



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 17, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-41 (*Reconsidered*)

Mr. John Graff, Counsel/Director of Government Relations
International Association of Amusement Parks and Attractions
Suite 330
1025 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Graff:

This responds to your letter of August 26, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to obtaining approvals from member corporations of the International Association of Amusement Parks and Attractions ("IAAPA") for soliciting political contributions.

IAAPA is a trade association with corporate members who operate permanent amusement facilities, as well as concessionaire members, individual management members, and manufacturing members. IAAPA has established a multi-candidate committee, IAAPA Political Action Committee ("the PAC"), which registered with the Commission on August 14, 1981.

Your letter states that the upcoming annual meeting in November 1981 will be attended by the aforementioned members of IAAPA, and, at that time, IAAPA proposes to announce and discuss the formation of the PAC. IAAPA also proposes to maintain a booth in the convention registration area for the purpose of distributing material intended to elicit corporate approvals for solicitation by the PAC of those corporate members' stockholders and executive or administrative personnel.¹ You state that IAAPA's requests for corporate solicitation approvals have been limited to your corporate amusement facility members, and that it is your intention to limit PAC solicitations to that group for the present time. You indicate that, to date, approvals have been obtained from a small minority of the corporate amusement facility members, and that you desire to increase the number of such corporate members approving solicitation during the annual convention and trade show.

¹ See 2 U.S.C. 441b(b)(4)(D)

Your letter indicates that mention of the PAC and a request for corporate approval of PAC solicitations would first be made in an article in the IAAPA news magazine prior to the convention. The article would "discuss the PAC in general terms only, mention the convention booth and invite corporate members to approve of" contribution solicitations by the PAC. You add that the article would include a clip out approval form which would be for the sole purpose of approving PAC solicitations. This form would contain the information with respect to limitations on corporate member approvals and the category of individuals who can be solicited. You ask whether such an article is permissible under the Act and regulations.

Secondly, you propose to make a brief, 5-minute, presentation during the annual IAAPA membership meeting. Attendance at that meeting will consist of all the various types of members including corporate members who have already given approval and those who have not. This presentation would be limited to a discussion of what the PAC is, why it was set up and what the general legal restrictions are on PAC activity including the requirement for prior corporate approval. You note that there would be no request for contributions included in this presentation but there would be an invitation to corporate members to stop by the PAC booth in the registration area, pick up a brochure on the PAC and sign an approval form. You ask whether such a presentation is permissible under the Act and Commission regulations.

Finally, the PAC would set up a booth, manned by a PAC representative, and identified simply by a sign identifying the booth. People stopping at the booth would be given a pamphlet containing a discussion of the PAC and the reasons for its existence as well as the requirements for prior approval; it would also discuss the limitations on the number of approvals that can be given by a corporation and the types of persons who can be solicited. The pamphlet would indicate which corporate officers must authorize the solicitation and would contain a solicitation approval form on which the appropriate party could indicate their approval and any limitation they wish to place on the solicitation.² In addition to distributing these pamphlets, the person in the booth would answer questions in connection with the PAC and its activities. While you state that no solicitation of contributions would be made by the PAC representative operating the booth, you inquire whether, after an approval form is signed, the representative may make such a solicitation and/or accept a contribution which is offered absent any solicitation at all.

Under the Act, a trade association with corporate members may solicit the stockholders, and executive or administrative personnel of those corporate members provided that the corporation separately and specifically approves such solicitation and the member corporation does not approve of any such solicitation by more than one such trade association in any calendar year. 2 U.S.C. 441b(b)(4)(D) and 11 CFR 114.8(d). A trade association which wishes to solicit contributions from stockholders, and executive or administrative personnel of a member corporation must obtain corporate approval prior to any solicitation of those persons. 11 CFR 114.8(d)(3) and see Advisory Opinion 1976-27, copy enclosed; also see page 112 of the Commission's explanation and justification of the cited regulations, H.R. Doc. No. 95-44, 95th Cong., 1st Sess. 112 (1977).

² Your request asks the Commission to assume that this pamphlet would contain all information that is required when a solicitation is made: the solicitee's right "to give or not give and to be free of intimidation or recrimination."

The activities you describe raise the issue of whether they constitute improper solicitations of contributions or whether they are a proper means of obtaining prior corporate member approval for subsequent contribution solicitations of the qualified personnel of the corporate members.

With respect to the IAAPA newsletter article about the PAC, the Commission has previously reviewed a specific newsletter article about a trade association's separate segregated fund. The Commission concluded that it did not constitute a solicitation and therefore could be included in the newsletter. The article included only general factual information concerning the PAC (i.e. number of contributors, number of solicitation approvals provided to the PAC, amount of contributions received and made). In addition, the article did not expressly encourage support of the PAC's activities nor did it provide a reader with information on how to contribute to the PAC. See Advisory Opinion 1979-66, and compare Advisory Opinion 1979-13, copies enclosed. Moreover, the Commission has also permitted a newsletter to include a request for corporate approval of contribution solicitations so long as the request for approval was specific and otherwise sufficient under 11 CFR 114.8. See Advisory Opinion 1980-65, copy enclosed. In that opinion (AO 1980-65), the Commission reasoned that a request for corporate approval of a solicitation was different than a solicitation for contributions to a PAC, and that so long as the language of the request was specific enough, the request for approval would not thereby become a solicitation for contributions. The Commission concludes that if the article that IAAPA includes in its newsletter is materially indistinguishable from the article and solicitation approval form considered respectively in Advisory Opinions 1979-66 and 1980-65, then the article and approval form would not be viewed as solicitations for contributions. Thus, if it is not a solicitation, the article may be included in the newsletter.

The described 5 minute presentation concerning the PAC may be made at the convention so long as it does not constitute a solicitation for contributions to the PAC. This means that the presentation would be permissible under the Act provided it does not encourage support of PAC activities (see Advisory Opinion 1979-13), nor provide the listener with information on how to contribute to the PAC. In addition, the presentation may not invite the listener to visit the booth to obtain contribution solicitation materials. In this connection, the presentation may not include an invitation to visit the booth to pick up the PAC brochure if that brochure is a solicitation for contributions (see footnotes 2 and 3). The presentation may, however, invite officers of corporate members of IAAPA to approve PAC solicitations and may invite them to the booth for the purpose of giving that approval. The preceding discussion regarding the article in the newsletter is also relevant to the question of whether the PAC presentation would be considered a solicitation for contributions.

Finally, with respect to setting up a PAC booth at the convention, the Commission has permitted such booths to be used to obtain corporate member approval for contribution solicitations, so long as no solicitation for contributions is made to individuals who are not solicitable under the Act and Commission regulations. See Advisory Opinions 1978-83, and 1978-17, copies enclosed. Thus, no information (including a brochure) distributed at the booth

may solicit contributions to the PAC from nonsolicitable individuals.³ If the contents of the PAC brochure is limited in the same manner as discussed above with regard to the newsletter article, then it would not be considered as a solicitation. If it is not a solicitation, the brochure could be distributed at the booth to persons who are not solicitable for contributions to the PAC. If the brochure is a solicitation for contributions, it could only be distributed to those individuals who are solicitable by the PAC and IAAPA: individual or noncorporate members of IAAPA, executive or administrative employees or stockholders of corporate members of IAAPA who have given prior approval for contribution solicitations, and executive or administrative employees of IAAPA. 11 CFR 114.8; also see Advisory Opinions 1978-83 and 1978-17.

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 yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures (AOs 1976-27, 1980-65, 1979-66, 1979-13, 1978-83, 1978-17)

* This opinion results from the Commission's reconsideration of a prior opinion issued under this number on October 20, 1981. By letter dated October 26, 1981, Mr. Graff requested partial reconsideration, and on November 12, 1981, the Commission agreed to reconsider. This opinion accordingly supercedes the original version issued on October 20.

³ Since the Commission is asked to assume (footnote 2) that the Brochure would have all information required on a contribution solicitation, 11 CFR 114.5(a)(3)-(5); and since an actual brochure was not provided, the Commission can only conclude that the brochure may be a solicitation.