



Larry Kocot <lkocot@NACDS.org> on 11/24/2003 02:24:44 PM

To: "payrollded03@fec.gov" <payrollded03@fec.gov>
cc: Mary Ellen Fleck <MFleck@NACDS.org>

Subject: FEC Comments

RE: Comments in Support of Petition to Permit Payroll Deduction
Contributions to a Trade Association's SSF

<<FEC Comments re Payroll Deduction.doc>>

> S. Lawrence Kocot
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> National Association of Chain Drug Stores
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>

**RE: Comments in Support of Petition to Permit Payroll Deduction Contributions to a Trade
Association's SSF**

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November 24, 2003

John C. Vergelli
Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Comments in Support of Petition to Permit Payroll Deduction Contributions to a Trade Association's SSF

Dear Acting Assistant General Counsel Vergelli:

The National Association of Chain Drug Stores (NACDS) and its Separate Segregated Fund (SSF), NACDS PAC, submit the following comments in support of the Petition of America's Community Bankers and its SSF to revise 11 CFR § 114.8(e)(3) to permit payroll deductions for contributions to trade associations' SSFs by member corporation's executive and administrative personnel.

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NACDS is an association organized and existing under the laws of the Commonwealth of Virginia. Founded in 1933 and based in Alexandria, Virginia, NACDS membership consists of over 200 retail community pharmacy companies. Collectively, community pharmacy companies comprise the largest component of pharmacy practice with over 100,000 pharmacists. NACDS's members operate almost 35,000 retail community pharmacies with annual sales totaling over \$450 billion. Chain-operated community retail pharmacies fill over 70% of the more than three billion prescriptions dispensed annually in the United States.

The Revision is Consistent with the Federal Election Campaign Act

Nothing in the Federal Election Campaign Act (FECA) prohibits trade associations from using payroll deductions for contributions from corporate member's solicitable class of employees, as long as the trade association complies with all other FECA solicitation requirements. Indeed, FECA seems to support payroll deductions for contributions.

FECA permits a corporate member to incur costs and expenses in facilitating contributions to a trade association SSF. *See* 2 U.S.C. § 441b(b)(2)(C) (excluding from the definition of a prohibited corporate contribution costs related to the administration of and solicitation for an SSF of a membership organization). Such costs and expenses are not restricted by the method in which they are incurred. Consequently, the statute neither expressly nor implicitly precludes them from being incurred in any particular manner.

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For example, the FEC has determined that FECA allows collection of contributions for an association or credit union SSF via deductions from an employee's bank account. *See*

Advisory Opinion 1999-35 and Advisory Opinion 1998-19. If bank account deductions are permissible under FECA, and there is nothing expressly precluding payroll deductions, then it logically follows that payroll deductions must be permissible under the statute as well.

The first part of 11 CFR § 114.8(e)(3) is consistent with this reading of FECA. *Compare* 11 CFR § 114.8(e)(3) (“There is no limitation on the method of soliciting voluntary contributions or the methods of facilitating the making of voluntary contributions which a trade association can use.”) *with* 2 U.S.C. § 441b(b)(2)(C) (prohibited contributions do not include payments related to “the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a . . . membership organization . . .”). But the last sentence of the regulation, which prohibits payroll deductions, is inconsistent with FECA. Therefore, that sentence should be revised to harmonize it with FECA, thus permitting payroll deductions.

The Revision is Supported by Policy Considerations

The proposed revision is appropriate and timely in the present environment. The use of electronics to conduct business and finance is ubiquitous in today’s world. Indeed, even the FEC is accepting comments regarding the Petition for revision via electronic submission.

With the increase in the use of electronic transactions, it is likely that corporate members of NACDS would take advantage of payroll deductions to collect contributions from their executives and administrative staff under a revised regulation. Such an option may be more efficient and economical, increasing participation in the political process. But should a corporate member determine that deductions are not the best way to collect contributions, it remains free to pursue other methods of collection.

Conclusion

In sum, NACDS supports the Petition to revise 11 CFR 114.8(e)(3) to read: “The member corporation *may* use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association.” Should you have any questions, please contact either me, at (703) 837-4281, or Mary Ellen Fleck, at (703) 837-4327. Thank you for considering our comments.

Sincerely,



S. Lawrence Kocot
Senior Vice President and General Counsel