



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 16, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-139

Mr. Daniel J. Edinger
Legal Department
Agway Inc.
Box 4933
Syracuse, New York 13221

Dear Mr. Edinger:

This responds to your letter of November 17, 1980 requesting an advisory opinion on behalf of Agway, Inc., concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to fundraising solicitations for the Agway Inc. Political Action Committee ("AGPAC") printed in a magazine published by Agway.

According to your letter Agway is an incorporated agricultural cooperative. Every Agway member owns one share of common stock which is held either individually, jointly with spouse, or in a corporate name. You say that Agway has about 10,300 employees of which about 2,500 are executive and administrative personnel. You explain that Agway publishes a magazine, the Cooperator, nine times a year, which is mailed to the residence of members and employees. Typical circulation figures for an issue are:

58,050 to unincorporated Agway members;
3,050 to corporate Agway members;
3,000 to individuals or institutions on a "courtesy list,"
2,500 to executive/administrative personnel of Agway;
6,400 to non-executive/administrative personnel of Agway; and
2,050 to retired Agway employees.
Total 75,050

Agway proposes to publish articles concerning AGPAC and solicit contributions for AGPAC not more than twice in any calendar year in the Cooperator. Accompanying each

solicitation and article will be the following caveat which you say will be clearly and conspicuously disclosed:

FEDERAL ELECTION LAW PROHIBITS AGPAC FROM SOLICITING DONATIONS FROM PERSONS WHO ARE NOT EITHER STOCKHOLDERS OR EXECUTIVE/ADMINISTRATIVE PERSONNEL AND THEIR FAMILIES OF AGWAY INC. AND ITS SUBSIDIARIES. ALL DONATIONS RECEIVED OTHER THAN FROM THESE PERSONS WILL BE RETURNED.

Moreover you explain that AGPAC will not accept deduction authorizations or donations from other than individual shareholders and their families and executive and administrative personnel and their families. All deduction authorizations or donations from others will be returned.

In summarizing Agway's request, you suggest that approximately 80% of the persons receiving the magazine are Agway members or executive and administrative personnel. About 10% of the recipients are employees who could be solicited under the conditions found in 11 CFR 114.6, "Twice Yearly Solicitations," The final 10% consists of recipients not eligible to be solicited. You conclude that 10% of the magazine's circulation is beyond AGPAC's solicitable class and thus you ask whether the articles and solicitations constitute a solicitation of persons who may not by statute be solicited by AGPAC.

2 U.S.C. 441b(b)(4) makes it unlawful for a corporation or a separate segregated fund established by a corporation to solicit contributions to such fund from any person other than its stockholders and their families and its executive or administrative personnel and their families except that all employees of a corporation may be solicited under certain specified conditions. See 2 U.S.C. 441b(b)(4)(B) and 11 CFR 114.6.

In a number of past advisory opinions, however, the Commission considered situations where a communication considered to be a solicitation did reach persons not solicitable under 441b(b)(4). Specifically, in Advisory Opinion 1978-97, to which you refer in your request, the Commission addressed solicitations made by a labor organization in its magazine which reached beyond the organization's membership. In that instance the Commission considered both the precautionary steps taken by the organization in conjunction with the solicitation, those being (1) the explicit caveat in contrasting print that contributions from nonmembers are not acceptable and will be returned and (2) the procedure of screening and returning contributions received at any time from persons who are not solicitable. Also considered was the fact that the magazine had a 3% circulation (1,000 recipients) beyond the organization's membership; the 3% consisted of members of Congress, senior government officials, and news media. The Commission then concluded that the solicitations would not be viewed as directed to persons beyond the solicitable class.

In Advisory Opinion 1979-50, copy enclosed, the Commission addressed a somewhat similar situation. There, however, the labor organization's newspaper was distributed to approximately 8,000 persons, 15% of the paper's circulation, who were not members of the labor organization. Those 8,000 were composed of members of Congress, senior government officials, news media, and "potential members." In that opinion the Commission, considering the group of

nonsolicitable persons reached, concluded that despite the fact that the same precautions were to be taken as in AO 1978-97, due to the percentage and number of persons receiving the newspaper, solicitation outside the permitted class would not be de minimis, and thus the proposed solicitation would be prohibited under the Act and Commission regulations.

This request concerns a solicitation appearing in a corporate magazine which, without considering the number of nonexecutive and administrative personnel recipients, reaches approximately 8,000 individuals or corporations (slightly more than 10% of the magazine's total circulation) who are not eligible to be solicited by AGPAC even under the twice yearly provisions of 11 CFR 114.6. The percentage and actual number of nonsolicitable recipients, comprised of corporations, individuals and institutions on a "courtesy list," and retired employees, does not appear to be de minimis. Thus, the Commission concludes that the solicitation would constitute a solicitation by AGPAC of persons who are beyond the solicitable class of AGPAC. Accordingly, the solicitation may not be made through the Agway magazine, the Cooperator.

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)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure (AO 1979-50)

P.S. Commissioner Aikens voted against approval of this opinion and will file a dissenting opinion at a later date.