



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 15, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-11

Richard M. Schmidt
Cohn and Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036-1573

Dear Mr. Schmidt:

This responds to your letters of October 15, 1987 and February 24, 1988, requesting an advisory opinion on behalf of the National Association of Trade and Technical Schools Political Action Committee ("NATTS PAC"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of teachers employed by member schools.

You state that the National Association of Trade and Technical Schools ("NATTS") is an incorporated membership organization of private career schools engaged in vocational and technical training with over 1,250 member schools in the United States. The separate segregated fund of NATTS, NATTS PAC, wants to solicit voluntary contributions from teachers employed by these corporate member schools. You indicate that all of these teachers are paid a salary in excess of \$170 a week. You also indicate that NATTS PAC does not know how many teachers in these corporate member schools are members of a labor organization, but that NATTS PAC recognizes that some schools employ teachers who are labor organization members. NATTS PAC, you explain, will not solicit contributions from those teachers who are members of a labor organization.

You ask whether NATTS PAC may solicit contributions from teachers who are employed by corporate member schools and are not members of any labor organization.

The Act and regulations provide that an incorporated trade association or a separate segregated fund established by the trade association may solicit contributions from the stockholders and

executive or administrative personnel of the member corporations of such trade association, provided the member corporations separately and specifically approve the solicitation and have not approved a solicitation by another trade association (or its separate segregated fund) for the same calendar year. 2 U.S.C. 441b(b)(4)(D), 11 CFR 114.8(c). The Act and regulations define executive and administrative personnel as individuals (1) who are employed by a corporation, (2) who are paid on a salary, rather than hourly basis, and (3) who have policymaking, managerial, professional, or supervisory responsibilities. 2 U.S.C. 441b(b)(7), 11 CFR 114.1(c)(2)(i).

Commission regulations state that the Fair Labor Standards Act ("FLSA") and its regulations may serve as a guideline to determine whether an individual possesses policymaking, managerial, professional, or supervisory responsibilities. 11 CFR 114.1(c)(4). Regulations under FLSA provide, in part, that an "employee employed in a bona fide professional capacity" includes any individual whose primary duty consists of the performance of "teaching, tutoring, instructing, or lecturing," whose work requires the "consistent exercise of discretion and judgment" that is "predominantly intellectual in character," and who is compensated more than \$170 per week. 29 CFR 541.3 (1987). By its nature, teaching requires the "consistent exercise of discretion and judgment" that is "predominantly intellectual in character." Therefore, because all teachers in these member schools earn in excess of \$170 per week and because all perform "teaching" duties, it appears that for purposes of FLSA these teachers are employed in a professional capacity.

Commission regulations, however, provide that the term "executive or administrative personnel" does not include any professional employee who is represented by a labor organization. 11 CFR 114.1(c)(2)(i). A "labor organization" is defined as any agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. 11 CFR 114.1(d).

The Commission concludes that if a labor organization represents teachers employed by a NATTS member school, then those teachers are not within the class of personnel who are solicitable by NATTS or NATTS PAC. Accordingly, NATTS PAC may solicit otherwise lawful and voluntary contributions from teachers employed by a corporate member school, provided those teachers are paid a salary and are not represented by a labor organization. Such a solicitation by NATTS PAC is, of course, subject to the prior approval rules applicable to trade associations under the Act and regulations.

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

Sincerely yours,

(signed)

Thomas J. Josefiak
Chairman of the Federal Election Commission

Enclosures (AOs 1988-1, 1987-15, and 1986-6)