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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO.13-35**  
**AGENDA ITEM**  
**For meeting of August 22, 2013**

August 15, 2013

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*  
Deputy General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Anthony T. Buckley *ATB*  
Attorney

Subject: Draft AO 2013-08 (American Veterinary Medical Association)

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on August 21, 2013.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-08

2

3 Isham R. Jones, III, Esq.

**DRAFT**

4 American Veterinary Medical Association

5 1931 North Meacham Road, Suite 100

6 Schaumburg, IL 60173-4360

7

8 Dear Mr. Jones:

9 We are responding to the advisory opinion request you submitted on behalf of the

10 American Veterinary Medical Association (“AVMA”) regarding the application of the Federal

11 Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to

12 AVMA’s proposed activity. AVMA asks whether it may solicit members of the Student

13 American Veterinary Medical Association (“SAVMA”) to make contributions to AVMA’s

14 separate segregated fund, the American Veterinary Medical Association Political Action

15 Committee (“AVMA PAC”). The Commission concludes that AVMA may solicit contributions

16 from members of SAVMA to AVMA PAC.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter dated July 3, 2013,

19 which included the bylaws and articles of incorporation for AVMA and SAVMA, and your

20 telephone conversation with Commission staff on July 25, 2013.

21 AVMA is a non-profit membership organization incorporated under Illinois law. It is

22 registered as a tax-exempt organization under section 501(c)(6) of the Internal Revenue Code.

23 According to its bylaws, the mission of AVMA is to “improve animal and human health and

24 advance the veterinary medical profession.” *American Veterinary Medical Association Bylaws,*

25 Art. I, Sec. 2.

1 AVMA's membership rules require an individual to have earned a professional degree in  
2 veterinary medicine or to be involved in teaching veterinary medicine or in veterinary research.  
3 *AVMA Bylaws*, Art. II, Sec. 3(a)-(c). More than 80% of veterinarians in the United States are  
4 members of AVMA, and more than 99% of AVMA members have full voting rights within the  
5 organization.<sup>1</sup> Most of these members qualify to be voting members on the basis of having  
6 graduated from veterinary school as SAVMA members in good standing. *See AVMA Bylaws*,  
7 Art. II, Sec. 3(a)(1)(iv).

8 AVMA has two governing bodies: the Executive Board and the House of Delegates.  
9 The AMVA Executive Board consists of 15 elected AVMA members and is charged with the  
10 overall management of the affairs of AVMA. *AVMA Bylaws*, Art. V, Sec. 1. The AVMA House  
11 of Delegates, which establishes the organization's policies and has power to amend its bylaws,  
12 *id.*, Art. VII, Sec. 1, is comprised of one delegate and one alternate delegate from each of  
13 68 constituent organizations, including SAVMA. *Id.*, Art. VII, Sec. 2.<sup>2</sup> AVMA's House of  
14 Delegates also elects three of the members of AVMA's Executive Board. *Id.*, Art. VI,  
15 Sec. 14(a).

16 SAVMA is a non-profit membership organization of veterinary students. SAVMA is  
17 incorporated under Illinois law and holds tax-exempt status under a "group exemption" from the  
18 Internal Revenue Service, which recognizes SAVMA as a "subordinate organization" to

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<sup>1</sup> AVMA has two categories of non-voting members (i.e., "associate" and "affiliate" members, *see AVMA Bylaws*, Art. II, Sec. 3), which comprise a total of 0.2% of AVMA's membership.

<sup>2</sup> These organizations include the veterinary medical association of each state (including the District of Columbia and Puerto Rico); "Constituent Allied Veterinary Organization[s]" representing specific areas within veterinary medicine; the Uniformed Services Organization, which represents AVMA members serving in the Uniformed Services; and SAVMA.

1 AVMA.<sup>3</sup> According to its bylaws, SAVMA’s mission is to “enhance the veterinary profession,  
2 to educate the public, and to promote contact and exchange of ideas between veterinary students,  
3 veterinarians and the parent organization, the American Veterinary Medical Association.”  
4 *Bylaws of the Student American Veterinary Medical Association*, Art. II, Sec. 3. SAVMA’s  
5 bylaws must “correlate” with AVMA’s bylaws and must be approved by AVMA’s Executive  
6 Vice President. *Id.*, Art. XV, Sec. 4; *see also id.*, Art. III, Sec. 1(d) (providing that SAVMA  
7 members must abide by AVMA Bylaws).

8         There are thirty-two chapters of SAVMA. These chapters have over 10,000 members  
9 combined, representing approximately 92% of all veterinary students in the United States.  
10 SAVMA cooperates with AVMA in inviting veterinary students to join SAVMA. Two people  
11 on staff at AVMA work with the AVMA Student Advisor and the AVMA Vice President to  
12 arrange visits by one or the other to each campus with a SAVMA chapter, where the AVMA  
13 Student Advisor or the AVMA Vice President explains to students the benefits of joining  
14 SAVMA. They also distribute brochures and send emails to students encouraging them to  
15 become members of SAVMA. In addition, SAVMA chapter officers meet with students at their  
16 respective schools to solicit membership.

17         SAVMA has two governing bodies: the SAVMA Executive Board and the SAVMA  
18 House of Delegates. The SAVMA Executive Board is charged with the overall management of  
19 the affairs of SAVMA and consists of 14 elected SAVMA members. *SAVMA Bylaws*, Art. VII,  
20 Secs. 1-2; Art. VI, Sec. 3. The SAVMA House of Delegates is the principal “legislative” body  
21 of the organization and elects the members of SAVMA’s Executive Board. *SAVMA Bylaws*,

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<sup>3</sup> Under IRS Revenue Procedure 80-27, “subordinate organizations” are organizations that are affiliated with and under the general control of a central organization. Subordinate organizations therefore need not file for separate recognition of tax-exempt status. Rev. Proc. 80-27, 1980-1 C.B. 677.

1 Art. VIII, Sec. 1; Art. VI, Sec. 3. The voting members of the SAVMA House of Delegates  
2 consist of one Junior Delegate and one Senior Delegate from each veterinary school that meets  
3 certain standards. *SAVMA Bylaws*, Art. VIII, Sec. 3. The AVMA Vice President and AVMA  
4 Staff Advisor are both empowered to act on behalf of SAVMA. *SAVMA Bylaws*, Art. V,  
5 Secs. 2-3.

6 Two members of SAVMA’s Executive Board — its President and President-Elect — are  
7 full voting delegates in the AVMA House of Delegates. *AVMA Bylaws*, Art. VII, Sec. 1(e)-(f);  
8 *See SAVMA Bylaws*, Art. VI, Secs. 2(A)(b)(v), 2(B)(b)(iv). SAVMA’s President also attends  
9 and participates (without voting power) in AVMA Executive Board meetings. *SAVMA Bylaws*,  
10 Art. VI, Sec. 2(A)(b)(vii).

11 SAVMA’s membership dues are determined by the SAVMA House of Delegates and are  
12 paid to SAVMA. *SAVMA Bylaws*, Art. IV. SAVMA members enjoy many benefits otherwise  
13 available only to AVMA members. These benefits include significantly reduced subscription  
14 rates on AVMA professional journals, access to the “members only” page of the AVMA website,  
15 eligibility to sign up for multiple “members only” newsletters, and participation in AVMA’s  
16 group health and life insurance programs.

17 SAVMA members receive a member identification number when they join and retain that  
18 number if they become members of AVMA. More than 97% of SAVMA members become  
19 members of AVMA upon graduating from veterinary school, and some of the remaining 3%  
20 become members of AVMA at a later time.

### 21 ***Questions Presented***

22 1. *Are members of SAVMA “members” of AVMA whom AVMA may solicit for contributions*  
23 *to AVMA PAC under the Act and Commission regulations?*

1           2. *Is SAVMA an affiliate organization of AVMA under the Act and Commission regulations?*

2           ***Legal Analysis and Conclusions***

3           1. *Are members of SAVMA “members” of AVMA whom AVMA may solicit for contributions*  
4           *to AVMA PAC under the Act and Commission regulations?*

5           Yes, members of SAVMA are members of AVMA whom AVMA may solicit for  
6           contributions to AVMA PAC under the Act and Commission regulations.

7           The Act prohibits a corporation from making any contribution in connection with a  
8           Federal election. 2 U.S.C. § 441b(a). The Act provides, however, that the term “contribution”  
9           does not include “the establishment, administration, and solicitation of contributions to a separate  
10          segregated fund to be utilized for political purposes by a corporation, labor organization, [or]  
11          membership organization.” 2 U.S.C. § 441b(b)(2)(C); *see also* 2 U.S.C. § 431(8)(B)(vi),  
12          (9)(B)(v).

13          Under 2 U.S.C. § 441b(b)(4)(A), a corporation may solicit contributions to its separate  
14          segregated fund only from the corporation’s stockholders and their families and the corporation’s  
15          executive or administrative personnel and their families. An exception set forth in 2 U.S.C.  
16          § 441b(b)(4)(C) allows a membership organization to solicit contributions to its separate  
17          segregated fund from the organization’s members.

18          Commission regulations define a “membership organization” to include a trade  
19          association or corporation without capital stock that: (1) is composed of members who have the  
20          authority to operate or administer the organization pursuant to its bylaws; (2) expressly states in  
21          its bylaws the qualifications and requirements for membership; (3) makes its bylaws available to  
22          its members upon request; (4) expressly solicits persons to become members; (5) expressly  
23          acknowledges the acceptance of membership, such as by sending a membership card or

1 including the member's name on a membership newsletter list; and (6) is not organized primarily  
2 for the purpose of influencing the nomination or election of any individual to federal office.

3 11 C.F.R. § 114.1(e)(1); *see also* 11 C.F.R. § 100.134(e).

4 AVMA meets all six of these criteria. First, it is a voluntary membership organization  
5 whose voting members (comprising 99.8% of its membership) operate the organization by  
6 electing its Executive Board and House of Delegates. Second, AVMA's Bylaws clearly set forth  
7 the organization's requirements for membership. Third, AVMA's mission statement, strategic  
8 plan, bylaws, and other organizational documents are available to AVMA's members on  
9 AVMA's web site, [www.AVMA.org](http://www.AVMA.org). Fourth, AVMA expressly solicits persons to become  
10 members on its website, and by assisting SAVMA in its membership efforts. Fifth, AVMA  
11 acknowledges membership by placing members on mailing lists and giving them identification  
12 numbers and individual profile pages on the AVMA website. Sixth, AVMA's primary purpose  
13 relates to advancing the interests of the veterinary medical profession, not to the election of  
14 individuals to federal office. Therefore, the Commission concludes that AVMA is a membership  
15 organization within the meaning of the Commission's regulations. 11 C.F.R. § 114.1(e); *see also*  
16 11 C.F.R. § 100.134(e).

17 Commission regulations provide that the "members" of a membership organization  
18 include all persons who satisfy the requirements for membership in that organization,  
19 affirmatively accept the organization's invitation to become a member, and meet certain other  
20 criteria. 11 C.F.R. §§ 100.134(f), 114.1(e)(2). AVMA's membership rules require an individual  
21 to have earned a professional degree in veterinary medicine or to be involved in teaching  
22 veterinary medicine or in veterinary research. Because SAVMA members are veterinary  
23 students, they do not meet any of these threshold requirements. Thus, SAVMA members do not

1 qualify as “members” of AVMA under the general rule in 11 C.F.R. §§ 100.134(f) and  
2 114.1(e)(2).

3           However, under 11 C.F.R. §§ 100.134(g) and 114.1(e)(3), the Commission may  
4 determine on a case-by-case basis that persons who do not precisely meet the requirements of the  
5 general rule are “members” for purposes of an organization’s solicitations for its separate  
6 segregated fund. To qualify as members under this regulation, the individuals must “have a  
7 relatively enduring and independently significant financial or organizational attachment to the  
8 organization.” 11 C.F.R. § 114.1(e)(3); *see, e.g.*, Advisory Opinion 2003-13 (OPHTHPAC).  
9 Commission regulations offer as one example, “student members [of an organization] who pay a  
10 lower amount of dues while in school.” 11 C.F.R. § 114.1(e)(3).

11           SAVMA members have significant and enduring financial and organizational  
12 attachments to AVMA. SAVMA members are required to abide by AVMA Bylaws and “other  
13 policies, rules and regulations as [AVMA] may adopt.” *AVMA Bylaws*, Art. II, Sec. 1. The  
14 Commission has previously found that a binding agreement to follow an organization’s rules  
15 constitutes a significant organizational attachment. *See* Advisory Opinion 2003-13  
16 (OPHTHPAC). SAVMA members participate further in the governance of AVMA by electing  
17 the SAVMA President and President-Elect, who have full voting rights in AVMA’s House of  
18 Delegates. SAVMA members also have financial attachments to AVMA, including eligibility  
19 for certain benefits of AVMA membership, such as participation in AVMA’s group health and  
20 life insurance programs, reduced subscription rates on AVMA’s professional journals, and  
21 access to “members only” pages of the AVMA website. *See* Advisory Opinion 2011-08  
22 (American Society of Anesthesiologists) (citing similar factors in concluding that retired  
23 members of professional association were “members” for solicitation purposes). And these



1 attachments are enduring, as more than 97% of SAVMA members convert to AVMA members  
2 upon graduation from veterinary school, and more than 80% of veterinarians are members of  
3 AVMA. *See* Advisory Opinion 2003-13 (OPHTHPAC) (finding that ophthalmologists-in-  
4 training had enduring connections to national ophthalmological association where 93% of all  
5 ophthalmologists were members of association).

6 For the foregoing reasons, the Commission determines that SAVMA members qualify as  
7 “members” of AVMA under 11 C.F.R. §§ 100.134(g) and 114.1(e)(3), and that AVMA may  
8 therefore solicit SAVMA members for contributions to AVMA PAC.

9 2. *Is SAVMA an affiliate organization of AVMA under the Act and Commission regulations?*

10 Yes, SAVMA is an affiliate organization of AVMA under the Act and Commission  
11 regulations.

12 Under Commission regulations, in the case of a membership organization which has  
13 “several levels,” a person who qualifies as a member of any of the “affiliate[d]” membership  
14 organizations also qualifies as a member of the other affiliates for purposes of 11 C.F.R. Part  
15 114. *See* 11 C.F.R. § 114.1(e)(5). The Commission uses the factors set forth at 11 C.F.R.  
16 § 100.5(g)(2)-(4) to determine whether entities are affiliated. *See* 11 C.F.R. § 114.1(e)(5).

17 Section 100.5(g)(2) provides that entities are affiliated if they are established, financed,  
18 maintained or controlled by the same person. Section 100.5(g)(4)(ii) then describes several  
19 factors relevant to determining whether there is evidence of SAVMA being established,  
20 financed, maintained or controlled by AVMA.

21 SAVMA meets at least three of these factors. First, AVMA participates directly in the  
22 governance of SAVMA, as two of AVMA’s officers are expressly authorized to act on  
23 SAVMA’s behalf, and SAVMA’s bylaws must correlate with AVMA’s bylaws and be approved

1 by AVMA’s Executive Vice President. *See* 11 C.F.R. § 100.5(g)(4)(ii)(B). Second, most  
2 AVMA members were once SAVMA members, and more than 97% of SAVMA members  
3 become AVMA members. *See* 11 C.F.R. § 100.5(g)(4)(ii)(F) (describing factor as “[w]hether a  
4 sponsoring organization . . . has any members . . . who were members . . . of another sponsoring  
5 organization”). Third, AVMA had a “significant role” in the formation of SAVMA, 11 C.F.R.  
6 § 100.5(g)(4)(ii)(I), and SAVMA still maintains its tax-exempt status through its relationship  
7 with AVMA. Therefore, the Commission concludes that SAVMA is an affiliate organization of  
8 AVMA under the Act and Commission regulations. As such, members of SAVMA qualify as  
9 members of AVMA under 11 C.F.R. § 114.1(e)(5).

10 This response constitutes an advisory opinion concerning the application of Commission  
11 regulations to the specific transaction or activity set forth in your request. *See* U.S.C. 437f. The  
12 Commission emphasizes that, if there is a change in any of the facts or assumptions presented,  
13 and such facts or assumptions are material to a conclusion presented in this advisory opinion,  
14 then the requestors may not rely on that conclusion as support for its proposed activity. Any  
15 person involved in any specific transaction or activity which is indistinguishable in all its  
16 material aspects from the transaction or activity with respect to which this advisory opinion is  
17 rendered may rely on this advisory opinion. *See* U.S.C. § 437f(c)(1)(B). Please note the analysis  
18 or conclusions in this advisory opinion may be affected by subsequent developments in the law  
19 including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited

1 advisory opinions are available from the Commission's Advisory Opinion searchable database  
2 at <http://www.fec.gov/searchao/>.

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On behalf of the Commission,

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Ellen L. Weintraub

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Chair