

Kentucky Super PACs May Not Share Polling Data with Party Committees

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On October 12, 2012, the Kentucky Registry of Election Finance (Registry) issued an advisory opinion prohibiting a Kentucky Super PAC from sharing polling data and other unspecified information with the Kentucky Democratic Party Executive Committee (KDP) and the Kentucky Democratic Caucus Campaign Committee (Caucus). The opinion serves as a reminder of the importance of keeping a wall of separation between a Super PAC's activities and those of a candidate/party that it may support.

In its opinion, No. 2012-006, the Registry expressed particular concern with the interaction between a Super PAC and party committees in light of the Super PAC's ability to accept unlimited corporate resources for its own independent expenditure activities. Because the Super PAC's selective sharing of a poll with the party committees would constitute an in-kind contribution to those committees, the Registry concluded that corporate funds were being used to indirectly support candidates. One important factor noted in the opinion is that Kentucky law does not authorize party committees to establish separate funds for use in making candidate contributions and independent expenditures; theoretically, this might have allowed the Super PAC to donate the polling data to the party committee's independent expenditure arm without making an indirect contribution to a candidate.

The Super PAC also asked if payment of fair market value for its polling data would make the proposed transaction lawful. The Registry responded that this transaction would be lawful so long as the transaction was made at arms-length and the Super PAC made the data available for purchase by others on the same terms and conditions.

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