



KENTUCKY REGISTRY OF ELECTION FINANCE

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ADVISORY OPINION 2014-003

Any Advisory Opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the Advisory Opinion is required. KRS 121.135(4).

June 5, 2014

**VIA FACSIMILE 859.255.6903
AND U.S. MAIL, FIRST CLASS, POSTAGE PREPAID**

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Steptoe & Johnson PLLC
One Paragon Centre
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Suite 300
Lexington, KY 40504

**In re: Kentucky Chamber of Commerce, Inc. / Kentucky Chamber PAC
Contributions to Permanent Committee by Payroll Deduction (AO 2014-003)**

Dear Mr. Lycan:

This Advisory Opinion is sent in response to your May 12, 2014 request regarding the proposed activities of the Kentucky Chamber of Commerce, Inc. (the Chamber) and the Chamber's registered permanent committee, Kentucky Chamber PAC. As required by KRS 121.135(5)(a), your request was posted for public comment on May 19, 2014. No public comments were received.

In your request, you ask whether the Chamber may establish a voluntary payroll deduction program for its employees to contribute to the Kentucky Chamber PAC. As you explain, this voluntary payroll deduction program would be established for the convenience of the Chamber's employees. The Chamber would explain to its employees, at least annually, that a decision to contribute to the Kentucky Chamber PAC is voluntary and participation in the payroll deduction program will have no effect on the employee's compensation, employment, or

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promotional opportunities with the Chamber. Participation in the payroll deduction program would require the affirmative election and consent by the participating employee, which the employee could terminate at any time.

You explain that the Chamber would deduct and collect voluntary employee contributions and transmit said contributions to the Kentucky Chamber PAC by corporate check together with a list of contributors with itemized contribution amounts and information required to be reported by the Kentucky Chamber PAC. The Kentucky Chamber PAC would reimburse the Chamber for overhead costs of the program, so that no corporate funds or in-kind contribution of value will be contributed to or accepted by Kentucky Chamber PAC. Given this scenario, you specifically ask the following questions:

1. May the Chamber establish a voluntary payroll deduction process for employees to contribute to the Kentucky Chamber PAC?
2. May the deductions collected by the Chamber, a corporation, then be transmitted by check to the Kentucky Chamber PAC?

Under the circumstances you have described in your request, the answer to both questions is "yes." The Registry cautions, however, that the Chamber must ensure its proposed payroll deduction program is *wholly voluntary* and revocable upon election of the employee, and has absolutely no effect on the employee's compensation, promotional opportunities, or employment with the Chamber. To do otherwise would violate provisions of Kentucky law which prohibit corporate contributions to aid candidates for public office. See KRS 121.025 and KRS 121.035. In addition, the Kentucky Chamber PAC must reimburse the Chamber for its overhead costs to administer the payroll deduction program to avoid acceptance of a corporate contribution, which is specifically prohibited by KRS 121.150(20). See also discussion in Advisory Opinion 1998-015 issued on January 6, 1999 to Hon. William E. Doll, Jr. on behalf of the Kentucky Beer Wholesalers Association (KBWA) and KBWA PAC.

Finally, while not specifically requested, due to the United States Supreme Court's recent decision in *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014), the Registry views KRS 121.150(10) as unenforceable to the extent the statute imposes a \$1,500 per year contribution limit to *all* registered permanent committees. Although the Sixth Circuit Court of Appeals previously upheld the \$1,500 aggregate annual contribution limit to all permanent committees in *Kentucky Right to Life v. Terry*, 108 F.3d 637 (6th Cir. 1997), *McCutcheon* makes clear that such aggregate limits - in this case restricting how much an individual contributor may give to all permanent committees - are invalid under the First Amendment. *McCutcheon*, supra, 134 S.Ct. at 1442. Therefore, in implementing its voluntary payroll deduction program, the Chamber should note that an individual may currently contribute up to \$1,500 annually to *any* registered permanent committee in Kentucky.

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Please keep in mind that this Advisory Opinion is based on the specific facts set forth in your written request, does not cover past conduct, and only may be applied to cover the conduct in the transaction you describe. If you have any questions concerning this Advisory Opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,



EMILY DENNIS
General Counsel

Cc: Registry Members
Sarah M. Jackson, Executive Director
Mr. Bradley A. Smith, Esq.
Mr. Zachary M. Wallen, Esq.