



October 15, 2009

## **ADVISORY OPINION 09-01**

Whether Housing Industry PAC is controlled by an employer of a lobbyist and therefore prohibited from making campaign contributions to a gubernatorial candidate during legislative session pursuant to Tenn. Code Ann. § 3-6-304(i).

### **INTRODUCTION**

The following Advisor Opinion has been requested by Mr. Larry D. Phillips, Member, Home Builders Association of Tennessee (HBAT).

### **QUESTION**

Is the Housing Industry PAC (HIPAC) “controlled by an employer of a lobbyist” and therefore prohibited from making a campaign contribution to a candidate for governor while the general assembly is in session pursuant to Tenn. Code Ann. § 3-6-304(i)?

### **ANSWER**

HIPAC is not controlled by the employer of a lobbyist and therefore is not subject to the contribution restrictions in Tenn. Code Ann. § 3-6-304(i).

### **FACTS**

Mr. Phillips requested an informal response request, IR 09-90, that the Commission staff declined to answer. Pursuant to Tenn. Code Ann. § 3-6-117(b)(7) Mr. Phillips requested a formal advisory opinion from the Commission. Submitted with Mr. Phillips’ request was information on HBAT and HIPAC policy and procedures and a contribution made to a gubernatorial candidate in February 2009.

HIPAC made a campaign contribution to a gubernatorial candidate in February 2009. HIPAC is a multicandidate political campaign committee registered with the Registry of Election Finance. HIPAC activities are overseen by a Board of Trustees. The Trustees are nominated by the local associations that are members of HIPAC, and confirmed by the Trustees of HIPAC. The Trustees elect a Chair and a Vice Chair of HIPAC. Each local association chooses one or more Trustees of HIPAC based on the numbers of members in the local association. HIPAC does not employ a lobbyist.

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HBAT is overseen by a board of directors elected by local associations that are its members. Susan Ritter, as Executive Vice President of HBAT, is the head administrative officer of HBAT. Ms. Ritter is also a registered lobbyist for HBAT.

**ANALYSIS**

Tenn. Code Ann. § 3-6-304(i) states:

No employer of a lobbyist or multicandidate political campaign committee controlled by an employer of a lobbyist shall make any campaign contribution to a candidate for the office of governor or member of the general assembly during any regular annual session or extraordinary session of the general assembly.

Tenn. Code Ann. § 3-6-301(8) states the following as part of the definition of “employer of lobbyist” “... does not include the individual employees, officers, directors, or members of a corporation, labor organization, association, or membership organization other than the chief executive officer and the chief financial officer or comparable individuals within such corporation, labor organization, association, or membership organization.

HBAT is an employer of a lobbyist, Ms. Ritter. As the head administrative officer of HBAT, by definition, Ms. Ritter would be considered an employer of a lobbyist.

Neither the Act nor legislative debate defines the word “control”. The ordinary meaning of the word is “to exercise authority or influence over.” Webster’s II New College Dictionary (3<sup>rd</sup> Ed. 2005), at 251-2.

HIPAC has adopted a set of policies and procedures that govern how decisions regarding contributions are made. The policies and procedures ensure that several people besides Ms. Ritter are involved in the decision-making processes.

Although HBAT is an employer of a lobbyist, HBAT does not appear to exercise control over HIPAC and its contribution decisions. HIPAC makes its contribution decisions independently of HBAT.

Susan Ritter is also, by definition, an “employer of a lobbyist” and based on HIPAC’s policies and procedures does appear to have input into contributions made by HIPAC. However, if HIPAC follows its approval process for making contributions, and the other parties listed in the procedures are free to disagree with her opinion, then “control” over HIPAC appears to be vested with the HIPAC Trustees and officers and Ms. Ritter does not “control” HIPAC.

Therefore, HIPAC is not a multicandidate political campaign committee controlled by an employer of a lobbyist and would not be subject to the prohibitions of Tenn. Code Ann. § 3-6-304(i).

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