



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-19

Timothy Sawyer Knowlton, Esq.
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Dear Mr. Knowlton:

We are responding to your advisory opinion request on behalf of Renaissance Health Service Corporation (“Renaissance”) regarding whether, under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations, individuals selected to be members of Renaissance by two entities related to Renaissance qualify as “members” for purposes of the Act.

The Commission concludes that, under the Act and Commission regulations, Renaissance is a “membership organization” and the individuals selected by the two entities are “members.” Renaissance may thus solicit the individuals for contributions to a separate segregated fund (“SSF”) formed by Renaissance.

Background

The facts presented in this advisory opinion are based on your letters received on May 11, June 26, and September 5, 2007, phone conversations with Commission staff on October 3 and 16, 2007, and an e-mailed organizational chart received on June 11, 2007.

Renaissance is a non-profit corporation that is exempt from taxation under section 501(c)(4) of the Internal Revenue Code. It was originally named the Michigan Dental Service Corporation and was incorporated under Michigan non-profit corporation law in 1957 as a non-stock operating company administering dental plans. In 1963, it became a non-operating holding company for Delta Dental Plan of Michigan (“DDPMI”). Currently, Renaissance has 75 members, all of whom are individuals. The Bylaws of Renaissance fix the number of “voting members” at 75. However, the Renaissance board of directors may, by resolution, increase the number of voting members to a maximum of

100. Renaissance Bylaws (“Bylaws”), Article II, Section 1. Renaissance has not yet established an SSF.

Renaissance’s Articles of Incorporation list a number of purposes for the company but principally it serves as a holding company for DDPMI and Delta Dental of Tennessee (“DDTN”) and other companies that it directly or indirectly owns or controls.¹ DDPMI and DDTN, which are both 501(c)(4) non-profit corporations, administer dental plans. Renaissance also directly supports programs to promote access to dental care and the advancement of dental science. For example, Renaissance makes large charitable contributions to public and private community health projects.²

Renaissance is the sole corporate member of DDPMI and DDTN and, hence, “controls” them. Renaissance has entered into an “Affiliation Agreement” with these two companies. In accordance with this agreement and the Renaissance Bylaws, DDPMI selects no more than 68 of the 75 members of Renaissance, and DDTN selects no fewer than seven. The members serve three-year terms and may be re-appointed by DDPMI or DDTN to further terms. Bylaws, Article II, Section 1. Subject to conditions explained below, these 75 individuals elect the board of directors of Renaissance at the annual membership meetings. Those directors who were not members of Renaissance prior to their election to the board of directors become members of Renaissance upon their election.

The board exercises Renaissance’s corporate powers. Bylaws, Article III; *see also* Bylaws, Articles V, VI, VII, and XI (describing such powers as electing, and serving as, officers and managing company assets). Generally, directors serve three-year terms as directors and may be re-elected to the board no more than twice. Director terms are staggered so that board members are elected at each annual membership meeting. You state that, once a member becomes a director, that individual’s membership term becomes at least co-extensive with his or her tenure as director; even if the individual’s three-year membership term ends before his or her director term, the individual will not be replaced as a member until his or her tenure as director ends.

The Bylaws permit the removal of a member during his or her membership appointment if the member refuses to comply with the conditions of the voting agreement among the members that is required by the Affiliation Agreement. Bylaws, Article II, Section 1. The voting agreement requires that, in electing the 19 directors of Renaissance, the members must vote such that no more than 17 directors represent DDPMI and no fewer than two directors represent DDTN. Renaissance’s nominating

¹ In a June 11 e-mail to the Commission, you sent an organizational chart showing the companies that Renaissance directly or indirectly controls (*e.g.*, DDPMI and DDTN and companies controlled by DDPMI and Renaissance through their partial ownership of the Renaissance Holding Company). Of these approximately 20 entities, only four have employees – DDPMI, DDTN, Renaissance Systems and Services, and Renaissance Life & Health Insurance Company of America.

² Renaissance has approximately \$18 million in cash and securities. These funds were generated during Renaissance’s time as an operating company and from investment income accumulated from funds earned at that time.

committee, which consists of at least five directors, selects the potential directors to be voted on in a separate procedure by the members. Although two of the nominees must be acceptable to DDTN, DDPMI and DDTN do not impose the slate of nominees, and Renaissance members may also propose nominees to the nominating committee. A member may comply with the voting agreement by voting for individuals who are among the DDTN-selected members of Renaissance for the board seats associated with DDTN, and need not limit his or her vote to the two nominees.

Questions Presented

(1) Do the 75 individuals selected by DDPMI and DDTN to be members of Renaissance qualify as “members” of a “membership organization” under the Act and Commission regulations, so that Renaissance may solicit them for contributions to its SSF?

(2) If the 75 individuals do not qualify as “members” of Renaissance under the Act and Commission regulations, do the 19 directors qualify as executive or administrative personnel, as defined in 11 CFR 114.1(c), so that Renaissance may solicit them for contributions to its SSF?

Legal Analysis and Conclusions

(1) Do the 75 individuals selected by DDPMI and DDTN to be members of Renaissance qualify as “members” of a “membership organization” under the Act and Commission regulations, so that Renaissance may solicit them for contributions to its SSF?

Yes, under the Act and Commission regulations, Renaissance is a “membership organization,” and the 75 individuals are its “members” and may be solicited by Renaissance for contributions to its SSF.

As an exception to the prohibition on corporate contributions and expenditures, the Act and Commission regulations provide that an incorporated membership organization, cooperative, or corporation without capital stock, or an SSF established by such an entity, may solicit voluntary contributions to the SSF, at any time, from the entity’s members and their families, as well as the entity’s executive and administrative personnel and their families. 2 U.S.C. 441b(b)(2)(C) and 441b(b)(4)(C); 11 CFR 114.1(a)(2)(iii) and 114.7(a).

a. Application of the definitions of “membership organization” and “member”

i. Application of the “membership organization” criteria

Commission regulations define a “membership organization” as a trade association, cooperative, or corporation without capital stock that:

- (i) Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;
- (ii) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;
- (iii) Makes its articles, bylaws, constitution, or other formal organizational documents available to its members upon request;
- (iv) Expressly solicits persons to become members;
- (v) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and
- (vi) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office.

11 CFR 114.1(e)(1)(i)-(vi) and 100.134(e)(1)-(6). An organization must meet all six criteria in 11 CFR 114.1(e)(1) and 100.134(e) to qualify as a "membership organization."

According to the Bylaws, the members of Renaissance elect the board of directors who generally serve three-year terms and may be re-elected no more than twice. Moreover, members serve on the board, and any non-member chosen for the board becomes a member of Renaissance upon election to the board. These facts support a conclusion that at least some of the individual members are vested with the power and authority to operate or administer Renaissance through their board membership, or that all of the individual members are vested with such power and authority by their ability to elect the members of the board. *See* 11 CFR 114.1(e)(1)(i) and 100.134(e)(1). *See also* Advisory Opinions 2006-17 (Berkeley Electric Cooperative) and 1999-40 (National Rural Electric Cooperative Association) (indicating that members have the power to operate or administer a membership organization through the ability to select the board of directors); and Advisory Opinion 2007-16 (American Kennel Club) (discussing the first membership organization criterion with reference to the organization's requirement that its board of directors consist of a subset of the voting delegates of the organization's members).

There are some limits on the discretion exercised by directors and other members when making decisions or voting. A member can be removed during his or her membership appointment if the member refuses to comply with the conditions of the voting agreement. Moreover, DDPMI and DDTN can decide not to re-appoint members to additional three-year terms. However, even if the limit on the members' right to select

the board of directors may raise questions about whether all 75 members are vested with “the power and authority to operate or administer” Renaissance, the directors, who comprise a subset of the members, exercise the corporate powers of Renaissance and manage the company. Moreover, even if DDPMI or DDTN do not want to re-select a director as a member of Renaissance, that member can continue to serve as a member so long as he or she is serving out his or her director term. The first membership organization criterion is thus satisfied because at least some of the members are vested with the power and authority to operate or administer Renaissance during their three-year terms as director.

Information and materials provided by you indicate that Renaissance satisfies the second through sixth criteria for qualifying as a “membership organization.” The Bylaws expressly set forth the qualifications for membership, stating that the members:

shall be selected for their interest in and qualification to advance the purposes of [Renaissance] and the concept of extending the benefits of dentistry and any other ancillary benefits [Renaissance] deems beneficial. Only persons who demonstrate and maintain their acceptance and concern for the purposes and objectives of [Renaissance] shall be eligible to become and remain members of [Renaissance].

Bylaws, Article II, Section 1. Each member must also agree to be bound by the terms of the voting agreement described above, and refusal to comply with the voting agreement disqualifies the individual from serving as a member. Bylaws, Article II, Section 1. *See* 11 CFR 114.1(e)(1)(ii) and 100.134(e)(2).

Renaissance’s Articles of Incorporation and Bylaws are made available to any member upon that individual’s request. Renaissance expressly invites individuals to be members upon their selection by DDPMI or DDTN. Although membership cards are not sent to members, each individual invited to be a member must agree to be a member before achieving membership status, and each member is given agenda documents from Renaissance in advance of each annual meeting. *See* 11 CFR 114.1(e)(1)(iii)-(v) and 100.134(e)(3)-(5).

Renaissance has existed since 1957, was not organized for the purpose of influencing any nomination for election, or election, of any individual to Federal office, and has not changed its purpose to one of influencing Federal elections. *See* 11 CFR 114.1(e)(1)(i) and 100.134(e)(6). Renaissance’s membership includes retired employees of DDPMI, dentists participating in a dental network maintained by DDPMI or DDTN for the benefit of subscribers covered by the dental plans, retired dentists, subscribers to DDPMI and DDTN, and other individuals. For many years, the number of members at any one time had totaled 68, and the provision for this number of members was to ensure a broad representation of constituencies that provide and utilize dental services. In 2005, when DDTN affiliated with DDPMI through Renaissance, seven members associated with DDTN were added. Thus, the membership is made up of a small group of individuals that has historically served, and continues to serve, the purposes of

Renaissance as an organization promoting access to dental care and the advancement of dentistry, and not the purpose of influencing Federal elections.

ii. Application of the criteria for “member”

Commission regulations provide that the term "members" includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

- (i) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or
- (ii) Pay membership dues at least annually, of a specific amount predetermined by the organization; or
- (iii) Have a significant organizational attachment to the membership organization which includes: affirmation of membership on at least an annual basis; and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

11 CFR 114.1(e)(2)(i)-(iii) and 100.134(f)(1)-(3).

The 75 individuals satisfy the requirements for membership set forth in Renaissance's Bylaws, affirmatively accept Renaissance's invitation to be a member, and affirm membership on an annual basis.³ See 11 CFR 114.1(e)(2)(iii) and 100.134(f)(3).

With respect to the exercise of participatory rights, the Bylaws provide for the individual member's right to vote in the election of board members, as described above, and for other member voting rights that are not subject to the voting agreement. Specifically, the members may amend the Bylaws by a majority vote of those present at an annual or special meeting. Moreover, prior written approval of the members is required for the board of directors to amend or repeal the Bylaws in such a way as to change: (a) the identity, qualification, or rights of the members; (b) the qualifications, classifications, terms of office, or permissible number of members of the board; or (c) any limitation on the rights or authority of the board contained in the Bylaws or Articles

³ Specifically, members are invited to the annual meeting and given agenda documents. If a member fails to appear without giving advance notice of the absence, Renaissance contacts that individual to ascertain if he or she continues to be interested in membership. If not, the person's membership is ended.

of Incorporation. Bylaws, Article VIII, Section 1. In addition, Michigan law requires that the members have the right to approve or reject: (1) any proposed merger or consolidation; (2) a sale, lease, exchange or other disposition of all or substantially all of Renaissance's assets; and (3) Renaissance's dissolution. *See* Michigan Compiled Laws 450.2703, 450.2753, and 450.2804. Although not provided for in the Bylaws, members occasionally vote on particular contributions to dental care-related charitable projects.

The 75 individual members are subject to the voting agreement described above and DDPMI and DDTN can deny re-appointment as a member to an individual member even if such member complies with the voting agreement. Nevertheless, the 75 individuals have some limited discretion in the important function of voting for directors, and have greater discretion in voting on other specific matters. Hence, these individuals have sufficient direct participatory rights during their three-year member terms to meet the definition of "member" at 11 CFR 114.1(e)(2)(iii) and 100.134(f)(3).

b. Conclusion

Based on the foregoing facts and analysis, the Commission concludes that, under Commission regulations, Renaissance is a "membership organization" and the 75 individuals are "members" of Renaissance. Hence, pursuant to 2 U.S.C. 441b(b)(2)(C) and 441b(b)(4)(C), Renaissance or any SSF it creates may solicit the 75 individuals at any time for contributions to the SSF.

(2) If the 75 individuals do not qualify as "members" of Renaissance under the Act and Commission regulations, do the 19 directors qualify as executive or administrative personnel, as defined in 11 CFR 114.1(c), so that Renaissance may solicit them for contributions to its SSF?

Because the Commission has answered the first question in the affirmative and because the directors themselves become members of Renaissance at the time they join the board if they were not members already, the Commission need not respond to the second question. As "members" of Renaissance, such individuals are solicitable.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)
Robert D. Lenhard
Chairman