



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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June 21, 1995

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 1995-12

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for June 29, 1995.

Attachment

AGENDA ITEM
For Meeting of: JUN 29, 1995

1
2
3 **ADVISORY OPINION 1995-12**

4 Richard L. Mount, President
5 Independent Bankers Association of America
6 One Thomas Circle, N.W.
7 Suite 950
8 Washington, D.C. 20005-5802

DRAFT

9 Dear Mr. Mount:

10 This responds to your letters dated December 7, 1994,
11 and March 6 and May 15, 1995, requesting an advisory opinion,
12 on behalf of the Independent Bankers Association of America
13 ("IBAA"), concerning the application of the Federal Election
14 Campaign Act of 1971, as amended ("the Act"), and Commission
15 regulations to the relationship of IBAA to state independent
16 banking associations ("SIBAs") for PAC fundraising purposes.

17 **I. BACKGROUND**

18 Specifically, you ask a series of questions as to
19 whether IBAA is affiliated with the SIBAs or whether IBAA and
20 the SIBAs come within a trade association federation
21 structure. Your questions also pose the consequences of
22 either relationship for purposes of solicitation and
23 aggregation of contributions to the IBAA Political Action
24 Committee ("IBAAPAC") or to a separate segregated fund
25 established by one of the SIBAs. This requires a
26 determination of the relevant structural features of these
27 organizations, and the relationship between them. A
28 description of a third organization with ties to both the
29 IBAA and the SIBAs, the Executive Council of State Community
30 Bankers Associations ("the SIBA Council"), will also be
necessary.

A. IBAA

IBAA is a national association organized for the purpose of promoting the interests of community banks. Its purposes include preserving competition in banking, preventing the concentration of control of banking resources, promoting the dual banking system, and protecting states' rights to determine the most suitable banking structure for the state. IBAA Articles of Incorporation, Article II. According to IBAA's Articles of Incorporation, IBAA is a nonprofit corporation which operates "on a membership basis, without capital stock." Articles IV and VIII. IBAA is the connected organization of IBAAPAC, which is registered, as a multicandidate committee, with the Commission.

The Articles provide that the Board of Directors "shall direct the affairs of the Association, subject always to the control and direction of the members acting as a Special or General Convention." Article VI. IBAA consists of two principal classes of membership, active and associate. Community banks or other community financial institutions supporting the purposes of IBAA are eligible to become active members. Any individual or organization is eligible to become an associate member. IBAA Bylaws, Sections 1.1 and 1.2.

SIBAs are associate members of IBAA, and, as such, pay annual dues which are set by the Board of Directors. As associate members, they generally do not have voting rights in the organization. Individual associate members may not

vote or hold office. Bylaws, Section 1.2.

Active members have an obligation to pay annual dues to IBAA which are set by the Board of Directors. They also have voting rights in the organization, with the ability to vote for members of the Board of Directors and delegates to the General or Special Convention of IBAA. Bylaws, Sections 2, 3, and 5.

A portion of the Board of Directors, which presently consists of 102 individuals, is chosen by the active members. The active members in a particular state are entitled to nominate and vote for a director to represent their particular state (if the state has fewer than 200 Active Members) or their particular district within a state (if the state has more than 200 active members and, hence, more than one district).^{1/} Such directors, which presently number 58, are elected for three-year terms. At a time designated under the bylaws, the active members in each state or district nominate candidates for director by sending in petitions (signed by at least three active members) to IBAA's recording secretary with the name of an officer of an institution that has been an active member for at least a year. The recording secretary prepares a ballot for each state or district and

^{1/} Active members in states with five or more active members may elect directors. States with more than 200 active members are divided into districts with one additional district for every two hundred members up to a maximum of four districts. States entitled to more than four directors designate one at-large director for each additional 200 active members. Bylaws, Section 5.5.

3 mails one to each active member in the appropriate
4 jurisdiction, and each such member may vote. Bylaws,
5 Sections 5.5, 5.6, and 5.7.

6 The General Convention is held each year and any Special
7 Convention may be called by the Board or the Executive
8 Committee (which consists of Board members). Bylaws,
9 Sections 2.1 and 6.1. The delegates to either type of
10 convention are the officers or directors of active members.
11 Each active member is entitled to one vote to be cast by its
12 properly accredited delegate. Each vote must be cast in
13 person. Section 2.3. Among the voting powers of the
14 delegates is the annual selection of top officers who, by
15 virtue of their office, sit on the Board. Section 7.2.^{2/}

16 **B. State Independent Banking Association**

17 You have selected Community Bankers Association of
18 Illinois ("CBAI") as an example of a SIBA, and have enclosed
19 its constitution and bylaws. CBAI is a non-profit
20 corporation. CBAI Constitution, Article 1. The CBAI
21 constitution lists purposes similar to those of IBAA.
22 In addition, one of the stated purposes is "[t]o assist and
23 cooperate with the Independent Bankers Association of America
24 and other organizations in the promotion and enactment of
25 better state and federal banking laws for the advancement of
26 community banking and the protection of the public interest
27

28
29 ^{2/} The Board of Directors may also confer honorary
30 memberships on individuals or organizations. Honorary
membership has the "same status" as associate membership
except that dues are not required. Bylaws, Section 1.3.

3 consistent with sound banking practices." Article 2. CBAI
4 is the connected organization of CBAIPAC, which registered
5 with the Commission on April 4, 1994.

6 The constitution provides that the supreme authority of
7 the CBAI is vested in the "Convention of the Association" and
8 that the administration of CBAI's affairs between the
9 Convention's annual meetings is vested in the Board of
10 Directors. Article 5. CBAI consists of two principal
11 classes of membership, active and associate. Article 4.

12 Associate members consist of any person, firm (including
13 commercial banks or other financial institutions that do not
14 qualify as active members), or corporation approved by the
15 CBAI Board or Executive Committee. They pay prescribed dues
16 but have no voting rights or rights to hold office.
17 Constitution, Article 4, and CBAI By-laws, Article 2.

18 Active members consist of national banks, state banks,
19 or trust companies which agree and adhere to CBAI's
20 principles, and are approved by the Board. They pay annual
21 dues, commensurate with their assets, in accordance with a
22 chart set out in the bylaws. As described below, active
23 members also have voting rights. Constitution, Articles 4,
24 5, and 6.

25 The Board of Directors consists of 25 individuals. For
26 purposes of representation, CBAI has divided Illinois into
27 13 geographic "groups," and the active members are entitled
28 to vote for one CBAI Board member from their particular
29 group to serve for two years. Directors elected by the
30

groups must be officers of active member banks. They are elected at a group meeting, or by a caucus of the group at the Convention. In addition, the active members may nominate candidates for CBAI's highest offices who, if elected, also serve on the Board. They may send petitions (signed by at least 20 active members) to the Nominating Committee with the name of an executive officer or director of an active member bank. Prior to the annual Convention session, the active members receive a mail ballot which they may use to vote for those candidates. Constitution, Articles 5 and 6.

The annual Convention of the Association, and the Special Conventions called by the Board, are comprised of officers and directors of the active members. Each member is represented by one delegate. Constitution, Article 5.^{3/}

C. SIBA Council

The SIBA Council consists principally of the full-time chief executive staff persons of the state independent banking associations.^{4/} The staff persons are the active members of the SIBA Council and, as such, have the right to hold an elective office and the right to vote for Council officers, including the President and President-Elect. The

^{3/} CBAI also has a third class, i.e., individuals who are "distinguished members." Like the honorary members of IBAA, distinguished members have the same status as associate members but are not required to pay dues. Constitution, Article 4.

^{4/} The chief executive staff person from the CBAI, i.e., the Executive Director, is elected by the CBAI Board of Directors. CBAI Constitution, Article 6.

Council's Board of Directors, which is its governing body, is made up of the active members. The bylaws also provide for associate members; these consist of any person or firm approved by the Board. They may attend Council meetings only upon Board invitation and have no right to vote or hold elective office. SIBA Council Bylaws, Articles 4, 6, and 7.

According to the bylaws, the Council's purposes include providing a forum whereby members can exchange information and ideas, fostering the interests of state community bankers associations, and maintaining an organization of association executives to effectively represent the interests of association members. In addition, the bylaws state that one of the Council's purposes is "[t]o assist and cooperate with the Independent Bankers Association of America (IBAA) in the promotion and enactment of beneficial federal banking laws and regulations for the advancement of community banking."

Article 2.

D. Relationship Among Organizations

The bylaws of IBAA and the CBAI indicate a number of different interactions between IBAA and a SIBA, as typified by the CBAI. For example, the IBAA bylaws provide that two of the members of the IBAA Board are the President and President-Elect of the SIBA Council, i.e., persons elected by the chief executives staff persons of the SIBAs. IBAA Bylaws, Section 5.2. You state that these directors provide information to the IBAA Board on behalf of the Council.

According to the IBAA bylaws, the division of a state

into districts for electing IBAA directors is determined by IBAA after consultation with the SIBA for the state. IBAA Bylaws, Section 5.5. In addition, each elected director from a state or district acts as a liaison between IBAA and the SIBA within that state. IBAA Bylaws, Section 5.8. You explain that this means that the director will convey to the IBAA Board the SIBA's issue concerns and report IBAA's concerns to the SIBA. If there are any differences, the IBAA director will be involved in negotiations to resolve the issue. The constitution of the CBAI provides that the state's elected IBAA directors will serve on the CBAI Board as well. CBAI Constitution, Article 5.

The IBAA bylaws also provide that "the senior staff officer" from a SIBA will serve as an ex-officio member on each of IBAA's standing committees, except for the Executive Committee, the Nominating Committee, and IBAAPAC. IBAA Bylaws, Section 9.1.^{5/} You indicate that these ex-officios are representatives from the SIBA Council.

Finally, the IBAA bylaws also provide that the Executive Committee will meet at least annually with the "SIBA Executives." IBAA Bylaws, Section 6.3. You state that each year IBAA holds its spring legislative meetings in Washington, D.C. and pays for SIBA personnel to come to Washington and discuss independent banking issues and lobby

^{5/} Other than those three committees, the bylaws list ten committees. The bylaws provide that they shall each have 15 to 25 members. IBAA Bylaws, Section 9.1.

on those issues. These personnel are the paid executive staff person who administers each SIBA and the SIBA Presidents.

You also discuss other activities not referred to in the bylaws. You state that IBAA and SIBAs coordinate on national lobbying efforts. In many instances, IBAA has joined with SIBAs to hold rallies, and in issuing press releases and other joint messages to the nation in support of "national issues." In addition, IBAAPAC regularly calls upon SIBA executives for input and guidance with respect to contributions to candidates in their states. You also state that approximately 25 SIBAs hold state conventions each year and provide a free booth to IBAA in the vendor area while all other vendors pay for their booths. At these conventions, an IBAA officer is always the main speaker.

Although you assert that "there are no formal policy channels between the SIBA Council itself and the IBAA" and that the Council does not "represent individual SIBAs on policy matters," you state that the SIBA Council itself acts as an informal advisory committee to the IBAA. You note that the Council meets several times a year with an IBAA representative in attendance.

There is also a considerable overlap in IBAA membership and membership in the SIBAs. In Illinois, there are 553 banks that are members of IBAA, CBAI, or both organizations. Fifty-seven percent of these banks are members of both organizations. Eighty-three percent of the IBAA members in

3 Illinois are CBAI members and 65 percent of the CBAI members
4 are IBAA members.

5 In the 35 states where there are SIBAs, there are 6,583
6 banks that are members of IBAA, the SIBA, or both.^{6/}
7 Fifty-nine percent are members of both. The percentages for
8 individual states (i.e., the ratio of the number of banks
9 that are members of both IBAA and a SIBA to the number of
10 banks that are members of IBAA, the SIBA, or both) varies
11 from seven percent in West Virginia to 79 percent in South
12 Carolina, with 33 of the states coming within the range of 36
13 percent to 79 percent. In the 35 states as a group, 76
14 percent of the IBAA members are SIBA members and 73 percent
15 of the SIBA members are IBAA members.

16 E. Questions Presented

17 You have presented seven questions in your request. The
18 Commission restates these questions in different form in
19 order to facilitate its analysis of your request.

20 You wish to know the nature of the relationship between
21 IBAA and the SIBAs. You ask whether IBAA is a federation of
22 the SIBAs, whether IBAA is affiliated with the SIBAs, and
23 what would be required to achieve affiliation.

24 You also wish to know the political fundraising
25 implications for the relationship between IBAA and the SIBAs.
26 You inquire as to the practical difference between an
27 affiliated relationship and a federated relationship with
28

29 _____
30 ^{6/} There are 442 IBAA member banks in the states with no
SIBAs.

3 respect to what activities may or may not be conducted
4 jointly. You ask whether SIBAs may act as the fundraising
5 arm for IBAA PAC and whether IBAA may act as a fundraising
6 arm for the SIBA PACs. You further ask about the
7 implications for prior approval by member banks for the
8 receipt of solicitations and whether this is affected by a
9 bank's membership in one organization, but not the other.
10 You also inquire about the effect of the relationship on the
11 aggregation of contributions. Finally, you ask whether
12 IBAAPAC may solicit or accept funds from a SIBA's PAC that
13 had been solicited from personnel of non-IBAA members of the
14 SIBA.

15 II. LEGAL ANALYSIS

16 A. Nature of Relationship

17 1. Organizations as Trade Associations

18 In order to analyze the relationship of IBAA to the
19 SIBAs with respect to solicitations and contributions, it is
20 necessary to establish the nature of these organizations.

21 Commission regulations define and describe a trade
22 association as:

23 generally a membership organization of persons
24 engaging in a similar or related line of commerce,
25 organized to promote and improve business
26 conditions in that line of commerce and not to
27 engage in a regular business of a kind ordinarily
28 carried on for profit, and no part of the net
29 earnings of which inures to the benefit of any
30 member.

11 CFR 114.8(a). Both IBAA and the SIBAs are not-for-profit
corporations. Each organization is composed of entities

engaged in community banking and the purpose of each organization is to promote and improve conditions in that endeavor.

Both the IBAA and the SIBAs are membership organizations under the Act. The active members of each association meet the Act's definition of member. Both organizations expressly provide for members in their articles and bylaws, both actively seek members, and both expressly acknowledge the acceptance of membership. See 11 CFR 114.1(e)(1)(i)-(iii). The active members in each organization pay dues on a regular basis. In addition, regardless of whether the Board of Directors or the Convention of each organization is viewed as the highest governing body, the active members have the right to vote for at least one member of that body. See 11 CFR 114.1(e)(2)(ii). See Advisory Opinion 1994-39.^{7/}

The IBAA and the SIBAs, using CBAI as an example, qualify, therefore, as trade associations under the Act and regulations. As trade associations with separate segregated funds, IBAA and a SIBA with an SSF may each solicit contributions from its members to its PAC subject to certain conditions.

A trade association such as IBAA, like any connected organization, may not solicit contributions from incorporated

^{7/} Your inquiry focuses on PAC fundraising activities directed to personnel of active member banks. Accordingly, the Commission does not reach issues as to the membership status of associate members or other classes of members. See 11 CFR 114.1(e)(1), (2), and (3).

3 entities. 11 CFR 114.8(b).^{8/} IBAA, however, may solicit
4 contributions to IBAAPAC from individual stockholders and
5 executive and administrative personnel, and the families
6 thereof, of the incorporated active member banks. A SIBA may
7 do the same with respect to the stockholders and qualified
8 personnel of its incorporated member banks for contributions
9 to the SIBA's SSF. A solicitation for a contribution to a
10 trade association's SSF may be done, however, only if the
11 member corporation has separately and specifically approved
12 it. The member corporation is not permitted to approve a
13 solicitation by more than one such trade association in any
14 calendar year. 2 U.S.C. §441b(b)(4)(D); 11 CFR 114.8(c) and
15 (d). The separate authorization applies through the calendar
16 year for which it is designated, and a separate authorization
17 must be provided for each year during which the solicitation
18 is to occur. 11 CFR 114.8(d)(4). Once the authorization has
19 been given for the year, a trade association may solicit
20 eligible persons an unlimited number of times unless the
21 corporation limits the number of times in connection with its
22 approval. 11 CFR 114.8(e)(1).^{9/}

24 _____
25 ^{8/} IBAA may solicit contributions to IBAAPAC directly from
26 unincorporated active member banks in the association, if
27 any. A SIBA may do the same with respect to its
unincorporated active member banks, if any, for contributions
to the SIBA's SSF. 2 U.S.C. §441b(b)(4)(C); 11 CFR 114.7(c).
See Advisory Opinions 1988-11 and 1981-52.

28 ^{9/} An authorization may be requested and given prior to the
29 calendar year in which the solicitation is to occur; i.e.,
30 authorizations may be requested and given several years in
advance as long as a separate authorization is given for each
year. 11 CFR 114.8(d)(4). Explanation and Justification,

While IBAA may solicit contributions to IBAAPAC under the trade association rules, and a SIBA may do the same for its PAC under those rules, it is necessary to establish that a particular relationship, described below, exists between IBAA and the SIBAs in order to expand the reach of solicitations by each organization.

2. IBAA as Federation of SIBAs

Commission regulations define a federation of trade associations as "an organization representing trade associations involved in the same or allied line of commerce." 11 CFR 114.8(g)(1). Commission regulations explain the federation's role for purposes of the Act as follows:

(1) ... 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 [contribution] limitations. 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.

(i) The federation and its member associations may engage in a joint solicitation; or

(ii) The member association may delegate its solicitation rights to the federation.

(2) A federation is subject to the provisions of this section when soliciting the stockholders and executive or administrative personnel of the corporate members of its member associations.

11 CFR 114.8(g)(1) and (2).

3 In a number of opinions, the Commission has addressed
4 issues pertaining to federations of trade associations.
5 Traditionally, such federations have had component or
6 affiliate state organizations that are officially recognized
7 as such. See Advisory Opinions 1994-19, 1991-24, 1983-28,
8 and 1977-44. Although the SIBAs are not expressly
9 characterized as state affiliates of IBAA in the IBAA
10 constitution and bylaws, the relationship between IBAA and
11 the SIBAs set out in the documents submitted and in the
12 practices of both IBAA and the SIBAs, as exemplified by the
13 CBAI, indicate that the SIBAs are, in fact, state
14 affiliates.^{10/}

15 The documents and the description of practices
16 submitted by you indicate that there is an organizational
17 relationship between IBAA and the SIBAs, and that IBAA
18 performs a major coordinating and representational function
19 for state trade associations involved in the same line of
20 commerce. Compare Advisory Opinion 1985-37. IBAA bylaws
21 provide that the chief executive staff persons of two SIBAs
22 (i.e., the President and President-Elect of the SIBA Council)
23 sit on the IBAA Board, and the CBAI constitution provides
24 that IBAA Directors elected by Illinois community banks sit
25 on the CBAI Board. The IBAA bylaws explicitly provide for
26 other official involvement by the SIBAs in its affairs (and
27
28

29 ^{10/} In the index entitled State and Regional Associations of
30 the United States, the CBAI lists itself as an affiliate of
IBAA.

3 by IBAA in SIBA affairs), including discussions as to IBAA
4 district lines, the liaison function performed by elected
5 IBAA Board members between IBAA and the SIBAs, the presence
6 of at least one SIBA chief executive staff person on all but
7 three IBAA standing committees, and meetings between SIBA
8 executives and the IBAA Executive Committee. IBAA also
9 coordinates with and involves the SIBAs in national lobbying
10 efforts, receives input from SIBA executives for IBAAPAC
11 activities, and has a specific role at SIBA conventions
12 through its booths and speakers.

13 The Commission notes that the CBAI constitution singles
14 out IBAA as an organization to which it would extend
15 assistance and cooperation. The bylaws of the SIBA Council,
16 which is the organization of the SIBA chief executive staff
17 persons, also contain such an explicit provision. The other
18 stated purposes of IBAA and the CBAI are similar. The
19 Commission also notes similarities in structure between IBAA
20 and the CBAI with respect to membership categories and
21 rights, and governance, i.e., the Board along with the
22 Convention.

23 Given the described portions of the IBAA and CBAI
24 governing articles and the practices of these organizations,
25 the Commission concludes that IBAA is a trade association
26 federation comprised of the 35 SIBAs (as exemplified by
27 CBAI).

28 3. IBAA's Affiliation with the SIBAs

29 As indicated above, a federation's ability to solicit
30

3 the restricted class of the corporate members of a state
4 "affiliate" trade association is dependent upon whether the
5 federation's PAC and the PACs of the state affiliates are
6 considered as one committee. Commission regulations provide
7 for the application of various factors in the context of an
8 overall relationship to determine whether one organization or
9 entity is an affiliate of another and, hence, whether their
10 respective SSFs are affiliated with each other. 11 CFR
11 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and
12 (ii)(A)-(J).^{11/} See Advisory Opinion 1994-19.

13 The relevant factors in the situation you have presented
14 are as follows: (B) the authority or ability of one
15 sponsoring organization to direct or participate in the
16 governance of another sponsoring organization through
17 provisions of constitutions, bylaws, contracts, or other
18 rules, or through formal or informal practices or procedures;
19 (C) the authority or ability to hire, appoint, demote or
20 otherwise control the officers or other decisionmaking
21 employees or members of another sponsoring organization; (D)
22 common or overlapping membership between sponsoring
23 organizations indicating a formal or overlapping relationship
24 between the sponsoring organizations; and (E) common or
25 overlapping officers or employees, indicating a formal or
26 ongoing relationship between the sponsoring organizations.
27

28
29 ^{11/} You have specifically asked if IBAA is affiliated with
30 the SIBAs whether or not the SIBAs have Federal PACs. The
answer to this question is yes for the reasons discussed
elsewhere in this opinion.

11 CFR 100.5(g)(4)(ii)(B), (C), (D), and (E), and
110.3(a)(3)(ii)(B), (C), (D), and (E).

The formal rules and the practices of IBAA and CBAI, as an example of the SIBAs, indicate the ability of each organization to participate in the other's governance. CBAI's constitution provides that IBAA directors will sit on its Board. The top two officers of the SIBA Council, which is comprised of SIBA chief executive staff persons, sit on IBAA's Board. Furthermore, IBAA's bylaws provide for SIBA chief executive staff persons as ex-officio members of IBAA committees. In addition to participation by one organization in the other's governance, these facts indicate both an overlap in directors stemming from formal arrangements and the ability of each organization to choose those who are decisionmakers in the other organization.

The degree of membership overlap is highly indicative of the close ongoing relationship between IBAA and the SIBAs as organizations formed for the same purpose and working together for those purposes. The figures cited above indicate that a significant percentage of the membership of the SIBAs, as illustrated by Illinois as well as nationally, is composed of IBAA members, and a large percentage of IBAA members in Illinois and nationally is composed of SIBA members.

Based on the foregoing, the Commission concludes that IBAA and the SIBAs are affiliated with each other and that, accordingly, their PACs would be considered as one committee.

B. Fundraising Implications

1. Solicitations and Solicitation Approval

Commission regulations at 11 CFR 114.8(g) permit joint and delegated activity by the trade association federation subject to compliance with the other requirements of 11 CFR 114.8 as to contribution solicitations by trade associations.

As a trade association affiliated with IBAA and the other SIBAs within the IBAA federation, a SIBA may act as a fundraising arm for IBAAPAC. Similarly, given this relationship, IBAA may act as a fundraising arm for a SIBA's PAC. A SIBA need not have a PAC of its own in order to serve in the proposed fundraising capacity, i.e., in soliciting, collecting, and transmitting funds to IBAAPAC. In acting as fundraising arms, IBAA and the SIBAs are collecting agents and should comply with the regulations for collecting agents set out in 11 CFR 102.6(b) and (c).

Solicitations by IBAA or a SIBA may be sent to the restricted class of those banks that are members, for purposes of the Act, of either IBAA or a SIBA. This may be done so long as those member banks have given solicitation approval for the year to one of the SIBAs or to IBAA, prior to the solicitation. Such an approval would mean that any of the SIBAs or IBAA could send a solicitation to the eligible personnel urging them to make voluntary contributions to IBAAPAC or any of the SIBA PACs.

As affiliated entities, the IBAA and all the SIBA PACs are treated as one committee for purposes of the Act's

3 limitations purposes. 2 U.S.C. §441a(a)(5); 11 CFR
4 110.3(a)(1). A person's contributions to the PACs of IBAA
5 and the SIBAs must, in the aggregate, fall within the \$5,000
6 per year limits of 2 U.S.C. §441a(a)(1)(C), and contributions
7 by those PACs must, in the aggregate fall, within the
8 applicable limits of 2 U.S.C. §441a(a)(2).^{12/} IBAAPAC and the
9 SIBA PACs should establish procedures to keep each other
10 informed as to the persons contributing to the PACs and the
11 amounts these persons each contribute, and as to the amounts
12 the PACs each contribute to particular candidates.

13 Your final question is whether IBAAPAC may "solicit" or
14 accept funds from a SIBA Federal PAC, even if those funds
15 were originally contributions from personnel of non-IBAA
16 members of the SIBA. In view of the affiliated nature of the
17 two PACs, the payment and acceptance of such funds would be
18 considered an affiliated committee transfer that could be
19 made in any amount, regardless of the limits of 2 U.S.C.

20
21 ^{12/} As stated above, IBAAPAC is a multicandidate committee.
22 See 2 U.S.C. §441a(a)(4). In prior opinions, the Commission
23 has concluded that, since all affiliated committees share a
24 single contribution limit and, as discussed below, may make
25 unlimited transfers among themselves, a political committee
26 that is affiliated with a multicandidate committee qualifies
27 for treatment as a multicandidate committee. Advisory
28 Opinions 1993-23 and 1990-16. Thus, the limits of 2 U.S.C.
29 §441a(a)(2), rather than the limits of 2 U.S.C. §441a(a)(1),
30 are applicable, even though some of the affiliated SIBA PACs
might not have, by themselves, met the qualifications for a
multicandidate committee.

Section 441a(a)(2) provides that multicandidate
committees may contribute no more than \$5,000 per election to
a Federal candidate, no more than \$15,000 to a national party
committee in any calendar year, and no more than \$5,000 to
any other political committee in a calendar year. 2 U.S.C.
§441a(a)(2)(A), (B), and (C).

3 §441a. 11 CFR 102.6(a)(1)(i). This conclusion assumes that
4 the transferor PAC obtained the underlying contributions from
5 sources that are permissible under the Act. 11 CFR
6 102.6(a)(1)(iv). If the SIBA solicited the original
7 contributions from solicitable personnel of the SIBA, then
8 those funds may be accepted by the SIBA's PAC and are
9 permissible funds under 2 U.S.C. §441b(b)(4)(D). As such,
10 they may be transferred to an affiliated PAC, such as
11 IBAAPAC.

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

16 Sincerely,

17
18 Danny L. McDonald
19 Chairman

20 Enclosures (AOs 1994-39, 1994-19, 1993-23, 1991-24, 1990-16,
21 1988-11, 1985-37, 1983-28, 1981-52, and
22 1977-44)
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