

ETHICS INTERPRETATION EI-1999-004
ISSUED DECEMBER 10, 1999

The Ethics Commission of the State of Oklahoma [“the Commission”], in the executive session portion of its regular meeting held December 10, 1999, considered your request for an ethics interpretation.¹ You have asked:

1. *Do the Constitutional Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 1999, Ch. 62, App., permit a not-for profit corporation to use its corporate treasury funds for communications sent solely to its membership which include a message advocating the election or defeat of a candidate running for statewide or state legislative office in Oklahoma? If permissible, does such an entity incur a reporting obligation for costs of those communications?*
2. *May this entity solicit contributions from individuals or those who are not members, and, if so, are these contributions subject to contribution limits?*
3. *Is this entity authorized to use its corporate treasury funds to reimburse its political action committee [“PAC”] for costs incurred and associated with the establishment, administration and solicitation of contributions?*
4. *What reporting obligations does the entity PAC incur when making in-kind contributions to a candidate committee?*

FACTS

You have informed the Commission that:

- the entity is a not-for-profit corporation exempt from federal taxation pursuant to IRC section 501(c)(6);
- the entity has in excess of several hundred thousand members consisting of individuals, partnerships, sole proprietorships, corporations and limited liability companies;
- although fewer than one per cent [1%] of its members are incorporated entities, approximately sixty percent [60%] of the dues of individual members are paid by for-profit corporations;

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Please be advised that questions pertaining to the Oklahoma Statutes and Constitution cannot be interpreted by the Commission.

- the entity has affiliated divisions in each of the fifty states;
- the entity sponsors a political committee in the State of Oklahoma which is connected to the not-for-profit corporation. The committee is properly registered within the State of Oklahoma. Its purpose is to solicit contributions which are then utilized to make contributions to Oklahoma statewide and state legislative candidates;
- members - whether individuals, sole proprietorships, partnerships, limited liability companies or corporations – pay annual dues and are entitled to vote on the entity’s issue ballot six times per calendar year; and,
- in addition to soliciting funds from its members, the entity often sends communications to its membership which advocate the election or defeat of candidates seeking office in their respective states. Communications are directed solely to the membership through direct mail and are not communicated in any fashion to the general public through media such as newspapers, radio or web pages.

ANALYSIS

Your first question pertains to the status of political communications between the instant entity and its members. Since the entity is a corporation – albeit a not-for-profit one – communications of the type you describe fall under an exception to the Rules’ definition of “contribution.”

Definitions

* * *

“Contribution”

* * *

(2) The term "contribution" shall not include:

* * *

(G) a communication by a corporation, labor organization, or association aimed at its members, owners, stockholders, directors, executive administrative personnel, or their families;

* * *

Section 257:1-1-2

A communication from a corporation to its members, owners, stockholders, directors, executive administrative personnel, or their families – even one which advocates election or defeat of candidates in state elections – is not a contribution within the meaning of the Rules. Consequently, such communications may be funded from the

corporation's treasury. Nor, do they incur a reporting obligation. The Commission notes that the same does not hold true with respect to the corporation's PAC. Expenditures from that entity are regulated and must be reported.

Your second question is answered by the first. Any communication on behalf of a candidate for state office which a corporate entity makes to those outside the specified class [i.e. members, owners, stockholders, directors, executive administrative personnel, or their families] is deemed a contribution to the candidate. The Rules prohibit corporations from making contributions to, or expenditures for the benefit of, candidates or committees in state races.

Prohibitions and exceptions to corporate contributions

* * *

(2) A corporation shall not make a contribution or expenditure to, or for the benefit of, a candidate or committee in connection with an election, except that this provision shall not apply to:

(A) a campaign or committee solely for or against a ballot measure or local question; or

(B) the establishment, administration, and solicitation of contributions to a political action committee to be utilized for political purposes by a corporation.

* * *

Section 257:10-1-2(c)(2)(A)(B)

The Commission is aware that some not-for-profit corporations [i.e. those formed for an ideological purpose who support candidates advocating their issues and whose treasuries contain only insignificant for-profit corporate funds], must be afforded direct access to treasury funds for supporting or opposing candidates. But, it distinguishes those entities from the instant one.

First, the instant entity is not an ideological corporation like that recognized in *Federal Election Commission v. Massachusetts Citizens For Life* ["MCFL"], 479 US 238, 93 L Ed 2d 539, 107 S Ct 616 (1986). Moreover, the Commission notes that while corporations comprise less than 1% of its membership, at least 60% of the dues paid the instant entity are from corporate treasury funds. These facts are analogous to those in *Austin v. Michigan Chamber of Commerce* ["Austin"], 494 US 652, 108 L Ed 2d 652, 110 S Ct 1391 (1990), where the Court found that a nonprofit corporation made up of for-profit corporate members is akin to a voluntary political association. Restricting the use of treasury funds for independent expenditures from these organizations was held not to violate the First Amendment since:

- the statute was supported by a compelling governmental interest in preventing political corruption in connection with immense aggregations of wealth that are accumulated by corporations with

the help of the state-conferred corporate structure and that there was little or no correlation to the public's support for a corporation's political ideas;

- the statute was narrowly tailored to achieve its goal, in that it permitted speech that accurately reflects contributors' support for a corporation's political views; and
- the federal constitution did not require that the chamber be exempted from the statute's restrictions as a voluntary political association, given that the chamber, unlike other nonprofit corporations, was a conduit for corporations which were directly barred by state law from making independent expenditures.

The Court in *Austin* found that, "state law grants corporations special advantages – such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets – which enhance their ability to attract capital and deploy their resources in ways that maximize the return on their shareholders' investments." *Id.*, at 658-659

The Commission notes that the instant entity provides its members many benefits which are not inherently political. As was the case with the Chamber in *Austin*, members may disagree with its political expression, but wish to avail themselves of other benefits the organization offers. Similarly, the Commission is concerned that shareholders of this entity's member corporations have a financial disincentive for disassociating from the company even if disagreeing with its political activity. This could well result in a person or entity being obliged to contribute to a candidate personally opposed, or opposing one personally supported.

The Commission is well aware that, as a legally recognized entity, a corporation must be afforded political rights. It believes that the Rules protect those by permitting the organization the option of participating in the campaign process through its PAC. Those who contribute to the corporation's separate segregated fund do so voluntarily and with full knowledge of the entity's political agenda. This protects the corporation's rights of political speech, while assuring both that participation accurately reflects contributors' support for its political views and guarding against compelled participation in the political process.

Nor, is the Commission blind to the fact that permitting the instant corporation to contribute to candidates would, in essence, allow it to act as a conduit for profit-making corporate members which Oklahoma bars from making independent expenditures in candidate campaigns.

The Commission thus finds no compelling reason for exempting this entity from the Rules' prohibition against corporate use of treasury funds for those independent expenditures which expressly advocate the election or defeat of a clearly identified candidate(s). At the same time, it leaves open to not-for-profit corporations use of its

treasury for covering administrative costs of its own separate segregated fund [PAC], whose political voice the Rules protect.

With respect to independent expenditures from corporate funds, the Commission adopts the test set forth in *MCFL*. Only those corporations which meet the following criteria are permitted to access treasury funds for such:

- the corporation must be formed for the express purpose of promoting political ideas and cannot engage in business activities;
- the corporation must have no shareholders or other persons who might have a claim on its assets and earnings; and
- the corporation must not be established by a business corporation or a labor union and have a policy not to accept contributions from such entities.

Id., at 264

Since the instant entity fails this criteria, the Commission finds that it may not use treasury funds to make independent expenditures.

With respect to PAC solicitations, the Rules provide the following:

(d) Prohibitions relating to committee solicitations and funds. It shall be prohibited for:

(1) a political action committee to accept a contribution or make an expenditure by using anything of value secured:

(A) by physical force, job discrimination, financial reprisals, or threat of the same; or

(B) by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, unless the making of such contributions is authorized by the organization's members;

(2) a person to solicit a contribution from an employee in exchange for any advantage or promise of an advantage conditioned upon making a contribution, or reprisal or threat of reprisal related to the failure to make a contribution;

(3) *a corporation or political action committee of a corporation to solicit contributions to the political action committee from a person other than its members, shareholders, directors, executive and administrative personnel, and their families; and*

(4) corporate contributions to a committee or person for or against a ballot measure to be commingled with a fund established by such person or committee to contribute to candidate committees or committees which support or oppose candidates.

Therefore, executive and administrative personnel, members, shareholders, directors and their families may be solicited, but not those outside the class. Hence, employees below the administrative level may not be asked for contributions. Non-members of professional corporations may not be solicited. Dues required as a condition of employment may not be used to make contributions unless authorized by the organization’s members.

Contribution limits most definitely apply. In Oklahoma, these have traditionally been calculated on the basis of the family unit, defined as:

Definitions

* * *

“**Family**” means an individual, his or her spouse, if any, and all children under the age of eighteen (18) years residing in the same household;

* * *

Section 257:1-1-2

The Rules also use the family unit for calculating limits both as to what PACs may give to candidate campaigns and receive from contributors. No person or family may contribute more than five thousand dollars (\$5,000) to a party committee or PAC in any calendar year, nor may a party committee or PAC knowingly accept a contribution from a person or family in excess of that amount within such time frame.

Contributions

(a) Limitations on contributions from a person.

(1) No person or family may contribute more than five thousand dollars (\$5,000) to a political action committee or a party committee in any calendar year. No political action committee or party committee shall knowingly accept a contribution from a person or family in excess of five thousand dollars (\$5,000) in a calendar year.

(2) No person or family may contribute more than five thousand dollars (\$5,000) to a candidate for state office or to a candidate committee authorized by such a candidate to accept contributions or make expenditures on his behalf during a campaign as defined in Chapter 1, Section 2 and as provided in Paragraphs (4) and (5) of this subsection. No candidate or candidate committee shall knowingly accept a contribution in excess of five thousand dollars (\$5,000) from a person or family during a campaign.

* * *

Section 257:10-1-2(a)

The entity's PAC may not receive a contribution of more than \$5,000 from any person during a calendar year. "Person", in turn, is defined under the Rules as:

Definitions

* * *

"Person" means an individual, corporation, limited liability company, association, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business trust, estate, trust, company, organization, committee, or club, or a group of persons who are voluntarily acting in concert.

* * *

Section 257:1-1-2

As the definition shows, "person" includes limited liability companies and partnerships. Although it encompasses corporations, the latter, as noted, are prohibited from making contributions or expenditures in support of, or opposition to, clearly identified Oklahoma state candidates.

This, in turn, answers your third question. For, while this not-for-profit corporation is forbidden from funding its PAC, it may, under previously cited authority, pay for or reimburse the establishment, administration and solicitation of contributions to its own PAC. Reporting of such administrative costs is required as follows:

Report contents

(a) **Basic reporting form.** The campaign contributions and expenditures report shall include:

* * *

(8) the amount of funds loaned or donated by a corporation, labor organization, or other person to its political action committee for the establishment and for solicitation costs of the committee;

Section 257:10-1-14(a)(8)

The corporation's PAC may solicit contributions and make expenditures in support of, or in opposition to, candidate campaigns. Contributions to, and expenditures made by, PACs must be reported, as set forth above.

In answer to your final question, reporting requirements for the instant political committee are contained in the Rules. Once an Oklahoma PAC, within a calendar year, exceeds \$500 in expenditures or contributions [whether in money or in-kind] in support of, or opposition to, Oklahoma state candidates, it must register with this agency.

Registration requirements

A committee other than a candidate committee, including an out-of-state committee, which accepts one or more contributions or makes one or more expenditures in excess of five hundred dollars (\$500) in the aggregate in this state in a calendar year shall file, or electronically transmit, a statement of organization with the Commission no later than five (5) days after accepting the contribution(s) or making the expenditure(s).

Section 257:10-1-11(a)

Registration triggers a periodic reporting requirement. Reporting is required quarterly, by the 15th day of the month following each quarter and by the eighth day before any election.²

Once an out-of-state committee exceeds \$500 in contributions for, or against, Oklahoma state candidates, it must register and report all contributions, including in-kind, from Oklahoma residents. It must also report transfers [contributions] to Oklahoma state candidates.

Oklahoma law requires that contributions which the PAC receives must be accompanied by a contributor statement. Likewise, contributions which the PAC makes to Oklahoma candidates must be accompanied by such statement.

Contributions

* * *

(b) **Contributor statement.** Before accepting a single contribution exceeding fifty dollars (\$50.00), or before accepting multiple contributions from a single source which exceed fifty dollars (\$50.00) in the aggregate, persons accepting contributions must obtain from each contributor a statement which shall include:

- (1) the date the contribution was given;
- (2) the name and address, occupation [e.g. "retail sales clerk"] and employer [e.g. "Dillard"], or principal business activity of the contributor; a contribution from a person other than an individual or a committee shall be reported by the name of the person or committee and not the individual who signed the check;
- (3) the amount; if in-kind, a description of the contribution and a good faith estimate of its fair market value;
- (4) a declaration that the contribution is freely and voluntarily given from the contributor's personal property, if an individual, or the person or committee's property, if other than an individual;
- (5) a declaration that the contributor has not been directly or indirectly compensated or reimbursed for the contribution, if an individual, and, if a person

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For the most current list of due dates, we recommend you refer to our web page at: < www.state.ok.us/~ethics/ > .

other than an individual or a committee, that the person or committee has not been compensated or reimbursed for the contribution by persons:

(A) other than those from whom contributor statements have been received and of whom disclosure has or will be made; or

(B) if from persons exempted from the definition of political action committee, by other persons; and

(6) the signature of the contributor, or in the case of a committee, the treasurer or, in the treasurer's absence, the deputy treasurer of the committee.

Persons accepting contributions from contributors who contribute by payroll deduction, dues check-off, or similar process shall be required to obtain only one contributor statement annually or at such other times as a change is made in the deduction, check-off, or similar process.

Section 257:10-1-2(b)

Such statements are required once contributors exceed \$50, in the aggregate, in a calendar year. Occupation and employer, if an individual, or principal business activity, if a committee or other fictional person, are reported, along with the date and amount of the contribution and a notation of whether the latter is in money or in-kind. The contributor must then attest that the contribution is free and voluntarily given from personal property and that no reimbursement or direct or indirect compensation is being received.

In addition to quarterly and pre-election reports, the Rules require "last minute" reporting of contributions [including loan proceeds] and independent expenditures. These are triggered for contributions received or independent expenditures made of \$500 or more in the aggregate between the 15th day before, and up to, the day of any election in which candidates are supported or opposed. Both must be filed with the Commission within 24 hours.

Report of last minute contributions/ receipts

A contribution or contributions of five hundred dollars (\$500) or more in the aggregate accepted from one (1) person or family or loan proceeds received in the amount of five hundred dollars (\$500) or more after the closing date for the pre-election reporting period, but before the election, except for prior reported contributions or loan proceeds, shall be reported by the name and address of the contributor, the date accepted and the amount of the contribution or contributions or the name and address of the lender and the date of the loan, promissory note, or security agreement resulting in the loan proceeds. Reports shall not be required by a candidate committee which does not have its candidate on the following ballot or a ballot measure committee which is not supporting or opposing a ballot measure on the following ballot nor by committees which are not supporting or opposing candidates in that election cycle or ballot measures on the following ballot. Reports shall be made on the appropriate form or computer diskette containing form software provided by the Commission by United States mail, hand delivery, facsimile transmission, telegram, or express delivery service to the Commission or electronically transmitted within twenty-four (24) hours of receipt. Electronic filings shall be followed by delivering, faxing or mailing a signed paper copy of the form received or postmarked by the date the report was due. With respect to a candidate

committee, the report shall be signed by the candidate or treasurer or, in the treasurer's absence, the deputy treasurer, and with respect to a committee other than a candidate committee, by the chair or the treasurer or, in the treasurer's absence, the deputy treasurer of said committee. This contribution shall also be included on the next report filed or electronically transmitted by the committee.

Section 257:10-1-15

Similarly, the Rules require reporting of last minute independent expenditures.

Report of last minute independent expenditures

A person that makes an independent expenditure of five hundred dollars (\$500) or more after the closing date for the pre-election reporting period, but before the election, shall report the total amount, the date, a brief description of the consideration for the expenditure, and the purpose of the expenditure on the paper form or by computer diskette or electronically transmitting the information on the form or form software provided by the Commission to the Commission office by United States mail, hand delivery, facsimile transmission, telegram, or express delivery service within twenty-four (24) hours of making the expenditure. Electronic filings shall be followed by delivering, faxing or mailing a signed paper copy of the form received or postmarked by the date the report was due. The report shall be signed by the person making the expenditure, or the treasurer or, in the treasurer's absence, the deputy treasurer of a reporting committee, who shall attest to the report's accuracy and veracity. This information shall be included on the next report filed on paper, computer diskette or electronically transmitted by the reporting committee or person.

Section 257:10-1-16

Both last minute contributions and last minute independent expenditures must again be reported on the next quarterly or pre-election report.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held December 10, 1999, that:

- 1. The instant not-for-profit corporation, using its corporate funds, may advocate the election or defeat of a candidate running for statewide elective office or the state legislature in communications directed solely to its members, owners, stockholders, directors, executive administrative personnel, or their families. Expenditures for such communications are not reportable, unless paid for from funds of an Oklahoma PAC;**
- 2. The entity may solicit contributions only from its members, shareholders, directors, executive and administrative personnel, and their families; no funds may be solicited from employees of members, the families of employees of members, or non-members;**
- 3. The entity may not use its corporate treasury funds to make independent expenditures – those which expressly advocate the election or defeat of a**

clearly identified candidate or candidates; it can, however, make such expenditures from PAC funds;

4. The entity may use its corporate treasury funds to pay for or reimburse the costs of the establishment, administration and solicitation of contributions to its own PAC. Such reimbursements are exclusions from the definition of a contribution; however, the amount of such reimbursements must be reported for each reporting period as an “administrative cost”;
5. quarterly and pre-election reports are required of Oklahoma committees and out-of-state committees which exceed \$500 in the aggregate within a calendar year in support of, or in opposition to, Oklahoma state candidates. Last minute contributions and independent expenditures in support of, or in opposition to, an Oklahoma state candidate, which exceed \$500 in the aggregate within the 14 days prior to any election in which such candidate is on the ballot, must be reported within 24 hours.

Please be advised that ethics interpretations are fact specific. They answer only the question or questions put forth in the underlying request according to information described in the “Facts” section [supra]. While they may shed light on other situations, this opinion does not necessarily control them. To be binding on the future action of this agency, the interpretation must be directed to the individual situation.

Ethics Interpretations are published with sufficient deletions to prevent identification of the person or persons involved in the situations herein described. The name of the requestor is considered confidential. This letter has been labeled accordingly.