



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jul 21 1 20 PM '94

July 21, 1994

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

SUBJECT: Draft AO 1994-21

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 28, 1994.

AGENDA ITEM
For Meeting of: JUL 28 1994

Attachment

ADVISORY OPINION 1994-21

Jul 21 1 20 PM '94

DRAFT

William M. Hermelin
Assistant Treasurer
American Pharmaceutical Association
Political Action Committee
2215 Constitution Avenue, N.W.
Washington, D.C. 20037-2985

Dear Mr. Hermelin:

This responds to your letters dated June 6 and July 14, 1994, requesting an advisory opinion on behalf of the American Pharmaceutical Association Political Action Committee ("APhA-PAC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the circulation of a combined dues invoice and solicitation.

The American Pharmaceutical Association ("APhA") is a membership association for pharmacists. Each year, its 30,000 members receive APhA's standard dues renewal invoice. APhA-PAC would like to include a solicitation for voluntary contributions on the dues renewal invoice. You state that the solicitation would include a suggested contribution amount of \$25.

You explain that less than 1,000 (or less than three percent) of the 30,000 members to be solicited are considered as unsolicitable under the Commission's definition of "member."^{1/} The solicitation would include a statement which

^{1/} See 11 CFR 100.8(b)(4)(iv)(B) and (C) and 114.1(e)(2) and (3). These members pay the same amount of dues and enjoy the same benefits as the solicitable members. You state that the non-solicitable members "have limited voting rights" but do not have the right "to vote for the highest governing body

4 would clearly note that contributions cannot be solicited of
5 those persons who are outside of the restricted class and
6 any contributions received from unsolicitable persons will be
7 returned. Furthermore, the suggested \$25 contribution amount
8 would not appear on invoices that are prepared for the
9 unsolicitable members. You ask the Commission to approve the
10 inclusion of the solicitation on the dues renewal notice that
11 will be received by some unsolicitable members.

12 To further clarify your request, you have sent a
13 blank standard membership invoice, a membership invoice to be
14 sent to a solicitable member (APhA Active Member) and a
15 non-solicitable member (APhA Associate Member) [copies
16 attached]. The blank invoice provides spaces for typing in
17 the member name and address, invoice date, member ID number,
18 renewal period, invoice number, the class of member,
19 "optional contributions" to the PAC, journals to be received
20 by the member, and method of payment (with total). There are
21 blank spaces for dollar amounts in the last four categories.

22 The space for "optional contributions" shows the
23 name of the PAC and states as follows:

24 Contributions to APhA-PAC are optional and are not
25 a requirement of APhA membership. Contributions
26 between \$50 and \$200 must be accompanied by name
and address; contributions in excess of \$200
aggregate in a calendar year must be reported with

27

(Footnote 1 continued from previous page)
28 of [AphA]." The Commission assumes that such members do not
29 have the right to vote for any person with full participatory
and voting rights on the highest governing body and do not
30 have the right to vote for those who select at least one such
person. 11 CFR 100.8(b)(4)(iv)(B)(2) and 114.1(e)(2)(ii).

4 name, mailing address, occupation and name of
5 employer. Federal election law prohibits APhA-PAC
6 from soliciting contributions from persons outside
7 the restricted class (APhA active members). Any
8 contributions received from outside the restricted
9 class will be returned.

10 All 30,000 members receive the above-described standard
11 invoice form; the blanks are filled in by a computer program
12 with specific information and dollar amounts related to the
13 individual receiving the invoice. The computer retrieves
14 this information from the individual member's record. The
15 forms you have enclosed for the solicitable members and
16 non-solicitable members have these spaces filled in. Next to
17 the above-quoted solicitation language (with the caveat for
18 non-solicitable members), the computer has filled in a \$25
19 figure on the invoice to be sent to the solicitable member
20 and a \$0 figure for the invoice to be sent to the
21 non-solicitable member.

22 You state that "[b]ecause the 1,000 unsolicitable
23 members pay the same amount in dues and receive the same
24 benefits (except for voting for the highest governing office)
25 as our solicitable members, it is easier, more convenient and
26 most of all, more cost efficient for the Association to use
27 the same invoice form for all 30,000."

28 As an exception to the general prohibition on
29 contributions by corporations and labor organizations, the
30 Act and Commission regulations permit those organizations,
and their separate segregated funds, to solicit voluntary
contributions to those funds at any time from their

4 restricted class. 2 U.S.C. §441b(b)(4); 11 CFR 114.5, 114.7,
5 and 114.8. The restricted class of an incorporated
6 membership organization consists of its members and executive
7 and administrative personnel, and the families of those
8 persons. 2 U.S.C. §441b(b)(4)(C) and (A); 11 CFR 114.7(a).

9 The Commission has, under limited circumstances,
10 permitted contribution solicitations to be sent outside the
11 solicitable class under certain conditions. The percentage
12 of the recipients outside the class should be relatively
13 small, i.e., "de minimis." Furthermore, the solicitation
14 should clearly inform the solicitee that donations from those
15 outside the class will not be accepted and that such
16 donations will be returned. In addition, the Commission
17 granted its permission on the basis that the contributions
18 received would be screened and the returns would occur.
19 Advisory Opinions 1981-7 and 1978-97. See Advisory Opinion
20 1980-139.

21 In determining what percentage of solicitation outside
22 the class was considered sufficiently small, the Commission
23 has concluded that, even with the above precautions taken, a
24 contribution solicitation in a magazine, with 10-20 percent
25 circulation (total circulation equaled 75,000) outside the
26 solicitable class, was too high to be permissible. Advisory
27 Opinion 1980-139. In addition, the Commission concluded that
28 a labor union taking the same precautions could not include a
29 solicitation in its magazine circulated to a readership that
30 included 15 percent (8,000 persons) of solicitees outside the

4 class. Advisory Opinion 1979-50. In contrast, the
5 Commission, permitted similar labor organization
6 solicitations to a group of 1,000 solicitees outside the
7 class or three percent of those solicited. Advisory Opinion
8 1978-97. See also Advisory Opinion 1981-7 (.16 percent of
9 total solicitees or 3,217 outside the class).

10 The language of the solicitation states clearly that
11 APHA-PAC plans to return contributions from those outside the
12 class, and the Commission assumes your intention to screen
13 and return such contributions. In addition, only three
14 percent of those receiving the solicitation are
15 unsolicitable. The Commission notes that the situations in
16 which it has allowed de minimis outside-the-class
17 solicitations have principally involved advertisements or
18 articles in an organization's periodicals. Advisory
19 Opinions 1981-7 and 1978-97. See Advisory Opinions 1982-58,
20 1980-139, 1979-50, and 1979-15 (involving solicitations in
21 periodicals to an unacceptable percentage outside the class).
22 In the situation presented by you, however, the printing of
23 separate dues invoices without a PAC solicitation is
24 impracticable and unduly cumbersome in the same respects as
25 presented by the distribution of periodicals without the
26 solicitations. In view of the precautions taken and the
27 minimal size of the group outside the solicitable class, the
28 situation here merits the same result as in the cited
29 opinions allowing PAC solicitations in periodicals.

30 Based on the foregoing, the Commission concludes that

4 Apha-PAC may send the proposed dues invoice forms to all
5 30,000 persons under the conditions set out.

6 This response constitutes an advisory opinion concerning
7 application of the Act, or regulations prescribed by the
8 Commission, to the specific transaction or activity set forth
9 in your request. See 2 U.S.C. §437f.

10 For the Commission,

11
12 Trevor Potter
13 Chairman

14 Enclosure (AOs 1982-58, 1981-7, 1980-139, 1979-50, 1979-15,
15 and 1978-97)
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PROPOSED DUES RENEWAL INVOICE - BLANK



American Pharmaceutical Association

American Pharmaceutical Association
c/o First Union Bank
P.O. Box 85080
Richmond, VA 23285-4003
202-628-4410 • FAX: 202-636-3783
800-237-APHA

MEMBERSHIP INVOICE

APHA

| | | |
|---|------------------|----------------|
| THE MISSION OF PHARMACY IS TO SERVE SOCIETY AS THE PROFESSION RESPONSIBLE FOR THE APPROPRIATE USE OF MEDICATIONS, DEVICES AND SERVICES TO ACHIEVE OPTIMAL THERAPEUTIC OUTCOMES. | | INVOICE NO. |
| DATE | MEMBER ID NUMBER | RENEWAL PERIOD |

If payment has been submitted within the last three weeks, please disregard this notice.

\$30 of membership dues applies toward a subscription to one journal. Contributions or gifts to APHA, under APHA-PAC, are not deductible as charitable contributions for federal tax purposes. However, dues may be deductible by members as ordinary and necessary business expenses.

MEMBERSHIP DUES

MEMBERSHIP DUES \$ _____

OPTIONAL CONTRIBUTIONS

Alpha Political Action Committee \$ _____

(If you wish to receive both journals add an additional \$30; \$100 for international members)

American Pharmacy Journal of Pharmaceutical Sciences Both Journals \$ _____

METHOD OF PAYMENT (U.S. Currency Only)

Check/Money Order-Made payable to APHA MasterCard American Express VISA

Amount of Charge \$ _____

Credit Card Number _____ Expiration Date _____

Card Holders' Signature _____

SUBTOTAL \$ _____

TOTAL PAYMENT \$ _____

PLEASE INDICATE NAME AND/OR ADDRESS CHANGES

Fold Here

Fold Here

PROPOSED DUES RENEWAL INVOICE - SOLICITABLE MEMBER

80 APHA.F08



**American
Pharmaceutical
Association**

American Pharmaceutical Association
600 First Union Bank
P.O. Box 85096
Richmond, VA 23285-0906
202-628-4410 • FAX: 202-628-3733
800-257-APHA

**MEMBERSHIP
INVOICE**

THE ASSOCIATION OF PHARMACISTS TO SERVE SOCIETY AS THE PROFESSION RESPONSIBLE FOR THE APPROPRIATE USE OF MEDICATIONS, DRUGS AND SERVICES TO ACHIEVE OPTIMAL THERAPEUTIC OUTCOMES.

| DATE | MEMBER ID NUMBER | RENEWAL PERIOD | INVOICE NO. |
|----------|------------------|-------------------|-------------|
| 07/14/94 | 123456 | 08/01/94-07/31/95 | 999999 |

Bill of membership dues option based on schedule in our journal. Contributions to APHA under APHA, Inc. are not eligible for charitable contribution deduction for federal income tax purposes. However, dues may be deductible by members as ordinary and necessary business expenses. If payment has been submitted within the last three weeks, please disregard this notice.

MEMBERSHIP DUES

Alpha Active Member

\$ 150.00

OPTIONAL CONTRIBUTIONS

Alpha Political Action Committee

Contributions by APHA-PAC are optional and are not a requirement of APHA membership. Contributions between \$50 and \$200 must be accompanied by name and address; contributions in excess of \$200 require a 1 calendar year must be reported with name, mailing address, occupation and name of employer. Federal election law prohibits APHA-PAC from soliciting contributions from persons outside the restricted class (APHA active members). Any contributions received from outside the restricted class will be returned.

\$ 25.00

JOURNALS

(If you wish to receive both journals add an additional \$12.50 for international and members)

American Pharmacy

Journal of Pharmaceutical Sciences

Both Journals

\$ 0.00

METHOD OF PAYMENT (U.S. Currency Only)

(Check appropriate box(es))

- Check/Money Order-Made payable to APHA
- MasterCard
- American Express
- VISA

SUBTOTAL

\$

TOTAL PAYMENT

175.00

Amount of Charge \$

John Suttch, Pharmacist
123 Main Street
Washington, DC 20037

Credit Card Number

Expiration Date

Card Holder's Signature

PLEASE INDICATE NAME AND/OR ADDRESS CHANGES

APHA-011 8336

Fold Here

Fold Here

PROPOSED DUES RENEWAL INVOICE - UNSOLICITABLE MEMBER



American Pharmaceutical Association

American Pharmaceutical Association
c/o First Union Bank
P.O. Box 85080
Richmond, VA 23285-4003
202-828-4410 • FAX: 202-828-9783
800-237-APPA

MEMBERSHIP INVOICE

THE MISSION OF PHARMACY IS TO SERVE SOCIETY AS THE PROFESSION RESPONSIBLE FOR THE APPROPRIATE USE OF MEDICATIONS, DEVICES AND SERVICES TO ACHIEVE OPTIMAL THERAPEUTIC OUTCOMES.

| | | | |
|----------|------------------|---------------------|-------------|
| DATE | MEMBER ID NUMBER | RENEWAL PERIOD | INVOICE NO. |
| 07/14/94 | 123456 | 08/01/94 - 07/31/95 | 9999 |

All of membership dues apply towards education items listed. Contributions of \$10 to APHA, under APHA-PAC, are not deductible on individual returns. However, dues may be deductible by members as ordinary and necessary business expenses. If payment has been scheduled within the last three weeks, please disregard this notice.

MEMBERSHIP DUES

APHA Associate Member

\$ 150.00

OPTIONAL CONTRIBUTIONS

APHA Political Action Committee
 Contributions to APHA-PAC are optional and are not a requirement of APHA membership. Contributions between \$25 and \$200 must be accompanied by name and address; contributions in excess of \$200 require a calendar year record by separate check (name, address, address, occupation and name of employer, Federal election law permits APHA-PAC from soliciting contributions from persons outside the restricted class (APHA 2266 members). Any contributions received from outside the restricted class will be returned.

JOURNALS

American Pharmacy Journal of Pharmaceutical Sciences Both Journals

\$ 0.00

METHOD OF PAYMENT (U.S. Currency Only)

- Check/Money Order-Made payable to APHA
- MasterCard
- American Express
- VISA

TOTAL PAYMENT **150.00**

SUBTOTAL \$

Amount of Charge \$

John Smith
 123 Main Street
 Washington, DC 20037

Card Number

Expiration Date

Card Holder's Signature

PLEASE INDICATE NAME AND/OR ADDRESS CHANGES

Fold Here

Fold Here