

**ADVISORY OPINION AO-1988-003
RECONSTITUTED AS ETHICS INTERPRETATION EI-1988-003
ISSUED NOVEMBER 9, 1988**

The Oklahoma Council on Campaign Compliance and Ethical Standards [the "Council"] has received your request for an advisory opinion on several questions. Any applicable law and the Council's reasoning are set forth after each question. All references to sections of the law will be found in Title 74 O.S. Supp. 1988, § 4200 et seq, The Oklahoma Campaign Compliance and Ethical Standards Act [the "Act"].

1. *May a foreign corporation which has an employee or agent political action committee ["PAC"] in Oklahoma require the PAC chairman and treasurer to sign undated letters of resignation as a condition to holding PAC office?*

The Council considered the following law :

Section 4219.

A. No corporation chartered under the laws of this state, or foreign corporation admitted to do business in this state, shall contribute to any campaign fund of any political party of this state or to any other person for the benefit of such party or its candidates, nor shall they, through any agent, officer, representative, employee, attorney, or any other person or persons, directly or through such other person, make any loan of money or anything of value, or give or furnish any privilege, favor or other thing of value to any political party, or to any representative of a political party, or to any other person for it, or to any candidate upon the ticket of any political party. The provisions of this section shall apply to candidates and organizations as well as political parties.

Such control of an employee PAC surely goes against the spirit of the statute prohibiting corporate contributions [Section 4219 (A)]; however, determining whether a violation of the statute occurred would inherently require a full review of all factual circumstances involved in the matter.

2. *May a foreign corporation require that the PAC chairman and treasurer [of the corporation's employee or agent PAC] agree that prior to making any PAC political contributions, it shall first be approved, as to amount and as to donee, by the general counsel of the corporation?*

The Council considered the following case:

Mapco v Cartwright in the United States District Court in the Western District of Oklahoma (CIV-80-1416-D).

Again, such action would be a factual consideration in determining whether a foreign corporation had contributed to a candidate. The *Mapco* case held that "the term

' contribution' does not include the expenditure of corporate funds or the utilization of corporate assets by the corporate owner thereof for the establishment, administration [including the provision of administrative overhead expenses such as the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in setting up and running a separate segregated fund] and solicitation of contributions from others to a separate segregated fund to be utilized for political purposes." Nothing in the Act or case law allows a foreign corporation to control amounts to be given or the recipients of contributions by a separate segregated fund; however, legal fees paid by the corporation to assist the PAC are allowed.

3. *May a foreign corporation force the resignation of a duly elected PAC chairman in the middle of his or her term of office so that the corporation may install, without the normal procedural election, a chairman of the corporate attorney's own choosing and where the PAC has by-laws duly adopted by its board of trustees?*

There is nothing in the Act which would require a corporation or its separate segregated fund to conduct the business of the fund according to adopted by-laws; however, such action by the corporation would be another factual consideration in determining whether the corporation had made a contribution.

4. *May an employee of a law firm of a foreign corporation place long distance phone calls on their salaried time, to the corporation's independent agents in Oklahoma, the purpose of which is to solicit those agents to work in legislative political campaigns by donating time and/or money to the candidate or to the corporation's PAC? Telephone calls are assumed to be reimbursed by the corporation to the law firm. Also, postage, stationery, copy costs, mailing costs involved in the organizing and arranging of political support are assumed to be reimbursed to the law firm. Reimbursement will be by the corporation itself or by an affiliated entity, which would be a benefit to the corporation.*

Mapco v Cartwright would allow the use of corporate assets to solicit for the corporate PAC but not use of corporate assets to solicit donations to be made to the corporation's choice of candidates. Such direct solicitation would be an in-kind contribution [prohibited from corporations] to the candidate if done with the candidate's knowledge and would be prohibited activity if done without the candidate's knowledge. [74 O.S. Supp. 1986, §4213 (E)]

- 4a. *Would the salary, which pays for the time of the law firm employee, be an in-kind contribution to candidates who benefit therefrom? Would it be illegal as a corporate reimbursed expense?*

Such an expenditure by a corporation could be considered an in-kind contribution only to the extent that contributions directly to specific candidates were being solicited.

4b. *Would such salaried time be a contribution to a PAC if the employee's efforts were to help the corporation's PAC in its support of or opposition to legislative candidates?*

The Council considered the following law :

Section 4219.

C. When any official, agent, attorney, or employee of a corporation has been shown to have violated the provisions of this section, it shall be presumed that he was acting for such corporation, and the burden shall be upon the accused corporation to show that such official, agent, attorney or employee was not acting for it or with its sanction.

The statute puts the burden on the corporation, not on the separate segregated fund [PAC], to overcome the presumption that the employee was not acting for the corporation; any benefit to the PAC's political effort would not overcome the presumption.

4c. *In either (a) or (b) would a candidate in (a) or a PAC in (b) be permitted to accept such help from the law firm employee if their time were billed to a foreign corporation or to an affiliated entity and their expenses of such political activity were reimbursed by the foreign corporation or affiliated entity?*

No. A candidate could not accept such help without accepting an illegal in-kind contribution; however, the statute only prohibits the contribution, not the acceptance of the contribution. The penalty for violating the statute would be against the corporation, not the candidate nor the PAC.

5. *Can an agent of a foreign corporation, e.g., the law firm employee in #4, actually be the person performing the phone calls and other politically related work previously described, or is that employee's role limited to purely administrative support to a corporation PAC?*

The *Mapco* case allows a corporation to contribute administrative expenses specifically including legal fees. These could be provided either by a corporate legal staff or an outside legal firm retained by the corporation; however, it is highly questionable whether direct solicitation of contributions to a candidate would be "legal fees" as contemplated in the *Mapco* case. Such activity is prohibited by the corporation and its attorney.

6. *Can a person publicly or privately solicit and/or accept political contributions without being a designated agent of the political candidate?*

The Council considered the following law :

Section 4213.

A. Every candidate shall designate a person, who may be the candidate himself, to be his agent for the receipt and expenditure of contributions for reporting purposes. The agent may designate as many subagents as he deems fit. A candidate may remove his agent and designate another agent at any time. A candidate or agent may remove a subagent and designate other subagents at any time. The designations of agents and subagents shall be made in writing and filed with the Oklahoma Council on Campaign Compliance and Ethical Standards for candidates for state and county office and with the clerk of the appropriate political subdivision for candidates for local office other than county office. No person shall act as any agent or as a subagent until after his designation is so filed.

No person may publicly or privately accept contributions for a candidate without being designated an agent by the candidate or a subagent by the agent of a candidate without violating Section 4213 A.

It is, therefore, the advisory opinion of the Council, as voted on at its regular meeting on November 9, 1988, that:

- 1. Control of the officers of an employee PAC through forced resignations and corporate approval of amounts and recipients of contributions by a foreign corporation goes against the spirit of Title 74 O.S. Supp. 1988, § 4219 (A); however, determining whether a violation occurred would inherently require a full review of all factual circumstances involved in the matter;**
- 2. Use of corporate assets to solicit contributions and payment of legal fees by a corporation to its separate segregated fund are allowed pursuant to *Mapco v Cartwright*. Use of corporate assets to solicit employees to donate directly to the corporation's choice of candidates would be an in-kind contribution by the corporation and, therefore, prohibited by Title 74 O.S. Supp. 1988, § 4219, if done with the candidate's knowledge. Such solicitation would also be prohibited activity if done without the candidate's knowledge pursuant to Title 74 O.S. Supp. 1988, § 4213 (E);**
- 3. Title 74 O.S. Supp. 1988, § 4219 puts the burden on the corporation, not on the separate segregated fund [PAC], to overcome any presumption that a corporate employee soliciting direct contributions to candidates did act for the corporation; any benefit to the corporation's separate segregated fund's political effort would not overcome the presumption;**
- 4. A candidate could not accept use of corporate assets to solicit contributions directly to the candidate without accepting an in-kind contribution prohibited by Title 74 O.S. Supp. 1988, § 4219; however, only the corporate contribution is prohibited, not the acceptance of the contribution by the candidate; and**

5. **No person may publicly or privately accept contributions for a candidate without being designated an agent by the candidate or a subagent by the agent of a candidate without violating Title 74 O.S. Supp. 1988, § 4213 (A).**

WITHDRAWN. Ethics Interpretation EI-1988-003 was withdrawn on June 28, 2011, as to Title 74, Section 4213(A) and (E), now Rules' Section 257:10-1-2(c) and (d) due to the United States Supreme Court holdings in *Citizens United v. Federal Election Commission*. No exceptions was provided in this interpretation for corporations to be able to make independent expenditures. The remaining opinion is still valid.