

# STATE ETHICS COMMISSION

## ADVISORY OPINION 2010-01

February 15, 2010

Whether two identifiable political action committees (PACs) that are “affiliated” with associations consisting of regulated entities can contribute to an Elected Executive Officer, a candidate for an elected executive office, or the campaign committee of such candidate (collectively, an EEO).

### **ADVISORY OPINION:**

Commission Advisory Opinion 2009-02 discusses in detail the Act's prohibition against the making of contributions to an EEO and the EEO's acceptance of such contributions. Under Question 6 of Advisory Opinion 2009-02, the Commission articulates the test for determining when contributions from PACs to EEOs are prohibited under Section 30.1 of the Ethics in Government Act (Act). *See* Comm. Adv. Op. 2009-02; O.C.G.A. § 21-5-30.1. The Act defines the term “elected executive officer” narrowly to include only the Secretary of State, the Attorney General, and the Commissioners of Agriculture, Insurance and Labor. O.C.G.A. § 21-5-30.1(a)(3).

Advisory Opinion 2009-02 states that a PAC can make a contribution to an EEO so long as the funds or thing of value contributed does not originate with a regulated entity, was not generated by a regulated entity, and so long as any contribution with non-regulated entity funds is not made by the PAC acting on behalf of a regulated entity. The Opinion specifies that the test for determining whether a PAC contribution is made “acting on behalf of a regulated entity” is: (1) whether the PAC is under the direction or control of a regulated entity, or (2) whether there is consultation or coordination between the PAC and the regulated entity concerning the making of the contribution. Comm. Adv. Op. 2009-02. It is this test that the Commission applies to Questions 1 and 2 below.

### QUESTION 1

Whether the PAC of the Georgia Associations of Health Underwriters (GAHU) can contribute to the campaign of a candidate for Insurance Commissioner with non-regulated entity funds.

Answer: The Request for Advisory Opinion states that GAHU-PAC is the “affiliated” PAC of GAHU and provides the Commission with GAHU's website for information regarding this entity. The by-laws posted on GAHU's website state that GAHU is the Georgia affiliate of the National Association of Health

Underwriters and its members consist of licensed health insurance individuals and companies that issue, administer or market health insurance. GAHU By-Laws, Art. III, §§ 2 & 4. The Insurance Commissioner regulates insurance underwriters. O.C.G.A. § 33-9-1 *et seq.*

The by-laws state that GAHU's objectives include "to promote the common business interests of those engaged in health insurance" and "to promote education, legislation, regulation and practices which are in the best interest of the health insurance, disability income and employee benefit products and services industry and the insuring public." GAHU By-Laws, Art. II, § 1(D) & (G).

GAHU-PAC fails the first prong of the "acting on behalf of" test set forth in Advisory Opinion 2009-02 as GAHU-PAC is under the direction or control of GAHU. Indeed, GAHU's website makes clear that GAHU controls GAHU-PAC. Therefore, GAHU-PAC may not make a contribution to the Insurance Commissioner, a candidate for Insurance Commissioner, or the campaign committee of such candidate. Likewise, the Insurance Commissioner, a candidate for Insurance Commissioner or the campaign committee of such candidate cannot accept such a contribution.

Because GAHU-PAC fails the first prong of the test set forth in Advisory Opinion 2009-02, there is no need to address whether it also fails the second prong of the "acting on behalf of" test.

## QUESTION 2

Whether the PAC known as HUPAC, which is affiliated with the National Association of Health Underwriters (NAHU), can contribute to the campaign of a candidate for Insurance Commissioner with unregulated funds.

Answer: The Request for Advisory Opinion states that HUPAC is the PAC for the NAHU and provides the Commission with NAHU's website for information regarding this entity. For the reasons stated in Question 1 above, HUPAC may not make a contribution to the Insurance Commissioner, a candidate for Insurance Commissioner or the campaign committee of such candidate. Likewise, the Insurance Commissioner, a candidate for Insurance Commissioner or the campaign committee of such candidate cannot accept such a contribution.

*Prepared by Tom Plank*