FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5573
Richard Bornemann;	)	
Governmental Strategies, Inc.	)	

STATEMENT OF REASONS OF CHAIRMAN SCOTT E. THOMAS AND COMMISSIONERS DAVID M. MASON, DANNY L. McDONALD AND ELLEN L. WEINTRAUB

On June 20, 2005, the Commission voted 5 to 1[1] in this matter to accept a conciliation agreement with Richard Bornemann, take no further action as to Governmental Strategies, Inc., close the file and approve the appropriate letters.

During Commission discussion of this matter, some concern was raised about whether Bornemann was being found liable for a violation because of what is an everyday activity for Washington lobbyists, heretofore universally considered to be legal, *i.e.*, delivering contribution checks on behalf of corporate clients.

It is indeed true that a lobbyist's delivery of a contribution check from a corporate client's separate segregated fund (SSF) is legally permissible. Corporations may pay overhead expenses of an SSF[2], and those expenses can include postage or other delivery expenses for SSF contribution checks.

This matter involved impermissible corporate facilitation of contributions by corporate employees – not contributions made by or through an SSF. The paid lobbyist involved participated in planning and directing (choosing recipients of) the contributions at issue. He then, acting on behalf of his corporate client, personally delivered contributions known to have been collected, bundled and transmitted on behalf of the corporation using its resources. Use of corporate resources for the collection, bundling and transmittal of employees' political contributions (other than through an SSF) is corporate facilitation, prohibited by the FECA and

[1] Chairman Thomas and Commissioners Mason, McDonald, Smith, and Weintraub voted affirmatively Vice Chairman Toner dissented

[2] *See* 2 U S C § 441b(b)(2)(C), 11 CFR 114 1(b), 114 5(b)

our implementing regulations.[3] Just as corporate officers who impermissibly facilitate contributions or consent to such facilitation may be held liable under the Act, lobbyists who participate in such prohibited activity may be subject to sanction as "representatives acting as agents." 11 CFR 114.2(f)(1).

It is legal for corporations to solicit contributions from employees in the "restricted class" to candidates and political committees.[4] Lobbyists who so recommend should also take care to apprise their corporate clients or employers of the rules governing such activity – specifically that corporate solicitation of the "restricted class" (executives, administrative personnel, stockholders) is permissible but that corporate "facilitation" (collection and transmittal of contributions) is prohibited (unless through an SSF and subject to certain rules).[5] Thus, lobbyists who advise corporate clients or employers to urge executives to make contributions to federal candidates should simply remind those involved that the contributors should mail or otherwise transmit checks to the campaign directly – not through a representative of the corporation. This is a simple rule, surely not beyond the comprehension of anyone whose profession is to guide corporate clients through the labyrinthine ways of Washington.

The facts of this matter did not involve a lobbyist volunteering to assist in fundraising on behalf of a campaign or a political party. Instead, the lobbyist involved was advising the corporation regarding its employees' political contributions (including impermissible facilitation thereof) and delivering those contributions for, and as a compensated representative of, the corporation. A lobbyist volunteering in his individual capacity on behalf of a campaign may collect and forward ("bundle") contributions on behalf of the recipient campaign, party or political committee.[6] In such instances the lobbyist-volunteer may personally solicit contributions, including from employees of clients. However, such volunteer activity may not be conducted on the corporate dime (as was admitted in this matter), nor under direction of corporate managers, nor using corporate resources (except as provided in the individual volunteer exemption)[7] to collect and forward contributions.

While the question of when a lobbyist is acting on behalf of a corporate client, on the one hand, and volunteering on behalf of a campaign, on the other, could give rise to disputes, this matter did not appear to be close or confused. Lobbyists, especially those representing multiple clients, should not have great difficulty in distinguishing when they are wearing one of several different hats and in complying with the various legal obligations that pertain to their actions on behalf of clients or principals.

In summary, a lobbyist may deliver a contribution check from a SSF (corporate PAC) at a fundraiser or otherwise on behalf of and using the resources of that corporate client. A lobbyist may volunteer in an individual capacity on behalf of a campaign to raise funds, but may not use corporate funds or resources (beyond what is allowed in the individual volunteer exemption) in

[3] *See* 2 U S C § 441b(a), 11 CFR 114 2(f)
[4] *See* 2 U S C § 441b(b)(2)(A), 11 CFR 114 1(a)(2)(i), 114 2(f)(4)(ii), (iii)
[5] *See* 11 CFR 114 2(f)(4)(iii)
[6] *See* 11 CFR 100 74, 110 6(b)(2)(i)(E), (ii), 114 9(a)
[7] *See* 11 CFR 114 9(a)

so doing. A corporation may ask its "restricted class" to make contributions to candidates. The corporation, or a lobbyist acting on behalf of the corporation, may not, however, collect and forward such individual contributions to recipient campaigns. It was this last activity only that was the subject of the Commission's proceedings in this matter.

August 4, 2005

Scott E. Thomas, Chairman

David M. Mason, Commissioner

Danny L. McDonald, Commissioner

Ellen L. Weintraub, Commissioner