

Record

October 2009

Federal Election Commission

Volume 35, Number 10

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New York Special Election: District 23

New York will hold a special election on November 3, 2009, to fill the House of Representatives seat vacated by Rep. John McHugh.

The applicable pre- and post-election reporting dates for committees involved in this election are available at http://www.fec.gov/info/report_dates.shtml.

Reports

October Reporting Reminder

The following reports are due in October:

- All principal campaign committees of House and Senate candidates must file a quarterly report by October 15, 2009. The report covers financial activity from July 1 (or the day after the closing date of the last report) through September 30;
- Principal campaign committees of Presidential candidates must file a report by October 15, if they are quarterly filers (the report covers financial activity from July 1 through September 30), or by October 20, if they are monthly filers (the report covers activity for the month of September); and
- National party committees, political action committees (PACs) following a monthly filing schedule and state, district and local party committees that engage in reportable “federal election activity” (see “State, District and Local Party Committees, on page 3) must file a monthly report by October 20. This report covers activity for the month of September. 11 CFR 104.5.

Notification of Filing Deadlines

In addition to publishing this article, the Commission notifies committees of filing deadlines on its

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Advisory Opinions

AO 2009-14

LLC Affiliated with Domestic Subsidiary of a Foreign Corporation May Administer an SSF

A domestic subsidiary of a foreign corporation may serve as the connected organization of a separate segregated fund (SSF). An affiliated limited liability company (LLC) that is treated as a partnership but owned entirely by corporations, and which shares the same foreign parent as the domestic subsidiary, may administer and pay the associated costs of running the SSF. The abbreviated name of that SSF may reflect the foreign parent’s name.

Background

Mercedes-Benz USA LLC (MBUSA LLC) is a LLC organized under the laws of the State of Delaware and headquartered in New Jersey; its sole member is Daimler North America Corporation (DNAC). DNAC is the wholly owned subsidiary of Daimler AG, a German company that is the ultimate parent of the Daimler-related companies. Sterling Truck Corporation (Sterling Corp.) is a Delaware corporation that is headquartered

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Reports

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web site, via its automated Faxline and through reporting reminders called prior notices. Prior notices are distributed exclusively by electronic mail. For that reason, it is important that every committee update its Statement of Organization (FEC Form 1) to disclose a current e-mail address. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should include only the committee's name, address, FEC identification number and the updated or changed portions of the form.

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Treasurer's Responsibilities

The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Federal Election Campaign Act (the Act) and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail (see below), or electronically, must be received by the Commission's (or the Secretary of the Senate's) close of business on the last business day before the deadline.

Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures, including independent expenditures, in excess of \$50,000 in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically.¹ Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines. 104.18(e).

¹ The regulation covers individuals and organizations required to file reports of contributions and/or expenditures with the Commission, including any person making an independent expenditure. Disbursements for "electioneering communications" do not count toward the \$50,000 threshold for mandatory electronic filing. 11 CFR 104.18(a).

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial copy of their reports with the Commission in order to speed disclosure.

The Commission's electronic filing software, FECFile, is free and can be downloaded from the FEC's web site. New FECFile Version 6.4.1.2 is available for download from the FEC web site at <http://www.fec.gov/electfil/updateslist.html>. All reports filed after July 8, 2009, must be filed in Format Version 6.4.1.2 (the new version). Reports filed in previous formats will not be accepted. Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site. Committees using commercial software should contact their vendors for more information about the Commission's latest software release.

Timely Filing for Paper Filers

Registered and Certified Mail. Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail. See 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Overnight Mail. Reports filed via overnight mail² will be considered timely filed if the report is received by the delivery service on or before

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² "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

Reports

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the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports. See 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Other Means of Filing. Reports sent by other means—including first class mail and courier—must be received by the FEC (or the Secretary of the Senate) before close of business on the filing deadline. See 11 CFR 100.19 and 104.5(e).

Paper forms are available for downloading at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413). The 2009 Reporting Schedule is also available on the FEC's web site (http://www.fec.gov/info/report_dates.shtml), and from

FECTube and E-Learning

As the Commission considers recommendations to improve its website and Internet communications (see August *Record*, page 1), the agency has added an E-Learning section to its Educational Outreach web page and has also launched its own YouTube channel: <http://www.youtube.com/FECTube>. The E-Learning page offers interactive presentations that allow users to test their knowledge of the information presented and video workshops. The workshops are actually hosted on YouTube and include presentations about the Commission and the law it administers, as well as highlights from the agency's workshop on lobbyist bundling. Additional content and other improvements will appear in the weeks and months ahead.

Faxline. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

State, District and Local Party Committees

State, district and local party committees that engage in certain levels of "federal election activity" must file on a monthly schedule. See 11 CFR 300.36(b) and (c)(1). Committees that do not engage in reportable "federal election activity" may file on a semi-annual basis in 2009. See 11 CFR 104.5(c)(1)(i).

National Party Committees

National committees of political parties must file on a monthly schedule in all years. 2 U.S.C. §434(a)(4)(B) and 11 CFR 104.5(c)(4).

Political Action Committees

PACs (separate segregated funds and nonconnected committees) that filed on a quarterly basis in 2008 file on a semiannual basis in 2009. Monthly filers continue on the monthly schedule. PACs may change their filing schedule, but must first notify the Commission in writing. Electronic filers must file this request electronically. A committee may change its filing frequency only once a year, after giving notice of change in filing frequency to the Commission. The committee will receive a letter indicating the Commission's acknowledgment of the request. All future reports must follow the new filing frequency. 11 CFR 104.5(c).

Additional Information

For more information on 2009 reporting dates:

- See the reporting tables in the January 2009 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or

- Visit the FEC's web page at http://www.fec.gov/info/report_dates.shtml to view the reporting tables online.

—Elizabeth Kurland

Advisory Opinions

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in Oregon; it is the wholly owned subsidiary of Daimler Trucks North America LLC (DTNA LLC), the sole member of which is DNAC.

Sterling Corp. intends to establish an SSF and MBUSA LLC would like to use its personnel and resources to administer that SSF, including paying the administrative and solicitation expenses of the SSF out of its External Affairs and Public Policy-Americas (EAPP) cost center. EAPP expenses are paid from MBUSA LLC's general treasury, which consists of U.S.-generated funds, or using its short-term credit line with Daimler North America Finance Corporation, which MBUSA LLC repays from domestic revenues.

MBUSA LLC would invoice Daimler AG for EAPP expenses per the terms of an agreement between MBUSA and Daimler AG for the provision of and payment for such services (the "Service Level Agreement"). Rather than reimburse MBUSA LLC directly for EAPP expenses, Daimler AG permits MBUSA LLC to credit those expenses against the amount it owes Daimler AG for vehicles and products.

Under the Service Level Agreement, Daimler AG authorizes annual spending levels for the EAPP cost center and "approve[s] the [EAPP] services to be provided by [MBUSA LLC] via the Budgeting and Planning procedures of the Daimler Group." Daimler AG does not otherwise guide or prioritize how MBUSA LLC must spend EAPP funds. All decision-making regarding the proposed SSF would be made exclusively by executive or

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administrative personnel of MBUSA LLC or Sterling Corp. who are U.S. citizens or legal permanent residents. Contributions to the SSF would not be solicited or accepted from persons who are foreign nationals.

Additionally, MBUSA LLC and Sterling Corp. propose a number of potential official names for the SSF, but would like to abbreviate the name of the SSF to “Daimler PAC.”

Analysis

Connected Organization. The Federal Election Campaign Act (the Act) defines a connected organization as any organization that is not a political committee and that directly or indirectly establishes, administers or financially supports a political committee. 2 U.S.C. §431(7) and 11 CFR 100.6(a). Corporations, labor organizations, membership organizations, cooperatives and trade

associations may serve as connected organizations of their SSFs. Payments by a connected organization for the establishment, administration or solicitation of contributions to its SSF are exempt from the definition of contribution and expenditure. 2 U.S.C. §441b(b)(2)(C) and 11 CFR 114.1(a)(2)(iii).

The Commission has held previously that foreign nationals¹ may not serve as an SSF’s connected organization. See AOs 1977-53 and 1982-34. However, domestic subsidiaries of foreign corporations may establish and administer SSFs if they are discrete entities whose principal place of business is the United States, and if those exercising decision-making authority over the SSF are not foreign nationals. See AOs 1980-100 and 1980-111.

The Bipartisan Campaign Reform Act of 2002 (BCRA) amended the Act to expand the prohibition on campaign contributions and donations by foreign nationals. The BCRA extended the ban to prohibit foreign national contributions that were made “directly or indirectly.” See 2 U.S.C. §441e.

In this situation, Sterling Corp.’s ultimate parent is Daimler AG, a German company. However, Sterling Corp. is a U.S. corporation that is organized under the laws of Delaware and is headquartered in Oregon. As such, and given that foreign nationals will not have decision-making authority regarding the proposed SSF, Sterling Corp. may serve as the SSF’s connected organization.

Personnel and Resources. The Commission has interpreted the Act and Commission regulations to permit a partnership (or an LLC

electing partnership status) to pay the administrative and solicitation costs of an SSF established by the partnership’s (or LLC’s) corporate owner, but only when the partnership is wholly owned by corporations and affiliated with at least one of the corporations. In that case, the administrative and solicitation support provided by a partnership may be construed as coming from the affiliated corporation(s). See, for example, AOs 2004-42, 2001-18 and 1992-17.

MBUSA is treated as a partnership under Commission regulations because it is a non-publicly traded LLC that has not affirmatively elected treatment as a corporation for tax purposes. In addition, since MBUSA is wholly owned by DNAC, MBUSA would be able to perform the functions of a connected organization for an SSF connected to DNAC, including paying the SSF’s administrative and solicitation costs. For internal business reasons, however, DNAC has chosen not to serve as the connected organization for the proposed SSF; Sterling Corp. will instead serve as the connected organization.

Through DNAC, MBUSA is also affiliated with Sterling Corp., which is DNAC’s wholly owned subsidiary. Although previous Commission advisory opinions have not addressed an arrangement whereby an LLC that is wholly owned by and affiliated with one corporation pays the administrative and solicitation costs of another affiliated corporation’s SSF, the Commission finds no material differences in the proposed arrangement that would affect the ability of MBUSA LLC to use its resources and personnel to administer Sterling Corp.’s SSF. As a result of this affiliation, MBUSA may pay the administrative and solicitation costs of Sterling Corp.’s SSF. The SSF must identify Sterling Corp.

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Campaign Guides Available

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site (www.fec.gov).

If you would like to place an order for paper copies of the *Campaign Guides*, please call the Information Division at 800/424-9530.

¹ The Act and Commission regulations define “foreign national” to include “foreign principals,” as defined at 22 U.S.C. §611(b). 2 U.S.C. §441e(b) and 11 CFR 110.20(a)(3). Under 22 U.S.C. §611(b), “foreign principal” includes corporations organized under the laws of or having their principal place of business in a foreign country.

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as its connected organization on its Statement of Organization (FEC Form 1). 2. U.S.C. §433b(2) and 11 CFR 102.2(a)(1)(ii).

Administrative Costs. The Commission considered the question of whether the payment of administrative costs of the proposed SSF could come from MBUSA LLC's EAPP cost center, but could not approve a response by the required four votes.

Name of SSF. The Act and Commission regulations require the name of an SSF to include the full name of its connected organization. 2 U.S.C. §432(e)(5) and 11 CFR 102.14(c). An SSF established by a subsidiary may, but need not, include in its name the name of the subsidiary's parent or another subsidiary of its parent. In limited circumstances, however, the Commission has allowed an SSF to be named after an LLC that is wholly owned a corporation that serves as the SSF's connected organization. See AOs 2004-42, 2003-28, and 1997-13.

In this proposal, Sterling Corp. will serve as the connected organization for the proposed SSF and the funding for the administration of and solicitation for the SSF will come from MBUSA LLC. The SSF may not be named after MBUSA LLC, though, because MBUSA LLC is not in virtually the same position as a corporate subsidiary as was the case with other SSFs named after LLCs. Accordingly, the name of the SSF must include Sterling Corp. and may, but need not, include the names of Sterling Corp.'s parent—DNAC—and a subsidiary of its parent, including MBUSA.

Commission regulations permit an SSF to use a "clearly recognized abbreviation or acronym by which the connected organization is commonly known." 11 CFR 102.14(c). In determining whether specific terms or names meet this requirement, the Commission has examined whether they give the public ad-

equate notice to the public as to the identity and sponsorship of the SSF.

The Commission concludes that the proposal to abbreviate the name of the SSF as "Daimler PAC" would be sufficient to provide the public with adequate notice as to the identity and sponsorship of the SSF and is therefore permissible. Although the SSF will be connected to Sterling Corp. and funded by MBUSA LLC, it will operate on behalf of all the Daimler-related companies.

The SSF must use both the abbreviation and the full name on the Statement of Organization (FEC Form 1), on all reports filed with the Commission and on all disclaimer notices required by Commission regulations. In addition, Sterling Corp. will be disclosed as the SSF's connected organization on the Statement of Organization with the Commission.

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Length: 7 pages.

— Myles Martin

AO 2009-19 **PAC May Use Contributor** **Information for Limited** **Communication**

A separate segregated fund may use contributor information obtained from reports filed with the Federal Election Commission to notify contributors to Senator Arlen Specter's 2010 Senate reelection campaign that the Senator has switched his party affiliation and has publicly offered to refund contributions upon request.

Background

On April 28, 2009, Pennsylvania Senator Arlen Specter announced he had decided to switch his party affiliation and to run as a Democrat for the 2010 Senate election. Senator Specter stated that he would return campaign contributions made during the 2010 election cycle upon request.

Club for Growth (Club) is an incorporated nonprofit membership

organization, and Club for Growth PAC (Club PAC) is the separate segregated fund of the Club.

The Club and Club PAC wish to communicate with individual contributors to the Specter Committee to inform them of Senator Specter's decision to run as a Democrat in the 2010 election. The Club and Club PAC propose to compile a list of contributors from information contained in campaign finance reports that the Specter Committee has filed with the Commission. The communication would notify contributors about Senator Specter's stated policy of providing refunds upon request to those who contributed to his campaign while he was running as a Republican. Club PAC indicated that the communication would not contain any express advocacy or mention any other candidate.

Either the Club or Club PAC would send a one-time letter to Specter's contributors or, alternatively, for those contributors with published phone numbers, the Club or Club PAC may make one telephone call.

The communications would not contain any solicitation of any kind for the Club, Club PAC, any candidate or any other entity. No follow up mailings or telephone calls would be made unless, during the initial telephone call, the contributor requests further information from the Club or Club PAC on how to request a refund. The communications would be made independently of any candidate or political party.

The Club and Club PAC would not use the list for any purpose other than the communication proposed in the advisory opinion request, and would not retain the list for any other purpose. The Club and Club PAC would not put any of the contact information obtained from the Specter Committee's Commission filings into either the Club or the Club PAC's general membership

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database. The Club and Club PAC would not make the list of contributors to the Specter Committee available to any other entity.

Analysis

Under the Federal Election Campaign Act (the Act) and Commission regulations, political committees are required to file reports with the Commission identifying the names and mailing addresses of their contributors. 2 U.S.C. §§434(b)(2)(A) and (b)(3)(A); 11 CFR 104.8(a). The Act provides that the Commission shall make reports and statements filed with it available for public inspection and copying within 48 hours of receipt. Any information copied from such reports or statements, however, “may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes,” other than using the name and address of a political committee to solicit contributions from that political committee. 11 CFR 104.15(a). Under Commission regulations, “soliciting contributions” includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 CFR 104.15(b).

In AO 1981-05, the Commission concluded that a candidate could use information obtained from disclosure reports to mail letters to contributors to his opponent’s campaign to correct allegedly defamatory charges made by his opponent. In Advisory Opinion 1984-02, a nonconnected political committee calling itself “Americans for Phil Gramm in 84” solicited contributions without the permission of Phil Gramm or his authorized campaign committee. The Commission concluded that Representative Gramm and his authorized campaign committee could use contributor information contained in Americans for Phil Gramm in 84’s disclosure reports to inform contributors that the nonconnected commit-

tee was not Phil Gramm’s authorized committee.

In these AOs, the Commission pointed out that the purpose of the sale and use prohibition is to prevent contributor information from being used for commercial purposes or for making solicitations. The prohibition does not, “foreclose the use of this information for other, albeit political, purposes, such as correcting contributor misperceptions.” (AO 1984-02.)

In this advisory opinion the Commission noted that the Club and Club PAC will not solicit contributions for any reason and will not use the contributor information for any commercial purpose. The Club and Club PAC will use contributor information obtained from the Specter Committee’s disclosure reports only for the limited purpose of notifying contributors that Senator Specter has switched parties and of his refund policy. Each donor will only be contacted once. Also, the Club and Club PAC indicated that they will safeguard the contributor information obtained from the reports to avoid using the contributor information for any purpose not presented in the advisory opinion request.

Therefore, in this limited situation, the Commission concludes that the use of contributor information obtained from the Specter Committee’s disclosure reports does not violate the solicitation and commercial use prohibition at 2 U.S.C. §438(a)(4).

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Length: 5 pages.

—Isaac J. Baker

AO 2009-20

Federal Officeholder May Use Campaign Funds to Pay Certain Legal Fees of Current and Former Staff Members

A federal officeholder may use campaign funds to pay legal fees and expenses incurred by current and former staff members in connection with a federal investigation of allegedly improper campaign contributions because the fees would not exist irrespective of the officeholder’s campaign or duties as a federal officeholder. However, the use of campaign funds to pay for any such employee’s representation in legal proceedings regarding allegations that are not related to the Congressman’s campaign activity or duties as a federal officeholder would constitute an impermissible personal use of campaign funds.

Background

Representative Visclosky is the U.S. Representative from the First District of Indiana. Visclosky for Congress (the Committee) is Rep. Visclosky’s principal campaign committee.

According to provided media reports, the FBI and federal prosecutors are investigating whether a lobbying firm, PMA Group, made improper political contributions to Rep. Visclosky and other members of the U.S. House of Representatives. Although many of the details of the federal investigation are not public at this time, media reports indicate that the investigation centers on more than \$500,000 in alleged campaign contributions from PMA Group and its clients to three Congressmen, including Rep. Visclosky. The media reports also indicate that Rep. Visclosky allegedly improperly earmarked appropriations for clients of PMA. As part of the ongoing federal investigation, Rep. Visclosky’s former Chief of Staff has been

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served with a grand jury subpoena to produce documents.

Analysis

The Federal Election Campaign Act (the Act) identifies six categories of permissible uses of campaign funds, including otherwise authorized expenditures in connection with the candidate's campaign for federal office, ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of federal office and any other lawful purpose not prohibited by the Act. 2 U.S.C. §§439a(a), (b) and 11 CFR 113.2(a)-(e). The Act prohibits "personal use" of campaign contributions by any person. 2 U.S.C. §439a(b)(1) and 11 CFR 113.2(e). The Act specifies that conversion to personal use occurs when a contribution or amount is used to "fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. §439a(b)(2); see also 11 CFR 113.1(g).

The Commission determined that the Committee may use campaign funds to pay legal fees and expenses incurred by Rep. Visclosky's current and former staff members in connection with a federal investigation into the alleged provision of illegal campaign contributions by PMA Group and its clients to the Committee, and Rep. Visclosky's allegedly improper earmarking of appropriations for clients of PMA, as well as any other legal proceedings that involve the same allegations. Rep. Visclosky's current and former staff members are involved in the federal investigation because of their current and former employment relationships with Rep. Visclosky in his capacity as a U.S. Congressman and

a candidate.¹ Therefore, the Commission concluded that the current and former staff members' legal fees and expenses associated with the federal investigation would not exist irrespective of Rep. Visclosky's campaign or duties as a federal officeholder. The Committee may not, however, use campaign funds to pay legal fees or expenses regarding allegations unrelated to Rep. Visclosky's campaign or duties as a federal officeholder.

The Commission noted that, because many of the details of the federal investigation are not public at this time, it is possible that portions of the investigation could involve allegations not related to Rep. Visclosky's campaign or his duties as a federal officeholder. The use of campaign funds to pay any such legal fees would be impermissible. See AOs 2009-10 and 2005-11. In accordance with the Act and Commission regulations, the Committee must maintain appropriate documentation of any disbursements made to pay legal expenses incurred in connection with the federal investigation or other legal proceedings. 11 CFR 102.9(b) and 104.11. The Committee must report all funds disbursed for such legal expenses as operating expenditures, noting the payee's full name, address and a detailed description of the purpose of the payment. 11 CFR 104.3(b)(2) and (4).

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Length: 5 pages

—Katherine Wurzbach

¹ In a previous Advisory Opinion, the Commission concluded that the allegations relate to Rep. Visclosky's campaign and duties as a federal officeholder because Rep. Visclosky allegedly received the contributions in question as part of his campaign and his alleged actions regarding the congressional appropriations process are directly related to his duties as a federal officeholder. See AO 2009-10.

AO 2009-21

FECA Preempts West Virginia Law Affecting Federal Candidates

The Federal Election Campaign Act (the Act), preempts a West Virginia law insofar as it limits polling expenditures by federal candidates and their principal campaign committees.

Background

West Virginia law allows political committees to pay for a limited number of election expenses. Allowed expenses include public opinion polls, which are prohibited from being "deceptively designed" or conducted in a manner that would influence anyone polled to vote for or against "any candidate, group of candidates, proposition or other matter to be voted on by the public at any election." Furthermore, Chapter 3 of the West Virginia Code, concerning elections, explicitly applies to "every general, primary, and special election in which candidates are nominated or elected" and defines "any election" or "all elections" to include elections for federal offices.

In response to a complaint from a citizen alleging that Ms. Anne Barth, a candidate for the 2nd Congressional District of West Virginia, and Anne Barth for Congress (the Barth Committee), her principal campaign committee, conducted a poll in violation of West Virginia Code 3-8-9(a)(10), the West Virginia Secretary of State sought information about the poll from both the Barth Committee and the polling company. Counsel for the Barth Committee responded that federal law preempts West Virginia law on this subject, citing AO 1995-41. The Secretary of State maintained that state laws held jurisdiction in the matter and sought an advisory opinion to that effect, asking if the West Virginia statute regulating spending for election

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expenses by political committees is preempted by the Act or Commission regulations with respect to federal candidates.

Analysis

The Act and Commission regulations preempt West Virginia law insofar as it purports to regulate spending by federal candidates and their principal campaign committees. The Act states that its provisions and rules “supersede and preempt any provision of State law with respect to election to Federal office.” 2 U.S.C. §453; see also 11 CFR 108.7(a). The legislative history indicates that Congress intended “to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that Federal law will be the sole authority under which such elections will be regulated.” *HR Rep. No. 93-1239*, 93d Cong., 2d Sess. 10 (1974).

Moreover, in promulgating regulations at 11 CFR 108.7, which address Commission regulations’ effect on state law, the Commission stated that federal law supersedes state law with respect to the organization and registration of political committees supporting federal candidates, disclosure of receipts and expenditures by federal candidates and political committees and the limitations on contributions and expenditures regarding federal candidates and political committees. See *Explanation and Justification of the Disclosure Regulations, House Document No. 95-44*, at 51 (1977). In contrast, the manner of qualifying as a candidate or political organization, the date and place of election, voter registration, voting fraud, ballot theft, candidate financial disclosure, or funds used to purchase or build a state or local party office building are left exclusively to the jurisdiction of the states. See *H.R. Rep. No. 93-1438* at 69, 100-101 and 11 CFR 108.7(c).

In this case, the West Virginia statute at issue limits expenditures by federal political committees (including candidate committees), which is one of the areas specifically regulated by the Act and Commission regulations. Furthermore, the West Virginia statute does not address any of the areas that Congress intended to leave exclusively to the jurisdiction of the states (the manner of qualifying as a candidate or political organization, date and place of election, voter registration, voting fraud, ballot theft, candidate financial disclosure, or funds used to purchase or build a State or local party office building).

Accordingly, the West Virginia statute is expressly preempted by federal law with respect to federal elections. 2 U.S.C. §453; 11 CFR 108.7(b)(3).

Commission regulations govern permissible and prohibited expenditures by federal candidates, including expenditures for polling expenses. 11 CFR 100.131-155, 106.2, 106.4, 113.2, 116.2, 116.11 and 116.12. With respect to this request, the West Virginia statute, if applied to federal candidates, would impede those candidates’ ability to make payment of polling expenses governed by the Act and Commission regulations. Under the Act’s preemption clause, only federal law could limit the ability of a federal candidate to make expenditures for polling. 2 U.S.C. §453.

Similarly, in AO 2000-23, in which the Commission concluded that because a New York statute limited state party expenditures regarding federal candidates, rather than “those areas defined as interests of the State,” the New York law was preempted by the Act and Commission regulations.

Therefore, the Commission concludes that, because West Virginia Code 3-8-9 limits expenditures by candidates and their principal campaigns that are otherwise lawful under the Act and Commission regu-

lations, the West Virginia statute is preempted where federal candidates and their principal campaign committees—such as Ms. Barth and the Barth Committee—are concerned.

Date Issued: August 28, 2009;
Length: 5 pages.

—Christopher Berg

Advisory Opinion Requests

AOR 2009-26

State officeholder’s use of state campaign and officeholder funds while a candidate for federal office (State Representative Elizabeth Coulson, September 8, 2009)

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Statistics

House and Senate Campaign Fundraising Through June

Candidates for the U.S. Senate and U.S. House in 2010 reported raising a total of \$250.3 million from January 1 through June 30, 2009, according to disclosure reports filed with the Commission. Candidates seeking election to 36 U.S. Senate seats reported raising \$93.2 million during the first six months of 2009. Democratic Senate candidates raised \$54.1 million, while Republicans raised \$39.1 million. Candidates for the U.S. House reported raising \$157.1 million in the first six months of this year, with Democrats raising \$97.5 million and Republicans raising \$59.6 million.

Senate Candidates

The \$93.2 million that 70 individual Senate campaign committees raised in 2009 was the highest total ever reported for the first six months in a non-election year, surpassing the previous high of \$84.8 million raised in the first half of 2007. In 2003, the last time this same group of Senate seats was up for election, 63 candidates raised \$75.6 million during the first six months of the cycle. However, there are two additional open seats this election cycle due to the vacancies created by the Senate resignations of Vice President Joe Biden and Secretary of State Hillary Clinton.

From January 1 through June 30, 2009, contributions from individuals accounted for \$65 million, or 70 percent of the total Senate candidates raised. Political action committee (PAC) contributions to Senate candidates totaled \$20.1 million, representing 22 percent of the campaigns' receipts.

Senate candidates ended the first six months of 2009 with \$150.8 million cash-on-hand and debts of \$2.9 million, some from previous elections.

House Candidates

Campaign finance reports filed by House candidates for the period January 1 through June 30, 2009, show 416 House incumbents with combined receipts of \$132 million, a \$7.6 million decrease from the same period in 2007. Individual contributions accounted for \$63.6 million of House incumbents' total receipts while contributions from PACs amounted to \$64.2 million, in the first half of 2009. From January 1 through June 30 of this year, 250 incumbent Democrats raised \$85.9 million, while 166 incumbent Republicans raised \$46.1 million. Democratic members reported a combined \$147 million cash-on-hand total at the end of the reporting period, and Republicans reported \$78.2 million.

The median receipts for Democratic House incumbents were \$273,576, up from \$268,072 in the first six months of 2007. For Republican members, the median receipts this year were \$226,824, down from \$242,012 in 2007. An equal number of candidates had receipts above and below these median values.

Receipts for the 38 Democratic House freshmen totaled \$18.6 million, while the 25 Republican freshmen reported receipts of \$8.5 million. Democratic freshmen had median receipts of \$509,573, while the median for Republican freshmen was \$371,052.

Non-incumbents raised a total of \$25.1 million for House races during the first six months of 2009, with 94 Democrats raising \$11.6 million and 146 Republicans raising \$13.5 million. In the same period in 2007, 135 Democrats raised \$16.3 million and 94 Republicans raised \$8.3 million.

For additional information, the full text of the Commission's press release is available at http://www.fec.gov/press/press2009/20090914_6MnthCandStats.shtml.

—Myles Martin

800 Line

Volunteer Activity

This article answers common questions from individuals wishing to participate in volunteer activity related to federal elections. The information applies to both volunteers for federal candidate campaigns and volunteers for federal political party committees. The Federal Election Campaign Act (the Act) and Commission regulations contain certain provisions related to volunteer activity connected to federal elections. In general, volunteer activity by individuals is not considered to be a contribution or expenditure and is, therefore, not required to be reported by the committee. However, certain volunteer activities are subject to limits which will be discussed further in this article.

Can I volunteer for a campaign committee if I am not a U.S. citizen?

Even though a foreign national cannot make campaign contributions or expenditures (including advances of personal funds), he or she can serve as an uncompensated volunteer for a campaign or political party. However, the individual may not serve in a decision-making capacity within the committee. For example, a foreign national is allowed to attend campaign strategy meetings and events, but may not be involved in the management of the committee. AOs 2007-22, 2004-26 and 1987-25.

Does volunteering my personal services to a campaign count as a contribution to the campaign?

An individual may volunteer his or her personal services to a campaign without making a contribution as long as the individual is not compensated by anyone else. 11 CFR 100.74. For example, if an individual helps organize a voter drive or offers

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his or her particular skills to a campaign, neither of those activities will result in a contribution, as long as the individual is not compensated. If the individual is compensated for his or her services, the activity is no longer considered volunteer activity and the payments, if made by someone other than the campaign itself, result in an in-kind contribution from that person, which must be reported by the campaign. 11 CFR 100.54.

I am a partner at a law firm. Can my firm offer its legal services to a campaign?

An entity (e.g. a committee, corporation or partnership) may provide a campaign with free legal and accounting services as long as:

- The services are provided for the sole purpose of helping in compliance with the Act;
- The entity paying for the services is the regular employer of the individual providing the services;
- The employer does not hire additional employees in place of the volunteer employee; and
- The committee reports the value of the service, as well as the name of each person who performed the service and the dates of services. 11 CFR 100.86, 100.146 and 114.1(a)(2); AO 2006-22.

An entity may also provide a political party committee the same free legal and accounting services applying the guidelines listed above except for the first requirement:

1) Here, the service cannot further the election of a specific federal candidate.

In addition, the free legal and accounting services exemption does not mean the entity can donate equipment along with the service. AO 1989-13, 1980-137.

I am an individual with a legal education, but not employed by a firm. Do the restrictions above apply to me as well?

An individual can personally volunteer his or her legal and accounting services without compensation, without the restrictions listed above. 11 CFR 100.54.

Am I allowed to hold a campaign-related gathering at my house?

Yes, an individual can use his or her home or the reception room of his or her apartment complex for activities benefiting a candidate or political party committee without making a contribution to the committee. In addition, volunteers may use a church or community room for campaign-related activities as long as the facility is regularly used for noncommercial purposes by members of the community, without regard to political affiliation. Any nominal fee charged for the use of the room will not count as an in-kind contribution to the committee and is not reportable. 11 CFR 100.75 and 100.76.

I would like to send out invitations and provide food and beverages at the campaign-related activity. Will those expenses count as contributions to the committee?

The costs for invitations or food and beverages served at the event are not considered contributions if they remain under certain limits. If the activity is benefiting a candidate, the limit is \$1,000 per candidate, per election. If the activity is benefiting a political party committee, the limit is \$2,000 per year on behalf of all committees of the same political party. Therefore, if a husband and wife host a benefit for a candidate at their home they would each be allowed the \$1,000 exemption and together would be able to spend up to \$2,000 on invitations or food and beverages without making a contribution. However, if the hosts

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PACronyms, Other PAC Publications Available

The Commission annually publishes an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC listed, the index provides the full name of the PAC, its city, state, FEC identification number and, if not identifiable from the full name, its connected, sponsoring or affiliated organization.

This index is helpful in identifying PACs that are not readily identified in their reports and statements on file with the FEC.

To order a free copy of PACronyms, call the FEC's Disclosure Division at 800/424-9530 or 202/694-1120.

PACronyms is also available on diskette for \$1 and can be accessed free on the FEC web site at www.fec.gov.

Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

- An alphabetical list of all registered PACs showing each PAC's identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state providing the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs showing the name of the PAC and its identification number (\$7.50).

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., NW.

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go over the limits, the excess will count as an in-kind contribution to the committee and is reportable. 11 CFR 100.77.

These exemptions do not apply to individuals co-hosting the activity in another individual's home. Any expenses paid by the co-host are considered to be contributions and must be reported. AO 1980-63.

I work in a corporate office. Can I conduct campaign-related volunteer work while at the office?

In general, if an individual provides services to a campaign during paid working hours, the employer is making a contribution. 11 CFR 100.54. However, if you are an employee, stockholder or member of a corporation or labor organization you may make limited use of the organization's facilities during paid working hours. For example, an employee could use the office phone to make calls pertaining to political volunteer work, but the activity must not interfere with the employee's work or the organization's normal activity.

In order for the activity not to be counted as a contribution, the Commission suggests limiting the activity to "incidental use" of the corporate facilities. Incidental use is considered to be one hour a week or four hours a month. 11 CFR 114.9(a)(1) and (b)(1). If the activity exceeds incidental use or the individual uses the organization's equipment to produce campaign materials, the individual must reimburse the organization within a commercially reasonable time. The reimbursement is considered a contribution from the individual to the political committee and must be reported. 11 CFR 114.9(a)(2), (b)(2) and (c).

Can I conduct volunteer Internet activity from my corporate office?

Yes, an individual can conduct volunteer Internet activity at work as

long as the individual complies with the employer's rules for personal use of computers and Internet access. This kind of activity can include anything from forwarding political emails to signing up to work at a candidate fundraiser. The individual must complete the normal amount of work for which the individual is paid and the activity must not increase the overhead or operating costs of the organization. In addition, the Internet activity cannot be coerced or conditioned upon being used for particular candidates. 11 CFR 100.94, 114.9(a)(2)(ii) and (b)(2)(ii).

If I create a website in support of a federal candidate, does that count as a contribution to the candidate's campaign?

An uncompensated individual or group may engage in Internet activities for the purpose of influencing federal elections without having the activity count as a contribution or expenditure. This exemption applies to those acting with or without the knowledge or consent of a campaign or political party committee. 11 CFR 100.94 and 100.155. The exempted Internet activities include, but are not limited to, sending or forwarding emails, providing a hyperlink to a website, posting comments to a blog, creating, maintaining or hosting a website and paying a nominal fee for the use of the website. 11 CFR 100.94(b). These exemptions apply regardless of whether the individual owns the computer.

Does the exemption still apply if I pay to place a political ad on someone else's web site?

The Internet activity exemption does not apply to paid political ads. Internet communications placed on another's website for a fee constitute "general public political advertising" and are thus viewed as "public communications" under the law. 11 CFR 100.26. Therefore, paying to place a communication on another's website could result in a contribution or expenditure under the Act. Other

regulations regarding coordinated communications and disclaimer requirements would also apply. 11 CFR 109.21, 109.37 and 110.11(a).

I am a campaign volunteer who pays for my own travel expenses to campaign-related events. Does that constitute an in-kind contribution to the campaign?

Not necessarily. An individual may pay for his or her own travel expenses related to candidate or party activities. An individual may spend up to \$1,000 per candidate, per election, and up to \$2,000 on behalf of all political committees of each political party in a calendar year for campaign-related travel. 11 CFR 100.79. However, if the individual spends over those limits, the excess is reportable as an in-kind contribution and counts against the

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FEC Accepts Credit Cards

The Federal Election Commission now accepts American Express, Diners Club and Discover Cards in addition to Via and MasterCard. While most FEC materials are available free of charge, some campaign finance reports and statements, statistical compilations, indexes and directories require payment.

Walk-in visitors and those placing requests by telephone may use any of the above-listed credit cards, cash or checks. Individuals and organizations may also place funds on deposit with the office to purchase these items. Since prepayment is required, using a credit card or funds placed on deposit can speed the process and delivery of orders. For further information, contact the Public Records Office at 800/424-9530 or 202/694-1120.

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individual's contribution limit.

In addition to the \$1,000/\$2,000 travel expenses exemption, a campaign volunteer may spend unlimited amounts of personal funds for his or her meals and lodging without making a contribution, as long as the expenses incurred are incidental to volunteer activities. 11 CFR 100.79(b).

What if the campaign offers to reimburse me for my travel expenses beyond the \$1,000/\$2,000 limit?

A committee is permitted to reimburse a volunteer's travel expenses and, as long as the reimbursement takes place within a certain time frame, no contribution will result. The following time frames apply:

- If the travel expense is paid for by cash or personal check, the committee must reimburse the individual within 30 days of the expense being incurred.
- If the travel expense is paid for by credit, the committee must reimburse the individual within 60 days of the closing date on the credit card billing statement where the charge first appears.

Outside of these time frames, the excess spent by the individual is counted as an in-kind contribution to the committee. 11 CFR 116.5(b) and AO 2003-31.

If I own a bakery, am I allowed to provide my baked goods to a campaign at a discount?

Yes, a vendor (whether or not it is incorporated) may sell food and beverages to a candidate's campaign or political committee at a discount. However, the amount charged must be at least equal to the vendor's costs of the items. If the value of the discount (difference between the normal charges and the amount paid by the campaign) does not exceed \$1,000 per candidate, per election,

or \$2,000 on behalf of all political party committees of each political party in a calendar year, then the discount is not considered a contribution. If the discount exceeds those limits then the excess is considered to be an in-kind contribution and must be reported. This is a problem if the vendor is incorporated because it would result in an impermissible contribution. Therefore, if the vendor is incorporated it may not exceed the \$1,000/\$2,000 discount limit. 11 CFR 100.78 and 114.1(a)(2)(v).

Additional Information

For additional information on volunteer activity, contact the FEC's Information Division at 1-800-424-9530 or 202-694-1100.

—Katherine Wurzbach

Outreach

San Francisco Regional Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs

The Commission will hold a regional conference in San Francisco, California, on October 28-29, 2009. Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance law. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. For additional information, to view the conference agenda or to register for the conference, please visit the conference web site at <http://www.fec.gov/info/conferences/2009/san-francisco09.shtml>.

Hotel Information. The conference will be held at the Sheraton Fisherman's Wharf Hotel, in the heart of one of San Francisco's most celebrated neighborhoods. Attend-

ees are responsible for making their own hotel reservations. To make your hotel reservations call 1-888-627-7024 and identify yourself as attending the Federal Election Commission conference or visit the hotel web site (<http://www.starwoodmeeting.com/StarGroupsWeb/res?id=0906250769&key=E3D1E>). The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your conference registration from Sylvester Management Corporation.

Registration Information. The registration fee for this conference is \$550, which covers the cost of the conference, materials and meals. A \$50 late fee will be added to registrations received after 5 p.m. EDT, September 25, 2009. Complete registration information is available online at <http://www.fec.gov/info/conferences/2009/sanfrancisco09.shtml>.

FEC Conference Questions

Please direct all questions about conference registration and fees to Sylvester Management Corporation (Phone: 1-800-246-7277; e-mail: rosalyn@sylvestermanagement.com). For questions about the conferences and workshops in 2009, call the FEC's Information Division at 1-800-424-1100, or send an e-mail to Conferences@fec.gov.

—Dorothy Yeager

FEC Conference Schedule for 2009

Conference for Campaigns, Party Committees and Corporate/Labor/Trade PACs
October 28-29, 2009
Sheraton at Fisherman's Wharf
San Francisco, CA

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