independent practices. You state that, in accordance with the Act, ASHA solicits only its members for contributions to ASHA-PAC.^{1/} Although each solicitation includes the statement, "ASHA-PAC cannot accept corporate checks," occasionally (10 to 15 instances per year) a member who owns an incorporated private practice will make a contribution to ASHA-PAC using a check drawn on that practice. You add that individual ASHA members who are presidents of separate state associations have made contributions to ASHA-PAC drawn on those incorporated state associations. The state associations are not members of ASHA.

In the past, ASHA has returned such checks to the contributors, but has now become aware of advisory opinions that permit members, including corporate members, of membership

organizations to defray the organization's costs for SSF administration and solicitation in certain circumstances. You therefore ask whether ASHA members may make contributions to ASHA-PAC with checks drawn on their independent practices if such checks are deposited in ASHA's general treasury funds, recorded in a separate administrative account, and used for the purpose of defraying ASHA's expenses in running the PAC. You also ask whether checks drawn on incorporated state associations, which are submitted by ASHA members who are presidents of such associations, may be deposited and used in the same manner. Additionally, you ask whether such checks, made out to "ASHA-PAC" and not ASHA, may be recorded in such an administrative account for administrative purposes if the checks are endorsed to ASHA on the backs of the checks. You state that, if the Commission approves these activities, ASHA would inform such contributors of the handling of their contributions and that they have the opportunity to have the checks returned.

Under the Act, a corporation is prohibited from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a). The Act provides, however, that the term "contribution or expenditure," does not include the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). The Commission has previously held that members of an incorporated trade association may donate funds or merchandise to the association or a separate administrative account to defray the administration and solicitation expenses of the association's SSF. Advisory Opinions 1986-13, 1982-36, and 1980-59. The Commission has applied this principle to the professional corporation accounts of individual members of an incorporated membership organization, allowing the use of such accounts to make combined payments of dues to the connected organization and donations for administration of the SSF. The donation portion of the payment could not be deposited in the separate segregated fund itself and used for the purpose of influencing Federal elections, but could be deposited in an account used only for the administrative and solicitation costs of the SSF. Such an account would function as a treasury account of the connected organization. Advisory Opinions 1990-4 and 1982-61.

You propose to have donations that are made by ASHA members from their corporate practice accounts deposited in an ASHA general treasury account with separate book records showing that the funds will only defray administrative and solicitation expenses of ASHA-PAC. In addition, you plan to avoid the deposit of such funds in an ASHA-PAC account, used for contributions to Federal candidates, by having checks made out to the SSF endorsed to ASHA. In view of the cited advisory opinions, the Commission concludes that the proposed treatment of donations from corporate practice accounts is permissible.^{2/}

The Commission does not reach the same conclusion, however, with respect to donations by presidents of non-member state associations who submit checks drawn on the association accounts. Although the presidents may have been solicited as individual members of ASHA, their donations are unlike those from incorporated private practice accounts in that the latter accounts are under the control of the member due to a proprietary relationship. As such, although the corporate account of the practice is not a member, the member's use of the account for this purpose is so inextricably identified with the member's professional vocation as to present a

situation that is materially indistinguishable from those corporate members who may contribute funds to defray administrative costs. The relationship between the state association and its president is of a very different nature. The Commission concludes, therefore, that the proposed treatment of the donations from the state association presidents is not permissible.

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)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1990-4, 1987-5, 1986-13, 1982-61, 1982-36, and 1980-59)

ENDNOTES:

1/ You state that individuals who are certified by ASHA, but are not ASHA members, and international affiliate members are not solicited. The Commission assumes the ASHA will solicit only those individuals who meet the standards for membership as set out in previous advisory opinions. See Advisory Opinion 1987-5.

2/ You state that, if the Commission approves ASHA's proposed activities, ASHA would inform contributions using their practice accounts of the handling of their contributions and give them the opportunity to have their checks returned. Commission regulations require that solicitations for contributions to separate segregated funds meet certain standards ensuring the voluntariness of contributions. 11 CFR 114.5(a). A solicitation to a member for a contribution to an SSF must inform the member of the political purposes of the fund and must inform the member of his or her right to refuse to so contribute without any reprisal. 11 CFR 114.5(a)(3) and (4). This information must be provided at the time of the solicitation. These regulations, however, do not require that the solicitation state that contributions on a corporate account will be deposited in an ASHA account. Nevertheless, the Commission notes its approval of your proposed notification procedure.