



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 23, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2005-20

Ms. Kathryn E. Donovan
Pillsbury Winthrop Shaw Pittman LLP
400 Capitol Mall
Suite 1700
Sacramento, CA 95814-4419

Dear Ms. Donovan:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of Pillsbury Winthrop Shaw Pittman LLP's ("PWSP") automated electronic payroll system by PWSP partners to make contributions from a partner's income distribution to PWSP's political action committee, PWSP PAC (the "PAC"). The Commission concludes that under the facts and circumstances presented, PWSP's partners may use PWSP's automated electronic payroll system to make voluntary contributions to PWSP PAC. PWSP PAC must pay in advance the costs associated with the use of PWSP's automated electronic payroll system for contributions to the PAC.

Background

The facts presented in this advisory opinion are based on your letter received on November 23, 2005.

PWSP is a law firm organized as a limited liability partnership. PWSP has more than 900 attorneys, of whom approximately 323 are partners.¹ From time to time, PWSP may perform legal services for Federal government agencies, and therefore it qualifies as

¹ PWSP was formed as the result of an April 4, 2005, merger between the law firms of Pillsbury Winthrop LLP and Shaw Pittman LLP. The PAC was formerly known as Pillsbury Winthrop LLP PAC. PWSP indicates that it intends to terminate the Shaw Pittman political action committee in the near future and transfer its remaining funds to the PAC.

a Federal contractor. Because of the difficulty in ascertaining PWSP's Federal contractor status at any given time, PWSP asks the Commission to assume that PWSP is a Federal contractor at all times. The PAC is the nonconnected multicandidate political committee sponsored by PWSP.

PWSP's partners receive monthly distributions of income, with the exception of two distributions in December. PWSP's Executive Committee determines the amount of each partner's monthly income distribution based on the level of anticipated or realized profits and the partner's interest therein under PWSP's partnership agreement. Most PWSP partners elect to receive their net compensation electronically via PWSP's automated payroll system by designating one or more accounts to receive an electronic transfer of all or part of their income distribution from PWSP's payroll account.

Each month, PWSP's entire payroll is electronically transferred in a lump sum from its operating account in one bank to its payroll account in another bank for distribution to PWSP partners and other PWSP employees. PWSP then instructs the payroll account bank as to the amount each partner is to receive, taking into account such deductions as health benefits and 401(k) contributions.

Partners who have elected to receive their compensation through PWSP's automated electronic payroll system must designate at least one bank account into which their net compensation, or a portion thereof, will be electronically transferred directly from PWSP's payroll account. In addition to designating a portion of their net compensation for transfer into one or more personal banking accounts, PWSP partners may also authorize electronic transfers of a portion of their income distribution directly to any other accounts they choose, including those of charitable organizations. Because such transfers come from funds that are part of a PWSP partner's income distribution, these charitable donations and other payments are made by the individual partner and not by PWSP. Each PWSP partner alone determines how his or her net compensation is to be disbursed from PWSP's payroll account, and each partner may at any time prior to disbursement modify or revoke any such account designations.

In 2006, the PAC plans to solicit voluntary contributions from PWSP's partners. No foreign nationals will be solicited and no contributions from foreign nationals will be accepted. The PAC currently only accepts contributions from PWSP partners made by personal check. PWSP would now like to provide those partners who use PWSP's automated electronic payroll system with the option of making contributions to the PAC by designating the PAC as a recipient of a portion of the partner's income distribution.² Such contributions to the PAC would not exceed \$5,000 in a calendar year for each PWSP partner and the PAC would pay for the costs associated with contributions to the PAC made through PWSP's automated electronic payroll system. Although the PAC

² A small number of PWSP partners do not use PWSP's automated electronic payroll system and continue to receive their income distributions by check. These partners would continue to be able to contribute to the PAC only by personal check. Similarly, for the few PWSP partners that are professional corporations, the employee of each such corporation would be asked to make a voluntary contribution to the PAC by personal check.

would be able to pay PWSP in advance for these costs, PWSP seeks guidance from the Commission as to whether the PAC may reimburse PWSP for such costs within a commercially reasonable time.

Question Presented

May PWSP's partners use PWSP's automated electronic payroll system to make voluntary contributions to PWSP PAC?

Legal Analysis and Conclusions

The Commission concludes that under the facts and circumstances presented, PWSP partners may use PWSP's automated electronic payroll system to make voluntary contributions to PWSP PAC, so long as the PAC pays in advance any costs associated with the use of PWSP's automated electronic payroll system for these contributions.

The Act and Commission regulations generally prohibit partnerships that are Federal contractors from making contributions or expenditures in connection with Federal elections. *See* 2 U.S.C. 441c(a); 11 CFR 115.4(a). Although the assets of a partnership that is a Federal contractor may not be used to make contributions to a political committee, Commission regulations specifically allow individual partners of such a partnership to make contributions in their own names from their own personal assets. 11 CFR 115.4(b).

PWSP partners who use PWSP's automated electronic payroll system exercise complete control over the funds that represent their net compensation in PWSP's payroll account by designating recipients for such funds in PWSP's payroll system. Each PWSP partner may modify or revoke these designations at any time prior to disbursement. Significantly, PWSP has no control over the partner's choice of the recipient of any disbursement from PWSP's payroll account and at the moment a disbursement takes place from PWSP's payroll account, the funds being disbursed are the personal assets of the partner.³ Thus, when a PWSP partner designates a recipient account in PWSP's automated electronic payroll system, it is the functional equivalent of that partner writing a personal check. Accordingly, the Commission concludes that PWSP's partners may use PWSP's automated electronic payroll system to make voluntary contributions to the PAC.

Because the Federal contractor prohibition extends to the use of partnership funds for the PAC's establishment, administration, and solicitation costs, PWSP may not pay

³ This differs from the circumstances in Advisory Opinion 1984-10, in which the Commission concluded that it was impermissible for a partnership to make partner-designated candidate contributions from the partnership's general operating account, even though an equivalent sum would then be deducted from the partner's subsequent quarterly income distribution. *See also* Advisory Opinion 1991-1.

for any costs related to the use of PWSP's automated electronic payroll system for contributions by PWSP's partners to the PAC.⁴

The Commission has allowed partnerships that were otherwise prohibited from making contributions to nonconnected political committees to pay for committee costs associated with a committee's use of goods and services that the partnership offers in the usual course of business, subject to reimbursement by the committee within a commercially reasonable time. *See, e.g.*, Advisory Opinion 2001-7. However, this allowance does not extend to goods and services that are not offered by a partnership in the ordinary course of its business. *See id.* (usual and normal charge for cost of services offered to clients in the ordinary course of business such as copying, postage, and telephone use, may be reimbursed by a political committee within a commercially reasonable time). Because use of PWSP's automated electronic payroll system is not a service that PWSP offers to its clients in the ordinary course of business, the PAC must pay PWSP the related costs in advance to avoid an impermissible contribution by PWSP to the PAC.⁵

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Michael E. Toner
Chairman

Enclosures (Advisory Opinions 2001-7, 1991-1, and 1984-10)

⁴ The Act does not extend to a partnership the ability granted to corporations to set up a separate segregated fund and conduct itself as a connected organization. Thus, a partnership's payments for a political committee's administrative costs would be contributions to the committee. *See* Advisory Opinion 1991-1. However, absent the Federal contractor prohibition, partnerships generally are allowed to make contributions to political committees subject to the limitations contained in 2 U.S.C. 441a and 11 CFR 110.1(b), (c) and (d). *See* 11 CFR 110.1(e).

⁵ The Commission considered, but could not reach a consensus on, whether the PAC may reimburse PWSP – instead of pre-paying the payroll costs – within a commercially reasonable time for these costs.