



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-33

Mr. John J. Buttita
Associate Counsel
National Association of Realtors
430 North Michigan Avenue
Chicago, Illinois 60611

Dear Mr. Buttita:

This responds to your letter of March 28, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed voter registration and get-out-the-vote program.

According to your letter the National Association of Realtors ("National Association") is a "not-for-profit" incorporated trade association whose members consist primarily of state and local real estate boards. Individuals who are members of these boards are, by virtue of their boards' membership, also members of the National Association.¹ The National Association is considering a three-phase program to provide individuals with nonpartisan voter registration and voting information. All phases will be planned and coordinated by the National Association and will be implemented by local boards. You specifically ask about the propriety of the program, described below, under the Act.

Phase I of the program will be directed at individual members of the National Association, and it will involve communications to individual members notifying them of the importance of voter registration. In addition, nonpartisan voter registration materials and information, prepared by the local official election administrators and available to the general public, will be made available to

¹ This opinion should not be viewed as reaching or stating any conclusion with respect to whether all the individuals referred to as members of the National Association would qualify as such under the definition of "members" in 11 CFR 114.1(e). To the extent that these individuals may not so qualify, they would come within the category of "general public" for purposes of the following discussion.

individual members at certain local real estate offices operated by individual members of the National Association.

Phase II of the program will be directed at the general public, and will involve the dissemination of useful information concerning voter registration. This information, in the form of a public service announcement, will be communicated by means of radio broadcasts or by other media. Below are four transcripts of announcements which are being considered for radio broadcasts:

1. If you're not registered, you cannot vote November 4th.
2. If you're not registered, you cannot vote November 4th -- this public service message is sponsored by the NATIONAL ASSOCIATION OF REALTORS.
3. In the 1976 presidential elections, 50 million Americans who were eligible to vote couldn't vote -- because they had failed to register. If you're not registered, stop by your local voter registration office today -- this public service message is sponsored by the NATIONAL ASSOCIATION OF REALTORS.
4. In the 1976 presidential elections, 50 million Americans who were eligible to vote couldn't vote -- because they had failed to register. The NATIONAL ASSOCIATION OF REALTORS wants to help America improve on that performance in the 1980 elections. If you're not registered, go to your local voter registration office today. If you have any questions, stop by a local real estate office displaying the big red, white and blue R in the window. These REALTORS have voter registration information to help you register to vote November 4. This year more than ever, America needs your vote. REALTORS are members of the NATIONAL ASSOCIATION OF REALTORS.

Phase II will also involve local member boards making available to the general public, at certain real estate brokerage offices, nonpartisan voter registration materials, such as registration-by-mail forms and instructions, prepared by the local official election administrators and available to the general public.

Phase III of the program will be directed at both individual members of the National Association and at the general public. Phase III will attempt to notify individual members and the general public of the importance of exercising their Constitutional right to vote.

With respect to individual members of the National Association, phone banks will be established by local board members of the National Association to provide useful nonpartisan voting information to individual members.

With respect to the general public, nonpartisan public service announcements will be disseminated by means of radio broadcasts and other media forms. The texts of these public service announcements will parallel those previously cited in connection with the Phase II voter registration plan. The announcement will inform the public of the importance of participating in the electoral process, and will offer useful nonpartisan voting information such as location of polls and where voting instructions and other materials may be obtained.

In addition, nonpartisan voting materials such as instructions and guides, prepared by local office election administrators and available to the general public, will be made available at certain real estate offices operated by individual members of the National Association.

Since the program consists of three phases which in themselves have one or more activities, each phase of the program will be addressed in turn. The Commission is of the opinion that both parts of Phase I are permissible. The activity involved is directed at individual members of the National Association. Commission regulations at 114.8(h) and 114.7(h) provide that an incorporated trade association may make communications, other than solicitations, to its members under the provisions of 114.3 which provides that a corporation or labor union may make partisan communications to its respective constituency. Since the National Association would be able to make partisan communications to its membership it certainly may make nonpartisan communications regarding voter registration. The National Association may also make available to its membership nonpartisan voter registration materials and information prepared by local official election administrators. See 11 CFR 114.4(c)(2) which provides that such materials may be distributed by a corporation or labor union to the general public.

Phase II, comprised of two distinct elements is directed at the general public. One aspect of this phase is comprised of the announcements previously described which urge voter registration. These announcements are to be broadcast on radio and communicated by other media. In a recent advisory opinion, 1980-20, copy enclosed, the Commission considered an advertisement, urging registration to vote² which was to be placed by a corporation in newspapers of general circulation. There the Commission determined that the corporation was not prohibited by either the Act or Commission regulations from paying for that advertisement out of general corporate funds. The Commission reasoned that although 2 U.S.C. 441b(a) prohibits any corporation from making a "contribution or expenditure in connection with any election" for Federal office the statute and Commission regulations which amplify 441b indicate that certain types of activity would not give rise to a prohibited political contribution or expenditure by a corporation or labor organization. Specifically addressing Commission regulation at 114.4 which describes a variety of permissible activities having election related aspects, the opinion stated that the regulation is not to be read as reflecting a Commission interpretation that 441b prohibits other materially indistinguishable activity, and the expenditures incident thereto.

² The advertisement read "Please Register to Vote" with "Rexnord, Inc." printed in the lower corner of the advertisement.

The Commission considered that Advisory Opinion 1980-20 presented such a situation. In particular, the advertisement lacked any direct or indirect suggestion that the reader designate any political party preference when registering to vote. The ad made no appeal for the participation of any identifiable group in the Federal election process to assure their political well being. (Compare facts and conclusions in Advisory Opinion 1978-102, copy enclosed.) The placement of the advertisement in a newspaper of general circulation indicated that the corporation had not made any effort to determine the political party preference of those who may receive the communication. In light of those factors, the Commission concluded that 441b would not prohibit payment by the corporation for the described advertisement.

Of the four transcripts which are under consideration by the National Association the first three are materially indistinguishable from the advertisement addressed in AO 1980-20. Thus, 441b does not prohibit payment for these advertisements by the National Association or the local boards of the National Association in light of the specific limitation in AO 1980-20 that such activity could be considered outside the purview of the Act only under the limited circumstances described, the Commission feels unable to express an opinion at this time that the fourth transcript being considered by the National Association would be permissible. The Commission will give further consideration to the fourth transcript when it considers other aspects of this request at a later date.

As to the second aspect, making available to the general public nonpartisan voter registration materials prepared by local election administrators, the Commission concludes that the intended activity is permissible if it meets all the criteria contained in 11 CFR 114.4(c)(2). That regulation permits distribution to the general public of registration or voting information prepared by local election officials. It further allows distribution to the general public of voter registration-by-mail forms if permitted by the applicable State law and if they are distributed in a nonpartisan manner and there is no endorsement, support, or promotion of registration with a particular party.

Phase III of the program, directed at both individual members and at the general public, is comprised of three elements which focus on the right and importance of voting. The first contemplates the establishment of phone banks to reach and provide individual members with nonpartisan voting information. As previously discussed, Commission regulations at 114.7(h) and 114.8(h) provide that an incorporated trade association may communicate with its members under the provisions of 114.3. Section 114.3(c)(3) provides, in turn, for the establishment and operation of phone banks to communicate with the designated category of personnel to urge voting for a particular candidate. Thus, the Commission concludes that the described nonpartisan activity restricted to National Association members is certainly permissible.

The second and third elements of Phase III contemplate announcements concerning the importance of voting, which are to be directed to the general public and making voting materials available to the general public, respectively. These elements cannot be addressed at this time due to a lack of specificity in the request. Advisory Opinion 1980-20 was specifically limited to facts where the public advertisement was designed so as to avoid partisan connotations or effects (see discussion above). Accordingly, consideration will be given by the Commission to any get-out-

the-vote announcements upon receipt of more detailed information, including transcripts once formulated, regarding the announcements under contemplation. So too, the Commission will address the final element of Phase III upon receipt of pertinent information.

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)

Max L. Friedorsdorf
Chairman for the
Federal Election Commission

Enclosures