



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-19

Andrew W. Cohen
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Washington, D.C. 20044-0407

Dear Mr. Cohen:

This responds to your letter dated June 6, 1994, on behalf of the American Society of Anesthesiologists, Inc. ("ASA"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the affiliation of ASA's separate segregated fund and the political committees of state component societies.

ASA, a national medical society, is a not-for-profit membership organization incorporated under the laws of New York and tax-exempt under 26 U.S.C. 501(c)(6). The membership consists of 30,000 anesthesiologists, other physicians, and scientists who engage in or are interested in anesthesiology. According to ASA'S Bylaws, the organization's purpose is "to associate and affiliate into one organization" all reputable physicians in the U.S. practicing or otherwise interested in anesthesiology, to encourage specialization in the field, to raise the specialty's standards through fostering education and research and recommending standards, to issue publications, "to safeguard the professional interest of its members," etc. Bylaws, Section 1.00.

In general, no individual may be a member of ASA unless he or she is first a member of one of the 48 state component societies chartered by the ASA Board of Directors. To be chartered, a component society must incorporate and agree to abide by the ASA's aims, principles, and purposes and its Guidelines for the Ethical Practice of Anesthesiology.

The component societies of North Carolina and Florida (i.e., the North Carolina Society of Anesthesiologists and the Florida Society of Anesthesiologists) have maintained separate segregated funds since 1987 and 1988 respectively. ASA established an SSF, ASA-PAC, in

1991. You ask whether ASA-PAC and the SSFs of the state component societies are affiliated, thus subjecting the contributions made and received by the three PACs to the limits for a single political committee.^{1/} 2 U.S.C. 441a(a)(5); 11 CFR 110.3(a)(1).

The response to your question may be approached in two ways, i.e., (i) by treating the ASA as a trade association and (ii) by treating the ASA as a federation of trade associations. Organizations may be classified under both categories at the same time, i.e., as a trade association consisting of individual members or business entities, and as a federation consisting of state or regional associations made up of those persons or entities (and perhaps other persons or entities who may be members of the state entity, but not the national organization). See Advisory Opinion 1977-44. See Re: AOR 1976-63.

A trade association is generally a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions 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). Commission regulations describe as affiliated committees those that are established, financed, maintained or controlled by a membership organization, including a trade or professional association and/or related state and local entities of that organization. 11 CFR 110.3(a)(2)(iv). Committees listed or described in this regulation are among those viewed as per se affiliated. Explanation and Justification, Federal Election Commission Regulations, 54 Fed. Reg. 34099 (August 17, 1989).

In consideration of the make-up of ASA's membership, its purposes, and its tax status, ASA falls within the category of trade association.^{2/} The state societies are characterized by the Bylaws as state component societies chartered by ASA, not as members of the society. ASA is a membership organization of individual physicians and scientists whose ASA membership, for most of them, is conditional upon their membership in the state component societies; the state component societies are the state entities of the ASA. See Bylaws, Title III. Compare Advisory Opinion 1988-3. As such, they are affiliates of ASA and the separate segregated funds of the state component societies are affiliated with ASA-PAC and with each other.

ASA also comes under the category of federation of trade associations. A federation of trade associations is an organization representing trade associations involved in the same or allied lines of commerce. 11 CFR 114.8(g)(1). ASA is made up of state component societies that have their own governance mechanisms, while still participating as units in the governance of the national body and bound as units by the rules of that body, e.g., rules directing the societies' governance structure. See Advisory Opinion 1977-44.

Although the state entities of a trade association are per se affiliated, Commission regulations indicate that a federation's state "affiliates" must satisfy sufficient indicia of affiliation in order for their committees to be considered affiliated under the Act. Commission regulations at 114.8(g)(1) state:

Such a federation may, subject to the following limitations, solicit the members of the federation's regional, State or local affiliates or members, provided that all of

the political committees established, financed, maintained or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for the purposes of the limitations [on contributions]. The factors set forth at 100.5(g)(4) shall be used to determine whether an entity is a regional, State or local affiliate of a federation of trade associations.

Commission regulations provide for the application of various factors in the context of an overall relationship to determine whether one organization or entity is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J). The relevant factors in the situation you have presented are as follows: (B) the authority or ability of one sponsoring organization to participate in the governance of another sponsoring organization through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) the authority or ability to hire, appoint, demote or otherwise control the officers or other decisionmaking employees or members of another sponsoring organization; (D) common or overlapping membership between sponsoring organizations indicating a formal or overlapping relationship between the sponsoring organizations; (E) common or overlapping officers or employees, indicating a formal or ongoing relationship between the sponsoring organizations; and (I) an active or significant role by one sponsoring organization in the formation of another. 11 CFR 110.3(a)(3)(ii)(B), (C), (D), (E), and (I).

The most obvious factor connecting the component societies with ASA and indicating their ongoing relationship is the heavily overlapping membership. For the most part, one becomes a member of ASA by being a member of the state component society. See 11 CFR 110.3(a)(3)(ii)(D). In addition, to be a member of ASA's Board of Directors generally requires two years voting membership in a state component society, and to be an officer of a state society one must be in the category of "active member" of ASA. Bylaws, Sections 1.43 and 1.35.

There are other factors, however, that go beyond the above circumstances. Most prominent is the fact that the state component societies are chartered by the ASA and the ASA Board and House of Delegates may revoke the charter. Bylaws, Sections 1.31 and 1.33. In applying for a charter as a state component society, an organization must submit a copy of its proposed articles of incorporation and Bylaws, a list of its officers and members, and a declaration of intent to comply with the Guidelines for Ethical Practice approved by the ASA. Bylaws, Section 1.32. The ASA Bylaws set out the categories of membership for a state society in detail, the requirements that each society's officers include at least a president and secretary (who must be "active members" of ASA), and the duties of the Secretary of each state society. Bylaws, Sections 1.34, 1.35, and 1.36. The chartering of an organization is a vital element of its formation and relationship to the charter-issuing body, and the ASA may exert control to change the nature of the organization by asking it to incorporate and to otherwise conduct its operations as part of a national society. See 11 CFR 110.3(a)(3)(ii)(I). See, by analogy, Advisory Opinion 1990-22. Furthermore, the ASA's chartering ability, and powers of revocation, and the membership and governance requirements set out in the Bylaws indicate the presence of factors (B) and (C).

Although state component societies have some degree of autonomy, the presence of the factors discussed above indicate that the ASA and the state component societies are affiliates. See

Advisory Opinions 1986-13 and 1983-46. Their political committees are affiliated with each other, and, thereby, share the limits on contributions made and received. Correspondingly, however, transfers between the committees will not be subject to those limits. 11 CFR 102.6(a)(1).

You also note that one member of the Board of Trustees of ASA-PAC is also a member of the Board of Trustees of the political committee maintained by Anesthesia Services Medical Group ("ASMG"), a private professional corporation of anesthesiologists based in San Diego, California. You state that there is no formal relationship between ASMG and ASA, although ASMG requires its anesthesiologists to be ASA members. You ask whether ASA-PAC and ASMG-PAC are affiliated as a result of the overlap.

The Commission concludes that, without further information, the overlap of one person on the boards of both committees is not sufficient by itself to create affiliation between the PACs. Compare Advisory Opinion 1994-9. (In that situation, the Commission considered a corporation's overlap of one director with each of its former parents to be significant. That situation, however, involved a question of disaffiliation, and other factors were also present.)

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,

(signed)

Trevor Potter
Chairman

Enclosure (AOs 1994-9, 1990-22, 1988-43, 1988-3, 1986-13, 1983-46, 1977-44 and Re: AOR 1976-63)

Endnotes

1/ In Advisory Opinion 1988-43, the Commission concluded that ASA would incur no reporting or registration requirements as a result of the establishment of political committees by the two component societies. The Commission declined to address the issues of affiliation with respect to the state society funds and any fund of ASA because the two state societies had not joined in the request and because ASA had not yet formed an SSF. The North Carolina and Florida state component societies are joining in this request.

2/ The Explanation and Justification to 11 CFR 114.8(a) states that the definition is based on the Federal tax code's treatment of business associations and cites to 26 U.S.C. 501(c)(6). House Document No. 95-44, at 112 (1977).