FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 23, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2014-05

Charles A. Fiedler, Esq.
Fiedler & Tenney, P.C.
322 West Ottawa Street, Suite 3
Lansing, Michigan 48933

Dear Mr. Fiedler:

We are responding to your advisory opinion request on behalf of the Henry Ford Health System Government Affairs Services Political Action Committee (the "Requestor"). The Requestor asks whether it may solicit contributions from employees of its connected organization's corporate parent and that parent's other subsidiaries under the Federal Election Campaign Act, 2 U.S.C. §§ 431-457 ("FECA"), and Commission regulations. The Requestor also asks whether FECA preempts Michigan law concerning the solicitation of contributions.

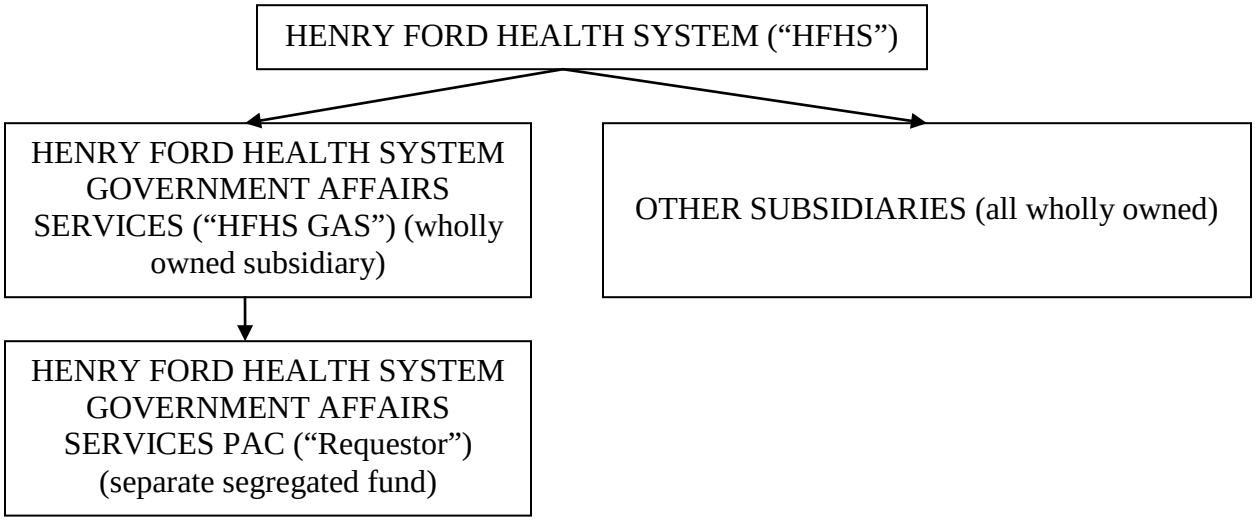
The Commission concludes that the Requestor may solicit contributions as it proposes pursuant to FECA and Commission regulations. The Commission does not reach the preemption question because the Michigan law at issue does not apply to contributions to federal political committees, and the state has officially interpreted that law as not regulating contributions or expenditures made to support or oppose federal candidates.

Background

The facts presented in this advisory opinion are based on your letter received on July 2, 2014.

The Requestor is registered with both the Commission and the Michigan Board of Elections as the separate segregated fund ("SSF") of Henry Ford Health System Government Affairs Services ("HFHS GAS"), a Michigan nonprofit membership corporation. HFHS GAS, in turn, is a wholly owned subsidiary of Henry Ford Health System ("HFHS"), a Michigan nonprofit corporation holding tax-exempt status under 26 U.S.C. § 501(c)(3).

HFHS has a number of other wholly owned subsidiaries in addition to HFHS GAS.[1] HFHS is either the sole member or the sole shareholder of each of these subsidiaries, with the authority to elect and remove all members of their boards of trustees and officers. Accordingly, the general structure of the entities at issue here is as follows:



HFHS's board of trustees and the boards of its subsidiaries have "varying degree[s]" of cross-membership. HFHS and its subsidiaries transfer funds, goods, and personnel between and among themselves on an ongoing basis. HFHS's consolidated financial statement and tax return include HFHS's subsidiaries.

The Requestor states that the primary purpose of HFHS GAS is to serve as a legislative, regulatory, and advocacy service for HFHS and its subsidiaries, with an incidental purpose of serving as a sponsor and organizer of a political action committee. HFHS GAS is not expected to have any employees.

The Requestor proposes to solicit contributions from individuals who are employees of either HFHS or HFHS's other wholly owned subsidiaries. The Requestor plans to establish three separate depository accounts for these contributions: (1) a federal account for contributions raised from solicitations of members of HFHS's "restricted class" (and unsolicited contributions received from the general public); (2) a second federal account for contributions raised from employees of HFHS's subsidiaries; and (3) a state account for funds that will be used for expenditures in support of state, district, and local candidates and committees.

The Requestor plans to deposit all contributions initially into one of the federal accounts. It will then transfer some of the funds to the state account for use in connection with state political activity. The Requestor states that solicitations of contributions to be transferred from a federal account to the state account will meet both federal and state legal requirements. For the

[1] These subsidiaries include Henry Ford Macomb Hospital Corporation, Henry Ford Wyandotte Hospital, Health Alliance Plan, and Henry Ford Physicians Network.

funds that will not be transferred to the state account, the Requestor would like to solicit contributions from all persons from whom it may solicit contributions under FECA and Commission regulations, without regard to state law.

The Michigan Campaign Finance Act, Mich. Comp. Laws Ann. §§ 169.201-.282 (West 2014), provides, in relevant part, that contributions to an SSF established by a nonprofit corporation may be solicited from any of the following persons or their spouses: (1) members of the corporation who are individuals; (2) stockholders or members of members of the corporation; (3) officers or directors of members of the corporation; (4) employees of the members of the corporation who have policymaking, managerial, professional, supervisory, or administrative non-clerical responsibilities; and (5) employees of the corporation who have policymaking, managerial, professional, supervisory, or administrative nonclerical responsibilities. Mich. Comp. Laws Ann. § 169.255(3) (West 2014).

With one exception not relevant here, the term "contribution" as used in the Michigan Campaign Finance Act "does not include a contribution to a federal candidate or a federal committee." Mich. Comp. Laws Ann. § 169.204(2) (West 2014). In a declaratory ruling, the Michigan Secretary of State's office therefore concluded that the Michigan statute "does *not* regulate contributions and expenditures made to support or oppose candidates for federal office." Mich. Dep't of State, 1-97-CI at 2 (Nov. 4, 1997), *available at* http://www.michigan.gov/documents/sos/Pirich_Knowlton_1997_428690_7.pdf (emphasis in original).

Questions Presented

1. *May the Requestor solicit contributions from the executive and administrative personnel (and their families) of HFHS and its subsidiaries, and other employees of HFHS and its subsidiaries, under FECA and Commission regulations?*[2]

2. *Do such solicitations by the Requestor supersede provisions of MCLA 169.201, et seq. with regard to funds that are used to support federal candidates and committees based on federal preemptive provisions?*

[2] The Requestor refers to executive and administrative personnel and their families as the "restricted class," and to other potentially solicitable employees as the "expanded class." Although Commission regulations use the term "restricted class" to describe the group of persons whom a stock corporation may solicit for contributions to the corporation's SSF, 11 C.F.R. § 114.1(j), that term applies differently to corporations without capital stock, like the Requestor. With regard to such corporations, Commission regulations refer to the group of persons whom the corporation's SSF may solicit as the "solicitable class," which "may include some persons who are not considered part of the organization's restricted class, and may exclude some persons who are in the restricted class." *Id.* In this advisory opinion, the Commission uses the term "solicitable class" to refer to the members and executive and administrative personnel, and their families, that a corporation without capital stock may solicit for contributions to its SSF. *See* 11 C.F.R. § 114.7(a).

Legal Analysis and Conclusions

1. *May the Requestor solicit contributions from the executive and administrative personnel (and their families) of HFHS and its subsidiaries, and other employees of HFHS and its subsidiaries, under FECA and Commission regulations?*

Yes, the Requestor may solicit contributions from the executive and administrative personnel (and their families) of HFHS and its subsidiaries. The Requestor may also solicit contributions from other employees of HFHS and its subsidiaries twice yearly, as provided by FECA and Commission regulations.

Under FECA and Commission regulations, a corporation without capital stock and its SSF may solicit contributions to the SSF from the corporation's members and executive and administrative personnel,[3] and their families (the "solicitable class"). 2 U.S.C. § 441b(b)(4)(C); 11 C.F.R. § 114.7(a); *see also* 11 C.F.R. § 114.1(j). A corporation and its SSF may also solicit the executive and administrative personnel of the corporation's "affiliates," and their families. 11 C.F.R. § 114.5(g)(1); *see also* Advisory Opinion 2001-18 (BellSouth); Advisory Opinion 1997-25 (Hughes Electronics).

"Commission regulations identify organizations that are *per se* affiliated . . . . These include a single corporation and/or its subsidiaries . . . ." Advisory Opinion 2007-12 (Tyco International Management) at 3 (citing 11 C.F.R. §§ 100.5(g)(3)(i), 110.3(a)(2)(i)). Thus, as a parent corporation and its wholly owned subsidiaries, HFHS, HFHS GAS, and HFHS's other subsidiaries are *per se* affiliated. *See* Advisory Opinion 2004-32 (Spirit Airlines) at 3 ("The Commission considers an entity that owns a majority interest of another organization to be affiliated *per se* with that other organization."); Advisory Opinion 1983-48 (Cablevision Systems); Advisory Opinion 1982-18 (Gannett Fleming Corddry and Carpenter Federal PAC); Advisory Opinion 1980-18 (Kanter). Accordingly, the Requestor may solicit the solicitable class of HFHS and its subsidiaries pursuant to 11 C.F.R. § 114.5(g)(1). *See* Advisory Opinion 2004-32 (Spirit Airlines) at 3 (concluding that if entities are affiliated, any affiliate may solicit any other's restricted class); *see also* Advisory Opinion 1999-28 (Bacardi-Martini, USA); Advisory Opinion 1982-18 at 1-2 (Gannett Fleming Corddry and Carpenter Federal PAC) (stating that SSF of subsidiary corporation may solicit contributions from parent's restricted class and from restricted class of parent's other subsidiaries).[4]

In addition, under FECA and Commission regulations, a corporation and its SSF may make up to two written solicitations per calendar year for contributions to the SSF from employees outside the corporation's solicitable class. 2 U.S.C. § 441b(b)(4)(B); 11 C.F.R.

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[3] Commission regulations define "executive or administrative personnel" as individuals who are employed by a corporation, paid on a salary rather than hourly basis, and have policymaking, managerial, professional, or supervisory responsibilities. 11 C.F.R. §§ 100.134(d), 114.1(c).

[4] The Commission notes that the Requestor and an SSF established by any of its affiliates would be deemed affiliated committees under FECA and Commission regulations. *See* 2 U.S.C. § 441a(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii). Accordingly, all such committees would be treated as a single political committee for purposes of FECA's contribution limits. 2 U.S.C. § 441a(a)(5); Advisory Opinion 1999-28 (Bacardi-Martini, USA).

§ 114.6(a). This rule also applies to the corporation's affiliates. *See* Advisory Opinion 2004-32 (Spirit Airlines); *see also* Advisory Opinion 1990-25 (Community Psychiatric Centers Federal PAC). Accordingly, if employees of HFHS or its subsidiaries do not qualify as members of the solicitable class, the Requestor may solicit contributions from such employees up to two times per year under the conditions set out in 11 C.F.R. §§ 114.5(a), 114.6.

2. *Do such solicitations by the Requestor supersede provisions of MCLA 169.201, et seq. with regard to funds that are used to support federal candidates and committees based on federal preemptive provisions?*

Because the Michigan law at issue does not apply to contributions to federal political committees and the state has confirmed that the law does not regulate contributions made to support or oppose candidates for federal office, the Commission does not reach the preemption question.

FECA and Commission regulations "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. § 453(a); *see also* 11 C.F.R. § 108.7(a). The Commission has previously applied this provision in the context of state laws restricting the solicitation of contributions by federal political committees. *See, e.g.,* Advisory Opinion 1989-27 (Bryan) (concluding that FECA preempts state restrictions on federal political committee's solicitation and receipt of contributions); *see also* Advisory Opinion 1992-43 (Erwin) (concluding that FECA preempts state law regulating timing of solicitation and acceptance of contributions by federal political committee).

The situation presented here, however, is most similar to Advisory Opinion 2014-04 (Enterprise Holdings). In that advisory opinion, the requestor asked the Commission to conclude that FECA preempted New York's statutory and regulatory prohibitions on using payroll deductions to facilitate contributions to political committees, as applied to the requestor's intended use of payroll deductions to facilitate its employees' contributions to its federal SSF. The New York statute in question contained a global exemption that permitted payroll deductions "made in accordance with . . . any law or . . . regulation issued by any governmental agency," *id*. at 3, and the New York agency charged with enforcing that statute had clarified that this exemption rendered the state statute inapplicable to payroll deductions authorized by FECA and Commission regulations. *Id*. Relying on the state agency's clarification that New York law did not apply to the requestor's activity, the Commission did not reach the question of whether the law was preempted by FECA. *Id*.

Similarly, here, the state statute on its face does not apply to contributions to a federal political committee, like the Requestor, or to federal candidates. Mich. Comp. Laws Ann. § 169.204(2) (West 2014) (providing that definition of "contribution" under Michigan Campaign Finance Act "does not include a contribution to a federal candidate or a federal committee"). Moreover, while confirming that the Michigan statute applies to contributions and expenditures that are made to support or oppose candidates for state and local offices and Michigan ballot questions, the Michigan Department of State has officially opined that the Michigan Act "does *not* regulate contributions and expenditures made to support or oppose candidates for federal offices or offices in other states." Mich. Dep't of State, 1-97-CI at 2 (Nov. 4, 1997), *available at*

http://www.michigan.gov/documents/sos/Pirich_Knowlton_1997_428690_7.pdf (emphasis in original). Accordingly, as in Advisory Opinion 2014-04 (Enterprise Holdings), the Commission relies on the state's interpretation that its statute does not apply to the Requestor's proposed activity, and the Commission therefore does not reach the question of whether the state law is preempted.

The Commission expresses no opinion regarding any implications of the Requestor's proposal under the Internal Revenue Code because those issues are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of FECA and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

(signed)

Lee E. Goodman
Chairman