

FEC Advisory Opinion Corner

May 2012

The Federal Election Commission (FEC) recently issued three noteworthy advisory opinions covering a wide range of topics. These opinions are briefly summarized below.

Bundling: Advisory Opinion 2012-3 (ActRight)

In Advisory Opinion 2012-3, the FEC issued yet another advisory opinion discussing Super PACs and Hybrid PACs. ActRight, a federal nonconnected PAC which operates a website that solicits and forwards contributions earmarked for certain federal candidates, asked the FEC whether it could also solicit and forward unlimited individual and corporate contributions earmarked for Super PACs or the non-contribution accounts of Hybrid PACs.

The FEC determined that ActRight could do so but would be required to deposit the candidate contributions and Super PAC/Hybrid PAC contributions into separate accounts. ActRight also would be required to forward all contributions to the recipient committees within the appropriate time frame and with the appropriate contributor information for reporting purposes.

Restricted Class: Advisory Opinion 2012-12 (Dunkin' Brands)

In Advisory Opinion 2012-12, the FEC confirmed that Dunkin' Brands, a corporation and the franchisor for Dunkin' Donuts and Baskin-Robbins, could solicit contributions for its PAC from the executive and administrative personnel of its franchisees and licensees, as well as from the franchisees and licensees themselves if they are individuals, partnerships or limited liability companies taxed as partnerships.

Under FEC regulations, a corporation may solicit contributions for its PAC from the executive and administrative personnel of its subsidiaries, branches, divisions and affiliates. The FEC has previously determined in several advisory opinions that franchisees and licensees can qualify as "affiliates" if the corporation exercises the requisite control over the business policies, practices and procedures of a franchisee or licensee, as well as the franchisee's or licensee's contractual obligations to the corporation that is the franchisor or licensor.

The FEC noted that Dunkin' Brands exerts significant and continuing control over its franchisees and licensees. For example, Dunkin' Brands maintains control over the location and physical appearance of its restaurants, the products sold in its restaurants, and the advertising and marketing of its restaurants.

Although the FEC has analyzed this question under a variety of circumstances, this advisory opinion nevertheless demonstrates that determining the scope of a corporation's solicitable class remains difficult and must be assessed on a case-by-case basis.

Aggregate Contribution Limits: Advisory Opinion 2012-14 (McCutcheon)

In Advisory Opinion 2012-14, the FEC affirmed that it will continue to enforce the Federal Election Campaign Act's (FECA's) aggregate election cycle contribution limits (also known as the biennial contribution limit). The requestor, a private citizen, asked whether he could make contributions to federal candidates totaling \$54,440 in the aggregate for the 2011-12 election cycle. Currently, an individual may contribute no more than \$46,200 to all federal candidates in the aggregate during the 2011-12 election cycle. The requestor asserted that FECA's aggregate election cycle contribution limit with respect to federal candidates was unconstitutional.

The FEC indicated that it lacked the power to find a federal statute unconstitutional and that it would continue to enforce the aggregate election cycle contribution limits because no court has invalidated the statute on constitutional grounds.