



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 13, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-55

Warren L. Blackmon, Secretary
Amerifirst Good Government Committee
One S.E. Third Ave.
Miami, FL 33131

Dear Mr. Blackmon:

This responds to your letter of September 25, 1984, in which you request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed solicitation of contributions from attorneys who represent your connected organization, Amerifirst Federal Savings and Loan Association.

You indicate that Amerifirst Federal Savings and Loan Association ("Amerifirst") is a federally chartered mutual savings and loan association. The amended Statement of Organization for Amerifirst Good Government Committee ("the Committee"), filed with the Commission on April 14, 1980, describes Amerifirst as a "corporation". You further indicate that two law firms, Blackwell, Walker, Gray, Powers, Flick and Hoehl, and Anderson and Rush, represent Amerifirst in legal matters incident to the savings and loan business. You state, however, that these firms also represent other clients in addition to Amerifirst, that none of the members of either firm are full time employees of Amerifirst, and that only W.H. Walker, Jr. (who is simultaneously Chairman of the Board of Amerifirst and a partner in the Blackwell firm) is compensated directly by Amerifirst for his service as Chairman. You note that Commission regulations provide that executive and administrative personnel who may permissibly be solicited for contributions include lawyers and others who follow the recognized professions. 11 CFR 114.1(c)(1)(ii). You ask whether it is permissible for the Committee to solicit contributions from the members of the two law firms.

The Act, as amended, provides that it is unlawful for a corporation organized by authority of any law of Congress to make a contribution or expenditure in connection with any election. 2 U.S.C. 441b(a). This provision applies in your case because Amerifirst is organized pursuant to a Federal statute, 12 U.S.C. 1464(a), and became a corporation when it received a charter from the Federal Home Loan Bank Board. See Advisory Opinion 1981-33.

The Act creates an exception to this general prohibition in that a corporation may establish, administer, and solicit contributions to a separate segregated fund (such as the Committee) to be utilized for political purposes. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). The right to solicit contributions to such a fund is restricted to the prescribed group of individuals. A corporation or its separate segregated fund may solicit contributions from stockholders of the corporation and their families, and from executive and administrative personnel and their families. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1).¹ The Act and regulations define executive and administrative personnel as individuals who are 1) employed by the corporation, 2) paid a salary rather than on an hourly basis, and 3) have policy-making, managerial, professional, or supervisory responsibilities. 2 U.S.C. 441b(b)(7); 11 CFR 114.1(c).

In your request, you state that the lawyers you propose to solicit are employed by their respective law firms, and not by Amerifirst. You specifically state that no members of the firm are compensated directly by the corporation except for the Chairman of the Board. You describe the compensation paid to the firms as "fees" rather than salary. Therefore, none of the members of the law firms, except for the Chairman of the Board, can be employees of Amerifirst. Accordingly, the Committee may not solicit contributions from these individuals.² See Advisory Opinion 1977-18.

You refer to language in the regulations stating that lawyers and other individuals following the professions may be included in the solicitable class. 11 CFR 114.1(c)(1)(ii). This is true only to the extent that such individuals are employees of the corporation. For this section to apply, the professional personnel must first meet the three requirements of 114.1(c) discussed above. The section you cite merely elaborates on 114.1(c) and does not create a separate category of individuals who are eligible for solicitation.

Based on the information you have provided, the only individual who may possibly be eligible for solicitation is the Chairman of the Board, J.H. Walker, Jr., as you have indicated that he is compensated directly by Amerifirst. While it is clear that he is employed by Amerifirst and has policy-making, managerial, or supervisory responsibilities, it is not clear from your request whether he is compensated by salary, or on an hourly basis, or in some other form. For the Chairman of the Board to be solicitable, he must be compensated on a salary basis. 2 U.S.C. 441b(b)(7); 11 CFR 114.1(c). The Commission has previously stated that salary in this context means "fixed compensation periodically paid to a person for regular work or services." Advisory Opinion 1977-18.

¹ The Act also provides that a corporation or its separate segregated fund may make two written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or other employees of the corporation. 2 U.S.C. 441b(b)(4)(B). Under this provision, the solicitable class is expanded to include all employees of the corporation, and is not limited to executive or administrative employees.

² Commission regulations provide that a separate segregated fund may accept contributions from individuals who are otherwise permitted by law to make contributions. 11 CFR 114.5(j). Advisory Opinion 1980-1. The Commission has held that a separate segregated fund may accept an unsolicited contribution from a non-solicitable person assuming it is otherwise lawful. Advisory Opinion 1983-38. However, the Commission has also held that where a separate segregated fund informs an individual whom it may not solicit that the individual has the right to make unsolicited contributions to the fund, the act of informing that individual that the fund may accept his contribution is itself a solicitation. Advisory Opinion 1983-38; 11 CFR 114.5(j); see Explanation and Justification of Part 114, 1 Fed. Elec. Camp. Fin. Guide (CCH) Para. 923, p. 1604.

You have not submitted any information indicating that the lawyers you wish to solicit are also stockholders in the corporation or members of the savings and loan association by virtue of having accounts with Amerifirst. Accordingly, the Commission does not express an opinion as to whether such individuals may be solicited as stockholders or as members of the association. See 11 CFR 114.1(e), 114.1(h); also compare the model charter provisions for Federal mutual savings and loan associations at 12 CFR 544.1.

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)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AO 1977-18, 1980-1, 1981-33 and 1983-38)