



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 14, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-25

Morgan L. Staines
Senior Assistant General Counsel
Community Psychiatric Centers
24502 Pacific Park Drive
Laguna Hills, CA 92656-3035

Dear Mr. Staines:

This responds to your letter dated October 31, 1990, requesting an advisory opinion on behalf of Community Psychiatric Centers Federal PAC ("CPCFPAC") and Community Psychiatric Centers ("CPC") and its subsidiaries concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the availability to a labor organization of solicitation methods used for contributions to CPCFPAC.

CPC is the connected organization of CPCFPAC. You state that CPC is the parent corporation of several other corporations and, through these wholly-owned subsidiaries, operates approximately 40 businesses in several states. One of these subsidiaries is Community Psychiatric Centers of California ("CPCCal") which operates 16 businesses in California and one in the State of Washington. CPC and its subsidiaries employ approximately 5800 persons, approximately 1700 of whom are employed by CPCCal. One of CPCCal's businesses, known as Belmont, employs approximately 150 persons, of whom approximately 40 are represented by a labor organization ("the union"). You state that no employees in any other subsidiary or business of CPC are represented by a labor organization.

CPCFPAC is contemplating a twice yearly solicitation of the employees of CPC and its subsidiaries. You present four questions with respect to the extent of the obligation of CPCFPAC, CPC, and/or its subsidiaries to notify the union of the intent to make such a solicitation and to allow the union access to information which would permit it to make a similar solicitation.

The first two questions involve situations in which CPCFPAC would solicit the employees of CPC and all its subsidiaries, including CPCCal. You first ask whether there is an obligation to notify and allow access to information to permit a union solicitation of the same group of employees, including the employees of CPCCal who do not work at Belmont and are not represented by the union. You also ask whether notice and access must be given to the union to enable it to solicit the employees of subsidiaries other than CPCCal even though none of those employees are represented by the union.

The second two questions involve situations in which CPCFPAC would solicit the employees of CPC and its subsidiaries excluding CPCCal. You ask whether notice and access must be given to the union to enable it to solicit the employees of CPCCal. You also ask whether notice of the solicitation and access to information pertaining to CPC and its subsidiaries, other than CPCCal, must be given to enable the union to solicit all CPC and subsidiary employees other than those of CPCCal.

The Commission notes that, for each of these questions, you have asked whether the obligation to notify and allow access lies with CPCFPAC, CPC, or both. You also inquire about the obligations of CPCCal and other subsidiaries.

According to the Act and Commission regulations, a corporation is allowed to solicit all its employees twice yearly for voluntary contributions to the corporation's separate segregated fund. Those solicitations must be made by mail directed to the employees' residences, and a special custodial arrangement must be used to receive the contributions in order to maintain the anonymity of noncontributors and contributors of small amounts. Under similar arrangements, a labor organization with members who are employees of the corporation is allowed twice yearly to solicit all other employees of the corporation for contributions to the union's separate segregated fund. 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6(b) and (c).

If a corporation makes twice yearly solicitations of its employees under 11 CFR 114.6, any method it uses to make those solicitations must be made available to any labor organization representing members employed by the corporation or its subsidiaries, branches, divisions, or affiliates. 11 CFR 114.6(e)(3). Such method must be made available in order to permit the labor organization to solicit corporate employees who are not members of the labor organization. 11 CFR 114.6(e)(3)(i). A corporation that does not wish to disclose employee names to the labor organization for its twice yearly solicitation may instead provide those names to an independent mailing service which shall be retained by both the corporation and the union for the mailings. 11 CFR 114.6(e)(3)(ii). In addition, the corporation must give advance notice to the labor organization of its intention to make such a solicitation, and the method it will use, within a reasonable time prior to the solicitation in order to give the labor organization an opportunity to make a similar solicitation. 11 CFR 114.6(e)(4).

Based on the cited provisions and on the reasons discussed below, the Commission concludes that CPC and its subsidiaries are obligated to provide the union with access to the names and addresses of all employees of CPC and its subsidiaries if CPCFPAC, CPC, or any of its subsidiaries intend to make a twice yearly solicitation for contributions to CPCFPAC. In the situation presented, the obligation to provide such notice and information resides with CPC,

which is the corporation in control of the subsidiaries and the connected organization for CPCFPAC.

By its terms, section 114.6(e)(3) obligates the corporation to make the solicitation method available to a labor organization that represents members who are employees of any entity within a group of affiliated corporations. In addition, that section follows the expressed intent of the conferees on the 1976 Amendments to the Act that 2 U.S.C. 441b(b)(4)(B) and (b)(6), taken together, extend the requirement of making the method available to situations involving twice yearly solicitations. Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, 110 (1977); H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 64 (1976). Section 441b(b)(6) requires any corporation, including its subsidiaries, branches, divisions, and affiliates to make its method of soliciting or facilitating voluntary contributions available to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates. In a situation involving the use by a corporation of a payroll deduction under section 441b(b)(4)(A), the Commission applied subsection (b)(6), as restated in 11 CFR 114.5(k), to conclude that that method must be made available to a labor organization representing employees of an affiliate corporation. Advisory Opinion 1982-45.

The Commission also has concluded that, for a twice yearly solicitation, the decision by a corporation to exclude the employees of certain subsidiaries from its solicitation does not limit the employee group that must be made available for a labor organization solicitation. In Advisory Opinion 1977-49, the Commission considered a situation in which a company electing the use of an independent mailing service for twice yearly solicitations decided not to solicit the employees of foreign-incorporated subsidiaries (as well as foreign nationals). The Commission concluded that 11 CFR 114.6(e)(3)(ii), nevertheless, required the corporation to submit to the mailing service the names of all the employees, including those of the foreign subsidiaries, for the union solicitation.

Finally, in its provisions for joint solicitations by unions, Commission regulations specifically contemplate solicitation by a union of nonrepresented employees in corporate subsidiaries and affiliates, regardless of whether the union represents employees of such affiliates. Specifically, if there are several labor organizations representing members employed at a corporation, its subsidiaries, or affiliates, they may not, singularly or jointly, make a combined total of more than two solicitations per year. In keeping to this limit, they may send out a combined mailing containing written solicitations for contributions to each separate fund established by the various labor organizations. 11 CFR 114.6(e)(5).

The Commission notes the limits of the union's access to the corporation's solicitation method. First, the employee names are made available only for solicitation of contributions to the union's separate segregated fund and may not be used for any other purpose. 11 CFR 114.6(e)(2). Second, despite the broad scope of the corporation's obligation here, the option of using an independent mailing service allows that obligation to be performed in a manner that protects the corporation from disclosure of employee names to the union. Third, the Commission notes that the corporation does not have to provide such availability if it makes no solicitation under section 441b(b)(4)(B). 11 CFR 114.6(e)(3)(iii). Finally, although the corporation would bear the

costs of making a list of employees available for solicitation by a union, the union would bear the costs of preparing and mailing union solicitation materials. Advisory Opinion 1977-49.

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,

(signed)

Lee Ann Elliott
Chairman for the Federal Election Commission

Enclosures (AOs 1982-45 and 1977-49)