



GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

Advisory Opinion

No. 2015-02

In response to a request on June 15, 2015, from Ms. Kaari Smith, the Georgia Government Transparency and Campaign Finance Commission advises that (a) a PAC operating in the state of Georgia which engages in both direct (i.e. campaign contributions) and indirect support (i.e. independent expenditures) of political candidates and/or the political candidate's campaign committees must register as both a PAC and as an Independent Committee prior to the acceptance of any contributions and/or expenditure of any contributions, and (b) a PAC need not create and/or operate as two distinct legal entities in order to make independent expenditures and/or campaign contributions, although it must use a "separate segregated fund" for separate accounting and reporting structures for independent expenditures and campaign contributions.

Questions Presented

- (1) Must a Political Action Committee register with the Commission as both an Independent Committee and as a Political Action Committee?
- (2) Must a Political Action Committee operate two legally distinct entities in order to make independent expenditures and direct campaign contributions to candidates for office?

Factual Background

In a letter dated June 15, 2015, from Ms. Kaari Smith seeks guidance as to whether a Political Action Committee (a "PAC") operating in the state of Georgia must register with the Commission both as a PAC and as an Independent Committee if the PAC makes contributions¹ to candidates for office as well as independent campaign expenditures² to influence a candidate's election. Ms. Smith also asks whether a PAC operating in the State of Georgia making both contributions to

¹ A contribution is defined as "...a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office..." O.C.G.A. § 21-5-3(7).

² As defined by regulation, an independent expenditure is "an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate but which is made independently of any candidate's campaign. However, an expenditure is 'independent' only if it meets certain conditions. It must not be made with the cooperation or consent of, or in consultation with, or at the request or suggestion of any candidate or any of his or her agents or authorized committees." Ga. Comp. R. & Regs 189-3-.01(f).

candidates and independent expenditures on a candidate's behalf must form two independent and legally distinct entities with differing campaign finance disclosures.

Discussion

The Georgia Government Transparency and Campaign Finance Act (hereinafter "Campaign Finance Act") treats PACs and Independent Committees as two distinct and separate categories of political organizations. The Campaign Finance Act defines a "Political [A]ction [C]ommittee," in part, as:

Any committee, club, association, partnership, corporation, labor union, or other group of persons which receives donations during a calendar year from persons who are members or supporters of the committee and *which contributes funds to one or more candidates for public office* or campaign committees of candidates for public office.

O.C.G.A. § 21-5-3(20)(A) (emphasis added).

An "Independent [C]ommittee," however, is defined as:

any committee, club, association, partnership, corporation, labor union, or other group of persons, other than a campaign committee, political party, or political action committee, which receives donations during a calendar year from persons who are members or supporters of the committee and *which expends such funds either for the purpose of affecting the outcome of an election* for any elected office or to advocate the election or defeat of any particular candidate.

O.C.G.A. § 21-5-3(15) (emphasis added).

The Campaign Finance Act has separate registration requirements for PACs and Independent Committees. *See* O.C.G.A. §§ 21-5-34(e); and, 21-5-34(f)(1). Thus, a PAC operating in the state of Georgia which engages in both direct (i.e. campaign contributions) and indirect support (i.e. independent expenditures) of political candidates and/or the political candidate's campaign committees must register as both a PAC and as an Independent Committee prior to the expenditure, respectively, of any direct contributions or independent expenditures. *See* O.C.G.A. §§ 21-5-34(e); and, 21-5-34(f)(1).

Likewise, a PAC also operating as an Independent Committee is required to file separate disclosures based upon the terms of the Campaign Finance Act. In particular, PACs must report their contributions and expenditures pursuant to the same filing schedule of the candidates/candidate committees that they are supporting pursuant to O.C.G.A. § 21-5-34(e) "[PACs] shall also file campaign contribution disclosure reports at the same times as required by

the candidates they are supporting.”).⁴ Independent Committees, on the other hand, are required to report their contributions and expenditures as follows:

- 1) On the first day of each of the two calendar months preceding any such election;
- 2) Two weeks prior to the date of such election;
- 3) December 31 of any election year; and,
- 4) June 30 and December 31 of each year that the independent committee continues to accept contributions or make expenditures.

O.C.G.A. § 21-5-34(f)(1)(A)-(C). Thus, when a PAC also operates as an Independent Committee it must file separate disclosures for each capacity.

Nonetheless, there is no legal requirement that a PAC organize as two distinct legal entities in order to make independent expenditures and/or campaign contributions. A single legal entity may operate in both capacities as long as it makes separate registrations and filings for each capacity. The Campaign Finance Act, however, mandates that a PAC making independent expenditures and campaign contributions use separate accounting and reporting structures by means of a “separate segregated fund.” *See* O.C.G.A. §§ 21-5-3(20)(B); 21-5-40(7) (a “separate segregated fund [is] a fund which is established, administered, and used for political purposes by a business entity, labor organization, membership organization, or cooperative and to which the business entity, labor organization, membership organization, or cooperative solicits contributions.”). Use of such a fund ensures that amounts used for independent expenditures and direct campaign contributions are fully disclosed on the relevant campaign disclosure reports.

Conclusion

For the reasons described above Commission advises that (a) a PAC operating in the state of Georgia which engages in both direct (i.e. campaign contributions) and indirect support (i.e. independent expenditures) of political candidates and/or the political candidate’s campaign committees must register as both a PAC and as an Independent Committee prior to the acceptance of any contributions and/or expenditure of any contributions, and (b) a PAC need not create and/or operate as two distinct legal entities in order to make independent expenditures and/or campaign contributions, although it must use a “separate segregated fund” for separate accounting and reporting structures for independent expenditures and campaign contributions.

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Government Transparency and Campaign Finance Commission, to the specific facts, transaction or activity set forth in Request for Advisory Opinion 2015-02.

⁴ The Commission notes the three exceptions to the PAC registration and reporting requirement contained at O.C.G.A. § 21-5-34(e)(1)-(3); those exceptions are not modified by this Advisory Opinion.

Advisory Opinion 2015-02 is hereby adopted by the Commission in conformity with O.C.G.A. §

21-5-6(13) on June 25, 2015.



Hillary S. Stringfellow
Chair of the Commission

AO 2015-02 prepared by Stefan Ritter and Robert S. Lane.
June 17, 2015.