



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 25, 1979

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-13

Mr. A. Pearce Godley
Chairman
RAYPAC
2801 South Post Oak Road
Houston, Texas 77066

Dear Mr. Godley:

This is in response to your letters of March 26 and April 5, 1979, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to publicizing the existence of the Raymond International Inc. Employees' Political Action Committee ("RAYPAC").

Your letter states that RAYPAC is a separate segregated fund established by Raymond International Inc. ("the Corporation") and empowered by the corporation to only solicit executive and administrative personnel, stockholders, and their spouses. You add that the Corporation publishes a newsletter, entitled the "Raymond Record," six times a year for the information of employees and retirees of the Raymond Group of Companies. It is distributed to all of the Corporation's permanent employees and retirees, as well as stockholders and certain other interested parties on request. Attached with your letter in an article which you are considering for inclusion in the "Record." The article states the amount of money raised and spent by RAYPAC and the methods used by RAYPAC in determining to whom it should contribute. The article further points out the number of corporate employees who "participated in" RAYPAC's activities in 1978 and includes a quotation from you as RAYPAC chairman:

"I was glad to see that Raymond has so many employees who realize that the welfare of us all is tied very closely to government policies and attitudes toward business. RAYPAC is one way we can make the voice of business people and our industry heard in this county. I hope we continued [sic] to have such an enthusiastic group."

You ask whether, under these circumstances, inclusion of the article in the "Record" would be permissible under the Act. If not, you ask whether such article would be permissible without the sentence: "However, the PAC's by-laws state that RAYPAC may accept voluntary contributions from any lawful contributor."

Under the Act, a corporation or a separate segregated fund established by a corporation may make two written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. 2 U.S.C. 441b(b)(4)(B). Section 114.6 of the Commission's regulations provides that such solicitations may be made only by mail addressed to stockholders, executive and administrative personnel, or employees at their residences, and must inform the recipient of the requirements of this section. For purposes of this section the term "employees" does not include retired employees who are not stockholders. 11 CFR 114.6(a).

Since the "Record" reaches a group of persons which RAYPAC may not generally solicit for contributions except as provided under 114.6, the issue presented is whether the proposed article is a solicitation for contributions to RAYPAC and thus prohibited from being included in the "Record."

The legislative history of the Act indicates that informing persons of a fundraising activity is considered a solicitation. See Advisory Opinions 1976-27, 1976-96, and 1978-17, copies enclosed. See particularly AO 1976-27 which includes quotes from Senators Allen, Cannon, and Packwood during Senate floor debates on the 1976 Amendments to the Act. Also, Representative Hays of Ohio, in explaining the corporate and union solicitation provisions of the 1976 Amendments (2 U.S.C. 441b), stated:

[We] determined that any action [that] could fairly be considered a request for a contribution should be treated as a solicitation. 122 Cong. Rec. 43779 (daily ed. May 3, 1976)).

The Commission is, accordingly, of the view that the proposed article would be a solicitation within the meaning of the Act since it describes RAYPAC's activities and encourages employee participation in RAYPAC by commanding the enthusiasm of employees whose participation in RAYPAC has indicated awareness of the connection between their welfare and government policies toward business. Therefore the article may not be included in the "Record" or any other publication of the Corporation which is distributed to persons that RAYPAC is otherwise prohibited from soliciting for contributions.

Additionally, your letter asks whether the article would be acceptable for inclusion in the "Record" by removing the sentence which states: "However, the PAC's bylaws state that RAYPAC may accept voluntary contributions from any lawful contributor." The Commission answers this question in the negative. The elements of the article as discussed above that make it a contribution solicitation would still be present in the proposed article even with the deletion of that particular sentence.

Your letter makes reference to Advisory Opinion 1978-97 wherein the Commission concluded that a contribution solicitation could be included in a membership publication because the organization involved took certain precautionary steps to instruct its personnel that contributions to the PAC must be checked and returned if made by a nonmember of the organization, and because the solicitation was primarily directed only at its members (with an incidental circulation beyond its membership). In your case, however, neither the Corporation nor RAYPAC propose to take precautionary measures like those described in AO 1978-97. Moreover, the medium for the solicitation (i.e. the "Record") is not directed only to the executive and administrative personnel of the Corporation, but rather to a larger group of persons that RAYPAC is either prohibited from soliciting altogether or must solicit under the conditions of 11 CFR 114.6. If the Corporation or RAYPAC take precautionary measures as described in AO 1978-97 and if the "Record" has only an incidental circulation to persons that RAYPAC is either prohibited from soliciting altogether or must solicit under the conditions of 11 CFR 114.6, the proposed article would not then be viewed as an improper contribution solicitation under the Act and regulations.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures