

# Wiley, Rein & Fielding

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May 12, 2000

Federal Election Commission  
Office of the General Counsel  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 2000-11

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
MAY 12 2 06 PM '00

Re: Advisory Opinion Request

Dear Sirs and Madam:

On behalf of the Georgia-Pacific Corporation ("Georgia-Pacific") and its separate segregated fund, G-P Employees Fund of Georgia-Pacific ("G-P Fund" or "Fund"), and pursuant to 2 U.S.C. § 437f and 11 C.F.R. § § 112.1-112.6, we respectfully request an advisory opinion concerning the application of the Federal Election Campaign Act, as amended ("FECA"), to the facts set forth below.

## FACTS

The G-P Fund has been in existence since 1974. Its immediate past treasurer, a Georgia-Pacific employee, assumed her position in 1991 and was replaced in early 2000. Upon taking office, the new treasurer reviewed the G-P Fund's reports for 1998 and 1999 and noticed that only \$65,535.20 had been reported as deposited in 1998. However, having been involved in the operations of the Fund prior to being treasurer, he believed that the total contributions based on payroll deductions alone should have been significantly greater. Thus, the new treasurer asked the Georgia-Pacific payroll department to prepare a schedule of all the payroll deduction checks it had issued to the Fund for the period from 1/1/97 through 1999. After receiving the information from the payroll department, he examined the Fund's Bank Statements to determine which checks had been deposited in the Fund's accounts. Two checks dated 12/23/97 and 1/5/98 had not been deposited. Several other checks dated between 7/27/98 and 5/18/99 also had not been deposited.

Specifically, in 1997, 25 checks were issued to the Fund by the payroll department in the aggregate amount of \$114,133.97. Of those, the last check of the year in the amount of \$5,656.02 was not deposited. In 1998 a total of 22 payroll checks were issued aggregating

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\$125,904.89. Of those, a total of 8 checks aggregating \$64,969.02 were not deposited. In 1999, 16 payroll checks aggregating \$125,530.73 were issued. Of those, 5 checks aggregating \$55,184.89 were not deposited. Thus, over the course of two years, \$365,569.59 in payroll deduction checks were issued of which \$125,809.95 in 14 checks was never deposited.

To ensure that no money had been misappropriated, the new treasurer asked the company's accounting department to confirm that none of the checks had been negotiated.<sup>1</sup> Accordingly, the new treasurer ascertained that \$125,809.95 in properly withheld payroll deduction contributions had not been deposited by the former treasurer.

Georgia-Pacific asked the former treasurer for an explanation of where the checks were and why they had not been deposited. She had no explanation as to why she had not deposited the checks as she had regularly done over the course of her earlier tenure as treasurer. She searched her office and was able to find most of the uncashed checks. Shortly thereafter, the former treasurer resigned her position with Georgia-Pacific and the Fund after being put on notice that her employment would be terminated.

The new treasurer promptly notified the Federal Election Commission's ("FEC" or "Commission") Reports Analysis Division ("RAD") of this problem. After several discussions with RAD, the Fund was uncertain how to proceed. The Fund wishes to obtain replacement checks<sup>2</sup> for the undeposited checks which consisted of validly withheld payroll deductions. However, having read the Commission's Advisory Opinion 1999-33 issued to MediaOne Corporation and its cautionary language, the Fund has determined that it should seek an Advisory Opinion from the Commission before having the payroll deduction checks reissued and deposited.

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<sup>1</sup> The accounting department has a system in place whereby letters are sent to all "vendors" if a check has not been cashed within six months after its issuance. Such a letter was sent with respect to the December 1997 check. However, the letter was received by the former treasurer. No additional letters were issued because there was a system-wide problem for all checks cut from the Georgia-Pacific headquarters. Letters were issued up through October of 1998 for checks with a date of issuance of 1997 or earlier. However, due to a systems conversion occurring during 1999, no letters were issued to any vendors with respect to 1998 or 1999 checks.

<sup>2</sup> The original checks are stale-dated and therefore non-negotiable. In order to deposit any of the funds, new checks would have to be issued to the Fund.

Finally, since discovering the undeposited checks, Georgia-Pacific conducted an internal audit of the Fund's accounts. This resulted in the Fund filing comprehensive amendments to its FEC reports to correct mistakes made over the last three years. In addition, the Fund has adopted a policy of conducting an annual audit. The Fund also will now send a monthly report to the senior management of Georgia-Pacific, as well as the Fund's Advisory Board, which will include a membership report, anticipated receipts, and monthly bank balances. All documents will now require the review and approval of both the Treasurer and Assistant Treasurer so that this situation cannot occur again.

#### QUESTION PRESENTED

May the Fund accept reissued payroll deduction checks which had not been deposited by the former treasurer, and report the contributions as of the dates of the payroll deductions?

#### DISCUSSION

The Commission has previously addressed a situation similar to this one in Advisory Opinion 1999-33, Fed. Election Camp. Fin. Guide (CCH) ¶ 6315 (2000). In that case, involving MediaOne Corporation, one of the company's regional payroll offices had collected payroll deduction contributions from regional employees. However, because that office had not converted to a centralized payroll system as had much of the remainder of the company, the regional office held the money in an escrow account. Upon conversion to the centralized payroll system these payroll deductions were discovered by MediaOne's PAC. The Commission ruled that the contributions had been made when the payroll deduction contributions were withheld by the company. Consequently, the FEC permitted the PAC to deposit the contributions which had been collected for the time period between January 1, 1998 and October, 1999.

Here the corporation, acting as the collecting agent pursuant to 11 C.F.R. § 102.6, forwarded the funds via check instead of deposit into an internal escrow account. This factual difference is an insignificant distinction in the payroll deduction context. In both cases, the contributions were made on the date that they were withheld from salaries, and in both cases, the funds were not deposited into the PAC's account in a timely manner. See 11 C.F.R. § 110.1(b)(6). We submit, therefore, that based on the MediaOne precedent, the Georgia-Pacific payroll department should be allowed to issue replacement checks which the Fund will then deposit.<sup>3</sup>

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<sup>3</sup> The Commission has addressed a situation where a candidate committee staffer had put

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The issuance of replacement checks is consistent with other Commission determinations. For instance, in Advisory Opinion 1992-42, a campaign committee received contribution checks which were subsequently lost in the mail on the way to the bank. The Commission permitted the campaign to seek replacement checks and to attribute them to the election for which they were originally designated. Advisory Opinion 1992-42, Fed. Election Camp. Fin. Guide (CCH) ¶ 6079 (1993). Similarly, in Advisory Opinion 1993-5, the Commission permitted a campaign committee to deposit contributions which had been delivered to the committee's post office box, but subsequently removed by the post office in clearing the box of holiday mail. Again, the Commission permitted the contributions to be reissued and attributed to the election for which they were made. Advisory Opinion 1993-5, Fed. Election Camp. Fin. Guide (CCH) ¶ 6084 (1993). More recently, the Commission permitted a PAC to issue a replacement check for a contribution which it had mailed in December, 1998, but which was never received by the recipient PAC. Here again, the Commission permitted the recipient PAC to treat the contribution as a 1998 contribution rather than a 1999 contribution when the replacement check was issued. Advisory Opinion 1999-23, Fed. Election Camp. Fin. Guide (CCH) ¶ 6301 (1999). In each of these prior opinions, no funds had ever left the hands of the contributors. In contrast, the Fund contributors no longer have the money. Rather, the contributors made the contributions on the date of the payroll deduction. Only the inexplicable negligence of the former treasurer prevented what contributors assumed had occurred, *i.e.*, the receipt and use of their contributions by the Fund. While the Fund does not condone the behavior of its former treasurer, it does not believe it should be denied contributions that were lawfully and voluntarily made by the employees of Georgia-Pacific.

Accordingly, the Fund requests that the Commission confirm that the Fund may deposit reissued payroll deduction checks, and treat those contributions as having been made as of the time they were deducted. The Fund is prepared to file an omnibus amendment for each affected calendar year. These amendments will provide the year-end figures on the summary and detailed summary pages as well as a new schedule A for line 11(a)(i) which will identify all payroll

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contribution checks in a drawer which went undiscovered for a long period of time. That opinion, however, differs from this situation. See Advisory Opinion 1992-29, Fed. Election Camp. Fin. Guide (CCH) ¶ 6068 (1992). A critical difference is that all of the contributions at issue in this case have been deducted from the contributors' payroll checks. Thus, not only has the contributor released control of the funds, the contributor no longer has the funds. Rather, the funds are in the control of the collecting agent, Georgia-Pacific, because the transmittal checks were not deposited.

*Wiley, Rein & Fielding*

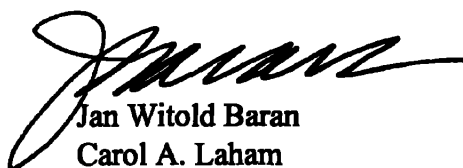
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deduction contributors that should have been identified for each calendar year in addition to the non-payroll deduction contributors previously itemized on the reports.

Respectfully submitted,



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Carol A. Laham