



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20543

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SECRETARIAT

SEP 14 4 23 PM '95

September 14, 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 1995-33

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for September 21, 1995.

Attachment

AGENDA ITEM
For Meeting of: SEP 21 1995

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3 ADVISORY OPINION 1995-33

4 Melanie Fahey
5 Senior Administrator
6 Coastal Employee Action Fund
7 Coastal Tower
8 Nine Greenway Plaza
9 Houston, TX 77046-0995

DRAFT

Dear Ms. Fahey:

10 This responds to your letters dated August 21 and August
11 25, 1995, requesting an advisory opinion on behalf of the
12 Coastal Employee Action Fund concerning the application of
13 the Federal Election Campaign Act of 1971, as amended ("the
14 Act"), and Commission regulations to the distribution of a
15 PAC newsletter through the use of electronic mail.

16 The Coastal Employee Action Fund ("the Committee") is
17 the separate segregated fund of the Coastal Corporation
18 ("Coastal"). The Committee intends to communicate with
19 solicitable personnel of Coastal through a newsletter sent by
20 electronic mail ("e-mail") over Coastal's computer system.^{1/}
21 The newsletter would include "information about current
22 political events, updates on Coastal's government affairs
23 efforts, and PAC activities, including solicitation efforts."

24 The e-mail system that would transmit the newsletter is
25 the corporate e-mail system used for all company-wide

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1 Your request refers to communications with "members" of the Committee. Commission regulations permit a separate segregated fund established by a corporation to characterize persons who contribute to the fund as "members." Such a characterization, however, gives the corporation no greater right of communication or solicitation than it otherwise is granted under the regulations. 11 CFR 114.5(c)(1) and (2); Advisory Opinions 1989-9, n.3, and 1989-7, n.1.

3 electronic communication. You state that many of Coastal's
4 executives have computers but do not use them. They instruct
5 anyone who wants to send them e-mail to send it to their
6 secretaries. Many other executives do not have computers,
7 and e-mail communications to them must be received through
8 their secretaries. You ask whether the newsletter may be
9 sent to the executive through his or her secretary, even
10 though such secretaries are not in the restricted class.

11 As an exception to the general prohibition on corporate
12 contributions and expenditures, the Act and Commission
13 regulations permit a corporation, or its separate segregated
14 fund, to solicit voluntary contributions to such a fund at
15 any time from its restricted class. A corporation's
16 restricted class consists of its executive and administrative
17 personnel, its stockholders, and the families of such
18 persons. 2 U.S.C. §441b(b)(4)(A)(i); 11 CFR 114.5(g)(1) and
19 114.1(c).²

20 You indicate that the executives in question have
21 directed that all e-mail communications sent to them be
22 forwarded through their secretaries. Thus, the secretary's
23 receipt of the newsletter would be pursuant to the usual and
24 normal function of routing such communications on to the
25 supervisor. In effect, therefore, any solicitation would be
26 directed to the executive only, and would only reach the

27 ² Since your request states that Committee solicitations
28 will be made in the newsletter, this opinion does not address
29 the issue of whether the partisan communications exemption is
30 invoked by any other content of the newsletter. See 11 CFR
114.3.

3 secretary in his or her capacity as the person designated to
4 routinely receive the executive's mail.

5 This situation bears some similarity to the facts
6 presented in Advisory Opinion 1978-26 with respect to a
7 situation where solicitation materials could not in every
8 case be delivered to beneficial shareholders of a corporation
9 because some shares appeared on company records in the names
10 of brokers and other nominees who held the stock for
11 beneficial owners. The SSF would correspond with those
12 nominees who would, in turn, convey the solicitation
13 materials to the beneficial owners. The Commission concluded
14 that this proposal was permissible "[s]o long as the
15 solicitation by the [SSF] is intended exclusively for and
16 speaks only to those persons falling within" the Commission
17 regulations' definition of stockholder.

18 Based on the nature of the secretaries' function on
19 behalf of the executives described above, the Committee may
20 e-mail its newsletter to those secretaries. In doing so,
21 Coastal or the Committee should make clear to the secretaries
22 that the solicitation is directed to the executives for whom
23 they regularly receive e-mail messages. This may be done
24 either through a computer "cover note" sent along with the
25 newsletter, or in some other way that ensures that the
26 solicitation is directed exclusively to the executive and
27 administrative personnel, the stockholders, and the families
28 of such persons. See Advisory Opinion 1978-26.

29 This response constitutes an advisory opinion concerning
30

1 AO 1995-33
2 Page 4

3 application of the Act, or regulations prescribed by the
4 Commission, to the specific transaction or activity set forth
5 in your request. See 2 U.S.C. §437f.

6 Sincerely,

7
8 Danny L. McDonald
9 Chairman

10 Enclosures (AOs 1989-9, 1989-7, and 1978-26)
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