STATE ETHICS COMMISSION
ADVISORY OPINION
S.E.C. 2010-04

Whether a federally registered political action committee of a regulated entity may contribute to a candidate for an elected executive office which regulates such entity.

ADVISORY OPINION

The Sonnenschein, Nath and Rosenthal law firm (Sonnenschein) has requested this advisory opinion to determine if a federally regulated political action committee (PAC) may contribute to a candidate running for the office of Georgia Insurance Commissioner if the corporation which established the PAC is a regulated entity under O.C.G.A. §21-5-30.1(b) of the Georgia Ethics in Government Act (the "Georgia Act"). The Georgia Act states,

> No regulated entity and no person or political action committee acting on behalf of a regulated entity shall make a contribution to or on behalf of a person holding office as an elected executive officer regulating such entity or to or on behalf of a candidate for the office of an elected officer regulating such entity or to or on behalf of a campaign committee of any such candidate.

Sonnenschein states that the Act's prohibition on contributions by a regulated entity applies to a state based political committee and not a federal PAC. Sonnenschein states the reasoning behind this distinction is the fact that federal PACs are prohibited under federal election law from accepting corporate contributions and require PAC money to be derived from individual contributions. Additionally, since the Act does not mention a federally registered committee, it was not meant to apply to federal PACs. We disagree.

As stated above, Sonnenschein's argument is based on the assumption that federal PACs or separate segregated funds (SSF) do not receive contributions from the regulated entity. It is true that corporations and unions are prohibited under the Federal Election Campaign Act (the "Federal Act") from contributing to or making expenditures in federal elections (2 U.S.C. §441b)[1]. The Federal Act, however, permits corporations and unions to establish federal PACs or SSFs for the purpose of collecting voluntary individual donations from its shareholders and executive and administrative personnel (the personnel with managerial or supervisory responsibility).

Corporations under federal law are not permitted to make any contribution or expenditure on behalf of a federal PAC even if the corporation has established the SSF or PAC. However,

[1] This Advisory Opinion does not address independent expenditures which have been the basis of recent federal court decisions in the Citizens United vs. FEC 130 S.Ct 876, 913 (2010) and SpeechNow.org vs. FEC, 599 F.3d 686, 689 (D.C. Cir. 2010) (en banc) decisions. The FEC has recently issued several advisory opinions on the topic of federal PACs ability to collect unlimited funds for independent expenditures from both individuals and corporations (see Federal Advisory Opinion 2010-11 issued July 22, 2010). However, we do not address the issue of independent expenditures here.

section §441b(b)(2)(C) of the Federal Act specifically excludes from the definition of contribution "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock." Thus the Federal Act provides for a specific exemption which permits a corporation to pay for or provide services to the SSF in order to establish and administer the SSF. Georgia law provides no such exemption.

The Georgia Act defines a contribution as "a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office …" (O.C.G.A. §21-5-3(7)). The definition includes a specific exemption for "the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis." No other exemption from contribution is stated.

In its opinion on the same topic in 1983, the Attorney General determined that a corporation providing logistical assistance to a campaign was making a contribution to the political campaign as defined by the Georgia Act (Atty. Gen. Op. 83-1). The Attorney General determined that services provided to a campaign by the compensated employees of the corporation were considered a contribution under the Georgia Act because the compensated employees were providing "something of value" to the campaign. Additionally, any of the following supplied by the corporation to the campaign would be considered a contribution: supplies, office space, IT services and assistance for overhead.

Because the services provided were a contribution under the Georgia Act and the corporation was regulated by the Public Service Commission (PSC), the corporation was in violation of O.C.G.A. §21-5-10 (now §21-5-30(f)). This section prohibits any person acting on behalf of a regulated public utility corporation from making a contribution to a political campaign.

Sonnenschein states in its correspondence to the Commission of October 23, 2010 that the Attorney General Opinion is distinguished based on the following: 1) the contributions were not directly to a PAC, but were instead in-kind contributions of company resources to a campaign and, 2) the regulated entity discussed in the Attorney General Opinion was a public utility corporation and not a regulated entity under the section at issue, O.C.G.A. §21-5-30.1. We believe those distinctions are without merit in this instance.

With respect to the first, the Georgia Act prohibits a PAC from making a contribution on behalf of a regulated entity to an elected executive officer that regulates that entity. (This applies in instances of both a public utility and a regulated entity as defined by §21-5-30.1.) The fact is that Georgia law does not exempt "administrative assistance support" from its definition of contribution as does the Federal Act.

As to the second, the prohibition against contributions to regulators, whether it is the Insurance Commissioner or the Public Service Commission, is based on the same public policy of preventing corruption or the appearance of corruption where a regulator/regulatee relationship is

involved. Therefore, the fact that Attorney General Opinion is based on a matter with the Public Service Commission as opposed to an insurance regulator should not be a distinguishing factor.

It is therefore the opinion of the Commission that a PAC, federal or state, established by a regulated entity (as defined under O.C.G.A. §21-5-30.1) which receives administrative or logistical support of any kind from the regulated entity, may not contribute to the campaign of an Elected Executive Officer.

Prepared by Stacey Kalberman, Executive Secretary
November 4, 2010