

PAC FUNDRAISING AND ---

THE LAW

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INTRODUCTION

As our 14th District NVP asked so forcefully on Sunday: --"Are we fired up?--Are we fired up?--Yeah, we're all fired up!"

This is an election year. AFGE **is** fired up and we **will** make a difference. We will work toward the election of those candidates who support our issues--who believe in the creed that nobody does it better than Federal Employees. And how will we do it? In part, our success is going to take dollars, more dollars and even yet more dollars.

I don't need to tell you that--I sure Bob has fired you up and handed you the challenge!

But, before you go out there and raise those big bucks, we think you need to stop first and make sure you pass the vet check. Do you really understand how you can raise PAC dollars legally? Do you know what your role is in making sure there are no black marks against AFGE or AFGE-PAC?

I'm here in my unpopular role of legal counsel to AFGE-PAC, to advise you that while you can go out there and get those political contributions, in fact, we expect you to do that, you must be very careful to only get them in certain ways and to report all sorts of information both to the contributor and to AFGE-PAC.

The Federal Election Campaign Act and the implementing rules and regulations are daunting to say the least. They comprise a whole legal specialty field. Campaign finance law is not easy to understand. It is not unequivocally clear. It has lots of twists and turns and subtle nuances. It is the very kind of law that leads clients --in this case, you -- to repeat the old joke about lawyers --in this case, me --

The next time I need a lawyer, I'm going to hire one who only has one arm--Why?

Because I'm sick of hearing those guys say on the one hand this but on the other than that....

Well, before you get a chance to repeat that joke, what I want to do today is to share with you some of the history of campaign finance and of the evolution of the regulations imposed on political contributions. Perhaps with this background in mind, it will help you to better understand the subtle nuances behind some of the restrictions in place to day.

When I get into the specific requirements we must all adhere to; I'm going to highlight certain words. This will be our vocabulary lesson because without the necessary vocabulary, it's awfully hard to understand why you must do some things and cannot do others under the Federal Election Campaign Act. We will talk about such matters as the "solicitable class", "prohibited contributions", "independent expenditures", "party committees", "candidate committees", issues involving "aggregation",

"allocation", "contributions in kind", "required disclaimers", the "three-for one rule", "voluntary", "individual", "best efforts" and others.

Finally, we'll touch on recordkeeping and reporting and then I'll leave you with my phone number.

BACKGROUND

It is now well established that the successful campaign is the well-financed campaign. And, the use of campaign money--how it is obtained and what attempts to limit its influence have been made -- is an important chapter in the development of American democracy.

This chapter in the history books involves a balancing of the candidate's funding needs -- they do need money -- with the maintenance of the integrity of the electoral system, which is the hallmark of democracy. When the amounts contributed or the means of obtaining the contributions appears to undermine the integrity of the electoral process, then the result has been a reform initiative.

Over the years, there have been a number of such reform measures and it is these measures that ultimately led to a proliferation of PAC's. That is the way political business is conducted now. If you are going to be a player in today's political process, then you will operate through a PAC. And, I might add, there are those who believe that once again the integrity of the electoral process is threatened and it is threatened by the power of the PAC's. Obviously, this is what is driving some to seek massive campaign finance reform now.

Let's briefly look briefly at the events that have led to the PAC way of doing business. After all, it was a labor initiative.

In the nineteenth century, there was no competitive civil service. For the most part, Federal employees were appointed to their positions as a reward for their political support of certain politicians. Once appointed, those employees then became the primary source of campaign funds. Contributions were exacted from them and if they failed to ante up, they were shown the door. This practice was not ended until the passage of the first Civil Service Reform Act of -- guess when -- 1883.

The passage of this Act barring the strong-arming of government employees for political contributions, led to a flow of millions of dollars of corporate monies to the campaign coffers and once again, a reform measure was passed. The Tillman Act of 1907 prohibited direct corporate contributions.

In the 1930's, once again, there was an explosion in political spending. So, campaign finance reform was perceived as a necessity. Who was the target this time? Labor unions were the primary focus. The War Disputes Act of 1943, or as it was commonly known, the Smith-Connelly Act, put the kaybosh on contributions from

unions' treasuries. Labor, however, remained undaunted. It recognized the role of and the necessity for making contributions to candidates for office. So, in 1943, it created what was probably the first PAC -- The Congress of Industrial Organizations Political Action Committee or CIO-PAC.

Even though the Smith-Connolly Act expired in 1947, that didn't free labor to once again use treasury money to make needed political contributions because Congress passed "The Labor Law" perhaps better known to us as the Taft-Hartly Act, the same year. That Act, believe it or not, banned contributions to candidates made by corporations, national banks and labor organizations. And, it stood as the principal law governing contributions from those organizations until passage of the Federal Election Campaign Act in 1971.

My point in mentioning all of this to you is that the rules I'm about to bring to your attention today are not new. Said simply, labor unions have been prohibited from making direct political contributions to federal candidates for 57 years. Ignorance of this fact, will not save any of us.

Having said this, how then can labor be a big player in today's political game? They can and AFGE has, establish a political action committee or PAC for the express purpose of raising money to be used solely for the purpose of making contributions to federal candidates.

Now, it sounds pretty simple: just follow these rules: (1) do not use any union dues money to make contributions to federal candidates, (2) establish a PAC, (3) collect money and (4) use the money to make contributions to federal candidates.

Unfortunately for you, the FECA puts limits on how you can raise money and from whom you can accept it. It requires you to report the financial transactions involved in raising money and on how you spend it. It tells you how the money must be handled. It goes beyond just looking at money but it moves into the arena of regulating certain activities of both the PAC and its sponsoring organization--in this case, AFGE.

Let's talk a little about this --

WHAT IS AFGE-PAC

AFGE-PAC is, under campaign finance law, a separated segregated fund established by a labor union. It is not a corporation or any other type of entity. It is, however, a totally separate legal entity apart from AFGE.

The reason AFGE established AFGE-PAC was so that it could continue to be a player in the electoral process. It is the means whereby contributions can be made to those candidates who support federal employees and their issues.

AFGE-PAC is the only PAC sanctioned by AFGE. In fact, AFGE policy, prohibits Locals and Councils from establishing their own PAC's and for a very good reason. Under the Federal Election Campaign Act, contributions made by the separate segregated funds of a union and any of its affiliates (in the case of AFGE, this means locals and councils) must be aggregated. This means that should a local have a PAC and make a contribution to Senator Jones, it would count against the overall contribution limitation for AFGE-PAC. There is simply no viable way to track this and to comply fully with the law.

It is true that AFGE may pay the administrative expenses associated with AFGE-PAC but it may not do anything where AFGE treasury money, which consists primarily of union dues (per capita), is shifted to AFGE-PAC. This is because the law expressly forbids labor unions from contributing to federal candidates.

FUNDRAISING FOR AFGE-PAC IN GENERAL

The key words in our vocabulary here are **VOLUNTARY and INDIVIDUAL**. The only monies a PAC may accept are contributions made by individuals and contributions which are entirely voluntarily made.

Let's start with INDIVIDUAL. From our brief history lesson, we know that labor unions, national banks and corporations cannot funnel money to federal candidates. This is strictly enforced. In fact, the enforcement is so strict, that PAC money and union treasury money cannot be commingled, even briefly, or it will be tainted. For example, if a local holds a PAC fundraiser and lots and lots of dollars are contributed by individuals, mostly in cash, the local cannot deposit that cash in its treasury account and then write AFGE-PAC a check. If it does, the money is tainted and PAC cannot accept it. Ultimately, it would have to be returned to the donors.

With respect to "VOLUNTARY", all contributions must be made voluntarily by the donor. This tenet is so inflexible that when written solicitations are made they must even set forth that the right to refuse to contribute shall be without any reprisal.

In addition, any person soliciting contributions to a PAC must inform the member at the time of the solicitation of the committee's political purposes. This is accomplished by stating that the contribution will be used to make political contributions to candidates for federal office.

Finally, every written solicitation for PAC contributions must include a clear request for the contributor's full name, mailing address, occupation and name of employer. PAC's are required to report this information for any individual who makes total contributions over \$200. in a year. If audited by the FEC, a PAC's records including solicitation forms, check-off forms, etc. must specifically show that this information has specifically been requested.

The IRS also has its say in requiring PAC's to make affirmative statements. Under IRS regulations, every written solicitation must include a statement that contributions to the PAC are not deductible as charitable contributions for income tax purposes.

PAC's do not have members. Membership carries with it the connotation that there is a dues structure or a price for becoming a donor. Because all contributions to PAC's must be voluntarily made, you cannot extract a price for a so-called PAC membership. PAC's can provide recognition for those who contribute to it. This is the route that AFGE-PAC has taken. It recognizes contributors at various levels--the diamond, gold, silver and bronze levels.

As an AFGE-PAC District Director, broaden your vocabulary and remember to refer not to "Members" of AFGE-PAC but to "Contributors or Donors" to AFGE-PAC at the specified level. For example, Bob is a Diamond Level contributor to AFGE-PAC.

GUIDELINES FOR CONTRIBUTIONS

PAC solicitations may suggest guidelines for contributions, provided that the notice makes clear that the guideline is merely a suggestion and that an individual is free to contribute more or less. The different levels AFGE-PAC has established to recognize contributors constitute guidelines. Therefore, when mentioning the AFGE-PAC contributor levels (diamond, gold, silver, and bronze), potential contributors should also be told that they are free to give more or less than the amount suggested by the different levels.

COLLECTING AGENTS

Now you may think that the only one who has to worry about these requirements is the National Office. Not so. You as an AFGE-PAC District Director and any local or council that collects money for AFGE-PAC is considered to be a COLLECTING AGENT. Collecting agents must comply with all of the solicitation restrictions just mentioned.

Collecting Agents have additional responsibilities as well. In the case of contributions in excess of \$50, they must provide AFGE-PAC with the name and address of the contributor and the date of receipt of the contribution. If the contribution is in excess of \$200, it is absolutely mandatory for acceptance to obtain the contributor's occupation and the name of the employer.

In the case of contributions of \$50 or less received in a so-called mass collection, (e.g. passing the hat), the collecting agent must keep and provide to AFGE-PAC a record of the date of the collection, the total amount collected, and the name of the function at which the collection was made.

Cash contributions must be transmitted to AFGE-PAC in the form of money orders or cashier's checks together with all of the required information. If a Collecting Agent receives checks made payable to "AFGE-PAC", then it must transmit the checks directly to the National Office for deposit.

Collecting agents must transmit all contributions -- both cash and checks -- to AFGE-PAC within 10 days of receipt, for contributions of more than \$50, and within 30 days, for contributions of \$50 or less.

SOLICITABLE CLASS

AFGE-PAC may only solicit contributions from its SOLICITABLE CLASS. AFGE's solicitable class consists of its members and their families and the executive and administrative personnel of the national office. That is, those national office staff who have managerial, professional, or supervisory responsibilities. Other national and district staff and their families may also be solicited twice a year.

AFGE-PAC and you as an AFGE-PAC District Director, are prohibited from soliciting contributions from any person who is not in the solicitable class. But, AFGE-PAC can accept contributions from persons outside of the solicitable class provided that (1) the individual's decision to give is not based on a solicitation and (2) nothing was said to the individual such as unsolicited contributions can be made, to persuade the individual to make a contribution.

LIMITS ON CONTRIBUTIONS TO THE PAC

AFGE-PAC may receive up to \$5,000 per year from any one contributor. Husbands and wives have separate contribution limits. If an individual makes a contribution from a joint account, then the contribution is allocated equally to each spouse. And, the requisite information with respect to name, address, **employer, and occupation** must be must be obtained for each spouse.

CASH AND ANONYMOUS CONTRIBUTIONS

AFGE-PAC may not accept a cash contribution of more than \$100 in the aggregate from a single donor. But, this limitation does not apply to contributions charged to the donor's credit card or to automatic, pre-authorized transfers from the donor's bank account to AFGE-PAC. AFGE-PAC may not accept anonymous cash contributions of more than \$50.

VOLUNTARY PERSONAL SERVICES

The value of services provided without compensation by any individual such as the AFGE-PAC District Directors, who volunteer on behalf of AFGE-PAC is not a contribution to the PAC. However, any materials they use will constitute a contribution to PAC if the costs are not reimbursed. The best way to think of this rule is the case of a

seamstress who makes a quilt that is then donated to PAC for fundraising purposes. The seamstress' time and services in making the quilt will not be considered a contribution but the cost of the materials used to make the quilt will be if they are not reimbursed by AFGE-PAC.

SALES OF FUNDRAISING ITEMS; RAFFLES AND PRIZES

The sale of fundraising or other items by AFGE-PAC results in a contribution to the PAC by the purchaser in the full amount of the purchase price. Fundraising items may not, therefore, be sold to anyone who is not in AFGE's solicitable class.

Further, appropriate notice must be given that all moneys derived from the sale will be used for political purposes and the full purchase price will be reported as a contribution to AFGE-PAC.

Now this presents a problem and is in conflict with rules we just discussed. Remember, all contributions must be voluntary and an individual must be free to give anything he wants. If a fixed price is charged, then that restricts an individual from giving more or less. The problem, however, can be dealt with. The FEC has indicated that it is okay to sell fundraising items to those members contributing the designated or fixed price provided that it is explained that other amounts may be contributed to the PAC. This then avoids the prohibition against mandatory guidelines for contributions.

RAFFLES

The full amount paid to participate in a raffle or other similar fundraising activity involving a prize is also regarded as a contribution to AFGE-PAC. Since the full amount collected from participants must be transmitted to the PAC, the cost of the prize may be paid from the union's treasury as an administrative expense if it is not disproportionate to the amount collected or it may be reimbursed by AFGE-PAC.

The notion of having the umbrella organization cover the cost of the prize if it is not disproportionate has led to the so-called "three-for-one rule". This rule is, for example, if AFGE treasury money were used to purchase a television set and other prizes, then AFGE-PAC must pay back the costs according to an FECA formula. The formula is the cost of the prizes, less one-third of the money raised, but not more than the total cost. This works so that the more proceeds AFGE-PAC raises, the less AFGE-PAC must pay back to AFGE. To avoid any pay back, all items would have to be sold at three times the original cost. If, for example, a television costing \$800, a VCR costing \$400 and a fish locator costing \$500 were the prizes and therefore, the total cost of the prizes was \$1,700, and if the amount which was raised by offering these prizes was \$5,000, the following would show the proper application of money according to the three-for one rule:

Cost of prizes paid from treasury money	\$1,700
Proceeds raised	\$5,000
1/3 of amount raised	\$1,667
Amount which must be reimbursed to treasury (cost of \$1,700 less 1/3 of money raised- \$1,667)\$ 33

In the case of 50/50 raffles, it should be noted that the entire amount contributed must be regarded as a contribution to AFGE-PAC. The 50% returned to the lucky ticket holder must either be reimbursed by AFGE-PAC or contributed by AFGE or a Local subject to the three for one-rule.

Finally, it should be noted that fundraising activities such as raffles and drawings are considered to be games of chance and as such are subject to federal and state laws pertaining to lotteries, gambling, etc.

COMMENTS, DISCUSSION, QUESTIONS

I do hope this overview of the complex area of law known as campaign finance law will help you as you go about the tasks of raising big bucks for AFGE-PAC and of insuring that AFGE-PAC does not inadvertently stray from the path of the law. Remember, the fines for violating the laws could decimate our PAC and --worse case scenario -- could result in a stay at a facility staffed by our very own BOPs.

One last word of advice, if you aren't sure what you should do, can do, shouldn't do or have any questions, call AFGE-PAC Director, Bob Nicklas at 202-639-6409, or the General Counsel's Office at 202-639-6424, before you take the step--not afterward.