



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 17, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-12

James S. Todd, M.D.
Executive Vice President
American Medical Association
515 North State Street
Chicago, Illinois 60610

Dear Mr. Todd:

This refers to your letters of June 3, April 21, March 23 and February 23, 1994, concerning the application of the Federal Election Campaign Act of 1971 ("the Act"), as amended, and Commission regulations to the governing and membership structure of the American Medical Association (the "AMA").

You state that the AMA is an Illinois corporation governed by the Illinois Not-For-Profit Corporation Act. It is a federation of 50 State medical societies and the medical societies of the District of Columbia, Guam, Puerto Rico and the United States Virgin Islands.^{1/} Its membership constitutes approximately 290,000 physicians and medical students. The AMA is the connected organization of the American Medical Association Political Action Committee ("AMPAC"), a separate segregated fund which you state is registered with the Commission as a multi-candidate committee.

Specifically, you request an advisory opinion to determine whether the House of Delegates of the AMA (the "House") is the highest governing body of the AMA within the meaning of Commission regulations and whether "direct members" of the AMA have sufficient organization and financial attachments to the AMA to qualify as members under the regulations.^{2/}

You provide various AMA documents with your request including its articles of incorporation, its Constitution, its Bylaws, a membership brochure and various policy statements approved by the House. These materials identify two bodies, the House and the Board of Trustees (the "Board"), that play a role in governing the AMA. In order to understand which institution should

be considered the AMA's highest governing body, the main responsibilities of each is reviewed below. The materials also provide information regarding the membership structure of the AMA which is also analyzed.

THE AMA GOVERNING BODIES

The House of Delegates

The House is made up of delegates from all of the organizational members of the AMA--the State medical associations and the special sections of the AMA. It also has delegates specially appointed by various medical divisions of the United States armed forces and medical speciality organizations.^{3/} All House delegates must be AMA members. AMA Bylaws 2.101.

The House of Delegates is described in Article VI of the AMA Constitution as the "legislative and policy making body" of the AMA. It passes policy statements and approved the dues and assessments (AMA Constitution Art. XI) and alone has the right to amend the AMA Constitution. It also appoints members to all committees, elects most members of AMA councils, elects almost all the members of the Board of Trustees.

The Board of Trustees

The Board of Trustees consists of 17 members. These are: 12 trustees elected by the House; the Resident Physician Member, President and President elect, all of whom are elected separately by the House; the immediate past president, and the medical student member who is elected at a business meeting of the medical student section. AMA Bylaws 3.40.^{4/} Members of the Board must have been AMA members for at least two years. AMA Bylaws 3.20

According to the AMA Constitution, the Board "shall have charge of the property and financial affairs of the Association and shall perform such duties as are prescribed by law governing directors of corporations or as may be prescribed in the Bylaws." AMA Constitution Art. VIII. The Bylaws, in turn, delineate this power further, by giving the Board veto power over any House resolution which pertains to the expenditure of money. AMA Bylaws 2.101.

Various House resolutions have given the Board certain limited policy prerogatives. The Board may enact policy in emergency situations when the House is not in session and there is no standing AMA policy. The House may, however, reverse the Board decision. The Board may also enact policy that differs from standing policy. In that case, the new policy must be presented at the next House meeting for House approval. In non-emergency situations and on specific issues, the House may delegate policy making power to the Board with no subsequent House approval required. However, the House always retains the right to change the policy and revoke the delegation.

The Board also possesses limited appointment powers. It may appoint a limited number of committee members and nominate some council members. It also appoints the secretary-treasurer and the executive vice president who acts as the AMA's chief executive officer.

THE AMA MEMBERSHIP STRUCTURE

Classes of Membership

As outlined by the AMA Bylaws, the organization's various classes of membership are: active constituent, active direct, affiliate and honorary. Active constituent members are AMA members of its constituent associations (State medical associations) who are entitled to exercise the rights of membership in their constituent associations, including the right to vote and hold office as determined by their respective constituent associations. Active direct members are individuals who chose to join the AMA directly and not through any constituent association. Both these classes also require identical professional credentials. AMA Bylaws 1.11 and 1.12.^{5/}

Affiliate membership is open to four classes of individuals: physicians in foreign countries, American physicians located abroad, dentists holding certain degrees and pharmacists. AMA Bylaws 1.14. Honorary membership is open to physicians of foreign countries who have achieved pre-eminence in medicine and who have attended an AMA convention. AMA Bylaws 1.15. Honorary and affiliate membership is bestowed by vote of the House, while constituent and direct are attained through application to the AMA.

Obligations and Benefits of Members

Constituent members and direct members are required to pay dues and assessments. In the membership brochure provided in your request, the range of dues varies corresponding to one's status as a physician, resident physician or intern, the length of time served in each capacity, and the time duration of the membership term one wishes to purchase.^{6/} Honorary and affiliate members do not pay dues or assessments.

Constituent and direct members are both eligible to be elected and serve as delegates or as trustees and officers. They both may serve on various committees, if other qualifications are met.^{7/} Both receive the various newsletters and journals and may take advantage of various AMA professional programs and insurance policies. The distinction between constituent and direct members lies in the ability of direct members to participate in election to the House. Since most direct members do not belong to a constituent society, most do not participate in the process to elect delegates to the House.^{8/} Honorary and affiliate members do not have any rights in the AMA beyond the privilege to attend AMA meetings. They are also expressly prohibited from holding any AMA office.

THE ACT AND COMMISSION REGULATIONS

The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a). The Act states, however, that the term "contribution or expenditure" does not include "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative or corporation without capital stock." 2 U.S.C. 441b(b)(2)(C). See also 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v).

The general prohibition of 2 U.S.C. 441b(a), however, has the additional exception that allows an incorporated membership organization to communicate with its members on "any subject" including partisan electioneering messages. 2 U.S.C. 441b(b)(2)(A). See also 2 U.S.C. 431(9)(B)(iii). Commission regulations expressly permit incorporated membership organizations to make partisan communications to their individual members. See 11 CFR 114.3(a)(2), 114.3(c), and 114.7(h).

Under 2 U.S.C. 441b(b)(4)(A), a corporation, or a separate segregated fund established by a corporation, may only solicit contributions to such a fund from its stockholders and their families and its executive or administrative personnel and their families. An exception set forth in 2 U.S.C. 441b(b)(4)(C) allows a corporation without capital stock or a separate segregated fund established by a corporation without capital stock, including a trade association, to solicit contributions to the fund from members of the nonstock corporation. A "Membership Association," a classification which includes trade associations and other corporations without stock is defined, in part, under 11 CFR 100.8(b)(4)(iv) and 114.1(e)(1) as a membership organization that (i) expressly provides for "members" in its articles and bylaws; (ii) expressly solicits members; and (iii) expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

The Commission regulations provide guidance as to the definition of the term "members." Under 11 CFR 100.8(b)(4)(vi)(B) and 114.1(e)(2), "members" means all persons who are currently satisfying the requirements for membership in a membership association, who affirmatively accept the membership association's invitation to become a member, and who meet one of the following requirements:

- (i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);
- (ii) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or
- (iii) Are entitled to vote directly for all of those on the highest governing body of the membership association.

The regulations also provide that the Commission "may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule." See 11 CFR 100.8(b)(4)(vi)(B) and 114.1(e)(3).

APPLICATION OF MEMBERSHIP REGULATIONS TO THE AMA

The AMA as a Membership Association.

The facts and background to this request indicate that the AMA is a membership association for purposes of the Act. For example, Article V of the AMA Constitution and section 1.00 of the

AMA Bylaws meets the requirements of 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1) by expressly providing for membership. The AMA has various journals and a newsletter which are sent to members, therefore, the requirement that membership be expressly recognized is also met. See 11 CFR 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1)(iii). The facts of the request and materials such as the membership brochure suggest that the AMA expressly solicits members. See 11 CFR 100.8(b)(4)(iv) and 114.1(e)(2).

The AMA's Highest Governing Body

Both the Board and the House have significant roles regarding the governance of the AMA. However, it appears that the power of the Board is derived from or delegated by the House. It is significant that the House retains supreme policy-making powers within the AMA and can overrule or retake any policy incentive it delegates to the Board. Further, while it appears that the House elects and can remove members of the Board in certain instances, the Board has no similar power to remove delegates. The one area in which the Board enjoys a veto right over the House is in financial matters. This power, while significant, must be contrasted with the power of the Board to approve dues and assessments and the ability of the House, not shared with the Board, to amend the bylaws and alter the powers of the Board. Therefore, after weighing these factors the Commission concludes that the AMA House of Delegates, rather than the AMA Board of Trustees, is the highest governing body of the AMA for purposes of the Commission Regulations.^{9/}

Status of AMA Direct Members

Under the membership regulations, AMA constituent members would be considered "members" of the AMA for purposes of the Act. Because of their obligation to pay dues and their voting rights, these individuals could meet the membership requirements of section 100.8(b)(4)(iv)(B)(2) and 114.1(e)(2)(ii), albeit under different clauses.^{10/} Similarly, direct members who are also members of AMA constituent associations or members of AMA sections would also be considered members of the AMA since they may participate in the election process of delegates to the House.^{11/}

A different situation exists for those remaining direct members. While these individuals pay dues and have certain participatory rights, they do not have the right to vote for any House delegate or any person who can vote for a House delegate. The Commission considered the status of these individuals, but was unable to reach a conclusion on their membership status by the required affirmative vote of four Commission members. See 2 U.S.C. 437c(c).

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.

For the Commission,

(signed)

Danny Lee McDonald
Vice Chairman

Enclosure (AO 1993-24)

ENDNOTES

1/ You state that these constituent medical associations are organized separately from the AMA and are not bound by AMA decisions. See AMA Bylaws 2.115.

2/ The relevant regulations are found at 11 CFR 100.8(b)(4) and 114.1(e).

3/ Of importance is the method by which delegates to the House are selected. As you indicate in your request, the method of election is up to each organization that belongs to the AMA. The vast majority (79%) of House delegates are chosen by State societies. You state that in all but two cases, California and Oregon, the delegates are chosen by the State association's own house of delegates. California and Oregon have direct election of AMA House delegates by a secret ballot among all AMA members of those two associations. You have informally provided information that the specialty organizations which provide the next largest bloc of delegates (19%) have their delegates appointed by each head of the organization. The various surgeon generals of the armed forces also appoint the House delegates (1%) allotted to the military. Finally, the last group of delegates (1%), those allotted to the five AMA special sections (resident physicians, medical student, hospital medical staff, medical schools and young physicians sections) are chosen at a business meeting of the representatives of each section. You state that AMA section members select the representatives to the section business meetings by direct elections.

4/ While the AMA Constitution and Bylaws are silent on whether the House may also remove Board members, you believe that under the Illinois Not-for-Profit Corporation Act-805 ILCS 105/108.35 & 108.55, the House could remove a Board member for cause.

5/ Hereinafter, these two classes of active constituent and active direct members will be cited without the use of the term "active."

6/ The highest payment is \$420 for a one year regular membership for physicians, while the lowest is \$20 for a one year membership for medical students.

7/ Membership in the House of Delegates is required for membership on House committees. The only exceptions are special committees of the House where non-delegate committee members may participate in the discussions, but may not cast a vote in committee. See AMA Bylaws 2.702.

8/ The actual number of AMA direct members who do not participate in the election of members to the House (what you refer to in your request as voting rights in the AMA) is indeterminate. You have estimated that the total number of direct members in 1993 was 89,000 (or 31% of total AMA membership). However, some of these members do nonetheless have voting rights. You

state that 21,000 (or 24% of the direct members) are individuals who obtained AMA membership and membership in a constituent society at different points in time. Therefore, while they are still apparently considered direct members, they nonetheless exercise the same AMA voting rights as constituent members through their current membership in a constituent association. Of the remaining 68,000 direct members (23% of total AMA membership), a further indeterminate amount are members of the special AMA sections that also elect representatives to the House. Medical students who can cross several different membership categories also elect their own representative trustee. However, even with all these additional subtractions, you estimate that a majority (over 44,500) of direct members do not have voting rights.

9/ This conclusion is consistent with the Commission's advice in Advisory Opinion 1993-24, where the Commission concluded that the requester's board of directors, rather than its executive committee, was the highest governing body of the organization. The executive committee was responsible for the day to day operations of the organization, but did not hold final power since, among other restrictions, it was limited in its ability to alter policy. See Advisory Opinion 1993-24.

10/ For example, AMA constituent members from California and Oregon would qualify as members since they vote directly for at least one delegate to the AMA House. AMA constituent members from other state associations would qualify since they vote directly for members of the state associations' house of delegates which, in turn, elect the delegates to the AMA House.

11/ The Commission notes the possibility that some direct members of the AMA may also be the members of various speciality organizations that send delegates to the House. If direct members have the right to elect these delegates to the AMA House, or elect those that select the delegates, then those direct members would also be considered members of the AMA for purposes of the Act.