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July 14, 2005

Federal Election Commission  
Office of General Counsel  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 2005-14

**Re: Request for Advisory Opinion  
Association of Kentucky Fried Chicken Franchisees, Inc., Political Action  
Committee FEC No. C00412098**

Dear Sir/Madam:

This firm is legal counsel to the Association of Kentucky Fried Chicken Franchisees, Inc., Political Action Committee ("AKFCF PAC"), a separate segregated fund.

AKFCF PAC's connected organization is the Association of Kentucky Fried Chicken Franchisees, Inc. ("AKFCF") a national trade association. AKFCF is a Georgia non-profit corporation organized on a non-stock, non-certificated membership basis. Its members are autonomous, regional, trade associations the members of which are franchisees of KFC Corporation. AKFCF is funded solely by its own activities and by dues collected on an irregular basis from its Regional members. Under its Bylaws, the AKFCF Board of Directors consists of the President, First Vice President and Immediate Past President of each of AKFCF's Regional members.

Pursuant to 11 CFR 112.1(b), we seek an Advisory Opinion on the question of whether the AKFCF PAC, as a trade association federation, can solicit PAC contributions from the individuals who own the KFC franchisees that are the members of AKFCF's Regional members.

Upon review of the Federal Election Campaign Act of 1971, as amended (the "Act"), FEC regulations and Advisory Opinions, we believe that under the Act AKFCF is a trade federation and its Regional members are affiliates whose individual members (or the individuals who own member franchisees that are incorporated entities) can be solicited by the AKFCF PAC pursuant to 11 CFR 100.5(g)(4). However, given the very fact-specific nature of the question the AKFCF PAC seeks an Advisory Opinion confirming that the proposed solicitation complies with the Act. The AKFCF PAC will not solicit voluntary contributions from individual franchisees (meaning the franchise owners, executive and administrative personnel and families pursuant to the trade federation solicitation rules) until receipt of this Advisory Opinion confirming that such solicitations meet with the solicitation provisions of the Act for trade federation affiliates. For

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case of reference, the remainder of this letter refers to the "franchisees" who are the members of the Regional associations that are the members of AKFCF; in cases where the franchisee is not a natural person, the reference is not to an incorporated entity that may own the KFC franchise but to the natural persons who own that franchisee.

**QUESTION PRESENTED**

AKFCF requests confirmation that, under the Act's trade association affiliation rules, the AKFCF PAC may solicit the franchisees even though the franchisees are members of the Regional AKFCF members and not directly members of AKFCF.

**FACTS**

1. The relationship between AKFCF and its Regional members and between the Regions and the franchisees.

AKFCF is a Georgia non-profit corporation, operated as a non-stock, non-certificated, membership, corporation. AKFCF is composed exclusively of the seven U.S. Regional associations plus three international Regions of Caribla (Caribbean and Latin America), Canada, and Mexico. Each Regional association is autonomous and incorporated separately from AKFCF. The autonomous Regions are themselves separately incorporated as non-profit membership corporations, under various state laws in the cases of the seven U.S. Regions, and their members in turn are the KFC franchisees, who are all either proprietors or closely-held corporations.<sup>1</sup> AKFCF's web site is at <http://www.akfcf.com/>.

AKFCF was formed in 1975 to coordinate at a national level the activities of Regional associations of KFC franchisees that were then being formed. Each Region has its own Bylaws, its own Board of Directors, and tradition of participatory democracy.

Each Regional association has representation on the AKFCF board of directors: namely, the Region's President, First Vice President, and Immediate Past President. The Board of Directors of AKFCF has an Executive Committee consisting of the AKFCF President, First and Second Vice Presidents, Immediate Past President, Secretary and Treasurer. Officers of AKFCF must be either a director of AKFCF or a past or present officer of a Regional association. Membership in a Regional association automatically entitles a KFC franchisee to the full benefits of membership in AKFCF. AKFCF has no members other than the Regions. Franchisees are members of their Region; franchisees are not directly members of AKFCF, except to the indirect extent that their Regions are members of AKFCF.

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<sup>1</sup> Members of the non-U.S. Regions are not solicited and the non-U.S. Region officers are not on the AKFCF PAC Board.

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AKFCF was created as and functions as an umbrella coordinating body for the Regions. Through the years, AKFCF has worked with KFC to produce an acceptable U.S. franchise contract and was integral to the formation of the KFC National Purchasing Cooperative which greatly improved distribution and competition in the system, benefiting all franchisees. The AKFCF newsletter, the *AKFCF Quarterly*, is one of the leading trade association publications in its field and a communication instrument of the franchisees. Also, AKFCF has managed and produced successive annual KFC franchisee conventions for its members, with annual attendance now surpassing 2,500 people.

**2. The Establishment of the AKFCF PAC:**

In 2005, the AKFCF Board and its Governmental Affairs Committee determined that it would be in the interest of a U.S. franchisees to establish a federal PAC in order to support conditions that favor federal legislation favorable to franchisees. The AKFCF PAC was formed by the AKFCF Board as an unincorporated association and registered with the FEC on June 3, 2005 and assigned FEC No. C0041298. As set forth in the proposed AKFCF Solicitation Policies, the PAC intends to directly solicit as its restricted class, the individual franchisee members of the AKFCF domestic Regions for voluntary contributions to the AKFCF PAC under the terms and conditions allowed by the Act's trade federation association rules. All solicitation requirements of 11 CFR § 114.8 regarding member corporation exclusive approval, duration of approval and affiliation will be adhered to.

No AKFCF Region has a federal PAC. Neither AKFCF nor (to AKFCF's knowledge) its Regions has any State PACs.

**ANALYSIS**

**1. Previous Advisory Opinions:**

We have consulted with the FEC Information Specialists on this and other questions related to the AKFCF PAC. The FEC Specialists have directed our attention to the following advisory opinion dealing with trade association affiliation and solicitation of members:

AO 2002-11  
AO 2000-15  
AO 2000-4  
AO 1995-12  
AO 1994-19  
AO 1977-44

In the above advisory opinions, the Commission has addressed issues pertaining to federations of trade associations. In these AOs, the federations are national associations with component State or Regional organizations that are officially recognized as members through the

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interconnectedness of the national association with each of the State associations. This has entailed such features as a significant portion of the national association's board of directors consisting of representatives of the State associations (see FEC Adv. Ops. 1998-19, 1995-17, 1991-24, and 1977-44); membership in the local or State entity as a necessity for membership in the national association, or where such State or local membership automatically provides membership in the national association (see FEC Adv. Ops. 1998-19, 1995-17, 1994-19); dues for the higher level of the organization that are collected by the lower level (see FEC Adv. Ops. 1998-19 and 1995-17); or prescription by the national organization of major portions of a State association's by-laws (see FEC Adv. Ops. 1995-17 and 1994-19). When national trade associations have such features, the Commission has used these facts in its analysis of both the federation status of the national association and the question of affiliation of that association with State or local organizations. The factors used in concluding that there is a federation in such situations will very likely lead to a conclusion of affiliation under the Commission regulations.

2. AKFCF is a trade association under the Act:

AKFCF is a trade association. The FEC's regulations define "trade association" as:

[G]enerally 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 C.F.R. § 114.8(a).

AKFCF is a national organization that was organized to further the interests of its members, the several autonomous Regional KFC associations. As can be seen by its mission statement, the AKFCF was formed to "protect, promote and advance the mutual interests of all member franchisees and the Kentucky Fried Chicken system." AKFCF, a non-profit corporation, does not engage in any other business other than advancing the interests of its members.

The Regions fit the Act's definition of a trade association "member" and the individual franchisees are "members" of the Regions since they either: (1) have a meaningful ownership or investment stake in the trade association (the Regions formed AKFCF and the franchisees formed the Regions) or (2) pay dues on a regular basis (franchisees pay dues to belong to their Regions and the Regions are assessed dues [determined on a basis of a defined dollar amount per member] to belong to AKFCF); or (3) have dual participating rights in the governance of the organization (the AKFCF Board is composed of officers of the Regions on an ex officio basis, and the Boards of Directors of the Regions are elected directly by the member franchisees). 11 CFR § 100.8(b)(4)(iv)(B).

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Thus, under the Act's definitions presented above, AKFCF is a trade association consisting of Regional members and the Regions are trade associations consisting of the franchisee members. AKFCF also is a "federation of trade associations" under the Act. Organizations may be classified under both categories, that is, as a trade association consisting of individual members or business entities, and as a federation consisting of state or regional associations made up of those persons or entities. *See, e.g.* FEC Adv. Op. 1994-19 (July 21, 1994).

**3. AKFCF is a trade federation under the Act:**

FEC regulations define a federation of trade associations as "an organization representing trade associations involved in the same or allied line of commerce." 11 C.F.R. § 114.8(g)(1). FEC regulations further explain the federation's role under the Federal Election Campaign Act as follows:

(1) A federation of trade associations is an organization representing trade associations involved in the same or allied line of commerce. Such a federation may, subject to the following limitations, solicit the members of the federation's regional, State or local affiliates or members, provided that all of the political committees established, financed, maintained or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for the purposes of the limitations in Sec. Sec. 110.1 and 110.2. The factors set forth at Sec. 100.5(g)(4) shall be used to determine whether an entity is a regional, State or local affiliate of a federation of trade associations.

(i) The federation and its member associations may engage in a joint solicitation; or

(ii) The member association may delegate its solicitation rights to the federation.

(2) A federation is subject to the provisions of this section when soliciting the stockholders and executive or administrative personnel of the corporate members of its member associations.

11 C.F.R. § 114.8(g)(1) and (2).

The FEC has concluded that a trade association was a trade federation when a sponsoring organization was made up of state component societies that participated as units in the governance of the national body, *see* FEC Adv. Op. 1994-19 (July 21, 1994), and when a supporting organization represents affiliated organizations on a national basis and the affiliates

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nominated the supporting organization's governing body, *see* FEC Adv. Op. 1977-44 (Jan. 11, 1978), and when the governing documents and practices of a national supporting organization and state organizations indicated that the national and state organizations were affiliated. *See* FEC Adv. Op. 1995-12 (June 30, 1995). AKFCF meets each of these tests.

On the other hand, the FEC found that a national trade association was not to be construed as a federation of trade associations comprised of state trade associations organized for the same general purpose, where the organization did not represent the other trade associations, did not recognize the state trade associations as "components" of the organization, the organization and other trade associations did not share a common membership application nor collect dues with consolidated statements, the organization had no control or input in the state trade associations' dues statements or receipts, membership in the organization was independent of membership in the state trade associations, the organization had not provided prototype bylaws or instructions on organization, policies or instructions to the state associations, and there were no overlaps or governance relationships between the organization and state trade associations. *See* FEC Adv. Op. 2002-11 (Oct. 11, 2002) (finding that the Mortgage Bankers Association of America was a "loose federation" and thus its PAC was not affiliated with the Texas Mortgage Bankers Association PAC). These disqualifying factors are not found in the AKFCF's relationship with its Regional members

Under these rules, AKFCF is clearly a trade association federation.

**4. AKFCF may solicit the franchisee members of the Regions under the trade association federation affiliation rules:**

The final step in the analysis of this solicitation question is whether as a trade federation, AKFCF through the AKFCF PAC can directly solicit the Region's individual franchisees (as defined above). Under the Act's affiliation rules:

(1) ... Such a federation may, subject to the following limitations, solicit the members of the federation's regional, State or local affiliates or members, provided that all of the political committees established, financed, maintained or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for the purposes of the [contribution] limitations in 110.1 and 110.2. The factors set forth at 100.5(g)(4) shall be used to determine whether an entity is a regional, State or local affiliate of a federation of trade associations.

- (i) The federation and its member associations may engage in a joint solicitation; or
- (ii) The member association may delegate its solicitation rights to the federation.

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(2) A federation is subject to the provisions of this section when soliciting the stockholders and executive or administrative personnel of the corporate members of its member associations.

11 CFR §114.8(g)(1) and (2). Thus, if AKFCF's Regional members are trade association federation "affiliates" of AKFCF, then AKFCF can directly solicit the Regions' franchisee members.

To determine whether the members are "affiliates", the FBC applies various factors "in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained, or controlled by another committee or sponsoring organization." 11 CFR § 100.5(g)(4)(i). These factors include, but are not limited to:

(A) Whether a sponsoring organization owns controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(B) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(C) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;

(D) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(E) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(F) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee

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which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;

(G) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(H) Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(I) Whether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and

(J) Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.

**11 C.F.R. §100(g)(4)(ii)(A)-(J).**

Applying those factors from the list cited above that are relevant to the AKFCF structure, it is clear that AKFCF's Regions are "affiliates" of AKFCF under the Act and, therefore, the Regions' individual franchisee members can be directly (or jointly) solicited for voluntary contributions. While the § 100.5(g)(4)(i) factors evaluate interconnecting in a "top down" position (from the connected organization to its affiliates) the realities of the relationship of the AKFCF Region to AKFCF show that the fundamental control and funding factors that establish "affiliate" status under the Act exist from a "bottom-up" perspective, i.e. from the Regions to AKFCF. AKFCF is a creature of the Regions, funded by the Regions, and its Board and officers act ex officio in their capacity as officers of their respective Regions.

The interconnections, control and funding that defines the relationship between the Regions and AKFCF clearly show that the Regions have "established, financed, maintained or controlled" AKFCF. 11 CFR § 100.5(g)(4)(i).



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**CONCLUSION**

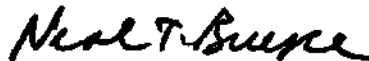
Thus, under the Act's trade federation association rules, we believe that the AKFCF PAC can directly solicit for voluntary contributions the individual franchisee members of its Regional members. But because of the importance and fact-specific nature of the question, we seek an Advisory Opinion. We are willing to supplement this request with any additional materials or information requested.

**ATTACHMENTS**

- Exhibit A:** AKFCF Articles
- Exhibit B:** AKFCF Bylaws
- Exhibit C:** AKFCF Board Resolution establishing AKFCF PAC and appointing Treasurer adopted May 24, 2005
- Exhibit D:** AKFCF PAC Charter and Bylaws (proposed)
- Exhibit E:** AKFCF PAC Solicitation Policy (proposed)

Respectfully submitted,

Briggs and Morgan, P.A.



Andrew C. Selden

Neal T. Bueche

NTB/rb

cc: Charles Weaver, AKFCF  
David Evans, AKFCF PAC Treasurer