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Washington, DC 20463

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For meeting of June 26, 2014
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June 25, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Deputy General Counsel

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Acting Associate General Counsel

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Attorney

Subject: AO 2014-04 (Enterprise Holdings) Draft C

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on June 26, 2014.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2014-04

2

3 Jan Witold Baran, Esq.

4 Eric Wang, Esq.

5 Wiley Rein LLP

6 1776 K Street, NW

7 Washington, DC 20006

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9 Dear Messrs. Baran and Wang:

DRAFT C

10 We are responding to your advisory opinion request on behalf of Enterprise Holdings,

11 Inc., which asks whether federal law preempts New York law regarding the requestor's use of

12 payroll deductions to process voluntary contributions to its separate segregated fund ("SSF").

13 The Commission concludes that the requestor's use of such deductions is permissible under the

14 Federal Election Campaign Act, 2 U.S.C. §§ 431-57 ("FECA"), and Commission regulations.

15 Because the New York State Department of Labor has clarified that the state statute and

16 regulation at issue do not apply to the requestor's payroll deductions for its SSF, the Commission

17 does not reach the preemption question presented in the request.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on April 24,

20 2014.

21 Enterprise Holdings is the corporate parent of Enterprise Rent-A-Car, Alamo Rent-A-

22 Car, and National Car Rental. Enterprise PAC is the SSF of Enterprise Holdings and is

23 registered with the Commission. Enterprise PAC makes contributions to federal candidates,

24 federal political committees, and (where permissible) to candidates for nonfederal offices in

25 states other than New York, though it does not make, and does not plan to make, contributions to

26 New York state nonfederal candidates or political committees. Enterprise Holdings uses a

1 payroll-deduction program to facilitate the making of voluntary contributions by its restricted-
2 class employees, including employees in New York, to Enterprise PAC.

3 A New York state statute specifies the payroll deductions that employers may implement
4 for their employees and prohibits all other deductions. N.Y. Lab. Law § 193. Paragraph (1)(a)
5 of the statute acknowledges that employers may implement payroll deductions “in accordance
6 with the provisions of any law or any rule or regulation issued by any governmental agency.” *Id.*
7 § 193(1)(a). Paragraph (1)(b) provides that an employer also may make deductions that are
8 “expressly authorized in writing by the employee” and “limited to payments for” certain
9 statutorily enumerated purposes. *Id.* § 193(1)(b).¹ None of these enumerated purposes includes
10 political contributions, *see id.*, and the New York State Department of Labor’s regulations
11 specify that payroll deductions for “[c]ontributions to political action committees, campaigns and
12 similar payments” are not permissible under section 193(1)(b), even if authorized by the
13 employee. N.Y. Comp. Codes R. & Regs. Tit. 12, § 195-4.5(f) (2013).

14 On May 27, 2014, the Commission received a comment from the New York State
15 Department of Labor regarding the instant request. The comment notes that the reference in
16 section 193(1)(a) to payroll deductions made “in accordance with any law or any rule or
17 regulation” includes “federal election laws and regulations.” N.Y. State Dep’t of Labor,
18 Comment at 1. The comment accordingly states that “New York does not prohibit the specific
19 payroll deductions at issue.” *Id.* More particularly, the comment states that the state law
20 prohibitions in question “do not apply to payroll deductions made in accordance with 2 U.S.C.
21 § 441b(b)(5) and 11 C.F.R. § 114.1(f), to facilitate the making of voluntary contributions from

¹ The statute contains other limited exceptions, which are not relevant here. *See* N.Y. Lab. Law § 193(1)(c)-(d), (2).

1 the restricted class employees of the requestor and its subsidiaries to its federal separate
2 segregated fund, Enterprise Holdings, Inc. Political Action Committee.” *Id.*

3 ***Question Presented***

4 *Do FECA and Commission regulations preempt N.Y. Lab. Law § 193 and N.Y. Comp.*
5 *Codes R. & Regs. Tit. 12, § 195-4.5(f) insofar as the state provisions purport to prohibit the use*
6 *of payroll deductions for employees to make voluntary contributions to Enterprise PAC?*

7 ***Legal Analysis and Conclusions***

8 The requestor’s use of payroll deductions to process voluntary contributions to Enterprise
9 PAC is permissible under FECA and Commission regulations. Because the New York State
10 Department of Labor has clarified that the state statute and regulation at issue do not apply to the
11 requestor’s payroll deductions for its SSF, the Commission does not reach the preemption
12 question presented in the request.

13 Commission regulations expressly permit a corporation to use payroll deductions to
14 facilitate the making of voluntary contributions from the corporation’s executive and
15 administrative personnel to its SSF. 11 C.F.R. §§ 114.1(f), 114.2(f)(4)(i), 114.5(k)(1); *see also*
16 *Advisory Opinion 2010-12 (Procter & Gamble) at 3 (authorizing connected organization to*
17 *deduct SSF contributions from quarterly retainer payments to its directors); Advisory Opinion*
18 *2001-04 (Morgan Stanley Dean Witter & Co. PAC) at 3 (authorizing connected organization to*
19 *accept payroll-deduction authorizations made by electronic signature for contributions to its*
20 *SSF); Advisory Opinion 1999-03 (Microsoft PAC) at 2 (same). Like the SSFs in these prior*
21 *advisory opinions, Enterprise PAC is a federal political committee that makes contributions to*
22 *federal candidates and political committees and uses a payroll-deduction system to process*
23 *voluntary contributions to the SSF from members of the restricted class. Thus, the Commission*

1 concludes that the requestor may operate a payroll-deduction system, as described in the request,
2 consistent with the Act and Commission’s regulations.

3 FECA and Commission regulations “supersede and preempt any provision of State law
4 with respect to election to Federal office.” 2 U.S.C. § 453(a); *see also* 11 C.F.R. § 108.7(a). The
5 Commission has previously applied this provision in the context of state laws prohibiting the use
6 of payroll-deduction programs for voluntary contributions to an SSF. *See* Advisory Opinion
7 1982-29 (United Telecom PAC) at 2 (“[T]he Act would supersede or preempt any State law
8 prohibiting the use of payroll deductions as a means of facilitating voluntary
9 contributions”); Advisory Opinion 1976-23 (Conoco Employees Good Government Fund)
10 at 2 (“State laws regarding payroll deduction plans would not be applicable to separate
11 segregated funds established for the purpose of making contributions or expenditures in
12 connection with Federal elections.”).

13 Here the state statute does not apply to any payroll deduction “made in accordance with
14 the provisions of any law or any rule or regulation issued by any governmental agency.” N.Y.
15 Lab. Law § 193(1)(a). In light of that provision, the New York State Department of Labor
16 confirms in its comment that the prohibitions in N.Y. Lab. Law § 193(1)(b) and its implementing
17 regulations “do not apply to payroll deductions . . . that are ‘made in accordance with’ the
18 provisions of applicable federal election laws and regulations that permit or proscribe payroll
19 deductions for certain political action committees.” N. Y. State Dep’t of Labor, Comment at 1.
20 “More specifically,” the comment notes, the state provisions “do not apply to payroll deductions
21 made in accordance with [FECA and Commission regulations] to facilitate the making of
22 voluntary contributions from the restricted class employees of the requestor and its subsidiaries
23 to its federal separate segregated fund.” *Id.* Furthermore, in response to the requestor’s specific

1 concern that the New York regulation at issue seems to prohibit payroll deductions for political-
2 committee contributions, the comment makes clear that “[t]he implementing regulation at § 195-
3 4.5 *does not, and could not,* prohibit [the requestor’s payroll deductions] because such an
4 application of that regulation would conflict with New York’s own statutory recognition of
5 deductions made in accordance with law at Labor Law § 193(1)(a).” *Id.* (emphasis added).

6 As noted above, the requestor’s payroll deductions are lawful under the Commission’s
7 regulations. In recognition of and reliance on the representation from the New York State
8 Department of Labor that state law does not apply to the activity that is the subject of this
9 advisory opinion request, the Commission does not reach the question of whether the state law is
10 preempted.

11 This response constitutes an advisory opinion concerning the application of FECA and
12 Commission regulations to the specific transaction or activity set forth in your request. *See* 2
13 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or
14 assumptions presented, and such facts or assumptions are material to a conclusion presented in
15 this advisory opinion, then the requestor may not rely on that conclusion as support for its
16 proposed activity. Any person involved in any specific transaction or activity which is
17 indistinguishable in all its material aspects from the transaction or activity with respect to which
18 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C.
19 § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be

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1 affected by subsequent developments in the law including, but not limited to, statutes,
2 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
3 on the Commission's website.

4 On behalf of the Commission,

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8 Lee E. Goodman
9 Chairman
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