

RECEIVED  
F.E.C.  
SECRETARIAT



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

94 MAR -9 AM 10: 28

March 9, 1994

**SUBMITTED LATE  
AGENDA ITEM**

For Meeting of: MAR 10 1994

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael Marinelli *m.m.*  
Staff Attorney

SUBJECT: Revised Draft of Advisory Opinion 1994-1

Attached for Commission approval is a revised draft of the subject advisory opinion.

The revised draft incorporates this office's original draft as set out in Agenda Document #94-17 and further changes that stem, in part, from discussion at the Commission's meeting of March 3, 1994 and new information from the requester. The revisions, shown in bolded type, are found on pages 1, 3, 10, 14, 16 and 18.

We request that this revised draft be placed on agenda for March 10, 1994.

Attachment

RECEIVED  
F.E.C.  
SECRETARIAT

94 MAR -9 AM 10:28  
**DRAFT**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-1

Robert I. Schramm  
Schramm, Williams & Associates, Inc.  
517 C Street, NE  
Capitol Hill, DC 20002-5809

Dear Mr. Schramm:

This refers to your letters of March 7, February 3, and January 18, 1994, and December 20, 1993, on behalf of NutPAC, the separate segregated fund of the Western Pistachio Association (the "WPA"), concerning application of the Federal Election Campaign Act of 1971 ("the Act"), as amended, and Commission regulations to a planned fundraising event and related solicitations conducted by the WPA for NutPAC.

You state that WPA is a trade association representing the interests of pistachio growers, processors other industry members. It has a stated geographic area of Arizona, California, Nevada, New Mexico, Texas, and Utah but includes members throughout the United States.<sup>1/</sup>

THE WPA MEMBERSHIP STRUCTURE

<sup>1/</sup> According to the information you have provided, the WPA is a non-profit corporation incorporated in the District of Columbia, and as of January 31, 1994, the WPA had 261 members. You state that the WPA engages in various activities on behalf of its members through its work on USDA voluntary grade and standards recommendations for the pistachio crop, and its work on various committees relating to issues such as endangered species legislation, Aflatoxin programs and quality programs. You also state that the WPA provides a quarterly magazine and routine industry information to members.

4 Your request includes Articles of Incorporation and the  
5 Bylaws of the WPA, supplementary information regarding the  
6 make up of WPA membership, and various WPA membership  
7 solicitation materials.

8 Classes of Membership

9 The Bylaws indicate that there are two classes of  
10 membership in the WPA: regular membership and associate  
11 membership. Regular membership consists of any individual,  
12 partnership, corporation or other type business entity which  
13 is in the business of producing, processing or marketing  
14 domestic pistachios and whose residence or principal place of  
15 business is in the geographic area of the WPA. Associate  
16 membership consists of any individual, corporation or other  
17 type of business entity who is in any way associated with  
18 the producing, processing, or marketing of domestic  
19 pistachios and who is over the age of 18, of good character,  
20 and dedicated to the purposes of the corporation.<sup>2/</sup>

21 All members pay dues but with certain variations.  
22 Associate members pay \$250. Regular members pay according to  
23 whether they are processors or growers and according to the  
24 amount of acreage of their crop or the total amount of pounds  
25 they process. A chart included in the request indicates that  
26 the actual range of dues paid by regular members varies from  
27 \$50 to \$5,000 with the majority of the WPA membership paying  
28

29 \_\_\_\_\_  
30 <sup>2/</sup> According to information provided this Office, WPA has  
261 members -- 238 regular members and 23 associate members.

from \$50 to \$499 per member.

Benefits and Rights of Members

From the materials you have provided, associate members have the right to attend general meetings and receive the WPA magazine. Both associate and regular members have the right to serve on committees after appointment by the Board of Directors ("the Board"). Regular members have the right to vote for and become candidates for the Board.<sup>3/</sup> Regular members also provide the quorum for the regular WPA meetings and may initiate and provide signatures for special meetings. In addition, they have the right to inspect the accounting books, committee records and Board minutes (excepting records of executive sessions) and may vote to amend the Bylaws.

PLANNED NUTPAC FUNDRAISER

You state that before its upcoming 1994 annual meeting, the WPA plans to hold a golf tournament on March 9, 1994, to raise funds for NutPAC. The WPA would like to solicit sponsors from WPA membership to help offset the costs of the tournament which you describe as rental of the golf course,

---

<sup>3/</sup> The WPA Bylaws delineate only one governing institution for the association, the Board of Directors. According to the Bylaws, Article VI, section 1, this body conducts, manages and controls the activities of the corporation and appoints committee members. It also acts as a nominating committee choosing successor directors. A very recent amendment of the WPA Bylaws indicates that the candidates for the Board must then be elected by a majority vote of the regular members. The officers of the WPA (President, Vice President, Secretary, and Treasurer) are also appointed by the Board.

food, and awards.<sup>4/</sup> Sponsor contributions would be in addition to annual dues collected by the Association. While sponsors will be allowed to play in the tournament free of charge, other participants will pay a \$150 entry fee.<sup>5/</sup> WPA members will also be charged the entry fee, and all funds from members would be deposited in NutPAC's account. You state that the WPA will contact WPA corporate members to request permission to solicit their employees to participate in the golf tournament.

Publication Efforts

You state that the tournament will be publicized by a letter sent to all WPA members inviting their participation. The WPA will also put an article in its quarterly magazine explaining the tournament, the cost, the time and date, and any restrictions on participation.<sup>6/</sup>

---

<sup>4/</sup> You state that the proposed sponsors will be individual members of the WPA, or they will be senior management from a corporate member or partnership member. Sponsors would be asked to contribute in various categories ranging from \$100 to \$5,000. Sponsors, you state, will pay by personal check. You propose to recognize the sponsor or sponsor's company through signs on the golf course and at the awards ceremony. To avoid prohibited corporate contributions to NutPAC, you propose to inform individual sponsors, who write personal checks, that they cannot be reimbursed by their corporation.

<sup>5/</sup> Your request indicates that the rental of the golf course is approximately \$5,600. Of the \$150 entry fee, \$82 is the amount necessary to offset green fees, and other costs actually associated with playing in the tournament, and \$68 is the amount that NutPAC will receive. You anticipate that between 60 and 70 individuals will participate in the tournament.

<sup>6/</sup> You state that the WPA's magazine is sent both to members and non-members. The circulation of the magazine is approximately 1,500.

Although the actual tournament will take place prior to the annual WPA meeting, you anticipate that non-members may learn about the event through various ways either by reading the article in the newsletter, through discussions with WPA members or while registering at the hotel. You state that WPA will have rented the golf course for the entire morning, will have exclusive access to the course, and will not allow any participation in the tournament that the Commission determines is violative of the Act. Further, you state that individuals "not directly associated with the industry" will not be allowed to contribute to NutPAC.

Areas of Inquiry

Most of your inquiry centers on certain proposals regarding the participation of WPA members and non-members. Regarding members, you ask whether members may be permitted to pay with a business or corporate check the portion of the entry fee associated with the costs of the tournament. The remaining portion would be paid for with a personal check.

Your questions involving the participation of non-members offers different possible scenarios. Under one set of possibilities, you would require non-members who hear about the tournament to become members of the WPA prior to their participation at the tournament. Depending on when the non-member received tournament information, this could occur, at the latest, at the tournament site on the day of the fundraiser. In these situations, where the non-member joined WPA, all of the entrance fee would go to NutPAC.

4 You also propose scenarios where non-members who learn  
5 of the fundraiser participate without becoming members of  
6 WPA. In these situations, you also propose certain  
7 alternatives to deal with the entry fees that these  
8 non-members might pay for participation. In one scenario,  
9 the non-member would pay the full \$150 entrance fee; however,  
10 none of the payment would go to NutPAC. Instead, \$82 of the  
11 entrance fee, would go first to pay the costs associated with  
12 the rent and use of the golf course. You state that \$82 of  
13 sponsorship funds would then be transferred into the NutPAC  
14 account. The remaining portion (\$68) would be placed in the  
15 WPA account which the WPA uses to pay for its own  
16 administration. Under this arrangement, you assert that no  
17 non-member funds would go to NutPAC. In a second scenario,  
18 the non-member would pay only the \$82 costs associated with  
19 the costs of the tournament. These funds would not go into  
20 any WPA or NutPAC account, but would be deposited in a  
21 segregated account with payment from the segregated account  
22 going directly to the golf course.

23 Lastly, you ask whether cash prizes may be awarded to  
24 the winners at the tournament. You state that no prize will  
25 exceed \$75 per winner.

26 THE ACT AND COMMISSION REGULATIONS

27 The Act prohibits corporations from making any  
28 contribution or expenditure in connection with a Federal  
29 election. 2 U.S.C. §441b(a). The Act states, however, that  
30 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). See also 2 U.S.C. §431(8)(B)(vi) and (9)(B)(v).

Under 2 U.S.C. §441b(b)(4)(A), a corporation, or a separate segregated fund established by a corporation, may only solicit contributions to such a fund from its stockholders and their families and its executive or administrative personnel and their families. An exception set forth in 2 U.S.C. §441b(b)(4)(C) allows a corporation without capital stock or a separate segregated fund established by a corporation without capital stock, including a trade association, to solicit contributions to the fund from members of the nonstock corporation. Further under 11 CFR 114.8(c), a trade association, if granted prior permission by a corporate member, may solicit contributions for its separate segregated fund from that corporation's stockholders and their families and its executive or administrative personnel and their families. Recently the Commission has revised its regulations regarding the definition of the term "members."<sup>7/</sup> A "Membership

---

<sup>7/</sup> The relevant regulations were published in the Federal Register on August 30, 1993, (58 Fed. Reg. 45770) with an effective date of November 10, 1993 (58 Fed. Reg. 59641). The rules will be published in the 1994 edition of the Code of Federal Regulations at 11 CFR 100.8(b)(4)(iv), 114.1(e), and 11 CFR 114.7(k).

4 Association," a classification which includes trade  
5 associations and other corporations without stock is defined,  
6 in part, under 11 CFR 114.1(e)(1) as a membership  
7 organization that (i) expressly provides for "members" in its  
8 articles and bylaws; (ii) expressly solicits members; and  
9 (iii) expressly acknowledges the acceptance of membership,  
10 such as by sending a membership card or inclusion on a  
11 membership newsletter list.

12 The revised Commission regulations provide guidance as  
13 to the definition of the term "members." Under 11 CFR  
14 114.1(e)(2), "members" means all persons who are currently  
15 satisfying the requirements for membership in a membership  
16 association, who affirmatively accept the membership  
17 association's invitation to become a member, and who meet one  
18 of the following requirements:

19 (i) Have some significant financial attachment to the  
20 membership association, such as a significant investment or  
21 ownership stake (but not merely the payment of dues);

22 (ii) Are required to pay on a regular basis a specific  
23 amount of dues that is predetermined by the association and  
24 are entitled to vote directly either for at least one member  
25 who has full participatory and voting rights on the highest  
26 governing body of the membership association, or for those  
27 who select at least one member of those on the highest  
28 governing body of the membership association; or

29 (iii) Are entitled to vote directly for all of those on  
30 the highest governing body of the membership association.

The regulations also provide that the Commission "may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule." See 11 CFR 114.1(e)(3).

THE WPA AS A MEMBERSHIP ASSOCIATION

The facts and background to this request indicate that the WPA is a membership association for purposes of the Act. For example, Article III of the WPA's Articles of Incorporation and Article III of the WPA Bylaws meets the requirement of 11 CFR 114.1(e)(1) for expressly providing for membership. The WPA has a magazine which is sent to members, therefore, the requirement that membership be expressly recognized is also met. See 11 CFR 114.1(e)(1)(iii). The request materials indicate that the WPA uses membership promotional materials that expressly solicit members. From the existence of the included membership application form, it appears that individuals solicited for WPA membership must affirmatively accept the invitation to join before the WPA considers them members. See 11 CFR 114.1(e)(2).<sup>8/</sup>

---

<sup>8/</sup> It also appears that the WPA meets the definition of "trade association" under 11 CFR 114.8(a). WPA appears to be "a membership organization of persons 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." 11 CFR 114.8(a), see also

4 Advertisement in WPA Magazine.

5 The situation regarding the planned advertisement in the  
6 WPA magazine is more problematic. In the past, the  
7 Commission has determined that where circulation of a  
8 corporation journal is made beyond an incidental percentage  
9 and number of unsolicitable persons, that journal may not  
10 contain a solicitation for contributions to the corporation's  
11 separate segregated fund. See Advisory Opinions 1991-3,  
12 1984-23 and 1980-139. The Commission notes your statements  
13 that the WPA magazine is sent to members and non-members, is  
14 used as a means to attract members, and has a circulation of  
15 1,500 (a number well beyond the WPA's 238 regular  
16 membership). These factors indicate more than an incidental  
17 outside circulation, both in percentage and numbers.  
18 Therefore, the WPA magazine may not contain any solicitation  
19 for contributions to NutPAC.

20 The Commission has previously concluded that a  
21 communication regarding a separate segregated fund's activity  
22 is not a solicitation under section 441b where the  
23 information provided would neither encourage readers to  
24 support a separate segregated fund's activities, nor  
25 facilitate making contributions to it. Advisory Opinions  
26 1992-9, 1991-3, 1988-2, and 1983-38. See also Advisory  
27  
28  
29  
30

4 Opinion 1979-13,<sup>11/</sup> In addition, although Commission  
5 regulations permit a separate segregated fund to accept an  
6 unsolicited contribution from a nonsolicitabile person  
7 (assuming it is otherwise lawful), informing any person of  
8 that right is a solicitation. See 11 CFR 114.5(j); Federal  
9 Election Commission Regulations, Explanation and  
10 Justification, House Document 95-44, 109; Advisory Opinions  
11 1984-55 and 1983-38.

12 You state that the planned advertisement would be  
13 "explaining the tournament, the cost, the time, the date, and  
14 any restrictions on participation." An announcement of this  
15 nature would clearly be a solicitation for the NutPAC  
16 fundraiser and, therefore, would not be permissible under the  
17 Act.

18 Other Forms of Advertisement

19 Your request states that non-members of the WPA who  
20 arrive early for the convention could receive information  
21 about the NutPAC fundraising event "through discussion with  
22 WPA members or while registering at the hotel." The  
23 Commission cautions you that the above contribution  
24 solicitation restrictions apply to face to face interactions  
25 between representatives of WPA and personnel who form the  
26 restricted classes of WPA corporate members, as well as to

27  
28 11/ In that advisory opinion, the Commission concluded that  
29 statements in Raymond International's company newsletter were  
30 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.

4 DETERMINATION OF WPA MEMBERSHIP

5 Under the revised regulations, regular members of the  
6 WPA would be considered "members" for purposes of the Act.  
7 Because of their obligation to pay dues and their extensive  
8 voting rights, these individuals would meet the membership  
9 requirements under both sections 114.1(e)(2)(ii) and (iii).  
10 However, associate members lack the right to vote for any  
11 director or any person who can vote for a director.  
12 Therefore, they do not meet the requirements of sections  
13 114.1(e)(2)(ii) or (iii).<sup>9/</sup>

14 The Commission also concludes that associate members do  
15 not meet the requirements of section 114.1(e)(2)(i). In  
16 Advisory Opinion 1993-24, as an example of a "significant  
17 financial attachment" or a "significant investment or  
18 ownership stake" in the membership organization beyond the  
19 payment of dues, the Commission cited the amounts (well over  
20 \$10,000) necessary to acquire nonvoting membership seats in  
21 stock and commodity exchanges. See Advisory Opinion 1993-24,  
22 see also 58 Fed. Reg. 45771 (August 30, 1993).  
23 The background to this opinion indicates that associate  
24 members do have this type of connection to the WPA.

25  
26 (Footnote 8 continued from previous page)  
Advisory Opinion 1991-24.

27  
28 <sup>9/</sup> In Advisory Opinion 1993-24, the Commission affirmed  
29 that section 114.1(e)(2) requires so-called 'governance'  
30 voting, as opposed to voting for the association's policies  
or positions. However, the participation of associate  
members in the governance of the WPA seems extremely limited.  
While associate members can apparently serve as officers and  
on committees, they are not eligible to serve as directors.

Lastly, the Commission addresses the application of the revised regulation's definition of "members" under the case by case approach of section 114.1(e)(3). In Advisory Opinion 1993-24, the Commission determined that 114.1(e)(3) required the presence of some level of voting rights. Since, again, associate members have no voting rights, they cannot be considered members under section 114.1(e)(3).

The Commission, therefore, concludes that the solicitable restricted class of WPA would include the WPA's executive and administrative personnel and their families and individuals holding regular memberships. The WPA may also solicit contributions for NutPAC from the restricted classes of corporations that are regular members of the WPA, provided that it has obtained that corporate member's prior approval pursuant to 11 CFR 114.8(c) and (d). See 2 U.S.C. §441b(b)(4)(D).

SOLICITATION FOR THE FUNDRAISING.

Solicitation Letters.

WPA may send solicitation letters informing the restricted class, as described above, of the fundraising event described in your request.<sup>10/</sup> However, as noted above, since associate members are not considered members of the WPA for purposes of the Act, they may not be solicited at all by letter, even under the twice yearly option.

<sup>10/</sup> If WPA wishes to send letters to all its employees, it may do so as part of the two written solicitations allowed a corporation to the wider employee class under 2 U.S.C. §441b(b)(4)(B) and 11 CFR 114.6(a).

4 contact with non-members. These restrictions also apply to  
5 any advertisement of the tournament at the hotel or at the  
6 golf course itself. The restricted classes of WPA corporate  
7 members may only be solicited for contributions to NutPAC if  
8 permission to do so is obtained prior to the solicitation.  
9 See Advisory Opinion 1981-41. Non-members may not be  
10 solicited at all for contributions to NutPAC, even if such  
11 solicitation is combined with a invitation to join the WPA.  
12 See Advisory Opinion 1992-9.<sup>12/</sup>

13 Attendance at the Fundraiser

14 By Members

15 The making of contributions to NutPAC through the  
16 tournament entry fees paid by individuals who are considered  
17 members of WPA for purposes of the Act would pose no  
18 difficulty. Should the WPA pay for the costs of the  
19 fundraiser, which it is permitted to do under the Act, NutPAC  
20 must reimburse the WPA for costs which exceed one third of  
21 money contributed.<sup>13/</sup> See 11 CFR 114.5(b)(2).

22  
23  
24 <sup>12/</sup> In Advisory Opinion 1992-9, the Commission applied the  
25 rules regarding corporate solicitation to the advertisement  
26 of and running of a PAC's fundraising raffle at a  
27 cooperative's annual convention. Also relevant to WPA  
28 solicitation situations at the hotel and golf course are past  
29 advisory opinions dealing with setting up of PAC promotional  
30 booths at trade association conventions. See Advisory  
Opinions 1978-83 and 1978-17; see also Advisory Opinion  
1976-27.

<sup>13/</sup> Because you have said that the golf course rental will  
be \$5,600 and have estimated that the golf tournament may  
attract 70 participants (donors to NutPAC at \$150 each), it  
appears that substantial amounts will have to be reimbursed  
by NutPAC to the WPA.

4 The Commission has concluded that corporate members of  
5 an incorporated trade association who meet the definition of  
6 "membership" under the Act and regulations may contribute  
7 funds or merchandise to defray administration and  
8 solicitation expenses of the trade association's separate  
9 segregated fund. See Advisory Opinions 1992-20 and 1990-4,  
10 and 1986-13. This includes defraying expenses of a  
11 fundraising event held by or for the association's separate  
12 segregated fund. See Advisory Opinions 1991-23 and 1989-18.  
13 Therefore, if the WPA pays for the costs of the tournament,  
14 representatives of corporate members may pay with a corporate  
15 check for the portion of the entry fee associated with the  
16 costs to hold the tournament. The Commission notes that  
17 NutPAC may have to subsequently reimburse the WPA for such  
18 payments pursuant to the "one third rule." See footnote 13.  
19 The Commission notes, moreover, that funds received from  
20 corporate members to cover tournament costs must be kept  
21 segregated from NutPAC's own accounts.<sup>14/</sup>

22 By Non-Members

23 As noted above, the WPA and NutPAC may not solicit  
24 donations to WPA or contributions to NutPAC from non-members  
25

26 14/ Advisory Opinion 1992-20 is relevant to your situation.  
27 The Commission approved a procedure whereby an incorporated  
28 membership association of professionals (the American  
29 Speech-Language Hearing Association) received donations of  
30 funds drawn on the professional corporate accounts of  
members. The funds were to be used only for the  
administrative and solicitation costs of the membership  
association's PAC. These funds could not be deposited in the  
PAC itself, but were placed in the association's account used  
to pay for the PAC administrative expenses.

4 of WPA in connection with the tournament. NutPAC may accept  
5 the unsolicited contributions of those non-members who are  
6 otherwise permitted to make contributions under the Act and  
7 whose participation in the tournament is not the result of  
8 any solicitation. These contributions, i.e. the entrance  
9 fees paid to participate in the tournament, may be used by  
10 NutPAC for any purpose and need not be segregated or applied  
11 to a particular purpose.<sup>15/</sup>

12 However, as a corollary to this, NutPAC may not accept  
13 the contributions of any corporate non-member, since the  
14 prohibitions of section 441b bar corporate non-members from  
15

16 15/ Your request indicates that several of the possible  
17 options for the participation of non-members in the  
18 tournament may result in an incidental increase in WPA  
19 membership. One of these options proposes using the fees  
20 paid by non-members solely to pay for tournament costs or for  
21 administration of the WPA.

22 The Commission notes, however, that whatever the  
23 subsequent division of funds raised by the tournament, your  
24 request has characterized the tournament from the start as a  
25 fundraiser for the PAC. From the background to the request,  
26 it is presumed that advertisements for the tournament make  
27 the same characterization. Thus, in these circumstances, you  
28 may not accept donations to pay for tournament costs from  
29 improperly solicited non-members. The Commission is not  
30 addressing here the circumstance where a membership  
organization uses corporate funds for the stated purpose of  
soliciting new members or soliciting donations for the  
general support of the organization. See FEC v. National  
Organization for Women, 713 F. Supp. 428 (D.D.C. 1989).

The situation in your request also differs from the  
circumstances in Advisory 1979-63. In that opinion, the  
Commission permitted funds raised by a membership  
organization, through the sale of food and beverages, to be  
used to pay for the administrative expenses of the membership  
organization's PAC. However, those funds were not raised as  
part of a fundraiser for the PAC itself or through PAC  
fundraising solicitations directed to non-members. See  
Advisory Opinion 1979-63.

4 making contributions or donations to, or for the benefit of,  
5 NutPAC under any circumstances.<sup>16/</sup> NutPAC, therefore, may not  
6 accept any donation or contribution drawn from a non-member's  
7 corporate account regardless of whether the donation or  
8 contribution is unsolicited, or for what purpose the donation  
9 will be used. See Advisory Opinions 1992-20, 1991-23 and  
10 1989-18.

11 Award of Cash prizes

12 Under 11 CFR 114.5(b)(2), any number of fundraising  
13 devices may be used to solicit contributions for a separate  
14 segregated fund, including the award of prizes, as long as  
15 state law permits. Furthermore, a corporation may pay for  
16 the prizes awarded at its PAC's fundraiser so long as the  
17 prizes are not disproportionately valuable. Therefore, the  
18 award of cash prizes at the tournament would be permitted  
19 under the Act (state law also permitting). Again, if the WPA  
20 pays for the prizes, under Commission regulations the cost of  
21 these prizes should not exceed one-third of the contributions  
22 made. See footnote 13. If NutPAC chooses to pay for the  
23 prizes out of its own funds the "one third rule," as well as  
24 the limit on the value of the prizes, would not apply. See  
25 Advisory Opinion 1989-18. However, should WPA pay for both  
26 the prizes and the golf course rental, these costs should be

27  
28  
29 <sup>16/</sup> Past advisory opinions have stated that while member  
30 corporations are permitted to donate prizes for fundraisers,  
or pay for solicitation costs, non-member corporations may  
not do so because of the prohibitions of section 441b. See  
Advisory Opinions 1991-23 and 1989-18.

aggregated together for purposes of the "one third rule."

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.

For the Commission,

Trevor Potter  
Chairman

Enclosures (AOs 1993-24, 1992-20, 1992-9, 1991-24, 1991-23, 1991-3, 1990-4, 1989-18, 1988-2, 1986-13, 1984-23, 1983-38, 1981-41, 1980-139, 1979-63, 1979-13, 1978-83, 1978-17 and 1976-27)