

**STATE ETHICS COMMISSION
ADVISORY OPINION
S.E.C. 2010-10**

QUESTION ONE

Whether telecommunications companies whose retail rates are not regulated by the Public Service Commission and persons acting on behalf of such companies are prohibited from making contributions to political campaigns.

Robert Highsmith of the law firm Holland & Knight on behalf of several telecommunication clients has requested the above advisory opinion from the Ethics Commission. Mr. Highsmith requests that the Commission advise that telecommunication companies which have chosen alternative regulation are no longer governed by § 21-5-30(f) of the Ethics in Government Act (the "Act"). Mr. Highsmith reasons that because telecommunication companies have been so significantly deregulated as a result of alternative regulation of telephone retail rates under Georgia law that O.C.G.A. § 21-5-30(f) no longer applies to them. The Commission disagrees.

O.C.G.A. § 21-5-30(f) states:

A person acting on behalf of a public utility corporation regulated by the Public Service Commission shall not make, directly or indirectly, any contribution to a political campaign. This subsection shall not apply to motor carriers whose rates are not regulated by the Public Service Commission. Any person who knowingly violates this subsection with respect to a member of the Public Service Commission, a candidate for the Public Service Commission, or the campaign committee of a candidate for the Public Service Commission shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years or by a fine not to exceed \$10,000.00, or both; and any person who knowingly violates this subsection with respect to any other public officer, a candidate for such other public office, or the campaign committee of a candidate for such other public office shall be guilty of a misdemeanor.

As a result of the concern for corruption or the appearance of corruption, the Georgia Legislature prohibits any public utility company regulated by the Public Service Commission from making campaign donations to candidates. Mr. Highsmith is correct in his assumption that a public utility corporation no longer regulated by the Public Service Commission would be exempt from the prohibition regarding campaign donations. In Advisory Opinion 2006-01, the Commission determined that because railroad companies were no longer regulated by the Public Service Commission, the campaign prohibition under § 21-5-30(f) no longer applied to railroad companies. However as stated in AO 2006-01, in 1995 Congress passed the ICC Termination Act which preempted state jurisdiction over railroads. The same has not occurred in this instance.

While telecom companies may choose alternative regulation, that is, they may choose to set their own retail rates, the PSC retains regulatory authority over much of the telecom business. First, the PSC maintains regulatory authority over wholesale rates charged by telecom companies. Wholesale rates represent the charges that telecom companies charge each other for connection to another company's systems. While alternatively regulated companies may negotiate wholesale rates among themselves, the PSC has authority to determine wholesale rates when the companies fail to reach agreement (O.C.G.A. § 46-5-164). The PSC retains this rate making authority to ensure that no local exchange company or telecommunications company gains an unfair market position by attempting to thwart competition through unreasonable wholesale rates.

In addition to the power to regulate wholesale rates, a telecom company must receive a certificate of authority from the PSC to conduct business in Georgia (O.C.G.A. § 46-5-163; wireless services excepted). In order to receive a certificate of authority, the telecom company must demonstrate to the PSC that it has sufficient technical capacity as well as financial strength in order to properly serve the community in which it operates. Under subsection (d) of § 46-5-163, the Commission has the authority to revoke, suspend or adjust a certificate of authority "where the commission finds upon complaint and hearing that a local exchange company has engaged in unfair competition or has abused its market position."

Lastly O.C.G.A. § 46-5-168 grants the following powers to the Commission:

(b) The commission's jurisdiction shall include the authority to:

- (1) Adopt reasonable rules governing certification of local exchange companies;
- (2) Grant, modify, impose conditions upon, or revoke a certificate;
- (3) Establish and administer the Universal Access Fund including modifications to the maximum allowable charge for basic local exchange service;
- (4) Adopt reasonable rules governing service quality;
- (5) Resolve complaints against a local exchange company regarding that company's service;
- (6) Require a telecommunications company electing alternative regulation under this article to comply with the rate adjustment provisions of this article;
- (7) Approve and if necessary revise, suspend, or deny tariffs in accordance with the provisions of this article;
- (8) If necessary, elect another comparable measurement of inflation calculated by the United States Department of Commerce;
- (9) Establish reasonable rules and methodologies for performing cost allocations among the services provided by a telecommunications company; and
- (10) Direct telecommunications companies to make investments and modifications necessary to enable portability.

Based on the above regulatory framework maintained by the PSC over alternatively regulated telecom companies, the Commission declines to advise that alternatively regulated telecom companies are exempt from the prohibitions under O.C.G.A. § 21-5-30(f).

QUESTION TWO

Whether public utility corporations, and persons acting on behalf of such corporations, are prohibited from providing logistical support to employee sponsored political action committees ("PACs").

To respond to this question, the Commission refers to its recently issued Advisory Opinion 2010-04. In AO 2010-04, the Commission determined that a PAC 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. The prohibition is based on subsection (b) of §21-5-30.1 which prohibits a regulated entity or any person or political action committee acting on behalf of a regulated entity from making contributions to an Elected Executive Officer regulating the entity.

Although the prohibition under §21-5-30.1 applies to an entity regulated by an Elected Executive Officer and not the PSC, the basis for our decision in AO 2010-04 is the same as the one we make here. The definition of contribution under the Act is “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 ...” (§21-5-3(7)). Logistical support provided to an employee sponsored PAC constitutes a contribution because it is something of value.

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.

Therefore, it is the opinion of the Commission that O.C.G.A. §21-5-30.1 prohibits a public utility corporation from providing logistical support to employee sponsored PACs.

Prepared by Stacey Kalberman, Executive Secretary
November 17, 2010