

Corporations Beware! FEC Leaves Small Business in Crosshairs

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Imagine you own a local bakery. A woman dressed in a suit walks into your store and orders a platter of pastries. You chat while preparing the order. The woman mentions her office is celebrating the retirement of a colleague. She hands you a credit card – it looks like any personal credit card with her name on it. You swipe it, and the transaction is processed. You hand the woman her order and receipt, and think nothing of it. You have no idea the woman you just sold baked goods to is an employee of the federal government and will be reimbursed with federal funds for the expense. But that is of no matter, right? Surely there’s no way you just became a *federal government contractor*. According to the Federal Election Commission’s (FEC) professional staff and some Commissioners, you should think again.

The FEC recently considered whether a regional company with a chain of auto and tire repair shops violated the federal contractor ban when it made a contribution to a federal super PAC. At the time, one of its auto shops was servicing a vehicle that, unbeknownst to the business, was owned by the U.S. General Services Administration.

The FEC’s Office of General Counsel (OGC) rejected the company’s argument that it was not a federal contractor, reiterating the Commission’s prior position that the definition of “contract” goes beyond procurement contracts and does not distinguish between negotiated, competitively bid, or any other types of contracts. Nonetheless, OGC recommended dismissing the matter for prudential reasons, taking into account the nature and value of the retail purchases (about \$10,000) and the unique circumstances. The Commissioners voted to dismiss the matter.

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So where does this leave businesses? The short answer: Vulnerable.

Without a vote of four or more Commissioners clarifying that retailers are not covered by the federal contractor ban, businesses remain in a cloud of uncertainty and can still unwittingly become government contractors, subject to attendant campaign finance restrictions.

Wiley's Election Law & Government Ethics Practice frequently counsels corporate clients on questions of federal campaign finance, including developing risk mitigation strategies in unclear areas of the law.