



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 23, 2000

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-10

Matthew D. Smyth, Director  
America's Community Bankers PAC  
900 Nineteenth St. NW, Suite 400  
Washington, DC 20006

Dear Mr. Smyth:

This refers to your letter dated May 9, 2000, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations regarding use of the website of America's Community Bankers (“ACB”) to obtain permission from its corporate members so that the qualified personnel of those corporations may be solicited for contributions to ACB’s PAC.

***FACTUAL BACKGROUND***

You state that America's Community Bankers Community Campaign Committee (COMPAC) is the political action committee (or separate segregated fund) of ACB. You explain that ACB is an incorporated trade association that represents the nation's community banks of all charter types and sizes, and whose members pursue progressive, entrepreneurial and service oriented strategies in providing financial services to benefit their customers and communities.<sup>1</sup>

You further state that ACB is redesigning its existing webpage to create an informational, “members-only” page for COMPAC. As part of that page, COMPAC proposes to include the “permission to solicit form” in a manner that would allow

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<sup>1</sup> ACB is an Illinois not-for-profit, 501 (c)(6) corporation, doing business in the District of Columbia as a foreign corporation. It is the result of a merger of two prior trade associations in 1992.

members to download and print it. You explain that the form would not be interactive; that is, a member could not complete the form on the web and send it to COMPAC. Instead, a member would have to print the form and return it, with his or her signature, to COMPAC.<sup>2</sup>

An introductory paragraph explaining the purpose and necessity of the form would be on the COMPAC page. The introductory paragraph would state:

ACB's political action committee, COMPAC, was created with the stated purpose of providing individuals interested in the future of the savings and community bank business with an avenue to contribute to the support of worthy candidates for Federal office. Participation is voluntary and contributions are not tax-deductible. In order to allow COMPAC to solicit your contribution for Federal election campaigns, we must receive your permission.<sup>3</sup> You may click on the form icon below and print the form. Because we need your signature, we ask that you fax or mail the form to us at the noted address.

We encourage you to be an active participant in the legislative process and to be an example to your senior staff and board of directors. By returning a completed consent form below, you take up the challenge of democracy and make your voice heard. If you have any questions, feel free to contact me at e-mail [msmyth@acbankers.org](mailto:msmyth@acbankers.org) or by telephone at (202) 857-5578.

Your request also includes a copy of the COMPAC solicitation authorization form. This form states:

America's Community Bankers Political Action Committee (COMPAC) can only solicit voluntary contributions from executive, administrative personnel and directors of member institutions. Authorization of such a solicitation can be given to only one trade association-affiliated, federal political action committee per calendar year. In order to authorize ACB-COMPAC to solicit your directors and employees, please complete the following.

The form then requests information regarding the managing officer, the member institution and its address. The form includes five separate authorized signature lines for each calendar year up to 2004. The form gives the managing officer the option to receive COMPAC solicitation materials and to provide a list of the institution's executive and administrative personnel and its directors.

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<sup>2</sup> In a further communication to Commission staff, you indicated that all the members of ACB are corporations. The password to allow access to the "members-only" page would be given to the contact person representing the member corporation to ACB who would normally receive the Association's communications.

<sup>3</sup> The Commission understands that the phrase "to solicit your contribution," in the text of the message, refers to contributions that may be made by individuals within the restricted class of the corporate members of ACB, rather than prohibited contributions by those corporations. *See* 11 CFR 114.8(b). The Commission suggests you revise your text to read: "to solicit at your organization."

You assert that this type of activity would not trigger the disclaimer requirement of 2 U.S.C. §441d as the “solicitation would not request specific contributions for the purpose of electing or defeating any particular candidate.” You also assert that your proposal would “not qualify as an in-kind contribution as again, no particular candidate would be the focus of the solicitation and no hyperlinks to candidate-specific sites would be included.”

You further state your view that this “solicitation” would differ from Advisory Opinion 1995-9 in that no contributions would be received as a result of the solicitation. Because of this, you believe that the “screening procedures described in AO 1995-9 and 1999-9 would not be required.” Rather, a member of ACB with access to the "members-only," passworded portion of the website would be required to select the COMPAC area and download the solicitation consent form for execution and return via the U.S. mail or facsimile transmission.

In addition, you explain that COMPAC could receive “improper” contributions or inquiries in three ways: telephone inquiries, e-mail, and through the U.S. mail. It is COMPAC's policy and practice to inform individuals of the need to execute a consent-to-solicit form in advance of any contribution. This, you state, has been COMPAC's practice and policy, and it will continue to be COMPAC's policy and practice. Checks received from “improper sources” will be returned with an explanation including the need to execute an authorization/consent-to-solicit form. You explain that such a check will not be deposited, nor will it be held until the consent form is received. The check will be returned to the sender.

In the alternative, or as an adjunct to the above activity, COMPAC proposes to place an informational notice on the ACB website accessible to the general, web-browsing public that would direct COMPAC inquiries to you. This notice would read as follows:

If you are a member of ACB and would like more information about COMPAC, ACB's political action committee, please contact:

Matthew Smyth, Director  
America's Community Bankers  
telephone: (202) 857-5578, fax: (202) 296-8716  
e-mail: [msmyth@acbankers.org](mailto:msmyth@acbankers.org)

As with your original proposal, you believe that as no active solicitation on behalf of any particular candidate and no contributions are solicited by the informational listing, the quoted language should not trigger the Act's disclosure or other restrictions.

## ***ACT AND COMMISSION REGULATIONS***

In an exception to the general prohibition on corporate contributions, the Act and Commission regulations provide that a corporation, including an incorporated trade association, may use general treasury funds for the establishment, administration, and solicitation of contributions to its separate segregated fund (“SSF”). 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii) and 114.5(b). An organization such as an incorporated trade association, which is not itself a political committee, but which directly or indirectly establishes, administers, or financially supports a political committee is a “connected organization” of that committee. 2 U.S.C. §431(7); 11 CFR 100.6(a).

The connected organization and its SSF are subject to restrictions as to the personnel who may be solicited for contributions to the SSF. 2 U.S.C. §441b(b)(4)(A), (C), and (D); 11 CFR 114.5(g)(1), 114.7(a), and 114.8(c). Specifically, an incorporated trade association and its SSF may solicit the association’s executive and administrative personnel, and the families of such personnel. They may also solicit the stockholders and executive and administrative personnel, and the families of such stockholders and personnel, of the member corporations that separately and specifically approve the solicitations and that have not approved a solicitation by any other trade association for the same calendar year. Moreover, they may solicit members of the association that are not incorporated, without any need to seek a prior approval. 11 CFR 114.7(a), 114.7(c), and 114.8(c).

The requirements for separate and specific approval are described in 11 CFR 114.8(d) and (e). A trade association must make a written request to the member corporation for permission to solicit the member’s restricted class. (The request may be sent to the corporate representative with whom the association normally conducts its activities.) This request for approval must inform the member corporation that: (1) corporate approval is necessary before the trade association or its SSF may conduct a solicitation; and (2) the corporation may not approve solicitations by another trade association for the same calendar year. *Id.*<sup>4</sup>

Before a trade association may solicit the restricted class of any corporate member, the association must obtain written authorization from the member corporation. The member must designate the calendar year for which the solicitations are authorized; the authorization automatically expires on December 31 of the designated year. There is no limit on the number of companies from which a trade association can obtain solicitation approvals. In a particular calendar year, however, a corporation may authorize only one trade association to solicit its restricted class. 11 CFR 114.8(d).

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<sup>4</sup> The trade association may enclose a copy of proposed solicitation materials in its request for approval. Moreover, the trade association may note that it intends to limit the scope of the solicitation (e.g., to just executive and administrative personnel). 11 CFR 114.8(d)(3) and (d)(5).

A member corporation may grant its approval for several years in advance; however, the company must provide the trade association with a separate approval for each year. For example, a trade association could ask a member corporation to approve solicitations for five consecutive years. The corporation would have to submit a signed statement for each year approved; the five statements and signatures could appear on one form or on five separate forms. 11 CFR 114.8(c)(2), 114.8(d)(1) and (4); Advisory Opinion 1984-61.

### ***APPLICATION TO PROPOSAL***

Under the Act and Commission regulations a distinction can be drawn between a solicitation for contributions to a PAC and a request for corporate approval of a solicitation.<sup>5</sup> The draft language of your first proposal would be only informational and does not go beyond asking for the required approval before ACB or COMPAC may solicit contributions from the restricted personnel group of ACB's corporate members. See Advisory Opinions 1980-65 and 1981-41. Your second alternative, which is not a request for approval to solicit contributions, likewise would not be a solicitation since it also is purely informational and contains no language soliciting a contribution. The Commission also notes your statement that contribution checks received from what you characterize as "improper sources" will not be deposited and will be returned. (The Commission understands that your reference to "improper sources" includes individuals who may not be solicited for COMPAC contributions until the related corporation member of ACB has given the requisite approval described above.)

The Commission has recently examined whether a corporation may include on its website certain informational matters about its SSF that did not solicit or encourage contributions. The Commission there concluded that placing such information on the corporation's web page was permissible under the Act and Commission regulations. See Advisory Opinion 2000-07. Similarly, the Commission concludes here that placing a request for permission to solicit its corporate members on ACB's web page would also be permissible, if the request did not otherwise constitute a PAC solicitation.<sup>6</sup> It also follows that COMPAC would not be required to place any §441d disclaimer notice on the web page; use of the web page for this purpose would also not be a contribution to COMPAC or to any candidate.

The Commission notes that the solicitation authorization form used with the first proposed message on the ACB website includes all the elements required by section 114.8, including a separate signature line for each separate year that the PAC seeks permission to solicit the restricted class of the corporate member. However, a slight

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<sup>5</sup> In Advisory Opinions 1980-65 and 1981-41, the Commission when examining proposed requests for corporate approval of SSF solicitations noted that as long as the language of the request was specific enough, the request for approval would not thereby become a solicitation for contributions.

<sup>6</sup> In Advisory Opinion 1980-65, the request for prior solicitation approval was placed in the trade association's magazine which was distributed to 7,000 readers, including individuals who were not members of the association. The Commission concluded that publishing the request for approval in the trade association magazine was permissible.

modification of this form is necessary before it can be utilized. The form asks that the reader provide the names of “executive, administrative personnel and directors employed by my institution.” The Commission notes that directors are not automatically considered members of a corporation’s executive and administrative class. *See* 11 CFR 114.5(g)(1), 114.1(c)(1)--(c)(3). In past opinions, the Commission has determined that a director must be paid a salary or stipend in order to be solicited (assuming the director is not otherwise solicitable as a stockholder or as an executive employee of the corporation). *See* Advisory Opinions 1992-9 and 1985-35. Therefore, with the above modification, either version of your web page would be permissible under the Act and Commission regulations.<sup>7</sup>

This response constitutes an advisory opinion concerning the 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)

Darryl R. Wold  
Chairman

Enclosures (AOs 2000-07, 1992-9, 1985-35, 1984-61, 1981-41 and 1980-65)

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<sup>7</sup> Your request indicates that COMPAC apparently asks for permission to solicit from each individual contributor, as well as from its corporate members, before it accepts a contribution from the individual contributor. The Commission notes that this is not required by the Act or Commission regulations. Once COMPAC receives permission to solicit the restricted classes of its corporate members, it does not need to secure the permission of each individual within the restricted classes before it can solicit those persons. *See* 11 CFR 114.8 (c), (d) and (e).