



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 2, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-5

Gregory Galassini
14th District TRIM Committee
30-31 34 St. #15
Astoria, NY 11103

Dear Mr. Galassini:

This responds to your letter dated January 12, 1995, requesting an advisory opinion on behalf of the 14th District TRIM Committee ("TRIM" or "your committee").^{1/} Your request concerns application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the distribution of literature describing the voting record of a Member of Congress to persons who contributed to the Member's campaign.

According to your materials, TRIM is a "network" of committees and individuals organized "to bring about lower taxes through less government." Your committee's full name is the Tax Reform Immediately Committee for New York's 14th District, apparently in reference to the 14th Congressional District which is represented by Representative Carolyn B. Maloney.

TRIM proposes to copy names of individual contributors to Ms. Maloney's authorized campaign committees from committee reports filed with the Commission pursuant to 2 U.S.C. 434(a). Your committee proposes to send a mailing to these contributors consisting of a cover letter, a four-page TRIM bulletin, and a copy of Article 1, Section 8 of the U.S. Constitution, listing the areas of jurisdiction of Congress.

The cover letter begins by stating that the recipient's name appears in the Commission's public records. It then states that TRIM wants to "share" Ms. Maloney's voting record on major spending bills with the recipient, and that TRIM bulletins are published three times a year in all Congressional districts and list the same bills for all representatives. The letter concludes by stating: "The purpose of TRIM is strictly educational. TRIM does not endorse any candidates,

Democrat, Republican, or Independent, and this letter is not a solicitation, simply a part of our educational program."

The bulletin features a number of short articles and graphics focusing on proposals for government spending, particularly health care proposals. The articles are critical of Federal government spending and what TRIM considers the excessive exercise of Federal governmental power. The back page contains a chart focusing on Ms. Maloney, characterized as a "report card" and entitled "How did YOUR Representative Vote?" The chart lists and describes (using several pejorative terms) eight "money bills" chosen by TRIM because of their significant effect on taxes and spending, or because they entail "unconstitutional" spending. The chart lists each of Ms. Maloney's votes as being for "high taxes and big government," (as opposed to "lower taxes and less government").

The bulletin also contains an offer informing the readers that they may order more TRIM bulletins by phone using a credit card or by mail using a coupon displayed below. The coupon presents three options that may be checked off by the reader. The first option states: "For \$10.00 enclosed, send me 100 TRIM Bulletins for" and then leaves spaces for the state, district, and representative's name. The second states: "Please have someone contact me about TRIM." The third states: "Enclosed is a donation of \$__ to help print and distribute TRIM Bulletins in my congressional district."

You ask whether sending the materials described above to contributor names, which are obtained from reports filed with the Commission by Ms. Maloney's authorized campaign committees, is a permissible use of those names.

The Act provides that the Commission shall make reports and statements filed with it available to the public for inspection and copying within 48 hours after receipt. 2 U.S.C. 438(a)(4). No information copied from such reports or statements, however, may be "sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." 2 U.S.C. 438(a)(4); 11 CFR 104.15(a).

Based on the legislative history of the Act, the Commission has previously stated that the principal purpose of restricting the sale or use of information copied from reports is to protect individual contributors from having their names sold or used for commercial purposes.^{2/} See Advisory Opinions 1989-19, 1984-2, and 1980-101. The prohibition against use for commercial purposes extends the protection of individual contributors beyond the solicitation for contributions to encompass commercial purposes that could make contributors vulnerable to all kinds of solicitations, "i.e., not merely for solicitations for 'contributions', but solicitations for cars, credit cards, magazine subscriptions, cheap vacations, and the like." Federal Election Commission v. Political Contributions Data, Inc., 943 F.2d 190, 197 (2d Cir. 1991).

The Commission has determined that the Act permits the use of other information contained in reports for solicitation or for commercial purposes, e.g., the use of candidate's names and addresses to solicit ads from them, the solicitation of information and subscriptions from persons disclosed as receiving committee expenditures, and the use in candidate solicitation

letters of expenditure totals obtained from reports filed by other candidates. Advisory Opinions 1983-44, 1981-38, and 1980-78. The Commission has also determined that the Act permits communications to persons whose names were obtained from reports of contributors as long as no solicitation or commercial purpose is involved. A candidate was permitted to contact contributors to an unauthorized campaign committee to tell those contributors that the committee was unauthorized and to suggest that they seek refunds, but was not permitted to solicit contributions to the authorized committee. Advisory Opinion 1984-2. A candidate was permitted to send a letter to his opponent's contributors to correct allegedly defamatory statements made by his opponent. Advisory Opinion 1981-5.

The materials that TRIM proposes to send to contributors whose names were obtained from Ms. Maloney's reports contain an offer to sell TRIM bulletins to the reader and a request for donations from the reader. You propose therefore to use the names of contributors whose privacy is protected by 2 U.S.C. 438(a)(4) for purposes that fall within the proscriptions of that section. The Commission concludes, therefore, that your committee's proposed activity would not be permissible under 2 U.S.C. 438(a)(4) and 11 CFR 104.15.3/

You have not asked the Commission to decide whether the bulletin or any part of its contents would result in an expenditure that would be reportable under 2 U.S.C. 434(c), or prohibited under 2 U.S.C. 441b(a), if TRIM is incorporated. See 2 U.S.C. 431(17) and 11 CFR 109.1. This opinion, therefore, does not address those issues.

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)

Danny L. McDonald
Chairman

Enclosures (AOs 1989-19, 1984-2, 1983-44, 1981-38, 1981-5, 1980-101, and 1980-78)

1/ TRIM is an acronym for Tax Reform Immediately.

2/ The sponsor of the amendment creating this restriction stated that the purpose was the protection of the privacy of the "very public-spirited citizens" who make contributions to campaigns. 117 Cong. Rec. 30057-58 (1971) (remarks of Senator Bellmon).

3/ The Commission is making a determination on the cover letter, the bulletin, and the copy of Article 1, Section 8, as a group. The letter was written with reference to the materials in the bulletin, and the constitutional excerpt is meant as a reference point for the bulletin.