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AGENDA ITEM
For Meeting of: 4-20-06

SUBMITTED LATE

MEMORANDUM

To: The Commission
General Counsel
Staff Director
Office of the Commission Secretary

From: Commissioner Hans A. von Spakovsky 

Date: April 19, 2006

Re: Draft AO 2006-09 (The American Institute for Certified Public Accountants
and The American Institute for Certified Public Accountants PAC)

Attached please find Commissioner von Spakovsky's proposed revisions to
AO 2006-9, Draft B that we plan to offer at the Commission's Open Session on Thursday,
April 20, 2006.

Thank you.

1 ADVISORY OPINION 2006-9

2

3 Mr. Russell L. Smith
4 Willkie Farr & Gallagher, LLP
5 1875 K Street, NW
6 Washington, DC 20006-1238

DRAFT B

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9 Dear Mr. Smith:

10 We are responding to your advisory opinion request on behalf of the American
11 Institute of Certified Public Accountants (“AICPA”) and its separate segregated fund, the
12 American Institute of Certified Public Accountants Political Action Committee (“AICPA
13 PAC”), concerning the application of the Federal Election Campaign Act of 1971, as
14 amended (the “Act”), and Commission regulations to AICPA PAC’s treatment of checks
15 received from partnerships. The Commission concludes that AICPA PAC may attribute
16 and report certain checks received from partnerships as contributions from only
17 individual partners.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 February 16, 2006. AICPA, a District of Columbia nonprofit corporation, is the national
21 professional organization composed of Certified Public Accountants, many of whom
22 practice their profession as partners in professional partnerships. The partnerships
23 themselves do not belong to AICPA. AICPA PAC is AICPA’s separate segregated fund
24 (“SSF”), and is registered with the Commission.

25 For the sake of administrative convenience, some partnerships deduct partners’
26 dues to AICPA from their partnership compensation and aggregate all of the dues
27 payments into a single check transmitted to AICPA. AICPA PAC would like to accept

1 contributions from partners in a similar manner. Under the proposal, partners would
2 direct their partnerships to deduct from their respective compensation certain amounts to
3 be transferred to AICPA PAC as contributions. The partnership would then aggregate all
4 such individual contributions into one check drawn on the partnership's operating
5 account, which the partnership would then send to AICPA PAC.

6 ***Question Presented***

7 *May AICPA PAC accept a check representing contributions by individual*
8 *partners of a partnership and attribute the contributions to the individual partners only*
9 *and not also attribute the contribution to the partnership, and report the contributions as*
10 *such?*

11 ***Legal Analysis and Conclusions***

12 The Commission concludes that AICPA PAC may accept a check from a
13 partnership representing contributions by individual partners and that it may attribute the
14 contributions to the individual partners only, as long as the check is comprised solely of
15 the personal funds of partners. AICPA PAC should report the contributions accordingly.

16 Under the Act and Commission regulations, a partnership is a "person." 2 U.S.C.
17 431(11); 11 CFR 100.10. As a result, a contribution from a partnership is attributable not
18 only to individual partners but also to the partnership itself, *see* 11 CFR 110.1(e).

19 However, not all actions undertaken by a partnership to facilitate contributions from
20 partners result in a partnership contribution under the dual attribution rule. Previously,
21 the Commission determined that where a partner exercises full control over the funds
22 deducted from his or her compensation, and the funds are drawn from a separate
23 automated electronic payroll account, and not from the partnership's operating account,

1 the partnership could forward such contributions to its own political committee, for the
2 sake of administrative convenience, without the dual attribution requirement of 11 CFR
3 110.1(e) being triggered.

4 In Advisory Opinion 2005-20 (Pillsbury Winthrop), a partnership that was a
5 Federal contractor sought to use its automated electronic payroll system to disburse funds
6 from the partnership's payroll account to the partnership-sponsored nonconnected
7 political committee. The payroll account held partnership distributions transferred to it
8 from the partnership's operating account. All funds in the payroll account were
9 designated for partnership compensation. Each partner determined to whom the payroll
10 account disbursed the partner's compensation. The Commission determined that at the
11 moment the funds were disbursed from the payroll account, they were the personal assets
12 of the individual partners. Thus, when these funds were disbursed from the payroll
13 account to the partnership-sponsored nonconnected political committee, the funds were
14 not contributions from the partnership to the political committee.

15 To the extent partnerships forward contributions comprised solely of the personal
16 funds of partners to AICPA PAC, at the direction of individual partners, those funds are
17 not partnership contributions, and are not attributable to the partnerships or reported as
18 such. In approving the proposal outlined in Advisory Opinion 2005-20, the Commission
19 emphasized that the partners would exercise complete control over the funds that would
20 be automatically transferred to the nonconnected political committee, and that the funds
21 were dispersed from a separate automated electronic payroll account, and not from the
22 partnership's operating account. The Commission wrote, "PWSP partners who use
23 PWSP's automated electronic payroll system exercise complete control over the funds

1 that represent their net compensation in PWSP's payroll account by designating
2 recipients for such funds in PWSP's payroll system. Each PWSP partner may modify or
3 revoke these designations at any time prior to disbursement." Advisory Opinion 2005-
4 20. The proposal here is no different. The requestor indicates that the deduction from a
5 partner's or member's compensation will occur only at the direction of the partner or
6 member.

7 Furthermore, in Advisory Opinion 2005-20, the Commission noted "Significantly,
8 PWSP has no control over the partner's choice of the recipient of any disbursement from
9 PWSP's payroll account and at the moment a disbursement takes place from PWSP's
10 payroll account, the funds being disbursed are the personal assets of the partner. Thus,
11 when a PWSP partner designates a recipient account in PWSP's automated electronic
12 payroll system, it is the functional equivalent of that partner writing a personal check."
13 The proposal here is no different. The deduction of funds is solely within the control and
14 discretion of the partner, and funds are deducted from a partner's compensation. As was
15 the case in Advisory Opinion 2005-20, this is "the functional equivalent of that partner
16 writing a personal check."

17 To ensure that the funds deducted are unquestionably the personal assets of the
18 partner directing the deduction, the partnerships are advised to utilize an account similar
19 in all material respects to Pillsbury Winthrop's payroll account.

20 In order to attribute the contributions properly, AICPA PAC must confirm that the
21 funds it has received represent only personal funds of individual partners that were
22 disbursed to AICPA PAC at the direction of the individual partners. AICPA PAC would

1 also need to know which partners contributed and the amount of each partner's
2 contribution.

3 Your request raises the issue of partnership contributions resulting from the costs
4 associated with the forwarding of funds. In Advisory Opinion 2005-20 (Pillsbury
5 Winthrop), the costs incurred in using of the partnership's automated electronic payroll
6 system would have resulted in a contribution. Because that partnership was a Federal
7 contractor, such a contribution would have been prohibited by 2 U.S.C. 441c.

8 Accordingly, the Commission required the political committee to pay the partnership in
9 advance for these costs to avoid the making and accepting of an illegal contribution.

10 Similarly, if any of the partnerships forwarding contributions to AICPA PAC are
11 prohibited from making contributions, AICPA PAC must pay these partnerships in
12 advance for their costs associated with forwarding contributions to AICPA PAC. Where
13 a partnership may lawfully make contributions, AICPA PAC may accept the
14 contributions or reimburse the partnership for its costs within a commercially reasonable
15 time.¹

16 Accordingly, under the Act and Commission regulations, when AICPA PAC
17 receives checks from partnerships that are composed only of the partners' personal funds,
18 it may attribute the contributions to individual partners only and not to the partnerships.

19 This response constitutes an advisory opinion concerning the application of the
20 Act and Commission regulations to the specific transaction or activity set forth in your
21 request. *See* 2 U.S.C. 437f. The requester may share this advisory opinion with third
22 parties without restriction. The Commission emphasizes that, if there is a change in any

¹ As the partnerships themselves are not members of AICPA, AICPA PAC may not solicit them for contributions. Nevertheless, AICPA PAC may accept any contribution it receives from a partnership that is permitted by law to make contributions. *See* 11 CFR 114.5(j).

1 of the facts or assumptions presented, and such facts or assumptions are material to a
2 conclusion presented in this advisory opinion, then the requestor may not rely on that
3 conclusion as support for its proposed activity.

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Sincerely,

Michael E. Toner
Chairman

Enclosures (Advisory Opinion 2005-20)