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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 14-30-A**  
**AGENDA ITEM**  
**For meeting of June 12, 2014**  
**SUBMITTED LATE**

June 11, 2014

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Deputy General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

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Assistant General Counsel

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Attorney

Subject: AOR 2014-04 (Enterprise Holdings) Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on June 12, 2014.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2014-04

2

3 Jan Witold Baran, Esq.

4 Eric Wang, Esq.

5 Wiley Rein LLP

6 1776 K Street, NW

7 Washington, DC 20006

8

9 Dear Messrs. Baran and Wang:

**DRAFT B**

10 We are responding to your advisory opinion request on behalf of Enterprise Holdings,

11 Inc., which asks whether federal law preempts New York law regarding the requestor's use of

12 payroll deductions to process voluntary contributions to its separate segregated fund ("SSF").

13 The Commission concludes that the requestor's use of such deductions is permissible under the

14 Federal Election Campaign Act, 2 U.S.C. §§ 431-57 ("FECA"), and Commission regulations.

15 Because the New York State Department of Labor has clarified that the state statute and

16 regulation at issue do not prohibit the requestor's payroll deductions for its SSF, the Commission

17 does not reach the preemption question presented in the request.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on April 24,

20 2014.

21 Enterprise Holdings is the corporate parent of Enterprise Rent-A-Car, Alamo Rent-A-

22 Car, and National Car Rental. Enterprise PAC is the SSF of Enterprise Holdings and is

23 registered with the Commission. Enterprise PAC makes contributions to federal candidates,

24 federal political committees, and (where permissible) to candidates for nonfederal offices in

25 states other than New York. Enterprise Holdings uses a payroll-deduction program to facilitate

26 the making of voluntary contributions by its restricted-class employees, including employees in

27 New York, to Enterprise PAC.

1           A New York state statute specifies the payroll deductions that employers may implement  
2 for their employees and prohibits all other deductions. N.Y. Lab. Law § 193. Paragraph (1)(a)  
3 of the statute provides that employers may implement payroll deductions “in accordance with the  
4 provisions of any law or any rule or regulation issued by any governmental agency.” *Id.*  
5 § 193(1)(a). Paragraph (1)(b) provides that an employer also may make deductions that are  
6 “expressly authorized in writing by the employee” and “limited to payments for” certain  
7 statutorily enumerated purposes. *Id.* § 193(1)(b).<sup>1</sup> None of these enumerated purposes includes  
8 political contributions, *see id.*, and the New York State Department of Labor’s regulations  
9 specify that payroll deductions for “[c]ontributions to political action committees, campaigns and  
10 similar payments” are not permissible under section 193(1)(b), even if authorized by the  
11 employee. N.Y. Comp. Codes R. & Regs. Tit. 12, § 195-4.5(f) (2013).

12           On May 27, 2014, the Commission received a comment from the New York State  
13 Department of Labor regarding the instant request. The comment notes that the reference in  
14 section 193(1)(a) to payroll deductions made “in accordance with any law or any rule or  
15 regulation” includes “federal election laws and regulations.” N.Y. State Dep’t of Labor,  
16 Comment at 1. The comment accordingly states that “New York does not prohibit the specific  
17 payroll deductions at issue.” *Id.* More particularly, the comment states that the state law  
18 prohibitions in question “do not apply to payroll deductions made in accordance with 2 U.S.C.  
19 § 441b(b)(5) and 11 C.F.R. § 114.1(f), to facilitate the making of voluntary contributions from  
20 the restricted class employees of the requestor and its subsidiaries to its federal separate  
21 segregated fund, Enterprise Holdings, Inc. Political Action Committee.” *Id.*

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<sup>1</sup> The statute contains other limited exceptions, which are not relevant here. *See* N.Y. Lab. Law § 193(1)(c)-(d), (2).

1 ***Question Presented***

2 *Do FECA and Commission regulations preempt N.Y. Lab. Law § 193 and N.Y. Comp.*  
3 *Codes R. & Regs. Tit. 12, § 195-4.5(f) insofar as the state provisions purport to prohibit the use*  
4 *of payroll deductions for employees to make voluntary contributions to Enterprise PAC?*

5 ***Legal Analysis and Conclusions***

6 The requestor's use of payroll deductions to process voluntary contributions to Enterprise  
7 PAC is permissible under FECA and Commission regulations. Because the New York State  
8 Department of Labor has clarified that the state statute and regulation at issue do not prohibit the  
9 requestor's payroll deductions for its SSF, the Commission does not reach the preemption  
10 question presented in the request.

11 Commission regulations expressly permit a corporation to use payroll deductions to  
12 facilitate the making of voluntary contributions from the corporation's executive and  
13 administrative personnel to its SSF. 11 C.F.R. §§ 114.1(f), 114.2(f)(4)(i), 114.5(k)(1); *see also*  
14 *Advisory Opinion 2010-12 (Procter & Gamble) at 3 (authorizing connected organization to*  
15 *deduct SSF contributions from quarterly retainer payments to its directors); Advisory Opinion*  
16 *2001-04 (Morgan Stanley Dean Witter & Co. PAC) at 3 (authorizing connected organization to*  
17 *accept payroll-deduction authorizations made by electronic signature for contributions to its*  
18 *SSF); Advisory Opinion 1999-03 (Microsoft PAC) at 2 (same). Like the SSFs in these prior*  
19 *advisory opinions, Enterprise PAC is a federal political committee that makes contributions to*  
20 *federal candidates and political committees and uses a payroll-deduction system to process*  
21 *voluntary contributions to the SSF from members of the restricted class. Thus, the requestor*  
22 *may operate a payroll-deduction system, as described in the request, consistent with the*  
23 *Commission's regulations.*

1           FECA and Commission regulations “supersede and preempt any provision of State law  
2 with respect to election to Federal office.” 2 U.S.C. § 453(a); *see also* 11 C.F.R. § 108.7(a). The  
3 Commission has previously applied this provision in the context of state laws prohibiting the use  
4 of payroll-deduction programs for voluntary contributions to an SSF. *See* Advisory Opinion  
5 1982-29 (United Telecom PAC) at 2 (“[T]he Act would supersede or preempt any State law  
6 prohibiting the use of payroll deductions as a means of facilitating voluntary  
7 contributions . . . .”); Advisory Opinion 1976-23 (Conoco Employees Good Government Fund)  
8 at 2 (“State laws regarding payroll deduction plans would not be applicable to separate  
9 segregated funds established for the purpose of making contributions or expenditures in  
10 connection with Federal elections.”). Here, however, the New York State Department of Labor  
11 has clarified that N.Y. Lab. Law § 193 and its implementing regulations do not prohibit the  
12 requestor’s activity. Thus, the Commission does not reach the question of whether the state  
13 statute and regulation are preempted by the Commission’s regulations regarding payroll  
14 deductions.

15           This response constitutes an advisory opinion concerning the application of FECA and  
16 Commission regulations to the specific transaction or activity set forth in your request. *See* 2  
17 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or  
18 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
19 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
20 proposed activity. Any person involved in any specific transaction or activity which is  
21 indistinguishable in all its material aspects from the transaction or activity with respect to which  
22 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C.  
23 § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be

1 affected by subsequent developments in the law including, but not limited to, statutes,  
2 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
3 on the Commission's website.

4 On behalf of the Commission,

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7  
8 Lee E. Goodman  
9 Chairman  
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