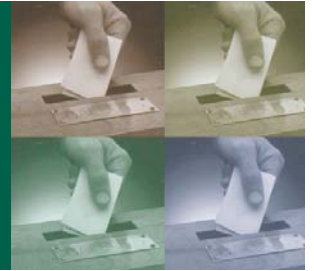




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Election Law News

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FEC Collects Big Fines for Illegal Campaign Finance Activity

The Federal Election Commission (FEC) continues to extract substantial civil penalties and other payments from organizations caught violating the nation's campaign finance laws. In addition to the civil penalties paid with respect to a corporate bundling scheme, which was reported in the September issue of *Election Law News*, the FEC recently announced two additional conciliation agreements that resulted in large payments: one with a corporation and one with a labor union.

In MUR 5628, AMEC Construction Management, Inc., made a payment of \$85,000 to the FEC in connection with FEC allegations that it reimbursed employees for political contributions and maintained special bonus structures for those employees that participated in the reimbursement process. Federal law prohibits corporations from reimbursing employees or others for campaign contributions through bonuses or otherwise.

[T]he FEC recently announced two additional conciliation agreements that resulted in substantial payments: one with a corporation and one with a labor union.

According to the conciliation agreement, the employee contributions occurred as far back as the late 1990s and resulted in contributions of nearly \$67,080. As a component of the conciliation agreement, the FEC has ceased its investigations and has agreed not to investigate the matter further. In addition, no individual paid civil

penalties in connection with the campaign finance law violations.

The conciliation agreement in MUR 5628, dated October 20, 2005, can be found using the FEC's Enforcement Query System at <http://eqs.nictusa.com/eqs/searcheqs>.

On October 27, 2005, the FEC announced a conciliation agreement with certain district and local lodges of the International Association of Machinists and Aerospace Workers (IAMAW). Through this agreement, the unions agreed to pay a civil penalty of \$151,000. The facts documented in the conciliation agreement show that the unions transferred registration fees to the unions' PAC and then reimbursed individual union members for these fees with funds from the unions' treasuries. Federal law prohibits contributions by labor unions, like corporations, in connection with federal elections.

For more information on MUR 5386, see the Enforcement Query System at <http://eqs.nictusa.com/eqs/searcheqs>. ■

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In This Issue

- 2 Recent FEC Advisory Opinions
- 2 Congress Repeals PUHCA in Energy Bill
- 3 Changes in the States: GA, ID, NY, NC and WV
- 4 SEC Adopts Changes to Rule G-37
- 4 Regulation of Political Activity on the Internet Remains Unclear
- 4 Upcoming Dates to Remember

Recent FEC Advisory Opinions

FEC ALLOWS SUGARBEET GROWERS PAC TO SOLICIT ASSOCIATION MEMBERS

On November 3, 2005, the Federal Election Commission (FEC) approved Advisory Opinion 2005-17, which provides fundraising guidance to sugarbeet growers from North Dakota and Minnesota. In the opinion, the FEC determined that an organization need not be classified as a 501(c)(6) trade association with the IRS in order to be considered a “trade association” under the Commission’s regulations. Accordingly, the FEC found the Red River Valley Sugarbeet Growers Association, a 501(c)(5) agricultural organization, to have fulfilled the requirements of a trade association.

In addition, the FEC found the Red River Valley Sugarbeet Growers Association to be affiliated with the American Crystal Sugar Company, a sugarbeet cooperative that purchases sugarbeets from growers and processes them into sugar. The FEC based its finding of affiliation on several factors, including a near total overlap between the members of the association and the owners of the company and the fact that the company collected the dues for the association by withholding the dues from the beet payments made to the farmers.

As a result of the above two findings—that the association was a trade association and that the association and company were affiliated—the FEC stated that the company could solicit contributions to its connected federal PAC from the restricted classes of the corporate members of the association that had provided prior, written authorization for such solicitations.

FEC RULES THAT KFC FRANCHISEES ARE A FEDERATION

In Advisory Opinion 2005-14, issued on October 20, 2005, the FEC found the Association of Kentucky Fried Chicken Franchisees, Inc., to be a federation of regional trade associations that are comprised of franchisees from around the country. Accordingly, the FEC permitted the federation to solicit contributions for its connected federal PAC from the owners and the executive and administrative personnel (and their families) of the incorporated franchisee members of the regional trade associations. The FEC also permitted the federation to solicit the unincorporated franchisee members, including individuals, of the regional associations. ■

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Congress Repeals PUHCA in Energy Bill

As a component of the recently enacted energy legislation, Congress included a provision that repeals the Public Utilities Holding Company Act (PUHCA) effective February 8, 2006. Congress repealed PUHCA largely on the basis that its provisions were outdated and that the law constituted unnecessary regulation of public utility holding companies.

Federal campaign finance laws, however, will continue to prohibit public utility holding companies from making contributions or expenditures in connection with federal elections.

Congress originally passed PUHCA in 1935, and the law dealt extensively with the regulation of all aspects of public utility holding company activity. Up until February 8, 2006, PUHCA prohibits public utility holding companies from contributing to the election of any federal, state or local candidate or to any federal or state political party. Since this prohibition superseded state campaign finance regulations, public utility holding companies that would otherwise be able to contribute on a state level were restricted from doing so. As a result of PUHCA’s repeal, state and local campaign finance laws will govern whether public utilities holding companies may make state and/or local contributions after February 8, 2006. Federal campaign finance laws, however, will continue to prohibit public utility holding companies from making contributions or expenditures in connection with federal elections. ■

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Changes in the States

Georgia

Georgia Expands Lobbying Law

Through the 2005 Georgia Laws Act 212 (former H.B. 48) (May 5, 2005), Georgia amended and substantially expanded its lobbying laws. Effective January 9, 2006, the state will statutorily require lobbyist registration and reporting from those individuals who try to influence the selection of state vendors (vendor lobbyists) and those individuals who attempt to promote or oppose the passage of any rule or regulation of any state agency (executive branch lobbyists).

By means of the statutory amendments, the state also imposes some new registration and reporting requirements on the already regulated state and local legislative lobbyists. Among other things, all lobbyists must disclose in their registration statements (which must be kept current) each individual or entity on whose behalf they are registered if the individual or entity has provided the lobbyist with \$10,000 or more in a calendar year for lobbying activities.

The new laws currently add to the registration and reporting requirements mandated for certain vendor lobbyists by the October 1, 2003 Executive Order from Governor Sonny Perdue. See www.wrf.com/procurement_lobbying for more information on this rule.

Idaho

Idaho Regulates Electioneering Communications

On July 1, 2005, Idaho followed the lead of 12 other states such as Florida, North Carolina and Ohio and added “electioneering communication” provisions to its campaign finance laws. Although the new law does not prohibit corporations or unions from making an electioneering communication (in contrast to federal law and that of some other states), it does create an electioneering communication reporting regime for all persons who spend more than \$100.

An electioneering communication under Idaho law broadly applies to any communication that identifies a candidate and is “broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences, or telephone calls made to personal residences, or otherwise distributed.” Covered electioneering

communications must be disseminated to the members of the electorate for the public office in question, feature or refer to a candidate and be disseminated within 30 days of a primary or within 60 days of a general election. Among other things, the new law contains exemptions for the following:

- Regular business communications.
- Communications by a membership organization to its members (and their families).
- Communications referring to a candidate only as part of the popular name of a bill or statute.

New York

New York Amends Lobbying Laws

Late this past summer, New York amended its lobbying laws in three significant ways. In short, these changes did the following:

- Expanded the definition of “lobbying” and “lobbying activities” to include attempts to influence government procurements, executive orders, tribal-state compacts and local resolutions.
- Restricted certain lobbying activities in connection with government procurements.
- Increased the lobbyist registration and reporting threshold from \$2,000 to \$5,000.

The above-described amendments take effect on January 1, 2006.

North Carolina

North Carolina Plans Changes to Lobbying Laws in 2007

On August 24, 2005, the North Carolina General Assembly passed sweeping changes to the state lobbying regulations. Governor Mike Easley signed the bill on September 30, 2005, but the changes will largely go into effect on January 1, 2007.

The new statute prohibits for a period of six months a public official from becoming a lobbyist in the state immediately following his or her tenure in public office; previously within North Carolina, a public official could register with the state as a lobbyist immediately upon

continued on page 5

SEC Adopts Changes to Rule G-37

On September 22, 2005, the Securities and Exchange Commission (SEC) approved the Municipal Securities Rulemaking Board's (MSRB) amendment to Rule G-37(c). This amendment relates to solicitation and coordination of payments to political parties. The SEC also approved the MSRB's new question and answer (Q&A) guidance on supervisory procedures related to Rule G-37(d) and on indirect violations. The amendments and Q&A guidance became effective on September 22, 2005. Both can be found at www.msrb.org/msrb1/whatsnew/2005-50.asp.

The rules and Q&As approved by the SEC are the same versions discussed in the March 2005 issue of *Election Law News*. ■

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Regulation of Political Activity on the Internet Remains Unclear

The regulation of political content on the Internet, such as political and regular blog sites, remains unclear given recent events in the U.S. House of Representatives. On November 2, 2005, the House failed to pass HR 1606, the Online Freedom of Speech Act, by the necessary two-thirds majority. (Certain procedural maneuvers caused the supermajority to be necessary.) The failure of the House to pass HR 1606 calls into doubt the future of legislation to set bright lines regulating permissible political activities on the Internet heading in to next year's elections. Currently regulation of Internet activity is a hodge-podge of case law on express advocacy, the media exemption and rules from the Federal Election Commission (FEC) that have been struck down by the U.S. District Court for the District of Columbia, but none of these offers any guidance to the many pressing Internet-related questions.

continued on page 6

Upcoming Dates to Remember

November	11/20/05	November monthly FEC report due for federal PACs filing monthly
	11/20/05	November monthly IRS report due for nonfederal PACs filing monthly*
December	12/20/05	December monthly FEC report due for federal PACs filing monthly
	12/20/05	December monthly IRS report due for nonfederal PACs filing monthly*
January	1/31/06	Year-end FEC report due for federal PACs filing semi-annually and monthly
	1/31/06	Year-end IRS report due for nonfederal PACs filing semi-annually and monthly*

Deadlines are not extended if they fall on a weekend.

*Qualified state and local political organizations are not required to file Form 8872 with the IRS.

Changes in the States

continued from page 3

leaving public office. Public officials covered by this new regulation include both members of the North Carolina General Assembly as well as certain high-ranking executive branch office holders.

Additionally, the new regulations tighten reporting requirements for lobbying within North Carolina. As of January 1, 2007, lobbyists will be required to file monthly reports with the Secretary of State. This requirement replaces the previous provision, which allowed for such reports every 60 days. Furthermore, lobbyists will now be required to report every expenditure of more than \$10 given to an individual legislator, whether or not the expenditure was made in connection with any specific pending legislation. Finally, among other things, the new law also creates new regulations that will be placed upon executive branch lobbyists.

West Virginia

West Virginia Regulates Electioneering Communications

On September 30, Governor Joe Manchin signed into law a bill that would make several significant changes to West Virginia's campaign finance laws. In addition to enacting a number of substantive amendments, the bill would also double the penalties for making prohibited corporate contributions from \$5,000 to \$10,000.

The new law includes a provision that defines "electioneering communications" as those communications that (1) refer to a clearly identified candidate for statewide office or the legislature, (2) are publicly disseminated within 30 days of a primary or 60 days of a general or special election and (3) are targeted to the relevant electorate. Among other exceptions to the definition of "electioneering communications," the new law exempts communications that:

- Are paid for by 501(c)(3) organizations.
- Urge the audience to communicate with a legislator on a piece of legislation (but only when the legislature is in session).
- Are made in a membership organization's newsletter prior to the time the individual became a candidate.

- Refer to all candidates for one or more offices (such as in a voter guide) and contain no appearance of endorsement or opposition to a particular candidate.

Importantly, corporations are prohibited from making "electioneering communications" within the 30- and 60-day windows. Under the new law, other non-corporate "persons" that spend \$5,000 or more in a calendar year for the direct costs of producing, purchasing or disseminating an "electioneering communication" must file a statement within 24 hours disclosing the amount of all expenditures totaling \$1,000. The person also must reveal the names of anyone contributing more than \$1,000 to pay for the electioneering communication.

In addition to the new electioneering communication requirements, the new law would limit contributions to certain 527 organizations to \$1,000 per election. The law would also prohibit a person from establishing multiple 527 organizations in order to evade the \$1,000 limit. ■

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WRF Upcoming Speeches

January 31 - February 3, 2006

- Speaker:** Carol A. Laham
- Presentations:** PAC Legal Quick Start:
Understanding the Federal Campaign Finance Law
Staying Out of Trouble: Answers to ALL of Your Campaign Finance Legal Questions
- Conference:** Innovate to Motivate 2006: The National Conference for Political Involvement Professionals
- Location:** Key West, FL
- Information:** www.wrf.com/events

Internet

continued from page 4

Since earlier this year, the FEC has undertaken a rulemaking that addresses certain aspects of political activity on the Internet. After receiving voluminous

Currently regulation of Internet activity is a hodge-podge of case law on express advocacy, the media exemption and rules from the Federal Election Commission . . .

comments and holding two days of hearings on June 28-29, 2005, the FEC has yet to promulgate the final

rules. Of note is the fairly large number of *ex parte* communications related to the rulemaking, including those from members of the House Judiciary Committee, Minority Leader Harry Reid, Senators McCain and Feingold and Congressmen Shays and Meehan. The Notice of Proposed Rulemaking, comments and *ex parte* communications, among other things, for the Internet rulemaking can be found at www.fec.gov/law/law_rulemakings.shtml#internet05. Persons interested in the current state of passions surrounding the issue of political activity on the Internet may find particularly pointed discussions at various blogs across the web. ■

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