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2006 FEB 16 A 11: 37

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Request for Advisory Opinion on the Permissibility of Acceptance by a Separate Segregated Fund of a Check from a Partnership that Transmits Contributions from Partners Who Are Members of the Fund's Connected Organization, without Attributing the Contributions to the Partnership Itself.

Dear Mr. Norton:

On behalf of the American Institute of Certified Public Accountants ("AICPA") and its separate segregated fund ("SSF"), the American Institute of Certified Public Accountants Political Action Committee ("AICPA PAC" or "PAC"), I respectfully request an Advisory Opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f, regarding whether it would be permissible for the AICPA PAC to accept a contribution check drawn on a partnership account that would be attributed only to the individual partners whose funds are aggregated in the check -- and not attributed to the partnership itself -- when the check is drawn on the partnership account only for administrative convenience.

In several past Advisory Opinions, the Commission has approved partnership contribution plans permitting individual partners to make contributions to federal candidates through certain arrangements involving the use of the partnership's operating account. Under these approved partnership contribution plans, the resulting contributions are attributed by the recipient to both the participating partners and the partnership as well. The proposed factual situation presented by AICPA PAC differs from the factual situations addressed in those Advisory Opinions. However, they are analogous and instructive. Nevertheless, based on conversations with Commission staff, our understanding is that AICPA PAC's question presents an issue of first impression which this letter requests the Commission to address.

I. Facts

The AICPA is the national professional membership organization for Certified Public Accountants ("CPAs") having a current membership of around 328,000 -- approximately three

out every four CPAs in the United States. It incorporated in the District of Columbia as a non-profit corporation. The AICPA qualifies as a trade association as defined at 11 CFR § 114.8(a).

AICPA PAC is registered with the FEC as an SSF which has qualified as a multicandidate committee and for which the AICPA is the connected organization.[1] AICPA PAC is subject to the requirement set forth at 11 C.F.R. § 110.1(e) of attributing a contribution from a partnership to both the partnership itself and to each partner according to one of the methods described in the regulation.

Many AICPA members practice their profession as members of professional partnerships. The AICPA believes it has a unique, although informal and unofficial, relationship with these partnerships because of the high number of practicing accountants who belong to the AICPA.

As an administrative convenience and at the request of their partners who are members of the AICPA, partnerships often will deduct each partner's AICPA membership dues from the partner's compensation and aggregate all of the partners' dues payments into a single check transmitted to the AICPA. Similarly, AICPA PAC would like to accept voluntary contributions made by members of a partnership who also are members of the AICPA ("partner/members") when, for the sake of administrative convenience, each contributing partner/member directs the partnership to deduct his/her individual contribution from that partner/member's compensation, the partnership aggregates these individual contributions into a single check drawn on the partnership's operating account, and the partnership sends the check to the AICPA PAC.

In connection with such contributions, AICPA PAC would like to attribute such a contribution only to the contributing partner/members, and not to the partnership itself, because the partnership would, in effect, be acting in a capacity identical to a conduit or collecting agent. The AICPA and AICPA PAC believe that the administrative function of aggregating individual partner/member contributions that have been deducted from their individual compensation would make contributions to the AICPA PAC more convenient to partners who are AICPA members and potentially encourage more widespread participation in the PAC. However, FEC Advisory Opinions do not specifically address the permissibility of attributing contributions aggregated in such a manner only to the individual partners contributing in such a manner.

II. While current FEC Advisory Opinions on payroll deduction or other partnership contributions do not specifically address AICPA PAC's question, they do support payroll deduction to facilitate partner participation as an administrative mechanism.

Advisory Opinion 1982-63 permitted partners in a partnership to authorize their firm to withhold a specified amount from their share of the firm's profits and to transfer that amount directly to the non-connected PAC sponsored by the partnership. Advisory Opinion 2005-20 approved the use of an automated electronic payroll system for voluntary contributions by a firm's partners to the partnership's PAC. However, AICPA PAC is not the PAC of any

[1] AICPA PAC was previously registered with the FEC as the American Institute of Certified Public Accountants Effective Legislation Committee.

partnership, nor it is affiliated with any PAC sponsored by a partnership. Therefore, while helpful in support of a partnership's ability to deduct PAC contributions from partner compensation, these opinions do not specifically indicate how a check forwarded by a partnership to AICPA PAC would be treated.

Other Advisory Opinions permit a partnership to establish an internal plan to facilitate contributions from individual partners, or from the partnership itself, to federal candidates and candidate committees. Advisory Opinions 1981-50 and 1984-18 permitted a partnership to establish a system facilitating voluntary contributions to "candidates for federal office." These opinions did not address contributions to SSFs nor, in particular, did they address contributions to an SSF connected to an organization of which many, if not most, partners in a partnership are members.

Advisory Opinion 1982-13 approved a contribution plan pursuant to which partners could agree on an amount to be budgeted for *partnership* political contributions. This Advisory Opinion involved a set of facts in which the partnership expressly intended that contributions would be made from partnership assets[2] and, moreover, also appears to have involved contributions to "Federal, state, and local candidates and political committees," without specific reference to SSFs.

The facts addressed by each of the opinions clearly demonstrate an organizational effort by the partnership to encourage partners' political contributions, including plans in which groups of partners act collectively as "clearinghouses" for solicitations by federal candidates and make recommendations regarding contributions. Each of these Advisory Opinions requires that political contributions made pursuant to such approved plans be attributed by the recipients to both the partnership and the individual partners involved. AICPA PAC believes this requirement logically reflects the collective nature of the partnership's activity. However AICPA believes that its proposed method of attribution falls outside this requirement because partner/members would individually decide whether to contribute to AICPA PAC, and the partnership would only be furnishing an administrative mechanism to aggregate contributions to AICPA PAC.

I would also note that under these opinions, attributing contributions to the partnership as well as the participating partners leaves the partnership with considerable flexibility to contribute potentially to numerous Federal candidates until it reaches the biennial contribution ceiling for partnerships, which is the same as for individuals. However, under the Federal Election Campaign Act ("FECA"), an SSF may accept no more than $5000 per calendar year from a single contributor. Should AICPA PAC have to attribute to both the partners and the partnership contributions received from partners using the administrative convenience of a partnership check, the PAC's ability to receive contributions from the partnership would be exhausted as soon as only one partner, or just a few partners collectively, contributed the maximum annual amount. In this situation, therefore, utilizing the partnership as a wholly administrative mechanism to aggregate and forward its partners' contributions to the AICPA PAC would be rendered virtually useless.

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[2] The opinion refers to the requester's statement that "the Partnership has determined that it is in its best interest to make *partnership* political contributions [emphasis added] . . . "

III. Current FEC Advisory Opinions on conduits and collecting agents, while not involving the same facts as the AICPA PAC's situation, are analogous and instructive.

AICPA PAC believes that its proposed method of attribution is virtually identical to the factual situations contemplated by FEC regulations and Advisory Opinions with respect to a conduit or collecting agent, which is a person or entity that merely transmits the contributions of others without any attribution of such contributions to the conduit or collecting agent itself. However, the FEC regulations at 11 C. F. R. § 110.6 regarding conduits apply only with respect to contributions to candidates, not to SSFs.

The FEC regulations at 11 C.F.R. § 102.6 define a collecting agent as "an organization or committee that collects and transmits contributions to one or more [SSFs] to which the collecting agent is related" in the specific ways set forth in the regulation. Partnerships that have significant numbers of AICPA members who are partners, in collecting and aggregating contributions to the AICPA PAC, would be involved in a relationship with the AICPA that is analogous to those described in § 102.6(b)(i) through (iv). Therefore the Commission could look to that relationship to find that these partnerships could act as collecting agents.

Alternatively, the Commission could reach a conclusion equating this situation with that of individuals who collect and transmit contributions. The Commission's regulations regarding collecting agents do not cover individuals.[3] Specifically, the regulations provide that "an individual who collects contributions for [an SSF] shall not be considered a collecting agent for the purpose of this section."

However, there is no express exclusion in the regulation for a partnership that similarly collects and transmits contributions to an SSF. FECA and Commission regulations in other respects treat partnerships the same as individuals (e.g., partnerships and individuals have the same contribution limits). Therefore the Commission could conclude that the regulation also excludes partnerships. Under such an interpretation, our understanding is that a partnership would be able to act as a collecting agent for the AICPA PAC without having to meet the conditions defining relatedness at § 106 (b)(i) through (iv).

IV. In circumstances parallel to those involving the AICPA PAC, the Commission has allowed corporations to collect and forward contributions to a trade association of which it is a member.

In Advisory Opinion 2003-22, the Commission permitted a corporate member of a trade association to collect and forward contributions from within the corporation to the SSF of a trade association. In that opinion, the Commission noted that 11 C.F.R. § 114.8(e)(3) provides that "[t]here is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use . . . ."

Subsequently, the Commission adopted regulations permitting a corporate member of a trade association to use a payroll deduction plan enabling members of the corporation's

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[3] 11 C.F.R. § 102.6(b)(3)(ii).

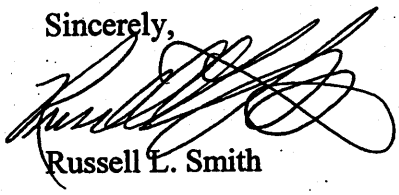
solicitable class to contribute to the trade association's SSF.[4] The Commission determined that a corporation's facilitation of such contributions to a trade association's SSF was not an unlawful corporate facilitation of contributions. By implication, the regulation permits the corporate collection and transmittal of contributions from the solicitable class to a trade association PAC by check drawn on that corporation's own account without such a transmittal check's being considered a corporate contribution (which would otherwise be unlawful). The contribution so transmitted is attributed by the recipient SSF only to the contributing personnel.

While there is no specific rule or opinion that allows partnerships having a similar relationship to a trade or professional association of which many of their partners are members to transmit contributions to the association and allow the recipient SSF to attribute the contributions only to the contributing partners, similarly in this situation the transmittal should not be considered a contribution by the partnership.

On behalf of the AICPA and the AICPA PAC, I request that the Commission clarify its rules regarding the attribution of partner contributions under the circumstances described above to permit the AICPA PAC to accept payments forwarded by partnerships aggregating the contributions made by individual partners to the AICPA PAC without attribution to the partnership.

Please feel free to call me with any questions regarding this letter or if you need further information.

Sincerely,



Russell L. Smith

[4] See 11 C.F.R. § 114.8 as amended by the Commission and published in the Federal Register of July 21, 2005.