SANDLER REIFF

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July 16, 2026

The Office of the General Counsel
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601

Via Email Only: KREFRequests@ky.gov

Re: Request for Advisory Opinion

Dear Ms. Saunders,

I am writing on behalf of our client, The American SOS Project PAC, which is a Federal independent-expenditure only political committee ("Super PAC") registered with the Federal Election Commission.[1] Since our client plans to participate in a Kentucky election, it fully intends to comply with the State's campaign finance laws as a Kentucky Independent Expenditure-Only Committee ("IEOC").[2]

The American SOS Project PAC plans to create and disseminate independent expenditures in support of a statewide candidate in Kentucky, and as part of these activities would like to receive assistance from those best positioned to offer their support. In particular, our client wants to know whether the candidate that it supports can solicit funds on behalf of the Super PAC. Also, our client wants to hire a person who previously volunteered for the candidate prior to the candidate formally declaring their candidacy. The volunteer will not work for or volunteer for the candidate after they become a candidate. Our client wants to know whether it can hire the former volunteer to assist the independent expenditure campaign in support of the candidate.

In order to better inform its planned activities, we request an advisory opinion on the questions stated below.

[1] The American SOS Project PAC, Statement of Organization – FEC Form 1 (May 23, 2024), https://docquery.fec.gov/pdf/249/202405239648732249/202405239648732249.pdf.

[2] *See* Ky. Rev. Stat. §§ 121.015(12) (defining independent expenditure-only committee), 121.170(5) (requiring Federal political committees to comply with Kentucky campaign finance law when participating in elections for state office).

<u>Question 1</u>: May a candidate for office in Kentucky solicit funds on behalf of a Super PAC supporting the candidate provided that such solicitations are limited to individuals in amounts of $3,500 per year?

State law provides that an independent expenditure cannot be made with the "coordination, consultation, or cooperation…[or] in concert with, or at the request or suggestion of any candidate, [or their agents]…."[3] In other words, candidates and their agents may not coordinate, consult, or cooperate with an IEOC on the IEOC's communication expenditures.

In analyzing how this rule applies in practice, the Kentucky Registry of Election Finance ("KREF") has advised that an IEOC "is not authorized by a candidate,"[4] and that candidates should avoid conduct indicating coordination on expenditures.[5]

Furthermore, the courts define "independent expenditure" as "an act not within the control of the candidate."[6] Kentucky courts have limited their inquiries of what qualifies as an independent expenditure to a few criteria: communications between the candidate and outside groups regarding the content, timing, place, nature, or volume of the IEOC's communication expenditures.[7] This suggests that a candidate can have communications with and on behalf of an IEOC as long as those communications do not include material information about the content, timing, place, nature, or volume of the IEOC's communications.

While State law limits certain communications between a candidate and their agents with an IEOC,[8] KREF has explained that State law does not "ban any communication between the candidate and potential spender, but rather [disallows] contributions not made through a campaign's manager or Treasurer."[9] Instead, KREF has stated that coordination "requires more than showing a prior communication, meeting, or consultation. The evidence must show that a candidate or his agent consulted with the spender 'regarding the content, timing, place, nature or volume of communications to be made.'"[10] Therefore, KREFs prior guidance indicates that a candidate and their agents can have conversations about other matters and there is no prohibition on candidate-solicitations for an IEOC.

When State law does not provide clear guidance, KREF has looked to Federal laws and regulations for clarity.[11] Federal law allows candidates to fundraise on behalf of a Super PACs

[3] Ky. Rev. Stat. § 121.015(12).
[4] Ky. Reg. of Elec. Finance, Advisory Op. 2010-001 at 3 (Mar. 24, 2010), https://kref.ky.gov/KREF%20Advisory%20Opinions/2010_001_Opinion.pdf.
[5] Ky. Reg. of Elec. Finance, Advisory Op. 2011-002 at 3 (Apr. 25, 2011), https://kref.ky.gov/KREF%20Advisory%20Opinions/2011_002_Opinion.pdf.
[6] *Wilkinson v. Jones*, 876 F. Supp. 916, 927 (W.D. Ky. 1995).
[7] *See Martin v. Commonwealth*, 96 S.W.3d 38, 56 (Ky. 2003) (citing *Federal Election Commission v. Christian Coalition*, 52 F.Supp.2d 45, 92 (D.D.C. 1999)); Ky. Reg. of Elec. Finance, Advisory Op. 1999-014 at 2 (Nov. 1, 1999), https://kref.ky.gov/KREF%20Advisory%20Opinions/1999_014_Opinion.pdf.
[8] Ky. Rev. Stat. § 121.150(1).
[9] Ky. Reg. of Elec. Finance, Advisory Op. 2014-006 at 2 (Jan. 13, 2015) (citing *Martin*, 96 S.W.3d at 52), https://kref.ky.gov/KREF Advisory Opinions/2014-006_Opinion.pdf.
[10] *Id.* at 2 (quoting *Martin*, 96 S.W.3d at 56).
[11] *See, e.g.*, *id.* at 3 (affirming that KREF has applied the Federal coordination standard when State law was lacking silent on whether a practicing election law attorney could serve as the treasurer of an IEOC).

provided that such solicitations are only made to permissible federal sources (*e.g.* individuals not corporations) and within the federal contribution limit ($5,000 per year).[12] Candidates may even attend a Super PAC's fundraising event and solicit donations for the Super PAC.[13]

<u>Question 2</u>: Can an individual who volunteered to assist a person before that person became a candidate for office in Kentucky be chair of, or otherwise work for, a Super PAC supporting the candidate?

State law prohibits candidates and their agents from coordinating, consulting, or cooperating with an IEOC.[14] State law, however, does not address the nature of relationships between a candidate, volunteers, or consultants prior to a person becoming a candidate for office, and the effect of those relationships on coordination under campaign finance law.

State campaign finance law explicitly states that volunteer services—whether a portion or all of a person's time—are not a contribution.[15] Although this assumes that the person receiving the volunteer services is already a candidate, it shows that there is no inherent conflict for a volunteer to a candidate's campaign eventually participating in an IEOC supporting the candidate.

As noted above, KREF has looked to Federal law and regulations when State law does not provide clear guidance.[16] Federal law permits former employees and contractors who provided certain services for a candidate to provide such services for an independent expenditure committee after a 120-day cooling-off period.[17] Specifically, an individual who provided services—including development of media strategy; selection or purchasing of advertising slots, selection of audiences; polling; fundraising; developing the content of a public communication; producing a public communication; identifying voters or developing voter lists, mailing lists, or donor lists; selecting personnel, contractors, or subcontractors; or consulting or otherwise providing political or media advice—can provide such services for a Super PAC after a 120-day cooling off period.[18] The FEC limits the rule to only apply to information that is material to the creation, production, or distribution of the Super PAC's communications.[19] After the 120-day "cooling-off" period is complete, the former employee or independent contractor has no restrictions on their work for the Super PAC.[20] And if an individual did not engage in any of the above-listed strategic services for a candidate, there would be no cooling-off period for them if they worked for an Super PAC.

[12] 52 U.S.C. § 31025(e)(1)(A)).
[13] 11 C.F.R. § 300.64.
[14] *See supra* text accompanying note 3.
[15] Ky. Rev. Stat. § 121.015(7)(a).
[16] *See supra* note 11.
[17] 11 C.F.R. § 109.21(d)(5).
[18] 11 C.F.R. §§ 109.21(d)(4) and (d)(5).
[19] 11 C.F.R. § 109.21(d)(4)(iii) and (d)(5).
[20] The former employee or independent contractor may work for the Super PAC before the 120-day cooling-off period is complete, but must operate under a federally compliant firewall policy to avoid coordination. *See* 11 C.F.R. § 109.21(h).

Thank you for your attention to this request. Please contact me if you need additional information.

James C. Lamb
Eric S. Lynch
Counsel