



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 17, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-13

Mr. Gary D. Lipkin
Assistant General Counsel
National Association of Manufacturers
1776 F Street N.W.
Washington, D.C. 20006

Dear Mr. Lipkin:

This responds to your letter of March 16, 1984, as supplemented by your letter dated May 9, 1984, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposal by the National Association of Manufacturers ("NAM") to feature various Republican congressional candidates as speakers at a conference that NAM plans to sponsor jointly with a local public affairs group on August 21, 1984, in Dallas, Texas.¹

You state that NAM is an incorporated trade association of more than 13,500 manufacturing corporations and that its public affairs department holds regional public affairs conferences each year as well as an annual national public affairs conference. These conferences are open to both members and nonmembers of NAM and consist of workshops on issues of interest to corporate public affairs officers and feature guest speakers. These speakers include elected and appointed public officials, pollsters, political consultants, and prominent industry public affairs professionals. According to your request, the regional public affairs conference for your department's southern division is tentatively scheduled for August 21, 1984, in Dallas, Texas. This conference would coincide with the holding of the Republican Party's national convention in Dallas. NAM plans to cosponsor this conference with the Dallas Study Group ("DSG"), an unincorporated, nonmembership group of approximately 150 public affairs professionals based in the Dallas area, which meets once or twice a month for a luncheon and a speech from a public official, candidate, or public affairs professional. You state that neither

¹ You note that NAM is also considering sponsoring a similar conference at the time of the Democratic National Convention in San Francisco.

NAM nor DSG is connected with any political action committee or endorses, supports, or opposes candidates for public office. You also state that there is no connection between NAM and DSG, except that some employees of NAM members in the Dallas area participate in DSG activities. You state that a majority of NAM members do not have political action committees and that this event is not designed to interest only political action committee officers. You expect that a large majority of those attending the meeting will have no direct connection with political action committees.

Your plans contemplate a one-day meeting at either a Dallas area hotel or a corporate meeting facility of a NAM member, although you have requested space from the Republican National Committee as a back-up. The meeting would begin with a breakfast featuring a noncandidate speaker. The morning session would present a panel of corporate public affairs professionals, who would speak on the development and operation of their own public affairs programs. A luncheon would feature a noncandidate speaker. Because of the large number of Republican congressional candidates in Dallas to attend the Republican convention, you propose to invite several of these candidates as speakers during the afternoon session of your planned conference. You state that your invitations to potential speakers for the afternoon session will be based on their status as congressional candidates and not on any other basis, such as a Federal or state officeholder. In fact, you indicate that all potential invitees will be "challengers in congressional races." You do not intend to invite any incumbent Federal officeholder to speak at the session. You also do not intend to invite candidates from any particular geographical area and, thus, will not limit your invitations to candidates in districts in Texas or the Dallas-Fort Worth vicinity, although such candidates may be invited to speak. You expect to obtain the appearances of such candidates "at little or no cost" to NAM. A NAM employee will moderate the conference. Both NAM and DSG would publicize this conference within their respective groups.

You state that it is not the intent of either NAM or DSG to become involved in any activity which expressly advocates the election or defeat of any candidate. You also state that you intend to ask all candidates/speakers to refrain from asking for contributions or other aid to their campaigns and to limit their remarks to an explanation of their positions on various issues. You further state that at no time during the conference will NAM or DSG endorse or otherwise express support or opposition for any candidate. You also will advise attendees that the appearance of any candidate is not to be construed as an endorsement of that candidate by either NAM or DSG. You note that NAM will assume the responsibility of securing candidates as speakers and may seek the assistance of the Republican National Committee, the Republican Senatorial Campaign Committee, or the National Republican Congressional Committee. You also expect a DSG representative to serve as an on-site coordinator relating to the meeting space and food and beverage services. Finally, you state that attendees will be charged a fee to cover the cost of food, beverages, materials, and other conference expenses. You state that any surplus will be divided between NAM and DSG, as will any deficit. You further state that none of the funds collected will be used to make any contributions or expenditures in connection with any election.

You ask whether the appearance of Republican congressional candidates at your planned conferences is permissible under the Act, if the conference is sponsored solely by NAM or jointly by NAM and DSG.²

The event described in your request involves the appearances of candidates or party representatives at an event sponsored and financed in whole or in part by a corporation and held simultaneously with the Republican Party's national convention in Dallas. The event falls only a few weeks prior to the 1984 general election and only shortly before primary elections for congressional candidates in many states. You plan to seek the assistance of the Republican National Committee and related party committees in obtaining candidates to appear at this event and, possibly, in providing a meeting location. Also, you will invite persons to speak at the meeting's afternoon session because they are congressional candidates, not on the basis of any other criteria. The only candidates invited will be candidates of the Republican Party. This event is thus linked by its timing and purpose to Congressional elections and carries partisan overtones. Although NAM and DSG will not endorse or support any candidate and although the candidates will not ask for campaign assistance, the appearances of these candidates in these circumstances will inevitably be campaign-related or involve partisan communications.³ Of course, this characterization would be reinforced if any portion of the audience at the meeting site consisted of part of any candidate's electorate. Thus, the sponsorship and financing by NAM, a corporation, of this event makes the provisions of 2 U.S.C. 441b applicable.

The Act makes it unlawful for a corporation to make a contribution or expenditure "in connection with" any Federal election. 2 U.S.C. 441b. This section defines "contribution" or "expenditure" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value...to any candidate, campaign committee, or political party or organization in connection with" any Federal election. 2 U.S.C. 441b(b)(2).

Commission regulations specifically address contributions or expenditures by corporations for partisan communications and for nonpartisan communications. The regulations provide that a corporation, including an incorporated trade association, may not make expenditures for partisan communications, such as candidate appearances, to the general public in connection with a Federal election. 11 CFR 114.3(a). By contrast, the regulations permit a candidate or party representative to make partisan appearances, including requests for contributions, at a function of an incorporated trade association if the audience before whom the candidate appears is limited to members and executive and administrative personnel of the organization and their families, "limited invited guests and observers," representatives of the news media, and employees of the organization outside of the restricted class of the organization who are necessary to administer the meeting. 11 CFR 114.3(a)(2) and (c)(2).⁴ The regulations also permit nonpartisan candidate appearances, subject to certain conditions, at a function of an

² As indicated in your letter of May 9, 1984, you represent only NAM and NAM's request does not contemplate sponsorship of this event solely by DSG. A request asking about the activities of a third party would not qualify as an advisory opinion request. See 11 CFR 112.1(b)

³ For these reasons, the event described in your request is factually distinguishable from issue forums, hospitality rooms, testimonial dinners, and charitable functions. See Advisory Opinions 1983-23, 1980-22, 1980-16, 1978-15, and 1978-4.

⁴ The trade association must report disbursements relating to such an appearance to the extent required by 11 CFR 100.8(b)(4) and 104.6.

incorporated trade association if the audience before whom the candidate appears consists of members and employees of the organization and their families. 11 CFR 114.4(d).⁵

Because your request is thus limited to a meeting involving partisan candidate appearances, only the exception of 11 CFR 114.3(c)(2) is applicable. To avail itself of this exception, the audience before whom the candidates appear at your meeting must be limited to those described in the regulation: (1) NAM members and their families; (2) NAM executive and administrative personnel and their families; (3) limited invited guests and observers; (4) representatives of the news media; and (5) NAM employees outside the restricted class of NAM who are necessary to administer the meeting. If the audience is so limited, the exception for such corporate expenditures in 11 CFR 114.3(c)(2) would apply whether the candidate appearances are sponsored solely by NAM or jointly by NAM and DSG. This exception would not apply, however, if the audience included persons beyond this group. Corporate sponsorship of partisan candidate appearances before an audience made up of persons outside the group described in the regulation would, in effect, result in corporate expenditures for partisan communications to the general public. Such corporate expenditures would be involved whether the candidate appearances were sponsored solely by NAM or jointly by NAM and DSG. No other exception in the Act or regulations would permit corporate expenditures for partisan candidate appearances before a group that included members of the general public. In this circumstance, the prohibition of corporate expenditures in 2 U.S.C. 441b would apply.⁶

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)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (Advisory Opinions 1983-23, 1980-22, 1980-16, 1978-15 and 1978-4;
Supplement to Regulations, Vol. I and Vol. II (February 1984)).

⁵ Because you apparently intend to include only Republican congressional candidates at your meeting, this nonpartisan provision does not apply to your request.

⁶ The same conditions and criteria would also apply to any similar conference sponsored by NAM in San Francisco at the time of the Democratic National Convention.