



# Compliance Connections

*Helping You Avoid Ethics, Lobbying & Campaign Finance Pitfalls*

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## A Caution for PACs and Parties: A Deposit Can Be Forever

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**By Maria J. Armstrong**

Three recent rulings from federal and state regulators to political action committees (PACs) and political parties highlight the need for committee treasurers to be diligent about deposits and upkeep of their committees. In each matter, committees tried to refund contributions or move contributions from one account to another. Regulators' responses to each request highlight the importance of solid fiscal practices and maintaining good campaign finance records.

On February 21, 2014, the Federal Elections Commission (FEC) issued a draft Advisory Opinion to the Solano County Democratic Central Committee (Committee) denying its request to use funds held in a dormant bank account related to a prior federal committee (Draft AO 2014-01-A). A former treasurer for the Committee failed to file nine required reports with the FEC and did not respond to FEC inquiries, leading to administrative termination of the Committee in 2005. Upon discovery of the activity in 2008, the Committee chairman isolated the federal account and suspended its use, then registered a new federal committee (New Committee). The account containing more than \$10,000 remained unused and was nearly forgotten until four years later when a new treasurer took over operations.

The New Committee requested permission to deposit the dormant funds into its federal account, but with the passage of time, could not locate sufficient records to establish that money raised into the account complied with federal campaign finance laws. As a result, the FEC proposed denying the request. But this year, the Committee was able to retrieve some old bank records and provided supplemental information to the FEC in March. Finally, on April 3, 2014, the FEC voted to permit the transfer, but only to the extent the Committee could establish from its records and using best efforts that the funds were not excessive and were not from a prohibited source (AO 2014-01-D).

The Advisory Opinion distinguishes a similar earlier situation involving a dormant committee that was permitted to transfer funds from a forgotten account into an existing federal account. In that situation though, the committee did file the required disclosure reports with the FEC at the time. Because that committee complied with disclosure laws, the new treasurer was permitted to use "best efforts" to disclose sources of funds to be transferred into the new federal account (AO 1981-01).

At the state level, the Ohio Election Commission (OEC) issued two rulings on February 20, 2014. In 2014-ELC-01, a PAC asked if it could refund a contribution to a contributor. Relying on an earlier ruling, the OEC denied the request. Ohio law permits contribution refunds in specific statutory circumstances, which did not apply in the situation presented. Moreover, Ohio law permits PACs to use their funds only to influence an election or to make a charitable contribution; refunds to contributors met neither authorized purpose.

Also on February 20, 2014, the OEC advised a political party that it could not refund gifts that were made to its building fund. Using the same reasoning, the OEC concluded that: 1) state law did not authorize a refund; and 2) a refund did not meet any of the four purposes that are statutorily authorized for building account funds.

In each situation, the various committees have mechanisms to lawfully spend the funds in question. But being diligent about initial deposits and record-keeping could have avoided issues or preserved greater flexibility for the committees in question.

*For more information, please contact Maria Armstrong at 614.227.8821. More information on Bricker's Ethics, Campaign & Lobbying Compliance services is available here.*

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## What Went Wrong? Lobbyist Guilty of Misdemeanors for Filing False Disclosure Forms

By Marjorie Yano and Katie Reardon

After enjoying meals at two upscale restaurants and attending a Cincinnati Bengals game, John Rabenold found himself in hot water.

What went wrong? Rabenold serves as the vice president of governmental affairs for Axxcess Financial, a Cincinnati-based company that runs Check 'n Go, a payday lender. In his role as the company's registered lobbyist, Rabenold treated lawmakers to the meals and the game in 2009 when the payday lenders were fighting heavy regulations on their industry. The real problem came after Rabenold failed to disclose that he had paid for the meals and tickets for the state officials.

Rabenold's failure to file was discovered when the FBI investigated former State Representatives W. Carlton Weddington and Clayton Luckie. Weddington was found guilty of bribery, election falsification and an ethics violation. Luckie was found guilty of falsifying documents to cover up the fact that he had illegally spent \$130,000 of his campaign funds. Both of them are now in prison.

Rabenold has admitted to two counts of filing a false legislative agent activity and expenditure report, which are both first-degree misdemeanors. He is

expected to be sentenced on May 1 in the Franklin County Common Pleas Court on two counts of filing false legislative activity reports.

This case illustrates what can happen to lobbyists who entertain public officials, then fail to disclose that activity. According to Ohio law, all food and beverages provided by lobbyists to legislators or their top staff must be reported. Lobbyists who spend more than \$50 in meals and beverages per reportable individual must identify the lawmaker or staff member. As for gifts, once the value of any gift exceeds \$25, it must be reported.

UPDATE: Rabenold faced up to six months in jail for each count with a maximum sentence of 12 consecutive months and a fine totaling \$2,000 for his actions. On May 1, 2014, he was fined \$2,000 and given up to three years' probation. Perhaps the biggest penalty of all is the reputational damage he inflicted on himself and his clients.

*If you would like more information on what lobbyists need to report, please contact Marjorie Yano at [myano@bricker.com](mailto:myano@bricker.com) or 614.227.8961.*

## Political Contributions from Partnerships

By Maria J. Armstrong and Marjorie Yano

Whenever a partnership makes a contribution to a candidate's authorized campaign committee, the contribution is attributed proportionately to each participating partner and counts against the individual contribution limit of those participating partners.

The partnership may designate how the contribution should be allocated among the partners and can be shared equally among participating partners or partners may be attributed greater or smaller portions of the contribution. A contribution made with partnership funds also counts toward the partnership's contribution limit of \$2,600 per election to any candidate's authorized committee.

If an individual partner makes a contribution from their own funds rather than from partnership funds, that contribution does not count against the partnership's contribution limit. Prohibited contributions include those from professional corporations or from partnerships using funds from corporate, foreign national or federal contractor members.

*For more information, contact Maria Armstrong at 614.227.8821 or Marjorie Yano at 614.227.8961.*

# A Gift by Any Other Source Might Constitute an Ethics Violation

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By Marjorie Yano

Ohio ethics laws regulate the gifts and entertainment that state government employees and public officials may receive as well as the reporting requirements that may apply. Both the value of the item given and the source must be considered. Companies must pay particular attention to the prohibition against public employees receiving gifts or entertainment from “prohibited sources.” Prohibited sources are defined as any individuals, companies, organizations or other entities that do business with, are regulated by, or have interested matters before the public entity.

Recently, two employees of The Ohio State University (OSU) Medical Center were fired because they unethically took \$4,901 in meals from an OSU vendor — a prohibited source under Ohio law. In Cleveland, former Cuyahoga County Commissioner Jimmy Dimora continues to make headlines after he was found guilty on corruption-related charges. Mr. Dimora admitted to receiving expensive meals, trips and other things of value from people looking to do business with the county.

It is common for state government employees or public officials to have personal friends who are or work for a prohibited source. When this occurs,

the public position supersedes the friendship and gifts of a substantial value from prohibited sources are not allowed. However, so long as the personal friend is not a prohibited source, gifts from personal friends are permitted. The Ohio Ethics Commission (OEC) suggests using the following criteria to determine if a gift or entertainment is prohibited from a personal friend:

- The length and nature of the pre-existing relationship;
- If the individual has commonly exchanged gifts with the giver prior to becoming a state government employee or public official;
- Whether the giver personally paid for the gift or entertainment or sought reimbursement from its business entity;
- If the giver also gave the same or similar gift or entertainment to other state government employees or public officials.

In all cases, any public employee or official who files a financial disclosure with the OEC must disclose the source of all gifts or entertainment valued over \$75.