



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1981-41

of

COMMISSIONER THOMAS E. HARRIS

The majority opinion allows a trade association PAC to man a booth at a trade convention and distribute, at that booth, a pamphlet containing information about the PAC as well as "a solicitation approval form on which the appropriate party could indicate their approval and any limitation they wish to place on the solicitation." If an appropriate corporate officer signs the solicitation approval form, the majority opinion will allow a solicitation and/or acceptance of a contribution then and there. It is my belief that this opinion makes a mockery of the two step procedure which Congress envisioned when it allowed solicitations by a trade association of the stockholders and executive or administrative personnel of its member corporations who had given prior separate and specific approval for such solicitation.

Section 441b(B)(4)(D) allows a trade association separate segregated fund to solicit contributions from stockholders and executive or administrative personnel of member corporations "to the extent that such solicitation of stockholders and personnel...has been separately and specifically approved by the member corporations involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year." In enacting the Commission's regulations which implement Section 441b the Commission "has interpreted the statute as requiring a two step process: (1) the member corporation must first approve the solicitation; and (2) after the approval has been received the trade association may solicit the persons approved by the member corporation." Explanation and Justification of the Commission's regulations, H. Doc. 94-573, 94th Cong., 2d Sess., p.110.

Since the Act and the Regulations limit the number of trade associations that may solicit personnel of a member corporation, it is important for a corporation to be allowed sufficient time to make a comparative study of the merits of each trade association's request. The majority opinion puts the decision on which trade association the corporation will authorize on the corporate officer with "apparent authority" who happens to attend the trade convention. This opinion ignores the Commission's own justification and explanation of its regulations which takes note of the fact that "corporations (not random officers who may attend a convention) may wish to see the solicitation materials

**a trade association would use to solicit its employees" before it gives its separate and specific approval. Id at 110. This opinion also ignores the fact that the Commission's regulations state that the member corporation must knowingly and specifically approve any solicitation for a trade association. Section 114.8 (d)(1).**

**In passing its regulations concerning trade associations, the Commission's justification and explanation for that regulation noted that the Commission had rejected an option which would have allowed a simultaneous request for approval and solicitation of contributions. Id at 111. In short, the request blurs the distinction between a two step process and a simultaneous approval process.**

**The purported justification for this Advisory Opinion is that this is an amalgam of prior opinions issued by the Commission. However, the Commission cannot ignore its own justification for its regulations which, unlike advisory opinions must pass congressional review. The opinions which are cited in the majority opinion have improperly relaxed the restrictions which the Commission, and Congress, approved in Section 114.8. It is my belief, moreover, that this opinion goes much further than the prior opinions relied on by the majority.**