



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 29, 1976

Re: AOR 1976-63

Gerald M. Tierney, Jr., Esquire  
Lord, Day & Lord  
25 Broadway  
New York, New York 10004

Dear Mr. Tierney:

This letter responds to your request of July 30, 1976 for an advisory opinion concerning permissible solicitation activities of the American Hotel & Motel Association ("AH & MA") and AH & MA Political Action Committee ("AHMPAC") under the Federal Election Campaign Act of 1971, as amended (the "Act").

According to your letter, the AH & MA is a national trade association, formed as a Delaware membership corporation without capital stock for the purpose of furthering the hotel and motel industry. The AH & MA has 50 state association members and 20 regional association members, which are generally nonprofit corporations having as their members individual proprietors or owners and operators of corporate hotel properties. AHMPAC is a separate segregated fund established and maintained by the AH & MA which solicits and receives contributions from individuals involved in the hotel industry for contributions to candidates for Federal elective office.

You desire confirmation of your interpretation of §321(b)(4)(D) of the Federal Election Campaign Act Amendments of 1976.<sup>1</sup> You state your interpretation would permit AHMPAC to solicit contributions from the following individuals:

"the executive and administrative personnel  
of the AH&MA member state and regional associations and their  
respective members (and the families of such members), including  
the following:

(i) non-corporate individual  
proprietors of hotels and their hotel

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<sup>1</sup> This section is now codified in 2 U.S.C. §441b(b)(4)(D).

employees,

(ii) the directors, stockholders (including employees who are stockholders) and executive and administrative personnel of corporations which own or operate hotel properties, and their families, without restriction as to the number of solicitations in any calendar year, and without regard to the manner of making such solicitations. However, all other employees of said corporations and their families may only be solicited by AHMPAC twice in any calendar year, and these two solicitations must be in writing."

The Commission agrees with your understanding that the AH & MA is a "trade association" falling within the provisions of 2 U.S.C. §441b(b)(4)(D), but your interpretation of the class of persons that may be solicited by the AH & MA or AHMPAC under that section is incorrect. Section 441b(b)(4)(D) governs the solicitation rights of a trade association or its separate segregated fund with respect to its corporate members, and provides that a trade association may solicit contributions--

. . . from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year. (Emphasis added.)

You will note this language limits both the class that may be solicited by a trade association (only stockholders, executive and administrative personnel of corporate members and their families), and the right of the trade association to solicit the class in the first instance (only after specific approval by the member corporation, with corporate approval limited to one trade association per year). Therefore, if a member corporation grants the required approval prior to any solicitation by AHMPAC and limits such approval to one trade association per year, AHMPAC may in general solicit the corporation's stockholders and "executive or administrative personnel"<sup>2</sup> and their

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<sup>2</sup> 2 U.S.C. §441b(b)(7) defines "executive or administrative personnel" as individuals employed by a corporation who are paid on a salary, rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities. See also §114.1(c) of the proposed regulations.

families without limit during the year in which approval is given. However, the corporation may, in granting approval to solicitations by the AH & MA or AHMPAC, limit both the class of executives or administrative personnel or stockholders to be solicited, and the number of times they may be solicited. Section 114.8(d)(5) and (e)(1).

The answer to the question whether AHMPAC may solicit the members of the AH & MA's State and regional association members who are not themselves "members"<sup>3</sup> of the AH & MA is in the affirmative. You represent the AH & MA to be a federation of trade associations; therefore under §114.8(g)(1) of the proposed regulations either the AH & MA or AHMPAC may solicit the members of the AH & MA's "regional, State, or local affiliates or members, provided that all of the political committees established, financed, maintained, or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for the purpose of the [contribution] limitations in §§110.1 and 110.2." Thus, the AH & MA may solicit the members of its State and regional member associations. However, if a member of a State or regional affiliate were itself a corporation, the statutory requirements of prior approval by the corporation, with one corporate approval granted per year, would apply. Section 114.8(g)(2). We note parenthetically that were the AH & MA not a federation of trade associations, solicitations by the AH & MA or AHMPAC would be limited to the AH & MA State or regional "members," and would not extend to entities who were not themselves members of the AH & MA. Section 114.8(f).

Solicitation by AHMPAC of noncorporate members of either the AH & MA or its State or regional associations would be governed by 2 U.S.C. §441b(b)(4)(C), under which a trade association which is a membership organization may solicit individual proprietors or partnerships who are members of the organization. No prior approval by the member is required, and there is no limitation on the number or method of solicitations allowed. Please note, however, that §441b(b)(4)(C) extends the solicitation right only to "members" of the AH & MA or its member associations, and not to the families, executive and administrative personnel, or other employees of the member. See §114.7 of the proposed regulations, which implements §441b(b)(4)(C).

The question you raise as to whether AHMPAC may solicit "all other employees of said corporations and their families" (who are not stockholders or executive or administrative personnel of member corporations) twice yearly in writing is answered in the negative by the Act. Under §441b(b)(4)(B), a corporation may solicit contributions for its separate segregated fund from non-executive employees and their families twice yearly, see §114.6; the corporation may solicit its stockholders and executive and administrative personnel and their families without limit under §441b(b)(4)(A). See §114.5. The right of the AH & MA as a trade association to solicit (or have AHMPAC solicit), the executive and administrative personnel and stockholders (and their families) of its member corporations under §441(b)(4)(D) does not extend to other employees of its member corporations. However, with respect to the AH & MA's own employees,

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<sup>3</sup> Section 114.1(e) defines "members," in pertinent part, as "all persons who are currently satisfying the requirements for membership in a ... trade association."

AHMPAC may solicit the executive and administrative personnel of the AH & MA and their families without limit under §441b(b)(4)(A), and the AH & MA's other employees twice yearly under §441b(b)(4)(B). See §114.8(i) of the proposed regulations.

With respect to the question whether corporate members of the AH & MA, or its State or regional associations, may solicit their stockholders, executive and other employees and their families on behalf of AHMPAC, it is the view of the Commission that the Act precludes such corporate solicitations. Section 441b(b)(4)(A) states:

Except as provided in subparagraph[s]  
(B), . . . it shall be unlawful--(i) for  
a corporation, or a separate segregated  
fund established by a corporation, to  
solicit contributions to such a fund from  
any person other than its stockholders  
and their families and its executive or  
administrative personnel and their  
families. . . . (Emphasis added.)

Subparagraph (B) allows a corporation to solicit its non-executive employees and their families twice a year, in writing, for "contributions to such a fund." Sections 114.5 and 114.6 of the proposed regulations reflect the statutory prohibition on corporate contributions contained in §441b, by establishing procedures that must be followed by a corporation soliciting "voluntary contributions" to "its separated segregated fund." Furthermore, the exemption for solicitation costs from the definition of "contribution or expenditure" in §441b(2)(C) applies only to solicitations by a corporation to its separate segregated fund; the costs of solicitations by a corporation on behalf of the separate segregated fund of another corporation would thus be a "contribution" by the soliciting corporation and prohibited by §441.<sup>4</sup> However, once a member corporation grants approval to AHMPAC for solicitations of any class of persons allowed by the Act, it is not precluded from giving incidental aid to such solicitations. The member corporation may, for example, distribute AHMPAC solicitation materials via its internal mailing system to its executive or administrative personnel or stockholders without the necessity of having AHMPAC or the AH & MA reimburse the corporation for any incidental costs involved. Furthermore, as a federation of trade associations, the AH & MA may under §114.8(g)(1) either engage in a joint solicitation with its member trade associations, or the member associations may delegate their solicitation rights to the AH & MA, to solicit "the stockholders and executive or administrative personnel of the member corporations of such trade associations and [their] families." 2 U.S.C. §441b(b)(4)(D).

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<sup>4</sup> This does not, however, preclude a parent corporation from soliciting, at its expense, the executive or administrative personnel of subsidiary corporations. Section 114.5(g).

The Commission points out that a member corporation may solicit its own stockholders and employees under §441b(b)(4)(A) and (B) for contributions to its own separate segregated fund, which may then contribute to AHMPAC subject to the contribution limits imposed by 2 U.S.C. §441a(a). Furthermore, a sole proprietor or partnership which is a member of a State or regional member of the AH & MA is not subject to the provisions of §441b and therefore could solicit its employees or partners on behalf of AHMPAC.<sup>5</sup>

You request that the Commission allow the AH & MA and AHMPAC to rely upon the written representations of member corporations that the solicitation by AHMPAC is the only one made by a trade association in the particular calendar year, and that the solicitation is either the first or second of the corporation's employees in a given calendar year for AHMPAC. As cited above §441b(b)(4)(D) requires a trade association to obtain prior approval from a corporate member before a solicitation of its executives, administrative personnel, or stockholders may be made, and permits the corporation to approve such solicitations by only one trade association per year. The Act places no burden upon a trade association to verify the representations of a member corporation to the requesting trade association. However, §114.8(d)(3) of the regulations requires that any request for approval by the AH & MA of its corporate members indicate the requirement of approval and the limitation of corporate approval to only one trade association per year; §114.8(d)(2) requires the AH & MA or AHMPAC to keep "a copy of each approved request" for three years from the date approval is given by the corporation. With respect to the number of solicitations during the calendar year, the Commission points out that once approval to solicitation by a single trade association is given by the member corporation there is no limitation on the number of solicitations that may be made (unless the corporation in its approval limits the number of solicitations) of the executive or administrative personnel, stockholders and their families. As stated above, the twice yearly solicitation right under §441b(b)(4)(B) applies only to solicitations by a corporation of its non-executive, non-stockholder employees for contributions to the corporation's own separate segregated fund.

Your final question is whether the regulations proposed by the Commission would permit a member corporation to give its written approval in a single document to several solicitations by AHMPAC. This is possible under the regulations as proposed; §114.8(e)(1) provides that once AHMPAC has obtained the required approval, "there is no limit on the number of times [the AH & MA or AHMPAC] may solicit the persons approved by the member corporation during the calendar year to which the approval applies." Once granted, the corporate approval would apply throughout the calendar year in which it is obtained, and new authorization must be obtained for each year. Section 114.8(d)(4). Note, however, that §114.8(e)(1) further provides that a corporate member of the AH & MA, in granting its approval, could itself limit the number of solicitations by AHMPAC.

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<sup>5</sup> As discussed above, the employees of noncorporate members of the AH & MA may not be solicited by AHMPAC.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission which must be submitted to Congress. The proposed regulations may be prescribed in final form by the Commission only if not disapproved either by the House or the Senate within 30 legislative days from the date received by them. 2 U.S.C. §438(c). The proposed regulations were submitted to Congress on August 3, 1976.

Sincerely yours,

(signed)  
Vernon W. Thomson  
Chairman for the  
Federal Election Commission