



October 14th, 2015

Peter Sherman  
Senior Vice President, PAC Services  
DDC  
805 15th Street, NW Suite 300  
Washington, DC 20005

## Advisory Opinion 2015-005

Dear Mr. Sherman:

We received and analyzed your request for an advisory opinion. Your request reads as follows:

  
 If a corporation is in the process of been granted permits or registration or is seeking or has been awarded one or more contracts of real property sales and purchase, services, or supplies, leasing contracts of lands, buildings, or equipment, contracts of public work construction with the Government of Puerto Rico, its agencies or municipalities, or that is subject to their regulations, is the corporation prohibited from making a contribution from its political action committee that is registered with the Federal Election Commission to a candidate in Puerto Rico?

According to the *Puerto Rico Political Campaign Financing Oversight Act*, Law 222-2011, as amended, 16 LPRA §§ 621, *et seq.* ("Law 222"), juridical persons, such as corporations, shall not make contributions form its own resources. See Section 5.006 of Law 222, 16 LPRA § 625g. A juridical person can establish a segregated funds committee complying with all the requirements detailed in Section 5.006 of Law 222. Such committee, once established, receives contributions from the juridical person members, employees and relatives up to a second degree of affinity or consanguinity up to \$2,600.00 per person per year. The contributions are deposited in a bank account established for such purposes. Then, the segregated funds committee can make contributions from said bank account to political parties, candidates, campaign committees, etc. See *Id.* Said contributions must comply with the contribution limits of \$2,600.00 a year for

each party, candidate, campaign committee, etc. See Sections 5.001 and 5.007 of Law 222, 16 LPRA §§ 625a and 625h.

Regarding a corporation that has a Political Action Committee registered with the Federal Election Commission, Section 6.000 (d) of Act 222, 16 LPRA § 626 (d), establishes that:

[...] political organizations established and registered in other jurisdiction of the United States of America, its States or Territories, with the intent, but not the main purpose, of making contributions or incurring expenditures for election-related purposes in Puerto Rico, **said organizations shall file before the Election Comptroller a trustworthy copy of their credentials which certify them as such in their state of original jurisdiction within a term of ten (10) business days after having made its first contribution or expenditure** for election related purposes in Puerto Rico; or for referendums, plebiscites, consultations to the electors and special elections.

 (Our emphasis).

 Aside from filing a copy of their credentials from the jurisdiction where it is registered, in this case the Federal Election Commission, a Political Action Committee should also “[...] present to the Election Comptroller reports including all contributions received from residents of Puerto Rico and all expenditures incurred to support or defeat an aspirant or candidate in Puerto Rico”, as required by Section 7.000 (k) of Act 222, 16 LPRA § 627 (k). Failure to file the required reports is typified as Violation Number 38 of Regulations No. 14, *supra*, and, if committed, the contributor may be subject to a fine of \$500.00 for the first violation and \$1,000.00 for subsequent violations.

According to Section 5.000 of Act 222, 16 LPRA § 625, “[i]t shall be unlawful to solicit, make or accepting contributions in violation of the provisions of this Act.” Wherefore, making a contribution without complying with the requirements of Law 222 is typified as Violation Number 1 of Regulations No. 14, Regulations on the Imposition of Administrative Fines before the Office of the Election Comptroller and, if committed, the contributor may be subject to a fine of two to five times the amount contributed, up to \$2,500.00 for each violation.<sup>1</sup>

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<sup>1</sup> The text of Law 222, Regulations and other information of interest are available in our webpage [www.contralorelectoral.gov.pr](http://www.contralorelectoral.gov.pr) or at our offices located in the North Tower of the Capital Center Bldg. 235 Arterial Hostos Ave. 15<sup>th</sup> Floor, San Juan, Puerto Rico.

Regarding your specific question, Section 13.003 of Law 222, 16 LPRA § 633c, states that:<sup>2</sup>

Any natural or juridical person:

- (1) In the process of being granted permits or registration, or adjudication, or awarding of one or more contracts of real property sales and purchase, services, or supplies, leasing contracts of lands, buildings, or equipment, contracts of public work construction with the Government of the Commonwealth of Puerto Rico, its agencies or municipalities, or that is subject to their regulations.
- (2) **That offers, makes, receives, or solicits, directly or indirectly, for the duration of such adjudication or granting process, any contribution, whether of money or any other kind.**
- (3) **With the purpose of obtaining, expediting, or benefiting from such permit, franchise, adjudication, award, service rendering.**
- (4) That, in support of a political party, aspirant, candidate, independent candidate, campaign committee, political action committee, public official, or a person or persons that, acting independently, **raise funds to such effect, incurring in bribery** as defined in § 5350 of Title 33, known as the "Puerto Rico Penal Code", or any other substitute law, shall be punished for felony by imprisonment ranging from eight (8) years and one (1) day to fifteen (15). If it is a juridical person, it shall be punished for a felony by a fine equal to eight percent (8%) of the annual income at the time when the felony was committed and, for felony, by a fine equivalent to six percent (6%) of the annual income at the time when the felony was committed. The Office of the Election Comptroller may request from the Secretary of State, and obtain from him/her, the cancellation of the certificate of incorporation, the dissolution, suspension of activities, or the revocation of the license of the corporation, as the case may be.

The provisions of §§ 928 et seq. of Title 3, prohibiting the award of public biddings and government contracts to persons who have been convicted for certain offenses shall apply to natural or juridical persons convicted for violations of this section.

The criminal action for this felony shall prescribe in five (5) years.

(Our emphasis)

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<sup>2</sup> An official translation of the ammended Section 13.003 of Law 222 is not available at this time. The cited text of said Section is our translation.

Please, note that Law 222 forbids a person from making an otherwise legal contribution if such contribution is made during the adjudication or granting process with the purpose of obtaining, expediting or benefiting a permit, franchise, adjudication, award or service rendering. Wherefore, if such purpose or motive is absent and the corporation's political action committee complies with the other requirements set forth on Law 222 and its Regulations, then it can make contributions to one or more, aspirants, candidates or political parties in Puerto Rico.

We hope that your question was answered. Should you have any other doubt, please, contact our Office.

Cordially yours,



Manuel A. Torres Nieves  
Election Comptroller



Francisco E. Cruz Febus  
Sub-Election Comptroller