



# STATE OF ALABAMA ETHICS COMMISSION



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October 7, 2020

## **ADVISORY OPINION NO. 2020-05**

The Honorable Christopher J. England  
Chairman, Alabama Democratic Party  
Montgomery, AL 36130

Fair Campaign Practices Act (FCPA)/PAC-to-PAC  
Transfers

A federally-registered PAC that complies with all  
FEC regulations and Federal laws may not  
contribute funds to the Alabama Democratic Party,  
an Alabama PAC. Money donated for use in  
federal campaigning activity is not subject to the  
PAC-to-PAC ban because federal law pre-empts  
state law with respect to federal campaign activity.

Dear Representative England:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory  
Opinion of this Commission and this opinion is issued pursuant to that request.

## **QUESTIONS PRESENTED**

1. Is it permissible for a Federally-registered PAC that complies with all FEC regulations and Federal laws to contribute funds to the Party that are then deposited into the state accounts of the Party?
2. If the answer to the first question is yes, is there any applicable contribution limit under Alabama law?

## FACTS AND ANALYSIS

Under Alabama Code sections 17-13-40 and 17-5-2(12), the Democratic Party is considered a Political Action Committee (PAC) because it is a “committee, club, association, political party, or other group of one or more persons, whether in-state or out-of-state, which receives or anticipates receiving contributions and makes or anticipates making expenditures to or on behalf of any Alabama state or local elected official, proposition, candidate, principal campaign committee or other political action committee.”

The Democratic Party maintains separate bank accounts for state and Federal electioneering activities. The Party solicits contributions to fund operations of the Party, as well as to fund electioneering communications on behalf of candidates and campaigns. Among the non-electioneering activities the Party conducts are research regarding policy positions and candidates, administration of volunteer databases, administration of voter files, candidate recruitment, voter education, voter protection, and other activities, both for the Party itself and for its candidates.

Although the funds will be deposited into a state account of the Party, none of the funds will be used to directly advocate for the election or defeat of a clearly identified candidate for state or local office. Rather, the Party intends to use the funds in connection with activities that cover the non-federal share of activities in situations where the Federal Election Commission permits a party to use a combination of federal and non-federal funds to pay for its administrative and other get-out-the-vote costs that are not for the direct benefit of any candidate.

The questions presented raise issues under Ala. Code § 17-5-15(b), commonly known as the “PAC to PAC ban,” which states, in part,

It shall be unlawful for any political action committee or tax exempt political organization under 26 U.S.C. § 527, including a principal campaign committee, or any person authorized to make an expenditure on behalf of such political action committee or 527 organization, to make a contribution, expenditure, or any other transfer of funds to any other political action committee or 527 organization.

Ala. Code § 17-5-2 defines “Political Action Committee” in part as

“[a]ny committee, club, association, political party, or other group of one or more persons, whether in-state or out-of-state, which receives or anticipates receiving contributions and makes or anticipates making expenditures to or on behalf of any Alabama state or local elected official, proposition, candidate, principal campaign committee or other political action committee.”

Your facts acknowledge that the Democratic Party is a PAC as defined in the Fair Campaign Practices Act. You state that another PAC wants to contribute money to your PAC. Alabama’s PAC-to-PAC ban prohibits any “transfer of funds” in addition to “contributions” and “expenditures” from one PAC to another or on behalf of “any Alabama state or local elected

official, proposition, candidate, principal campaign committee or other political action committee”, and provides no exception to that ban except for contributions, expenditures, or a transfer of funds made by a PAC directly to a candidate’s Principal Campaign Committee. The constitutionality of this ban has been upheld. See Alabama Democratic Conference v. Attorney General of Alabama, 838 F. 3d 1057 (11<sup>th</sup> Cir. 2016).

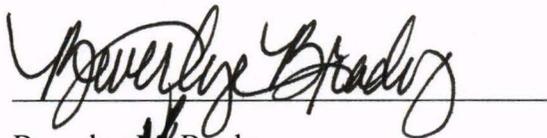
If the transfer you describe were done for the purpose of federal campaigning only, then federal law pre-empts the state’s interest in that transfer. In the facts presented, however, the money is going into a state account, and although not for the use of any specific state candidate, will be used at least in part for state campaign activity benefitting state candidates. There are no facts presented here that the funds will be used only to influence or support federal campaign activity and will not be used to affect a state election. Therefore, what you propose is prohibited by the PAC-to-PAC ban found in Ala. Code § 17-5-15(b).

### CONCLUSION

A federally-registered PAC that complies with all FEC regulations and Federal laws may not contribute funds to the Alabama Democratic Party, an Alabama PAC. Money donated for use in federal campaigning activity is not subject to the PAC-to-PAC ban because federal law pre-empts state law with respect to federal campaign activity.<sup>1</sup>

### AUTHORITY

By 4-8-1 vote of the Alabama Ethics Commission on October 7, 2020.



Beverly M. Brady,  
Chair, Alabama Ethics Commission

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<sup>1</sup> The effect of this Advisory Opinion is prospective only, and the questions raised herein have not been addressed previously either by the Commission or a court of law. For that reason, this Opinion should not be read to criminalize conduct that occurred prior to its effective date.