



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 29, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2008-05

Christopher DeLacy, Esq.
Holland & Knight LLP
2099 Pennsylvania Ave., N.W., Suite 100
Washington, D.C. 20006-6081

Dear Mr. DeLacy:

We are responding to your advisory opinion request on behalf of Holland & Knight LLP (the "Firm"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the Firm's status as a corporation or a partnership under the Act and Commission regulations. The Firm asks if it may administer and "financially support" the Holland & Knight Committee for Effective Government (the "Committee") as its separate segregated fund ("SSF").

The Commission concludes that the Firm is a partnership under the Act and Commission regulations, and not a corporation. Hence, all administrative and financial support provided to the Committee by the Firm would constitute contributions subject to the Act's amount limitations.

Background

The facts presented in this advisory opinion are based on your letter received on May 13, 2008, and your emails received on May 15, 2008 and June 26, 2008.

The Firm is a law firm that is a limited liability partnership ("LLP") organized under the laws of Florida. On October 1, 2007, the Firm elected to classify itself as an association taxable as a corporation for Federal tax purposes pursuant to 26 CFR 301.7701-3. The Firm will continue to be treated as an LLP under Florida law and the

law of all other states in which it operates. The Firm will be taxed as a partnership in Massachusetts and Florida, although it will be taxed as a corporation in other States in which it operates.

The Committee filed a statement of organization on December 12, 2006 and is a nonconnected multicandidate committee.

Questions Presented

- (1) Is the Firm a corporation or a partnership under the Act and Commission regulations?*
- (2) May the Firm administer and financially support the Committee as its SSF?*
- (3) If the answer to Question 2 is no, may the Firm continue to contribute to the Committee as a nonconnected political committee?*

Legal Analysis and Conclusions

- (1) Is the Firm a corporation or a partnership under the Act and Commission regulations?*

The Firm is a partnership under the Act and Commission regulations because it is an LLP under Florida law.

As described in more detail below, whether the Firm is a corporation for purposes of the Act determines whether it may pay administrative expenses of the Committee without those amounts being a “contribution or expenditure” as defined in the Act and Commission regulations.¹

Neither the Act, Commission regulations, nor the Act’s legislative history define “corporation” or “partnership.” Instead, the Act’s legislative history and Commission regulations rely on State law to distinguish a partnership from a corporation. For example, in considering how the predecessor of 2 U.S.C. 441b’s prohibition on corporate contributions applied to a “professional corporation composed of doctors, lawyers, architects, engineers, etc.,” the Committee on House Administration stated that “[w]hether or not a professional association is a corporation is a matter determined under State law.” *See* H.R. Rep. 93-1239, 93d Cong., 2d Sess., at 21 (1974), *reprinted in*

¹ The definition of “contribution or expenditure” includes a “gift of money . . . or anything of value” in connection with a Federal election. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a); *see also* 2 U.S.C. 431(8) and (9); 11 CFR 100.52 and 100.111.

Legislative History of the Federal Election Campaign Act Amendments of 1974 (“1974 Act Legislative History”), at 655 (1977); accord H.R. Rep. No. 93-1438, 93d Cong., 2d Sess., at 68 (1974) (Conf. Rep.), reprinted in *1974 Act Legislative History*, at 1012 (1977).²

The Commission created a limited exception to the application of State law when it promulgated regulations with respect to a different business form, limited liability companies (“LLCs”). While Commission regulations define an LLC as “a business entity that is recognized as a limited liability company under the laws of the State in which it is established,” the regulations treat as corporations LLCs that elect to be treated as corporations by the Internal Revenue Service under 26 CFR 301.7701-3. 11 CFR 110.1(g)(1) to (3). However, in promulgating its LLC rules, the Commission emphasized that:

[Section 110.1(g)(1) to (3)] should be viewed as a narrow exception to its general practice of looking to State law to determine corporate status. The Commission will continue to treat all entities that qualify as corporations under State law as corporations for FECA purposes.

Explanation and Justification for Final Rules on Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37397, 37398 (July 12, 1999) (“LLC E&J”).

Thus, because the Firm is not an LLC, the Commission looks to State law in the Firm’s State of organization to determine whether the Firm is a corporation. Accordingly, because the Firm is organized and operates as an LLP under the laws of Florida, and not as a corporation, it is treated as a partnership under the Act and Commission regulations.³

(2) *May the Firm administer and financially support the Committee as its SSF?*

No, because the Firm is a partnership, it may not pay the Committee’s administrative expenses if these amounts exceed \$5,000 per calendar year.

Although the Act generally prohibits a corporation from making contributions or expenditures in connection with a Federal election, the Act exempts from the definition

² Commission regulations addressing membership organizations, cooperatives, and corporations without capital stock similarly state that “[t]he question of whether a professional organization is a corporation is determined by the *law of the State in which the professional organization exists*” [emphasis added]. 11 CFR 114.7(d).

³ This conclusion is consistent with the Firm’s operation as a partnership in other States. It is also consistent with previous advisory opinions involving limited liability partnerships where the Commission treated these entities as partnerships for purposes of the Act and Commission regulations. See Advisory Opinions 2006-13 (Spivack) and 2005-20 (Pillsbury Winthrop Shaw Pittman).

of “contribution or expenditure” a corporation’s costs for establishing, administering, or soliciting contributions to, its SSF established for political purposes. *See* 2 U.S.C. 441b(a) and 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii) and 114.2(b). However, the Act generally does not extend to a partnership the ability granted to a corporation to set up an SSF and avail itself of the contribution and expenditure exemptions. *See, e.g.*, Advisory Opinions 2001-07 (NMC PAC), 1991-1 (Deloitte & Touche PAC) and 1990-20 (Bradbury, Bliss); *see also* 2 U.S.C. 441b(b)(2)(C) and 11 CFR 114.1(a)(2)(iii). Because the Firm is not a corporation under the Act and Commission regulations, the Firm may not treat the Committee as its SSF and may not treat disbursements for the costs for administering the Committee, or for soliciting contributions to the Committee, as exempt from the definition of “contribution or expenditure” in the Act and Commission regulations.

(3) *If the answer to Question 2 is no, may the Firm continue to contribute to the Committee as a nonconnected political committee?*

Yes, the Firm may make contributions to the Committee of up to \$5,000 per year.

A partnership is a person under the Act and Commission regulations. 2 U.S.C. 431(11); 11 CFR 100.10. As such, a partnership is limited to contributing no more than \$5,000 per year to a nonconnected committee. *See* 2 U.S.C. 441a(a)(1)(C) and 11 CFR 110.1(d).⁴ Thus, the Firm may make contributions of up to \$5,000 per year to the Committee. In addition, these contributions are attributable both to the Firm and to its partners.⁵ 11 CFR 110.1(e)(1) and (2).

The Commission expresses no opinion regarding any tax ramifications of the proposed activities because those questions are not within the Commission’s jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific

⁴ Further, contributions by the Firm to the Committee must be paid for with funds from permissible sources (*i.e.*, funds not prohibited by 2 U.S.C. 441b, 441c, 441e, 441f, and 441g).

⁵ Although you assert that the Firm’s election to classify itself as an association taxable as a corporation for Federal tax purposes would make it difficult (or impossible) for the Firm to comply with section 110.1(e)(1), it is not clear why the Firm could not attribute contributions among the Firm’s partners in proportion to partners’ shares of Firm profits, or pursuant to an agreement among partners, so long as no portion of the contribution comes from profits of a partner who is a prohibited source (*e.g.*, a corporation). *See* 11 CFR 110.1(e). It is also not clear why the Firm could not attribute contributions among the Firm’s partners in proportion to their ownership interests in the Firm. *Id.*

transaction or activity which is indistinguishable in all its material respects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions and case law. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Donald F. McGahn II
Chairman