



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 3, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-24

Richard E. Gardiner, Legislative Counsel
National Rifle Association of America
11250 Waples Mill Rd.
Fairfax, VA 22030

Dear Mr. Gardiner:

This refers to your letters of January 11, 1994 and December 15, December 6 and November 23, 1993, concerning application of the Federal Election Campaign Act of 1971 ("the Act"), as amended, and Commission regulations to contribution solicitations that the National Rifle Association ("NRA") wishes to make to persons it regards as its members.

The specific focus of your request is the application to the NRA of new and revised Commission regulations defining "members." The relevant regulations were published in the Federal Register on August 30, 1993, (58 Fed. Reg. 45770) with an effective date of November 10, 1993 (58 Fed. Reg. 59641). The rules will be published in the 1994 edition of the Code of Federal Regulations at 11 CFR 100.8(b)(4)(iv), 114.1(e), and 11 CFR 114.7(k).

You state that the NRA is a membership organization with a separate segregated fund, the NRA Political Victory Fund ("NRA/PVF"). As background to your request, you state that on October 23, 1984, the Commission determined in an enforcement case (MUR 1765) that the NRA's solicitation of its members for contributions to the NRA/PVF did not violate 2 U.S.C. 441b. Since that determination, the NRA has solicited its members for contributions and wishes to continue to do so. You note, however, that the cited regulations define the term "membership organization" and "members" under 2 U.S.C. 441b(b)(4)(C). You wish to know whether these new regulations would allow the continued solicitations.

THE NRA MEMBERSHIP STRUCTURE

Included in your request are a membership brochure and the Bylaws of the NRA which you state have not changed substantially since the Commission's resolution of MUR 1765. These provide factual background as to the classes of membership available and the benefits and rights for each class.

Classes of Membership

The NRA's Bylaws outline the organization's various classes of membership. The membership classes can be divided into two groups, those that have voting rights and those that do not. The obligation to pay dues varies with each membership class.^{1/}

Nonvoting Classes-- The nonvoting classes are all variations of the basic NRA annual membership. Annual members have a tenure of only one year. The annual membership group includes: adult members, associate members (spouses of persons who are in any other membership category), junior members (individuals under age 21) and senior members (individuals over age 65). Annual adult members pay \$25 per year; associate members pay \$15 per year, junior and senior adult annual members pay \$20 per year.^{2/}

Voting classes-- The voting classes consist of two basic groups: annual members who have held membership for more than five consecutive years and members who hold various types of lifetime membership.^{3/} The lifetime membership group includes life members who, in effect, prepay their dues for a 20 year period (\$500) at the same rate as an annual adult membership. A discounted adult lifetime membership is available to individuals over the age of 65. The dues payments for the other lifetime members are significantly greater than life members, except for honorary life members who have no dues obligation to the NRA.^{4/}

Benefits and Rights of Members

Under Article III, section 6, of the Bylaws all members possess certain privileges. For example, they may compete in competitions conducted by the NRA or affiliated groups. Members, at a reasonable charge, may receive advice and assistance from the NRA on NRA related issues. All members, with the apparent exception of junior and associate members, also receive the official NRA journal. All members may receive certain types of insurance through the NRA such as ArmsCare Firearms insurance. Some participation rights in the NRA are also shared by all classes of membership. All members may attend membership meetings and may attend sessions of the Board of Directors, Executive Committee and other committees "except during executive sessions thereof."^{5/} All members may circulate and submit petitions for nomination to the Board of Directors. Membership on most committees, excepting the nominating and executive committees, is open to all members as appointed by the NRA President.

However, greater participation rights accrue to those classes of membership possessing the power to vote. Only these members have the power to vote for the Board of Directors which, in turn, chooses the NRA President, other executive officers, and members of both the Executive Committee and the Nominating Committee.^{6/} Further, only lifetime members may qualify for election to the Board of Directors, and only voting members may sign petitions for nominations to the Board of directors and initiate and vote for the recall of directors and officers.^{7/}

REVISED REGULATIONS

Under 2 U.S.C. 441b(b)(4)(A), a corporation, or a separate segregated fund established by a corporation, may only solicit contributions to such a fund from its stockholders and their families and its executive or administrative personnel and their families. An exception set forth in 2 U.S.C. 441b(b)(4)(C) allows a corporation without capital stock or a separate segregated fund established by a corporation without capital stock, including a membership association, to solicit contributions to the fund from members of the nonstock corporation.

"Membership Association" is defined, in part, under 11 CFR 114.1(e)(1) as a membership organization that (i) expressly provides for "members" in its articles and by-laws; (ii) expressly solicits members; and (iii) expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

The revised Commission regulations provide guidance as to the definition of the term "members."^{8/} Under 11 CFR 114.1(e)(2), "members" means all persons who are currently satisfying the requirements for membership in a membership association, who affirmatively accept the membership association's invitation to become a member, and who meet one of the following requirements:

- (i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);
- (ii) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or
- (iii) Are entitled to vote directly for all of those on the highest governing body of the membership association.^{9/}

The regulations also provide that the Commission "may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule." See 11 CFR 114.1(e)(3).

THE NRA AS A MEMBERSHIP ASSOCIATION

The facts and background to this request indicate that the NRA is a membership association for purposes of the Act. For example, article III of the NRA's Bylaws meets the requirements of 11 CFR 114.1(e)(1). It expressly provides for several membership groups within the NRA and specifies a membership admission process which includes issuing a membership card, certificate, or insignia to all those who are admitted to the membership. The request indicates that the NRA

uses membership promotional materials that expressly solicit members and include a membership application form. It appears that individuals solicited for NRA membership affirmatively accept the invitation to join before the NRA considers them members. In this regard, the Bylaws provide that any applicant for membership may be refused admission by the Board of Directors for any reason deemed by the Board to be sufficient. See 11 CFR 114.1(e)(2).

DETERMINATION OF NRA MEMBERSHIP

Voting Members

Under the revised regulations, individuals who are lifetime members or have been annual members for five years or more would be considered "members" of the NRA for purposes of the Act. Because of their obligation to pay dues and their extensive voting rights, these individuals would meet the membership requirements under both sections 114.1(e)(2)(ii) and (iii). Likewise, honorary lifetime members also would be considered "members" under section 114.1(e)(2)(iii) because, while they do not pay dues, they are entitled to vote directly for all candidates for the Board of Directors who run in any particular year.

Nonvoting Members

A different situation exists for those individuals who are associate members, or junior members, or who have been annual members of the NRA for less than five years. While these individuals pay dues and have certain participatory rights, they do not have the right to vote for any director or any person who can vote for a director. Therefore, they do not meet the requirements of sections 114.1(e)(2)(ii) or (iii).^{10/}

The Commission also concludes that individuals who hold nonvoting NRA memberships do not meet the requirements of section 114.1(e)(2)(i). In explaining what is meant by a "significant financial attachment" or a "significant investment or ownership stake" in the membership organization beyond the payment of dues, the Commission cited, as an example, the tens of thousand of dollars necessary to acquire nonvoting membership seats in stock and commodity exchanges. See 58 Fed. Reg. 45771 (August 30, 1993) and Advisory Opinions 1988-38 and 1988-39. While members receive certain benefits from their membership in the NRA for which they pay nominal or modest fees, these benefits taken together do not equal a "significant financial attachment" or a "significant investment or ownership stake" in the NRA as stated in the above standard.

Lastly, the Commission addresses the application of the revised regulation's definition of "members" under the case by case approach of section 114.1(e)(3). Of importance here is whether the nonvoting members of the NRA have a "significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule." *Id.* The Explanation and Justification for the regulations indicates that while the application of section 114.1(e)(3) provides certain leeway, its application should take into account the same factors and elements stressed in the prior paragraphs. The importance of voting rights is reaffirmed under section 114.1(e)(3) when considering what constitutes a "significant organizational attachment." For example, section 114.1(e)(3) elaborates on possible "case by

case" situations. It states "student members who pay a lower amount of dues while in school or long term dues paying membership status with little or no dues obligations may be considered members if they retain voting rights in the association."^{11/} Since, again, associate members, junior members, senior members, and annual members of less than five years membership have no voting rights at all, the Commission concludes that they do not meet the definitional requirement for "members" under section 114.1(e)(3).

The Commission, therefore, concludes that the NRA may solicit contributions to the NRA/PVF from lifetime members, honorary lifetime members and annual members who have voting rights. The NRA may also solicit contributions to the NRA/PVF from its executive and administrative personnel and their families. Of course, these solicitations and the resulting contributions must otherwise comply with the Act and Commission regulations. See 11 CFR 114.5 and 114.7. However, the NRA may not solicit contributions for the NRA/PVF from any category of "members" who have no voting rights. The Commission recognizes its conclusions regarding which "members" may not be solicited are at variance with the result in MUR 1765. However, the Commission notes that its conclusions here would have been the same prior to the effective date of the revised regulations. Prior advisory opinions decided after the disposition of MUR 1765 would also have permitted only the solicitation of the NRA's voting membership. See Advisory Opinions 1989-18, 1988-39, 1988-38, 1987-13 and 1984-33.^{12/}

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.

For the Commission,

(signed)

Trevor Potter
Chairman

Enclosures (AOs 1989-18, 1988-39, 1988-38, 1987-13 and 1984-33)

ENDNOTES

^{1/} Article III, section 4 of the NRA Bylaws also permits State associations, nonprofit organizations and other groups to become affiliated with the NRA. The original complaint filed in MUR 1765, however, concerned the solicitation of contributions to NRA/PVF from individual NRA members. Therefore, the Commission assumes that the NRA's proposed contribution solicitations for NRA/PVF would be directed only toward individual members. Under 11 CFR 114.7(b) corporations which are members of the NRA may not make contributions to NRA/PVF. Furthermore, the separate segregated fund of a corporate member of the NRA may not be solicited for contributions to NRA/PVF. See 11 CFR 114.7(j). The same prohibitions would also apply to any corporate affiliate of the NRA.

2/ Other dues payment options available to adult members are a three year membership for \$68, or a five year membership for \$100. The rights that attach to these payment options are the same as the basic annual membership.

3/ At the Commission's December 9, 1992, hearings which solicited testimony regarding the proposed revisions to the regulations, a witness representing the NRA stated that a third of the membership of the NRA has voting rights. Of the voting members, one third are life members and two thirds are individuals who have held annual membership for five years or more.

4/ The higher rates for other lifetime members are Endowment (\$1,000), Patron (\$1,500) and Benefactor (\$2,500). Under Article III, Section 3, the Board of Directors may elect up to three individuals per calendar year as honorary life members. These individuals have all the rights of life members but pay no dues. The Board has evidently granted this honor sparingly since, at present, there are only four of these members.

5/ Article III, section 6(d) of the NRA Bylaws.

6/ The NRA Bylaws delineate two institutions which play roles in the governance of the NRA--the Board of Directors and the Executive Committee. For purposes of the analysis below, the Commission concludes that the Board of Directors rather than the Executive Committee is the highest governing body of the NRA. The Commission notes that under the NRA Bylaws, the Executive Committee, while responsible for the day to day running of the organization, has important limitations to its power. For example, under Article IV, section 2, the Executive Committee may "exercise all the powers of the Board when the Board is not in session," but may not purchase, sell, mortgage or lease NRA property, present legal petitions, authorize indemnification, or "adopt and disseminate a fundamental change of view or basic policy of the Association." It is also precluded from formulating "such other corporate policy decisions or perform[ing] corporate activities of the [NRA] of such major significance as to warrant action by the full [Board]." All these powers instead are reserved by the Board.

7/ According to the NRA Bylaws, a person may be nominated for the Board of Directors by either the Nominating Committee or by the circulation of a petition which garners a sufficient number of signatures. Only members of the Board may serve as NRA President, Vice President, or on the Nominating or Executive committees.

8/ While your request asks the application of three revised provisions of the Commission's regulations, 11 CFR 100.8, and 114.1, and 114.7 to the NRA's solicitations, the discussion below will concern revised section 114.1. This provision applies to a membership association's solicitation of contributions from its members for its separate segregated fund. Section 100.8 relates to an association's right to make partisan communication to its members. However, the wording of the revised portions of sections 100.8 and 114.1 are identical so that the analysis of section 114.1 will, to that extent, be applicable to section 100.8 as well. Revised section 114.7 is not addressed in this opinion since the revisions to that section relate to a cooperative's right to solicit its members.

9/ Previously section 114.1 had required that "members" of a membership association be persons who satisfy that particular organization's definition of member and that the requirement of membership include more than simply the making of a contribution to that organization's separate segregated fund. See 11 CFR 114.1(e) (1977). The revisions to this rule were intended to take notice of developments in the definition of membership reflected both in the Supreme Court decision in FEC v. National Right to Work Committee, 459 U.S. 196 (1982) and in advisory opinions which followed. See 58 Fed. Reg. 45770 (August 30, 1993).

10/ It is clear that the nonvoting members of the NRA possess certain rights of participation in policy matters but this, in and of itself, is not sufficient to meet the requirements of section 114.1(e)(2)(ii) and (iii). The Explanation and Justification for these provisions of the new regulations notes that "The Commission stresses that so-called 'governance' voting is required, as opposed to voting for the association's policies or positions." 58 Fed. Reg. 45771 (August 30, 1993).

11/ The explanation and justification for the revised regulations discusses these examples further and notes that that individuals in these categories could be considered members under section 114.1(e)(3) only if they have "some voting rights in the association." See 58 Fed. Reg. 45773. (August 30, 1993).

12/ Furthermore, MUR 1765 was decided prior to the promulgation of the recent rules and, therefore, is not a controlling or persuasive precedent under the circumstances.