



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 10, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-36

Gordon K. Gayer, Esq.  
O'Connor & Hannan  
1919 Pennsylvania Ave., N.W.  
Suite 800  
Washington, D.C. 20006

Dear Mr. Gayer:

This responds to your letter of July 13, 1984, requesting an advisory opinion on behalf of American Health Capital, Inc., concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of personnel of a joint venture and a related corporation and its businesses.

You state that American Health Capital, the parent corporation, is a for-profit corporation, headquartered in New York City, with a separate segregated fund, American Health Capital PAC ("AHC/PAC"). It also has a wholly-owned subsidiary known as AHC Ventures, Inc., a Texas corporation. AHC Ventures has entered into a Texas-based joint venture partnership with VHA Ventures, Inc., itself a wholly-owned subsidiary of its parent, Voluntary Hospitals of America, Inc., an Illinois corporation. This joint venture partnership is called VHA Health Ventures ("the partnership"). Other than this partnership, no other apparent organizational relationship exists between American Health Capital and Voluntary Hospitals of America, the two parent corporations. The joint venture partnership owns 100 percent of the Class A stock of Voluntary Health Enterprises, Inc., a Delaware corporation. Class A stock outvotes Class B stock by a ratio of 20 to 1. In turn, the Delaware corporation controls several other businesses.

VHA Ventures, the subsidiary of the Illinois corporation, owns 60 percent of the equity in the partnership and appoints five persons to a nine-member governing body called the Board of Directors. AHC Ventures, a subsidiary of the requestor, owns 40 percent of the equity in the partnership and appoints four persons to the Board of Directors. Nevertheless, AHC Ventures is the managing partner. Thus, it manages the day-to-day affairs of the partnership and has authority to bind the partnership, act in its name, and execute contracts on its behalf. As managing partner, AHC Ventures does, however, report to the Board of Directors. It also may not take certain major actions without the consent of the Board, such as institute litigation,

dispose of the partnership's good will, or allow its aggregate indebtedness to exceed \$250,000. AHC Ventures also votes the partnership's stock in the Delaware corporation only as directed by the Board.

You ask whether American Health Capital may solicit contributions to AHC/PAC from the executive and administrative personnel and their families of (1) VHA Health Ventures, the partnership, and; (2) Voluntary Health Enterprises and its controlled businesses.<sup>1</sup>

The Act prohibits a corporation from making contributions or expenditures in connection with a Federal election, but it excludes from the definition of "contribution" or "expenditure" the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by the corporation. 2 U.S.C. 441b(a) and (b)(2)(C); see also, 11 CFR 114.1(a) and (b). The Act also makes it unlawful for a corporation or its separate segregated fund to solicit contributions to the fund "from any person other than its stockholders and their families and its executive or administrative personnel and their families..." 2 U.S.C. 441b(b)(4)(A)(i). The Act and Commission regulations also define "executive or administrative personnel." See 2 U.S.C. 441b(b)(7); 11 CFR 114.1(c). Commission regulations include within a corporation's solicitable class "the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families." 11 CFR 114.5(g)(1).

In deciding whether an entity is affiliated with a corporation for solicitation purposes, the Commission has applied the criteria for determining whether the corporation's and the other entity's separate segregated funds (presuming each entity had one)<sup>2</sup> would be affiliated for contribution limitation purposes. See Advisory Opinions 1983-48, 1987-18, 1981-54, 1980-18, 1979-77, and 1979-56. Commission regulations include three relevant factors that are indicia in determining whether such affiliation exists: (1) ownership of a controlling interest in voting shares or securities; (2) provisions of by-laws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity; and (3) the authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity.<sup>3</sup> 11 CFR 100.5(g)(2)(ii) and 110.3(a)(1)(iii).

The first step is to determine whether the partnership, VHA Health Ventures, is affiliated with American Health Capital. As your request acknowledges, any relationship of these two entities derives from the interest and authority of American Health Capital's wholly-owned subsidiary, AHC Ventures, in the partnership. As such, any interest or authority possessed by AHC Ventures may be imputed to American Health Capital in resolving this affiliation question.

---

<sup>1</sup> The Commission notes that your request does not include any question regarding your solicitation of personnel of Voluntary Hospitals of America and VHA Ventures. The request also does not raise the question whether any of the personnel that American Health Capital seeks to solicit may be solicitable by Voluntary Hospitals of America or VHA Ventures.

<sup>2</sup> The Commission does not suggest or imply by this analysis any change in its position that the Act does not authorize the establishment of a separate segregated fund by a partnership. Nor does the fact of the joint venture's partnership status by itself mean that affiliation is or is not present. See Advisory Opinion 1981-54.

<sup>3</sup> Two other factors set out in the regulations are not implicated by this request.

AHC Ventures owns a 40 percent equity interest in the partnership while the other partner owns a 60 percent equity interest. Thus, AHC Ventures does not own a controlling interest in the partnership. As you also acknowledge, the governing body of the partnership is its Board of Directors, a nine-member body. AHC Ventures appoints four members of this governing board while its partner appoints five members. Thus, AHC Ventures also lacks authority to direct the partnership.

AHC Ventures, however, is the managing partner in the partnership. It manages the day-to-day affairs of the partnership and may take certain actions that bind the partnership. Nevertheless, it can take certain major actions only with the consent of the governing board and can vote the partnership's stock in Voluntary Health Enterprises only as directed by the Board. More importantly, you state that, as managing partner, AHC Ventures "reports to the partnership's Board of Directors." These limitations significantly circumscribe AHC Ventures' powers as managing partner so that AHC Ventures lacks sufficient authority to influence the decisions of the officers of the partnership.

Thus, considering each of the above three factors, the Commission concludes that VHA Health Ventures, the partnership, is not an affiliate of American Health Capital. Therefore, American Health Capital may not solicit the executive and administrative personnel and their families of VHA Health Ventures.

As noted above, VHA Health Ventures controls Voluntary Health Enterprises, Inc., through its ownership of 100 percent of the corporation's Class A stock. AHC Ventures, as managing partner, votes this stock. But it votes the stock only as directed by the Board of Directors, to which it appoints only four of nine members. The stock is also an asset of the partnership in which AHC Ventures has a minority 40 percent equity interest. Thus, AHC Ventures lacks a controlling interest in, and authority to direct, Voluntary Health Enterprises and its controlled businesses. Therefore, American Health Capital may not solicit the executive or administrative personnel and their families of Voluntary Health Enterprises and its controlled businesses.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Lee Ann Elliott  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1983-48, 1982-18, 1981-54, 1980-18, 1979-77, and 1979-56).