

MEMORANDUM

By Email

TO: Shelby Scales, CEO, AMAC

FROM: William A. Kirk, Jr.

DATE: July 6, 2015

RE: Starting and Maintaining a Trade Association Political Action Committee

Summary

This memorandum provides general background information about the decisions and process for establishing and maintaining a federal Political Action Committee (“PAC”) with the Federal Election Commission (“FEC”) pursuant to the federal election laws including some practical considerations we have encountered in our representation of other entities in establishing their own PACs.

The following basic steps are typically followed to create a PAC:

Officially form the PAC with a board resolution;

Register the PAC with the FEC;

Establish a PAC Board; and

Create PAC articles of organization and bylaws.

Officially Form the PAC

The first step to establishing a new PAC would be for the AMAC Board of Directors to pass a Board resolution authorizing formation of the PAC. The resolution would specifically establish the PAC and name it, designate who shall appoint the PAC treasurer, assistant treasurer and members of the PAC’s governing body (i.e., board or steering committee). The resolution should also authorize AMAC to pay the start-up administrative expenses of the PAC.

The individual named as the treasurer (per federal election law) will have responsibility, and personal liability, to ensure that all filings and activities of the PAC take place in accordance with federal election law. That individual must also sign all filings. In order to mitigate the liability associated with serving as PAC treasurer, many associations

choose to include the treasurer on their Directors and Officers insurance policy (if any). It also makes sense to also name an assistant treasurer who can assume the treasurer's duties when he or she is unavailable as the PAC may not make filings, accept contributions or make contributions to candidates without Treasurer's involvement.

The Board will have few options with respect to the official name of the organization. Per FEC regulations, the name of the PAC must include the full name of the connected organization (i.e.; the Airport Minority Advisory Council). However, an abbreviated name may be used on solicitations and letterhead but only if it clearly identifies the connected organization.

. Establish a New EIN for the PAC and Set up a Separate Bank Account

The PAC's finances must be maintained separately from AMAC's general treasury funds. The FEC requires a wholly separate bank account to be established and maintained by the PAC. In order to open that account, AMAC will need to obtain a unique Employer Identification Number from the I.R.S. This process may be completed online at this link: <https://sa2.www4.irs.gov/modiein/individual/index.jsp>.

Once this is completed, the Treasurer can file the appropriate paperwork with the FEC to inform them of the creation of the new PAC. **The FEC filing *must* be completed within ten calendar days of the Board's resolution.**

Name a PAC Board

Generally, we suggest that AMAC establish a separate Board of Directors or Steering Committee for the PAC. Board members are important for recruiting donors. A separate board would be responsible for adopting PAC bylaws, contribution criteria to aid in determining which candidates should receive contributions from the PAC, which potential donors within the Council's membership it should solicit for contributions, how much to budget for contributions, whether or not it should hold fundraisers in support of candidates, and other similar decisions regarding the operation of the PAC. Members of the Board should be clearly within the solicitable class of the trade association, which is discussed below in further detail. The PAC Board could include the Executive Director/CEO as well as a small number of representatives from member companies providing geographic and member type diversity. (Members who are politically active or who are actively engaged in government relations are especially well suited for PAC Board Membership.)

Establish Articles of Organization and PAC Bylaws

Although the FEC does not require any specific PAC organization (outside appointing a treasurer and having a separate bank account), however as noted above, we

generally advise that associations formalize the creation of the PAC through articles of organization. Bylaws should also be prepared which spell out how the PAC will operate. We can suggest sample articles of organization and bylaws to facilitate this process.

A PAC is permitted under the Federal election laws to incorporate for liability purposes. While the treasurer remains liable for compliance with campaign finance law regardless of whether or not the PAC is incorporated, some PACs incorporate for liability purposes to protect the PAC's Board members and some do not. Other trade associations address this issue by only selecting PAC Board members who are covered by their organization's Director and Officer liability insurance policy (if any).

The tax treatment of PAC activities also should be taken into account in establishing the PAC. For example, a PAC that opens an interest-bearing checking account has investment income that will be subject to federal and possibly state taxation. In such a case, the PAC would have to meet certain Internal Revenue Service and possibly state tax reporting requirements. To avoid tax filing requirements, consideration should be given to maintaining PAC funds in a non- interest-bearing account.

Begin PAC Operations

Once the steps listed above are complete, the new PAC is ready to begin soliciting and making contributions. To solicit individuals within the restricted class of member companies and build the PAC's bank account, the **next step** is to seek authorization from member companies. Guidelines for beginning normal operations are discussed below.

Who May be a Donor?

The bulk of the contributions to the PAC are likely to be from high-level individuals within the association's member corporations' respective "restricted" class, their immediate families or equity/stockholders of those member companies. However, in order to solicit members of this restricted class, a **trade association must first obtain the corporate member's written approval for solicitation**. A corporate member *may only authorize one trade association* of which it is a member to solicit its restricted class per year.

Without obtaining such authorizations, an association may solicit its *own* restricted class, if any such individuals would be considered to be within it. This could include any specifically compensated officials of the association, such as its Executive Director/CEO, or other Board Members. It may also solicit non-corporate members without seeking such approval (such as a partnership or individual members). Note that subject to certain limitations, a partnership *may contribute* to the PAC out of its general treasury funds directly. We would be happy to advise on these requirements.

General Limitations on Who May Contribute

Contributions may be made to the PAC only by those individuals (and other members of the “restricted class” as previously discussed) who are U.S. citizens or “green card” holders, and **not** by any employees who are “foreign nationals.” A “foreign national” is defined as “an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence.” **Corporate reimbursement to individuals who contribute to the PAC is not permissible.**

Who May Receive PAC Contributions?

The PAC will be able to contribute to candidates for federal office. As soon as the existence of the PAC becomes known in the political community, the PAC will begin to receive requests for contributions. Again, we recommend that AMAC develop criteria to assist in making contribution decisions. For example, Members of certain Congressional Committees will play key roles with regard to AMAC’s legislative and policy agenda. Additionally, AMAC member companies may suggest supporting Members who represent their state or congressional district in which they are located.

Generally, associations try to avoid in-kind contributions, such as supplying the food for a candidate’s reception or supplying a mailing list to a candidate. In-kind contributions can slip into difficult valuation problems or issues over whether the contribution actually came from the corporation (which is prohibited) rather than the PAC. On the flip side, a PAC can serve as a convenient source to pay these in-kind contributions to avoid concerns about corporate contributions. However, PAC’s should be careful to ensure that any in-kind PAC contributions receive the proper fair-market valuation and that they are for permissible activities.

What Are the Limits?

During its first six months of existence, a PAC can contribute up to \$2,700 per candidate *per an election*. In the typical situation, this means \$2,700 for a primary election and \$2,700 for a general election. It may accept contributions of up to \$5,000 per donor *per year*, which means that a husband and wife may contribute up to \$10,000 to the PAC *per year*.

Once a PAC qualifies as a **multi-candidate committee** and has been in existence for more than six months, it may contribute up to \$5,000 per candidate per election and receive donations of \$5,000 per person, per year (\$10,000 per couple). A PAC automatically becomes a multi-candidate committee once it meets the three criteria below:

- receives contributions from more than 50 people;
- has been registered for at least six months; and
- makes contributions to at least five federal candidates.

The second and third requirements are easily met. The first threshold requirement (having 51 or more donors) is the most difficult to meet and depends mainly on the size of your target donor base. Note there is no minimum contribution amount to qualify as a donor. An individual contributing as little as \$1 to the PAC qualifies as a donor for purposes of the 51 donor multi-candidate committee threshold. **Within 10 days of meeting the three criteria noted above, the PAC would be required to notify the FEC that it has become a multi-candidate committee.** Therefore, the PAC should keep track of the number of contributors and the date on which each first makes a contribution to the PAC, so it knows the date on which the 51st person or entity contributed to it.

There are advantages and disadvantages of a becoming multi-candidate PAC. A multi-candidate PAC can then *donate more* to individual candidates (and *receive larger* contributions from donors). However, if the PAC intends to donate to a substantial number of candidates but does not have a large budget (say, \$50,000 or more), it can be an advantage to not be a multi-candidate PAC because you can cut off donations to a persistent candidate at a reasonable level by saying you've already "maxed" – *i.e.*, given \$2,600 per an election.

Paying PAC Administrative Expenses

The PAC will incur administrative and fundraising expenses, including administrative support, equipment and computing costs, fundraising expenses and legal assistance. AMAC is permitted to pay those expenses out of its general treasury funds, even though it cannot contribute to candidates or to the PAC, or reimburse employees or anyone else who contributes to the PAC. If the Council wishes, the PAC could pay its own administrative expenses out of the funds it raises, but PACs generally prefer to use all the funds they raise for political contributions. Additionally, subject to detailed requirements

(which we can help you navigate), member companies could make contributions to the association out of their general treasury funds to pay for the PAC's administrative expenses.

Soliciting Contributions to the PAC

All contributions to the PAC must be voluntary and contributors may not be reimbursed in any way from corporate funds. Dues or fees for PAC membership may not be established. No threat or force can be used, such as job discrimination or financial reprisal. A contribution amount may be suggested so long as it is made clear that the potential contributor may give more (except not more than \$2,600 per year, \$5,000 if a multi-candidate PAC), less, or nothing at all.

Solicitations to a trade association's restricted class or the restricted class of authorized member companies can be made orally or in writing. Any solicitations, however, *must* be limited to the restricted classes of member companies who have agreed to be solicited. Thus, a solicitation should **not** be made, for instance, in an AMAC newsletter for general distribution if persons outside the restricted class of those select companies receive the publication. Invitations to a meeting to discuss the PAC should be directed only to the relevant restricted class, **not** posted or circulated generally.

The key to successful PAC solicitation is significant participation from the top level of the organization. A CEO of a trade association normally cannot make a PAC successful by his/her own efforts. If primary member companies are not fully committed to the PAC's success, that evaluation will filter down quickly. As discussed above, establishing a broad-based PAC board usually will help solicitation because more targets can be approached by their peers and fellow members, rather than just by mail from a distant office.

Some PAC's prefer contributions by personal check so the source of the funds is clear and the record keeping is simplified (unless a partnership contribution, as discussed previously). The PAC must identify the name, address, occupation and employer of each person who gives more than \$200 in a calendar year. Recording the data for each and every contribution helps to avoid problems with aggregated contributions of an individual.

Conclusion

We hope that this general information is helpful as you consider the steps that are involved in establishing a PAC.