

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

2
3 **ADVISORY OPINION**

4 **C.F.C. 2012-02**

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6 The Georgia Government Transparency and Campaign Finance Commission (the “Commission”)
7 has received this request for advisory opinion from ActRight Fund. ActRight Fund plans to register
8 a Georgia political committee called ActRight Georgia, which will accept the contributions of
9 website donors and distribute (contribute) these funds to the candidates that website users designate.
10 ActRight Fund has submitted the following four questions:

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12 **QUESTION NO. 1**

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14 Does Georgia law permit ActRight Fund to register a separate segregated fund (ActRight Georgia) to
15 accept designated contributions from individuals for Georgia candidates?

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17 **ADVISORY OPINION TO QUESTION NO. 1**

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19 Yes. A “separate segregated fund” is “a fund which is established, administered, and used for
20 political purposes by a business entity ... and to which the business entity ... solicits contributions.”
21 O.C.G.A. §21-5-40(7); *see also* O.C.G.A. § 21-5-3(1)(“Business entity” includes any entity, whether
22 for profit or nonprofit); O.C.G.A. §21-5-12. A “separate segregated fund” falls under the definition
23 of “political action committee” and “political committee.” O.C.G.A. § 21-5-3(20); O.C.G.A. §21-5-
24 40(6). And political committees are allowed to contribute to candidates. *See* O.C.G.A. §21-5-41.

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27 **QUESTION NO. 2**

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29 May ActRight Georgia distribute these contributions to each candidate as a contribution from
30 ActRight Georgia?

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32 **ADVISORY OPINION TO QUESTION NO. 2**

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34 ActRight Georgia may make contributions to Georgia candidates subject to the maximum aggregate
35 contribution limits outlined in O.C.G.A. § 21-5-41 and Comm’n Rule 189-6-.04.

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38 **QUESTION NO. 3**

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40 Each donor will be identified and reported on ActRight Georgia reports. Should the candidates
41 report the individual donors or do they simply report the contribution amount as a single contribution
42 from ActRight Georgia to each candidate?

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44 **ADVISORY OPINION TO QUESTION NO. 3**

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46 Any contribution from ActRight Georgia must be reported as a single contribution from ActRight
47 Georgia to each candidate and is subject to the aggregate contribution limits outlined in O.C.G.A. §
48 21-5-41 (discussing maximum allowable contributions from political committees); Comm’n Rule
49 189-6-.04.

QUESTION NO. 4

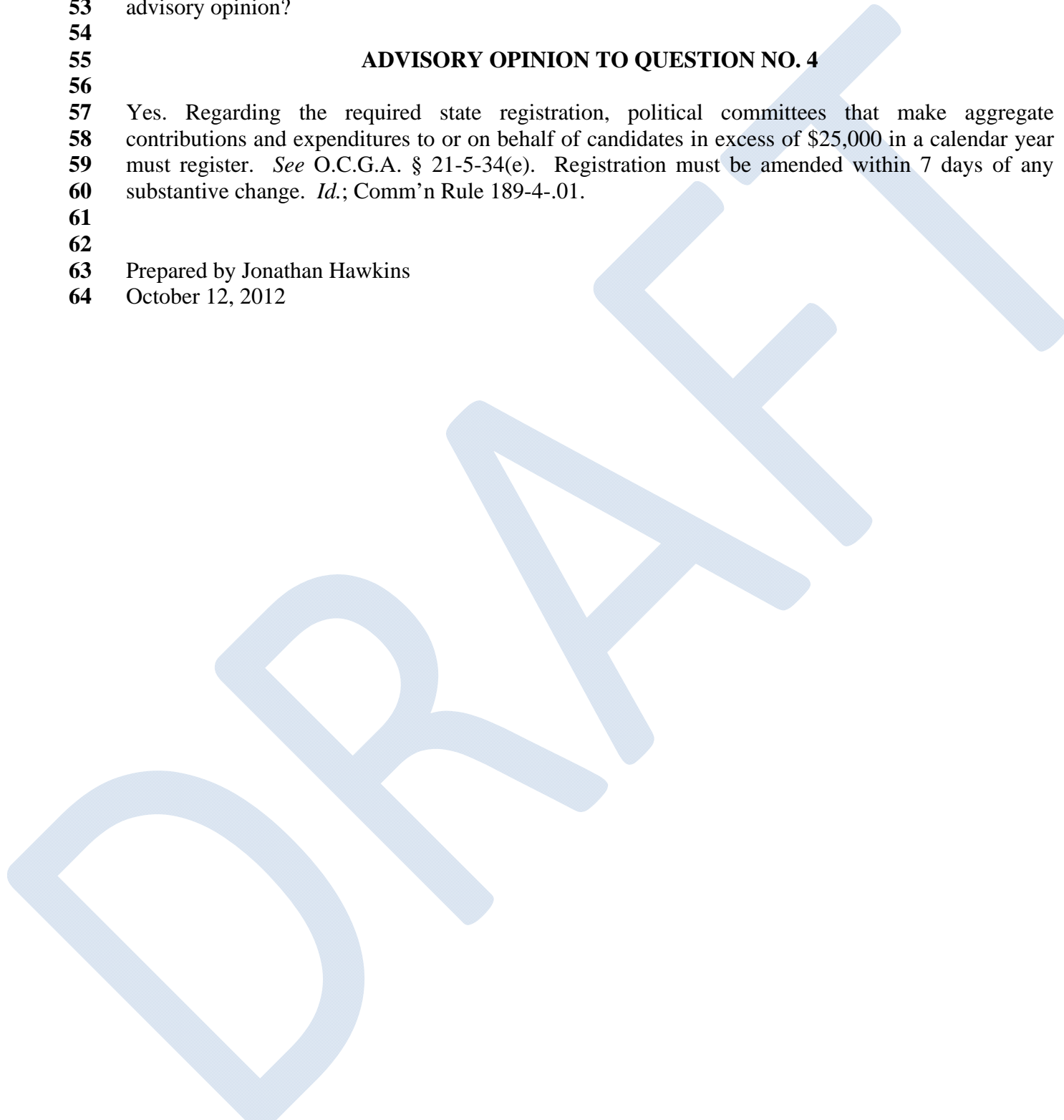
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Are there any errors in the summary of Georgia campaign finance law provided in the request for advisory opinion?

ADVISORY OPINION TO QUESTION NO. 4

Yes. Regarding the required state registration, political committees that make aggregate contributions and expenditures to or on behalf of candidates in excess of \$25,000 in a calendar year must register. *See* O.C.G.A. § 21-5-34(e). Registration must be amended within 7 days of any substantive change. *Id.*; Comm'n Rule 189-4-.01.

Prepared by Jonathan Hawkins
October 12, 2012



Barry A. Bostrom
Joseph A. Vanderhulst
Zachary S. Kester

Postmark Date

6/6/12

June 6, 2012

Campaign Finance Commission
James H. Floyd Building, Suite 1402 W
200 Piedmont Avenue, S.E.
Atlanta, GA 30334

Re: Georgia advisory opinion request

RECEIVED

JUN 12 2012

Campaign Finance
Commission

Dear Sir or Madam:

Please be advised that I represent ActRight Fund and the ActRight.com website, the online clearinghouse for conservative action. Our goal is to permit donors to contribute to state and federal candidates nationwide. We will be selecting Georgia state candidates to support in 2012 and would like to provide information about the candidate(s) and invite donors to contribute to the candidate(s) of their choice through our website. Since campaign finance laws were not written to accommodate such fundraising websites, we thought it prudent to ask some questions and request an advisory opinion pursuant to Ga. Comp. R. & Regs. R. 189-2-.02(4) ("Informal Request for Interpretation and Rulings") regarding compliance with Georgia law.

How does ActRight.com work?

ActRight combines a 527 organization (ActRight Fund), a 501(c)(4) non-profit corporation (ActRight Action), and a 501(c)(3) non-profit (ActRight Action Education Trust) into one website, enabling users to choose what activities they wish to support. Separate bank accounts are used for each entity and contributions to candidates are processed separately from donations to other causes. ActRight Action plans to register a Georgia political committee called ActRight Georgia. It will accept the contributions of website donors and distribute (contribute) these funds to the candidates that website users designate when they click on a "donate" button for a particular Georgia state candidate. Every gift to a candidate will be distributed along with the required donor information to the candidate's campaign.

What does Georgia law require?

In Georgia, an organization may establish a connected PAC for the purpose of soliciting contributions and making contributions to state candidates. Ga. Code 21-5-3 (20) ("political action committee" definition); and sec. 21-5-12 ("the name of any separate segregated fund" . . .

¹"Separate segregated fund" means a fund which is established, administered, and used for political purposes by a business entity, labor organization, membership organization, or

shall include the name of its connected organization.”). If ActRight Fund makes expenditures exceeding \$25,000 in a calendar year, it must register a political committee by filing Forms RO and PIN Application, and file contribution and expenditure reports. Ga. Code 21-5-5. This means that ActRight Fund may register a separate segregated fund (“ActRight Georgia”) as a political committee in Georgia in order to receive contributions, make contributions to state candidates, and file reports as a committee. Registration and reporting forms are available at <http://ethics.ga.gov/>.

The following is a summary of the registration, disclaimer, and reporting requirements for ActRight Action Georgia:

1. *Contributions to ActRight Georgia:* PACs may accept unlimited contributions from individuals, corporations, political committees, or political parties. Ga. Code 21-5-41.
2. *Contributions to candidates:* ActRight Georgia may make contributions to Georgia candidates² subject to the following contribution limits: \$6,300 per election³ for state-wide candidates; \$2,500 per election⁴ for candidates for General Assembly and all other non-statewide candidates. Ga. Code 21-5-41; Ga. Regs. 189-6-.04.⁵
3. *State law disclaimer required:* None.
4. *State registration required:* In Georgia, political committees that make expenditures in excess of \$25,000 in a calendar year must register. Registration must be amended within 7 days of any change. Ga. Code 21-5-34(e); Ga. Regs. 189-4-.01. The name of a PAC must include the name of its connected organization. Ga. Code 21-5-12. A current email address is required and must be updated within 10 days of any change. Ga. Code 21-5-14.

cooperative” Ga. Code 21-5-40(7). “Business entity” includes any entity, whether profit or nonprofit. Ga. Code 21-5-3(1).

²No member of the General Assembly may accept a contribution during a legislative session. Ga. Code 21-5-35.

³The contribution limit for run-off elections is \$3,700. Candidates may accept contributions designated for a primary election even though unopposed. Ga. Regs. 189-6-.02.

⁴The contribution limit for run-off elections is \$1,300.

⁵Contributions limits are adjusted annually. Ga. Code 21-5-41(k); Ga. Regs. 189-1-.07.

5. *Reports required:* Contributions and expenditures in 2012⁶ must be reported as follows:

- a. March 31st Election Year report: due April 6, 2012.⁷
- b. June 30th Election Year report: due July 9, 2012.
- c. September 30th Election Year report: due October 5, 2012.
- d. October 25th Election Year report: due October 30, 2012.
- e. December 31st Election Year report: due January 8, 2013. Ga. Code 21-5-34(c).

6. *Contribution reports:* The PAC must disclose the donor's name, mailing address, occupation and employer (for individuals), date received, and amount for contributions over \$100 in the aggregate. Ga. Code 21-5-34(b); Ga. Regs. 189-3-.01.

7. *Late contribution reports:* Contributions of \$1,000 or more between the date of last report and election day must be reported within two business days (Two Business Day Report form), and on the next regular report. Ga. Code 21-5-34(c).

8. *Expenditure reports:* Reports must include the name, mailing address, purpose, date, and amount of all expenditures over \$100 made; and employer and occupation (for individuals). Ga. Code 21-5-34(b); Ga. Regs. 189-3-.01.

9. *Independent expenditures:* Expenditures that expressly advocate in support of or opposition to candidates are reported like other expenditures. AO 2010-02.

10. *Electronic filing* is required. Ga. Code 21-5-34.1(d); Ga. Regs. 189-1-.10.

11. *Records* must be retained for 3 years from the termination date of the committee. Ga. Code 21-5-32.

12. *Termination statement* is required within 10 days of dissolution, together with a final disclosure report. Ga. Code 21-5-34(m); Ga. Regs. 189-4-.01(4). Registration expires at the end of each calendar year. *Id.* at (5).

⁶In non-election years reports are due on June 30 and December 31. Ga. Code 21-5-34(c).

⁷Each due date notes the end of the grace period for filing the report. Ga. Code 21-5-34(c).

Questions

Please provide answers to the following four questions:

1. Does Georgia law permit ActRight Fund to register a separate segregated fund (ActRight Georgia) to accept designated contributions from individuals for Georgia candidates?
2. May ActRight Georgia distribute these contributions to each candidate as a contribution from ActRight Georgia?
3. Each donor will be identified and reported on ActRight Georgia reports. Should the candidates report the individual donors or do they simply report the contribution amount as a single contribution from ActRight Georgia to each candidate?
4. Are there any errors in the above summary of Georgia campaign finance law?

Please contact me if I need to clarify any of the information or questions provided above.
Thank you.

Sincerely,



Barry A Bostrom
General Counsel
ActRight Fund