

**INFORMAL OPINION IO-1999-007  
ISSUED OCTOBER 27, 1999**

We have asked for an informal opinion on the following question:

*Do the Constitutional Ethics Rules [“the Rules”], Section 1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 1999, Ch. 62, App., permit an incorporated securities firm to participate in political activity in the State of Oklahoma?*

**FACTS**

You have advised that the securities firm in question is a strictly for-profit organization. It has no ideological purpose or directive.

**ANALYSIS**

The Rules couch those authorized to make campaign contributions in state races in terms of “persons” and “families.”

**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...

(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 ...

Section 257:10-1-2 (a)

[emphasis added]

Family is defined as:

**Definitions**

\* \* \*

... an individual, his or her spouse, if any, and all children under the age of eighteen (18) years residing in the same household.

\* \* \*

257:1-1-2 [family]

“Persons,” however, have a far broader definition and encompass entities like corporations.

## 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.

\* \* \*

257:1-1-2 [person]

[emphasis added]

A "person" thus includes a corporation without reference to whether the entity is an incorporated securities firm.

Corporations like this one are, however, prohibited from contributing to candidate campaigns.

## Contributions

\* \* \*

(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.

Again, no distinction is made with respect to securities corporations. Under the Rules, they are treated the same as other corporations.

The Rules do permit corporations to establish, administer and solicit contributions for political activity into its own political action committee ["PAC"] . Prohibitions applicable to such funds are as follows:

**Contributions**

\* \* \*

(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.

257:10-1-2(d)

Contributions solicited from the limited class may thus be used to make contributions and expenditures for the benefit of candidate campaigns. Reporting obligations are incurred once more than \$500 is contributed or expended for the benefit or in opposition to a state candidate campaign.

**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).

\* \* \*

Section 257:10-1-11

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.<sup>1</sup>

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

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

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<sup>1</sup>For the most current list of due dates, we recommend you refer to our web page at: < [www.state.ok.us/~ethics/](http://www.state.ok.us/~ethics/) > .

(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, in a calendar year, \$50 in the aggregate. Information required includes occupation and employer, if an individual, or principal business activity, if a committee or other fictional person, 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 freely 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

The Rules likewise 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 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.

Section 257:10-1-16

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

### **CONCLUSION**

**It is therefore the informal opinion of the Ethics Commission staff that Section 257:10-1-2(b) of the Rules prohibit the instant securities corporation from making contributions or expenditures for the benefit of candidate campaigns for state office; however, the firm may establish its own separate segregated fund [i.e. PAC] into which contributions may be solicited from its members, shareholders, directors, executive and administrative personnel and their families and from which contributions or expenditures may be made to benefit or oppose candidate campaigns. Once \$500 is contributed or expended in support of or in opposition to Oklahoma state candidates, the committee must register with the Commission. It then incurs a periodic reporting requirement on a quarterly, pre-election and last minute contributions/independent expenditures basis.**

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.