

JUL - 9 2008

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

P-MUR 461  
DATE ACTIVATED 4/10/08  
EXPIRATION OF SOL 8/04/08 - 3/01/12

**SOURCE**

**RESPONDENT**

Park Federal Savings Bank

**RELEVANT STATUTES**

2 U S C § 441b

**INTERNAL REPORTS CHECKED**

Disclosure Reports

**FEDERAL AGENCIES CHECKED**

**I. INTRODUCTION**

Park Federal Savings Bank ("Park"), a federally chartered savings association in Chicago, a wholly owned subsidiary of Park, GPS Corporation ("GPS") GPS made several state and local political contributions in 2006 and 2007, in violation of 2 U S C § 441b of the Federal Election Campaign Act of 1971, as amended ("Act") in that a wholly owned, state-chartered subsidiary of a federally chartered savings association cannot make contributions if it is merely the "agent, instrumentality, or alter ego" of the parent

1           We invited GPS and Park to respond to the allegations \_\_\_\_\_ and also to the  
2   circumstances surrounding Park's own apparent political contributions, which we discovered  
3   during preliminary research. Based on the information \_\_\_\_\_ and response, and as more  
4   fully set forth below, we recommend that the Commission find reason to believe that Park  
5   Federal Savings Bank violated 2 U S C § 441b by making political contributions. We further  
6   recommend that the Commission \_\_\_\_\_

7 \_\_\_\_\_  
8   **II   FACTUAL AND LEGAL ANALYSIS**

9       **A.   Facts**

10       \_\_\_\_\_ GPS engaged in the business of insurance brokerage until late  
11   1999. Since then, GPS continues to have funds in a bank account that it earned previously and  
12   remains in good standing with the Illinois Secretary of State \_\_\_\_\_.  
13   GPS's officers and directors are identical to Park's, and the GPS Board of Directors discontinued  
14   its meetings in 2005 \_\_\_\_\_

15       In its response, Park maintains that GPS is a separate entity. It states that GPS was  
16   incorporated in 1974 and conducted an active insurance agency business until 1994. See  
17   *generally* Park Response at 1. In 1994, GPS sold its insurance agency business, but not its  
18   insurance license, to a third party insurance agency. GPS continued to receive commission  
19   payments from the insurance business buyer through 1998 and earned approximately \$27,800. In  
20   addition, GPS has continued to pay to keep its insurance license because it may decide to re-enter

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1 the insurance agency business Park states that license fees and other expenses have caused GPS  
2 to incur approximately \$20,000 in "net losses" since 1999 See Park Response at 1

3 GPS made 17 contributions to state and local political committees from August 1, 2003  
4 to August 30, 2007, totaling \$7,950 <sup>2</sup> In addition Park made a \$1,250 contribution to a state or  
5 local political committee on June 1, 2004 <sup>3</sup>

6  
7  
8 Park does not address the warning by  
9 but it states in its reply that it "believes that the political contributions made by GPS  
10 were permissible contributions" and is "discontinuing the payment of any political contributions  
11 by its non-banking subsidiaries" See Park Response at 2

12 **B. Legal Analysis**

13 National banks and corporations organized by authority of any law of Congress are  
14 prohibited from making any contribution in connection with any election to any national, state, or  
15 local political office 2 U S C § 441b(a) in Advisory Opinion 1980-7  
16 (California Savings & Loan League), the Commission said that a wholly owned, state-chartered  
17 subsidiary of a federally chartered savings association could not make political contributions if  
18 the subsidiary and the parent bank could be characterized as one entity In other words, "[A]  
19 subsidiary corporation is considered a distinct legal entity, an entity in its own right, apart from  
20 the parent However, where circumstances are such that one corporation is merely an agent,

<sup>2</sup> State of Illinois campaign disclosure records show that GPS made additional contributions totaling \$2,755 dating to October 13, 1999, but these contributions are not within the five-year statute of limitations

<sup>3</sup> State of Illinois campaign disclosure records show that Park made an additional \$2,350 in political contributions that fall outside of the five-year statute of limitations

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instrumentality, or alter ego of another corporation, the notion of separate corporate existence of parent and subsidiary will not be recognized " AO 1980-7 (California Savings & Loan League) (*citing* 18 Am Jur 2d *Corporations* § 17 (1980) for discussion of parent-subsidiary relationships) (renumbered 18 Am Jur 2d *Corporations* §§ 62, 63 (2008)) In such a case, political contributions by the subsidiary would be considered prohibited political contributions by the federally chartered corporation

Courts consider a variety of factors to determine whether to disregard the corporate entity and hold a parent liable for the acts of its subsidiary, including the failure of the subsidiary to observe corporate formalities, maintain corporate records, or retain functioning officers, and its undercapitalization or insolvency See 18 Am Jur 2d *Corporations* §§ 54, 61-65 Courts will disregard the fiction of a separate legal entity when there is such domination of finances, policy, and practices by the parent that the subsidiary has no separate existence of its own and is merely a business conduit for its principal *Id* at § 65, *cf* MUR 5628 (AMBC), First General Counsel's Report at 12-13 (declining to hold parent liable where subsidiary maintained an independent management team and operated with relative autonomy from parent), AO 1998-11 (Patriot Holdings) (superseded in part by limited liability company regulations) (concluding that subsidiaries were not the "agent, instrumentality, or alter ego" of the parent entity where the parent did not pay the salaries or expenses of the subsidiaries, and the subsidiaries' contracts with third parties did not contain clauses holding the parent liable for breach)

Park and GPS argue that they are indeed two separate entities, and that, therefore, the GPS contributions are permissible, pursuant to Illinois law Specifically, they say that because

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GPS "may engage in future business activities GPS should be viewed as a separate entity "

Park Response at 1 They add that if they "did not believe that GPS would be able to conduct business activities in the future, Park would have acted to dissolve GPS " *Id* They do not, however, address whether GPS observed corporate formalities, kept corporate records, maintained separate officers, or state what functions its officers performed

The available information supports the conclusion that Park and GPS are not separate entities and were not at the time of the relevant contributions Park and GPS have the same officers and directors, and GPS is wholly owned by Park, has no employees, and has not conducted business since 1994 *See generally* 18 Am Jur 2d *Corporations* §§ 41 *et seq* (factors relevant to corporate veil-piercing analysis) GPS is not an active business despite having an up-to-date insurance license, it is not selling insurance and has not earned money since 1998 Moreover, GPS discontinued Board of Directors meetings in 2005 The GPS Board of Directors met at the time some contributions were made (from 2003-2005), but there is no information suggesting that GPS observed other corporate formalities at that time or thereafter And, although GPS maintains a separate bank account containing previously earned funds, this appears to be its sole source of independent capital In sum, GPS does not appear to be operational Accordingly, it appears that GPS may have been the "agent, instrumentality, or alter ego" of Park, and the \$7,950 in GPS contributions were subject to 2 U S C § 441b(a)

Regarding the contributions attributed to Park on the Illinois campaign disclosure website, *see supra* note 3 and accompanying text, Park claims that these were, in fact, contributions by GPS Whether or not the \$1,250 contribution within the statute of limitations was made by Park or GPS, it also appears to violate the Act, either as a direct contribution by a federally chartered savings association, or in violation of the Act as described above

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**Therefore, we recommend that the Commission find reason to believe that Park Federal Savings Bank violated 2 U S C § 441b by making political contributions. We do not recommend pursuing knowing and willful findings, even though Park continued to make GPS contributions. Because the prohibition against state and local contributions by a wholly owned, state-chartered subsidiary of a savings association appears in an advisory opinion, and Park's response indicates that it believed the contributions were legal, it is unclear whether the warning served as an adequate basis for knowing and willful findings. We are not pursuing GPS itself because if GPS is not an agent, instrumentality, or alter ego, it would not have violated the Act as section 441b does not prohibit regular corporations from making state and local political contributions.**

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**IV. RECOMMENDATIONS**

- 1      **Open a Matter Under Review**
- 2      **Find reason to believe Park Federal Savings Bank violated 2 U S C § 441b**
- 3      **Approve the attached Factual and Legal Analysis**
- 4      \_\_\_\_\_
- 5      \_\_\_\_\_
- 6      **Approve the appropriate letters**

**Thomasena P Duncan**  
**General Counsel**

**DATE** 7/9/08

**BY**   
**Ann Marie Terzaken**  
**Associate General Counsel for Enforcement**

  
**Julie McConnell**  
**Assistant General Counsel**

  
**Elena Paoli**  
**Attorney**

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