



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 2, 2012

CERTIFIED MAIL
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ADVISORY OPINION 2012-23

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Dear Messrs. Baran and Renaud:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the relationship between seven sugarbeet growers associations (collectively, “the Associations”) and Snake River Sugar Company (“Snake River”), an agricultural cooperative. The Commission concludes that the Associations are trade associations affiliated with Snake River, and that they may therefore solicit their members, executive and administrative personnel, and their families, as well as the shareholders and executive and administrative personnel of their corporate members and their families under the conditions described below, for contributions to Snake River’s separate segregated fund (“SSF”).

Background

The facts presented in this advisory opinion are based on your letter received on May 8 and your email received on June 25, 2012.

A. The Associations

The Associations are nonprofit Idaho corporations without capital stock that are organized under section 501(c)(5) of the Internal Revenue Code (26 U.S.C. 501(c)(5)). They consist of sugarbeet growers in Idaho and Oregon and are organized by geographic region. They are the Nyssa-Nampa Sugarbeet Growers Association, Inc.; the Elwyhee Sugarbeet Growers Association, Inc.; the Upper Snake River Valley Sugarbeet Growers

Association, Inc.; the Minidoka County Sugarbeet Growers Association, Inc.; the Cassia County Sugarbeet Growers Association, Inc.; the Twin Falls County Sugarbeet Growers Association, Inc.; and the Northside Sugarbeet Growers Association, Inc.

The Associations were established as “grower-member” associations to promote the interests of their members in the sugarbeet industry. The Associations promote the production of sugarbeets; propose, support, or oppose legislation relating to the sugarbeet industry; promote and participate in research to improve industry practices; cooperate with other entities to improve operating conditions for sugarbeet growers; and coordinate the management of sugarbeet receiving stations and the disposition of tare dirt (dirt removed from sugarbeets). The Associations also fund the Snake River Sugarbeet Research and Seed Committee, which funds research on varieties of sugarbeets and selects the varieties of sugarbeets that the members of the Associations and Snake River must grow during a given season.¹

The Associations solicit members in cooperation with Snake River by targeting growers in their respective growing districts. Membership in an Association is open to any person or entity that is both “actively engaged in the cultivation of sugarbeets” on lands situated within that Association’s growing district and a member of Snake River. Association Bylaws, Art. 3.1.² The payment of membership dues, fees, and assessments is required to maintain membership. *Id.*, Art. 3.2. The Associations acknowledge membership by issuing notices of meetings to their members, and make their bylaws available to members upon request. *Id.*, Art. 3.5.

Each Association is governed by a board of directors, the members of which are chosen by vote of the Association’s members. *Id.*, Art. 4.2. The directors choose the Association’s officers. *Id.*, Art. 5.1. Each member of an Association is allocated a single vote on all decisions brought before the Association.

The Associations are funded exclusively by membership dues. These dues are remitted to the Associations by Snake River, which withholds money for them from its payments to members for the sugarbeets they produce. The Associations “serv[e] a vital communication pipeline for Snake River to get information to its members” and participate in managing the receiving stations in their areas to which the farmers bring their sugarbeets for delivery to Snake River. Letter from Jan Baran, Esq. and Mark Renaud, Esq. received on May 8, 2012.

¹ The Snake River Sugarbeet Research and Seed Committee is currently an unincorporated association. It will soon become a limited liability company, the members of which will be the Associations, Snake River, and The Amalgamated Sugar Company LLC.

² The terms of the Associations’ bylaws are largely identical to each other. Thus, unless otherwise indicated, a citation to “Association Bylaws” refers to each Association’s bylaws.

B. Snake River Sugar Company

Between 1994 and 1996, the Associations organized the growers in the Idaho, Oregon, and Washington sugarbeet growing region. These organized growers formed Snake River, an Oregon agricultural cooperative, in 1994.³ Snake River became operational in 1996.

The primary purpose of Snake River is to handle, manufacture, process, and market the sugarbeets grown by its members. Snake River purchases all of the sugarbeets grown by its members, and sells them to The Amalgamated Sugar Company LLC (“Amalgamated”) for processing.⁴ Amalgamated processes the sugarbeets, sells the resulting sugar and related products, and then returns the net proceeds to Snake River for distribution to Snake River’s members, less the funds that Snake River withholds and remits to the Associations as members’ dues.

Membership in Snake River is limited to agricultural producers “that are actually engaged in the production of sugar beets” and their cooperative associations.⁵ Snake River Third Amended and Restated Articles of Incorporation, Art. IV, Sec. 2. Snake River currently has 805 members, all but three of which are also members of an Association. Although not Association members, these three Snake River members participate in the Nyssa-Nampa Sugarbeet Growers Association and provide funding to the Research and Seed Committee and the American Sugarbeet Growers Association by paying assessments to the Nyssa-Nampa Sugarbeet Growers Association.

Snake River’s business affairs are managed by a board of directors, with the directors elected by Snake River’s members. All but three of Snake River’s original 24 directors were also officers or directors of an Association; currently; two of Snake River’s directors are officers or directors of an Association.

C. Proposed Activities

Snake River is the connected organization of Snake River PAC, an SSF.⁶ The Associations propose to solicit contributions to Snake River PAC from the shareholders, executive and administrative personnel, and their families, of corporations that are

³ All but three of Snake River’s original 24 directors were officers or directors of an Association.

⁴ Snake River purchased Amalgamated in 1997 and currently owns 95 percent of the voting interest in it; the remaining five percent is owned by ASC Holdings, Inc., which in turn is owned by Valhi, Inc.

⁵ The conditions for membership include applying for membership, consenting in writing to take distributions, being approved for membership by Snake River’s board of directors, and executing a grower agreement with Snake River. Snake River Third Amended Bylaws, Art. 1, Sec. 1.

⁶ Snake River PAC is affiliated with Amalgamated’s SSF, The Amalgamated Sugar Company LLC Political Action Committee. See Statement of Organization, Snake River Sugar Company Political Action Committee (filed on June 18, 2009). Unlike Amalgamated, the Associations do not have their own SSFs.

Association members. The Associations plan to solicit contributions only after receiving exclusive written approval to make such solicitations for a given calendar year from their corporate members. The requestors represent that these solicitations would be accompanied by all required legal notices and disclaimers.

Additional facts appear in the legal analysis below.

Questions Presented

1. *Are the Associations “trade associations” under the Commission’s regulations?*
2. *Are the Associations and Snake River affiliated for purposes of the Act and Commission regulations?*
3. *May the Associations solicit the executive and administrative personnel, stockholders, and family members of their member corporations that have provided prior approval for such solicitations, for contributions to Snake River PAC?*

Legal Analysis and Conclusions

1. *Are the Associations “trade associations” under the Commission’s regulations?*

Yes, the Associations are trade associations under the Commission’s regulations.

The Commission’s regulations define a trade association as: generally a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member.

11 CFR 114.8(a). Thus, to qualify as a trade association, an organization must first qualify as a membership organization under Commission regulations. A “membership organization” is a trade association, cooperative, or corporation without capital stock that: (1) is composed of members, some or all of whom are vested with the power and

authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents; (2) expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents; (3) makes its articles, bylaws, constitution, or other formal organizational documents available to its members upon request; (4) expressly solicits persons to become members; (5) expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and (6) is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for Federal office. 11 CFR 114.1(e)(1)(i)-(vi); *see also* 11 CFR 100.134.

The Associations satisfy these criteria. Each Association is a corporation without capital stock that (1) is composed of members, each of whom can vote on matters brought before the Association and in elections for the Association's governing board of directors;⁷ (2) expressly states the qualifications and requirements for membership in its organizational documents;⁸ (3) make its bylaws available to members upon request; (4) expressly solicits persons to become members by targeting growers in the relevant growing district; (5) expressly acknowledges the acceptance of membership by issuing notices of meetings to its members;⁹ and (6) is organized primarily to promote the interests of the sugarbeet industry, rather than for the purpose of influencing Federal elections.¹⁰ Thus, the Associations qualify as membership organizations.¹¹

The Associations also satisfy the remaining criteria for trade associations under Commission regulations. 11 C.F.R. 114.8(a). They consist of persons engaged in a similar line of commerce: here, the business of growing sugarbeets. Their purpose is "to promote the interests of the sugarbeet industry, including promoting the efficient, successful, and profitable production of sugarbeets," and not to engage in business that is ordinarily carried on for profit. *See* Association Articles of Incorporation, Art. II.¹² The Associations' revenue is derived from their members' dues, no part of which inures to the

⁷ *See* Association Bylaws, Art. 4.2.

⁸ *See id.*, Arts. 3.1-3.2.

⁹ *Id.*, Art. 3.5.

¹⁰ *See supra* p. 2 (listing examples of Association activities, including promoting and participating in research to improve industry practices, cooperating with other entities to improve operating conditions for sugarbeet growers, and coordinating the management of sugarbeet receiving stations); Association Bylaws, Art. 1 (describing the same activities as purposes of the Associations).

¹¹ Based on representations made by requestors, the Commission assumes for the purpose of this advisory opinion that the Association's members are "members" under 11 CFR 114.1(e)(2)(ii), (iii) or (3). *See also* Advisory Opinion 2012-15 (APTA); Advisory Opinion 2011-08 (American Society of Anesthesiologists).

¹² The terms of the Associations' articles of incorporation are largely identical to each other. "Association Articles of Incorporation" thus refers to each Association's articles of incorporation.

benefit of any individual member. The Commission concludes, therefore, that the Associations qualify as trade associations under 11 CFR 114.8(a).

2. *Are the Associations and Snake River affiliated for purposes of the Act and Commission regulations?*

Yes, the Associations and Snake River are affiliated for purposes of the Act and Commission regulations.

Political committees, including SSFs, that are established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. *See* 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1)(ii). Committees' sponsoring organizations are also considered to be affiliated with each other when such organizations are established, financed, maintained or controlled by the same corporation, person, or group of persons. *See* 11 C.F.R. 100.5(g)(4), 110.3(a)(3).

Commission regulations identify certain organizations that are *per se* affiliated, and hence whose SSFs are *per se* affiliated. These organizations include a single corporation and its subsidiaries, as well as a single person or group of persons. *See* 11 CFR 100.5(g)(3)(i), 110.3(a)(2)(i).

In the absence of *per se* affiliation, the Commission considers various factors to determine whether political committees or their sponsoring organizations are affiliated. *See* 11 CFR 100.5(g)(4); 110.3(a)(3). These factors – pertaining to the relationship between sponsoring organizations as to governance, common officers, employees, or members indicating a formal or ongoing relationship, financing, and the formation of the organizations – are examined in the context of the overall relationship between sponsoring organizations. *See* 11 CFR 100.5(g)(4); *see also* 110.3(a)(3); Advisory Opinion 2005-14 (AKFCF).

Several factors indicating affiliation are present here. The most striking indication is the marked degree of overlap in the membership and governance of Snake River and the Associations. 11 CFR 100.5(g)(4)(ii)(D), (E). Each member of an Association is (and, indeed, must be) a member of Snake River, and 99.6 percent of Snake River's members are also Association members. Further, all directors of the Associations are shareholders of Snake River, and 24 of Snake River's 25 directors are Association members.

The officers and directors of the Associations and Snake River also overlap. 11 CFR 100.5(g)(4)(ii)(B). Currently, the officers and directors of two Associations serve on Snake River's board of directors.¹³

¹³ The presidents of all of the Associations also attend and participate in the meetings of the Snake River board of directors, although they have no official vote at such meetings.

Furthermore, Snake River plays a critical role in funding the Associations. 11 CFR 100.5(g)(4)(ii)(H). Snake River purchases all of the sugarbeets grown by members of the Associations, withholds members' Association dues from its payments to the growers, and remits those funds to the Associations. These funds represent the entirety of the Associations' revenues.

The Associations also participate formally and financially in the operation of Snake River, by arranging funds and in-kind services for the benefit of Snake River. 11 CFR 100.5(g)(4)(ii)(G). For example, the Associations make annual payments to, and participate in, Snake River's Research and Seed Committee. In addition to running trials and conducting research to further sugarbeet production in Idaho, Oregon, and Washington, the Committee selects the varieties to be used by Snake River growers and sets the rules for their use. Snake River growers must conform to these rules in order to make deliveries to Snake River. Each Association appoints two people to this Committee, Snake River appoints one individual, and Amalgamated appoints four people.

The Associations also participate in the operations of Snake River by participating in the management of the receiving stations. Each Association appoints a station director for each receiving station; coordinates the schedule for the delivery of sugarbeets to that station; works with Amalgamated to address any special issues related to that station as they arise; and facilitates deliveries of sugarbeets to Snake River by removing tare dirt from each station.

Finally, the Associations participated in the formation of Snake River. 11 CFR 100.5(g)(4)(ii)(I). They organized the growers for the common purpose of establishing Snake River, and all but three of Snake River's original 24 directors were Association officers.

Based on these facts, the Commission concludes that Snake River and the Associations are affiliated. This conclusion is consistent with the Commission's determinations in prior advisory opinions. *See, e.g.,* Advisory Opinion 2005-17 (American Crystal Sugar).

3. *May the Associations solicit the executive and administrative personnel, stockholders, and family members of their member corporations that have provided prior approval for such solicitations, for contributions to Snake River PAC?*

Yes. Because Snake River and the associations are affiliated, the Associations may solicit the executive and administrative personnel, stockholders, and family members of their member corporations that have provided prior approval for such solicitations, for contributions to Snake River PAC.

As an exception to the prohibition on corporate contributions, a corporation and its SSF may solicit the corporation's solicitable class for contributions to the corporation's SSF. 2 U.S.C. 441b(b)(4); *see also* 11 CFR 114.1(j). Incorporated trade associations may solicit their executive and administrative personnel and the families of such personnel. They may also solicit their members who are individuals and their families, and members that are unincorporated entities. 2 U.S.C. 441b(b)(4)(A), (C); 11 CFR 114.7(a), (c), 114.8(i)(2). An incorporated trade association may not solicit contributions from its incorporated members, but it may solicit the stockholders and executive and administrative personnel, and their families, of any incorporated members that provide separate and specific approval to the trade association for the making of such solicitations during a calendar year and that have not approved a solicitation by any other trade association for the same calendar year. 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c), (d).

Where, as here, a trade association is affiliated with an SSF's connected organization, the trade association may solicit contributions to its affiliate's SSF in the same manner as if the trade association itself were the connected organization of the SSF. Advisory Opinion 2005-17 (American Crystal Sugar). Thus, the Associations may solicit their executive and administrative personnel and the families of such personnel for contributions to Snake River PAC. They may also solicit their members who are individuals and their families; members that are unincorporated entities; and the stockholders and executive and administrative personnel, and their families, of any incorporated members that provide separate and specific approval to the trade association for the making of such solicitations during a calendar year and that have not approved a solicitation by any other trade association for the same calendar year.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case

law. The cited advisory opinions are available on the Commission's website, or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)
Caroline C. Hunter
Chair