



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20546

**STATEMENT OF CHAIRMAN POTTER  
IN ADVISORY OPINION 1994-12**

In response to an Advisory Opinion Request from the American Medical Association ("the AMA"), the Commission on June 16, 1994 discussed the impact upon that association of newly implemented regulations found at 11 CFR 100.8(b)(4)(vi) and 114.1(e). Those regulations define who constitute members for solicitation purposes under the Federal Election Campaign Act of 1971, as amended. I believe the membership structure outlined by the AMA in its request for advice represents exactly the type of situation the Commission anticipated when it provided for case by case analysis of membership qualification in Sections 100.8(b)(4)(iv)(C) and 114.1(e)(3) of the regulations. I further believe that the "direct" members of the AMA should qualify as "members" for Commission purposes under that approach.

The regulations provide that to qualify as a "member" of an organization an individual must meet one of the following criteria:

- (1) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);
- (2) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or
- (3) Are entitled to vote directly for all of those on the highest governing body of the membership association. See 11 CFR 114.1(e)(2)(i) - (iii).

The regulations then go on to say:

Notwithstanding the requirements of paragraph (e)(2)(ii) of this section, 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 a significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. See 11 CFR 100.8(4)(iv)(C) and 114.1(e)(3).

In the AMA's current membership structure "direct members," who are not also members of AMA constituent associations (about 68,000 individuals), do not have participatory rights in the election process for the AMA House of Delegates (the highest governing body of the AMA for purposes of Commission Regulations). Nevertheless, direct members may themselves serve as voting members of the House of Delegates, and without a doubt have a "significant financial attachment" and investment in the AMA.

To qualify as a direct member of the AMA an individual must (a) possess the degree of Doctor of Medicine or its equivalent; (b) possess an unrestricted license to practice medicine and surgery; (c) be a resident serving in a training program approved by the Association, or serving in an osteopathic training program approved by an appropriate accrediting agency; or (d) be a medical student enrolled in a medical school approved by the Association, or in an osteopathic medical school approved by an appropriate accrediting agency. See AMA bylaws 1.12. These prerequisites for direct membership reflect a large financial investment in the medical profession itself, and a strong beneficial association with the AMA as a result.

Both constituent members (those whom the Commission determined would be considered "members" under the Commission's new regulations) and direct members are required to pay dues and assessments. While it is unclear from the AMA's "Guide to Member Benefits" brochure submitted along with their request, the amount of such dues does not appear to hinge on the constituent/direct member distinction. What is clear is that the range of dues varies depending upon whether the member is a resident physician or intern, the length of time served in each capacity and the time duration of the membership purchased. Taking into account these distinctions, the highest dues payment reflected in the brochure is \$420 per year for a regular physician membership, while the lowest is \$20 for a one year medical student membership.

The AMA also provides its direct members with the unique ability to participate in a substantial way in the governance of the medical profession. The AMA plays a decisive role in regulating medical profession ethics through the issuance of ethical guidelines and the disciplining of members. The AMA is central to the accreditation of medical education programs (medical schools, residency programs, and continuing education)

It also is active in the accreditation of hospitals, long term care facilities, health maintenance organizations, ambulatory care facilities, and home health care providers. These unique functions provide an enduring and independently significant inducement to become a member of the AMA. By paying annual dues that support these functions, and by subjecting themselves to such self-regulation, direct members have a further intangible economic stake in the AMA.

Such financial investment, on-going stake in the administration of the AMA, ability to serve in the House of Delegates, as well as the pervasiveness of their numbers ensure that direct members take a sufficiently active concern in the AMA to qualify them as members. To exclude such an intimately connected and significant component of an association from membership for solicitation purposes under the Commission regulations would contradict the basic tenants behind those regulations.

Some Commissioners noted the language in the Commission's Explanation and Justification of the membership regulations discussed herein, which would appear to suggest that voting rights are required in every circumstance. However, this reading of the Explanation and Justification language would countermand the clear import of 11 CFR 100.8(b)(4)(iv)(C) and 114.1(e)(3). Those sections of the regulations make it clear that, notwithstanding the specific requirements noted in paragraph (2) above, "the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association . . . have a significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule." Thus, voting rights, as one of the requirements of the general rule, is included in the authority to waive the specifics on a case by case basis.

For the reasons outlined above I conclude that direct membership in the AMA constitutes the type of fact-specific situation that the Commission contemplated when it allowed for a case by case review of membership classes. The membership regulations were designed to ensure that membership entities are not turned into vehicles to solicit the general public. Solicitation of AMA direct members does not render the statutory solicitation limitation meaningless in any sense. Thus, including direct members within the AMA's solicitable class appears to be within the spirit of Congress' intent and the Commission's goals in establishing its regulations.

  
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Trevor Potter  
Chairman

July 14, 1994