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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 16-51-A**  
**AGENDA ITEM**  
**For meeting of October 27, 2016**

October 20, 2016

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Acting General Counsel

Adav Noti *AN*  
Associate General Counsel

Neven F. Stipanovic *NFS by AN*  
Acting Assistant General Counsel

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Attorney

Subject: AO 2016-11 (Plains Cotton Growers) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on October 26, 2016.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2016-11

2

3 Kody Bessent

4 Vice President of Operations & Legislative Affairs

5 Plains Cotton Growers, Inc.

6 4517 West Loop 289

7 Lubbock, Texas 79414

8

9

10 Dear Mr. Bessent:

11 We are responding to your advisory opinion request on behalf of Plains Cotton Growers,

12 Inc. (“PCG”) and Plains Cotton Growers Political Action Committee (“PCGPAC”) concerning

13 the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and

14 Commission regulations to the requestors’ proposal to solicit contributions from individual PCG

15 members and to authorize other members to collect and transmit those contributions to

16 PCGPAC. The Commission concludes that the proposal is permissible.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on

19 August 31 and your emails received on September 12 and 28, 2016.

20 PCG is incorporated in the State of Texas as a non-profit, non-stock corporation with

21 members. Advisory Opinion Request (“AOR”) at AOR001. PCG is exempt from federal

22 income tax under section 501(c)(6) of the Internal Revenue Code. *Id.* PCG was organized,

23 among other things, to promote and protect the interests of cotton producers in the Texas high

24 plains. *Id.*; AOR009. PCGPAC is the separate segregated fund (“SSF”) of PCG. AOR001.

25 According to PCG’s bylaws, to be eligible for PCG membership an individual or entity

26 must pay dues to PCG and qualify for one of the following three classes of membership: (1) a

27 cotton gin from a designated county in the Texas high plains (“cotton gin”); (2) a cotton producer

28 who delivers cotton to cotton gins (“producer”); or (3) a business that either operates in the

**DRAFT A**

1 cotton industry, such as a cotton warehouse or cottonseed dealer, or is “interested in cotton.”  
2 AOR001, AOR010-011. Cotton gin members are organized as agricultural cooperatives under  
3 Texas state law; producers and the businesses in the third membership category may be  
4 individuals, partnerships, or corporations. AOR 010-11; AOR063; *see also* Tex. Bus. Orgs.  
5 Code Ann. § 251 (2006). Producers, who harvest the cotton crop and deliver it to cotton gins for  
6 processing, are also members of the cotton gin cooperatives to which they deliver the cotton.  
7 AOR062. The cotton gins currently collect the producers’ PCG membership dues (at 25 cents  
8 per bale) and transmit them to PCG. PCG has approximately 89 cotton gin members, 8,967  
9 producer members (the majority of which are individuals and partnerships), and 187 business  
10 members. AOR001-002, AOR063.

11 PCG and PCGPAC plan to solicit contributions from individual cotton producers.  
12 AOR002. They plan to do so by establishing an automatic voluntary deduction program that  
13 would be administered by the cotton gins to which the producers deliver cotton for processing.  
14 The automatic deduction would be set at a recommended price per bale of processed cotton and  
15 be charged against the producers’ individual cotton proceeds. *Id.*, AOR059. PCG would  
16 authorize the cotton gins to collect contributions on PCG’s behalf and remit them to PCGPAC,  
17 and PCG would pay for the costs that the cotton gins incur in doing so. AOR003.

18 Producers wishing to participate would sign automatic deduction forms that would  
19 authorize their respective cotton gins to collect funds from the individuals’ accounts and transfer  
20 them to PCGPAC. AOR002, AOR059. Individual cotton producers would be informed that  
21 their contribution would be for the purpose of supporting federal candidates; that their decision  
22 to contribute would be voluntary and they may refuse to contribute without fear of reprisal; that  
23 the recommended contribution amount would be merely a suggestion and that individuals may

1 contribute more or less than recommended; and that they may revoke the contribution at any  
2 time without penalty or adverse action. AOR059. The request further states that the  
3 contributions received would not reduce any dues the individuals owed to PCG and that the  
4 cotton producer members will not receive any “tangible or valuable benefit” from PCG by  
5 supporting PCGPAC. AOR002. The cotton gins would transmit the contributions to PCGPAC  
6 within 10 or 30 days, as required by 11 C.F.R. § 102.8.

7 ***Questions Presented***

- 8 1. *May PCG serve as a collecting agent for PCGPAC?*
- 9 2. *Is the voluntary per bale contribution deduction a permissible method of soliciting*  
10 *contributions to PCGPAC?*

11

12 ***Legal Analysis and Conclusions***

- 13 1. *May PCG serve as a collecting agent for PCGPAC?*

14 Yes, PCG may serve as a collecting agent for contributions solicited from the producers  
15 to PCGPAC, and the cotton gins may collect and transmit those contributions to PCGPAC on  
16 PCG’s behalf.

17 As an exception to the Act’s prohibition on corporate contributions, 52 U.S.C.  
18 § 30118(a), an incorporated membership organization or its SSF may solicit the organization’s  
19 individual members for contributions to the SSF. 52 U.S.C. § 30118(b)(3)(C); 11 C.F.R.  
20 §§ 114.1(j), 114.7(a). A membership organization also may act as its SSF’s “collecting agent,”  
21 which Commission regulations define as “an organization or committee that collects and  
22 transmits contributions to one or more separate segregated funds to which the collecting agent is  
23 related.” 11 C.F.R. § 102.6(b)(1); *see also* 11 C.F.R. § 102.6(b)(1)(ii) (providing that collecting  
24 agent may be “[t]he connected organization of the separate segregated fund”). Commission

1 regulations define a “membership organization” as a trade association, cooperative, or  
2 corporation without capital stock that:

3 (i) Is composed of members, some or all of whom are vested with the power  
4 and authority to operate or administer the organization, pursuant to the  
5 organization’s articles, bylaws, constitution or other formal organizational  
6 documents;

7  
8 (ii) Expressly states the qualifications and requirements for membership in its  
9 articles, bylaws, constitution or other formal organizational documents;

10  
11 (iii) Makes its articles, bylaws, constitution, or other formal organizational  
12 documents available to its members upon request;

13  
14 (iv) Expressly solicits persons to become members;

15  
16 (v) Expressly acknowledges the acceptance of membership, such as by  
17 sending a membership card or including the member’s name on a membership  
18 newsletter list; and

19  
20 (vi) Is not organized primarily for the purpose of influencing the nomination  
21 for election, or election, of any individual to Federal office.

22  
23 11 C.F.R. § 114.1(e)(1)(i)-(vi); *see also* 11 C.F.R. § 100.134.

24 PCG, a corporation without capital stock, satisfies all six criteria and thus is a  
25 membership organization under this definition. First, PCG is composed of members that have  
26 the power and authority to operate and administer the organization. Under Commission  
27 regulations, “members” include all persons who satisfy the requirements for membership in a  
28 membership organization, affirmatively accept the membership organization’s invitation to  
29 become a member, and either:

30 (i) Have some significant financial attachment to the membership organization, such  
31 as a significant investment or ownership stake; or

32 (ii) Pay membership dues at least annually, of a specific amount predetermined by the  
33 organization; or

1 (iii) Have a significant organizational attachment to the membership organization  
2 which includes: affirmation of membership on at least an annual basis; and direct  
3 participatory rights in the governance of the organization.

4 11 C.F.R. §§ 114.1(e)(2)(i)-(iii), 100.134(f)(1)-(3). Cotton producers and cotton gins qualify as  
5 “members” under these criteria because they must satisfy PCG’s requirements for membership  
6 — cotton gins must be located within the required geographical location and cotton producers  
7 must deliver cotton to eligible cotton gins — and remain current on their membership dues.

8 Further, PCG is managed by a Board of Directors (the “Board”), which is composed of one  
9 cotton producer representative selected by each eligible cotton gin. AOR011. The Board also  
10 conducts an annual meeting of its members, AOR010, at which members may amend the bylaws.  
11 AOR015. PCG members, thus, have the power and authority to operate and administer the  
12 organization.

13 Second, as required by section 114.1(e)(1)(ii) and described above, PCG’s bylaws  
14 expressly state the requirements for membership. AOR010-011.

15 Third, PCG makes its bylaws available to members of the organization upon request, in  
16 accordance with section 114.1(e)(1)(iii). AOR065.

17 Fourth, PCG expressly solicits cotton producers to become members, consistent with  
18 section 114.1(e)(1)(iv). *Id.*

19 Fifth, as required by section 114.1(e)(1)(v), PCG expressly acknowledges acceptance of  
20 membership by sending to the members a placard. Members are also acknowledged at PCG’s  
21 annual meeting. *Id.*

22 Sixth, in accordance with section 114.1(e)(1)(vi), PCG is not organized primarily for the  
23 purpose of influencing the nomination or election of any individual to federal office. Rather,

1 PCG is organized, generally, for the purposes of promoting and protecting the interests of cotton  
2 growers located in the Texas high plains. AOR009.

3 Because PCG is a membership organization under Commission regulations and cotton  
4 producers are its members, PCG and PCGPAC may solicit contributions from the individual  
5 cotton producers. 11 C.F.R. §§ 114.1(j), 114.7(a). As the connected organization of PCGPAC,  
6 PCG also qualifies as a collecting agent for PCGPAC, and PCG thus may collect and transmit  
7 contributions from its individual cotton producer members to PCGPAC. 11 C.F.R.  
8 § 102.6(b)(1)(ii).

9 In addition to asking whether it may serve as a collecting agent, PCG asks whether it may  
10 conduct its collecting activities by entering into contracts with the cotton gin members to collect  
11 and transmit the contributions to PCGPAC on PCG's behalf. According to the request, each  
12 cotton gin member would administer the automatic deduction program for its own cotton  
13 producers — those delivering the cotton harvest to them for processing as members of the cotton  
14 gin cooperative. PCG would then reimburse the cotton gins for the costs they incur in collecting  
15 and transmitting the contributions.

16 Neither the Act nor Commission regulations prohibit this type of a contractual  
17 arrangement for collecting and forwarding contributions from a membership organization's  
18 members to its SSF. Indeed, "[u]nder Commission regulations, '[t]here is no limitation . . . on  
19 the method of . . . facilitating the making of voluntary contributions which may be used'" by a  
20 membership organization. Advisory Opinion 2012-15 (American Physical Therapy Association)  
21 ("APTA") at 6 (quoting 11 C.F.R. § 114.7(f)). Given this "express and unlimited authorization .  
22 . . . to facilitate contributions to their SSFs," the Commission previously has permitted a  
23 corporation to collect contributions from its employees via a payroll deduction and forward them

1 to the SSF of a membership organization of which the corporation's employees were members.  
2 *See id.* at 7-8. And PCG's reimbursement of the cotton gins' expenses means that the cotton  
3 gins' activities will not themselves constitute in-kind contributions from the cotton gins to  
4 PCGPAC.<sup>1</sup> Accordingly, the Commission concludes that PCG may contract with the cotton gins  
5 to collect and forward contributions to PCGPAC as proposed.

6 2. *Is the voluntary per bale contribution deduction a permissible method of soliciting*  
7 *contributions to PCGPAC?*  
8

9 Yes, the voluntary per bale contribution deduction is a permissible method of soliciting  
10 contributions to PCGPAC.

11 Section 114.7(g) of the Commission's regulations provides that a membership  
12 organization and its SSF are subject to the provisions of section 114.5(a), which in turn provides  
13 that an SSF or its connected organization may suggest a guideline for suggested contributions,  
14 provided that any person solicited is informed (1) of the political purposes of the fund, (2) that  
15 the guidelines are merely suggestions, (3) that the person is free to contribute more or less than  
16 the suggested amount, and (4) that the organization will not favor or disadvantage a member by  
17 reason of the amount of any person's contribution or decision not to contribute. 52 U.S.C.  
18 § 50118(b)(3); 11 C.F.R. § 114.5(a)(2)-(4); *see also* Advisory Opinion 2012-15 (APTA)  
19 (requiring solicitations of members to include these elements); Advisory Opinion 2011-22  
20 (Virginia Poultry Growers Cooperative) (same).

21 The sample contribution form you have provided satisfies these requirements. The  
22 sample form expressly states that the \$1.00 per bale deduction is "only a suggestion and any

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<sup>1</sup> In Advisory Opinion 2012-15 (APTA), the membership organization paid the corporation in advance for all the costs of the payroll deduction program, and the Commission found that the payment was the fair market value of the services the corporations provided to the SSF. *Id.* Unlike the corporations collecting and forwarding contributions in Advisory Opinion 2012-15 (APTA), however, the cotton gins are unincorporated cooperatives and thus PCG would not be required to pay in advance the fair market value of services to PCGPAC.



1 PCG cotton producer member may contribute more or less than the recommendation.” AOR059.  
2 The sample form further states that the requested contributions are “for the purposes of  
3 supporting and electing political candidates at the federal level” and that the members “may  
4 refuse to contribute without reprisal.” *Id.* Accordingly, the proposed solicitation using the  
5 voluntary per bale contribution deduction is permissible.

6 This response constitutes an advisory opinion concerning the application of the Act and  
7 Commission regulations to the specific transaction or activity set forth in your request. *See* 52  
8 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or  
9 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
10 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
11 proposed activity. Any person involved in any specific transaction or activity which is  
12 indistinguishable in all its material aspects from the transaction or activity with respect to which  
13 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. §  
14 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
15 affected by subsequent developments in the law including, but not limited to, statutes,  
16 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
17 on the Commission’s website.

18 On behalf of the Commission,

19  
20  
21 Matthew S. Petersen  
22 Chairman