



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

December 17, 2014

Brian A. Kang, Esq.
Watanabe Ing, LLP
First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, Hawaii 96813

Re: Advisory Opinion No. 15-01

Dear Mr. Kang:

This is in response to the General Contractors Association of Hawaii's ("GCA") request for an advisory opinion dated October 8, 2014.¹ As indicated in your request, this is a follow-up to Advisory Opinion No. 13-02, in which the Campaign Spending Commission ("Commission") determined, among other things, that the GCA can use non-dues² sources of revenue to fund its noncandidate committee (to make political contributions) so long as the source of the revenue is not from state and county contractors.

The GCA now seeks an advisory opinion on whether five specific sources of revenue for the GCA may be used to fund the GCA's noncandidate committee. The five sources of revenue are:

1. Naylor, LLC. Naylor, LLC, is a company based in Florida that publishes the GCA's bi-annual magazine and member directory. Naylor, LLC, solicits advertising for the directory from GCA members and nonmembers. The GCA receives royalty payments from Naylor, LLC, for each edition of the directory. Naylor, LLC, does not have a contract with the state or the counties.
2. Naylor, LLC. In a separate contract with the GCA, Naylor, LLC, also sells advertising space on GCA's website. Advertising space may be sold to members or nonmembers of the GCA. Naylor, LLC, pays GCA a portion of its advertising revenues on a quarterly basis.

¹ Attachment "A" is a copy of the request.

² Since GCA membership dues come directly from GCA members, the Commission had determined that membership dues from state and county contractors could not be used by the GCA to fund its noncandidate committee because of the government contractor ban provided in Hawaii Revised Statutes ("HRS") §11-355.

3. National Purchasing Partners, LLC (“National”). National is based in Washington and that company provides royalties to the GCA for GCA’s participation in National’s membership endorsement program. That is, the GCA endorses National’s products to its membership and receives royalty fees when its members purchase National’s products. National does not have a contract with the state or the counties.
4. Interest Income. The GCA receives interest income on the monies it collects from various sources, including members, nonmembers and affiliates.
5. Investment Income. The GCA provides services for a fee. The fees collected are then invested which generates income in the form of interest payments, dividends, and capital gains, among other things.

The Commission understands that the issue raised by the GCA is whether, or to what extent, can the GCA use the above-described sources of revenue to fund the GCA’s noncandidate committee given that fact that some of its members may be a state or county contractor and are thus subject to the contribution ban in HRS §11-355, and may potentially contribute to the revenue source by, for example, purchasing an endorsed product from National. The Commission answers that the GCA may use the revenue from these sources to fund its noncandidate committee.

Under HRS §11-355(a)(1), a state and county contractor may not “[d]irectly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose.” (Emphasis added.) In Advisory Opinion No. 07-07, the Commission determined that the partners, employees, and their spouses and family members, of a partnership that was a government contractor, were not barred from making political contributions under the contractor ban, even though the partnership itself could not make contributions.³ The Commission noted then that the legislative history of the contractor ban indicated that the Legislature intended that the ban only apply to the specific contracting entity and not individuals associated with the contractor, such as the individual owners of the contractor.

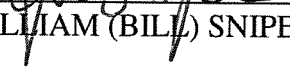
Clearly, contributions made by the GCA’s noncandidate committee would not be a direct contribution from a government contractor member. Further, Advisory Opinion No. 07-07 leads to a determination that contributions from the GCA noncandidate committee, using revenue derived from Naylor, LLC, National, GCA interest income, and GCA investment income would not constitute an indirect contribution from government contractor members. This is because the nexus between a government contractor member of the GCA and the sources of revenue described above is more attenuated than the nexus between a government contractor and its owners or employees and their spouses and family members. In the latter situation, it is likely or at least expected that political contributions of an owner or employee of a government contractor may be funded by income or salary provided by the government contractor. In contrast, in the

³ At that time, the contractor ban was codified at §11-205.5.

case of the sources of revenue described above, a government contractor member has no direct relationship with the third-party sources of revenue. Also, a government contractor member of GCA will have no direct or indirect impact on the amount of revenue from Naylor, LLC, National, and GCA investment income, much less the contributions from the GCA noncandidate committee, if the member does not advertise in the GCA directory or on the GCA website, purchase an endorsed product, or purchase GCA services.

The Commission provides this Advisory Opinion as a means of stating its current interpretation of the Hawaii campaign finance law in §11-301, *et seq.*, HRS, and the Commission's rules in chapter 3-160, Hawaii Administrative Rules. The Commission may adopt, revise, or revoke this Advisory Opinion if provisions of the campaign finance law or administrative rules are amended or repealed.

CAMPAIGN SPENDING COMMISSION


By: G. WILLIAM (BILL) SNIPES
Its Chair

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90 days



October 8, 2014

VIA HAND DELIVERY

Gary Kam, Esq.
General Counsel
Campaign Spending Commission
235 South Beretania Street, Room 300
Honolulu, Hawaii 96813

Re: General Contractors Association of Hawaii

Dear Mr. Kam:

On behalf of the General Contractors Association of Hawaii (“GCA”), and as previously discussed, the GCA requests the Commission’s review and guidance on the sources of funds that the GCA intends to use to fund its planned noncandidate committee on an ongoing basis. Specifically, GCA requests confirmation that using these sources of funds would comport with the provisions of the Hawaii campaign spending law, and in particular, HRS, §11-355(a)(1), which prohibits certain state and county contractors from “directly or indirectly” making “any contribution, or promise expressly or impliedly to make any contribution to any candidate committee, or any noncandidate committee, or to any committee or to any person for any political purpose or use.” To the extent that the Commission deems it necessary in order to advise the GCA on this matter, the GCA requests that the Commission deem this letter as a request for an advisory opinion pursuant to Hawaii Revised Statutes § 11-315.

On February 13, 2013, the Commission issued Advisory Opinion No. 13-02, which addressed several issues previously raised by GCA with respect to its contemplated noncandidate committee. For purposes of this request, the facts previously considered by the Commission (in connection with considering the issues discussed in AO 13-02) relating to the organizational structure of GCA and its membership remain the same.

With respect to the “non-dues sources of revenue” discussed in AO 13-02, GCA provides the following description of the non-dues sources of revenue that the GCA intends to use to fund its noncandidate committee on an ongoing basis:

Attachment A

<u>Name of Fund Source</u>	<u>Description of Funding Source</u>
Naylor, LLC (Magazine & Directory Contract)	Naylor, LLC, (Naylor) based in Gainesville, Florida is the publisher of GCA's Bi-Annual Magazine and Directory (Directory). Naylor oversees the development of GCA's Directory through organizing, printing and soliciting advertising among members and non-members of GCA. GCA assists with the editorial plan and material for the Directory. GCA receives royalty payments from Naylor for each edition of the Directory. Naylor does not have any contracts with the State of Hawaii or any of the counties.
Naylor, LLC (Website Advertising Contract)	GCA is engaged in a separate agreement with Naylor, LLC for website advertising on GCA's website. Naylor hosts ads and markets online advertising on behalf of GCA. Naylor organizes, plans and executes sale campaigns for all website advertising. Naylor communicates directly with advertisers who may be members or non-members of GCA. GCA does not receive any payments directly from advertisers for web advertising. Advertising opportunities are initiated and completed by Naylor. GCA receives a portion of advertising revenues from Naylor at the end of each quarter.
National Purchasing Partners, LLC	National Purchasing Partners, LLC (National) is based in Seattle, Washington and provides royalties to GCA for participation in their membership endorsement program. GCA endorses National through incentive discount programs for using their products. GCA agrees to endorse National's products to its members through written and electronic communication. National provides GCA with royalty fees payable as products and services are acquired through National's program. National and GCA act independently of the other and are not a joint venture or an agent of another. Currently GCA endorses one product through National which is Verizon. National does not have any contracts with the State of Hawaii or any of the counties.

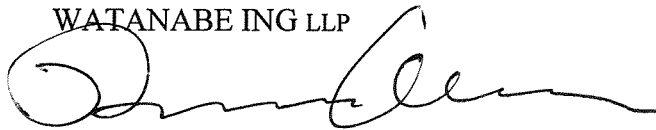
<u>Name of Fund Source</u>	<u>Description of Funding Source</u>
Interest Income	GCA receives interest and investment income from surplus monies collected over time from members, non-members and affiliates who may have contributed to the organization in various capacities. The surplus funds have produced interest and realized investment income (dividends, capital gains, etc.) due to deposits in financial institutions and investment accounts. These funds have indirectly provided income to GCA.
Investment Income	GCA received investment income from surplus monies originally received for GCA services that were then designated for various income generating investments, including, but not limited to, interest payments, dividends, capital gains collected upon sale of security.

Given the foregoing additional facts, GCA requests confirmation that using these sources of revenue to fund GCA's planned noncandidate committee would not violate any provision of the Hawaii campaign spending law, including, but not limited to, HRS, §11-355(a)(1).

Thank you for your assistance with this matter, and please contact me should the Commission have any questions regarding this request or need any additional information for its review and analysis.

Very truly yours,

WATANABE ING LLP



BRIAN A. KANG

cc: General Contractors Association of Hawaii