



KENTUCKY REGISTRY OF ELECTION FINANCE

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140 Walnut Street
Frankfort, Kentucky 40601-3240
Phone: (502) 573-2226
Fax: (502) 573-5622
www.kref.ky.gov

John R. Steffen
Executive Director

Emily Dennis
General Counsel

ADVISORY OPINION 2018-001

Any Advisory Opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the Advisory Opinion is required. See KRS 121.135(4).

April 4, 2018

VIA FACSIMILE 502.695.9499
AND FIRST CLASS U.S. MAIL

R. Finley Messick
Executive Director
Kentucky Concrete Association
1 HMB Circle
Frankfort, KY 40601

In re: Permanent Committee/ Corporate Sponsorship of Fundraising Event (AO 2018-001)

Dear Mr. Messick:

This Advisory Opinion is sent in response to your recent request on behalf of the Kentucky Concrete Association (KCA) and its sponsored permanent committee, the Kentucky Concrete Industries PAC. The Registry received your advisory opinion request on March 9, 2018. As required by KRS 121.135(5)(a), your request was posted for public comment on March 14, 2018. No public comments were received.

You specifically state that the Kentucky Concrete Industries PAC is planning a Sporting Clay Shoot fundraising event for May 2018. The plan for the event is to have individuals pay a fee to participate in the event, and the KCA would like to ask corporations to sponsor the administrative and overhead costs of the event by donating certain items which will be available to attendees, as follows:

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- Food
- Drinks
- Signage
- Golf Cart Rental
- Targets
- Eye & Ear Protection
- Venue fees for location rental
- Fees for services rendered by the venue (Tallying score cards, professional guides)
- Ammunition

You specifically ask if it is allowable for corporations to donate the above items as part of the administrative expenses for the fundraiser?

The core issue in your request is whether certain fundraising expenses consistent with the described Sporting Clay Shoot fundraising event are properly considered administrative expenses within the meaning of KRS 121.150(19). Regarding contribution limits, KRS 121.150(19) specifically provides that “(n)othing in this section [KRS 121.150] shall be construed to restrict the ability of a corporation to administer its permanent committee insofar as its actions can be deemed not to influence an election as prohibited by KRS 121.025.” See KRS 121.150(19). The term “corporation” is not defined in the campaign finance law; however, under KRS 446.010(11), the term “corporation” may extend and be applied to any corporation, company, partnership, joint stock company, or association. Therefore, for purposes of this analysis, the Kentucky Concrete Association is treated as a corporation.

Prior interpretations of KRS 121.150(19) required a state PAC such as the Kentucky Concrete Industries PAC to reimburse a corporate sponsor for administrative expenses associated with a PAC. However, the United States District Court for the Eastern District of Kentucky has ordered that corporations, limited liability companies and unions are entitled to equal treatment in the exercise of a PAC option, including state PACs. *Protect My Check v. Dilger, et al.*, 176 F. Supp.3d 685 (E.D. Ky. 2016). Under this ruling, the Registry has acknowledged, although corporate contributions to a PAC remain prohibited, a corporation such as the Kentucky Concrete Association may sponsor and otherwise administer its state PAC using corporate funds.

A PAC cannot be effectively administered without fundraising efforts. Thus, the Kentucky Concrete Association may use its general treasury funds to administer the Kentucky Concrete Industries PAC Sporting Clay Shoot fundraising event, which includes the items enumerated above, so long as no corporate funds are contributed directly or otherwise commingled in the Kentucky Concrete Industries PAC account, participating corporate co-sponsors are publicly recognized at the event, and the event is properly disclosed on the Events Schedule of the PAC’s duly filed Election Finance Statement covering the time period in which the event is held. In addition to disclosing the cost of the event as paid for by the Kentucky Concrete Association and its participating co-sponsors on the Events Schedule, all admission fees paid by individuals to the PAC for participation in the event must be reported as contributions and itemized by the PAC as required by law.

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The Kentucky Concrete Association may not, however, use its funds or otherwise accept corporate donations for prizes or other inducements offered to donors in exchange for their support of the Kentucky Concrete Industries PAC. In general, donations of items to be offered in exchange for contributions are considered in-kind contributions, which includes the payment for or provision of certain goods and services valued at more than one hundred dollars in the aggregate. See KRS 121.015(6)(c) and (d).

Please keep in mind that this Advisory Opinion is based on the specific facts set forth in your written request, does not cover past conduct, and only may be applied to cover the conduct in the transaction you describe. If you have any questions concerning this Advisory Opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,



EMILY DENNIS
General Counsel

Cc: Registry Members
John R. Steffen, Executive Director