



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 22, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-33

Melanie Fahey
Senior Administrator
Coastal Employee Action Fund
Coastal Tower
Nine Greenway Plaza
Houston, TX 77046-0995

Dear Ms. Fahey:

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

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

The e-mail system that would transmit the newsletter is the corporate e-mail system used for all company-wide electronic communication. You state that many of Coastal's executives have computers but do not use them. They instruct anyone who wants to send them e-mail to send it to their secretaries. Many other executives do not have computers, and e-mail communications to them must be received through their secretaries. You ask whether the newsletter may be sent to the executive through his or her secretary, even though such secretaries are not in the restricted class.

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

You indicate that the executives in question have directed that all e-mail communications sent to them be forwarded through their secretaries. Thus, the secretary's receipt of the newsletter would be pursuant to the usual and normal function of routing such communications on to the supervisor. In effect, therefore, any solicitation would be directed to the executive only, and would only reach the secretary in his or her capacity as the person designated to routinely receive the executive's mail.

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

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

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 1989-9, 1989-7, and 1978-26)

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