



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 29, 1994

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-21

William M. Hermelin  
Assistant Treasurer  
American Pharmaceutical Association Political Action Committee  
2215 Constitution Avenue, N.W.  
Washington, D.C. 20037-2985

Dear Mr. Hermelin:

This responds to your letters dated June 6 and July 14, 1994, requesting an advisory opinion on behalf of the American Pharmaceutical Association Political Action Committee ("APhA-PAC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the circulation of a combined dues invoice and solicitation.

The American Pharmaceutical Association ("APhA") is a membership association for pharmacists. Each year, its 30,000 members receive APhA's standard dues renewal invoice. APhA-PAC would like to include a solicitation for voluntary contributions on the dues renewal invoice. You state that the solicitation would include a suggested contribution amount of \$25.

You explain that less than 1,000 (or less than three percent) of the 30,000 members to be solicited are considered as unsolicitable under the Commission's definition of "member."<sup>1/</sup> The solicitation would include a statement which would clearly note that contributions cannot be solicited of those persons who are outside of the restricted class and any contributions received from unsolicitable persons will be returned. Furthermore, the suggested \$25 contribution amount would not appear on invoices that are prepared for the unsolicitable members. You ask the Commission to approve the inclusion of the solicitation on the dues renewal notice that will be received by some unsolicitable members.

To further clarify your request, you have sent a blank standard membership invoice, a membership invoice to be sent to a solicitable member (APhA Active Member) and a non-

solicitable member (APhA Associate Member) [copies attached]. The blank invoice provides spaces for typing in the member name and address, invoice date, member ID number, renewal period, invoice number, the class of member, "optional contributions" to the PAC, journals to be received by the member, and method of payment (with total). There are blank spaces for dollar amounts in the last four categories.

The space for "optional contributions" shows the name of the PAC and states as follows:

Contributions to APhA-PAC are optional and are not a requirement of APhA membership. Contributions between \$50 and \$200 must be accompanied by name and address; contributions in excess of \$200 aggregate in a calendar year must be reported with name, mailing address, occupation and name of employer. Federal election law prohibits APhA-PAC from soliciting contributions from persons outside the restricted class (APhA active members). Any contributions received from outside the restricted class will be returned.

All 30,000 members receive the above-described standard invoice form; the blanks are filled in by a computer program with specific information and dollar amounts related to the individual receiving the invoice. The computer retrieves this information from the individual member's record. The forms you have enclosed for the solicitable members and non-solicitable members have these spaces filled in. Next to the above-quoted solicitation language (with the caveat for non-solicitable members), the computer has filled in a \$25 figure on the invoice to be sent to the solicitable member and a \$0 figure for the invoice to be sent to the non-solicitable member.

You state that "[b]ecause the 1,000 unsolicitable members pay the same amount in dues and receive the same benefits (except for voting for the highest governing office) as our solicitable members, it is easier, more convenient and most of all, more cost efficient for the Association to use the same invoice form for all 30,000."

As an exception to the general prohibition on contributions by corporations and labor organizations, the Act and Commission regulations permit those organizations, and their separate segregated funds, to solicit voluntary contributions to those funds at any time from their restricted class. 2 U.S.C. 441b(b)(4); 11 CFR 114.5, 114.7, and 114.8. The restricted class of an incorporated membership organization consists of its members and executive and administrative personnel, and the families of those persons. 2 U.S.C. 441b(b)(4)(C) and (A); 11 CFR 114.7(a).

The Commission has, under limited circumstances, permitted contribution solicitations to be sent outside the solicitable class under certain conditions. The percentage of the recipients outside the class should be relatively small, i.e., "de minimis." Furthermore, the solicitation should clearly inform the solicitee that donations from those outside the class will not be accepted and that such donations will be returned. In addition, the Commission granted its permission on the basis that the contributions received would be screened and the returns would occur. Advisory Opinions 1981-7 and 1978-97. See Advisory Opinion 1980-139.

In determining what percentage of solicitation outside the class was considered sufficiently small, the Commission has concluded that, even with the above precautions taken, a contribution

solicitation in a magazine, with 10-20 percent circulation (total circulation equaled 75,000) outside the solicitable class, was too high to be permissible. Advisory Opinion 1980-139. In addition, the Commission concluded that a labor union taking the same precautions could not include a solicitation in its magazine circulated to a readership that included 15 percent (8,000 persons) of solicitees outside the class. Advisory Opinion 1979-50. In contrast, the Commission, permitted similar labor organization solicitations to a group of 1,000 solicitees outside the class or three percent of those solicited. Advisory Opinion 1978-97. See also Advisory Opinion 1981-7 (.16 percent of total solicitees or 3,217 outside the class).

The language of the solicitation states clearly that APhA-PAC plans to return contributions from those outside the class, and the Commission assumes your intention to screen and return such contributions. In addition, only three percent of those receiving the solicitation are unsolicitable. The Commission notes that the situations in which it has allowed de minimis outside-the-class solicitations have principally involved advertisements or articles in an organization's periodicals. Advisory Opinions 1981-7 and 1978-97. See Advisory Opinions 1982-58, 1980-139, 1979-50, and 1979-15 (involving solicitations in periodicals to an unacceptable percentage outside the class). In the situation presented by you, however, the printing of separate dues invoices without a PAC solicitation is impracticable and unduly cumbersome in the same respects as presented by the distribution of periodicals without the solicitations. In view of the precautions taken and the minimal size of the group outside the solicitable class, the situation here merits the same result as in the cited opinions allowing PAC solicitations in periodicals.

Based on the foregoing, the Commission concludes that APhA-PAC may send the proposed dues invoice forms to all 30,000 persons under the conditions set out.

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.

For the Commission,

(signed)

Trevor Potter  
Chairman

Enclosure (AOs 1982-58, 1981-7, 1980-139, 1979-50, 1979-15, and 1978-97)

Attachments (Invoice forms)

Endnotes

1/ See 11 CFR 100.8(b)(4)(iv)(B) and (C) and 114.1(e)(2) and (3). These members pay the same amount of dues and enjoy the same benefits as the solicitable members. You state that the non-solicitable members "have limited voting rights" but do not have the right "to vote for the highest governing body of [APhA]." The Commission assumes that such members do not have the right

to vote for any person with full participatory and voting rights on the highest governing body and do not have the right to vote for those who select at least one such person. 11 CFR 100.8(b)(4)(iv)(B)(2) and 114.1(e)(2)(ii).

PROPOSED DUES RENEWAL INVOICE - BLANK

American Pharmaceutical Association  
 c/o First Union Bank  
 P.O. Box 85080  
 Richmond, VA 23285-4003  
 202-628-4410 • FAX: 202-638-3783  
 800-237-APhA

American  
 Pharmaceutical  
 Association



APhA-FDS

MEMBERSHIP  
 INVOICE

THE MISSION OF PHARMACY IS TO SERVE SOCIETY AS THE PROFESSION RESPONSIBLE FOR THE APPROPRIATE  
 USE OF MEDICATIONS, DEVICES AND SERVICES TO ACHIEVE OPTIMAL THERAPEUTIC OUTCOMES.

DATE	MEMBER ID NUMBER	RENEWAL PERIOD	INVOICE NO.

If payment has been  
 submitted within the  
 last three weeks, please  
 disregard this notice.

50% of membership dues apply toward a subscription to one journal. Contributions or gifts to APhA, except APhA-PAC, are not deductible as charitable contributions for federal tax purposes. However, dues may be deductible by members as ordinary and necessary business expenses.

**MEMBERSHIP DUES**

MEMBERSHIP DUES \$ \_\_\_\_\_

**OPTIONAL CONTRIBUTIONS**

Contributions to APhA-PAC are optional and are not a requirement of APhA membership. Contributions between \$50 and \$200 must be accompanied by name and address, contributions in excess of \$200 appropriate at a calendar year must be reported with name, mailing address, occupation and name of employer. Federal election law prohibits APhA-PAC from soliciting contributions from persons outside the restricted class (APhA active members). Any contributions received from outside the restricted class will be returned.

APhA Political Action Committee \$ \_\_\_\_\_

**JOURNALS**  
 (If you wish to receive both journals add an additional \$30; \$100 for international members)

American Pharmacy  Journal of Pharmaceutical Sciences  Both Journals

JOURNALS \$ \_\_\_\_\_

**METHOD OF PAYMENT (U.S. Currency Only)**  
 (Check appropriate boxes)

Check/Money Order-Made payable to APhA  MasterCard  VISA  American Express

SUBTOTAL ▶ \$ \_\_\_\_\_

**TOTAL PAYMENT** ▶ \$ \_\_\_\_\_

Amount of Charge \$ \_\_\_\_\_

Credit Card Number \_\_\_\_\_ Card Holder's Signature \_\_\_\_\_

Expiration Date \_\_\_\_\_

PLEASE INDICATE NAME AND/OR ADDRESS CHANGES

Fold Here

Fold Here

APhA-011 (6/94)

**PROPOSED DUES RENEWAL INVOICE - SOLICITABLE MEMBER**



**American Pharmaceutical Association**  
 610 First Union Bank  
 P.O. Box 85090  
 Richmond, VA 23285-4003  
 202-828-4410 · FAX: 202-638-3783  
 800-237-APHA

**MEMBERSHIP INVOICE**

THE MISSION OF PHARMACY IS TO SERVE SOCIETY AS THE PROFESSION RESPONSIBLE FOR THE APPROPRIATE USE OF MEDICATIONS, DEVICES AND SERVICES TO ACHIEVE OPTIMAL THERAPEUTIC OUTCOMES.

DATE	MEMBER ID NUMBER	RENEWAL PERIOD	INVOICE NO.
07/14/94	123456	08/01/94-07/31/95	99999

If payment has been submitted within the last 30 days, please disregard this notice.

All of membership dues applies toward a subscription to one Journal. Contributions or gifts to APHA, under APHA, Inc. are not deductible as charitable contributions for federal tax purposes. However, dues may be deductible by members as ordinary and necessary business expenses.

**MEMBERSHIP DUES**

Alpha Active Member

\$ 150.00

**OPTIONAL CONTRIBUTIONS**

Contributors to APHA-PAC are optional and are not a requirement of APHA membership. Contributions between \$50 and \$200 must be accompanied by name and address; contributions in excess of \$200 appropriate in a calendar year must be reported with name, mailing address, occupation and name of employer. Federal election law prohibits APHA-PAC from soliciting contributions from persons outside the restricted class (APHA active members). Any contributions received from outside the restricted class will be returned.

Alpha Political Action Committee

\$ 25.00

**JOURNALS**

(If you wish to receive both Journals add an additional \$12.50 for international members)

American Pharmacy  Journal of Pharmaceutical Sciences  Both Journals

\$ 0.00

**METHOD OF PAYMENT (U.S. Currency Only)**  
 (Check applicable boxes)

Check/Money Order - Made payable to APHA  MasterCard  VISA  American Express

SUBTOTAL ▶ \$

TOTAL PAYMENT ▶ 175.00

Amount of Charge \$

John Smith, Pharmacist  
 123 Main Street  
 Washington, DC 20037

Credit Card Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

Card Holder's Signature \_\_\_\_\_

PLEASE INDICATE NAME AND/OR ADDRESS CHANGES

**PROPOSED DUES RENEWAL INVOICE - UNSOLICITABLE MEMBER**



**American  
Pharmaceutical  
Association**

American Pharmaceutical Association  
c/o First Union Bank  
P.O. Box 65080  
Richmond, VA 23265-4009  
202-828-4410 • FAX: 202-638-3783  
800-237-APHA

**MEMBERSHIP  
INVOICE**

THE MISSION OF PHARMACY IS TO SERVE SOCIETY AS THE PROFESSION RESPONSIBLE FOR THE APPROPRIATE  
USE OF MEDICATIONS, DEVICES AND SERVICES TO ACHIEVE OPTIMAL THERAPEUTIC OUTCOMES.

DATE	MEMBER ID NUMBER	RENEWAL PERIOD	INVOICE NO.
07/14/94	123456	08/01/94 - 07/31/95	9999

If payment has been  
submitted within the  
last three weeks, please  
disregard this notice.

All of membership dues apply toward a subscription to the journal. Contributions or gifts to APHA under APHA-PAC are not deductible on charitable contributions for federal tax purposes. However, dues may be deductible by members as ordinary and necessary business expenses.

**MEMBERSHIP DUES**

Alpha Associate Member

\$ 150.00

**OPTIONAL CONTRIBUTIONS**

APHA Political Action Committee  **JOURNALS**  **Journal of Pharmaceutical Sciences**  **Both Journals**

\$ 0.00

Contributions to APHA-PAC are optional and are not a requirement of APHA membership. Contributions between \$50 and \$500 must be  
accompanied by name and address; contributions in excess of \$500 require a calendar year must be reported with name, mailing  
address, occupation and name of employer. Federal election law prohibits APHA-PAC from soliciting contributions from persons outside  
the restricted class (APHA active members). Any contributions received from outside the restricted class will be returned.

APHA-PAC sign up receipt both journals only (total \$10.00 for non-union members)

**METHOD OF PAYMENT (U.S. Currency Only)**

SUBTOTAL ▶ \$

American Pharmacy  Journal of Pharmaceutical Sciences  Both Journals

MasterCard  VISA

Check/Money Order-Made payable to APHA  American Express

TOTAL PAYMENT ▶ 150.00

John Smith  
123 Main Street  
Washington, DC 20037

Amount of Charge \$

Credit Card Number

Expiration Date

Credit Holders' Signature

PLEASE INDICATE NAME AND/OR ADDRESS CHANGES

APHA-011 (9/94)

For Mem

Field Here

APHA-PAC