

FEC Fines Trade Association for PAC Fundraising Violations

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The U.S. Federal Election Commission (FEC) recently settled an enforcement action, which resulted in a \$9,000 civil penalty for the American Hotel & Lodging Association (AHLA) and its federal political action committee (Hotel PAC) for violating key aspects of the FEC's solicitation rules.

Most importantly, the FEC found that AHLA improperly solicited contributions for Hotel PAC from individuals outside of AHLA's restricted class. AHLA, which has an individual membership category, solicited individuals for Hotel PAC contributions prior to the individuals becoming members and simultaneously offered AHLA memberships and solicited Hotel PAC contributions from individuals.

Scope of a Trade Association's Restricted Class

The players and events at issue in the AHLA enforcement action illustrate the complexity of the FEC's solicitation rules with respect to trade associations. Under federal campaign finance law, a trade association is permitted to solicit contributions for its federal PAC only from its restricted class. A trade association's restricted class includes its executive and administrative personnel and their families as well as any non-corporate members (*i.e.*, individuals, partnerships, and certain limited liability companies (LLCs)) and their families. A trade association's restricted class also includes the restricted class of its membership organization and corporate members, provided that the members have given prior approval to the trade association to solicit these individuals.

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The AHLA enforcement action focuses on an annual golf tournament benefitting the Hotel PAC held at a golf club owned by one of AHLA's corporate members, the Broadmoor Hotel. In an effort to increase turnout and fundraising, AHLA and the corporate member sought to invite individuals who were members of the golf club to participate in the Hotel PAC golf tournament. However, these individuals did not fall within the scope of AHLA's restricted class. Since the Broadmoor Hotel was a corporation without capital stock—and not a membership organization—its restricted class was comprised of the corporation's executive and administrative personnel and their families. The individuals who paid dues to the Broadmoor Hotel's golf club were not within the Broadmoor Hotel's restricted class and thus could not fall within the scope of AHLA's restricted class.

Impermissible Solicitations Outside the Restricted Class to Golf Tournaments

Recognizing that the golf club's individual members did not fall within AHLA's restricted class, AHLA and the Broadmoor Hotel asked these individuals to become members of AHLA (and thereby members of AHLA's restricted class) in addition to participating in the golf tournament and making contributions to the Hotel PAC. Unfortunately, these steps were not taken in the correct order:

- In 2010, AHLA and the Broadmoor Hotel invited the golf club members to participate in the Hotel PAC golf tournament. Each golf tournament participant was required to pay a \$50 registration fee, which was considered a contribution to Hotel PAC. Upon arriving at the tournament, the golf club members were required to complete an AHLA membership form and given a complimentary three-month membership to AHLA.
- In 2011, AHLA and the Broadmoor Hotel once again invited the golf club members to participate in the Hotel PAC golf tournament. Separately, and on the same day, AHLA and the Broadmoor Hotel sent an email to the golf club members inviting them to join AHLA for a discounted fee for one year. In a follow-up email sent later that day, it was made clear to the golf club members that they must join AHLA in order to play in the Hotel PAC golf tournament.

Even though the golf club members who participated in the golf tournament and contributed to Hotel PAC ultimately became members of AHLA, the FEC determined that the invitations to participate in the golf tournament were impermissible solicitations outside AHLA's restricted class because the golf club members were not bona fide members of AHLA at the time the solicitations were made. In connection with the 2010 golf tournament, the golf club members were clearly solicited at a time when they did not fall within AHLA's restricted class. With respect to the 2011 golf tournament, the FEC reiterated its long-standing position that membership organizations, including trade associations, are prohibited from simultaneously extending membership invitations and soliciting PAC contributions from individuals. The FEC explained that “a simultaneous solicitation would, in effect, evade the parameters of the solicitable class by leading to a process that is, in reality, a solicitation of a broader group.”

Increasing the number of individual members, or creating a new individual membership category, can have a significant and positive impact on a trade association PAC's fundraising efforts. It is important, however, that individuals are bona fide members of the trade association (and satisfy the FEC's definition of “member”) before they are solicited for any PAC contributions.