

1           **GEORGIA GOVERNMENT TRANSPARENCY AND CAMPAIGN FINANCE COMMISSION**

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3                                   **ADVISORY OPINION**  
4                                   **C.F.C. 2011-08**

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7                                   **QUESTION PRESENTED**

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9       Whether an employer corporation and an incorporated employee-sponsored political action  
10       committee (“PAC”), that are not parent or subsidiary business entities to each other, are  
11       unaffiliated so that it would be permissible for the two entities to each make maximum  
12       contributions to the same candidate under O.C.G.A. § 21-5-41(c).

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14                                   **ADVISORY OPINION**

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16       The Georgia Government Transparency and Campaign Finance Commission (the  
17       “Commission”) has received this request for advisory opinion from the law firm of Holland &  
18       Knight LLP (“H&K”) based upon the above hypothetical. H&K asserts (1) that an employer  
19       corporation lacks common ownership or control with an incorporated employee-sponsored  
20       political action committee (“PAC”) and (2) that neither entity exhibits control over the other if  
21       the following conditions are met:

- 22  
23           1. The employer corporation has different directors and different officers than the  
24           incorporated employee-sponsored PAC;  
25           2. Neither entity pays the administrative fees for or contributes to the other entity in  
26           any way; and  
27           3. The directors and officers for each entity lack authority concerning disposition of  
28           funds by the other entity.

29  
30       According to H&K, so long as these conditions are met and neither entity is a parent or  
31       subsidiary business entity to the other, the employer corporation and the employee-sponsored  
32       PAC would be unaffiliated and it would be permissible for the two entities to each make a  
33       maximum contribution to the same candidate under O.C.G.A. § 21-5-41(c).

34       The Georgia Government Transparency and Campaign Finance Act (the “Act”) provides that no  
35       business entity

36  
37           shall make any election contributions to any candidate which when aggregated  
38           with contributions to the same candidate from any affiliated corporations exceed  
39           the per election maximum allowable contribution limits for such candidate as  
40           specified in subsection (a) of this Code section.

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42       *See* O.C.G.A. § 21-4-41(c).

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44       The Act defines a “business entity” as

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46           any corporation, sole proprietorship, partnership, limited partnership, limited  
47           liability company, limited liability partnership, professional corporation,

48 enterprise, franchise, association, trust, joint venture, or other entity, whether for  
49 profit or nonprofit.

50

51 *See* O.C.G.A. §§ 21-5-3(1) & 21-5-40(3).

52

53 The Act further states that “Affiliated corporation”

54

55 means with respect to any business entity any other business entity related thereto:  
56 as a parent business entity; as a subsidiary business entity; as a sister business  
57 entity; by common ownership or control; or by control of one business entity by  
58 the other.

59

60 *See* O.C.G.A. § 21-5-40(2).

61

62 If the conditions listed above are met, the Commission finds that an employer and an employee-  
63 sponsored PAC do not have common ownership. The Commission’s inquiry, however, cannot  
64 end there.

65

66 The Act includes in its definition of “affiliated corporation” a business entity that has common  
67 “control” or that is controlled by another entity. *See* O.C.G.A. § 21-5-40(2). The Commission  
68 can imagine situations where an employer could still exert “control” over an employee-  
69 sponsored PAC that does not share common ownership. Obviously, an employer has direct  
70 control over its employees. For example, within the confines of the law, an employer has the  
71 ability to direct and control when an employee must arrive at work and when an employee may  
72 leave. The employer sets an employee’s job title and job duties. The employer decides an  
73 employee’s salary and whether or not an employee will receive a raise. Most importantly, an  
74 employer has the power and ability to fire an employee.

75 Because of the unequal position of power an employer possesses in the employer-employee  
76 relationship, whether an employer explicitly directs its employees to use an employee-sponsored  
77 PAC to contribute to a candidate of the employer’s choosing or implicitly communicates its  
78 desire that such a contribution be made, the employer has more than sufficient opportunity to  
79 influence and/or control the employee-sponsored PAC. Moreover, an employer could implicitly  
80 require its employees to form and/or contribute to an employee-sponsored PAC. With such  
81 influence and power, the employer could effectively “control” the employee-sponsored PAC.  
82 For this reason, the burden will be on the employee-sponsored PAC to demonstrate that there is  
83 no control.

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85 For these reasons, the Commission finds that an employer corporation and an incorporated  
86 employee-sponsored PAC can each make maximum contributions to the same candidate under  
87 O.C.G.A. § 21-5-41(c) where:

88

- 89 1. The employer corporation has different directors and different officers than the  
90 incorporated employee-sponsored PAC;
- 91 2. Neither entity pays the administrative fees for or contributes to the other entity in  
92 any way;

- 93 3. The directors and officers for each entity lack authority concerning disposition of  
94 funds by the other entity; and  
95 4. The employer corporation does not exert control over the employee-sponsored  
96 PAC.

97  
98 Because questions of control are fact-specific, the Commission expresses no opinion on what  
99 would constitute control under the Act.

100

101 The Commission states that this opinion is limited to the hypothetical described above and  
102 should not be read to hold that an employer corporation and an incorporated employee-sponsored  
103 PAC may each make maximum contributions to the same candidate only if the above-listed  
104 circumstances are met.

105

106

107 Prepared by Jonathan E. Hawkins

108 April 11, 2012

# Holland & Knight

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Campaign Finance  
Commission

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27 September 2011

## VIA HAND DELIVERY

Patrick N. Millsaps, Esq., Chairman  
Hillary Stringfellow, Esq., Member  
Kevin Abernethy, Esq., Member  
Kent Alexander, Esq., Member  
Holly LeBerge, Executive Secretary  
Georgia Government Transparency and Campaign Finance Commission  
200 Piedmont Avenue, SE  
Suite 1402, West Tower  
Atlanta, Georgia 30334

Re: Advisory Opinion Request

Dear Commissioners:

We write to request that the Georgia Government Transparency and Campaign Finance Commission (the "Commission") issue an advisory opinion under O.C.G.A. § 21-5-6(b)(13). For aid in the advice and counsel we provide our clients, we request an advisory opinion by the Commission that:

If the following conditions are met, an employer corporation would share no common ownership or control with an incorporated employee-sponsored political action committee ("PAC"), and neither entity would exhibit control over the other:

- (1) The employer corporation has different directors and different officers than the incorporated employee-sponsored PAC,
- (2) Neither entity pays the administrative fees for or contributes to the other entity in any way, and
- (3) The directors and officers for each entity lack authority concerning disposition of funds by the other entity.

Thus, so long as these conditions are met and neither entity is a parent or subsidiary business entity to the other, the employer corporation and the

employee-sponsored PAC would be unaffiliated, and it would be permissible for the two entities to each make a maximum contribution to the same candidate under O.C.G.A. § 21-5-41(c).

### **Relevant Law**

The provision of the Ethics in Government Act (the "Act") at issue in this request is O.C.G.A. § 21-5-41(c), which provides:

No business entity shall make any election contributions to any candidate which *when aggregated* with contributions to the same candidate for the same election *from any affiliated corporations* exceed the per election maximum allowable contribution limits for such candidate as specified in subsection (a) of this Code section.

(emphasis added). According to O.C.G.A. § 21-5-40(2),

"Affiliated corporation" means with respect to any business entity any other business entity related thereto: as a parent business entity; as a subsidiary business entity; as a sister business entity; *by common ownership or control; or by control of one business entity by the other.*

(emphasis added). The Act defines "business entity" as

*any corporation, sole proprietorship, partnership, limited partnership, limited liability company, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit.*

O.C.G.A. §§ 21-5-40(3) & 21-5-3(1) (emphasis added).

### **Discussion**

We would like to clarify the factual circumstances that must exist for an employer corporation to be considered unaffiliated from an employee-sponsored PAC, making it permissible for the two entities to each make maximum contributions to the same candidate under O.C.G.A. § 21-5-41(c). In our hypothetical situation, neither the employer corporation nor the employee-sponsored PAC is a parent or subsidiary business entity to the other. Therefore, we wish to establish the factual circumstances that must exist to determine (1) that an incorporated employee-sponsored PAC lacks common ownership or control with an employer corporation and (2) that neither entity exhibits control over the other entity.

We submit that the Commission should determine (1) that an employer corporation lacks common ownership or control with an employee-sponsored PAC and (2) that neither entity exhibits control over the other if the following conditions are met:

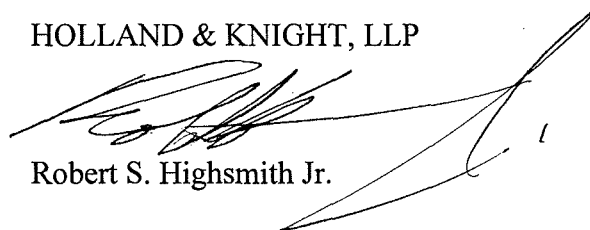
- (1) The employer corporation has different directors and different officers than the incorporated employee-sponsored PAC,
- (2) Neither entity pays the administrative fees for or contributes to the other entity in any way, and
- (3) The directors and officers for each entity lack authority concerning disposition of funds by the other entity.

Please confirm that if these conditions are met and if neither entity is a parent or subsidiary business to the other, the employer corporation and the employee-sponsored PAC would be considered unaffiliated corporations, and it would be permissible for each of the two entities to make a maximum contribution to the same candidate under O.C.G.A. § 21-5-41(c).

We appreciate your thoughtful consideration.

Sincerely yours,

HOLLAND & KNIGHT, LLP



Robert S. Highsmith Jr.