



December 16, 2015

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Advisory Opinion 2015-11

Dear Mrs. Ross:

We received and analyzed your request for an advisory opinion. Your request submits the following three questions:

Question 1: Can a corporation pay for the costs related to forming a Segregated Funds Committee that intends to make donations to specific candidates?

Question 2: Can corporate affiliates establish separate segregated funds committees?

Question 3: Alternatively, can a corporation create one segregated fund committee to cover multiple corporate affiliates?

MAY

Yes

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 from 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's 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 -or any other limit established by the Board of Election Comptrollers according to Law 222- for each party, candidate, campaign committee, etc. See Sections 5.001 and 5.007 of Law 222, 16 LPRA §§ 625a and 625h.

Please, note that Law 222 no longer requires the juridical person to hold a membership meeting in order to get an authorization to establish a segregated funds committee. See Law 233-2014, which amended Law 222. Wherefore, a juridical person can establish a segregated funds committee following their own internal procedures and regulations.

Regarding the first question, Law 222 does not explicitly state if a juridical person can pay for the costs related to forming a segregated funds committee. However, we cannot think of another way that a juridical person can form of a segregated funds committee. Wherefore, a juridical person can lawfully pay for the costs related to forming a segregated funds committee from its own funds.

On the second question you ask if corporate affiliates who have separate tax ids, payroll, accounting books and different licenses, can establish separate segregated funds that would not be considered as a single committee. To answer this question, we have to examine various dispositions of Law 222. First of all, according to Section 5.006 of Law 222, 16 LPRA § 625g, "[...] a segregated funds committee [...] **shall be treated as a political action committee** that must be registered in the Office of the Election Comptroller, render reports, and meet all requirements imposed under this Act." (Our emphasis). Afterwards, Section 5.007 of Law 222, 16 LPRA § 625h, states that "[...] Two (2) or more political action committees shall be deemed to be one (1) single committee if they have been established by the same person or group of persons, **is controlled by the same person or group of persons**, or share officials, directors, or employees".

Note that the having separate tax ids, payroll, accounting books and different licenses **does not** define the actual control of the affiliate corporations. By definition, an affiliate corporation is "[a] corporation related to another corporation by **shareholdings or other means of control**; a subsidiary, parent, or sibling corporation." (Our emphasis). Black's Law Dictionary 67 (9th ed. 2009), as cited with approval by Bacardi International v. V. Suárez & Co., 719 F.3d 1, 11 (1st Cir. 2012). An affiliate corporation is considered a subsidiary of another corporation if the corporation is directly or indirectly owned, wholly or partially, by another corporation or juridical entity. See General Corporations Act of 2009, as amended, 14 LPRA §§ 3650, 3751. By definition, then, the control of affiliate corporations is exerted by persons in common among them, wherefore, if each affiliate establish a separate segregated funds committee, under Section 5.007 of Law 222 our Office would treat them as one single committee.

It follows, then, that a corporation can establish a single segregated funds committee that will also cover all of its affiliates. This answers your third question.

We hope that your questions were 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