

# No Missing Links: The OCE, Campaign Contributions and Legislative Action

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On May 27, 2010, the House Office of Congressional Ethics (OCE) announced its referral to the Department of Justice (DOJ) of "certain evidence collected in the course of its investigation concerning appropriations earmarks and the now defunct PMA lobbying firm." OCE described this evidence as pertaining to its "factual finding . . . that certain persons and companies saw their campaign donations as affecting decisions about earmarks." OCE based this referral on Rule 13 of its Rules for the Conduct of Investigations, which provides that the OCE "may refer information to state and federal authorities in the event that information indicates a crime has occurred or is about to occur." Despite this rule, some observers question whether the OCE is authorized to refer matters to law-enforcement authorities.

In announcing its referral, OCE did not release copies of, or specifically describe, the evidence it forwarded to DOJ. But a review of the OCE's February 2010 reports in its PMA-related investigations reveals the range of conduct that-according to the OCE-suggests that "commercial entities" "appear to have linked contributions to Members' campaigns and/or PACs to specific legislative acts." Whether or not the House Ethics Committee or DOJ would find all such conduct equally troubling, corporations and associations-and their lobbying and Political Action Committee (PAC) personnel-need to know what catches the attention of the OCE.

**Contribution request forms.** Several documents cited in OCE's PMA reports were form questionnaires used by corporate entities and their PACs as part of the process of justifying requests for PAC contributions. On one such form, the proposed PAC contribution was justified by reference to the member's past legislative support of funding for a specific company program and to his intention to

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continue this support. Another such contribution request form referenced a named "senior legislative staffer's" confirmation that the member intended to support the company's funding request.

But even where PAC contribution request forms described a member's legislative support for a company's programs in a more general way, the OCE expressed concern about linkage. For example, the OCE found question-and-answer entries like the following on contribution request forms to be problematic:

*How important is the candidate's sponsorship [of] any programs we are involved in? Very important.*

*Is the candidate in a position to lawfully influence the funding or the ultimate awardee/recipient of the government? Absolutely.*

Did the answers to these questions matter to the OCE? Regardless of any specific answers, consideration of these kinds of questions in the contribution request process for a company's PAC may have been viewed by the OCE as inviting, if not requiring, reference to a member's past or future legislative support for the company.

**PAC charts and spreadsheets.** The OCE also included in its PMA reports what it viewed as problematic examples of PAC spreadsheets or charts showing past and proposed future contributions for congressional members and candidates. The particular spreadsheets cited by the OCE included columns for the Member/candidate's name, for contributions made in the current election cycle and for contributions proposed for the next cycle-but these spreadsheets also contained a column listing "possible programs" supported by or to be supported by the Member.

**Emails and events.** The OCE also focused in its PMA reports on a number of emails that, in its view, evidenced linkage between campaign contributions or fundraising for a named member and official actions by or matters before that member. These emails took several forms. Like the questionnaires already discussed, some of the emails cited specific funding actions taken or to be taken by a member as justification for a requested contribution to that member. Another email justified a requested contribution to a Member by more general reference to the member as a "good supporter" of the company and to the overall amount of funding for the company that the Member had supported historically.

Yet another email singled out by the OCE described a campaign fundraising event at which a company representative discussed with the Member specific "ongoing and proposed" company projects and programs for which the company had sought or would be seeking official funding assistance.

Another internal company email cited by the OCE in its PMA reports appears to have simply contained separate discussions of a campaign fundraising event with a Member and of a later official meeting with that Member's staff. There was no explicit indication in the email that official matters were discussed at the campaign meeting or that campaign matters were discussed at the official meeting. Discussion of these two

meetings in the same email appears to have been enough to catch the OCE's eye.

Finally, based on its PMA reports, it appears that the OCE was even concerned about campaign contributions given to a Member with the expectation by the donor that they would simply generate personal contacts that-sometime in the future-could be used to benefit the donor's business. In one email cited by the OCE, a company official wrote generically about providing "personal contributions in the past knowing that the resulting contacts could help our business"; the company official went on to write that, in the case of one named Member, "I believe it has [helped] to some extent."

Which-if any-of these or similar instances cited in the OCE PMA reports rise to the level of evidence that "indicates a crime has occurred or is about to occur"? For corporations and associations, or their lobbyists or PACs, called on to provide information to the OCE, this question may be beside the point. With its PMA inquiry as prologue and precedent, if the OCE obtains evidence of what it considers to be improper linkage, a referral to the DOJ may be only a matter of time.