



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 16, 1979

AO 1978-97

Timothy J. May
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037

Dear Mr. May:

This refers to your letter of November 21, 1978 (as supplemented by letter of December 15), requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to fundraising solicitations for, and published articles on, the Supervisors Political Action Committee ("SPAC") which is the separate segregated fund of the National Association of Postal Supervisors ("NAPS").

Your letter as supplemented explains that, for purposes of 2 U.S.C. 441b, NAPS is, a labor organization of managers and supervisors employed by the United States Postal Service. SPAC is its separate segregated fund. NAPS publishes a magazine which every member receives. In addition, the magazine is distributed to approximately 1,000 recipients (3% of circulation) who are not members of NAPS but rather are Members of Congress, the Board of Governors of the Postal Service, senior officials of the Civil Service Commission, and selected news media.

You explain in your letter that NAPS proposes to solicit contributions for, and publish articles on SPAC¹ in the magazine. You state that accompanying each advertised solicitation and article which "reasonably could be read as a solicitation" will be a caveat stating:

Federal law prohibits SPAC from receiving donations from other than members of NAPS and their immediate families. All donations from other than members of NAPS and their immediate families will be returned forthwith.²

¹ The Commission notes that depending on the content of the articles and if the magazine is not "primarily devoted to subjects other than" candidate advocacy, there may be a reporting obligation under 2 U.S.C. 431(f)(4)(C); see also 11 CFR 100.7(b)(5).

² The Commission notes that the statement that donations from other than NAPS members or their immediate families are prohibited is inaccurate. (Your statement would be accurate if revised to say that "soliciting" donations

This caveat will be enclosed in a rectangle and printed in type which contrasts with the print type of the solicitation. As a further measure, you state that all donations received from persons other than those "legally eligible to donate to SPAC" will be returned.

In light of the fact that the magazine in which the solicitations and articles will appear is distributed to some individuals who are not NAPS members, you ask whether a solicitation by NAPS conducted in the described manner constitutes a solicitation of persons other than those whom it is permitted by statute to solicit.

2 U.S.C. 441b(b)(4) makes it unlawful for a labor organization or a separate segregated fund established by a labor organization to solicit contributions to such fund from any person other than its members and their families. As you are aware, in Advisory Opinion 1979-17 the Commission discussed the issue of whether a communication considered to be a solicitation, which reached persons not solicitable under 441b(b)(4), is made permissible in view of the conditions under which it is made and conditions under which contributions will be accepted. In that situation the Commission determined that a fundraising booth set up by a political action committee at the convention of its connected trade association constituted a solicitation. However, the Commission concluded that the booth would not be considered a solicitation by the PAC beyond its class, since: (i) only personnel properly solicitable by the PAC or trade association would be allowed to make contributions (i.e. purchase items) at the booth; (ii) personnel operating the booth would be instructed not to accept funds from any other person; and (iii) the PAC would follow a policy of refusing all contributions at any time from persons for whom it did not have prior solicitation approval.

The situation with the conditions you propose is analogous. Along with your solicitations and articles will be the statement in contrasting print that donations from other than members of NAPS or their immediate families are prohibited and will be immediately returned. Moreover, your policy will be to instruct your personnel that all contributions to SPAC are to be checked and returned if from a "donor not eligible to donate to SPAC." From that caveat and the discussion in your letter, the Commission understands your reference to "legally eligible" donor to mean members of NAPS and their immediate families. The Commission further understands your policy to be that contributions will not be accepted at any time from persons who are not NAPS members or their immediate families.

from nonmembers is prohibited.) Under the Act and Commission regulation 114.5(j) a separate segregated fund may accept contributions from persons otherwise permitted by law to make contributions. However, 441b prohibits the solicitation of contributions by a labor organization or its separate segregated fund beyond its proper class, that is, members and their families. Past advisory opinions of the Commission have concluded that a contribution solicitation may occur in many types of communications which do not explicitly request the making of a contribution but nevertheless give notice to the communication recipient that a specific PAC exists to accept and make contributions. See Advisory Opinions 1978-83, 1978-17, 1976-96 and 1976-27, copies enclosed.

Compliance with a self-imposed policy of refusing contributions from persons who may not be lawfully solicited for contributions achieves the underlying purpose of 441b's restrictions on contribution solicitations. Thus the Commission has taken a less restrictive view of what constitutes an improper contribution solicitation where a separate segregated fund follows a policy such as that described in your request.

Based on these precautionary steps -- the explicit caveat in contrasting print that contributions from nonmembers are not acceptable to SPAC and will be returned, and the procedure of screening and returning contributions received at any time from persons who are not solicitable -- the Commission concludes that the proposed communications to be included in the NAPS magazine which has a 3% circulation beyond its membership will not be viewed as solicitations directed to persons other than those whom NAPS is permitted by the Act to solicit.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Robert O. Tiernan
Vice Chairman for the
Federal Election Commission

Enclosures