



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

Caleb P. Burns, Esq.
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1776 K Street NW
Washington, D.C. 20006

JUN 19 2018

RE: MUR 7410
(Formerly Pre-MUR 604)

Dear Messrs. Burns, Baran, and Woodson:

On May 5, 2017, your clients, Wine and Spirits Wholesalers of America, Inc. ("WSWA") and the Wine and Spirits Wholesalers of America, Inc. Political Action Committee ("WSWA PAC"), filed a *sua sponte* submission notifying the Federal Election Commission ("Commission") that WSWA and WSWA PAC may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").

Upon review of the available information, the Commission, on June 7, 2018, opened a matter under review and found reason to believe that WSWA and WSWA PAC violated 52 U.S.C. § 30118(b)(4)(A)(i). The Factual and Legal Analysis, which provides the basis for the Commission's findings, is enclosed for your information.

Please note that your clients have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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If your clients are interested in engaging in pre-probable cause conciliation, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650 or rluckett@fec.gov, within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

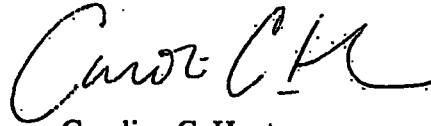
In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,

A handwritten signature in cursive script, appearing to read "Caroline C. Hunter".

Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

1 discovery of this activity,⁵ they determined which solicited personnel of the five companies were
2 union members, ceased soliciting them for contributions to WSWA PAC, and refunded all of
3 their contributions — totaling \$246,142.69 — made during the period from 2007 through 2016.⁶
4 WSWA PAC's 2017 May Monthly Report discloses these refunds.⁷ Some of the contributions,
5 \$145,306.88, were made between 2012 and 2016 and remain within the five-year statute of
6 limitations (“SOL”).⁸ Respondents assert that to prevent similar impermissible solicitations from
7 recurring in the future, “WSWA amended its PAC solicitation materials to go beyond what the
8 FEC’s regulations require to specifically highlight the restriction on soliciting PAC contributions
9 from union members.”⁹

10 III. LEGAL ANALYSIS

11 The Federal Election Campaign Act of 1971, as amended (the “Act”), permits
12 corporations to establish SSFs.¹⁰ The Act, however, prohibits a corporation or its SSF from
13 soliciting contributions to the SSF from persons outside the corporation’s restricted class.¹¹ A
14 corporation’s restricted class includes its executive and administrative personnel and families of
15 such personnel.¹² A trade association and its SSF may solicit the stockholders and the executive

⁵ According to Respondents, they learned of these solicitations in January 2017 when WSWA was preparing to solicit eligible employees of a member company, and the company inquired about the permissibility of soliciting unionized employees. *Id.* at 4.

⁶ *Id.* at 3-4. Supplemental *Sua Sponte* Submission of the Wine & Spirits Wholesalers of America, Inc. in Pre-MUR 604 (“Supplemental Submission”) at 10 (Oct. 2, 2017).

⁷ See WSWA PAC 2017 May Monthly Report at 211-322 (May 19, 2017), available at <http://docquery.fec.gov/pdf/006/201705199054037006/201705199054037006.pdf>.

⁸ See Supplemental Submission at 10. The amount within the SOL in the Supplemental Submission was slightly revised from the figure in the original Submission. Respondents compare this amount with the overall \$5.2 million in contributions received by WSWA PAC during the 2012-2016 period. Submission at 2.

⁹ *Id.* at 2.

¹⁰ See 52 U.S.C. §§ 30118(b)(2)(C), 30101(4)(B).

¹¹ 52 U.S.C. § 30118(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1).

¹² 11 C.F.R. § 114.1(j).

1 and administrative personnel of a member corporation, provided that the member corporation
2 separately and specifically approves the solicitation, and the member corporation does not
3 approve a solicitation by any other trade association during the calendar year.¹³ Excluded from
4 solicitable executive and administrative personnel, however, are professionals who are
5 represented by a labor organization; therefore, these people are not part of a corporation's
6 restricted class who may be solicited for contributions to a trade association's SSF.¹⁴

7 Respondents admit that they improperly solicited 473 unionized employees outside the
8 restricted classes of five member companies who contributed a total of \$246,142.69 to WSWA
9 PAC.¹⁵ Under these circumstances, the Commission finds reason to believe that Respondents
10 violated 52 U.S.C. § 30118(b)(4)(A)(i).

¹³ 52 U.S.C. § 30118(b)(4)(D); 11 C.F.R. § 114.8(c), (d). *See also* 11 C.F.R. § 114.8 (defining trade association).

¹⁴ 11 C.F.R. § 114.1(c)(2)(i).

¹⁵ *See* Supplemental Submission at 10.