

Comment on AOR 2012-16

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April 19, 2012

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VIA FACSIMILE (202.219.3923)

Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463Re: Comments on Advisory Opinion Request 2012-16 (King for Senate and
Pierce Atwood LLP)

Dear Mr. Herman:

These comments are respectfully submitted regarding Advisory Opinion Request 2012-16 (King for Senate and Pierce Atwood LLP). We write as attorneys who regularly practice before the Federal Election Commission ("Commission" or "FEC"). Our comments reflect our own views and not that of any particular client.

We urge the Commission to confirm that Pierce Atwood LLP may provide to King for Senate pro bono legal services related to FEC compliance. We also urge the Commission to confirm that the exemptions for (1) individual volunteer use of corporate or labor organization facilities, 11 C.F.R. § 114.9, and (2) political committee use of meeting rooms, 11 C.F.R. § 114.13, apply to federal contractor partnerships.

I. Section 114.9 Should Apply By Analogy To Federal Contractor Partnerships

Unlike most law partnerships, federal contractor partnerships are prohibited from making contributions or expenditures in connection with federal elections. 11 C.F.R. § 115.4(a). However, partners and employees of federal contractor partnerships may make contributions and expenditures in their own names and from their personal funds. *Id.* § 115.4(b), (c). Federal contractor partnerships also may use partnership resources to facilitate their partners' and employees' political contributions, provided that a permissible source pays in advance the usual and normal charge for such use so that a prohibited federal contractor contribution does not result. *See, e.g.,* Advisory Opinion 2005-20 (permitting partners of federal contractor law firm to use the firm's payroll deduction system to make



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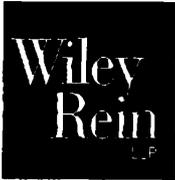
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contributions to a nonconnected PAC, provided that the PAC pay in advance the costs associated with using the payroll deduction system).

A partnership is neither a corporation nor a labor organization and therefore cannot benefit from the exemption for establishment, administration, and solicitations costs on behalf of a separate segregated fund. *See Cal. Med. Assoc. v. Fed. Election Comm'n*, 453 U.S. 182 (1981); Advisory Opinions 1994-11, 1992-17, 1990-20, 1982-63, 1981-56, 1981-54. The Commission, however, has ruled on several occasions that the exemption at Section 114.9 for individual volunteer use of corporate or labor organization facilities, including the so-called "safe harbor" for occasional, isolated, or incidental use of resources, applies "by analogy" to partnerships. *See* Advisory Opinion 2001-07 at 9 ("By analogy to 11 CFR 114.9(c) and (d), NMCPAC may pay NMC the usual and normal charge for the use of office facilities . . . within a commercially reasonable time."); Advisory Opinion 1979-22 at 3 n.2 (Section "114.9 of the Commission's regulation, which deals with the use of corporate facilities, would appear to be applicable by analogy . . ."). The Commission has made clear that a corporation, labor organization, or partnership does not make a contribution or expenditure—and reimbursement is not required—when an employee uses its facilities for volunteer purposes on an occasional, isolated, or incidental basis. *See* Advisory Opinion 1979-22 at 3. If a partnership does not make a contribution or expenditure when an employee uses its facilities in accordance with Section 114.9, then it follows that a federal contractor partnership does not make a prohibited contribution or expenditure when an employee makes the same use. The Commission has not directly stated this and we urge the Commission to do so now.

II. Section 114.13 Should Also Apply By Analogy To Partnerships, Including Federal Contractor Partnerships

Section 114.9(d), which the Commission has said applies to partnerships by analogy, *see supra*, requires persons who are not employees or other qualified individuals, including political committees, to reimburse the corporation or labor organization (or by analogy, partnership) for the use of the facilities at the usual and normal charge. Section 114.13 permits a corporation or labor organization to make its meeting rooms available to political committees at a reduced rental rate or for free if certain criteria are met. Advisory Opinion Request 2012-12 does not specifically mention the exemption for political committee use of meeting rooms at Section 114.13. The requestors contemplate that King for Senate might "use"



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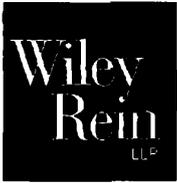
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Pierce Atwood LLP's meeting rooms, even if the use is by Pierce Atwood's employees on more than an occasional, isolated, or incidental basis. *See* Advisory Opinion Request 2012-16 at 5, 9. Requestors indicate that Pierce Atwood LLP under certain circumstances intends to charge a fee to King for Senate for use of meeting rooms. *Id.* This may be unnecessary if Section 114.13 applies and the firm satisfies its conditions. Analyzing whether the use of meeting rooms for political purposes is permissible inherently involves both Section 114.9 and Section 114.13. The Commission has not directly addressed whether the exemption for political committee use of meeting rooms at Section 114.13 extends to partnerships; we believe that it does.

The Commission, in creating Section 114.13, correctly concluded that the free use of a meeting room by a candidate or committee does not create a contribution or expenditure if the room is made available for free to other non-political organizations. If a corporation or labor organization does not make a prohibited contribution or expenditure when it makes a meeting room available to a political committee under Section 114.13, then by analogy a partnership, including a federal contractor partnership, also would not make a prohibited contribution or expenditure when it makes a meeting room available under the conditions of Section 114.13. As with the exemption for individual volunteer use of corporate or labor organization facilities discussed above, the exemption for political committee use of meeting rooms has no relation to the exemption for separate segregated funds, which is the only exemption to date that the courts have held are strictly limited to corporations and labor organizations. *See supra.* Given that the Commission could apply by analogy this exemption to partnerships, and given that this exemption does not result in a contribution or expenditure, we urge the Commission to clarify that Section 114.13 applies by analogy to partnerships, including federal contractor partnerships.

III. Conclusion

For the foregoing reasons, we respectfully urge the Commission to (1) issue an advisory opinion confirming that Pierce Atwood LLP may provide to King for Senate pro bono legal services related to FEC compliance; (2) clarify in its advisory opinion that the exemption for individual volunteer use of corporate and labor organization facilities at 11 C.F.R. § 114.9 applies by analogy to federal contractor partnerships; and (3) clarify in its advisory opinion that the exemption



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for political committee use of corporate and labor organization meeting rooms at
11 C.F.R. § 114.13 also applies by analogy to federal contractor partnerships.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Witold Baran".

Jan Witold Baran
Brandis L. Zehr