

Record

November 2010

Federal Election Commission

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Reports

Post-General Reporting Reminder

The 30-Day Post-General Election report is due on December 2, 2010. The Post-General Election report covers activity from October 14 (or from the close of books of the last report filed) through November 22. The following committees must file this report:

- All registered PACs and party committees—even committees with little or no activity to disclose. Monthly filers must submit this report in lieu of the December monthly report.¹
- Authorized committees of federal candidates running in the general election, including committees of unopposed candidates. Note that because the reporting period for the Post-General Election report spans two election cycles, candidate committees must use the Post-Election Detailed Summary Page (FEC Form 3, Pages 5-8 or FEC Form 3P, Page 3) instead of the normal Detailed Summary Page.

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¹ Monthly filers are not required to file a December 20 monthly report in addition to the Post-General report.

Advisory Opinions

AO 2010-16

SSF of Corporate-Owned LLC

EmblemHealth LLC, a limited liability company that is treated as a partnership for tax purposes and is wholly owned by corporations, may pay the administrative and solicitation costs of its affiliated corporation's separate segregated fund (SSF), but it may not be named as the SSF's connected organization. Nevertheless, the name of the SSF may be changed and abbreviated to EmblemHealth PAC, and EmblemHealth LLC and its owner corporations may solicit contributions to the SSF from the restricted class of EmblemHealth LLC and its corporate owners.

Background

EmblemHealth LLC is a limited liability company, treated as a partnership under the Internal Revenue Code,¹ that is wholly owned by two not-for-profit health services corporations: Health Insurance Plan of

(continued on page 3)

¹An LLC that elects to be treated as a partnership by the Internal Revenue Service under 26 CFR 301.7701-3 is treated as a partnership under Commission regulations. 11 CFR 110.1(g)(2).

Reports

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Notification of Filing Deadlines

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

Federal Election Commission
999 E Street, NW
Washington, DC 20463

800/424-9530 (Toll-Free)
 202/694-1100 (Information Div.)
 202/501-3413 (FEC Faxline)
 202/219-3336 (TDD for the
 hearing impaired)

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Amy L. Kort,
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<http://www.fec.gov>

address, FEC identification number and the updated or changed portions of the form.

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.

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.² 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. 11 CFR 104.18(e).

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 website. New FECFile Version 6.4.2.0 is available for download from the FEC website at <http://www.fec.gov/electfil/updateslist.html>. All reports filed after June 1, 2010, must be filed in Format Version 6.4.2.0 (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 website. 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 mail³ will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight de-

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²The 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).

³"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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livery 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 Public Records Office) 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 website (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413). The 2010 Reporting Schedule is also available on the FEC's website (http://www.fec.gov/info/report_dates_2010.shtml), and from Faxline. For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

Additional Information

For more information on 2010 reporting dates:

- See the reporting tables in the January 2010 *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_2010.shtml to view the reporting tables online.

—Elizabeth Kurland

Advisory Opinions

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Greater New York (HIP) and Group Health Incorporated (GHI). Another corporation, EmblemHealth Inc., is the sole owner of both HIP and GHI. HIP and GHI established EmblemHealth LLC to integrate management and administration, and to set direction for the joint operations of GHI and HIP.

EmblemHealth LLC asks if an SSF currently operated by HIP may be renamed "EmblemHealth Services Company LLC Federal Political Action Committee," abbreviated as "EmblemHealth PAC," and further asks if it may act as the connected organization for the SSF. Furthermore, EmblemHealth LLC asks if it, GHI and HIP may each use personnel and resources to pay the administrative and solicitation expenses for the SSF, and solicit the restricted classes of EmblemHealth LLC, GHI and HIP for contributions to the SSF.

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations do not include partnerships or LLCs in the definition of "connected organization" (11 CFR 100.6(a)), instead permitting them to contribute directly to candidates. However, partnerships that are owned entirely by corporations may not make contributions because of the dual attribution principle. Contributions by partnerships are attributed not only to the partnership but also to the partners which, in this case, are corporations prohibited from making contributions. 11 CFR 110.1(e). In order to avoid prohibiting these types of partnerships from both making contributions and establishing and administering an SSF, the Commission has interpreted the Act and Commission regulations as permitting such partnerships to pay the administrative or solicitation costs of an SSF established by the partnership's corporate owner, but only when the partnership is wholly

owned by corporations and is affiliated with at least one of the corporations. AOs 2009-14 and 1992-17.

EmblemHealth LLC is wholly owned by GHI and HIP, both of which are corporations wholly owned by EmblemHealth, Inc. GHI and HIP are therefore subsidiaries of EmblemHealth Inc., and are thus affiliated. EmblemHealth LLC and its corporate owners may all act as the connected organization for the SSF, paying for its administrative expenses and solicitation costs. However, because EmblemHealth LLC itself does not satisfy the definition of "connected organization" as discussed above, it may not be listed as the SSF's connected organization on FEC Form 1. Instead, the SSF must list one of EmblemHealth LLC's corporate affiliates as the connected organization. AOs 2009-14, 2004-42 and 2003-28.

The SSF may be renamed "EmblemHealth Services Company LLC Federal Political Action Committee," abbreviated as "EmblemHealth PAC." In past advisory opinions, the Commission has permitted an SSF's name to include only the name of a joint venture LLC that was treated as a partnership under Commission regulations, where the LLC was performing the functions of the SSF's connected organization. AOs 2004-42 and 2003-28. Under that circumstance, the SSF may omit the names of the LLC's affiliated corporate owners from its name "because the LLC was in virtually the same position as a corporate subsidiary of the owner corporation." AO 2004-42.

An SSF and its connected organization may solicit contributions from the restricted class – the executive and administrative personnel and stockholders, and their families – of its subsidiaries, branches, and other affiliates. 2 U.S.C. §§441b(b)(2)(A) and (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1). Once the Commission has concluded that entities

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Advisory Opinions

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are affiliated, any one affiliate may solicit the restricted class of any other affiliated entities. AOs 2004-32 and 2001-18. Therefore, HIP, GHI and EmblemHealth LLC may solicit the restricted class of the SSF's connected organization (HIP) and the restricted class of its affiliated corporation (GHI) for contributions to the SSF. Although EmblemHealth LLC is not a corporate affiliate of HIP or GHI, the Commission has, in previous advisory opinions, determined that the executive and administrative personnel of partnerships that were affiliated with corporations could be solicited for contributions to the corporation's separate segregated fund. AOs 1989-08 and 1983-48. Therefore, because EmblemHealth LLC is affiliated with HIP, GHI and EmblemHealth Inc., and is treated as a partnership under Commission regulations, HIP, GHI and EmblemHealth LLC may solicit contributions from EmblemHealth LLC's executive and administrative personnel for contributions to the SSF.

Date Issued: September 23, 2010;
Length: 6 pages.

—*Christopher Berg*

AO 2010-17

Undesignated Contributions May Be Applied to General or Special Election

A Congressional candidate who is running in both a special and general election that are being held on the same day may treat undesignated contributions as contributions made for the general election or for the special election. The candidate committee may divide undesignated contributions between the two elections as long as those contributions do not exceed the contributor's combined limit for both elections. If the combined contribution limits for both elections are not exceeded, no redesignation is necessary.

Background

Stutzman for Congress (the Committee), is the principal campaign committee of Marlin Stutzman, a Republican candidate in Indiana's Third Congressional District. The incumbent holder of that office, Representative Mark Souder, won the Republican primary election on May 4. After the primary, Representative Souder resigned from office. Indiana's governor then scheduled a special election to fill Souder's office. That special election will be held on November 2, which is the same day as the general election. The winner of the special election will serve the remainder of Representative Souder's term of office. The candidate elected in the general election will serve the next full two-year term of office.

The Republican Party held a caucus to nominate a candidate for the special election and a new candidate for the general election. Stutzman was nominated as the Republican Party candidate for both of those elections. Stutzman is campaigning in both elections and the Committee anticipates it will receive undesignated contributions that exceed the Federal Election Campaign Act's (the Act) contribution limits for a single election. The Committee wishes to redesignate the excessive portion of those contributions from the general election to the special election without seeking written redesignations from the contributors.

Analysis

The Commission determined that the Committee may apply undesignated contributions to the general election or to the special election. As long as those contributions do not exceed the contributor's combined limit for both elections, the Committee may divide the contributions between the two elections. The Committee need not seek a redesignation from the contributor if the combined contribution limits for both elections are not exceeded.

Individuals may contribute up to \$2,400 to a candidate "with respect to any election for Federal office." 11 CFR 110.1(b)(1). These contributions limits "apply separately with respect to each election." 2 U.S.C. §441a(a)(6); 11 CFR 110.1(j)(1). The Act and Commission regulations define "election" to include both a general election and a special election.

Under the Act and Commission regulations, an undesignated contribution is considered a contribution for the next election for that federal office. 11 CFR 110.1(b)(2)(ii). In these circumstances, because the special election and the general election for the same federal office will be held on the same day, both elections are considered "the next election" for purposes of treating undesignated contributions. In this situation, although the federal office sought by Mr. Stutzman is the same in both elections, each election will fill a vacancy for a different term of that office. AO 1984-42 dealt with a similar situation in the State of Kentucky, which held a special election for a Congressional district seat on the same day as the general election. The Commission concluded in that opinion that each election is subject to a separate contribution limit.

In AO 1986-31, the Commission addressed a nearly identical situation: North Carolina held a special election on the same day as the general election for the same Senate seat after the incumbent Senator John East died in office. In that case the Commission concluded that a candidate's authorized committee could treat undesignated contributions as made with respect to either election or divide them between the two elections as long as the contributor did not exceed the combined contribution limits for both elections. The Commission also determined that the committee did not need to seek redesignations from contributors.

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Therefore, in this case, the Committee may treat undesignated contributions as made with respect to either election or as divided between the two elections. This means the Committee may accept up to the contributor's combined \$4,800 limit for both elections (\$2,400 for the special election and \$2,400 for the general election). Accordingly, the Committee does not have to seek written designations or redesignations for these contributions from the contributors. However, undesignated contributions that exceed the contributor's combined contribution limits for both elections are prohibited to the extent they exceed the combined limits.

Date Issued: September 23, 2010;
Length: 4 pages.

—Isaac J. Baker

AO 2010-18

Use of Recount Funds from Prior Election Cycle

A state party committee may request that donors to a recount fund redesignate their donations as contributions to the federal campaign account for the 2010 election. The party organization may also use any remaining recount funds to pay for recount activities in relation to future elections.

Background

The Minnesota Democratic-Farmer-Labor Party (the "DFL") is a state party committee affiliated with the national Democratic party. The DFL has \$11,583.61 remaining in a recount fund raised for the 2008 recount and election contest involving Senator Al Franken and then-Senator Norm Coleman.

The DFL wants to transfer some or all of the remaining money from the recount fund to its federal campaign account for use in connection with 2010 elections. The DFL will use the "first in, first out" accounting

method to determine whose donations remain in the recount account to ensure that transfer does not cause any donor to exceed its 2010 limits for contributions to the federal account. Alternatively, it would like to ask some of the donors to the recount fund to redesignate their donations as contributions to the DFL's federal campaign account, again making sure that no redesignation would cause any donor to exceed its 2010 limits for contributions to the federal account. It also wants to use any funds remaining in the recount account to pay for recount activities relating to the 2010 elections.

Analysis

The Commission could not approve a response by the required four affirmative votes with regard to whether the DFL could transfer funds remaining in its recount fund to its federal campaign account for use in connection with 2010 elections.

The Commission determined that the DFL may ask donors to the recount fund to redesignate their donations as contributions to the DFL's federal account. The Commission noted that there are no regulations that govern redesignations of recount donations, and that, unlike the regulations concerning redesignations of excessive contributions made to candidates and authorized committees, donations to recount funds are not required to be redesignated or refunded. The Commission concluded that while the DFL, as a state party committee, is not covered by the existing redesignation regulations and that donations to the recount fund are permissible and may remain in the recount fund for future elections, the DFL may request that donors to the recount fund redesignate their donations to its federal account.

The Commission looked to the existing redesignation regulations for a procedure for the DFL to voluntarily request and to obtain redesignations of recount funds. It concluded that the DFL may use the

written redesignation regulations at 11 CFR 110.1(b)(5)(ii)(A) as a guide, and may consider a recount donation redesignated if:

- The treasurer of the political party committee requests that the donor provide a written redesignation of the contribution;
- The donor is informed that he or she may request a refund, or if the donor neither redesignates the donation nor requests a refund, that the donation will remain in the recount fund for future use; and
- The donor provides the treasurer with a written redesignation of the donation as a contribution, signed by the donor.

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Legal History of the Presidential Election Campaign Fund Act Available from the FEC

The FEC's Law Library is making available case-bound copies of the *Legal History of the Presidential Election Campaign Fund Act* in two volumes. Compiled and printed by agency staff in 1984, these editions provide an exhaustive historical record of the bills, accompanying reports and floor debates from which the present law originated. The material is presented in chronological fashion, starting with the 1957 Gore Report, which examined the campaign contributions and expenditures during the 1956 federal elections. These volumes are available to the public free of charge. They can be obtained at the Federal Election Commission's headquarters at 999 E Street NW, Washington, DC, 20463. To obtain a copy, please contact Leta Holley at holley@fec.gov or (202) 694-1516.

Advisory Opinions

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The Commission noted that any donation that is redesignated in writing as a contribution must be aggregated with any other contributions made by the same contributor during that calendar year for the purpose of adhering to the contribution limits. The Commission also noted that once donations are redesignated to the DFL's federal account, they will be considered contributions for the purposes of the donors' biennial limits and encouraged the DFL to notify the donors of this fact for the donors' compliance purposes. The Commission added that since the

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* starting with January 1987 are available on the FEC website as PDF files. Visit the FEC website at <http://www.fec.gov/pages/record.shtml> to find monthly *Record* issues.

The website also provides copies of the *Annual Record Index* for each completed year of the *Record*, dating back to 1987. The *Annual Record Index* list *Record* articles for each year by topic, type of Commission action and, in the case of advisory opinions, the names of individuals requesting Commission action.

You will need Adobe® Acrobat® Reader software to view the publication. The FEC's website has a link that will take you to Adobe's website, where you can download the latest version of the software for free.

DFL is not required to redesignate or refund the recount donations, it is not required to seek redesignations within a 60-day timeframe under 110.1(b)(5)(ii)(A)(2).

The Commission emphasized that all redesignations must be reported within the applicable reporting period, and that committees receiving redesignated contributions must report the redesignation in a memo entry on Schedule A of the campaign finance report covering the reporting period in which the redesignation is received. The memo entry for any redesignations of recount donations as contributions must include all of the information for the recount donation as it was originally reported on Schedule A, as well as all of the information for the contribution as it was redesignated by the donor, including that the donation was redesignated as a contribution to the federal account and the date on which the redesignation was received.

Finally, the Commission permitted the DFL to use the funds remaining in its recount fund to pay for recount activities in relation to future elections, as the use of recount funds is not restricted to recounts and election contests held in the calendar year in which donations to the recount fund are made.

Date: September 23, 2010;

Length: 5 pages.

—Zainab Smith

AO 2010-19

Disclaimers on Internet Text Ads

Candidates, their authorized committees and other political committees need not display disclaimers on text ads they sponsor that are generated through Google, Inc.'s AdWords program. The full disclaimer would instead appear on a "landing page" that appears when a user clicks through a text ad.

Background

Google, Inc. is a corporation that creates programs and applications that allow persons to search for and collect information on the Internet. Google's AdWords program generates text ads in conjunction with keywords that are chosen by the advertiser. Text ads have a headline which can consist of up to 25 characters and two lines of text that display a Uniform Resource Locator ("URL"), which can consist of up to 70 characters. This general format applies to all advertisers, regardless of whether they are political committees. Google has partnered with other websites to participate in Google's AdWords program. Using chosen keywords, Google can match an advertiser's ads to websites in Google's partner network that are most relevant to the advertiser's message.

The primary purpose of a text ad is to attract customers to an advertiser's "landing page" so that customers may learn more about what the advertiser has to offer. Advertisers pay Google for a text ad based upon the number of times a user clicks on the ad and is taken to the advertiser's website. Google wishes to sell such text ads to candidates, their authorized committees and other political committees. The text ads would not display a disclaimer indicating who authorized or paid for the ad. A full disclaimer would instead appear on the landing page that appears when a user clicks through a text ad.

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Advisory Opinions

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Analysis

The Commission could not reach an agreement by the required four affirmative votes in response to the questions presented by Google. 2 U.S.C. §437c(c) and 11 CFR 112.4(a). However, the Commission concluded that, under the circumstances described in the request, the proposed conduct is not in violation of the Federal Election Campaign Act or Commission regulations. Further explanation will be provided in the Commissioners' concurring opinions.

Date Issued: October 8, 2010;

Length: 3 pages.

—Myles Martin

AO 2010-21

Corporate Affinity Program for Purchase of Used Mobile Phones

ReCellular, Inc., a for-profit corporation that recycles and resells used mobile phones and accessories, may offer an affinity program to transmit to political committees contributions that result from its purchase of consumers' used phones.

Background

ReCellular collects used cell phones in several ways, including purchasing phones directly from consumers via its website. A consumer visiting the website may enter the brand and model number of his or her phone and receive a purchase quote from ReCellular. If the consumer accepts the offer, ReCellular provides them a shipping label—a common industry practice that improves consumer follow through. Upon receipt, ReCellular assesses the phone to ensure that it meets certain sales criteria, and then sends the consumer a check for the agreed purchase price.

ReCellular allows each consumer the option of donating the sale proceeds from his or her phone to one of several 501(c)(3) charitable organizations listed on the company's website. If the consumer elects this option, ReCellular sends a check in his or her name for the full purchase price of the phone as a donation to the selected charity.

Now, ReCellular plans to allow consumers to choose to contribute their sale proceeds to federal candidates' authorized committees, national political party committees, and nonconnected committees. Committees will pay to be listed on the website, and ReCellular will post a statement that it does not endorse any of the committees. Consumers choosing to contribute sale proceeds to political committees will be asked to confirm that their contribution complies with the source and amount restrictions of the Act. Finally, ReCellular plans to collect the recordkeeping and reporting information committees need and use that information to generate two emails: the first to each consumer, will confirm completion of the sale and the amount of the contribution; the second to each recipient political committee, will list the contribution amount and contributor information provided by the consumer. ReCellular will not forward any proceeds from the sale of a phone to a political committee until it has ensured that the phone meets ReCellular's criteria.

ReCellular asks if its plan to allow consumers to direct the company to send proceeds from the sale of their used cell phones to a political committee chosen by the individual complies with the Act and Commission regulations. ReCellular also asks if it must charge the recipient political committee for the company's costs for shipping the phone, processing the transaction, confirming the sale, and transmitting the payment, even though that cost is already reflected in the price

that ReCellular pays each consumer. Finally, ReCellular asks if recipient political committees must each pay ReCellular the incremental cost of sending a notification email to the committee with the contributor's name, address, occupation and employer, and date of contribution, if that cost is not already paid by the consumer.

Analysis

In prior advisory opinions, the Commission has allowed corporations to offer affinity programs and enter into affinity-type business arrangements so long as the corporation and political committee enter into a commercially reasonable transaction in which the committee pays the usual and normal charge for any services provided, and the amounts contributed to political committees via rebates or rewards are from individual customers'

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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 website (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.

Advisory Opinions

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funds and not corporate funds. AOs 2010-06, 2008-18 and 2003-16.

The Commission concluded that ReCellular proposal represents a commercially reasonable transaction. ReCellular is not required to charge political committees for costs that are already reflected in the purchase price offered to the consumer, such as the cost of shipping phones and processing payments. However, committees must pay to be listed on the ReCellular website and must cover the cost of the notification emails, unless the cost is borne by the consumers. The Commission stated ReCellular could bill committees for these services monthly, so long as doing so would be “commercially reasonable.” See AO 2006-34; 11 CFR 114.2(f)(1) and 116.4.

The Commission also determined that the proceeds of each phone sale are the property of the consumer. ReCellular does not disburse the proceeds of a phone sale until it confirms that the phone meets its purchase criteria. Additionally, the consumer has ultimate control over the disposition of the funds: upon agreeing to sell a phone to ReCellular, the consumer decides whether the company sends the proceeds to the consumer, a charity, or a political committee. Under ReCellular’s proposal, each consumer must confirm that his or her contribution complies with the limitations and prohibitions of the Act: that it is not made by a corporation, national bank, labor organization, Federal contractor, or a foreign national. This is consistent with the conditions approved by the Commission in previous advisory opinions. AOs 2010-06, 2006-35 and 1995-09.

Finally, the Commission concluded that ReCellular’s plan to forward sale proceeds to recipient committees within ten days of confirming

that “the consumer’s phone was worth the quoted price” complies with the Act and Commission regulations. 2 U.S.C. §432(a) and (b); 11 CFR 102.8.

Date Issued: October 8, 2010;

Length: 9 pages.

—*Christopher Berg*

Alternative Disposition of Advisory Opinion Request

AOR 2010-20

On September 23, 2010, the Commission considered, but could not approve by the required four votes, an advisory opinion request on behalf of National Defense PAC regarding a nonconnected committee’s receipt of corporate or union funds to make independent expenditures and allocation of administrative and operating expenses.

Thus, the Commission was unable to render an opinion in this matter and concluded its consideration of the request.

Advisory Opinion Requests

AOR 2010-26

Use by retiring House member of campaign funds for storage expenses in preparation for move to home state (Representative Brian Baird, October 1, 2010)

AOR 2010-27

Transfer from a presidential-vice presidential general election PCC to the presidential primary PCC of the vice presidential nominee (Obama for America and Biden for President, October 1, 2010)

AOR 2010-28

Refund of transfer from principal campaign committee to state party committee under 2 U.S.C. §439a(a) (4) (Indiana Democratic Congressional Committee and Hoosiers for Hill, October 1, 2010)

800 Line

Winding Down Your Federal Campaign

This article answers common questions from candidates and officeholders who are registered with the Federal Election Commission (the Commission) but are “no longer actively seeking” election to federal office. Federal candidates who withdraw from the race before the election takes place, lose the primary or general election or retire from office may choose to terminate their campaign committees. The Federal Election Campaign Act (the Act) and Commission regulations contain certain provisions related to the process of winding down and terminating a principal campaign committee (committee), including the proper use of remaining campaign funds, the settlement of committee debts and the process for terminating the committee’s reporting obligations.

I collected contributions for the general election but will not participate in that election. Are refunds required?

Yes. A candidate may accept contributions for an election only if he or she seeks office in that election. Thus, a candidate who loses the primary (or otherwise does not participate in the general election) does not have a separate contribution limit for the general. If a candidate accepts contributions for the general election before the primary is held and loses the primary (or does not otherwise participate in the general election), the candidate’s principal campaign committee must return the general election contributions within 60 days of the primary or the date the candidate became ineligible to participate in the general election. 11 CFR 102.9(e)(3) and 110.1(b)(3)(i). Alternatively, the campaign committee may redesignate the contributions in accordance with 11

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800 Line

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CFR 110.1(b)(5) or 110.2(b)(5), or reattribute them in accordance with 11 CFR 110.1(k)(3), as appropriate.

Can my committee continue to pay expenses even if the campaign is over?

Yes. Under the Act, campaign funds may be used for the following non-campaign purposes:

- Defrayment of ordinary and necessary expenses incurred in connection with the federal officeholder's duties, such as travel expenses for a federal officeholder and an accompanying spouse, provided that the travel is undertaken to participate in a function that is directly connected to the officeholder's *bona fide* official responsibilities. 113.2(a)(1);
- Winding down costs of a federal officeholder's office for a period of six months after leaving office. 113.2(a)(2), AOs 1996-44 and 1996-14; (House and Senate rules may apply.);
- Contributions to charitable organizations defined in 26 U.S.C. 170(c). 113.2(b);
- Unlimited transfer to any national, state or local party committee. 113.2(c);
- Donations to state and local candidates, pursuant to state law. 113.2(d); and
- Any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g). 113.2(e).

Can I use remaining campaign funds to cover personal expenses?

Using campaign funds for personal use is prohibited, even when a federal candidate or officeholder is no longer seeking election to federal office. In determining whether expenses are for personal use or are legitimate campaign/officeholder expenses, the Commission uses the "Irrespective Test." Personal use is any use of funds in a campaign account

of a candidate (or former candidate) to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a federal officeholder. 11 CFR 113.1(g). Generally speaking, if the expense would exist even in the absence of the candidacy or even if the officeholder were not in office, then the personal use ban applies.

Automatic Personal Use. Commission regulations list some expenses that are automatically considered to be personal use:

- Household food items and supplies;
- Funeral, cremation and burial expenses, except for a candidate or campaign worker whose death arises out of, or in the course of, the campaign;
- Clothing, except for the cost of campaign T-shirts, hats, etc.;
- Tuition payments, except those associated with training campaign staff;
- Mortgage, rent and utility payments for the candidate's personal residence, even if a portion of the space is used for campaign purposes. 60 Fed. Reg. 7862, 7865 (February 9, 1995);
- Investment expenses, unless all of the investment and its proceeds are used for campaign purposes or one of the permissible non-campaign uses of funds described above. 67 Fed. Reg. 38354 (June 4, 2002);
- Entertainment expenses, such as concert or sporting event tickets, unless the entertainment is part of a specific campaign or officeholder activity;
- Dues, fees and gratuities for country clubs, health clubs, recreational facilities or other nonpolitical organizations, unless they are part of the costs of a specific fundraising event held on the organization's premises; and
- Salary payments to the candidate's family, unless the family member is providing a *bona fide*

service to the campaign and the payments reflect the fair market value of those services. 11 CFR 113.1(g)(1)(i)(A)-(J).

Case-by-Case Determination of Personal Use. The Commission will determine, on a case-by-case basis, whether other expenses, including legal expenses and travel expenses, would exist irrespective of the candidate's campaign or duties as a federal officeholder and would be considered personal use expenses. 11 CFR 113.1(g)(1)(ii).

Can my campaign committee pay winding down costs?

Yes. Excess campaign funds may be used to pay any ordinary and necessary expenses incurred in connection with one's duties as a federal officeholder. Such expenses include the costs of winding down the office of a former federal officeholder for a period of six months after he or she leaves office. 113.2(a)(2) and AO 1996-14. Winding down costs include:

- *Moving Expenses.* A retiring Member may use campaign funds to pay for the expenses of moving office and personal furnishings from the Congressional office in Washington, D.C., back to the Member's home state. While the costs of transporting a Member's personal household effects and furnishings from Washington, D.C., to the Member's home state are not "winding down costs," such costs are "ordinary and necessary expenses" incurred in connection with ending the Member's duties as a federal officeholder. AO 1996-14. Similarly, a retiring Member may use campaign funds to pay the expenses of transporting office furnishings from the Member's district office to Wash-

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ington, D.C., where the Member will remain upon leaving office. Such costs are considered winding down costs. AO 1996-44. All such moving expenses should be reported as “other disbursements” by the Member’s committee, with the specific payee(s) and purpose noted. 11 CFR 104.3(b)(2)(vi) and (b)(4)(vi).

- **Payments to Committee Staff.** A retiring Member may use excess funds to pay staff salaries and incidental expenses while performing duties “imposed by virtue of having been a Member.” AOs 1976-90 and 1978-43.
- **Gifts.** Campaign funds may be used to purchase gifts or make donations of nominal value to persons other than the members of the candidate’s family. 11 CFR 113.1(g)(4).

Can my campaign committee contribute to other candidates?

Yes. A federal candidate committee may contribute up to \$2,000 per election to the committee of another federal candidate. 11 CFR 102.12(c)(2).¹ Donations from federal candidate committees to state or local candidate committees are subject to state law.

Can my campaign committee donate to a charitable organization?

Yes. Gifts to charity are not considered personal use expenses as long as the candidate does not receive compensation from the

¹ Note: The contribution limit that applies to a contribution from one federal candidate’s campaign to another federal candidate’s campaign is \$2,000 per candidate per election. This limit is different from an individual contribution limit to a federal candidate’s campaign, which is currently \$2,400 per candidate per election and is indexed for inflation.

charitable organization before it has expended the entire amount donated. Note that the amount donated must have been used for purposes that do not personally benefit the candidate. 11 CFR 113.1(g)(2). AOs 2005-6, 1997-1, 1996-40 and 1994-20.

May I convert my principal campaign committee into a PAC?

In past advisory opinions, the Commission has explicitly permitted a principal campaign committee to become a multicandidate committee as an alternative to the committee’s termination. In meeting the requirements for multicandidate status, a former principal campaign committee may avail itself of the length of time of its prior registration, the number of contributions it has made in the past and the number of contributions it has received. Note that the prohibition on converting campaign funds to personal use still applies to such a committee. AOs 2004-3, 1988-41 and 1985-30.

May I use remaining campaign funds in a future federal election?

Yes, surplus funds may be used in connection with a future election. Funds may be transferred between authorized committees of the same candidate (for example, from a previous campaign committee to a current campaign committee) without limit as long as the committee making the transfer has no “net debts outstanding” as defined in 11 CFR 110.1(b)(3)(ii). 11 CFR 110.3(c) and 116.2(c)(2). Alternatively, a candidate may redesignate a former campaign committee as the principal campaign committee of his or her current campaign and use the excess funds of the previous campaign in the current campaign. AO 1980–30. A candidate who wishes to use the committee for a subsequent federal campaign, may redesignate it as an authorized committee using FEC Form 2.

How does a committee terminate?

A committee may file a termination report at any time, provided that:

- The committee no longer intends to receive contributions, make expenditures or make any disbursements that would otherwise qualify it as a political committee; and
- Neither the committee seeking to terminate nor any other authorized committee of the same candidate has any outstanding debts or obligations. 11 CFR 102.3 and 116.1.

A committee involved in an FEC enforcement action, an FEC audit or litigation with the FEC, however, must continue to file regularly scheduled reports until the matter is resolved. When filing the committee’s termination report, the treasurer should check the “Termination Report” box on Line 4 of the Summary Page of FEC Form 3. The termination report must disclose:

- All receipts and disbursements not previously reported, including an accounting of debt retirement; and
- The purposes for which any remaining committee funds or assets will be used. 11 CFR 102.3(a).

The committee’s reporting obligation ends only when the Commission notifies the committee in writing that the termination report has been accepted. Until the committee receives this notification, it must continue to file reports. The FEC, upon its own initiative or at the request of a political committee, may administratively terminate a committee’s reporting status. For details on administrative termination, consult section 102.4 of the regulations.

The Commission will host a roundtable workshop covering many of these issues on November 17. See page 11 for details.

— Isaac J. Baker

Nonfilers

Committees Fail to File Campaign Finance Reports

The Commission cited campaign committees in October for failing to file the October Quarterly Report and the 12-Day Pre-General Report required by the Federal Election Campaign Act (the Act).

October Quarterly Report

The Commission cited seven campaign committees for failing to file the October Quarterly Report required by the Act.

As of October 29, 2010, the required disclosure reports had not been received from:

- Vote McNealy (CO-6);
- Bernie DeCastro Campaign Committee (FL);
- Banciella for US Congress (FL-18);
- Tim Olson for Congress Committee (MN-8);
- Committee to Elect Juan N. Babauta for Congress (MP);
- Roberts for Ohio (OH-3); and
- Friends of James Whitfield (TN-5).

The reports were due on October 15, 2010, and should have included financial activity through September 30, 2010.

The FEC notified committees of their filing requirements on September 21, 2010. Those committees that did not file on the due date were sent notification on October 22, 2010, that their reports had not been received and that their names would be published if they did not respond within four business days.

Pre-General Report

The Commission cited 34 campaign committees for failing to file the 12-Day Pre-General Election Report required by the Act for the general election held on November 2, 2010.

As of October 29, 2010, the required disclosure reports had not been received from:

- Trevor Drown for US Senate (AR);
- Elect Ian Gilyeat (AZ);
- Joslyn for Senate (AZ);
- Goodwin Exploratory Committee (CA-19);
- Vote McNealy (CO-6);
- Bernie DeCastro Campaign Committee (FL);
- Bobbie Bean Committee for US Senate (FL);
- Snitker for Senate (FL);
- Martin-Back for Congress (FL-3);
- Jim Horn Election Committee (FL-16);
- Banciella for US Congress (FL-18);
- Kunst for Congress (FL-20);
- Craig Porter for Congress (FL-25);
- Committee to Elect Roderick Vereen for Congress (FL-17);
- Willoughby for Congress (HI-2);
- Bendas for Congress (IL-3);
- Wilhelm for Congress (MD-3);
- Committee to Elect Michael Engel for Congress (MA-1);
- Gerry Dembrowski PAC (MA-7);
- Tim Olson for Congress Committee (MN-8);
- Lance Enderle for Congress (MI-8);
- Committee to Elect Juan N. Babauta for Congress (MP);

- Committee to Elect Liz Berney (NY-5);
- Jeff Doctor for Congress (NC-9);
- Roberts for Ohio (OH-3);
- Citizens for Litt (OH-4);
- John Anderson for Congress (OH-7);
- O'Neill for Congress 2010 (OH-14);
- Ben Frasier for Congress (SC-1);
- Jim Pratt for Congress (SC-6);
- Friends of James Whitfield (TN-5);
- Jackie Miller for Congress (TN-5);
- Elect Steve Mueller Campaign Committee (TX-9); and
- Kolosso for Congress Election Committee (WI-5).

The reports were due on October 21, 2010, and should have included financial activity for the period October 1, 2010, through October 13, 2010. If sent by certified or registered mail, the reports should have been postmarked by October 18, 2010.

The FEC notified committees involved in the general election of their filing requirement on September 27, 2010. Those committees that did not file on the due date were sent notification on October 22, 2010 that their reports had not been received and that their names would be published if they did not respond within four business days.

—Myles Martin

Outreach

Winding Down the Campaign Reporting Roundtable

On November 17, 2010, the Commission will hold a roundtable workshop to help candidate committees prepare to file their 30 Day Post-General (30G) Report and wind down their campaigns. The workshop will include information on raising funds to retire campaign debt, settling debts for less than the full amount owed, filing the Post Election Detailed Summary Page and terminating a committee. Attendance is limited to 50 people and the registration fee is \$25. The registration form is available on the FEC's website at <http://www.fec.gov/info/outreach.shtml#roundtables> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, please call the Information Division at 800/424-9530, or locally at 202/694-1100.

—Kathy Carothers

FEC to Host Reporting and E-Filing Workshops for the 2010 Year-End Report

On January 12, 2011, the Commission will host roundtable workshops on reporting and electronic filing for the 2010 Year-End Report. The reporting sessions will address common filing problems and provide answers to questions committees may have as they prepare to file their financial reports. The electronic filing sessions will provide hands-on instruction for committees that use the Commission's FECFile software and will address questions filers may have concerning electronic filing. Attendance is limited to 50 people per reporting workshop and 16 people per electronic filing workshop; the registration fee is \$25 per workshop. The registration form is

available on the FEC's web site at <http://www.fec.gov/info/outreach.shtml#roundtables> and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, please call the Information Division at 800/424-9530, or locally at 202/694-1100.

—Kathy Carothers

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Roundtable Schedule

Winding Down the Campaign Reporting Roundtable

November 17, 2010
FEC Headquarters
9:30 a.m. - 11:00 a.m.

Year-End Reporting Workshops

January 12, 2011
FEC Headquarters

Reporting for PACs and Party Committees

9:30 a.m. - 11:00 a.m.

FECFile and E-Filing for Candidate Committees

9:30 a.m. - 11:00 a.m.

Reporting for Candidate Committees

1:00 p.m. - 2:30 p.m.

FECFile and E-Filing for PACs and Party Committees

1:00 p.m. - 2:30 p.m.

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