

The \$100 Gift Cap and Political Action Committees

April 24, 2017



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Overview



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- Background: FAO 2016-F-004
- Analysis
- Discussion



Background

Background



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- On April 26, 2016, the Council issued Formal Advisory Opinion 2016-F-004.
- The question presented was whether a Political Action Committee (PAC) could pay for an individual required to file a Statement of Economic Interests (“a filer”) to attend an event or go on a trip that cost more than \$100, without violating the \$100 gift cap.

- In the Opinion, the language of Va. Code §§ 2.2-3103.1 and 30-103.1 was analyzed.
- The \$100 gift cap applies to gifts received from (i) a registered lobbyist, (ii) a lobbyist's principal, or (iii) for state and local employees, a person, organization, or business who is or is seeking to become a party to a contract with his agency.

- A PAC is defined, in Va. Code § 24.2-945.1, as “any organization, person, or group of persons, established or maintained to receive and expend contributions for the primary purpose of expressly advocating the election or defeat of a clearly identified candidate.”

- As the Opinion noted, a PAC is required to file a statement of organization with the State Corporation Commission, file income tax returns, and have its own employer identification number.
- *“Therefore, as evidenced by its structural requirements, a PAC is its own legal entity even if closely associated with another organization.”*

- The Opinion concluded that if a PAC did not hire its own lobbyists or was not a party to or seeking to become a party to a contract with the filer’s agency, then it would not be in any of the categories of donor for which the \$100 gift cap applies.
- *“In that case, the PAC may pay for a filer to attend certain events or for a filer’s trip without violating either §§ 2.2-3103.1 or 30-103.1.”*



Analysis

Analysis

- The Formal Advisory Opinion issued by the Council involves a straightforward reading of the definitions and prohibitions found in the Conflict(s) of Interests Acts and Article 4 (Political Action Committees) of Chapter 9.3 of Title 24.2 (Elections).

Analysis



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- The categories of individuals and entities from whom filers may not receive more than \$100 in gifts in a calendar year are defined by statute: Va. Code §§ 2.2-3103.1 and 30-103.1.
- A change or addition to these categories would have to be made by the General Assembly.

Analysis

- If a change were to be made to include gifts from PACs in the \$100 gift cap, “*(iv) or any political action committee as defined in 24.2-945.1*” could be added to the relevant parts of Va. Code §§ 2.2-3103.1 and 30-103.1.
- This new category could be expanded to also include related entities such as federal PACs, campaign committees, out-of-state political committees, political party committees, referendum committees, or inaugural committees.

Analysis



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- Note that any expenditures made by a PAC to either a candidate or his campaign staff would likely be reported as campaign contributions.
- Under the definition of “gift” provided in Va. Code §§ 2.2-3101 and 30-101, properly reported campaign contributions are not considered gifts.
- Therefore, in these situations, the \$100 gift cap limit still would not apply, even if this change were made.



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Discussion