



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 18, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-58

Mr. Edwin W. Miller
P.O.B. Publishing Company
P.O. Box 810
Wayne, Michigan 48184

Dear Mr. Miller:

This responds to your letters of November 4, 1982 and January 12, 1983, with enclosures, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the publication in P.O.B. magazine of a solicitation for contributions to the political action committee of the American Congress on Surveying and Mapping/National Society of Professional Surveyors ("ACSM PAC").

Your letters, including the enclosures with the January 12 letter, set forth the following relevant facts. P.O.B. is published every two months by P.O.B. Publishing Company ("PubCo") which is a profit corporation organized under Michigan law; it is also a wholly owned subsidiary of Technical Advisors, Inc. ("TAI"). PubCo was originally a business name for TAI, but was organized as a separate corporation in 1981. Advertising in P.O.B. accounted for 86.5% of PubCo's income in 1981-82, and P.O.B. is the only publication of PubCo. In addition, TAI¹ contributed the amount of \$27,535 to PubCo's income in 1981-82. P.O.B. is distributed free of charge to persons in the United States² who are "qualified members of the surveying and mapping community." Your request explains that criteria have not been set up to determine who qualifies for a free subscription. Anyone who fills out and returns a card (inserted in each issue of P.O.B.) is placed on your mailing list. This card contains eight requests for data, with numerous subcategories, that relate to the type of position and employment that the respondent holds in the surveying and mapping fields. P.O.B.'s original mailing list was compiled from

¹ TAI provides computing, drafting, and time-sharing services to surveyors, civil engineers and land developers. It is a stock corporation organized under Michigan law.

² Individuals located in foreign countries must subscribe to P.O.B. at rates ranging from \$18 to \$34 per year. There are presently 50 such paying subscribers. Total circulation for the October-November 1982 issue was 56,239 and 57,011 for the December-January 1983 issue.

published state lists of Registered Land Surveyors and from lists of registrants at annual meetings of state surveyors societies.

With respect to the involvement of P.O.B., PubCo, and TAI in activities of the American Congress on Surveying and Mapping ("ACSM"), your request presents various facts and comments. TAI, the parent corporation of PubCo, is one of approximately 95 firms that are sustaining members of ACSM. ACSM membership includes, *inter alia*, three member organizations: the National Society of Professional Surveyors ("NSPS"), the American Association for Geodetic Surveying, and the American Cartographic Association. The connected organization of ACSM/PAC is identified on FEC Form 1 as the American Congress on Surveying and Mapping/National Society of Professional Surveyors. ACSM is a nonprofit corporation and is incorporated under the laws of the District of Columbia. You estimate that less than 20% of those who receive P.O.B. are members of ACSM/NSPS.³ P.O.B., you state, is "not affiliated or associated with ACSM/NSPS" and is the "major, independent publication in the surveying and mapping community...". You also explain that the proposed contribution solicitation for ACSM/PAC would be published in P.O.B. "independent of and without the authority of the PAC."

Notwithstanding these assertions, the facts presented in your request demonstrate that P.O.B. is, in essence, a trade publication and promotional vehicle for ACSM and its member organizations, primarily NSPS. The facts that undergird this conclusion are evident from the two most recent issues of P.O.B. and from your letter of January 12, 1983. You state that ACSM/NSPS is the "principal source of news for P.O.B." To carry out this informing function, P.O.B. maintains a "close working relationship with ACSM and NSPS officers and staff." Both recent issues of P.O.B. include a calendar of future meetings sponsored by state and regional components of ACSM. The October-November issue describes an awards program sponsored by NSPS and sets forth the nomination procedure for the awards, pages 32 and 34. The December-January issue includes a major feature covering eight pages wherein various candidates for national and regional offices in ACSM and NSPS are pictured and respond to questions posed by P.O.B. The December issue also includes a promotional notice advocating membership in ACSM, page 39-E, as well as an ACSM membership application with instructions, pages 55 and 56. Also included, at page 43, is an informational report on the contributions made by ACSM/PAC to Federal candidates in the 1982 elections.

Accordingly, given the specialized nature of P.O.B. both as to its advertising and editorial content and its targeted readership, and also in view of its avowed purpose to be the principal source of information concerning ACSM affairs and to promote ACSM membership by annually circulating membership applications, the Commission concludes that PubCo and P.O.B. are subject to the same limitations on contribution solicitations as apply to ACSM/NSPS itself and to ACSM/NSPS PAC. See generally 2 U.S.C. 441b(b)(4), 11 CFR 114.7 and 114.8.

³ The bylaws of both ACSM and NSPS require concurrent membership in both organizations, and dues for both are billed on a unified basis; that is, dues statements are issued by ACSM and include dues amounts payable to ACSM and to the relevant member organizations (e.g. NSPS) of ACSM.

Under the Act, a corporate membership organization such as ACSM may solicit voluntary contributions from its individual members to a separate segregated fund that will be used for political purposes. 2 U.S.C. S6 441b(b)(4)(C), 11 CFR 114.7(a). While the Commission has permitted a corporate membership organization (including a trade association) to publish a solicitation for contributions in the organization's magazine, such publication was permitted only when the distribution beyond the permissible class of persons that could be lawfully solicited for political contributions was "isolated, incidental, and inadvertent." See, Advisory Opinion 1978-97, and compare Advisory Opinions 1979-50, and 1980-139, copies enclosed. Specifically, in Advisory Opinion 1980-139, the Commission concluded that where a solicitation was to appear in a magazine which had a circulation outside of the organization's membership of 20%, then such a solicitation was prohibited by the Act even though the magazine and the organization proposed to undertake certain precautionary measures to avoid the acceptance of contributions from individuals who were not members of the organization. In this case you estimate that over 80% of those who receive P.O.B. are not members of ACSM/NSPS.⁴ Thus, P.O.B. may not be used as a means of soliciting contributions for ACSM PAC.

In concluding that P.O.B. may not publish the solicitation for ACSM/PAC, the Commission is of the opinion that the relationship between PubCo and ASCM/NSPS is significant. Under these circumstances, as discussed above, the Commission views P.O.B. magazine as the functional equivalent of an ACSM/NSPS "in-house" magazine. As such PubCo and P.O.B. would be subject to the restrictions imposed by 2 U.S.C. 441b(b)(4) with respect to whom ACSM or ACSM PAC may solicit for political contributions to ACSM/PAC.

The situation in this opinion is distinguishable from the facts presented in Advisory Opinion 1980-109, copy enclosed. In that opinion, an independent publishing company, not having any coordinating functions or cooperative relationship with any membership organization or trade association which had solicitation restrictions imposed upon it under 2 U.S.C. 441b, sought permission to publish a solicitation for contributions on behalf of a Federal candidate. On the facts there presented, the Commission concluded that the news story exception to the definition of expenditure permitted the printing of a contribution solicitation for the candidate in the periodical without a corporate contribution resulting therefrom. See, Advisory Opinion 1980-109, and 2 U.S.C. 431(9)(B)(i); see also Advisory Opinion 1980-90, copy enclosed.

⁴ While some recipients of P.O.B. may be members of ACSM through member organizations other than NSPS, it still appears that approximately 78% of the circulation of P.O.B. goes outside the membership of ACSM. P.O.B. has a current circulation of 57,000 and ACSM has a membership of 12,700 according to the 1983 edition of the Encyclopedia of Associations.

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)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AOs 1980-139, 1980-109, 1980-90, 1979-50 and 1978-97)