



FAIR POLITICAL PRACTICES COMMISSION

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May 14, 2008

Ms. Latasha Kindrick
Vice President, Operations
PAC Outsourcing LLC
7915 Old Branch Avenue
Clinton, Maryland 20735

Re: Your Request for Advice
Our File No. A-08-059

Dear Ms. Kindrick:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTION

Considering recent regulatory changes, may a corporate or labor federal political action committee ("PAC"), which is registered and reporting with the California Secretary of State as a state general purpose committee, continue to use its federal separate segregated bank account to make contributions to California candidates? You would like us to confirm your understanding that these federal PACs are not required to have more than one bank account.

CONCLUSION

Under Regulation 18534, a federal PAC that is active in California state elections and is registered with, and reporting its California activity to, the California Secretary of State, may continue to use its federal separate segregated bank account to make contributions to California candidates. Because the federal PAC does not receive any contributions in excess of \$5,000, it is not required to set up a separate bank account for contributions to California state candidates under Regulation 18534. Pursuant to

¹ 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.

Regulation 18534(f), a federal corporate or labor PAC contributing to a California candidate for elective state office must write "all purpose" on the memo line of the check to inform the recipient of the nature of the funds.

FACTS

PAC Outsourcing LLC provides administrative and compliance services to corporations, labor organizations, and other entities with established political action committees that are registered with the Federal Election Commission ("FEC"). Many of these committees are interested in making contributions to California state candidates. You have reviewed the statutory changes to the Political Reform Act and Commission regulations affecting committees that make contributions to state candidates, including those contained in the document on the Commission's website titled "New (2007/2008) Campaign Reporting and Other Requirements" dated November 28, 2007. Specifically, you are interested in understanding how these new changes affect committees that are registered with the FEC and intend to make contributions to California state candidates. Your inquiry only concerns federal corporate and labor PACs, not political party committees.

Federal PACs are required to maintain a separate segregated account from which contributions to federal or to state candidates (where permitted) are disbursed. Federal committees may not accept contributions from any persons totaling more than \$5,000 per calendar year. It is your understanding that a federal committee, if also registered as a state general purpose committee with the California Secretary of State, is not required to have more than one bank account.

You seek advice as to whether the recent regulatory changes permit a federal PAC registered with the California Secretary of State to continue to use its federal separate segregated bank account to make contributions to California state candidates.

ANALYSIS

Section 85303 contains the California state contribution limits for committees active in state candidate elections. Section 85303 provides:

"(a) A person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than five thousand dollars (\$5,000) per calendar year for the purpose of making contributions to candidates for elective state office.²

² "Elective state office" means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees' Retirement System, and member of the State Board of Equalization." (Section 82024.)

“(b) A person may not make to any political party committee, and a political party committee may not accept, any contribution totaling more than twenty-five thousand dollars (\$25,000) per calendar year for the purpose of making contributions for the support or defeat of candidates for elective state office. ...

“(c) Except as provided in Section 85310, nothing in this chapter shall limit a person’s contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office. ...” (Section 85303.)

The committee contribution limits set forth in Section 85303(a) and (b) above are subject to cost-of-living adjustments and are currently \$6,000 for the committee limit and \$30,200 for the political party committee limit.

To implement the contribution limits of Section 85303, the Commission adopted a new regulation in 2007 requiring some committees to set up two separate bank accounts, to keep the limited and unlimited funds separate. Regulation 18534 requires contributions made to committees for the purpose of making contributions to state candidates, which are subject to limits, to be kept in an separate account designated as its “all purpose account.” These funds may be used for any legitimate purpose, including making contributions to state candidates. Contributions a committee raises in excess of the contribution limits must be put in a “restricted use account.” These funds may be used for any legitimate purpose except to make contributions to state candidates.

Regulation 18534, titled “Required Committee Bank Accounts,” states:

“(a) This regulation is applicable to any committee pursuant to subdivision (a) of Government Code section 82013 that receives contributions subject to the limits of subdivision (a) or (b) of Government Code section 85303.

“(b) A committee described in subdivision (a) of this regulation must make all contributions to candidates for elective state office, and to other committees for the purpose of making contributions to candidates for elective state office, from a bank account maintained and designated as an “all purpose” committee account. Checks drawn on this account must include the words “all purpose” in the title of the account appearing on the checks. (For example, “XYZ’s all purpose account.”)

“(c) Contributions received by a committee described in subdivision (a) of this regulation, that exceed the aggregate limits prescribed in subdivisions (a) or (b) of Government Code section 85303, must be returned pursuant to 2 Cal. Code. Regs. section 18531, or deposited into a committee bank account designated as a “restricted use” account, or may be split between a committee’s “all purpose” and “restricted use” accounts at the time of deposit, with the amount deposited into the “all purpose” account not to exceed the contributor’s limit under subdivisions (a) or (b) of Government Code section 85303. Within fourteen (14) calendar days following receipt, a committee

may transfer any portion of the original contribution from the committee's "restricted use" account to the "all purpose" account, provided that the total amount deposited into the "all purpose" account does not exceed the contributor's limit under subdivisions (a) or (b) of Government Code section 85303. For each contribution transferred under this subdivision, the committee shall maintain records sufficient to establish that the transfer was effected within fourteen (14) calendar days of receipt. Checks drawn on any "restricted use account" must include the words "restricted use" in the title of the account appearing on the checks. (For example, "XYZ's restricted use account.")

(d) Except by means of the transfer described in subdivision (c) above, funds from a "restricted use" account may not be used to make contributions to candidates for elective state office, or to make contributions to other committees for the purpose of making contributions to candidates for elective state office.

(e) A committee described in subdivision (a) of this regulation may transfer funds from its "all purpose" account to any other account. Any such transfers, however, need not be considered in determining whether any person contributing to the committee has or has not exceeded annual contribution limits for that person under subdivisions (a) or (b) of Government Code section 85303. Except as set forth in subdivision (c) above, a committee may not transfer funds to an "all purpose" account from any "restricted use" or other committee account.

(f) A committee making a contribution to any other committee must notify the recipient whether the contribution is from the committee's "all purpose" or "restricted use" account, or from some other account. A check with the proper designation of the account on its face shall be presumed to be adequate notification of the nature of the funds to the recipient committee.

Under Regulation 18534(a), the federal corporate and labor PACs you described are receiving contributions for the purposes of making contributions to candidates for elective state office in California under Section 85303(a). Therefore, Regulation 18534 applies to these committees which are active in California state elections and are reporting their California activity to the Secretary of State as general purpose committees.

However, a federal PAC may not accept contributions from any persons totaling more than \$5,000 per calendar year into its separate segregated account. (2 U.S.C. §441a(a)(1)(C).) Because these federal PACs do not receive contributions in excess of \$5,000, which amount is less than the state committee limit under Section 85303(a), they are not required to open a separate "all purpose account" under Regulation 18534. The primary purpose of this regulation is to separate funds subject to the contribution limits of Section 85303 from other funds that are not subject to limits.

A memorandum concerning Regulation 18534 discussed the case of small California committees that did not receive and did not anticipate receiving contributions

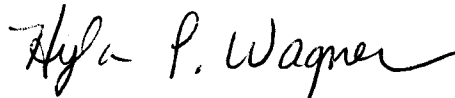
over the then-\$5,000 limit of Section 85303(a).³ The memorandum observed that committees like these would not require a second account, and stated that a second account would only be needed if a committee receives or anticipates receiving over-limit contributions.

Regulation 18534(f) requires that “[a] committee making a contribution to any other committee must notify the recipient whether the contribution is from the committee’s ‘all purpose’ or ‘restricted use’ account, or from some other account.” A federal corporate or labor PAC making a contribution to a California candidate for elective state office must write “all purpose” in the memo line of the check. This will inform the recipient that the funds are from an account that does not receive contributions in excess of the limits of Section 85303(a), currently \$6,000.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl

³ Memorandum to Commission from Lawrence T. Woodlock and Luisa Menchaca. “Update on Proposed Regulations 18530.3 (Mixed Federal and State Expenditures by Political Party Committees) and 18534 (Hard and Soft Money Accounts), dated June 22, 2006.