



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

August 31, 2022

ADVISORY OPINION 2022-16

Graham M. Wilson, Esq.  
Jacquelyn K. Lopez, Esq.  
Johnathan A. Peterson, Esq.  
Andrea T. Levien, Esq.  
Zachary P. Morrison, Esq.  
Elias Law Group  
10 G Street NE, Suite 600  
Washington, DC 20002

Dear Counsel:

We are responding to your advisory opinion request on behalf of the Democratic Senatorial Campaign Committee and the Democratic National Committee Services Corporation/Democratic National Committee (collectively, the “Committees”), concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the Committees’ proposed retention and use of contributions that were untimely deposited into the Committees’ bank accounts by the Committees’ “contribution caging vendor” (the “Vendor”).

The Commission concludes that the Committees may retain and use the late-deposited contributions because the delay in depositing them resulted from events that were outside of the Committees’ and the Vendor’s control, the Committees took prompt remedial action after discovering the untimely deposits, and there was no evidence of ill intent on the part of the Vendor.

***Background***

The facts presented in this advisory opinion are based on your letter received on June 28, 2022.

The Committees are national party committees.<sup>1</sup> For over 12 years, the Committees have each contracted with and received services from the Vendor.<sup>2</sup> Under the Committees' contracts with the Vendor,<sup>3</sup> the Vendor directly receives and processes contributions designated for the Committees and electronically deposits them into the Committees' designated bank accounts. The contracts further require the Vendor to comply with the Act and Commission regulations, including the requirement to deposit all contributions within 10 days of receipt.<sup>4</sup> The contracts contain safeguards designed to ensure the Vendor's timely deposit of the Committees' contributions. The Vendor is required to check the Committees' designated mailbox every business day and to deposit all contributions promptly, for which service the Committees pay the Vendor "premium rates."<sup>5</sup>

Over the course of their working relationship, the Committees say they regularly engaged with the Vendor's personnel to ensure the Vendor met its legal and contractual obligations. The Committees assert that they closely monitored the timing of the Vendor's deposits of their contributions and "took every reasonable step" to ensure timeliness.<sup>6</sup> According to the Committees, "over the many years that the Committees have worked with [the] Vendor, there has never previously been a significant issue of late-deposited contributions."<sup>7</sup>

Beginning in April 2022, however, the Vendor began experiencing "severe delays" in processing and depositing the Committees' contributions.<sup>8</sup> As a result, the Vendor deposited many contributions in the Committee's bank accounts more than 10 days after receipt.<sup>9</sup> The Committees assert that these "late deposits occurred without [the] Committees' authorization."<sup>10</sup>

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<sup>1</sup> See DSCC current Statement of Organization (FEC Form 1) (July 1, 2022) <https://docquery.fec.gov/pdf/950/202208059525132950/202208059525132950.pdf> and DNC current Statement of Organization (FEC Form 1) (June 20, 2022) <https://docquery.fec.gov/pdf/550/202206209515068550/202206209515068550.pdf> (last visited July 18, 2022).

<sup>2</sup> Advisory Opinion Request ("AOR") at AOR001.

<sup>3</sup> "The relevant terms of the agreements between (1) DSCC and Vendor and (2) DNC and Vendor are identical for purposes of this request." *Id.*

<sup>4</sup> 11 C.F.R. § 103.3(a).

<sup>5</sup> AOR001, 6.

<sup>6</sup> AOR006.

<sup>7</sup> AOR002.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* The Committees state that all such contributions were deposited within 32 days after receipt.

Upon learning of the issue, the Committees acted “promptly” to assess and correct the problem.<sup>11</sup> They frequently communicated with the Vendor’s personnel and engaged counsel in order to ensure that the Vendor complies with its contractual and legal obligations.<sup>12</sup> The Committees assert that the Vendor is no longer processing or depositing the Committee’s contributions more than 10-days after receipt. In addition, the Committees have segregated the late-deposited contributions to prevent their being used pending the Commission’s decision in this advisory opinion.

According to the Committees, the Vendor attributed its late deposit of their contributions to a variety of factors over which the Committees had no control. These factors included turnover in the Vendor’s staff, Vendor staff unavailability due to Covid-19 infections, and a significant increase in the Vendor’s contribution-processing workload for its other clients “due to global events (e.g. the war in Ukraine).”<sup>13</sup> The Committees state that they “did not have adequate notice from [the] Vendor of the[se] issues.”<sup>14</sup>

### ***Question Presented***

*May the Committees retain and use the contributions that the Vendor failed to deposit within 10 days of receipt when the delay was not the responsibility or fault of the Committees under the circumstances presented here?*<sup>15</sup>

### ***Legal Analysis***

Yes, the Committees may retain and use the contributions that the Vendor failed to deposit within 10 days of receipt under the circumstances presented here.

Commission regulations require all receipts by a political committee to be deposited in an account established by the committee at its campaign depository within

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> AOR003.

10 days of receipt by the committee's treasurer.<sup>16</sup> Political committees may also return contributions within 10 days of receipt without depositing them.<sup>17</sup>

The Commission has considered the 10-day deposit timeframe in several advisory opinions in which contributions were not timely deposited for various reasons. In certain situations, the Commission has interpreted the Act and Commission regulations as allowing political committees to deposit and use such contributions.

For example, in Advisory Opinion 1999-23 (Arkansas Bankers) and Advisory Opinion 1992-42 (Lewis for Congress), the Commission concluded that two political committees that had been prevented from receiving or depositing contribution checks because the checks had been lost in the mail could obtain and deposit replacement checks and, further, should report them as if the original contribution checks had been timely received and deposited. Similarly, in Advisory Opinion 1993-05 (Fields for Congress), the Commission concluded that a political committee that had been prevented from timely depositing contribution checks because postal service personnel had removed the checks from the committee's post office box without notifying the committee could, after obtaining possession of the checks, deposit and report the checks as having been timely received and deposited. In these cases, the committees were prevented from complying with the regulatory 10-day deposit requirement by circumstances beyond their control, and they acted reasonably promptly to remedy the noncompliance after discovering it.<sup>18</sup>

In two other advisory opinions, even though the late-deposited contributions were in the control of the requestors or their separate segregated fund ("SSF"), the Commission allowed the requestors to acquire replacement checks but required them to take the remedial action of amending all previously filed FEC reports and include an explanation and a reference to the advisory opinion. In Advisory Opinion 1999-33 (MediaOne PAC), a branch office retained payroll deduction contributions on its general ledger instead of forwarding them to the corporation's SSF. Two years later when the error was discovered, the Commission stated that the funds were entirely under the control of the corporation or its regional offices and concluded that the requestor must take remedial action.

Further, in Advisory Opinion 2000-11 (Georgia-Pacific), the corporation collected and timely forwarded payroll deductions to its SSF. Upon the arrival of a new treasurer at the SSF, it was found that some two-to-three-year-old checks had not been deposited.

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<sup>16</sup> 11 C.F.R. § 103.3(a). *See also* 52 U.S.C. § 30102(h)(1). Because in this case the Vendor received the contributions on behalf of the Committees, the 10-day deposit period began to run at the time of receipt by the Vendor. *See, e.g.*, Advisory Opinion 1989-21 (Create-a-Craft) (concluding that an entrepreneur contracted to receive contributions on behalf of several committees must deposit all contributions within 10 days of receipt).

<sup>17</sup> 11 C.F.R. § 103.3(a).

<sup>18</sup> *See also* Advisory Opinion 2001-11 (Democratic Party of Virginia) (concluding that state party committee could timely transfer funds from its non-federal account to its federal account to cover allocable expenses after committee's bank failed to comply with timely instructions to transfer funds, even though transfer occurred after regulatory deadline).

The previous treasurer had no explanation as to why they had not been deposited, as she had regularly done earlier during her several-year tenure as treasurer. Most of the missing checks were found after searching her office. After discovering the undeposited checks, Georgia-Pacific conducted an internal audit of the SSF's accounts, resulting in comprehensive amendments to the SSF's reports to be filed with the Commission. The SSF also promptly adopted policies of conducting an annual audit, monthly reporting to senior management of the corporation and the SSF's board, requiring all documents to be reviewed and approved by the treasurer and the assistant treasurer, and requested an advisory opinion. The Commission concluded that the failure to deposit the contributions in a timely manner did not appear to be intentional, stating that "although the treasurer must have known that she had received checks and 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>19</sup>

According to the request, the Committees' noncompliance with the 10-day contribution deposit requirement was due to several factors, including turnover in the Vendor's staff, Vendor staff unavailability due to Covid-19 infections, and a significant increase in the Vendor's contribution-processing workload on behalf of its other clients. Each of these causes was outside of the Committees' and the Vendor's control. There was no indication that the failure was intentional.

Further, the Committees had taken reasonable precautions to ensure that their contributions would be deposited in a timely manner, including by contractually requiring the vendor to check the Committees' mailboxes each business day and to process and deposit their contributions promptly. The Committees also monitored the Vendor's actions and the timing of their deposits.

Additionally, the Committees acted promptly to avoid future noncompliance after learning about the Vendor's untimely deposits. The Committees maintained frequent contact with the Vendor's personnel, engaged counsel, and segregated the late-deposited contributions to prevent their being used pending the Commission's decision in this advisory opinion.<sup>20</sup>

Under these circumstances, and consistent with its prior advisory opinions, the Commission concludes that the Committees may retain and use the contributions in question. The Committees should report them as if the original contribution checks had been timely received and deposited and should amend any previously filed reports affected by the late deposits based on the dates of receipt and add an explanation and reference to this advisory opinion.

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

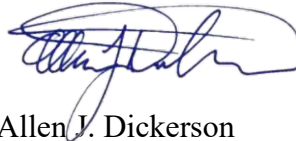
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<sup>19</sup> Advisory Opinion 2000-11 (Georgia-Pacific), n.4.

<sup>20</sup> AOR002.

request.<sup>21</sup> 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 requestors may not rely on that conclusion as support for their proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion.<sup>22</sup> Please note that 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. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen J. Dickerson", written over a horizontal line.

Allen J. Dickerson  
Chairman

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<sup>21</sup> See 52 U.S.C. § 30108.

<sup>22</sup> See *id.* § 30108(c)(1)(B).