

INFORMAL OPINION IO-1999-002
ISSUED APRIL 23, 1999

You have asked for an informal opinion on the following questions:

1. *Pursuant to the Constitutional Ethics Rules, may a corporation use its corporate treasury funds to make communications, which are limited only to its membership when such communications include a message which advocates the election or defeat of a candidate running for statewide or state legislative office? If permissible, does the corporation incur a reporting liability for the costs associated with those communications?*
2. *May a corporation solicit contributions from individuals or entities who are not members, and, if so, are they subject to any contributions limits?*
3. *Is a corporation authorized to use its corporate treasury funds to reimburse the Trust for costs incurred and associated with the overhead, administration and solicitation of contributions?*
4. *What responsibilities are incumbent on the committee when the Trust conducts in-kind contributions to a candidate committee, i.e. reporting of expenditures to you, timeliness, reporting of contributions to candidates, etc.?*

FACTS

You have informed us that:

- you are a not-for-profit corporation exempt from Federal Tax pursuant to IRC section 501(c)(6);
- you have a membership in excess of several hundred thousand consisting of individuals, partnerships, sole proprietorships, corporations and limited liability companies.
- you has affiliated divisions in each of the fifty states.
- you sponsor a political committee in the State of Oklahoma which is connected to you. It is properly registered and will be identified as the Trust. Its purpose is to solicit contributions which in turn are utilized to make contributions to statewide and state legislative candidates in the state of Oklahoma.
- your members – whether they be individuals, sole proprietorships, partnerships, limited liability companies or corporations – pay annual dues and are entitled to vote on your issue ballot six times per calendar year.

- In addition to soliciting funds from your members, you often send communications to its membership which advocate the defeat or election 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, web pages, etc.

ANALYSIS

Corporate communications are governed as follows:

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;

* * *

257:1-1-2

Thus, a communication will not be considered a contribution if its circulation is limited to members, owners, stockholders, directors, executive administrative personnel, or their families. All expenditures of the political action committee must be reported.

Maximum contribution limits are set by Section 257:10-1-2(a) of the Rules:

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.

257:10-1-2

Your political action committee may not receive a contribution of more than \$5,000 from any person during a calendar year. "Person" is defined as:

"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.

257:10-1-2

As you can see, a person includes a limited liability company and a partnership. Although it includes corporations, those entities are prohibited from contributing to candidate campaigns [see below].

(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 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.

257:10-1-2

A contributor statement is required once a contributor exceeds \$50 in a calendar year. Most of the information on the contributor statement, including occupation and employer, if an individual, or principal business activity, if a committee or other fictional person.

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(c) **Prohibitions and exceptions to corporate contributions.**

(1) No corporation shall contribute to any campaign fund of any party committee of this state or to any other person for the benefit of such party committee or its candidates, nor shall it, through any agent, officer, representative, employee, attorney, or any other person or persons, so contribute. Nor shall any such corporation, 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 party committee, or to any representative of a party committee, or to any other person for it, or to any candidate upon the ticket of any political party.

(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.

(3) No candidate, candidate committee or other committee shall knowingly accept contributions given in violation of the provisions of Paragraphs (1) and (2) of this subsection.

(4) The provisions of this subsection shall not apply to a bank, savings and loan association or credit union loaning money to a candidate in connection with his own campaign which is to be repaid with interest at a rate comparable to that of equivalent loans for other purposes.

* * *

257:10-1-2

No corporate money can be accepted by a committee, even from a corporate member of an association. Any contributions received must be from a person other than a corporation. The only exception to that Rule is that a corporation may pay the administrative costs of its own separate segregated fund [political action committee] which must be reported 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;

* * *

257:10-1-14

A corporation may not give anything of value in Oklahoma to influence candidate elections. The applicable Rule reads:

(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.

Executive and administrative personnel, shareholders, directors and families of corporate members may be solicited; however, no employee below the administrative level can be solicited. Dues required as a condition of employment may not be used to make contributions unless such use is authorized by the organization's members.

Registration of committees is required as follows.

Registration requirements

(a) 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).

* * *

257:10-1-11

Once an Oklahoma political action committee exceeds \$500 in contributions, including in-kind, or expenditures in a calendar year in support of or opposition to Oklahoma state candidates, it must register and report quarterly by the 15th day of the month following each quarter and by the eighth day before any election. Refer to our web page for the most current due dates at < www.state.ok.us/~ethics/ > .

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

In addition to quarterly and pre-election reports, last minute contributions and independent expenditures [those which occur between the 15th day before up to the day of any election and which exceed \$500] must be reported to the Commission within 24 hours as follows:

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.

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 softw are 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.

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

CONCLUSION

It is therefore the informal opinion of the Ethics Commission staff that:

- 1. You may use corporate funds to make communications which are limited only to your members, owners, stockholders, directors, executive administrative personnel, or their families. Such expenditures are not reportable unless paid from an Oklahoma PAC fund;**
- 2. You may solicit contributions only from your members, shareholders, directors, executive and administrative personnel, and their families; no funds may be solicited from non-members;**
- 3. You may use your corporate treasury funds to reimburse the Trust for costs incurred and associated with the overhead, administration and solicitation of contributions; such reimbursements are exclusions from the definition of contribution; however, the amount of such reimbursements must be reported for each reporting period as an "administrative cost"; and**
- 4. Quarterly and pre-election reports are required of Oklahoma committees and out-of-state committees which exceed \$500 in a calendar year in support of or in opposition to Oklahoma state candidates. Last minutes contributions and independent expenditures in support of or opposition to an Oklahoma state candidate, which exceed \$500 within the 14 days prior to any election in which such candidate is on the ballot, must be reported within 24 hours of acceptance or being expended.**

The rules permit the Commission staff to issue informal opinions, upon the approval of the Chair or Vice Chair, provided the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. We hope these informal letters shed light on the issues and provide guidance. They are not, however, official pronouncements.

This letter has been approved by the Commission Chair. Please note that, like ethics interpretations, informal opinions like this one are published in such a way as to protect the identity of those involved.

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