



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission
Staff Director
Acting General Counsel
FEC Press Office
FEC Public Disclosure

FROM: Office of the Commission Secretary *JS*

DATE: August 3, 2011

SUBJECT: Comment on Draft AO 2011-14
(Utah Bankers Association and Utah Bankers
Association Action PAC)

Transmitted herewith is a timely submitted comment from Utah Bankers Association and Utah Bankers Association Action PAC by Kirk L. Jowers and Matthew T. Sanderson regarding the above-captioned matter.

Draft Advisory Opinion 2011-14 is on the agenda for August 4, 2011.

Attachment



Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
202-862-5000 202-429-3301 Fax
www.caplindrysdale.com

August 3, 2011

VIA FACSIMILE

P. Christopher Hughey, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: Comment on Commission Drafts for Pending Advisory Opinion Request
2011-14**

Dear Mr. Hughey:

This letter is a brief comment about the Commission's recently released drafts for Pending Advisory Opinion Request 2011-14. It is filed on behalf of the Utah Bankers Association ("UBA") and the Utah Bankers Association Action PAC ("UBAA PAC").

The Commission's drafts conclude that if one of UBA's affiliated state bankers associations provides monetary support to UBA for the Friends of Traditional Banking project or allows its employee to assist in the project during work time, UBAA PAC must list the state association as a "connected organization" on its Statement of Organization and include the state association in its name.¹

UBA and UBAA PAC believe the Commission's draft conclusion is incorrect for two main reasons.

First, an affiliated state association would not be a "connected organization" under these circumstances. Commission rules define a "connected organization" as "any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports a political committee."² An incorporated entity, for example, is a "connected organization" when it supports the PAC of an affiliate that is a separate, stand-alone organization.³ However, in the trade association context, an incorporated entity is not a "connected organization" when it supports the PAC of an affiliate that shares a common

¹ FEC Draft A at 11, 12. FEC Draft B at 11, 12.

² 11 C.F.R. § 100.6(a).

³ FEC Adv. Op. 2002-15 at 8 (stating that two separate but affiliated trade associations should both be listed as "connected organizations" if they provide support to a PAC); FEC Adv. Op. 1988-14 (concluding that two separate but affiliated corporations should both be listed as "connected organizations" if they provide support to a PAC).

organizational umbrella.⁴ Indeed, the Commission once addressed the issue of support between affiliated state-level banking associations that were members of the Independent Bankers Association of America.⁵ The Commission stated that “any of the SIBAs [ed: the abbreviation used for state-level banking associations] ... could send a solicitation to the eligible personnel urging them to make voluntary contributions to ... any of the SIBA PACs.”⁶ State-level banking associations that used paid staff time to solicit for their affiliates’ PACs were not identified as “connected organizations” by the Commission. Here, a UBA-affiliated state bankers association may similarly offer monetary or employee support for the Friends of Traditional Banking project without becoming UBAA PAC’s “connected organization” because UBA and affiliated state bankers associations share the common organizational umbrella of the American Bankers Association. UBAA PAC therefore need not list another state association as a “connected organization” on its Statement of Organization or include another state association in its name.

Second, even if an affiliated state association were somehow a “connected organization,” it would not be included in UBAA PAC’s name. Commission regulations stipulate that “a separate segregated fund established by a subsidiary need not include in its name the name of its parent or another subsidiary of its parent,” even if the parent or other subsidiary would otherwise qualify as a “connected organization.”⁷ This PAC naming rule applies to entities that are not technically subsidiaries of any organization.⁸ And the Commission has flexibly interpreted PAC naming provisions in order to “provide the public with a more accurate understanding of the PAC’s funding and purpose.”⁹ For Pending Advisory Opinion Request 2011-14, UBA and its fellow state-level bankers associations, though not technically subsidiaries, are affiliated with the national-level American Bankers Association organization. Because the UBA is an entity that falls under a national organizational umbrella, UBAA PAC should be permitted, like any other subordinate-type entity’s PAC, to exclude from its name any reference to UBA-affiliated state bankers associations. Such an interpretation is especially justified here to further disclosure objectives that undergird the PAC naming rule. Although UBA’s affiliated state associations may provide some monetary or employee support for the specific Friends of Traditional Banking project, UBA will remain the principal source of funding and staffing for UBAA PAC’s overall activities. UBA-affiliated state associations that provide support could be listed as “connected organizations” on UBAA PAC’s Statement of Organization, if necessary, but referencing numerous state associations in UBAA PAC’s name would only confuse the public. Allowing UBAA PAC to exclude from its name any reference to UBA-affiliated state bankers associations,

⁴ See 11 C.F.R. § 100.6(b) (“For purposes of 11 CFR 100.6, organizations which are members of the entity (such as corporate members of a trade association) which establishes, administers, or financially supports a political committee are not organizations which directly or indirectly establish, administer or financially support that political committee.”); FEC Adv. Op. 1995-28 at 5 (permitting incorporated entities to defray a trade association PAC’s administrative costs without becoming a “connected organization”). See also FEC Adv. Op. 1995-17 at 8; FEC Adv. Op. 1989-18 at 2.

⁵ FEC Adv. Op. 1995-12.

⁶ FEC Adv. Op. 1995-12 at 9.

⁷ 11 C.F.R. § 102.14(c).

⁸ FEC Adv. Op. 1997-13 at 6 (allowing PAC name to exclude connected organization’s affiliated entities where PAC’s connected organization was not “technically a subsidiary” of any organization).

⁹ FEC Adv. Op. 2004-42 at 4.

Caplin & Drysdale
C H A R T E R E D

however, would "provide the public with a more accurate understanding of the PAC's funding and purpose."

In sum, UBA and UBAA PAC believe the Commission's draft conclusion is incorrect because an affiliated state association would not be a "connected organization" and because even if an affiliated state association were somehow a "connected organization," it would not be included in UBAA PAC's name.

Please contact us if you have any questions regarding the Advisory Opinion Request or this comment.

Sincerely,



Kirk L. Jowers
Matthew T. Sanderson
Caplin & Drysdale, Chtd.

cc: Office of the Commission Secretary