



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 22, 2005

ADVISORY OPINION 2005-03

Michael J. Kurman, Esq.
Arent Fox, PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Dear Mr. Kurman:

We are responding to your advisory opinion request on behalf of the American College of Obstetricians and Gynecologists (“ACOG”) regarding whether, under the Federal Election Campaign Act of 1971, as amended (the “Act”), ACOG and Ob-Gyns for Women’s Health (“OGWH”) are affiliated. If ACOG and OGWH are affiliated, you ask whether OGWH or its separate segregated fund (“SSF”), Ob-Gyn PAC, may solicit ACOG’s members for contributions to Ob-Gyn PAC; and if such solicitations are permissible, whether, specifically, ACOG’s Fellows and Junior Fellows qualify as solicitable members of ACOG.¹

The Commission concludes that ACOG and OGWH are affiliated membership organizations. As such, OGWH or Ob-Gyn PAC may solicit ACOG’s members for contributions to Ob-Gyn PAC. The Commission also concludes that both Fellows and Junior Fellows qualify as solicitable ACOG members.

Background

The facts of this request are presented in your letter of February 17, 2005, as supplemented by your letter of March 2, 2005.

1. ACOG

ACOG is a private, voluntary membership group incorporated without capital stock. It operates as a nonprofit, tax-exempt educational and charitable organization

¹ OGWH has represented to ACOG that it fully joins in ACOG’s request for an advisory opinion and has reaffirmed its stated intent to solicit ACOG members – via the potential sale by ACOG, and purchase by OGWH or Ob-Gyn PAC, of ACOG’s membership lists – if the Commission advises that such solicitation is legally permissible.

under the Internal Revenue Code section 501(c)(3), and is dedicated to the advancement of women's health. You indicate that ACOG's membership consists of over 46,000 individuals spread across several membership categories. Your request, however, is limited to two of ACOG's "membership categories" – Fellows and Junior Fellows.

2. *OGWH*

OGWH is a private, voluntary membership group, established in 2000 by a vote of ACOG's Executive Board and incorporated without capital stock. OGWH operates as a nonprofit, tax-exempt social welfare organization under the Internal Revenue Code section 501(c)(4), advocating laws and public policies that support the field of obstetrics and gynecology, and quality healthcare for women, generally. OGWH works to increase awareness among its members and the public of the changing public policies and legislation related to women's health care.

In January 2001, OGWH created an SSF called Ob-Gyn PAC. Ob-Gyn PAC currently only solicits contributions from OGWH members. ACOG intends to sell its member list to OGWH or Ob-GYN PAC for fair market value in order for OGWH or Ob-GYN PAC to solicit ACOG Fellows and Junior Fellows for contributions to Ob-Gyn PAC.

Questions Presented

Are ACOG and OGWH affiliated? If so, may OGWH or Ob-Gyn PAC solicit ACOG's members for contributions to Ob-Gyn PAC? If such solicitations are permissible, do ACOG Fellows and Junior Fellows qualify as solicitable ACOG members?

Legal Analysis and Conclusions

Question 1. Are ACOG and OGWH affiliated?

The Commission concludes that both ACOG and OGWH are membership organizations under the Act and Commission regulations, and because ACOG established OGWH, they qualify as affiliated membership organizations under 11 CFR 100.5(g)(4).² See also 114.5(g)(1) and 11 CFR 114.7(g).

ACOG satisfies the Commission's requirements for membership organization status. ACOG Fellows have the right to select ACOG's governing Executive Board and to vote on other matters. ACOG Bylaws, Articles IV and XI; see 11 CFR 114.1(e)(1)(i). ACOG's Bylaws set forth specific professional requirements that applicants must meet to be accepted as members. ACOG Bylaws, Articles III-VIII; see 11 CFR 114.1(e)(1)(ii). ACOG's formal organizational documents are available to members upon request, and on

² Commission regulations provide for a case-by-case examination of ten circumstantial factors found at 11 CFR 100.5(g)(4)(ii)(A) – (J) to determine whether two entities are affiliated.

ACOG's website.³ See 11 CFR 114.1(e)(1)(iii). ACOG actively solicits members through its website and at ACOG-sponsored meetings, and acknowledges the applicants' acceptance of the invitation to membership with a Certificate for Fellows and a Letter of Election for Junior Fellows. See 11 CFR 114.1(e)(1)(iv)-(v). Finally, ACOG is dedicated to the advancement of women's health, and is not organized primarily for the purpose of influencing Federal elections. ACOG Bylaws, Article II; see 11 CFR 114.1(e)(1)(vi).

OGWH also satisfies the Commission's requirements for membership organization status. OGWH's Board of Directors, which is made up entirely of OGWH members in good standing, exercises exclusive policy-making and governance authority of OGWH. OGWH Bylaws, Articles II and III; see 11 CFR 114.1(e)(1)(i). OGWH's Bylaws state that membership in OGWH is open to anyone who pays the required dues. OGWH Bylaws, Article III; see 11 CFR 114.1(e)(1)(ii). OGWH's formal organizational documents are available to members upon request. See 11 CFR 114.1(e)(1)(iii). OGWH actively solicits members. OGWH Bylaws, Article III; see 11 CFR 114.1(e)(1)(iv). OGWH acknowledges acceptance of membership with a membership card or by adding the member's name to a newsletter list. OGWH Bylaws, Article III; see 11 CFR 114.1(e)(1)(iv). Finally, OGWH's purpose is advocating laws and public policies supporting quality healthcare for women, and the field of obstetrics and gynecology, and is not organized primarily for the purpose of influencing Federal elections. OGWH Bylaws, Articles I and V; see 11 CFR 114.1(e)(1)(vi).

The Act and Commission regulations provide that a membership organization may solicit contributions for a separate segregated fund from its members. 2 U.S.C. 441b(b)(4)(C); 11 CFR 114.7(a). The Commission's regulations at 11 CFR 114.7(g) further provide that an incorporated membership organization is subject to the rules at 11 CFR 114.5, which, in turn, provides that for purposes of determining affiliation, the rules at 11 CFR 100.5(g)(4) apply. 11 CFR 114.5(g)(1). Accordingly, in this instance, factors such as whether an organization had a significant role in the formation of another organization become determinative. See 11 CFR 100.5(g)(4)(ii)(I).

Accordingly, the Commission finds that because ACOG established OGWH, and because you have presented no other facts regarding the relationship between ACOG and OGWH that would lead to a contrary conclusion, ACOG and OGWH are affiliated.

Question 2. May OGWH or Ob-Gyn PAC solicit ACOG's members for contributions to Ob-Gyn PAC?

The Act permits an incorporated membership organization, or its SSF, to solicit its noncorporate members and executive and administrative personnel, and their families, for contributions to the SSF. See 2 U.S.C. 441b(b)(4)(A) and (4)(C); see also 11 CFR 114.7(a). Additionally, a membership organization or its SSF may solicit the executive and administrative personnel, and their families, of the membership organization's

³ www.acog.org.

affiliates. *See* 11 CFR 114.5(g)(1). The Commission has extended this allowance to the solicitation of members. *See* Advisory Opinion 2003-29.

Therefore, because ACOG and OGWH are affiliated membership organizations, OGWH or Ob-Gyn PAC may solicit ACOG's noncorporate members and executive and administrative personnel, and their families, for contributions to Ob-Gyn PAC.

Question 3. Do ACOG Fellows and Junior Fellows qualify as solicitable ACOG members?

Commission regulations define "members" of a membership organization as including all persons who are currently satisfying the requirements for membership, affirmatively accept the membership organization's invitation to become a member and, either have a significant financial attachment to the organization, pay annual dues set by the organization, or have significant organizational ties to the membership organization. 11 CFR 114.1(e)(2). Both Fellows and Junior Fellows must satisfy the requirements for membership stated in ACOG's Bylaws. ACOG Bylaws, Articles IV and V. Fellows and Junior Fellows must accept the invitation to become members, and must pay annual dues. *Id.* Therefore, both Fellows and Junior Fellows are members of ACOG under the Commission's regulations and, as such, may be solicited by OGWH or Ob-Gyn PAC for contributions to Ob-Gyn PAC.

The Commission expresses no opinion regarding the applicability of the Internal Revenue Code, or of regulations promulgated by the Internal Revenue Service, to the status of ACOG or OGWH and the transactions contemplated in this request because those questions are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Scott E. Thomas
Chairman

Enclosure (AO 2003-29)