



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 23, 2000

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-11

Jan Witold Baran  
Carol A. Laham  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Baran:

This responds to your letter dated May 12, 2000, on behalf of the Georgia-Pacific Corporation (“Georgia-Pacific”) and its separate segregated fund, G-P Employees Fund of Georgia-Pacific (the “Fund”), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to the misplacement of checks transmitting contributions received through payroll deduction.

***Background***

The Fund is a political committee that filed its statement of organization with the Commission on May 6, 1975. It has had monthly filer status since 1978. Georgia-Pacific operates a payroll deduction plan whereby eligible employees contribute to the Fund. The Fund’s immediate past treasurer, a Georgia-Pacific employee, assumed her position in 1991 and was replaced in early 2000. You state that, upon taking office, the new treasurer reviewed the Fund’s reports for 1998 and 1999 and noticed that only \$65,535 had been reported as deposited in 1998.<sup>1</sup> Based on his prior experience with the Fund, he believed that the total contribution figure, based on payroll deductions alone, should have been significantly greater. Thus, he asked the Georgia-Pacific payroll deduction department to prepare a schedule of all the payroll deduction checks it had issued to the

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<sup>1</sup> All dollar figures in this opinion are stated without cents. This has a slight effect on the total dollar amount, stated below, of payroll deduction checks issued from 1997 to 1999.

Fund from January 1, 1997, to the end of 1999. After receiving the information, he examined the Fund's bank statements to determine which checks had been deposited in the Fund's accounts. Two checks dated 12/23/97 and 1/5/98 had not been deposited. Several other checks dated between 7/27/98 and 5/18/99 also had not been deposited.

Specifically, in 1997, 25 checks were issued to the Fund by the payroll department in the aggregate amount of \$114,133. Of these, the last check of the year, in the amount of \$5,656, was not deposited. In 1998, 22 payroll checks were issued aggregating \$125,904, of which eight checks aggregating \$64,969 were not deposited. In 1999, 16 payroll checks aggregating \$125,530 were issued, of which five checks aggregating \$55,184 were not deposited. Thus, during the three years, \$365,569 in payroll deduction checks were issued, of which \$125,809 in 14 checks were never deposited.

To ensure that no money had been misappropriated, the new treasurer asked the company's accounting department to confirm that none of the checks had been negotiated. Accordingly, the new treasurer ascertained that \$125,809 in properly withheld payroll deduction contributions had not been deposited by the former treasurer. You explain that the Georgia-Pacific accounting department has a system in place whereby letters are sent to all "vendors" if a check has not been cashed within six months of issuance. Such a letter was sent with respect to the 1997 check, but the letter was received by the former treasurer. No additional letters were issued because there was a system-wide problem for all checks cut from the Georgia-Pacific headquarters. Letters were issued through October 1998 for checks issued with dates in 1997 or earlier. Due to a systems conversion occurring during 1999, however, no letters were issued to any vendors with respect to 1998 or 1999 checks.

Georgia-Pacific asked the former treasurer for an explanation of where the checks were and why they had not been deposited. She had no explanation as to why they had not been deposited, as she had regularly done earlier in the course of her tenure as treasurer. After searching her office, she was able to find most of the checks that had not been deposited in the Fund's account. Shortly thereafter, she resigned her position with Georgia-Pacific after being put on notice that that her employment would be terminated.

The new treasurer notified the Commission's Reports Analysis Division ("RAD") of this problem. After several discussions with RAD, the Fund was uncertain how to proceed. In view of the fact that the undeposited checks are stale-dated and thus non-negotiable, the Fund wishes to obtain replacement checks. Having read cautionary language in Advisory Opinion 1999-33, however, the Fund determined that it should seek an advisory opinion as to whether the issuance and deposit of such replacement checks would be lawful.

In addition, after discovering the undeposited checks, Georgia-Pacific conducted an internal audit of the Fund's accounts. This resulted in the Fund filing comprehensive amendments to its FEC reports to correct mistakes, other than the non-deposit of the 14

checks, made over the past three years. Furthermore, the Fund has recently adopted a policy of conducting an annual audit. The Fund will also now send a monthly report to Georgia-Pacific's senior management and to the Fund's advisory board, which will include a membership report, anticipated receipts, and monthly bank balances. All documents will now require the review and approval of the Fund's treasurer and assistant treasurer so that this situation cannot occur again.

You ask whether the Fund may accept new payroll deduction checks to replace those not deposited by the former treasurer, and report the contributions as of the dates of the payroll deductions. You state that the Fund is prepared to file an omnibus amendment for each affected calendar year. These amendments will provide the year-end figures on the summary and detailed summary pages, as well as a new schedule A for line 11(a)(i) which will identify all payroll deduction contributors that should have been itemized for each calendar year, in addition to the non-payroll deduction contributors previously itemized on reports.

### ***Applicable Law and Analysis***

Commission regulations permit a corporation to use a payroll deduction system for soliciting and collecting voluntary contributions from its restricted class to the corporation's separate segregated fund ("SSF"). See 11 CFR 114.5(k)(1) and 114.1(f); see also 11 CFR 114.1(j), 114.5(g)(1), and Advisory Opinions 1999-33 and 1999-3. A corporation that collects and transmits contributions to its SSF is thereby acting as a "collecting agent" under Commission regulations. 11 CFR 102.6(b)(1)(ii).<sup>2</sup> Such a corporation that follows the procedures for collecting agents set out at 11 CFR 102.6(c) is not required to register and report as a political committee, provided that it does not engage in other activities such as making contributions or expenditures for the purpose of influencing a Federal election. 11 CFR 102.6(b)(2).

When a collecting agent receives contributions such as those collected from contributors through a payroll deduction system, one of its options is to retain the funds in its treasury and keep separate records of such contributions. 11 CFR 102.6(c)(4)(ii)(B). However, the collecting agent has certain obligations with respect to the transmittal of such contributions. An individual's contribution of \$50 or less shall be forwarded to the SSF's treasurer within 30 days of the collecting agent's receipt. 11 CFR 102.6(c)(4) and 102.8(b)(1); 2 U.S.C. §432(b)(2)(A). If the contribution exceeds \$50, the collecting agent must forward the contribution within 10 days of its receipt, along with the name and address of the contributor and the date of receipt of the contribution. For contributions over \$200, the contributor's occupation and employer must also be forwarded with the contribution. 11 CFR 102.6(c)(4) and (5), and 102.8(b)(2); 2 U.S.C.

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<sup>2</sup> A collecting agent may be either: (i) a committee, whether or not it is a political committee, that is affiliated with the SSF; (ii) the SSF's connected organization; (iii) a parent, subsidiary, branch, division, department, or local unit of the connected organization; or (iv) a local, national, or international union collecting contributions on behalf of the SSF of any federation with which the union is affiliated. 11 CFR 102.6(b)(1)(i)-(iv).

§432(b)(2)(B). The date of receipt of the contribution is the date that the collecting agent obtains possession. 11 CFR 102.8(b)(2); see, e.g., Advisory Opinion 1999-33. Commission regulations also require the deposit of committee receipts in the committee's depository within ten days of the receipt by the committee treasurer. 11 CFR 103.3(a).<sup>3</sup> Thus, in the case of a check containing payroll deducted contributions, that is transmitted by a collecting agent to a committee, the check must be deposited within ten days of the receipt of the check.

Commission regulations provide that contributions are considered to be made when the contributor relinquishes control over the contributions, and that a contributor relinquishes control when the contribution is delivered by the contributor to the political committee or an agent of the committee. 11 CFR 110.1(b)(6). Thus, contributions by payroll deduction are made by the donors on each date that the funds are withheld from salary payments made to them. See Advisory Opinion 1999-33. In a payroll deduction system, contributions are also, in effect, received by the collecting agent and, hence, by the committee on that date. *Id.*

When an individual's contributions aggregate in excess of \$200 for the calendar year, the SSF must disclose the date of receipt for the contribution that brings the total amount above \$200, along with the identification of the contributor and his aggregate year-to-date total. 2 U.S.C. §434(b)(3)(A); 11 CFR 104.3(a)(4)(i). The identification of the contributor is her name, address, occupation, and name of employer. 2 U.S.C. §431(13)(A); 11 CFR 100.12. An SSF receiving contributions through payroll deduction, however, does not need to separately itemize each contribution received from the contributor during that reporting period. Instead, for the reporting period in which the \$200 aggregate amount has been exceeded and for each succeeding reporting period in that year, it may report the aggregate amount received from the contributor through payroll deduction during the reporting period, the identification of the individual, and a statement of the amount deducted per pay period. 11 CFR 104.8(b). In addition, the SSF must report the totals of the contributions received and the amounts that were itemized and unitemized. 2 U.S.C. §434(b)(2)(A); 11 CFR 104.3(a)(2)(i). The foregoing information is required to be disclosed in the reports covering the period in which the contributions were received. See 2 U.S.C. §434(a)(4); 11 CFR 104.5(c).

In a recent opinion, the Commission examined a situation where certain payroll deducted monthly contributions to a corporation's SSF, collected over a 20-month period from restricted class employees in a particular region, were inadvertently held by the corporation in a general ledger account because the region had not been converted to the corporation's new centralized payroll system and operated on a separate stand alone system. Advisory Opinion 1999-33. The retention of the contributions was detected when the regional office converted to the new system and the PAC received year-to-date

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<sup>3</sup> The Act and Commission regulations also contemplate that the treasurer will have authorized agents to receive contributions and make expenditures for the committee. See 2 U.S.C. §432(a); 11 CFR 102.9. Thus, the Commission has construed 11 CFR 103.3(a) to apply to committee employees and others who were performing treasurer duties. See Advisory Opinions 1992-29 and opinions cited therein.

PAC contribution information on the contributing employees in that region. The corporation asked the Commission whether it could deposit the funds in the PAC accounts and report them appropriately on monthly reports. The Commission concluded that the contributions could be deposited into the PAC account, but that report amendments were required for each of the 20 reports covering the periods in which the payroll deducted contributions were originally received and not properly reported in compliance with the above-described reporting provisions.

The Commission concludes that the Fund's situation may be treated similarly to that of the PAC in Advisory Opinion 1999-33. In each situation, the failure to comply with the rules related to the forwarding and deposit of contributions already collected (forwarding in Advisory Opinion 1999-33 and deposit in the Fund's situation) does not appear to have been intentional.<sup>4</sup> Moreover, regardless of the stage at which the forwarding of contributions stopped (i.e., whether before or after the actual transmittal of funds to the PAC by the collecting agent), the contributions at issue were deducted from the contributors' payroll checks. Thus, the contributor not only released control of the funds, but also no longer had possession of them; in each case, they were in the accounts of the collecting agent. Those who contributed by payroll deduction to the PAC had presumably already manifested an intent over a period of time (via an unrevoked, voluntary payroll deduction authorization) to relinquish control over those funds on a periodic basis for the purpose of allowing the PAC to use them.<sup>5</sup> Thus, barring the deposit of the funds into the PAC account would not effectuate the intent of contributors who have lawfully relinquished control and possession of the funds.

Accordingly, the Fund may accept new payroll deduction checks to replace those not deposited by the former treasurer. Your proposed report amendment procedure is, however, inadequate for the situation presented. As in Advisory Opinion 1999-33, the Fund must fully report the contributions as of the date of the deductions in accordance with the specific requirements of the Act and regulations. The Fund must amend each of the previous monthly and other required reports (e.g., pre-general and post-general reports) covering the periods of these payroll deductions in order to reflect the dates of receipt of the contributions. Each report shall be amended in accordance with the disclosure provisions discussed above. Thus, each of the amended reports shall include revised totals on the summary page and detailed summary page, and the Schedule A of each report naming a contributor should be amended.<sup>6</sup> Each amended report should also be accompanied by a short statement which explains why the report is being amended (including the reasons for the late disclosure) and which makes reference to this advisory

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<sup>4</sup> From the account in your request, it appears that, although the treasurer must have known that she had received checks and that they were supposed to be deposited in the PAC's account, her failure to deposit does not appear to have been for the purpose of self enrichment or any other improper disposition.

<sup>5</sup> The Commission presumes that these contributions complied with the Act's limits and were from lawful sources.

<sup>6</sup> You may follow the procedures set out in 11 CFR 104.8(b) for contributions aggregating in excess of \$200 in the calendar year, and the amounts in excess of \$200 should be included in the itemized totals on the detailed summary page. For an illustration of reporting by SSFs under 11 CFR 104.8(b), refer to the Commission's publication, *Campaign Guide for Corporations and Labor Organizations*, on page 32.

opinion. The required amendments should be filed with the Commission within 30 days after the Fund receives the first replacement check from Georgia-Pacific.<sup>7</sup>

The Commission cautions that this advisory opinion may not fully resolve the issues raised by this matter. Advisory opinions address specific transactions or activity that the requester “plans to undertake or is presently undertaking and intends to undertake in the future.” 11 CFR 112.1(b). They do not address past activity, except to the extent past activity is proposed to continue or recur. The activities of the Fund and its treasurer may be addressed in an enforcement context by the Commission. See 2 U.S.C. §437g; 11 CFR Part 111. If so, there may be remedies and penalties in that process that would be separate and distinct from the actions already implemented by the Fund and those prescribed in this opinion.

This response is based on the specific facts of your request and may not be relied upon by any person engaged in a transaction or activity which is distinguishable in any material respect. See 2 U.S.C. §437f.

Sincerely,

(signed)

Darryl R. Wold  
Chairman

Enclosures (AOs 1999-33, 1999-3, and 1992-29)

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<sup>7</sup> These amended reports will also need to include reports for periods during which the former treasurer deposited the checks, because the Fund’s year to date contribution totals and cash-on-hand figures, as well as individual contributor’s totals, will be affected.