



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 9, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-13

R. William Taylor, President
American Society of Association Executives
1575 Eye Street, N.W.
Washington, D.C. 20005-1168

Dear Mr. Taylor:

This refers to your letters of May 8, and March 29, 1995, on behalf of the American Society of Association Executives ("ASAE") regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to its proposed solicitation of its membership for contributions to its political committee, A-PAC.

You inquire as to the application of Commission regulations to those (22,250) persons whom ASAE claims as its members, and you ask whether the organization may solicit all such "members" for contributions to A-PAC.^{1/} You state that ASAE, a not-for-profit, District of Columbia corporation, is "an umbrella organization organized to serve and represent associations." You explain that its membership includes association executives and staff, as well as representatives of suppliers of goods and services to the association community. Membership in ASAE is by individual only.^{2/}

You provide various ASAE documents with your request including its bylaws, and portions of a membership brochure. These materials provide information, which is analyzed below, regarding the membership structure of ASAE.

ASAE MEMBERSHIP STRUCTURE

Classes of Membership

As outlined by its bylaws, ASAE's various classes of membership are: regular, associate, section and life.^{3/}

Regular membership is "limited to full-time staff personnel devoting 50 percent or more of their working time to the management of voluntary trade, professional, educational, philanthropic, technical or similar type organizations which have either members or donors or both, or to members who meet the criteria for Life Membership but who are consulting to associations on a part-time basis." ASAE Bylaws, Article III, section 2.

Associate membership is open to "any person representing a firm or corporation engaged in selling products or services to members of ASAE; persons employed by governmental agencies and educational institutions; individuals in salaried positions working less than 50 percent in association duties; lawyers, certified public accountants, and other members of learned professions who provide services to associations; individuals formerly holding Regular Membership who no longer qualify for such membership." ASAE Bylaws, Article III, section 3.

Regarding section membership, ASAE Bylaws state: "In addition to, or as an alternative to Regular Membership in ASAE, association executives and Associate Members may hold membership in sections of the Society as may be established by the Board of Directors." Id. You state that there are currently 10 sections in ASAE, each related to a different functional area of association management. While some regular and associate members hold section membership, your request identifies a large class of members in ASAE, referred to as "section-only" members, who belong only to a section and do not hold any other membership in the ASAE. See footnote 3.

Regarding life members, ASAE Bylaws state that "Life and Honorary Membership without voting rights may be conferred upon members of the Society at such time and under such terms as the Board of Directors shall determine." ASAE Bylaws, Article III, section 4.

Duties Rights and Powers of Members

Membership dues for all classes of membership are established by the Board. ASAE Bylaws, Article V, section 1. The system of annual dues, as of March 1995, has the following three levels: chief executive officer from an association, \$195; association staff or association management company executive, \$165; associate member from a for-profit company, \$295. For all classes of membership, membership in additional sections is \$100 for each section.^{4/}

Certain benefits and rights of membership pertain to all classes of membership. All members may serve on certain committees. However, rights of governance are reserved to regular members; chief among these is the power to vote. Only the regular members may vote for the elected officers of ASAE and the ASAE Board of Directors; may nominate directors by petition; may be appointed to the nominating committee; and may vote to amend certain core articles of the bylaws.^{5/} ASAE Bylaws, Article III, section 1; Article XI, section 1; and Article XVI, section 2.

The right to be elected to office is, for the most part, reserved to regular members. Only a regular member may be elected to serve as an officer.^{6/} ASAE Bylaws, Article VII, section 2. Associate members, however, may be elected to two (of 34) positions on the ASAE Board which are reserved for them.^{7/} Regular members occupy all other positions on the Board. ASAE Bylaws, Article IX, section 2.^{8/} Members of sections also have "a vote in the affairs of that section subject to overall Board of Directors' control." ASAE Bylaws, Article III, section 3.

ACT AND COMMISSION REGULATIONS

The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a). The Act states, however, that the term "contribution or expenditure" does not include "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock." 2 U.S.C. 441b(b)(2)(C). See also 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v).

Under 2 U.S.C. 441b(b)(4)(A)(i), a corporation, or a separate segregated fund established by a corporation, may solicit contributions to such a fund only from its stockholders and their families and its executive and administrative personnel and their families. An exception set forth in 2 U.S.C. 441b(b)(4)(C) and 11 CFR 114.7(a) allows a membership organization (among other corporations without capital stock), or its separate segregated fund, to solicit contributions to the fund from the members of the organization and their families. The Commission's regulations use the term "membership association" to implement this exception. It is defined, in part, as a membership organization that (i) expressly provides for "members" in its articles and bylaws; (ii) expressly solicits members; and (iii) expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list. 11 CFR 114.1(e)(1)(i), (ii), and (iii).

Commission regulations define the term "members." Under 11 CFR 114.1(e)(2), "members" means all persons who are currently satisfying the requirements for membership in a membership association, who affirmatively accept the membership association's invitation to become a member, and who meet one of the following requirements:

- (i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);
- (ii) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or
- (iii) Are entitled to vote directly for all of those on the highest governing body of the membership association.

The regulations also provide that the Commission "may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational and financial attachment to the association under

circumstances that do not precisely meet the requirements of the general rule." See 11 CFR 114.1(e)(3).^{9/}

APPLICATION OF MEMBERSHIP REGULATIONS TO ASAE

The ASAE as a Membership Association.

The facts and background to this request indicate that ASAE is a membership association for purposes of the Act. For example, Article III of ASAE Bylaws meets the requirements of 11 CFR 114.1(e)(1)(i) by expressly providing for membership. The facts of the request and materials, such as the portions of the membership brochure included in your request, suggest that ASAE expressly solicits members. See 11 CFR 114.1(e)(1)(ii). ASAE also sends membership cards and publications to members. Therefore, the requirement that membership be expressly acknowledged is also met. See 11 CFR 114.1(e)(1)(iii).^{10/}

Status of ASAE Members

Under the membership regulations, regular members of ASAE would be considered "members" of ASAE for purposes of the Act. Because of their obligation to pay dues and their voting rights in the governance of ASAE, these individuals meet the membership requirements of section 114.1(e)(2)(ii). The Commission concludes that ASAE may solicit contributions to A-PAC from its regular members.

A different situation exists for the associate members and section-only members. The Commission considered the status of associate and section-only members but was unable to reach a conclusion on their membership status by the required affirmative vote of four Commission members. See 2 U.S.C. 437c(e).

Based on the materials submitted by ASAE, life members do not meet the membership requirements. Life members do not vote for any ASAE officer, any director or any person who can vote for an officer or director. They are even further removed from the governance of ASAE than the associate members, since these classes of members do not have any directorship positions set aside to represent their interests even if they could not themselves vote for those positions. Finally, the Commission has no evidence that life members pay dues. Based on the facts presented, ASAE and A-PAC may not solicit contributions to A-PAC from the life members.

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)

Danny L. McDonald

Chairman

Enclosures (AOs 1994-12, 1993-24, and 1991-24)

1 You state that ASAE's political activities are limited to the funding, maintenance and operation of A-PAC. ASAE does not engage in any partisan political communication within the meaning of 11 CFR 114.8(h). As such, you state that your advisory opinion request is directed solely at ASAE's solicitation of contributions to A-PAC.

2 The ASAE Bylaws state that among the organization's purposes is to "promote the arts and sciences of association management and educate members and the public in the advancement, improvement and uses of voluntary associations." ASAE Bylaws, Article II. You state that approximately one-third of ASAE's member association executives and staff manage charitable and philanthropic societies and trade associations. The remaining two-thirds manage professional societies and trade associations.

3 Your request indicates that ASAE has 22,250 members in four categories: 29% (6,411) regular members, 16% (3,490) associate members, 52% (11,705) section-only members, 3% (644) life members.

4 The materials you have provided are silent as to whether life members also pay dues.

5 Either the Board of Directors or the regular members may propose amendments by petition. ASAE Bylaws, Article XVI, section 1.

6 The elected officers of ASAE consist of a Chairman of the Board, a Chairman-Elect, four Vice Chairmen, and a Secretary-Treasurer.

7 Your request identifies four committees which represent the interests and views of the associate membership. These committees are the Associate Member Advisory Committee, the Exhibitors Advisory Committee, the Associate Member Past Directors Committee, and the Associate Member Fellows. You further state that these committees are among the sources solicited by the nominating committee for names of possible associate director candidates. However, the voting for the directors, including the associate directors, is still limited to regular members.

8 ASAE Bylaws delineate two institutions which play roles in the governance of ASAE -- the Board and the Executive Committee. For purposes of the analysis below, the Commission concludes that the Board, rather than the Executive Committee, is the highest governing body of ASAE. In the past, the Commission has based such determinations on which governing institution of a membership organization holds pre-eminent power. See Advisory Opinions 1994-12 and 1993-24.

The Commission notes that under ASAE Bylaws, the Board is specifically entitled the governing body of the society. It "shall have supervision, control and direction of the affairs of the Society, its committees and publications; shall determine its policies or changes therein; shall actively prosecute these objectives, supervise the disbursement of its funds, and shall be responsible for the interpretation of these bylaws." ASAE Bylaws, Article IX, section 1. The Board is permitted to delegate some of its powers to the Executive Committee. *Id.*

The Executive Committee may act in place and instead of the Board between Board meetings on all matters, except those specifically reserved to the Board by the bylaws. ASAE Bylaws, Article X, section 1. Among the powers reserved to the Board is the distribution of ASAE assets and the proposal of amendments to the bylaws (shared with the regular membership) as well as the power to amend certain articles of the ASAE Bylaws. ASAE Bylaws, Article XIV, section 1.

9 Your request only concerns solicitation of contributions to ASAE's separate segregated fund. Therefore, the discussion below will concern section 114.1(e). The Commission notes that sections 100.8(b)(4)(iv)(A), (B) and (C) relate to an association's right to make partisan communication to its members, and the wording of sections 100.8(b)(4)(iv) and 114.1(e) dealing with membership are identical. Therefore, the analysis of section 114.1(e) will, to that extent, be applicable to section 100.8(b)(4)(iv) as well.

10 It also appears that ASAE meets the definition of "trade association" under 11 CFR 114.8(a). ASAE is "a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member." 11 CFR 114.8(a), see also Advisory Opinion 1991-24.