

**ADVISORY OPINION AO-1988-006
RECONSTITUTED AS ETHICS INTERPRETATION EI-1988-006
ISSUED NOVEMBER 9, 1988**

The Oklahoma Council on Campaign Compliance and Ethical Standards has received your request for a declaratory ruling. The Council voted at its regular meeting on November 9, 1988, to reconstitute the question as a Request for Advisory Opinion [since by statute, it is not an agency for purposes of the Administrative Procedures Act--Title 74 O.S. Supp. 1988, § 4206 (B)]. Your question, in effect, was:

Can an insurance company, which is not an affiliated or connected organization of its independent agents' political action committee, withhold a portion of the agent members' commissions, and upon receipt of payment by the agents of the fair market value of the service of withholding, forward the sum withheld to the agents' political action committee without violating Title 74 O.S. Supp. 1988, § 4219?

Section 4219 (A) reads:

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.

Article 9, Section 40 of the Oklahoma Constitution provides:

No corporation organized or doing business in this State shall be permitted to influence elections or official duty by contributions of money or anything of value.

A "connected organization" is defined in Rule 2 of the Rules and Regulations of the Oklahoma Ethics Commission, the predecessor of the Oklahoma Council on Campaign Compliance and Ethical Standards, as:

...any organization which directly or indirectly establishes, administers or financially supports a political entity.

Op. Atty. Gen. No. 79-206 held:

(1) Under 26 O.S. Supp. 1979, § 15-110, which prohibits corporate campaign contributions, and under the provisions of Article 9, Section 40 of the Oklahoma Constitution, a corporation may not bear administrative overhead expenses for a political action committee composed of its employees nor may it provide employees, office space, equipment and supplies to said political action organization for the purpose of obtaining funds from such voluntary members for use by the political action organization, if such use is for any purpose prohibited by 26 O.S. Supp. 1979, § 15-110

or Article 9, Section 40 of the Oklahoma Constitution. (2) If prohibited, the furnishing of employees, office space, supplies and equipment may not be provided by the corporation to the political action organization under an arrangement for subsequent reimbursement.

While it is unrelated to your question, the holding in this opinion has been superseded by the case of *Mapco v Cartwright* in the United States District Court in the Western District of Oklahoma (CIV-80-1416-D).

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.

The insurance company in your petition is not a connected organization of the agents' political action committee nor is the political action committee a separate segregated fund. The independent agents sell insurance for and receive a commission from the insurance company. The insurance company, in consideration of being paid the fair market value of its services prior to the services being performed, withholds a percentage of the commission owed to each individual agent and remits it to the political action committee.

This factual situation is distinguishable from Op. Atty. Gen. No. 79-206 in that it offers no possibility of an in-kind contribution by the insurance company since the service is performed for fair market value which is paid by the agent before the service is performed. It is a contractual service performed for each agent, not for the political action committee itself. However, either a member of a political action committee or a political action committee or a political party or a candidate would be free to contract at arms length for services for fair market value whether it contracts with a sole proprietorship, an insurance company or a corporation without violating § 4219. There is no direct or indirect benefit from the insurance company to the political action committee. The benefit is to the agent who pays for the service provided.

It is, therefore, the advisory opinion of the Oklahoma Council on Campaign Compliance and Ethical Standards, as voted on at its regular meeting on November 9, 1988, that an insurance company, which is not an affiliated or connected organization of its independent agent's political action committee, may, at the agent's request, withhold a portion of the agent's commission, and upon receipt of payment by the agent of the fair market value of the service of withholding, forward the sum withheld to the agent's political action committee without violating Title 74 O.S. Supp. 1988, § 4219 or Article 9, Section 40 of the Oklahoma Constitution.