



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2013-08

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American Veterinary Medical Association
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Dear Mr. Jones:

We are responding to the advisory opinion request you submitted on behalf of the American Veterinary Medical Association (“AVMA”) regarding the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to AVMA’s proposed activity. AVMA asks whether it may solicit members of the Student American Veterinary Medical Association (“SAVMA”) to make contributions to AVMA’s separate segregated fund, the American Veterinary Medical Association Political Action Committee (“AVMA PAC”). The Commission concludes that AVMA may solicit contributions from members of SAVMA to AVMA PAC.

Background

The facts presented in this advisory opinion are based on your letter dated July 3, 2013, which included the bylaws and articles of incorporation for AVMA and SAVMA, your telephone conversation with Commission staff on July 25, 2013, and your comments dated August 20, 2013.

AVMA is a non-profit membership organization incorporated under Illinois law. It is registered as a tax-exempt organization under section 501(c)(6) of the Internal Revenue Code. According to its bylaws, the mission of AVMA is to “improve animal and human health and advance the veterinary medical profession.” *American Veterinary Medical Association Bylaws*, Art. I, Sec. 3.

AVMA's membership rules require an individual to have earned a professional degree in veterinary medicine or to be involved in teaching veterinary medicine or in veterinary research. *AVMA Bylaws*, Art. II, Sec. 3(a)-(c). More than 80% of veterinarians in the United States are members of AVMA, and more than 99% of AVMA members have full voting rights within the organization.¹ Most of these members qualify to be voting members on the basis of having graduated from veterinary school as SAVMA members in good standing. *See AVMA Bylaws*, Art. II, Sec. 3(a)(1)(iv).

AVMA has two governing bodies: the Executive Board and the House of Delegates. The AVMA Executive Board consists of 15 elected AVMA members and is charged with the overall management of the affairs of AVMA. *AVMA Bylaws*, Art. V, Sec. 1. The AVMA House of Delegates, which establishes the organization's policies and has power to amend its bylaws, *id.*, Art. VII, Sec. 1, is comprised of one delegate and one alternate delegate from each of 68 constituent organizations, including SAVMA. *Id.*, Art. VII, Sec. 2.² AVMA's House of Delegates also elects three of the members of AVMA's Executive Board. *Id.*, Art. VI, Sec. 14(a).

SAVMA is a non-profit membership organization of veterinary students. SAVMA is incorporated under Illinois law and holds tax-exempt status under a "group exemption" from the Internal Revenue Service, which recognizes SAVMA as a "subordinate organization" to AVMA.³ According to its bylaws, SAVMA's mission is to "enhance the veterinary profession, to educate the public, and to promote contact and exchange of ideas between veterinary students, veterinarians and the parent organization, the American Veterinary Medical Association." *Bylaws of the Student American Veterinary Medical Association*, Art. II, Sec. 3. SAVMA's bylaws must "correlate" with AVMA's bylaws and must be approved by AVMA's Executive Vice President. *Id.*, Art. XV, Sec. 4; *see also id.*, Art. III, Sec. 1(d) (providing that SAVMA members must abide by AVMA Bylaws).

Most SAVMA members join the organization by joining a student chapter of AVMA. There are thirty-three student chapters of AVMA. These chapters have over 10,000 members combined, representing approximately 92% of all veterinary students in the United States. SAVMA cooperates with AVMA in inviting veterinary students to join SAVMA. The AVMA Student Advisor and/or the AVMA Vice President visit each campus with a student chapter, where they explain to students the benefits of joining SAVMA. They also distribute brochures and send emails to students encouraging them to become members of SAVMA. In addition, student chapter officers meet with students at their respective schools to solicit membership.

¹ AVMA has two categories of non-voting members (i.e., "associate" and "affiliate" members, *see AVMA Bylaws*, Art. II, Sec. 3), which comprise a total of 0.2% of AVMA's membership.

² These organizations include the veterinary medical association of each state (including the District of Columbia and Puerto Rico); "Constituent Allied Veterinary Organization[s]" representing specific areas within veterinary medicine; the Uniformed Services Organization, which represents AVMA members serving in the Uniformed Services; and SAVMA.

³ Under IRS Revenue Procedure 80-27, "subordinate organizations" are organizations that are affiliated with and under the general control of a central organization. Subordinate organizations therefore need not file for separate recognition of tax-exempt status. Rev. Proc. 80-27, 1980-1 C.B. 677.

SAVMA has two governing bodies: the SAVMA Executive Board and the SAVMA House of Delegates. The SAVMA Executive Board is charged with the overall management of the affairs of SAVMA and consists of 14 elected SAVMA members. *SAVMA Bylaws*, Art. VII, Secs. 1-2; Art. VI, Sec. 3. The SAVMA House of Delegates is the principal “legislative” body of the organization and elects the members of SAVMA’s Executive Board. *SAVMA Bylaws*, Art. VIII, Sec. 1; Art. VI, Sec. 3. The voting members of the SAVMA House of Delegates consist of one Junior Delegate and one Senior Delegate from each veterinary school that meets certain standards. *SAVMA Bylaws*, Art. VIII, Sec. 3. The AVMA Vice President and AVMA Staff Advisor are both empowered to act on behalf of SAVMA. *SAVMA Bylaws*, Art. V, Secs. 2-3.

Two members of SAVMA’s Executive Board — its President and President-Elect — are delegates in the AVMA House of Delegates: the President with full voting power, and the President-elect as the President’s alternate. *AVMA Bylaws*, Art. VII, Secs. 2(d), 15-16; *see SAVMA Bylaws*, Art. VI, Secs. 2(A)(b)(v), 2(B)(b)(iv). SAVMA’s President also attends and participates (without voting power) in AVMA Executive Board meetings. *SAVMA Bylaws*, Art. VI, Sec. 2(A)(b)(vii).

SAVMA’s membership dues are determined by the SAVMA House of Delegates and are paid to SAVMA. *SAVMA Bylaws*, Art. IV. SAVMA members enjoy many benefits otherwise available only to AVMA members. These benefits include significantly reduced subscription rates on AVMA professional journals, access to the “members only” page of the AVMA website, eligibility to sign up for multiple “members only” newsletters, and participation in AVMA’s group health, professional liability, and life insurance programs.

SAVMA members receive a member identification number when they join and retain that number if they become members of AVMA. More than 97% of SAVMA members become members of AVMA upon graduating from veterinary school, and some of the remaining 3% become members of AVMA at a later time.

Questions Presented

1. *Are members of SAVMA “members” of AVMA whom AVMA may solicit for contributions to AVMA PAC under the Act and Commission regulations?*
2. *Is SAVMA an affiliate organization of AVMA under the Act and Commission regulations?*

Legal Analysis and Conclusions

1. *Are members of SAVMA “members” of AVMA whom AVMA may solicit for contributions to AVMA PAC under the Act and Commission regulations?*

Yes, members of SAVMA are members of AVMA whom AVMA may solicit for contributions to AVMA PAC under the Act and Commission regulations.

The Act prohibits a corporation from making any contribution in connection with a Federal election. 2 U.S.C. § 441b(a). The Act provides, however, that the term “contribution” 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, [or] membership organization.” 2 U.S.C. § 441b(b)(2)(C); *see also* 2 U.S.C. § 431(8)(B)(vi), (9)(B)(v).

Under 2 U.S.C. § 441b(b)(4)(A), a corporation may solicit contributions to its separate segregated fund only from the corporation’s stockholders and their families and the corporation’s executive or administrative personnel and their families. An exception set forth in 2 U.S.C. § 441b(b)(4)(C) allows a membership organization to solicit contributions to its separate segregated fund from the organization’s members.

Commission regulations define a “membership organization” to include a trade association or corporation without capital stock that: (1) is composed of members who have the authority to operate or administer the organization pursuant to its bylaws; (2) expressly states in its bylaws the qualifications and requirements for membership; (3) makes its bylaws available to its members upon request; (4) expressly solicits persons to become members; (5) 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 (6) is not organized primarily for the purpose of influencing the nomination or election of any individual to federal office. 11 C.F.R. § 114.1(e)(1); *see also* 11 C.F.R. § 100.134(e).

AVMA meets all six of these criteria. First, it is a voluntary membership organization whose voting members (comprising 99.8% of its membership) operate the organization by directly and indirectly electing its Executive Board. Second, AVMA’s Bylaws clearly set forth the organization’s requirements for membership. Third, AVMA’s mission statement, strategic plan, bylaws, and other organizational documents are available to AVMA’s members on AVMA’s web site, www.AVMA.org. Fourth, AVMA expressly solicits persons to become members on its website, and by assisting SAVMA in its membership efforts. Fifth, AVMA acknowledges membership by placing members on mailing lists and giving them identification numbers and individual profile pages on the AVMA website. Sixth, AVMA’s primary purpose relates to advancing the interests of the veterinary medical profession, not to the election of individuals to federal office. Therefore, the Commission concludes that AVMA is a membership organization within the meaning of the Commission’s regulations. 11 C.F.R. § 114.1(e); *see also* 11 C.F.R. § 100.134(e).

Commission regulations provide that the “members” of a membership organization include all persons who satisfy the requirements for membership in that organization, affirmatively accept the organization’s invitation to become a member, and meet certain other criteria. 11 C.F.R. §§ 100.134(f), 114.1(e)(2). AVMA’s membership rules require an individual to have earned a professional degree in veterinary medicine or to be involved in teaching veterinary medicine or in veterinary research. Because SAVMA members are veterinary students, they do not meet any of these threshold requirements. Thus, SAVMA members do not qualify as “members” of AVMA under the general rule in 11 C.F.R. §§ 100.134(f) and 114.1(e)(2).

However, under 11 C.F.R. §§ 100.134(g) and 114.1(e)(3), the Commission may determine on a case-by-case basis that persons who do not precisely meet the requirements of the general rule are “members” for purposes of an organization’s solicitations for its separate segregated fund. To qualify as members under this regulation, the individuals must “have a relatively enduring and independently significant financial or organizational attachment to the organization.” 11 C.F.R. § 114.1(e)(3); *see, e.g.*, Advisory Opinion 2003-13 (OPHTHPAC). Commission regulations offer as one example, “student members [of an organization] who pay a lower amount of dues while in school.” 11 C.F.R. § 114.1(e)(3).

SAVMA members have significant and enduring financial and organizational attachments to AVMA. SAVMA members are required to abide by AVMA Bylaws and “other policies, rules and regulations as [AVMA] may adopt.” *AVMA Bylaws*, Art. II, Sec. 1. The Commission has previously found that a binding agreement to follow an organization’s rules constitutes a significant organizational attachment. *See* Advisory Opinion 2003-13 (OPHTHPAC). SAVMA members participate further in the governance of AVMA by electing the SAVMA President and President-Elect, who have voting rights in AVMA’s House of Delegates, as described above. SAVMA members also have financial attachments to AVMA, including eligibility for certain benefits of AVMA membership, such as participation in AVMA’s group health, professional liability, and life insurance programs, reduced subscription rates on AVMA’s professional journals, and access to “members only” pages of the AVMA website. *See* Advisory Opinion 2011-08 (American Society of Anesthesiologists) (citing similar factors in concluding that retired members of professional association were “members” for solicitation purposes). And these attachments are enduring, as more than 97% of SAVMA members convert to AVMA members upon graduation from veterinary school, and more than 80% of veterinarians are members of AVMA. *See* Advisory Opinion 2003-13 (OPHTHPAC) (finding that ophthalmologists-in-training had enduring connections to national ophthalmological association where 93% of all ophthalmologists were members of association).

For the foregoing reasons, the Commission determines that SAVMA members qualify as “members” of AVMA under 11 C.F.R. §§ 100.134(g) and 114.1(e)(3), and that AVMA may therefore solicit SAVMA members for contributions to AVMA PAC.

2. *Is SAVMA an affiliate organization of AVMA under the Act and Commission regulations?*

Yes, SAVMA is an affiliate organization of AVMA under the Act and Commission regulations.

Under Commission regulations, in the case of a membership organization which has “several levels,” a person who qualifies as a member of any of the “affiliate[d]” membership organizations also qualifies as a member of the other affiliates for purposes of 11 C.F.R. Part 114. *See* 11 C.F.R. § 114.1(e)(5). The Commission uses the factors set forth at 11 C.F.R. § 100.5(g)(2)-(4) to determine whether entities are affiliated. *See* 11 C.F.R. § 114.1(e)(5).

Section 100.5(g)(2) provides that entities are affiliated if they are established, financed, maintained or controlled by the same person. Section 100.5(g)(4)(ii) then describes several

factors relevant to determining whether there is evidence of SAVMA being established, financed, maintained or controlled by AVMA.

SAVMA meets at least three of these factors. First, AVMA participates directly in the governance of SAVMA, as two of AVMA's officers are expressly authorized to act on SAVMA's behalf, and SAVMA's bylaws must correlate with AVMA's bylaws and be approved by AVMA's Executive Vice President. *See* 11 C.F.R. § 100.5(g)(4)(ii)(B). Second, most AVMA members were once SAVMA members, and more than 97% of SAVMA members become AVMA members. *See* 11 C.F.R. § 100.5(g)(4)(ii)(F) (describing factor as “[w]hether a sponsoring organization . . . has any members . . . who were members . . . of another sponsoring organization”). Third, AVMA had a “significant role” in the formation of SAVMA, 11 C.F.R. § 100.5(g)(4)(ii)(I), and SAVMA still maintains its tax-exempt status through its relationship with AVMA. Therefore, the Commission concludes that SAVMA is an affiliate organization of AVMA under the Act and Commission regulations. As such, members of SAVMA qualify as members of AVMA under 11 C.F.R. § 114.1(e)(5).

This response constitutes an advisory opinion concerning the application of Commission regulations to the specific transaction or activity set forth in your request. *See* 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 requestors may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* U.S.C. § 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao/>.

On behalf of the Commission,

(signed)
Ellen L. Weintraub
Chair