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November 22, 2005

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Via Federal Express

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 20463

AOR 2005-20

Re: Request for Advisory Opinion - Pillsbury Winthrop Shaw Pittman LLP Political Action Committee

Dear Mr. Norton:

This letter is a request for an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "FECA") to the Pillsbury Winthrop Shaw Pittman LLP Political Action Committee (the "PWSP PAC"), formerly the Pillsbury Winthrop LLP PAC. I serve as assistant treasurer for the PWSP PAC.

The PWSP PAC is a nonconnected multi-candidate PAC, sponsored by Pillsbury Winthrop Shaw Pittman LLP ("PWSP"), a law firm limited liability partnership with more than 900 attorneys and approximately 323 partners. PWSP is a result of the April 4, 2005 merger of two law firms, Pillsbury Winthrop LLP and Shaw Pittman LLP, both of which sponsored non-connected PACs.[1]

From time to time, PWSP may perform legal services for Federal government agencies and thus qualify as a Federal contractor. Because of the difficulty of ascertaining the firm's Federal contractor status at any particular time, PWSP operates on the assumption that at all times it may be a Federal contractor. A Federal contractor is prohibited from, directly or indirectly, making any contribution to a Federal candidate or committee. 18 U.S.C. § 611. Commission regulations also provide that "the assets of a partnership which is a Federal contractor may not be used to make contributions or expenditures in

[1] After the merger, the Pillsbury Winthrop LLP PAC was renamed the PWSP PAC. The Shaw Pittman PAC will be terminated in the near future, and its remaining funds will be transferred to the PWSP PAC.

connection with Federal elections," although individual partners may make contributions in their own names from their personal assets. 11 C.F.R. 115.4(a) and (b).

The PWSP PAC is not registered or operated as a separate segregated fund under 2 U.S.C. sections 441b(b)(2), (3) and (4). This means, among other things, that the PAC may not receive unlimited assistance, in kind or in financial contributions, from PWSP since the Section 441b(b) exceptions for expenses of establishment, administration, and solicitation of contributions to a separate segregated fund are only available to national banks, corporations, and labor organizations. Advisory Opinions 1982-63, 1981-56 and 1981-54. Accordingly, any expenses paid by PWSP on behalf of its PAC, and any use of PWSP facilities, supplies, or personnel, would constitute a contribution of something of value to the PAC by the PWSP, unless the PAC pays for such expenses. 11 C.F.R. 100.7(a)(1)(iii).

To ensure that PWSP is not making contributions of administrative support expenses to the PWSP PAC, such as the copying costs, postage costs and secretarial time for PAC solicitations, the PAC pays PWSP the "usual and normal charge" for such support using the funds the PAC receives from its contributors. See 11 C.F.R. 100.7(a)(1)(iii). Payments by the PAC to PWSP for these purposes are reported by the PAC as operating expenditures. 2 U.S.C. §§ 434(b)(4), (b)(5) and 11 C.F.R. 104.3(b)(1), (b)(3)(i).

PWSP personnel provide the legal and accounting services for the PWSP PAC to ensure compliance with the FECA requirements. Pursuant to 11 C.F.R. section 104.3(h), the costs incurred for these services are reported as a memo entry on Schedule A of the PAC's campaign reports.

In 2006, the PWSP PAC will solicit voluntary contributions from the partners of PWSP. No foreign nationals will be solicited and no contributions from foreign nationals will be accepted. Currently, the PWSP PAC accepts contributions from PWSP partners only by personal check. The partners have requested the option of contributing to the PWSP PAC by use of the firm's automated payroll system, as an alternative to writing a personal check to the PAC.

In Advisory Opinion 1975-31, the Commission distinguished between contributions made by a partnership that is a federal contractor and contributions made by the individual partners. The Commission concluded that "a political contribution made by a partner (1) out of personal funds on a personal check (or other written instrument), as distinguished from partnership funds drawn from a partnership account, and (2) in his or her own name, will not be regarded as a violation of 18 U.S.C. § 611." Subsequently, in Advisory Opinion 1984-10, the Commission concluded that Arnold & Porter, a law firm partnership that was a federal contractor, could not establish a voluntary political contribution plan under which participating partners would make contributions to candidates for federal office by means of checks drawn on the firm's operating account, and then subsequently deducted from each participating partner's quarterly income distribution. The Commission characterized the funds paid from the firm's operating account as partnership assets because the account was inaccessible to individual partners and could not be used for their personal expenses. Accordingly, the Commission determined that the proposed voluntary contribution plan did not meet the requirements set forth in Advisory Opinion 1975-31.

The purpose of this letter is to ascertain whether PWSP may allow use of the firm's PeopleSoft automated payroll interface software to collect contributions from the partners who receive their compensation through direct deposit[2] and who agree to contribute to the PAC. The PWSP PAC would pay for the costs incurred to collect PAC contributions in this manner.

PWSP uses the PeopleSoft interface software as its payroll system for all partners and employees who chose to receive their compensation through direct deposit, instead of by check. We propose that the PWSP partners who receive their compensation through direct deposit would be asked to use the PeopleSoft interface to make their contributions to the PWSP PAC. This would be similar to a payroll deduction arrangement, as explained below.

Partners receive distributions on a monthly basis (except in December when partners receive two distributions). Each partner's distribution amount is based on the partner's interest in the firm's profits, as specified in the firm's partnership agreement, which is the governing contract among the partners. The amount of each monthly distribution is determined by the PWSP Executive Committee and is based on the level of anticipated or realized profits. "Clean-up" distributions are made in the first three months of each year

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[2] A small number of partners receive their compensation by check, rather than by direct deposit. These partners would be able to contribute to the PWSP PAC only by personal check. Similarly, although most of the PWSP partners are individuals, some are professional corporations. In the case of professional corporations, the employee of each corporation would be asked to make a voluntary contribution to the PAC by check, drawn on his or her personal checking account.

and reflect the undistributed profits from the prior year. The funds for the prior year are fully distributed by no later than April 15th of the subsequent year.

The mechanics of the system work as follows:

The firm's entire monthly payroll (representing salaries of non-partner attorneys and non-lawyer personnel in addition to the amounts to be distributed to the partners) is electronically transferred in a lump sum from the firm's operating account at Bank of America to its payroll account at Citibank. The firm provides Citibank with directions on the amount each partner (or employee) is to receive. These directives take into account deductions such as health benefits, 401K contributions, etc. Each partner (or employee) who has elected to receive his or her compensation through direct deposit must designate, using the PeopleSoft interface, at least one bank account into which his or her net compensation will be electronically transferred. A net amount is then electronically transferred into the bank account or accounts the partner (or employee) has indicated by means of the PeopleSoft interface.

Through the PeopleSoft interface, PWSP partners, like all firm employees, have the ability to distribute their net compensation among any bank accounts they choose. Currently, partners (and employees) may authorize, through the PeopleSoft interface, the electronic transfer of any amount of their net compensation for charitable donations or for deposit in savings or credit union accounts. For example, a partner whose net compensation in a particular month is $10,000 may direct $100 of that amount to be donated to the Red Cross, $2,000 to be deposited in his or her credit union savings account, and the remaining $7,900 to be deposited in his or her checking account.

Each partner would be solicited by the PWSP PAC and asked to direct, through the PeopleSoft interface (see enclosed sample form), that a certain amount of his or her distribution check be deposited, on a one-time or recurring basis, into the PAC. Using this system, the partner who wishes to make a voluntary contribution to the PWSP PAC could so direct, up to $5,000 per year. The partner may modify, at any time, the account(s) he or she designates for receipt of his or her net distribution through the PeopleSoft interface.

Although the funds held in the firm's payroll account are partnership funds, they are earmarked for individual partners and employees and they become the funds of the individual partners and employees upon transfer from that account to the accounts designated by means of the PeopleSoft interface. When the partner's net distribution leaves the Citibank payroll account via the PeopleSoft interface, the funds belong to the partner, and the partner alone determines how his or her funds will be disbursed. The firm has no input or control over where the partner chooses to direct to his or her net distribution or how much the partner directs to any particular account. Once the funds are transferred to the accounts designated by the partner, the firm cannot withdraw those funds and return them to its payroll or operating account or use them to pay firm debts.[3] Thus, in the example above, the $10,000 transferred to the accounts designated by the individual partner are the personal funds of that partner and are not firm assets. The partner's $100 donation to the Red Cross is made in the name of the partner and with his or her funds.

In summary, the funds disbursed from the Citibank payroll account through the PeopleSoft interface become the personal funds of the payees; they are not treated as operating funds of PWSP. Although the payroll account itself was established and is controlled by the partnership, the funds transferred thereto represent payroll and distributions, which must be (and are) paid to employees by law and to partners by contract. Failure to so distribute would result in claims by the unpaid designated payees.

The PeopleSoft interface can be used only for transferring funds to the account(s) specifically authorized by the individual partner (or employee), and only in the amount(s) authorized by that individual; the firm has no control over any partner's (or employee's) choices for transferring funds through the PeopleSoft interface and has no access to, or control over, the funds. If funds are transferred to the PWSP PAC, as directed by an individual partner, the PAC would report receipt of a contribution from the partner, as required by the FECA.

The PWSP PAC would pay for the costs associated with the transfer of contributions to the PAC through the use of the firm's PeopleSoft interface. By analogy to 11 C.F.R. § 114.9(d), we believe it would be appropriate for the PAC to provide this reimbursement in a commercially reasonable time. PWSP's use of the PeopleSoft interface is an ongoing function for ordinary firm payroll operations, regardless of whether it is used for PAC contributions. *See also* AO 2001-7. However, if the Commission should determine that payment in advance for these costs is required, the PAC would do so. *See* AO 1985-23. We would appreciate guidance from the Commission on this point.

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3 The firm's partnership agreement provides that, if a partner leaves the firm prior to the end of the year, he or she is entitled to the lesser of the distribution year to date, or his share of net income at the time of departure. Accordingly, if funds previously distributed to the partner were more than the amount he or she was entitled to under the agreement, the firm could seek a refund of the excess distribution.

We believe that the situation proposed by the PWSP PAC differs materially from that described in AO 1984-10. First, the funds disbursed to the PAC through the PeopleSoft interface would be income that already has been distributed by PWSP to the individual noncorporate partners. This is the functional equivalent of the individual writing a personal check to the PWSP PAC, or using an individual credit card account to make his or her PAC contribution (see AO 1991-1). In our proposal, the transfer of income to the partner and the partner's contribution to the PAC occur simultaneously, but no firm assets are ever transferred to the PAC. In contrast, the Arnold & Porter proposal involved making a contribution with partnership funds, and subsequently charging the amount of the contribution against a partner's quarterly income distribution. Second, the individual partner has complete control over how his or her funds will be distributed through the firm's PeopleSoft interface and may change his or her elections at any time. PWSP has no claim to, or control over, the funds disbursed through the PeopleSoft interface. Finally, PWSP PAC would pay for the costs incurred to collect PAC contributions through use of the firm's PeopleSoft interface.

In the years since AOs 1975-31 and 1984-10 were issued, the manner in which individuals may perform their personal financial transactions has changed dramatically. Debit cards, direct deposit, electronic fund transfers, and other electronic banking transactions, once a rarity, are now commonplace, while personal checks, although still an option, are used much less often. The Commission acknowledged this trend during its recent adoption of amendments to regulation 11 C.F.R. 114.2 and 114.8, which allow corporate members of a trade association to collect and forward voluntary contributions from the corporate member's solicitable class to the trade association's PAC by payroll deduction or check off system. The Commission also observed in that rulemaking that the use of payroll deduction is convenient, makes it easier to track and report the contributions, and allows contributors to spread out their contributions over time, thereby potentially enhancing their participation in the political process.

The proposal to use the firm's PeopleSoft interface software for designating contributions to the PWSP PAC is consistent with these trends, but avoids the problems in AO 1984-10 by not transferring any partnership funds to the PAC.

Thank you for your consideration of this advisory opinion request. Please do not hesitate to contact Fred Lowell (415.983.1585) or me (916.329.4714) if you need any additional information.

Very truly yours,

Kathryn E. Donovan

Kathryn E. Donovan

Enc.

cc: Jonathan M. Levin, Esq. w/ enc.
Mr. F. K. Lowell w/ enc.

To: Rosanna Kulaja
SF-1102

Effective ____________________, I elect to contribute $____________ or _________% of my monthly net distribution to the PWSP LLP PAC. My total annual contributions shall not exceed $5,000.

Partner Signature ______________________________

Print Name: ______________________________

Date: ______________________________