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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

September 25, 2001

AO-01-25

Christopher N. Souris, Esq.
Krakow, Souris & Birmingham, LLC
225 Friend Street
Boston, MA 02114

Re: Direct Deposit Payments to PAC

Dear Mr. Souris:

This letter is in response to your August 20, 2001 request for guidance on behalf of the New England Regional Council of Carpenters AFL-CIO Political Action Committee ("PAC") as to whether union members may, under the circumstances set forth below, make contributions from a benefits fund to the PAC by way of direct deposit.

Your client is a labor organization that has received contributions from union members in the construction industry. Pursuant to collective bargaining agreements, contractors employing members of this union contribute certain specified amounts of each member's hourly salary to various fringe benefit funds, including pension, annuity, health and welfare, training, etc. In addition, dues are deducted from members' wages and up to \$.89 per hour is reallocated to an account in the Vacation Fund ("Fund").

You state that the Fund is in fact a legal trust established pursuant to federal law and governed by the federal Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, *et seq.* The Fund is a separate legal entity, not affiliated with either the union or the contractor employers, and the administrators of the Fund are independent trustees who are under a strict fiduciary duty to act in the best interest of the union members.

After employers make the Fund wage deduction, the appropriate sum is transferred to the trustees of the Fund, who invest the money and maintain the members' account. The principal and earnings are distributed to members twice a year. You have described the vacation fund as "a form of [a] forced savings plan."

You further state that:

Under the Fund's rules and regulations, members may direct the Fund to transmit a small portion of their semiannual Vacation Fund

distribution to the PAC rather than receive the entire amount accrued in their accounts. The Fund will do so only if it receives from the member a form signed by the member expressly authorizing and directing the Fund to do so in the amount specified by the member ... The form itself reflects that the authorization may be "revoked by me in writing."

In accordance with this plan, the Fund distributes on a semiannual basis either the full amount in the member's account to the member or, for those members from whom the Fund has received signed authorization cards, the Fund will transmit a small portion of the amount to the PAC and distribute the balance to the member. When the Fund transmits amounts from the members' accounts to the PAC in accordance with the member's written direction, it deposits the amounts by wire transfer directly into the PAC's bank account. It also sends the PAC a list with the names, addresses, and amounts involved for each member who has contributed more than \$50 during the year in this manner so that the PAC can report such contributions on Schedule A. While the vast majority of members do not contribute more than \$50 per year to the PAC by this method, there usually are a few who do. The Fund itself maintains and retains its own internal records of the exact amounts transferred on behalf of each member who has authorized it to do so, regardless of the amount.

QUESTION

May the PAC accept direct deposit contributions from union members' Fund under the circumstances set forth above?

RESPONSE

Yes. As described, the transactions appear to comply with M.G.L. c. 55, §§ 9 and 9A. Therefore, union members may give, and the PAC may receive, contributions up to the legal limit by direct deposit from the Funds to the PAC's account.

The campaign finance law does not restrict the form of contributions received by a political committee until the aggregate amount given by any one contributor exceeds \$50 in a calendar year. Once this annual threshold is met, contributions from that individual or committee must be in the form of a written instrument¹ or, in the case of individual contributions to PACs, by direct deposit in accordance with § 9A. See M.G.L. § 9.

¹ A "written instrument" includes "a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account which represents or contains the contributor's funds ... [or] for contributions by credit card, a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder." The term "written instrument" shall not mean a certified check, cashier's check, treasurer's check, registered check, money order, traveler's check or other similar

For an individual to make a PAC contribution by direct deposit, section 9A requires that the funds be transferred by wire or other electronic means into the PAC's bank account. In addition, the contributor must provide the PAC with a copy of a signed card authorizing the contributor's bank or other financial institution to complete the transaction. This card must include (1) the contributor's name and residential address; (2) the amount, and payment period if applicable, of each contribution; (3) the contributor's occupation and employer(s) if the contribution authorized exceeds \$200 or may exceed \$200 in a calendar year; and (4) a statement that the contributor's authorization may be revoked at any time by written notice to the contributor's bank or financial institution. See M.G.L. § 9A.

Generally speaking political contributions financed through payroll deductions cannot exceed \$50 per contributor per calendar year because such contributions do not meet the criteria set forth in M.G.L. c. 55, § 9A and are not by way of written instrument. In the scenario you have presented, however, this does not appear to be the case. As you have described it, union members can authorize the trustees of the fund to transfer money from their account in the Fund into the PAC's account every six months. As long as the PAC is provided with a copy of the member's signed authorization, containing the information and disclaimer required by § 9A, at the time of the transfer, the PAC may accept such contributions up to the legal limit.²

Please note that this opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,



Michael J. Sullivan
Director

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negotiable instrument.” See M.G.L. c. 55, § 9.

² At this time it does not appear as though the fund trustees are providing the PAC with union members' employment information along with the transaction authorization. This is probably because you have indicated that union members “never” contribute more than \$200 a year to the PAC out of their vacation funds. In the event this ceases to be the case, or if contributions from a union member's vacation fund coupled with any other cash or in-kind contributions from that member to the PAC will exceed \$200 in a calendar year, the written authorization for the direct deposit provided to the PAC must also contain the union members employment information to conform with section 9A.