

December 19, 2013

Ms. Lacey E. Keys  
Olson, Hagel & Fishburn LLP  
555 Capitol Mall, Suite 1425  
Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. A-13-153**

Dear Ms. Keys:

This letter responds to your request for advice on behalf of your client, Service Employees International Union United Healthcare Workers West (“SEIU-UHW”), regarding campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup>

### **QUESTION**

Does SEIU-UHW’s sponsored political action committee (“SEIU-UHW PAC”) still qualify as a small contributor committee when an \$800 check made out to and intended for the union’s general fund was deposited by mistake into the SEIU-UHW PAC, the funds were not intended as a contribution or given for political purposes, and the error was promptly corrected as soon as it was discovered?

### **CONCLUSION**

Where SEIU-UHW PAC has review procedures in place to ensure compliance with the \$200 limit, but due to administrative error, a check for \$800 made out to the union’s general fund was mistakenly deposited into the PAC account, and the erroneously deposited funds were transferred out seven days later, the committee does not lose its status as a small contributor committee under Section 85203.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS

Your client's sponsored committee, SEIU-UHW PAC, qualified as a small contributor committee on January 1, 2001, and has been registered as such since that date. You wish to confirm that based on the facts provided SEIU-UHW PAC still qualifies as a small contributor committee as defined in Section 85203.

On October 31, 2013, your client inadvertently deposited an \$800 check into the political action committee bank account. The check was from the "SEIU United Healthcare Workers West and Joint Employer Education Fund," and you have included a copy. The check was made out to the sponsor's general fund ("SEIU United Healthcare Workers West"), not to the political action committee. Further, the check was intended for deposit into the general fund. Due to a mistake, the check was deposited into the political action committee account instead of the general fund account.

Your client has internal review procedures in place where a clerical staff member copies the checks and prepares deposits, and then a staff accountant reviews each deposit and makes the deposit into the appropriate account. However, this mistake was unfortunately not identified during the review process before the check was deposited.

Once the error was identified, the full \$800 was immediately refunded to the payor. This refund occurred on November 7, 2013. Your client is also establishing additional review procedures to prevent against any such mistakes in the future, including another level of review by the Controller or Assistant Controller before deposits are made. Additionally, all checks to be deposited to the small contributor committee will be sent directly to Olson Hagel and Fishburn for deposit to further ensure compliance.

## ANALYSIS

Section 85203 of the Act defines a "small contributor committee" as follows:

"Small contributor committee' means any committee that meets all of the following criteria:

- (a) The committee has been in existence for at least six months.
- (b) The committee receives contributions from 100 or more persons.
- (c) No one person has contributed to the committee more than two hundred dollars (\$200) per calendar year.
- (d) The committee makes contributions to five or more candidates."

Regulation 18503 further provides:

"(a) A 'small contributor committee' means any committee that meets all of the following requirements:

- (1) The committee has been in existence for at least six months . . .

- (2) Within 36 months before making a contribution under Government Code section 85302, the committee receives contributions from 100 or more persons . . .
- (3) The committee's campaign funds do not include any contributions that exceed \$200 per person per calendar year . . .
- (4) The committee makes contributions to five or more candidates for any elective office every 36 months and each contribution equals or exceeds \$25 . . .”

A small contributor committee is permitted to give contributions to state candidates at a contribution limit that is twice the amount that other persons (other than political parties) may give. (Sections 85301 and 85302.) For example, a person may give State Senate or Assembly candidates \$4,100 per election in 2014, whereas a small contributor committee may give such a candidate \$8,200 per election.

The Act gives special status to small contributor committees, permitting a group made up of numerous small donors to contribute to state candidates at double the contribution limit applicable to a single person or entity. A committee indicates on its statement of organization (Form 410) if it is a small contributor committee and provides the date on which it qualified as such. (Regulation 18503(b).)

To exist as a small contributor committee and take advantage of the doubled contribution limit, a committee's campaign funds may not include any contributions exceeding \$200 per person per calendar year. This is the primary requirement for small contributor committee status and is strictly enforced. Small contributor committees are advised to have internal review procedures in place to avoid receiving contributions of more than \$200.

A committee loses its status as a small contributor committee if its campaign funds include any contributions that exceed \$200 per person per calendar year. To re-form a new small contributor committee, one must open a new committee and bank account, wait six months, and receive contributions of no more than \$200 per person per calendar year.

The FPPC recognizes, however, that even with review procedures in place to monitor the \$200 limit on contributions received by small contributor committees, an inadvertent administrative error in depositing a check can occur. In the situation you described, the committee had procedures in place to avoid receiving a contribution over \$200. Nevertheless due to administrative error, a check for \$800 made out to the general fund was mistakenly deposited in the small contributor committee account on October 31, 2013. The funds were promptly transferred out of the small contributor committee's bank account, on November 7, 2013. Under these facts, the committee does not lose its status as a small contributor committee pursuant to Section 85203.

Where a small contributor committee has procedures in place to avoid receiving a contribution over \$200 per contributor per calendar year, but receives a deposit in excess of that amount through inadvertent error or mistake, and the funds are transferred out of the small

contributor committee's account within 14 calendar days, the committee may retain its status as a small contributor committee.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Hyla P. Wagner  
Senior Counsel, Legal Division

HPW:jgl