

Record

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Reports

Statements of Organization Require Amendment

Under the Commission's Mandatory Electronic Filing regulation, which became effective January 1, 2001, any committee with a Web site, whether it files electronically or not, must provide that Web site's address on its Statement of Organization (FEC Form 1). 11 CFR 102.2(a)(1)(vii). A committee that has a Web site that is not already listed on its Statement of Organization must amend the Statement to provide the committee's Web site address. 11 CFR 102.2(a)(2).

Electronic Filers

Filers who are either *required* to file electronically, or who do so *voluntarily*, *must* amend electronically-filed reports by electronic means. The regulation further requires a committee that is required to file electronically to include its e-mail address on its Statement of Organization. An electronic filer that has not yet disclosed its e-mail address on its Statement of Organization must amend its Statement to provide this information. 11 CFR 102.2(a)(1)(vii) and 11 CFR 104.18(b).

Alternative Dispute Resolution

ADR Program Resolves First Case

On December 21, 2000, the Commission certified the first case resolved through its Alternative Dispute Resolution program (ADR). The respondent, FJC Corporation, negotiated an agreement on November 7, 2000, to pay an \$850 civil penalty for violations of the Federal Election Campaign Act (the Act) relating to corporate contributions. The ADR office first received the case on October 13, 2000.

The ADR program's goal is to expedite resolution of some violations of the Act, reduce the cost of processing complaints and audit referrals and enhance overall FEC enforcement. For a case to be considered for the program, the respondent must express a willingness to engage in the ADR process, agree to set aside the statute of limitations while the case is pending in the ADR Office and agree to participate in bilateral negotiations and, if necessary, mediation.

Bilateral negotiations through ADR are oriented toward reaching an expedited resolution in a manner that is mutually satisfying to both

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Reports

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Paper Filers

A committee that files on paper must disclose its Web site address. To do so, the committee must amend its Statement of Organization using the revised FEC Form 1. This form is now available:

- On line (go to the FEC's Web site at <http://www.fec.gov/pdf/fecfrm1.pdf>);
- By fax (call the FEC's automated faxline at 202/501-3413 and request document 801); or
- By mail (call 800/424-9530, press 1 and then 3).

A committee that does not file its reports electronically may also amend its Statement of Organization by sending a letter to the Commission explaining the amendment.

Amendments filed with the FEC by mail should be addressed to the Federal Election Commission, 999 E Street N.W., Washington, DC 20463. Senate candidate committees

(and other persons who support Senate candidates only) file with the Secretary of the Senate. ♦

Commission Certifies Nevada for State Filing Waiver

On December 22, 2000, the Commission certified that Nevada qualified for a state filing waiver.¹ Consequently, federal committees and candidates in Nevada no longer have to file copies of their federal reports with the Nevada Office of the Secretary of State. The first report affected by the waiver was the 2000 Year-End report.

Alternative Dispute Resolution

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sides and is focused on correcting the activities that provoked the complaint or referral. If a resolution is not reached in bilateral negotiation, the case proceeds to mediation. Resolutions reached in ADR negotiations or mediation are subsequently submitted to the Commissioners for final approval and certification. Cases resolved through ADR do not set a precedent for other enforcement actions or procedures.

Closed ADR-negotiated settlement summaries are available from

¹ The Commission has certified that the following states and territories qualify for filing waivers: Alabama, American Samoa, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming. Committees that file their reports at the FEC need not file copies in these states.

the Public Records Office at 999 E Street, N.W., Washington, DC 20463. The Public Records Office may also be contacted at 1/800-424-9530 (press 3). ♦

Electronic Filing

FECFile Version 4 Software Now Available

Version 4 of FECFile, the FEC's electronic filing software, may now be downloaded from the FEC Web site at www.fec.gov (click on the Electronic Filing icon). The software has been updated to conform to the new format requirements and now produces electronic Statements of Organization, Statements of Candidacy and 24 Hour Notices, and it also includes space for cover letters, explanations of transactions and other miscellaneous text. Committees may continue to use FECFile version 3 to create and upload reports to the FEC through June 30, 2001. The Second Quarter report, the Mid Year report and the July 20 monthly report, however, must be filed with the FEC's new software or with other software that supports the new format. ♦

Advisory Opinions

AO 2000-24

Preemption of Alaska State Restrictions on State Party's Allocation Ratio

The Alaska Democratic Party (ADP) may pay its administrative and generic voter drive expenses entirely from its federal account, despite the Alaska Public Offices Commission's (APOC) finding that it must pay for some portion of these costs with funds from its

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nonfederal account. Under the Federal Election Campaign Act (the Act), a committee may pay for all such expenses with funds from its federal account and, under the Act, federal law preempts any state law with respect to federal elections. 2 U.S.C. §453 and 11 CFR 108.7(a).

Allocation and Using Federal Funds

When a political committee has separate accounts to make disbursements for federal and nonfederal elections, the committee may choose to pay for all of its shared expenses with federal funds. Alternatively, it may allocate its expenses between its federal and nonfederal accounts according to formulas specified in Commission regulations.¹ The appropriate formula for generic voter drive and administrative expenses is the “ballot composition method.” This method is based on the ratio of federal offices to the total of federal and nonfederal offices expected on the ballot in the state’s next general election. 11 CFR 106.5(d)(1)(i).

The federal portion represents the *minimum* amount that *must* be paid

¹ When making a disbursement using both federal and nonfederal funds, the committee has the option of either:

- Paying the entire amount from its federal account, in which case it would transfer funds from its nonfederal account to its federal account to cover the nonfederal share of the allocable expenses; or
- Establishing a separate allocation account, in which case the committee would transfer the appropriate funds from both the federal and nonfederal accounts to the allocation account and pay the allocable expenses from that account. 11 CFR 106.5(g)(1)(i-ii).

In either case, the funds must be transferred from the nonfederal to the federal account, or from both of these accounts to the allocation account, within 10 days before or 60 days after the bill for the allocable expense is paid.

from the federal account, and the nonfederal portion calculated using this method represents the *maximum* amount that *can* be paid using nonfederal funds.² In other words, a committee is not precluded from paying for allocable expenses—including generic voter drive and administrative expenses—with a higher percentage of federal funds or with only federal funds.

For the 1999-2000 election cycle, ADP’s allocation ratio was 40 percent federal to 60 percent nonfederal funds. ADP, however, used its federal funds to pay substantially more than 40 percent of its allocable expenses. ADP asserted that it was more successful in raising funds for its federal account than for its nonfederal account because new Alaska contribution limits and prohibitions are in some ways more restrictive than those of the Act.

State Restrictions on Nonfederal Activity

APOC, Alaska’s agency for campaign finance regulation, issued a letter asking that ADP pay some portion of its administrative and generic voter drive expenses using nonfederal funds because most of ADP’s activity was in support of nonfederal candidates. APOC stated that it would accept an allocation percentage that ADP determined in good faith to represent the use of nonfederal funds in support of nonfederal activity and federal funds in support of federal

² In making this determination, the Commission looked to the two Explanations and Justifications of the revisions to the allocation rules (1990 and 1992), which suggested that allocating a portion of certain costs to a committee’s nonfederal account was a permissive rather than a mandated procedure. See the June 26, 1990, Federal Register (55 FR 26058, 26063, 26064) and the March 13, 1992 Federal Register (57 FR 8990, 8991). See also AO 1993-17.

activity and that ADP could change this ratio if necessary.

Preemption

Under the Act and Commission regulations, the Act supersedes any provision of state law with respect to election to federal office. 2 U.S.C. 453; 11 CFR 108.7(a). By their very nature, the shared expenses of a state party committee—as distinguished from funds raised for and spent solely for the support of a nonfederal candidate—are intertwined with the expenses that pay for and can affect federal election activity. Thus, the Act and Commission regulations preempt any requirement imposed by APOC that would limit the amount of federal account funds that ADP used to pay for administrative and generic voter drive expenses.

Commissioners McDonald and Thomas further explained their reasons for voting to approve this opinion in a separate concurring statement issued on December 18, 2000.

Date Issued: December 18, 2000, Length, 7 pages. ♦

AO 2000-28

Disaffiliation of Trade Association PACs

Following the December 31, 2000, effective date of a formal separation agreement between American Seniors Housing Association (ASHA), a previously unincorporated business association, and National Multi Housing Council (NMHC), an incorporated trade association, these two organizations are no longer affiliated with one another. As a result, their respective political action committees (PAC) are also no longer affiliated organizations.

Affiliation

Under the Federal Election Campaign Act (the Act) and Com-

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Advisory Opinions

(continued from page 3)

mission regulations, committees established by the same corporation, person or group—including any parent, subsidiary, branch, division, department or local unit of a given entity—are affiliated. 2 U.S.C. §441a(a)(5) and 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). Affiliated committees are considered to be a single committee and share contribution limits. Therefore, contributions made to or by affiliated committees are considered to have been made to or by one committee. 2 U.S.C. §441(a)(5) and 11 CFR 100.5(g)(2), 110.3(a)(1) and 110.3(a)(1)(ii). Additionally, a corporation may solicit contributions to its PAC from the restricted class of its subsidiaries or other affiliates. 2 U.S.C. §441b(b)(4)(A)(i) and 11 CFR 114.5(g)(1).

ASHA and NMHC

In cases where the relationship of one company to another—and, by extension, of one company's PAC to another's—is not automatically clear, Commission regulations provide a list of factors that the Commission considers when, on a case-by-case basis, it examines the relationship to determine whether or not the companies are affiliated. See 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), 11 CFR 110.3(a)(3)(i) and (ii)(A)-(J), and Advisory Opinions 1999-39 and 1995-36.

In advisory opinion 1996-38, the Commission found that ASHA and NMHC were affiliated based on several factors:

- All members of ASHA were required to be members of NMHC;
- ASHA's activities were funded by NMHC from dues paid to NMHC;
- ASHA was founded by the NMHC board and others associated with NMHC; and
- The two organizations had significant personnel in common.

New ASHA

Since that time, however, ASHA has become an incorporated trade association (New ASHA) and has formally separated from NMHC. Following a separation agreement that became effective December 31, 2000, circumstances, which previously indicated affiliation between the two organizations, are altered:

- New ASHA members are not required to be members of NMHC, and membership overlap is minimal;
- New ASHA's activities are funded by dues paid directly to it;
- New ASHA's employees terminated their employment with NMHC; and
- The composition of the board of directors of each organization suggests that the two are separate entities.

These changes signify that NMHC does not control or finance New ASHA.¹ As a result, the two organizations, and their respective PACs, were no longer affiliated as of December 31, 2000. ASHA PAC must amend its statement of organization to replace NMHC with New

¹ *New ASHA and NMHC will have some continued contacts and financial transactions following their disaffiliation. For example, as part of the terms of separation, NMHC agreed to license to New ASHA certain of its assets that related to the operation of ASHA and to provide New ASHA a one time secured loan. Such transactions do not, however, suggest affiliation. Rather, they can be seen as part of the process to establish the independence of New ASHA from its organizational parent. The agreement also includes an understanding that the organizations will cooperate whenever each organization decides independently that it is in its best interests to do so. Significantly, however, the agreement does not compel cooperation and, in cases of more tangible, financial cooperation, requires that the parties negotiate an "arms-length fee" for assistance in research and advocacy.*

ASHA as its connected organization, and it can no longer list NMHC PAC as an affiliated committee.

Consequences of Disaffiliation

New ASHA may maintain ASHA PAC as its separate segregated fund and may pay its administrative expenses. Solicitations for contributions to this PAC, however, are now limited to the restricted class of New ASHA.

As a trade association, New ASHA may also solicit its noncorporate members and the restricted classes of its corporate members so long as it obtains written permission from the corporate member. 11 CFR 114.8. Permission granted to NMHC PAC, for solicitations of contributions by corporations that are members of both New ASHA and NMHC, no longer extends to ASHA PAC.

Finally, the prior affiliation between the two organizations and their PACs affects the contributions that they can now make. AOs 1997-25 and 1996-42. Although the PACs now have separate contribution limits, they shared one set of contribution limits while affiliated. Thus, to determine the amount that each PAC may contribute to a given candidate after December 31, 2000, the committees must consider the amounts given by each of them for a particular election before this date. The sum of the amounts given by each committee prior to disaffiliation must be attributed to each committee's contributions for that election after disaffiliation. For example, if before disaffiliation NMHC PAC gave \$2,000 to a candidate for the 2002 primary election and ASHA PAC gave \$1,000 to that candidate for that election, each PAC is considered, after December 31, to have made a \$3,000 contribution. As disaffiliated committees, each may now contribute an additional \$2,000 to that candidate for that election before reaching its \$5,000 per candidate,

per election contribution limit.² Contributions made by each PAC after December 31 will, however, only be attributed to the PAC making the contribution.

Date Issued: December 18, 2000;
Length: 13 pages. ♦

AO 2000-34

Name and Acronym of SSF

S.D. Warren Company (the Company), which is a subsidiary of SAPPI Limited, may name its separate segregated fund (SSF) "SAPPI Fine Paper North America/S.D. Warren Company Political Action Committee" and may use the acronym SAPPI PAC for common uses, such as on checks and letterhead.

Under the Federal Election Campaign Act and Commission regulations, the name of an SSF must include the name of its connected organization.¹ The regulations also permit the use of a clearly recognized abbreviation or acronym, so long as the SSF uses both the abbreviation (or acronym) and the full name on all reports, including the Statement of Organization, and in all disclaimer notices. 11 CFR 102.14(c). See also AOs 1999-20, 1993-7 and 1987-26.

Since the official name of the corporation, S.D. Warren Company, is included in the Company's proposed SSF name, the name is permissible. Moreover, since the abbreviation "SAPPI," which is part

² Both ASHA PAC and NMHC PAC are registered as multi-candidate committees and have a \$5,000 per candidate, per election contribution limit under 2 U.S.C. §441a(a)(2)(A).

¹ A fund established by a corporation with many subsidiaries need not include the name of each subsidiary in its name, and an SSF established by a subsidiary need not include the name of the parent corporation or another subsidiary of the parent in its own name.

of a company trademark, is used in various, well-known financial reference sources that are available to the public, it meets the requirement of being clearly recognized and, thus, is also permissible.

Date Issued: December 7, 2000;
Length: 4 pages. ♦

AO 2000-36

Disaffiliation of LLP PACs

As the result of an August 7, 2000, arbitration order, Arthur Andersen PAC (AAPAC) and Andersen Consulting PAC (ACPAC) are no longer subject to coordination and governance by the same body and, therefore, are no longer affiliated.

Corporate Structure/Background

ACPAC is a multicandidate committee maintained and controlled by the partners of Andersen Consulting LLP (AC), and AAPAC is a multicandidate committee maintained and controlled by the partners of Arthur Andersen LLP (AA). Until an arbitration order was issued on August 7, 2000, ACPAC and AAPAC operated as affiliated PACs. Prior to the arbitration order, AC and AA were part of the structure of the Andersen Worldwide Organization (AWO). As AWO member firms, AA and AC were coordinated by Arthur Andersen & Co. Societe Cooperative (AWSC), a Swiss cooperative entity that coordinates the professional practices of AWO members worldwide. Also, AA and AC were each bound by a Member Firm Interfirm Agreement (MFIFA) with AWSC that established common standards, compatible policies and other responsibilities for all member firms.

Statutory and Regulatory Requirements

Under the Federal Election Campaign Act and Federal Election Commission regulations, commit-

tees, including separate segregated funds, that are established, financed, maintained or controlled by the same entity or group of persons are affiliated. For cases in which committees are not *per se* affiliated, FEC regulations provide for the examination of other factors to determine whether one company is affiliated with another and, hence, whether the political committees controlled by the companies are affiliated. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J). Contributions made to or by affiliated committees are considered to have been made to or by a single committee and thus such committees share contribution limits. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii).

Restructuring/Disaffiliation

An arbitration order, effective August 7, 2000, separated AC and AA. Specifically, the order:

- Excused AC (and the other 43 AC entities outside the US) from any further obligations to AWSC (and thus to AA) under the MFIFA;
- Ordered AC (and its sister entities) to cease to represent itself as associated with any Arthur Andersen member firm and to discontinue use of the Andersen name; and
- Ordered that AC (and its sister entities) end its use of certain "Andersen Technology."

In addition to the terms of the arbitration order, the following facts, when measured against the FEC's criteria for affiliation, indicate a lack of affiliation between AAPAC and ACPAC as of August 7, 2000:

- AC is no longer within the structure or under the limited governance of AWSC;
- Neither AA nor AC owns any financial interest in the other;

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- No AA partner or Arthur Anderson entity can participate in AC's governance;
- No AA partner or Arthur Anderson entity has personnel authority over any officer of AC;
- AC has no obligations to AA except to change its name and return certain Andersen Technology;
- Since August 7, 2000, there have been no common partners, officers or employees between AC and AA, nor have there been any common officers or employees between AAPAC and ACPAC.
- Also, since the date of the arbitration order, there has been no significant transfer of funds, services or goods between AC and AA or between their PACs, with the exception of substantial payments between AA, AC and AWSAC made in connection with the separation process and mandated by the arbitration order.
- The only ongoing relationship between ACPAC and AAPAC prior to the issuance of the advisory opinion has been the monitoring of expenditures so as not to exceed the single contribution limit shared by affiliated committees.

Disaffiliation and Contribution Limits

Based upon the terms of the arbitration order and the other facts mentioned, ACPAC and AAPAC are no longer affiliated, as of August 7, 2000. As a result of disaffiliation, ACPAC and AAPAC will operate under separate contribution limits after that date; however, because of their affiliated status before that date, the two committees cannot disregard each other's contributions made prior to disaffiliation. AOs 1997-25 and 1993-23. To determine the amount that each PAC may contribute to a candidate after disaffiliation, each PAC must add the amounts given by both

PACs prior to disaffiliation and attribute that sum to its per-election contribution limit for that same candidate. See example given in AO 1993-23.

Date: December 18, 2000;
Length: 6 pages. ♦

AO 2000-37

Campaign's Purchase and Distribution of Liberty Medals

The Udall for Us All Committee (the Committee) may use campaign funds to purchase Liberty medals and to pay expenses connected with their presentation to veterans by U.S. Representative Tom Udall. Expenses associated with the medals and their presentation would not exist irrespective of Mr. Udall's duties as a federal office holder and, therefore, these expenditures would not be a personal use of campaign funds. 2 U.S.C. §439(a) and 11 CFR 113.1(g).

Under the Federal Election Campaign Act (the Act) and Commission regulations, campaigns have wide discretion in expending their funds, but may not convert these funds to personal use. 2 U.S.C. §§431(9) and 439a and 11 CFR 113.1(g) and 113.2(d). See also AOs 2000-12, 1998-1 and 1997-11. Commission regulations define personal use as "any use of funds in a campaign account of a present 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). The regulation lists a number of expenditures that would constitute personal use *per se*. Travel expenses (including subsistence expenses incurred during travel), however, are among those specifically listed examples to be analyzed on a case-by-case basis. 11 CFR 113.1(g)(1)(ii)(C).

In this case, the purchase and presentation of replica Liberty

medals to military service veterans is a form of community service that is an integral part of the duties of a Member of Congress. The replica medals are low in cost and have little monetary value, and the benefit to the veteran is the recognition of his service by a Member of Congress. ¹ Thus, the Committee may use its campaign funds to purchase these medals for distribution to eligible veterans who are constituents of Representative Udall.

The Committee may also use its funds to pay for the expenses involved in presenting these medals—primarily Representative Udall's travel expenses—because these expenses would not exist irrespective of his duties as an officeholder.² If, however, there are any additional expenses resulting from personal activities by the Representative or his staff (additional travel stops, for example) the person benefiting from the expenditure must reimburse the Committee within thirty days. 11 CFR 113.1(g)(1)(ii)(C).

The Committee should report payments to purchase and distribute the medals as "other disbursements." It should itemize the disbursements, with the purpose of the disbursement noted, in cases where the recipient of the payment

¹ Two dozen medals cost approximately \$328, plus additional costs for shipping and handling. This type of recognition, if it involved the use of campaign funds to purchase an intrinsically valuable item for the veterans, would be problematic under Commission regulations in cases where it extended beyond an honorific purpose and entailed the use of campaign funds to confer a significant personal benefit on the recipient veteran.

² The Commission expressed no opinion regarding the application of any rules of the House of Representatives or any tax ramifications of this activity because these issues were not within its jurisdiction.

receives more than \$200 from the Committee during the 2001-2002 election cycle. 11 CFR 104.3(b)(2)(vi) and (b)(4)(vi).

Date Issued: December 12, 2000;
Length: 4 pages. ♦

AO 2000-38

Registration of Party Committee Due to Delegate Expenses

The Democratic Party of the Commonwealth of Puerto Rico (DPPR) must register with the Commission as a political committee and disclose its contributions and expenditures even though it did not support any federal candidates. Funds the DPPR solicited in order to send delegates to the National Democratic Convention (the Convention) and funds it spent at the Convention meet the definitions of contribution and expenditure that are contained in the Federal Election Campaign Act (the Act) and Commission regulations; and the contributions received exceeded the \$1,000 contribution threshold at which a committee is required to file as a political committee under the Act. 2 U.S.C. §431(4) and 11 CFR 100.5(a).

The DPPR is the equivalent of a state party within the Democratic party of the United States. It does not nominate candidates for political office in Puerto Rico, or for any federal office.¹ The DPPR was, however, involved in the Convention, and its delegates had full voting rights at the Convention. The

¹ *The only election for federal office held in Puerto Rico is for the Resident Commissioner to Congress, and candidates for this election are not supported by local national parties (e.g., Democratic, Republican or national independent parties). The Presidential general election is not held in Puerto Rico. The DPPR spent no funds with respect to a presidential primary or caucus.*

DPPR received donations totaling \$40,000 solicited from individuals, with the understanding that some of the funds would be used to pay the costs of delegates' and other party members' attendance at the 2000 Convention. The solicitations did not mention or advocate the election of any federal candidates. The DPPR subsequently used a portion of these funds to send four delegates and a secretary to the Convention, and to cover their Convention expenses.

Funds Raised and Spent for Convention Delegates

Commission regulations do not specifically address disbursements by a party committee for the expenses of a delegate at a national convention. The regulations' definitions of contribution and expenditure, and the treatment of such spending with respect to delegates and delegate committees, however, indicate that disbursements for the expenses of delegates and delegate committees at a national convention are expenditures (or in-kind contributions to the delegates) and that donations made for the purpose of supporting these delegates are contributions.

Under the Act and Commission regulations, contributions and expenditures are defined as funds given or spent in order to influence a federal election. 2 U.S.C. §§431(8)(A)(i) and 431(9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). A nominating convention, which chooses the party's presidential nominee through selection by delegates to that convention, is included within the statutory and regulatory definitions of an "election." 2 U.S.C. §431(1)(B) and 11 CFR 100.2(e) and 9008.2(g).

In this case, the DPPR's payments enabled the delegates to participate in the convention and thus could be considered as having been made for the purpose of influencing an election. Amounts received in response to solicitations

for money to support convention delegates would, therefore, be contributions to the party.

Although the DPPR's solicitations mentioned that funds would be used for other purposes, apart from Convention expenses, the solicitations did not provide any method for allocating the donations among various purposes. Consequently, the full amount of donations—\$40,000—is considered when determining whether the DPPR's contributions exceeded the threshold for determining political committee status (\$1,000).

Registration and Reporting

The DPPR was obligated to register within ten days of receiving the \$40,000 and to file all appropriate reports. 2 U.S.C. §434(a)(4) and 11 CFR 104.6(c).

The DPPR must, within thirty days of its receipt of this opinion, file a Statement of Organization and file all reports that were due after the date that it qualified as a political committee. In these reports, the DPPR should:

- Report the \$40,000 in contributions on line 11a and itemize each contribution that exceeds \$200;
- Report any expenditures for travel, lodging, food and entertainment related to the Convention, and expenditures for other administrative expenses, as operating expenditures; and
- Report, as other disbursements, Convention disbursements related to shirts and stickers and the personal, non-Convention expenses of the delegates and secretary.

Once the DPPR files all due reports, it may file a termination report if it has no outstanding debts and will no longer receive any contributions or make any expenditures that will qualify it as a political committee. The termination report

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Advisory Opinions

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must contain a final report of receipts and disbursements and include a statement explaining how its remaining funds will be used.

Date Issued: December 18, 2000;
Length: 6 pages. ♦

AO 2000-39

Status of State Party as State Committee of Political Party

The Pacific Green Party of Oregon (the Pacific Green Party) satisfies the requirements for state committee status.¹

The Federal Election Campaign Act (the Act) defines a state committee as “the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.” 2 U.S.C. §431(15). In order to achieve state committee status under Commission regulations, an organization must meet two requirements. It must have:

- Bylaws or a similar document that “delineates activities commensurate with the day-to-day operation” of a party at a state level; and
- Ballot access for at least one federal candidate who has qualified as a candidate under Commission regulations.

¹ The Pacific Green Party is affiliated with the Association of State Green Parties, one of the two national Green Party organizations. The Association of State Green Parties is not a recognized national committee. The Commission has, however, recognized the state committee status of other party committees affiliated with national organizations that did not qualify as national committees of a political party. The most recent example is the granting of state committee status to the Green Party of Washington State. AO 2000-35.

The Pacific Green Party meets both requirements. It satisfies the first requirement because its bylaws set out a comprehensive organizational structure for the party from the statewide level down through local levels, and the bylaws clearly identify the role of the Pacific Green Party.

The Pacific Green Party satisfies the second requirement—ballot access for a federal candidate—in that Ralph Nader gained ballot access as the Pacific Green Party’s candidate on the Oregon ballot in 2000. Mr. Nader meets the requirements for becoming a federal candidate under 2 U.S.C. §441a(d).²

Date Issued: December 18, 2000;
Length: 4 pages. ♦

Advisory Opinion Request

AOR 2001-01

Use of political party’s office building fund to pay building renovation costs and fundraising expenses of building fund (North Carolina Democratic Party, January 12, 2001) ♦

Court Cases

On Appeal

Christine Beaumont, et al. v. FEC

On December 21, 2000, the Federal Election Commission appealed this case to the United

² An individual becomes a candidate for the purposes of the Act once he or she receives contributions aggregating in excess of \$5,000 or makes expenditures in excess of \$5,000. Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate, and the committee also becomes subject to registration and reporting requirements. 2 U.S.C. §§432(e)(1) and 434(a); 11 CFR 101.1, 102.1 and 104.1.

Federal Election Commission Seeks General Counsel

The Commission is recruiting for a General Counsel (EX-V, \$117,600 per annum). Interested candidates should review the entire announcement and application requirements by visiting our website at www.fec.gov/jobs.htm or calling 202-694-1080. The FEC is an Equal Opportunity Employer. The closing date is March 20, 2001.

States Court of Appeals for the Fourth Circuit. The appeal is from the preliminary injunction issued by the U.S. District Court for the Eastern District of North Carolina on October 26, 2000, which barred the Commission from enforcing statutory and regulatory provisions against the plaintiffs pending the final judgment by the district court. See the November 2000 *Record*, page 5. ♦

Audits

Commission Makes Final Determination on 1996 Presidential Audits

The FEC recently made final determinations of the amount of money that the Dole and Buchanan Presidential campaigns must repay to the U.S. Treasury for public funds they used during the 1996 election. In 1999, the Commission determined the amount that the Clinton campaign owed (see *Record*, July 1999), which has since been repaid. The Commission made its determinations after conducting audits of the committees, which is required for any authorized candidate committee that receives federal funds

under the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. 26 U.S.C. §§9007.1(a) and 9038.1(a).

Buchanan Committee

Patrick J. Buchanan's 1996 primary committee, Buchanan for President, Inc., must repay \$63,750 to the Treasury. This amount represents matching funds received by the Committee that were in excess of the candidate's entitlement for matched contributions. The Commission found that the Committee received matching funds for contributions that were later determined to be non-matchable—\$62,116 for improperly reattributed contributions and \$1,634 for contributions that the Committee later refunded. The Committee made a partial repayment of \$50,000 on January 22, 2001.

Mr. Buchanan's 1996 primary committee made repayments totaling \$29,328 for nonqualified campaign expenses. This amount represented \$12,159 for inadequate documentation for disbursements and \$17,169 for duplicate payments. The Commission determined that the Committee must also make a payment for stale-dated checks totaling \$27,431.

Dole Committees

Former Senator Bob Dole's 1996 primary committee, Dole for President, Inc., must repay \$6,255 to the Treasury. This amount represents public funds that the Committee spent on nonqualified campaign expenses. These expenses included \$1,237 for the "refund" of an unpaid contribution, \$930 for payment for services to prepare financial statements and \$4,088 for miscellaneous nonqualified campaign expenses. In addition, the Commission found \$225,536 in stale-dated checks. Most of this amount represents contribution refund checks that the contributors failed to cash. Under Commission regulations this amount

must be paid to the Treasury. 26 U.S.C. §9038.6.

Dole/Kemp '96, Inc., the general election committee, must repay a total of \$1,416,093 to the Treasury. This amount represents \$1,369,583 spent in excess of the expenditure limitation (\$61.82 million) and \$46,510 in interest earned on federal funds. The Commission found that a significant factor in the excessive spending related to overbilling the press for many expenses, including payment for event costs and air travel. Like the primary committee, Dole/Kemp '96, Inc., had stale dated checks that require payment to the Treasury. The amount is \$44,046.

Clinton Committees

President Bill Clinton's 1996 primary committee, Clinton/Gore '96 Primary Committee, Inc., was initially found to owe a total of \$114,450 to the Treasury, which represented repayments for nonqualified campaign expenses that included catering services, equipment, staff salaries, office overhead and consulting work. The Primary Committee, however, was not required to repay this amount to the Treasury because it received a transfer of \$309,008 from the Clinton/Gore '96 General Committee and \$53,319 from the Clinton/Gore GELAC Committee to cover these expenses. In addition, the Primary Committee provided documentation in 1999 demonstrating that stale-dated checks totaling \$1,050 cleared the bank and that the Committee had repaid the remaining \$11,180 to the Treasury.

Clinton/Gore '96 General Committee, Inc., has repaid \$3,241 to the Treasury for interest earned on federal funds. In addition, the General Committee demonstrated that it received a wire transfer of \$12,427 from the Primary Committee to pay for nonqualified campaign expenses, thereby relieving the General Committee of its obligation for repayment to the U.S. Treasury. ♦

Compliance

MUR 4762 Prohibited Union Contributions and Other Violations

The American Federation of State, County & Municipal Employees (AFSCME), its separate segregated fund, the American Federation of State, County & Municipal Employees-PEOPLE (AFSCME-PEOPLE), and AFSCME-PEOPLE's treasurer, William Lucy, have agreed to pay a civil penalty of \$6,500 for violations of the Federal Election Campaign Act (the Act). The violations include:

- Making and accepting in-kind contributions from a labor union in the form of express advocacy phone bank services;
- Misreporting contributions; and
- Making excessive contributions.

During the July, August and September 1996 monthly reporting periods, AFSCME-PEOPLE disclosed a total of \$15,995 in reimbursements to AFSCME for in-kind contributions to federal candidates in the form of phone bank services. These services consisted of a phone bank run by paid employees of AFSCME and from a facility owned by AFSCME. The calls made from the phone bank were directed to the general public and expressly advocated the election of federal candidates.

The Commission subsequently found reason to believe that the respondents had violated the Act by making and accepting prohibited contributions from a labor organization. Under the Federal Election Campaign Act, corporations and labor organizations are prohibited from making contributions and expenditures to influence a federal election, and political committees

(continued on page 10)

Compliance

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are prohibited from accepting such contributions. 2 U.S.C. §441b(a).¹ Public communications that expressly advocate the election or defeat of a clearly identified candidate, such as the communications made through the phone bank, must be directed and financed solely by the organization's separate segregated fund (SSF), not through the use of the connected organization's general treasury funds. Moreover, the SSF's connected organization may not pay for such communications, even if these funds are later reimbursed by the SSF. 11 CFR 114.5(b) and AO 1984-24. Thus, because AFSCME paid its employees on its premises to make the express advocacy phone calls to the general public and received the payment from its SSF only after the activity was completed, the activity was impermissibly funded from AFSCME's treasury funds. The activity constituted a prohibited in-kind contribution from a labor organization, in violation of 2 U.S.C. §441b(a). Respondents AFSCME-PEOPLE and its treasurer accepted these contributions—also in violation of §441b(a).

AFSCME-PEOPLE also misreported these contributions. Under the Act, all contributions must be reported according to the date made. AFSCME-PEOPLE and its treasurer, Mr. Lucy, instead reported AFSCME's in-kind contributions as of the date of the reimbursements. 2 U.S.C. §434(b).

Additionally, the Commission found that in May and October 1996, AFSCME-PEOPLE and its treasurer made contributions to the Cummings for Congress general

¹ A labor organization may use its funds, facilities and personnel only within its restricted class to raise contributions for and expressly advocate the election or defeat of a federal candidate. 11 CFR 114.

election campaign that, in the aggregate, exceeded the \$5,000 per candidate, per election contribution limit for multicandidate committees. 2 U.S.C. §441a(a)(2)(A).

Prior to finding probable cause to believe the Act had been violated, the Commission entered into a conciliation agreement with the respondents on September 18, 2000. ♦

MUR 5029 Contributions in the Name of Another Made by Corporation and Government Contractor

MSE Technology Applications, Inc., (MSE) has paid a civil penalty of \$19,500 for knowing and willful violations of the Federal Election Campaign Act (the Act). MSE, a corporation and a federal government contractor, made contributions in the names of others during 1998 to a campaign for federal office. This matter was referred to the FEC by the Department of Justice.¹

Background

In August 1998, representatives of MSE invited Senator Christopher Bond of Missouri to visit their facilities in Butte, Montana. The president of MSE, Donald Peoples, announced Senator Bond's upcoming visit at an executive staff meeting, during which it was

¹ MSE agreed to enter into a conciliation agreement with the Commission as part of a plea agreement between MSE and the U.S. Justice Department to resolve MSE's criminal violations of the Act. The plea agreement provided for a \$97,500 criminal fine and two years of probation. During the probation period, MSE's principal officers were to implement a program to prevent future violations of the Act, as well as perform 200 hours of community service by lecturing on the requirements and prohibitions of the Act.

determined that 13 MSE employees should be given "community incentive awards." The awards consisted of payments of \$750 and were distributed on August 6, 1998.

Donald Peoples then invited several individuals, including the recipients of the community incentive awards, to attend an event for Senator Bond and suggested that they each contribute \$500 to \$1,000 to the Senator's campaign committee, Missourians for Kit Bond (the Committee). All 13 individuals who received the awards contributed amounts ranging from \$750 to \$1,000 after encouragement from officials at MSE.

Analysis

The Act prohibits corporations from making contributions in connection with federal elections. 2 U.S.C. §441b(a). In addition, the Act prohibits contributions from federal government contractors (2 U.S.C. §441c) and contributions in the name of another person (2 U.S.C. §441f).

The Commission found reason to believe that MSE knowingly and willfully violated 2 U.S.C. §§441f, 441b(a) and 441c by making contributions to the Committee in the names of others. The Commission and MSE participated in informal methods of conciliation, prior to a finding of probable cause to believe that the Act was violated, and MSE entered into a conciliation agreement and agreed to pay a civil penalty of \$19,500. ♦

Outreach

FEC Roundtables

The Commission will host roundtable sessions in February and March. See the table below for more details.

FEC roundtables, limited to 12 participants per session, are conducted at the FEC's headquarters in Washington, DC.

The registration fee is \$25, and participants will be accepted on a first-come, first-served basis. Please call the FEC before registering or sending money to be sure that openings remain in the session. Prepayment is required. The registration form is available at the FEC's Web site—<http://www.fec.gov/pdf/rndtabl.pdf>—and from Faxline, the FEC's automated fax system (202/501-3413, request document 590). For more information, call 800/424-9530 (press 1, then 3) or 202/694-1100. ♦

FEC Announces April Conferences

The FEC will hold the first of its annual conferences in April 2001. More details will follow in the March issue of the *Record*. To register for any conference, call Sylvester Management Corporation at 800/246-7277. For program information, call the FEC's Information Division at 800/424-9530 (press 1, then 3) or 202/694-1100. For the latest information, go to <http://www.fec.gov/pages/infosvc.htm#Conferences>.

Conference for Corporations

Date: April 4-6, 2001
 Location: Washington, DC (Lowe's L'Enfant Plaza)
 Registration: \$375

Conference for Trade Associations

Date: April 9-11, 2001
 Location: Arlington, VA (Hilton Crystal City)
 Registration: TBA

Public Appearances

February 14, 2001
 Federalist Society at the University of Chicago Law School
 Chicago, Illinois
 Commissioner Smith

February 21-25, 2001
 Cato Institute
 Cancun, Mexico
 Commissioner Smith

Roundtables

Date	Subject	Intended Audience
February 7, 2001 9:30 - 11:00 a.m.	Candidate Preparations for the Next Election Cycle <ul style="list-style-type: none"> • New election-cycle reporting rules • New electronic filing rules for campaigns • Candidate registration • Contribution limits and prohibitions 	<ul style="list-style-type: none"> • House and Senate campaigns • Lawyers, consultants and party staff who advise campaigns
March 7, 2001 9:30 - 11:00 a.m.	The New Electronic Filing Rules and FEC Forms for PACs Explanation and Q/A about the new electronic filing requirements and the new paper forms used by PACs and party committees.	<ul style="list-style-type: none"> • Corporate/labor/trade association PACs • Nonconnected PACs • Party committees • Lawyers and consultants to PACs and party committees

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