



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 5, 1985

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-63

Warren L. Blackmon, Secretary  
Amerifirst Good Government Committee  
One S.E. Third Ave.  
Miami, FL 33131

Dear Mr. Blackmon:

This responds to your letter of November 29, 1984, as supplemented by your response of December 17, 1984, in which you request an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to a proposed solicitation of contributions to the Amerifirst Good Government Committee from the holders of savings and demand accounts and loan customers of your connected organization, Amerifirst Federal Savings and Loan Association.

You state that Amerifirst Federal Savings and Loan Association ("Amerifirst") is a Federally-chartered mutual savings and loan association. Amerifirst's Federal Mutual Charter (a copy of which you submitted) indicates its corporate status and provides in section five that the association may raise capital by accepting payments on savings and demand accounts, and by other means if approved by the Board of Directors. Amerifirst may therefore properly be characterized as a corporation without capital stock. Section six of Amerifirst's charter provides that "all holders of the association's savings, demand or other authorized accounts are members of the association. Each borrower from the association whose borrowing was outstanding on April 24, 1984, is a member for as long as such borrowing is outstanding."<sup>1</sup> Thus, Amerifirst may also be characterized as a "membership organization".

The Charter and the bylaws made pursuant to it describe the incidents of this membership.<sup>2</sup> These may be summarized as follows:

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<sup>1</sup> The Home Owner's Loan Act of 1933 provides: "Holders of accounts and obligors of an association shall, to such extent as may be provided by its charter or by regulations of the Board, be members of the association, and shall have such voting rights and such other rights as are thereby provided." 12 U.S.C. 1464(b)(1)(B).

<sup>2</sup> The regulations of the Federal Home Loan Bank Board provide a model Federal Mutual Charter and model bylaws. The pertinent provisions are materially the same as the Federal Mutual Charter submitted by Amerifirst. See 12 CFR 544.1.

- a. Members have the right to vote as follows: holders of savings or demand accounts have one vote for each \$100 or fraction thereof, of the withdrawal value of the account. Borrowers may cast one vote as a borrower, and may also, cast the number of votes to which that customer is entitled as the holder of a savings account. No member may cast more than 1000 votes.
- b. Members may vote to elect the Board of Directors.
- c. Members may vote to amend the Charter.
- d. Members are entitled to be present and participate in the annual meeting, which includes the election of directors and reports by the officers for the past year's activities and plans for the future year.
- e. Members are entitled to notice of the annual meeting.
- f. If members holding the aggregate share of one-tenth of the organization's capital so request, the president shall call a special meeting of the members.
- g. Members may make proposals at meetings provided the proposals are filed 30 days in advance with the secretary.
- h. Members are entitled to serve on the nominating committee for directors and to make individual nominations.
- i. Members who are account holders are entitled to a share of net earnings on accounts as authorized by the Board of Directors.
- j. Members who are account holders are entitled to an equal distribution of assets, pro rata to the value of their accounts, in the event of liquidation of the association.

You ask two questions. First, referring to 11 CFR 114.7(a), you ask whether the Amerifirst Good Government Committee ("the Committee") may solicit contributions from the holders of savings and demand accounts and from loan customers of Amerifirst. Second, assuming that such a solicitation is permissible, you ask whether the Committee may solicit certain members of Amerifirst without soliciting all members; or whether the Committee is required to solicit all members of Amerifirst for a contribution if it solicits any.

The Act, as amended, provides that it is unlawful for a corporation organized by authority of any law of Congress to make a contribution or expenditure in connection with any election.

2 U.S.C. 441b(a). This provision applies in your case because Amerifirst is organized pursuant to a Federal statute, 12 U.S.C. 1464(a), and became a corporation when it received a charter from the Federal Home Loan Bank Board. Advisory Opinion 1984-55; see also Advisory Opinion 1981-33.

The Act creates an exception to this general prohibition in that a corporation may establish, administer, and solicit contributions to a separate segregated fund (such as the Committee) to be utilized for political purposes. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). The Act and regulations expressly provide that incorporated membership organizations and corporations without capital stock may solicit contributions from their individual members. 2 U.S.C. 441b(b)(4)(C); 11 CFR 114.7(a).

Your request presents the question of whether the holders of savings and demand accounts and loan customers of Amerifirst are "members" within the meaning of the Act and regulations for purposes of solicitation. Commission regulations provide that the term "members" means all persons who are currently satisfying the requirements for membership in a membership organization or corporation without capital stock. 11 CFR 114.1(e). Recent opinions by the Commission and by the Supreme Court of the United States explain the application of this regulation to various organizations.

In Advisory Opinion 1984-22 the Commission recently considered in detail the requirements of membership status in corporations without capital stock and membership organizations for purposes of the Act. That opinion was based upon a Supreme Court decision indicating that members must be attached in some way to the organization's corporate structure. Federal Election Commission v. National Right to Work Committee, 459 U.S. 1971 202, 103 S.Ct. 552 (1982). Solicitable members are analogous to shareholders in a business corporation; the Court stated that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member' under 441b(b)(4)(C)." Id. at 459 U.S. 204.

The Commission has required that members have specific obligations to and rights in the organization including some right to participate in the governance of the organization. Advisory Opinion 1984-22; also, see Advisory Opinions 1982-2, 1979-69, 1977-67, and 1977-17. It is apparent from your request that obligations of a financial nature exist between Amerifirst and its savings accounts holders and between Amerifirst and its borrowers. In addition, Amerifirst's Federal Mutual Charter indicates that holders of savings and demand accounts and loan customers of Amerifirst have sufficient rights in the governance of the organization to be

considered attached to the organization's corporate structure, and analogous to shareholders in a business corporation.<sup>3</sup>

These rights, outlined above, include the right to vote at membership meetings, to elect directors, to participate in nominating directors, to make proposals at membership meetings, and to receive a pro rata share of assets on dissolution. Accordingly, the Commission concludes that individuals who hold Amerifirst savings and demand accounts, as well as individual borrowers from Amerifirst, are sufficiently analogous to shareholders in a stock corporation, and are sufficiently attached to the organization's corporate structure, that they are members of Amerifirst and may be solicited by the Committee.

Your second question is whether the Committee may solicit fewer than all Amerifirst members who are eligible to be solicited. The Act does not specifically address the question you have asked. In general, the regulations provide a separate segregated fund with considerable discretion as to what contribution solicitation activities it will engage in. 11 CFR 114.5(a), 114.7(g). There is no limit to the number of times a membership corporation without capital stock may solicit its individual members. 11 CFR 114.7(e). Commission regulations also provide that there is no limitation on the method of contribution solicitation or the method of facilitating the making of voluntary contributions to the separate segregated fund of such an organization. 11 CFR 114.7(f). Further, a membership corporation without capital stock may communicate with its members on any subject, as provided by 11 CFR 114.3. 11 CFR 114.7(h). Given the absence of any specific language requiring a separate segregated fund to solicit members on an all-or-none basis, the Commission concludes that the Committee may solicit fewer than all of the eligible individual members of Amerifirst. This result is also consistent with the regulations governing trade association solicitations which specifically permit a trade association to solicit fewer than all personnel who would be qualified solicitees. See 11 CFR 114.8(d)(5).

The Committee should be aware that certain Amerifirst members who may be eligible for solicitation would be prohibited from making contributions by other provisions of the Act. Corporations, national banks, labor organizations, Federal contractors, and foreign nationals may not make any contributions to the Committee. See 2 U.S.C. 441b, 441c, 441e. Contributions from other persons are, of course, subject to the limits of 2 U.S.C. 441a(a).

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<sup>3</sup> Although the interest of a member of a mutual savings and loan association is not identical with the interest held by a shareholder of a business corporation, see 11 W. Fletcher, Cyclopedia of the Law of Private Corporations §5083 (perm. ed. 1971), the interests have several prominent features in common, including the right to vote for directors, the right to receive surplus profits as declared by the Board of Directors, and the right to a pro rata share of assets on dissolution.

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.

Sincerely yours,

(signed)

John Warren McGarry  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1984-55, 1984-22, 1982-2, 1981-33, 1979-69, 1977-67 and 1977-17)