



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

JUN 15 1995

June 8, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1995-14

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for June 15, 1995.

Attachment

AGENDA ITEM
For Meeting of: JUN 15 1995

1995 / 454 . 5

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2
3 CERTIFIED MAIL
4 RETURN RECEIPT REQUESTED

5 ADVISORY OPINION 1995-14

6 Colleen M. Nolan, Secretary
7 Oral and Maxillofacial Surgery
8 Political Action Committee
9 9700 West Bryn Mawr Avenue
10 Rosemont, IL 60018-5701

DRAFT

11 Dear Ms. Nolan:

12 This refers to your letters of May 23, May 16, May 8,
13 April 17 and March 26, 1995, concerning the application of
14 the Federal Election Campaign Act of 1971, as amended ("the
15 Act"), and Commission regulations to a fundraising proposal
16 of the Oral and Maxillofacial Surgery Political Action
17 Committee ("OMSPAC").

18 Specifically, you ask whether a proposed booth display
19 by OMSPAC at a convention, and the fundraising activity
20 conducted at the booth, is permissible under Commission
21 regulations. If not, you request an opinion as to "what
22 modifications would bring the booth display into compliance
23 with FEC guidelines."

24 OMSPAC is the separate segregated fund established by
25 its connected organization, the American Association of Oral
26 and Maxillofacial Surgeons ("AAOMS"). AAOMS is a
27 not-for-profit corporation, chartered under the laws of the
28 State of Illinois.^{1/}

29 ^{1/} The AAOMS Articles of Incorporation set forth, among the
30 purposes of the Association, the goal of contributing to "the
public welfare by advancement of the specialty of oral and
maxillofacial surgery." AAOMS Articles, section 3.

3 Your proposal raises the issue of the classes of
4 individuals at the convention who may be solicited for
5 contributions to OMSPAC. The resolution of this question
6 first requires the determination of AAOMS membership (a group
7 that could be solicited), and a related analysis dealing with
8 AAOMS' organizational structure. These determinations will
9 be made before the specifics of your fundraising proposal are
10 addressed.

11 Your request includes the AAOMS governing documents: its
12 Constitution, Bylaws, Articles of Incorporation and Manual of
13 the House of Delegates. These materials identify two bodies,
14 the House of Delegates (the "House") and the Board of
15 Trustees (the "Board"), that play a role in governing AAOMS.
16 The materials also provide information regarding the
17 membership structure of AAOMS.

18 AAOMS GOVERNING BODIES

19 House of Delegates

20 The House is made up of delegates from all of the
21 organizational units of AAOMS- the state component societies
22 and the Federal counterparts representing the five Federal
23 dental services.^{2/} Members of the House must be fellows or
24

25 _____
26 ^{2/} According to the AAOMS Bylaws, the method of election is
27 up to each component society and Federal counterpart. AAOMS
28 Bylaws Chapter III, sections 10, 20 and 40. The information
29 included in your request indicates that all AAOMS fellows,
30 life fellows, retired fellows, members, life members and
retired members participate in the election of delegates
by their state component societies, regardless of whether
they are members of that state society. However, members of
state societies, who are not AAOMS members, are not permitted
to participate. AAOMS Bylaws, Chapter III, sections 30 and

4 life fellows of AAOMS. AAOMS Bylaws, Chapter V, section 10.

5 The House of Delegates is described in Article V of the
6 AAOMS Bylaws as the "legislative and governing body" of the
7 AAOMS. It determines the policies which govern the
8 Association, has the power to repeal the AAOMS Constitution,
9 Bylaws, and Code of Professional Conduct and Judicial
10 Procedures. It may grant or retract component/Federal
11 counterpart status and it approves the annual budget. It
12 also elects all categories of membership to the Association,
13 as well as the members of the Board and all AAOMS officers.^{3/}
14 AAOMS Bylaws, Chapter V, sections 40 and 50.

15 The Board of Trustees

16 The Board of Trustees consists of 11 members. These
17 are: 6 trustees elected by the House; the AAOMS president and
18 president elect, the immediate AAOMS past president, the
19 vice president and the AAOMS treasurer.^{4/} Members of the
20 Board must be fellows or life fellows. AAOMS Bylaws, Chapter
21 VI, section 10 and 20.

22 According to the AAOMS Bylaws, the Board is "the
23 administrative body of the Association vested with full power
24 to conduct all business of the Association subject tothe

25 _____
26 (Footnote 2 continued from previous page)
27 40; and Chapter V, section 10 and AAOMS Manual of House
28 Delegates, Chapter V.

29 ^{3/} In addition to the trustees, the elected officers of AAOMS
30 are a president-elect, an immediate past president, a
vice-president, a speaker of the House and a treasurer.

^{4/} According to the AAOMS Bylaws, the House may remove
Board members. AAOMS Bylaws, Chapter VI, section 40.

3 mandates of the House of Delegates." AAOMS Bylaws, Chapter
4 IV, section 80. The Board may enact policy in emergency
5 situations when the House is not in session. The House may,
6 however, later reverse the Board decision. Id. The Board
7 also provides for the maintenance of AAOMS property, prepares
8 Association audits and proposes the AAOMS yearly budget. Id.

9 The Board possesses certain appointment powers as well.
10 It must approve the selection of (non-House) committee and
11 section members. It also appoints the executive director of
12 the Association and the editor and assistant editor of the
13 AAOMS journal. Id.

14 AAOMS MEMBERSHIP STRUCTURE

15 Classes of Membership

16 As outlined by the AAOMS Bylaws, the organization's
17 various classes of membership are: fellow, member, affiliate,
18 and honorary. There are the additional categories of
19 inactive status for fellows and members; and life and retired
20 status for fellows, members and affiliates.^{5/} --

21 The requirements for fellow and membership status in the
22 AAOMS are almost identical and require various professional
23 qualifications, including membership in the component oral
24

25
26 ^{5/} You state in your request that AAOMS does not include any
corporate members; the Association membership is exclusively
made up of individuals.

27
28 Your request indicates that AAOMS has 5,990 members and
183 candidates for membership. The membership is distributed
29 as follows: 69% (3,977) fellows, 10% (630) members, 3% (209)
affiliates, 16% (987) retired or life members and fellows,
30 and less than 1% (35) honorary/inactive. There are currently
no retired or life affiliates in AAOMS.

3 and maxillofacial surgery society in the state in which the
4 individual maintains his primary place of practice. Members,
5 unlike fellows, need not have certification by the American
6 Board of Oral and Maxillofacial Surgeons. AAOMS Bylaws,
7 Chapter 1, Section 20.^{6/}

8 Affiliate membership is open to individuals in foreign
9 nations who are recognized professionally in that nation as
10 an oral and maxillofacial surgeon. Id.

11 Honorary membership is granted to those holding no other
12 class of membership or to AAOMS non-USA members who have made
13 distinguished contributions to the speciality of oral and
14 maxillofacial surgery. Nominations are made by the AAOMS
15 Board and are approved by the AAOMS House.

16 Life membership in the above categories is granted upon
17 reaching the age of 65 or upon completion of 35 dues paying
18 years. Retired status is granted to individuals in
19 membership categories who retire from their practice and have
20 paid dues for 20 years or are disabled and unable to continue
21 in their profession. Members and fellows who attain life or
22 retired status are no longer required to maintain membership
23

24
25 ^{6/} However, while membership in a component state association
26 seems to be a prime requirement for these two categories,
27 there is also a grandfather clause in the Bylaws which
28 provides that no individual, who was a fellow or member of
29 the Association and was not an active member of a component
30 oral and maxillofacial surgery society on September 27, 1991,
should have his or her membership discontinued solely as a
result of failure to hold membership in a component society.
AAOMS Bylaws, Chapter I, Section 60. The information in your
request indicates that the class of members and fellows
covered by this provision is 283 which is 5% of the current
number of fellows and members.

3 in a component state society and are exempted from the
4 requirement to pay dues. Id.

5 Inactive membership is open to those members and fellows
6 who derive no income from the active practice of oral and
7 maxillofacial surgery. Id.

8 Duties, Rights and Powers of Members

9 Fellows, members and affiliates are required to pay dues
10 and assessments. According to the AAOMS Bylaws, fellows and
11 members each pay \$750 a year, while affiliates pay \$190 a
12 year. Honorary, retired, life and inactive members do not
13 pay dues. AAOMS Bylaws, Chapter XII, section 20.

14 Fellows and life fellows may serve in the House of
15 Delegates, as a voting member of the AAOMS Board of Trustees,
16 or as one of the other elected officers of the Association.
17 Fellows, life fellows, members and life members may serve on
18 various committees. However, only fellows and life fellows
19 may serve on the House committees since these must be
20 occupied by House delegates. Fellows, alone, are permitted
21 to serve the Committee on Residency Education and Training.

22 As noted above, the right to be elected to office is
23 reserved to fellows and life fellows. Only these classes of
24 membership may serve in the House of Delegates, as Board
25 members or be elected as officers.^{7/} The right to vote for
26

27
28 ^{7/} The nomination process is also limited to fellows and life
29 fellows. The AAOMS Bylaws do not identify a nominations
30 committee. The nominations to the board of trustees are made
by House delegates divided into caucuses representing the
different multi-state districts which make up the
Association. Each district must be represented on the Board

3 members of the House of Delegates is, by contrast, expansive.
4 Voting for the House delegates is open to all fellows and
5 members, including life and retired fellows and members
6 though the auspices of the component societies and Federal
7 counterparts. The only classes that cannot vote for House
8 delegates are affiliate, honorary and inactive members.

9 OMSPAC CONVENTION PROPOSAL

10 You state that OMSPAC proposes to set up an exhibit
11 booth at the scheduled February 1996 AAOMS Midwinter
12 Conference. The booth would display various items
13 identifying OMSPAC and would also be used to collect
14 contributions from those attending the conference. You
15 further explain that this conference will be a joint meeting
16 with the American Association of Orthodontists ("AAO"). You
17 state that there is no overlapping or common membership
18 between AAOMS and AAO. Further, you say that the two
19 organizations do not share any common directors, trustees,
20 officers or key employees.^{8/}

21
22 _____
(Footnote 7 continued from previous page)
23 by one trustee. After the nominations are made, the entire
24 House votes on the candidates. AAOMS Bylaws, Chapter IV,
25 Section 50. Officers are nominated and elected in the House.
The nomination must be signed by ten fellows or life fellows
in good standing. AAOMS Bylaws, Chapter VII, Section 30.

26 ^{8/} While AAOMS and AAO are two distinct organizations, you
27 state that the professional similarities between the
28 organizations provide the rationale for the joint convention.
Oral and maxillofacial surgeons and orthodontist share
29 similar educational backgrounds and interests, and often
collaborate to offer state of the art patient care. The two
30 organizations, you state, believe there are mutual benefits
in sharing knowledge between the fields of oral and
maxillofacial surgery and orthodontia. In past years, the

3 You expect that approximately 900 qualified,
4 professional AAOMS and AAO members will attend the
5 convention, with the number expected to be equally divided
6 between the two associations. You also estimate that 1,325
7 additional persons, not professional members of either
8 organization, will attend.^{9/} The booth would be accessible to
9 all attendees since it would be located in the exhibit hall
10 facility used for the event.

11 You state that the booth would consist of a simple
12 draped counter with a backdrop. The backdrop would display
13 an OMSPAC banner, PAC newsletters and pictures from volunteer
14 visits to Capitol Hill. The counter will display additional
15 copies of the newsletter, brochures, OMSPAC hats and
16 T-shirts. You also affirm that OMSPAC has followed a policy,
17 since its creation, to reject contributions from individuals
18 who are not qualified AAOMS members or executive level
19 employees of AAOMS. Contributions from non-qualified AAOMS
20 members, or non-executive level AAOMS employees, are returned
21 with a letter explaining the reason(s) the contribution could
22

23 _____
(Footnote 8 continued from previous page)
24 AAOMS and the AAO have held four joint meetings -- in 1980,
1983, 1986 and 1991.

25 ^{9/} You allocate the expected 1,325 non-member attendees into
26 the following categories: 30 are employees of either AAOMS or
AAO; 200 are residents and graduate students; 15 are
27 non-members of related dental specialties; 200 are
professional and allied staff persons employed in the offices
28 of oral and maxillofacial surgeons and orthodontists; 180 are
persons employed by businesses which offer goods and services
29 of interest to oral and maxillofacial surgeons and
orthodontists; and 700 are spouses and other guests/family
30 members.

3 not be accepted.

4 ACT AND COMMISSION REGULATIONS

5 The Act prohibits corporations from making any
6 contribution or expenditure in connection with a Federal
7 election. 2 U.S.C. §441b(a). The Act states, however, that
8 the term "contribution or expenditure" does not include "the
9 establishment, administration, and solicitation of
10 contributions to a separate segregated fund to be utilized
11 for political purposes by a corporation, labor organization,
12 membership organization, cooperative, or corporation without
13 capital stock." 2 U.S.C. §441b(b)(2)(C). See also 2 U.S.C.
14 §431(8)(B)(vi) and (9)(B)(v).

15 Under 2 U.S.C. §441b(b)(4)(A)(i), a corporation, or a
16 separate segregated fund established by a corporation, may
17 solicit contributions to such a fund only from its
18 stockholders and their families and its executive and
19 administrative personnel and their families. An exception
20 set forth in 2 U.S.C. §441b(b)(4)(C) and 11 CFR 114.7(a)
21 allows a membership organization (among other corporations
22 without capital stock), or its separate segregated fund, to
23 solicit contributions to the fund from the members of the
24 organization and their families. The Commission's
25 regulations use the term "membership association" to
26 implement this exception. It is defined, in part, as a
27 membership organization that (i) expressly provides for
28 "members" in its articles and bylaws; (ii) expressly solicits
29 members; and (iii) expressly acknowledges the acceptance of
30

3 membership, such as by sending a membership card or inclusion
4 on a membership newsletter list. 11 CFR 114.1(e)(1)(i),
5 (ii), and (iii).

6 Commission regulations define the term "members." Under
7 11 CFR 114.1(e)(2), "members" means all persons who are
8 currently satisfying the requirements for membership in a
9 membership association, who affirmatively accept the
10 membership association's invitation to become a member, and
11 who meet one of the following requirements:

12 (i) Have some significant financial attachment to the
13 membership association, such as a significant investment or
14 ownership stake (but not merely the payment of dues);

15 (ii) Are required to pay on a regular basis a specific
16 amount of dues that is predetermined by the association and
17 are entitled to vote directly either for at least one member
18 who has full participatory and voting rights on the highest
19 governing body of the membership association, or for those
20 who select at least one member of those on the highest
21 governing body of the membership association; or

22 (iii) Are entitled to vote directly for all of those on
23 the highest governing body of the membership association.

24 The regulations also provide that the Commission "may
25 determine, on a case by case basis, that persons seeking to
26 be considered members of a membership association for
27 purposes of this section have a significant organizational
28 and financial attachment to the association under
29 circumstances that do not precisely meet the requirements of
30

3 the general rule." See 11 CFR 114.1(e)(3).^{10/}

4 DETERMINING MEMBERSHIP OF AAOMS.

5 AAOMS as Membership Association.

6 The facts and background to this request indicate that
7 AAOMS is a membership association for purposes of the Act.
8 For example, Chapter I, of AAOMS Bylaws meets the
9 requirements of 11 CFR 114.1(e)(1)(i) by expressly providing
10 for membership. The facts of the request and materials, such
11 as the portions of the AAOMS governing materials included in
12 your request, suggest that AAOMS expressly solicits members.
13 See 11 CFR 114.1(e)(1)(ii). AAOMS also sends publications to
14 members. Therefore, the requirement that membership be
15 expressly acknowledged is also met. See 11 CFR
16 114.1(e)(1)(iii).^{11/}

17 AAOMS highest governing body

18 Both the Board and the House of Delegates have
19
20

21 ^{10/} Your request only concerns solicitation of contributions
22 to OMS PAC through use of its convention booth. Therefore,
23 the discussion below will concern section 114.1(e). The
24 Commission notes that section 100.8(b)(4)(iv) relates to an
25 association's right to make partisan communication to its
members, and the wording of sections 100.8(b)(4)(iv) and
114.1(e) dealing with membership are identical. Therefore,
the analysis of section 114.1(e) will, to that extent, be
applicable to section 100.8(b)(4)(iv) as well.

26 ^{11/} It also appears that AAOMS meets the definition of
27 "trade association" under 11 CFR 114.8(a). AAOMS is "a
28 membership organization of persons engaging in a similar or
29 related line of commerce, organized to promote and improve
30 business conditions in that line of commerce and not to
engage in a regular business of a kind ordinarily carried on
for profit, and no part of the net earnings of which inures
to the benefit of any member." 11 CFR 114.8(a), see also
Advisory Opinion 1991-24.

4 significant roles regarding the governance of the AAOMS.
5 However, it appears that the power of the Board is derived
6 from or delegated by the House. It is significant that the
7 House retains supreme policy-making powers within the AAOMS
8 and can overrule any prior policy action taken by Board when
9 the House was not in session. Further, the House elects and
10 can remove members of the Board. In financial matters, the
11 House retains its superiority since the budget proposed by
12 the Board must be approved by the House. After considering
13 these and the other powers enjoyed by the House over the
14 Board, the Commission concludes that the AAOMS House of
15 Delegates, rather than the AAOMS Board of Trustees, is the
16 highest governing body of the AAOMS for purposes of the
17 Commission regulations.^{12/}

18 Status of AAOMS Members

19 Under the membership regulations, AAOMS fellows and
20 members would be considered "members" of the AAOMS for
21 purposes of the Act. Because of their obligation to pay dues
22 and their voting rights, these individuals could meet the
23 membership requirements of section 114.1(e)(2)(ii).

24 Retired and life fellows and members would also be
25 considered members of AAOMS for purposes of the Act under the

26
27 ^{12/} This conclusion is consistent with the Commission's
28 advice in Advisory Opinion 1994-12, which concluded that the
29 AMA's House of Delegates, rather than its Board of Trustees,
30 was the highest governing body of the organization. The
question was somewhat closer in that the AMA Board held
certain veto rights in financial matters over the AMA House;
such powers are not granted to the AAOMS Board. See Advisory
Opinion 1994-12.

3 case by case basis of 11 CFR 114.1(e)(3). According to your
4 request, these individuals do not pay dues, but they do have
5 the power to vote for members of the House. The case by case
6 rule of section 114.1(e)(3) provides that "long term dues
7 paying members who qualify for lifetime membership status
8 with little or no dues obligation may be considered members
9 if they retain voting rights in the association."

10 A different situation exists for affiliate members,
11 honorary members, and inactive members. Of these three
12 classes only one, the affiliate class, pays dues. The
13 governing documents indicate that these classes have
14 no voting rights or governance or participatory rights.
15 Therefore, they do not meet the requirements of sections
16 114.1(e)(2)(ii) or (iii), nor 100.8(b)(4)(iv)(B)(2) or (3).^{13/}

17 The Commission also concludes that affiliate members,
18 honorary members, and inactive members do not meet the
19 requirements of section 114.1(e)(2)(i). In Advisory Opinions
20 1995-2 and 1994-34, the Commission considered examples of a
21 "significant financial attachment" or a "significant
22 investment or ownership stake" in the membership organization
23 beyond the payment of dues. The Commission cited the
24 monetary value (well over \$10,000) and interests linked to

25
26 ^{13/} The Commission notes that some affiliate members and
27 honorary members may be prohibited from contributing to
28 OMSPAC by 2 U.S.C. §441e if they are also foreign nationals.
29 As noted above, a qualification for affiliate status is
30 residence abroad and recognition and training by another
nation's oral and maxillofacial surgery organization.
Honorary status is reserved for, among others, non-USA
members.

3 holding a seat and membership in a commodity exchange. See
4 Advisory Opinions 1995-2 and 1994-34, see also 58 Fed. Reg.
5 45771 (August 30, 1993). The factual material submitted in
6 this opinion request indicates that affiliate, honorary and
7 inactive members do not have this type of connection to
8 AAOMS.^{14/}

9 Lastly, the Commission addresses the application of the
10 regulation's definition of "members" under the case by case
11 approach of section 114.1(e)(3) and 100.8(b)(4)(iv)(C). In
12 past opinions the Commission has considered this approach.
13 See Advisory Opinion 1993-24. Given the facts presented as
14 to the above three membership classes, those who belong to
15 them cannot be considered members under section 114.1(e)(3).

16
17 Therefore, the Commission concludes that AAOMS may
18 solicit contributions to OMSPAC from fellows, members, life
19 fellows, life members, retired fellows and retired members.
20 The Commission also concludes that AAOMS and OMSPAC may not
21 solicit contributions to OMSPAC from the other membership
22 classes who lack the right to vote for the House of
23 Delegates.^{15/}

24
25
26 ^{14/} In the case of inactive members, lack of a current
financial attachment either to the organization or to the
profession is the requirement for this category.

27
28 ^{15/} Your May 16, 1995, submission states that 183
individuals are candidates for membership to the AAOMS. An
29 association's governing documents are used to interpret
membership status. See 11 CFR 114.1(e)(1) and 58 Fed Reg.
30 45771 (August 30, 1993); see also Advisory Opinion 1994-39.
Under the AAOMS Bylaws, candidates are not regarded as

3 Given this conclusion, the class of individuals
4 attending the convention who may engage in the fundraising
5 activities of the proposed OMSPAC booth would be restricted
6 to the qualified members of AAOMS; that is fellows, life
7 fellows, retired fellows, members, life members and retired
8 members.^{16/}

9 CONDUCT OF CONVENTION BOOTH AND RELATED ACTIVITIES

10 In several advisory opinions, the Commission has
11 examined the issues surrounding the operation of
12 PAC booths and related PAC fundraising activities at trade
13 association conventions. See Advisory Opinions 1976-27,
14 1976-96, 1978-17, 1978-83, 1981-41 (booths at conventions);
15 see also Advisory Opinion 1992-9 (fundraising raffles at
16 conventions).^{17/}

17
18 (Footnote 15 continued from previous page)
19 members of the association, they pay no dues and have no
20 participatory rights other than the privilege of subscribing
21 to the AAOMS journal. See AAOMS Bylaws, Chapter II. Given
22 AAOMS treatment of candidates as non-members, the Commission
23 concludes that candidates cannot be considered members of the
24 AAOMS for purposes of the Act and Commission regulations.

25 ^{16/} The Commission assumes that your policy of rejecting
26 contributions from non-qualified AAOMS members means that you
27 reject contributions made by honorary, affiliate or inactive
28 members. The wording of your policy also seems to imply that
29 you reject contributions made by the families of AAOMS
30 members or the families of AAOMS executive level employees.
The Commission notes that family members of AAOMS members and
AAOMS executive level employees are solicitable so that a
policy rejecting contributions from nonsolicitable
individuals need not exclude them. See 11 CFR 114.7(a), (e),
(g).

^{17/} In these convention booth opinions, the PAC booths were
set up to obtain permission to solicit the restricted class
of the trade association's corporate members, give out PAC
information and to solicit contributions to the PAC. Since

3 The basic principle applied in these opinions is that
4 the requirements for permissible solicitations apply to the
5 convention environment. The Commission has concluded that
6 PAC booths and the related fundraising activities, as well as
7 publication efforts, will be considered solicitations for
8 contributions if they do more than simply give factual
9 information regarding the PAC. See the above cited
10 opinions.^{18/} Since these convention activities are
11 solicitations, they can only be directed to qualified AAOMS
12 members and personnel who are AAOMS executive and
13 administrative personnel and their families.

14 Of vital importance here, is the AAOMS policy to reject
15 contributions from non-members or non-executive level
16 employees. The Commission has concluded that compliance with
17 a self-imposed policy of refusing contributions from persons
18 who may not be lawfully solicited for contributions achieves
19 the underlying purpose of section 441b's restrictions on
20 contribution solicitation. Thus, the Commission has taken a
21

22
23 (Footnote 17 continued from previous page)
24 AAOMS has no corporate members, your booth would not have the
25 first purpose. This distinction does not alter the relevance
26 of the above opinions. The basic issue remains the conduct
27 of PAC solicitation in convention environments where
28 nonsolicitable individuals will be present.

29 ^{18/} The Commission has previously concluded that a
30 communication regarding a separate segregated fund's activity
is not a solicitation under section 441b where the
information provided would neither encourage readers or
listeners to support a separate segregated fund's activities,
nor facilitate making contributions to it. See Advisory
Opinions 1992-9, 1991-3, 1988-2, 1983-38, 1981-41, and
1979-13.

3 less restrictive view of what constitutes an improper
4 solicitation where a separate segregated fund follows a
5 policy such as described in your request. See Advisory
6 Opinion 1978-17.

7 Advisory Opinion 1978-17 is especially relevant to the
8 situation here. In that opinion, a trade association, with a
9 contribution rejection policy similar to the AAOMS policy,
10 wished to set up a PAC booth with the intention to raise
11 funds by selling PAC related items. The requesting trade
12 association expected that numerous non-members would attend
13 its convention and have access to the area where the PAC
14 booth would be located. The requester listed various steps
15 that would be taken to prevent impermissible solicitations.^{19/}
16 The Commission concluded that, if the trade association and
17

18
19 19/These steps were as follows:

20 The booth will not be publicized prior to
21 or during the convention in any [trade
22 association] release or publicity. The
23 operation of the booth would include: (1)
24 the posting of signs on the booth which
25 will clearly state that only stockholders
26 and employees of the designating [trade
27 association] member companies using
28 personal funds can purchase articles and
29 that the funds collected will go to
30 [the PAC] (2) the maintenance of a list
of member companies who have authorized
[PAC] solicitations for 1978; (3) the
instructions of personnel operating the
booth to advise employees of non-member
companies or non-designating member
companies that their purchase cannot be
legally accepted and (4) the maintenance
of records of each purchase, the amount
and type of purchase and company
affiliation of the purchaser.

4 its PAC followed these safeguards, the operation of the booth
5 would be permissible under the Act and Commission
6 regulations.

7 Compliance with similar steps would also permit the
8 operation of OMSPAC's proposed booth. Specifically, the
9 booth should contain signs clearly stating OMSPAC's policy to
10 reject contributions from non-members or non-executive level
11 employees of AAOMS. The policy should be followed and
12 enforced by booth personnel. A method of identifying the
13 qualified AAOMS members from whom OMSPAC proposes to accept
14 contributions should be maintained. OMSPAC would already be
15 obligated by the record keeping requirements of the Act and
16 Commission regulations to create records of all contributions
17 accepted at the booth. See 2 U.S.C. §432(c).^{20/}

18 The Commission notes that while the requester in
19 Advisory Opinion 1978-17 planned to avoid any pre-convention
20 and convention publicity of the booth, this step is not
21 necessary. What is required is that such publicity be
22 directed only toward solicitable individuals. Therefore, any
23 pre-convention mailings and convention registration packets
24 that contain advertisements regarding OMSPAC booth
25 fundraising activities must be directed only to solicitable

26
27 ^{20/} Under section 432(c), OMSPAC is required to maintain
28 records of all contributions received; the name and address
29 of any person who makes any contribution in excess of \$50,
30 together with the date and amount of such contributions; and
the identification of any person who makes a contribution or
contributions aggregating more than \$200 during a calendar
year, together with the date and amount of any such
contribution. See also 11 CFR 102.9(a).

