



New York State Department of Labor
Andrew M. Cuomo, Governor
Peter M. Rivera, Commissioner

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Comment on ADR 2014-04

OFFICE OF GENERAL
COUNSEL

May 27, 2014

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Re: AO 2014-04 Enterprise Holdings, Inc.
Federal preemption of state law

Dear Commissioners:

The New York State Department of Labor respectfully requests that the Commission refrain from issuing an opinion on the preemption issue raised by the requestor because that issue is rendered moot by the underlying state statutory scheme. New York does not prohibit the specific payroll deductions at issue, as further set forth below. Absent such prohibition, the request poses a hypothetical situation that does not qualify as an advisory opinion request under the Commission's regulation at 11 C.F.R. § 112.1(b).

New York expressly recognizes that payroll deductions from wages may be "made in accordance with the provisions of any law or any rule or regulation..." New York Labor Law § 193(1)(a). The New York State Department of Labor, which is charged with enforcing this and other provisions of the New York State Labor Law, recognizes that this language governs the issue raised by the requestor. Generally, the Department recognizes that the prohibitions of Labor Law § 193 and its implementing regulation at 12 NYCRR Part 195 do not apply to payroll deductions from wages that are "made in accordance with" the provisions of applicable federal election laws and regulations that permit or proscribe payroll deductions for certain political action committees. More specifically, the Department acknowledges that the prohibitions of § 193 and Part 195 do not apply to payroll deductions made in accordance with 2 U.S.C. § 441b(b)(5) and 11 C.F.R. § 114.1(f), to facilitate the making of voluntary contributions from the restricted class employees of the requestor and its subsidiaries to its federal separate segregated fund, Enterprise Holdings, Inc. Political Action Committee, which the requestor represents does not make contributions to New York state non-federal candidates or political committees.

The requestor's concern that the broad language of a portion of the implementing regulations, at 12 NYCRR § 195-4.5, purport to prohibit the particular payroll deductions identified above, which are the subject of its request, is belied and obviated by the express statutory provisions of Labor Law § 193(1)(a) identified above. The implementing regulation at § 195-4.5 does not, and could not, prohibit such contributions because such an application of that regulation would conflict with New York's own statutory recognition of deductions made in accordance with law at Labor Law § 193(1)(a).

Absent any legal or factual basis for the requestor's concern that 12 NYCRR § 195-4.5 might purport to prohibit the specific payroll deductions identified above and in the request, notwithstanding the express language Labor Law § 193(1)(a) and our representations in this letter, we urge you to recommend, and the Commission to agree, that an opinion on the federal preemption issue posed by requestor, should not be issued.

Sincerely,



Pico Ben-Amotz, Esq.
General Counsel
New York State Dept. of Labor

PBA:rmm