



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 7, 1988

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-29

Jan W. Baran, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Baran:

This responds to your letter of October 1, 1987, requesting an advisory opinion on behalf of the National Association of Life Underwriters ("NALU") and the Life Underwriters Political Action Committee ("LUPAC") concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to corporate financing of communications endorsing Federal candidates and soliciting contributions earmarked for them through the corporation's separate segregated fund. Your request was supplemented by letter dated January 7, 1988, which also responded to several questions raised by the Commission and set forth by letter dated November 23, 1987, from the Office of General Counsel.

In your request you state that NALU is an incorporated federation of membership associations each composed of individuals who sell life and health insurance. NALU's purposes are to "protect and promote high standards of ethical conduct in the profession of underwriting and the business of life and health insurance." Article II, 1(d), Bylaws of NALU. NALU sponsors a separate segregated fund, LUPAC, which is registered with the Commission.

Article XIX of NALU's Bylaws permits NALU to sponsor various conferences or divisions. One such division created by NALU is the Association for Advanced Life Underwriting ("AALU"). You state that AALU members have a particular interest in legislation and government regulation of advanced life underwriting. In order for an individual to become a member of AALU, he or she must be an active member of NALU. AALU members pay dues to both AALU and NALU. AALU, however, has no legal identity of its own and exists only as a division of NALU. AALU's members, as with all members of NALU, are solicited by LUPAC.

AALU desires to encourage its members to make contributions to candidates endorsed by AALU as well as to contribute directly to LUPAC. In order to encourage AALU members to contribute, LUPAC proposes to establish an "honorific designation" to be known as the Legislative Circle.<sup>1</sup> To qualify for the Legislative Circle, members of AALU "would need to make contributions aggregating a specific minimum dollar amount (\$1000 is the proposed minimum) in a calendar year, of which at least \$400 must be contributions to LUPAC, and the balance may be contributions to candidates chosen by the individual from those endorsed by AALU, or to the House or Senate campaign committees of a national political party, or contributions to LUPAC." All AALU members will be advised of the existence of the program and asked to participate. You state that no penalty accrues to any member who chooses not to participate in the Legislative Circle.

Under this program, AALU will endorse between 20 and 100 specific candidates for Federal office in 1988 and then recommend only those candidates, as well as national party campaign committees, to individual members of AALU on a "pro-rata basis, with the intention that each candidate or committee be recommended to approximately the same number of AALU active members." These individuals will receive at least one and possibly five, or more, letters or telephone calls from AALU soliciting contributions to the endorsed candidate(s) or committee(s) recommended to the particular individual. At least one such communication, you explain, will include the names of all 20-100 Federal candidates recommended to all AALU members. No specific dollar amounts, other than the minimum necessary to join the Legislative Circle, will be suggested by AALU. In addition, AALU "will not provide envelopes or stamps, or in any other way facilitate the transmittal of any contribution." Finally, in order for the contribution to count towards qualification for LUPAC's Legislative Circle, the individual member must forward the contribution to LUPAC for delivery to the designated campaign or committee.

Your letter dated January 7, 1988, explains the selection process that will be used to distribute contribution recommendations for specific AALU-endorsed candidates to individual AALU members. You state that two possibilities are under consideration. AALU members located in or near a given geographic region would receive recommendations of AALU-endorsed candidates who are seeking office in that same region. A second option is to make candidate recommendations to AALU members on an arbitrary, alphabetic basis. Under either system the basis on which categories of solicitees are matched with AALU-endorsed candidates would be made available to all members, and each AALU-endorsed candidate would be the subject of an AALU earmarking recommendation to approximately the same number of AALU members. While the number of categories of solicitees and the number in each category has not been determined, you explain that the method described above will be utilized. You further explain that each AALU member will receive at least one communication which recommends an earmarked contribution to a specific Federal candidate.

AALU and LUPAC ask the Commission whether AALU may finance the communications endorsing and soliciting contributions for specific Federal candidates and whether LUPAC may accept and transmit the solicited earmarked contributions without affecting LUPAC's contribution limits. The letter of January 7, 1988, supplements the original request and also asks the Commission whether AALU/NALU may finance and send communications to AALU members which suggest that the member contribute to AALU-endorsed Federal candidates and

which also provide the candidate's address "so that [member] contributions will be sent directly to the candidate without LUPAC's involvement in the delivery of any contributions to candidates."

In its meeting of February 25, 1988 the Commission considered and voted on alternative proposed opinions in response to your original request, but did not approve an advisory opinion by the required affirmative vote of four members. 2 U.S.C. 437c(c), 11 CFR 112.4(a). The proposals considered are identified as Agenda Documents #88-17, #88-17-A, and #88-17-B. See also Agenda Documents #87-111, #87-111-A, #87-111-B which were considered by the Commission on November 12, 1987. The Commission has, however, approved an advisory opinion with respect to AALU's "alternative program."

By letter dated January 7, 1988, you describe a possible change to AALU's program as originally proposed and request an opinion with respect to that modification. You characterize this change as an "alternative program." Accordingly, the Commission assumes that, if implemented, this modified program would not be used in conjunction with, or in addition to, the original program or any variation thereof.

The modified program would not involve the acceptance of any earmarked contributions by LUPAC, but would include a series of partisan communications to members of AALU. These communications would solicit contributions by AALU members to specific Federal candidates who are endorsed by AALU and recommended to AALU members as worthy recipients of their individual contributions. The communications to AALU members would state the names and addresses of the endorsed candidates' committees, but would not facilitate the actual making or delivery of any contributions to them such as by enclosing envelopes or postage stamps. This alternate plan would also include use of the LUPAC Legislative Circle honorific designation for those AALU members who make their own contributions to AALU-endorsed candidates, or to other noncandidate recipients specified in the program. The communications sent to AALU members will inform them that their contributions to candidates endorsed and recommended by AALU must be made directly to those candidates. If the AALU member wishes to become a member of the Legislative Circle on the basis of candidate contributions, it will be the member's obligation to inform LUPAC that those contributions have been made.

The Act prohibits corporations from making any contribution or expenditure in connection with Federal elections. 2 U.S.C. 441b. Contributions include direct or indirect payments or gifts of money or any services, or anything of value, to any candidate for Federal office. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). This general prohibition also has an exception that allows an incorporated membership organization to communicate with its members on "any subject" including partisan electioneering messages. 2 U.S.C. 441b(b)(2)(A).

Commission regulations expressly permit incorporated trade associations and incorporated membership organizations to make partisan communications to their individual members. 11 CFR 114.3(a)(2), 114.3(c), 114.7(h), and 114.8(h). Partisan communications under section 114.3 may solicit or suggest that the individual member make a contribution to a particular candidate so long as the corporation limits its activity to communication only and does not actually facilitate the making of the member's contribution to the candidate.<sup>2</sup> Applying this regulation, the

Commission concluded in Advisory Opinion 1982-2 that a membership corporation could make communications to its individual members recommending that they make contributions to a particular candidate or committee. The Commission added, however, that this exception does not permit a corporation to act as a conduit or intermediary by facilitating the making of contributions, including providing envelopes addressed to the candidate or committee.

Your alternate program, as described, is limited to communications that solicit contributions by AALU members to AALU endorsed candidates and that provide only information as to the name and address of the candidate's committee. The communications will also inform AALU members that their contributions must be made directly to the candidates, and LUPAC will not accept earmarked contributions. Moreover, the AALU communications will not provide any form of assistance to facilitate the actual making of the contribution. Specifically, they will not include envelopes, stamps, or other similar items which would assist the AALU member in making his or her contribution to the candidate.

Based on the foregoing aspects of the alternate program, the Commission concludes that it would not improperly facilitate the making of a contribution by AALU members because it is limited to the communication of information. Corporate disbursements by AALU for permitted partisan communications are subject to reporting to the extent the content of such communications and the aggregate costs fall within the applicable provisions of the Act and regulations. 2 U.S.C. 431(9)(B)(iii), 11 CFR 100.8(b)(4), 104.6.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Thomas J. Josefiak  
Chairman for the Federal Election Commission

Enclosure (AO 1982-2)

1/ This Legislative Circle would be in addition to nine other honorific designations already established by LUPAC. See also 11 CFR 114.5(c).

2/ As the Commission explained in transmitting the proposed section 114.3 to Congress in 1977:

The corporation or labor organization may suggest in a communication sent to . . . members that they contribute to a particular candidate or political committee and provide the candidate's address. The corporation or labor organization may not, however, facilitate the making of contributions to a particular candidate or political committee other than its separate segregated fund, as by providing

envelopes addressed to the candidate or committee or enrolling persons in a payroll deduction plan for contributions to that candidate or committee.

See Explanation and Justification of Regulations, H. Doc. No. 95-44, 95th Cong., 1st Sess. at 104-105.