



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 6, 1989

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-18

William C. Clohan, Jr.
Clohan & Dean
Suite 400
1101 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Clohan:

This responds to your letters dated August 29 and June 6, 1989, requesting an advisory opinion on behalf of the Association of Independent Colleges and Schools Political Action Committee ("AICSPAC") concerning the application of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA") and Commission regulations to a raffle that AICSPAC proposes to hold in October, 1989.

Your initial letter and Commission records indicate that AICSPAC is the separate segregated fund of the Association of Independent Colleges and Schools ("AICS"), an incorporated trade association made up of incorporated educational institutions.¹ AICS sponsors an accrediting commission for postsecondary and collegiate institutions. You state that AICSPAC's raffle prizes will include "vacation homes, slots to the AIS-run Management Institute, and items purchased by AICSPAC," such as a wide-screen television set. Your letter also states that the vacation homes "may be donated by AICS member institutions, AICSPAC contributors, and any other individual or corporations who wish to donate."

Your subsequent letter of August 29 explain that the vacation home prize will consist of the use of the vacation homes for a "short-term, one-time visit of probably one week or weekend period" which excludes the costs of travel to and from the vacation home. You also indicate that the donors of the vacation-home prizes will include: (1) corporations which own private postsecondary institutions, many or all of which are members of AICS; and (2) individuals who are not "members" of AICS, but who "are probably officials at the institutions which are members of AICS" most of whom are past contributors to AICSPAC. You propose to distribute

the raffle tickets to those who contribute at least \$90 and estimate that approximately 150 raffle tickets will be distributed.

You ask whether the Act and Commission regulations permit AICSPAC to conduct its proposed raffle.

Under the Act and Commission regulations, a corporation, including an incorporated trade association, may use general treasury monies, including dues monies or membership fees for the establishment, administration and solicitation of contributions to a separate segregated fund. See 2 U.S.C. 441b(b)(2), 11 CFR 114.5 and 114.8. The Commission's regulations at 11 CFR 114.5(b)(2) specifically permit a corporation to use a raffle as a method of raising funds for a separate segregated fund, so long as State law permits and the prize is not disproportionately valuable. As noted in Advisory Opinion 1982-36, the "prizes cannot be so numerous or valuable in relation to their cost that the fundraising procedure becomes, in effect, a 'trading money' situation." For this reason, the regulations indicate that a reasonable practice to follow is for the separate segregated fund to reimburse the corporation for costs which exceed one-third of the money contributed. 11 CFR 114.5(b)(2).

To avoid awarding prizes "disproportionately valuable" to raffle receipts, pursuant to 11 CFR 114.5(b)(2), you state that AICSPAC will reimburse AICS for the dollar value of AIC's costs for the winners of slots in its Management Institute, to the extent such costs exceed one-third of the total contributions collected from the raffle. Therefore, the Commission concludes that the provision of those slots as a raffle prize constitutes a permissible payment by AICS of solicitation expenses under the Act. The Commission notes that any reimbursement to AICS should be based upon the total value of all prizes donated by AICS and its members, and not upon any one prize or group of prizes. The Commission also concludes that the purchase by AICSPAC of a wide-screen television for use a raffle prize is permitted by the Act, assuming that it is correctly reported by AICSPAC as an operating expenditure.

Corporate Members

Your proposed raffle raises questions as to whether certain categories of corporations qualify as members of AICS for FECA purposes and whether such corporate members are therefore permitted to donate the use of vacation homes as raffle prizes.

The Commission's regulations permit an incorporated membership organization (including an incorporated trade association such as AICs) to use general treasury monies, including dues monies or membership fees, to pay solicitation expenses on behalf of the trade association's separate segregated fund. 11 CFR 114.5(b) The Commission has previously stated that corporate members of an incorporated trade association who meet the definition of "members" under the Act and regulations, may contribute funds or merchandise to defray solicitation expenses of the trade association's separate segregated fund. Compare Advisory Opinions 1984-33 and 1983-24. The Commission has also interpreted this provision to permit a corporate member of a trade association to donate funds over and above its membership dues to defray administrative and solicitation expenses of the trade association's PAC. See Advisory Opinions 1982-36 and 1980-59. In Advisory Opinion 1982-36, the Commission permitted a trade association to encourage its

corporate members to make in-kind donations of corporate merchandise which would then be used by the trade association PAC for fundraising purposes including a raffle.² However, as discussed above, the prizes donated cannot be disproportionately valuable in relation to the contributions generated. See 11 CFR 114.5(b)(2). Accordingly, the Commission concludes that incorporated educational institutions that meet the Act's requirements for qualification as members of AICS may donate vacation home prizes to the AICSPAC raffle, provided the requirements of 11 CFR 114.5(b)(2) are satisfied.

Commission regulations define the term "members" to include "all persons who are currently satisfying the requirements for membership in a ... trade association" 11 CFR 114.1(e). The U.S. Supreme Court has suggested that "'members' of nonstock corporations were to be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions." FEC v. National Right to Work Committee, 459 U.S. 197, 204 (1982). The Court added that the "analogy to stockholders and union members suggests some relatively enduring and independently significant financial or organizational attachment is required to be a 'member' under 441b(b)(4)(C)." Id. In making this determination, the Commission considers whether such persons have a right to participate in the governance of the organization and an obligation to help sustain the organization through regular financial contributions of a predetermined minimum amount. E.g. Advisory Opinions 1988-39, 1986-13 and 1984-33.

An examination of AICS' articles of incorporation and bylaws indicates that AICS membership is divided into three categories: members, associate members, and allied members. Members consist of incorporated educational institutions and separate departments of educational institutions within or outside the United States offering resident programs including the study of business and office occupations which are accredited by the Accrediting Commission of AICS.³ The bylaws of AICS impose regular dues obligations upon such members, and grant them the right to vote, hold office, and otherwise participate in the full range of AICS activities. Therefore, the Commission concludes that these accredited member institutions qualify as members of AICS under the Act.

Based upon your request the Commission understands that AICSPAC will reimburse the donors to the extent that the total value of the prizes donated exceeds one-third of the total contributions collected from the raffle, pursuant to 11 CFR 114.5(b)(2). Your request also contemplates ascertaining the fair market value of each prize donated by obtaining price quotes for the short term use of similar homes from travel agencies. Consequently, the Commission concludes that the donation of the use of vacation homes as raffle prizes by the accredited institutional members of AICS would constitute permissible payments of solicitation expenses.

Associate members consist of incorporated educational institutions within or outside the United States that are accredited by other specified accrediting organizations. Associate members must pay dues and have the right to fully participate in the affairs of AICS with the exception that they cannot serve as or vote in the election of Commissioners to the Accrediting Commission. The Commission concludes that associate members have sufficient attachment to qualify as members under the National Right to Work opinion. Therefore, associate members may donate the use of vacation homes as a PAC solicitation expense provided they are reimbursed by AICSPAC to the

extent that the value of the donation exceeds one-third of the total receipts generated by the raffle.

The bylaws and articles of incorporation also establish a category of allied members, which consists of persons, firms and corporations engaged in a trade, business or profession allied to the business school industry. Your description of the proposed donors of prizes does not appear to include allied members. Consequently, the Commission does not address the question of whether allied members of AICS would be considered members for purposes of the FECA.

Your letter indicates that certain corporations which own educational institutions may also wish to donate prizes for the raffle. Although the educational institutions are members of AICS, their corporate parents do not appear to qualify for membership status under the bylaws of AICS because the corporate parents are not educational institutions. Consequently, the Act does not permit such nonmember corporations to donate funds to pay the solicitation expenses of AICSPAC or to contribute to AICSPAC.

Individual Donors

Your proposed raffle also raises questions as to whether the use of vacation homes may be donated to AICSPAC by individuals who are either owners of or officials at the educational institutions that are members of AICS. The Commission notes that 11 CFR 114.5(j) permits separate segregated funds to accept contributions from persons otherwise permitted by law to make contributions. This provision would permit AICSPAC to accept in-kind contributions from the individuals you describe, provided that such individuals are not foreign nationals and provided that the value of the use of the vacation homes would not exceed the contribution limitations set forth in 2 U.S.C. 441a.⁴ Consequently, these donations are reportable as in-kind contributions to AICSPAC. Your request does not indicate whether AICs or AICSPAC intends to solicit the individuals you describe for in-kind contributions consisting of the use of such vacation homes. Any solicitations of this nature would, of course, be subject to the requirements of 441b(b) of the Act and sections 114.5 and 114.8 of the Commission's regulations, which are discussed more fully below.

Publicizing the Raffle

Your request also raises questions concerning your proposed efforts to publicize the raffle. You state that the raffle will be publicized "through letters to AICSPAC members or to other persons for which authorization has been granted to solicit contributions." The Commission notes that such letters would constitute solicitations for purposes of the Act. The Act and regulations permit a trade association or a separate segregated fund established by a trade association to solicit the stockholders and executive or administrative personnel of the member corporations of the trade association, and the families of such stockholders and personnel. See 11 CFR 114.8(c).⁵ Solicitation of such individuals must be separately and specifically approved by the member corporations, and the member corporations may not have approved a solicitation by any other trade association for the same calendar year. 2 U.S.C. 441b(b)(4)(D), 11 CFR 114.8(c). Consequently, the Commission concludes that if separate authorization has been granted for 1989 by a member corporation, the letters publicizing the raffle may be sent to the stockholders

and executive and administrative personnel of the AICs member corporations and their families. Such solicitations may not, however, be directed to the executive or administrative personnel or shareholders (or the families of either group) of a parent corporation that owns the member institution, since the parent corporation is not a member of AICS. See 11 CFR 114.8(f), as revised at 54 Fed. Register 10622 (March 15, 1989) and 54 Fed. Register 27153 (June 28, 1989).

Distribution of Raffle Tickets

You propose to distribute raffle tickets to those who contribute at least \$90. This proposal is analogous to the situation presented in Advisory Opinion 1981-7 in which the Commission concluded that the Act permitted a separate segregated fund of a labor organization. In that situation, the Commission determined that the funds received from such sales constitute contributions and must be reported as such. Similarly, any contributions you receive in response to the raffle letter are subject to the reporting requirements and the limitations and prohibitions of the Act. See 2 U.S.C. 434, 441a, 441b, 441c, and 441e. Although raffle tickets may be distributed only to those contributing a designated minimum amount, such as \$90, a minimum guideline for contributions may not be enforced. Thus, the AICSPAC solicitation should explain that any such guideline is merely a suggestion and any other lesser or greater amount may be contributed. 11 CFR 114.5(a)(2).

Other Issues

The Commission, while partially approving the proposal presented by this request, cautions AICSPAC as to future potential affiliation problems with the separate segregated funds, if any, of AICS incorporated member institutions. An issue of affiliation may arise where, in addition to paying dues, corporate members donate funds or anything of value to AICS or AICSPAC to defray a significant percentage of the administrative and solicitation costs of AICSPAC. Under 2 U.S.C. 441a(a)(5), all political committees commonly established, financed, maintained or controlled are affiliated committees and therefore share a common contribution limitation.

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,

(signed)

Donald L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1988-39, 1986-13, 1984-33, 1983-24, 1982-36, 1981-7, 1980-59 and 1979-63).

1/ The Commission notes that AICSPAC's Statement of Organization lists AICS as a trade association. Accordingly, that representation serves as the basis and factual framework for this

advisory opinion. However, this opinion does not represent a conclusion by the Commission that AICS qualifies as a trade association, as defined in 11 CFR 114.8(a).

2/ The Commission notes that in Advisory Opinion 1979-63 the Commission concluded that the Act would not permit the separate segregated fund of a nonprofit corporation to accept or utilize funds received from the corporation's local and auxiliary bodies which represent "dues and receipts from the sale of food and beverages." However, the use of such funds by the corporation to pay the PAC's administration and solicitation expenses was permissible under the FECA. The situation presented in that opinion, however, differs significantly from the one proposed by AICSPAC. The funds received by the nonprofit corporation in Advisory Opinion 1979-63 were derived, in part, from commercial transactions involving the general public, whereas in the instant case, the use of the vacation homes would be donated by members of AICS's restricted class specifically for fundraising purposes.

3/ Section 441e of the Act prohibits foreign nationals from making any contribution in connection with Federal, state and local elections. Accordingly, the member institutions donating the raffle prizes must be located in the United States and must not be foreign nationals. Similarly, individuals who are foreign nationals may not donate raffle prizes.

4/ Such donations would not be treated as the payment of PAC solicitation expenses because the individuals are not members of AICs and are thus ineligible to pay such solicitation costs.

5/ The Commission notes that the bylaws of AICSPAC indicate that individual contributors to AICSPAC become "members" of AICSPAC for a specified period of time. The Commission cautions that your treatment of previous contributors or other persons as "members" of AICSPAC is immaterial to the question of whether the FECA permits solicitation of such persons during 1989. 11 CFR 114.5(c)(2).