



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 25, 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-14

Jan W. Baran, Esq.  
Carol A. Laham, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Dear Mr. Baran and Ms. Laham:

We are responding to your advisory opinion request on behalf of the Associated Builders and Contractors, the National Federation of Independent Business, and the National Restaurant Association (collectively, the "Trade Associations") concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. Your request concerns a series of jointly sponsored live telephone conferences featuring presidential candidates, which will be made available simultaneously to the three Trade Associations' restricted classes.

The Commission concludes that the Trade Associations may sponsor the telephone conferences as proposed, provided that the Trade Associations split the costs of the conferences on a pro rata basis determined by restricted class participation (assuming it is possible to track such participation), or by other reasonable method (if it is not possible to track participation) to ensure that each trade association does not subsidize the costs of candidate appearances to a restricted class other than its own.

### ***Background***

The facts presented in this advisory opinion are based on your letter received on July 18, 2007, your telephone conversation with Commission staff on July 31, 2007, and your email received on August 2, 2007.

The Trade Associations are non-profit corporations organized as trade associations under Section 501(c)(6) of the Internal Revenue Code. The Trade Associations comprise incorporated members whose representatives are small business owners. There may be some overlap in membership among the Trade Associations, but not in large numbers.

The Trade Associations plan to host a series of live telephone conferences focusing on small business issues. The telephone conferences would be open to the “restricted class,” as defined under the Act and Commission regulations, of each of the three Trade Associations. The three restricted classes would have access to the telephone conferences either by dialing into the telephone conference and providing a password or by receiving a telephone call connecting them to the telephone conference. Access to the telephone conferences will also be granted to members of the news media.

Each telephone conference will feature one presidential candidate. The Trade Associations will invite several Democratic and Republican presidential candidates in accordance with current polls, beginning with the most popular candidates. The Trade Associations will contact the candidates’ campaigns to schedule each candidate’s appearance, but do not contemplate coordinating with the candidates in advance of the conferences on any subject other than scheduling. The Trade Associations will offer each candidate a similar opportunity to participate in the conferences in terms of time and format.

The Trade Associations will not limit the content of any candidate’s discussion during the telephone conferences in any manner. The candidates will be free to solicit contributions and to solicit campaign volunteers by asking conference participants to visit a website or call a telephone number. Candidates will also answer questions posed by members of the audience. The Trade Associations have decided not to endorse any of the candidates, to expressly advocate the election or defeat of any of the candidates in connection with the conferences, or to collect any contributions.

The Trade Associations will split the costs of the conferences and are open to cost splitting arrangements other than dividing the costs equally among themselves. The Trade Associations may be able to track restricted class participation and to split costs based on the number of restricted class members of each trade association who participates in the conferences.

### ***Question Presented***

*May the Trade Associations jointly sponsor a series of telephone conferences featuring presidential candidates for the Trade Associations’ restricted classes?*

### ***Legal Analysis and Conclusions***

Yes, they may do so, provided that the Trade Associations split the costs of the conferences on a pro rata basis determined by restricted class participation (assuming it is

possible to track such participation), or by other reasonable method (if it is not possible to track participation) to ensure that each trade association does not subsidize the costs of candidate appearances to a restricted class other than its own.

The Act prohibits contributions and expenditures by a corporation in connection with a Federal election. *See* 2 U.S.C. 441b(a); 11 CFR 114.2(b). The terms “contribution” and “expenditure” are defined to include “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization” in connection with any Federal election. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1); *see also* 2 U.S.C. 431(8)(A)(i) and (9)(A)(i); 11 CFR 100.52(a) and 100.111(a). The phrase “anything of value” includes goods or services provided without charge, or at less than the usual and normal charge. 11 CFR 100.52(d)(1) and 100.111(e)(1).

Under an exception to the prohibition on corporate contributions and expenditures in connection with a Federal election, an incorporated trade association may sponsor candidate campaign appearances, but only if: (1) the audience is limited to the trade association’s restricted class<sup>1</sup> and those employees of the corporation outside the restricted class who are necessary to administer the meeting; or (2) the audience is limited to the trade association’s employees and their families. *See* 2 U.S.C. 441b(b)(2)(A); 11 CFR 114.3(c)(2) and 11 CFR 114.4(b)(1). Other guests of the corporation who are being honored or speaking or participating in the event, and representatives of the news media, may also attend. *Id.*

Under your proposal, each trade association would use its general treasury funds to sponsor candidate appearances to its own restricted class. Because the Trade Associations would sponsor the same candidate to address their restricted classes simultaneously during the telephone conferences, each trade association must pay only the portion of the costs of the conferences incurred because of its restricted class’s participation, assuming it is possible to track such participation. You indicate that the Trade Associations *may* also be able to track restricted class participation and to split the costs based on the number of restricted class members of each Trade Association that participates in the conferences. If the Trade Associations split the costs of the conferences proportionally, as described in the preceding sentence, the Commission concludes that the proposed conferences come within the exemptions from the definitions

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<sup>1</sup> An incorporated trade association’s restricted class for communication purposes is its members and executive or administrative personnel, and their families. 11 CFR 114.1(j). A trade association’s members include its noncorporate members and, in the case of corporate members, the individual corporate representatives with whom the trade association normally conducts the association’s activities. 11 CFR 114.8(h). Under Commission regulations, an incorporated trade association’s executive and administrative personnel are defined as individuals employed by the trade association who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities. 11 CFR 114.1(c). This definition consists of individuals who run the trade association’s business such as officers, other executives, and division and section managers; and individuals following the recognized professions, such as lawyers and engineers. Other classes of employees are excluded. *Id.*

of “contribution” and “expenditure” for corporate-sponsored candidate campaign appearances to the restricted class.<sup>2</sup>

The situation presented here is similar to that considered by the Commission in Advisory Opinion 1984-13 (National Association of Manufacturers). In that advisory opinion, the Commission concluded that the National Association of Manufacturers (“NAM”), a corporation, could host candidates as speakers at a conference for its restricted class and jointly sponsor the conference with another entity, the Dallas Study Group (“DSG”), an unincorporated, nonmembership entity. The Commission concluded that because NAM was funding candidate appearances to its restricted class only, the event fell within the scope of the exemptions from the definitions of “contribution” and “expenditure” for corporate-sponsored candidate campaign appearances to the restricted class, regardless of DSG’s joint sponsorship.

Here, each trade association plans to host candidates as speakers at telephone conferences for its restricted class, and also plans to sponsor the events jointly with the two other Trade Associations. So long as the Trade Associations split the costs of the conferences on a pro rata basis according to the participation of each trade association’s restricted class, or by other reasonable method, *see supra* footnote 2, thereby ensuring no trade association is subsidizing the costs of candidate appearances to a restricted class other than its own, then, like NAM’s event, the proposed telephone conferences would come within the exception for corporate-sponsored candidate campaign appearances to the restricted class, regardless of the other Trade Associations’ joint sponsorship.

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 requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission’s website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)  
Robert D. Lenhard  
Chairman

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<sup>2</sup> If it is not possible to precisely track restricted class participation and to split costs based on the number of restricted class members of each Trade Association that participates in the conferences, costs may be split by some other reasonable method calculated to closely approximate pro rata participation.