

Recent FEC Enforcement Cases Involving PACs and PAC Staff

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Election and Political Law

While the Federal Election Commission (FEC) is often criticized for failing to enforce the campaign finance laws, two recent cases show that some violations by corporate or trade association PACs still lead to stiff penalties, including significant personal liability for PAC staff involved in the violations. These cases underscore the need for corporations and their PACs to have basic accounting and compliance processes in place to mitigate the risk of misconduct.

MUR 6889 (National Air Transportation Association)

In the first case, the National Air Transportation Association (NATA), its PAC, and Vice President of Government Affairs Eric Byer (who served as the PAC's assistant treasurer), admitted to violating the Federal Election Campaign Act (FECA, or "the Act") prohibitions against corporate contributions to PACs and contributions made "in the name of another person." The problem arose in 2001, when NATA decided to reimburse its employees for contributions to NATA PAC by increasing their compensation to cover the amount of the contributions, as well as "grossing up" the sums to cover taxes. Neither the board, nor any NATA employees or officers, ever asked a lawyer whether this scheme was legal, although the FEC found Mr. Byer had assured several individuals that other companies engaged in similar behavior. In total, NATA funded \$214,353 in contributions from 20 employees over twelve years.

NATA self-reported the violation under the FEC's *sua sponte* policy, cooperated with the investigation and implemented extensive internal controls. These steps led the FEC not to seek a "knowing and willful" violation, which could have brought significantly enhanced penalties and potential criminal prosecution. Instead, NATA and NATA PAC agreed to a \$26,000 penalty and to disgorge \$65,000 in improper corporate contributions. Mr. Byer, who had a "significant role" in overseeing the reimbursements and encouraging employees to participate, paid a \$53,600 fine.

MUR 6922 (ACA International)

In the second case, corporate staff made a significant mistake in trying to solve a common problem: the PAC's bank balance did not reconcile with its FEC reported "cash on hand." In 2010, facing a \$23,419 discrepancy between ACA International's (ACA's) financial records and its bank account balance, ACA Vice President of Finance Michael Henke, who served as the PAC's assistant treasurer, transferred the difference from ACA's treasury to ACPAC's bank account. Mr. Henke compounded the error by instructing ACA staff to attribute the funds to various ACPAC donors who had not yet "maxed out" on their contributions to the PAC for the year. Separately, ACPAC failed to file accurate reports as a result of embezzlement by ACA's assistant controller.

ACA and its PAC admitted to making illegal corporate contributions, contributions in the name of another, and filing false or misleading reports to the FEC. Again, the company self-reported this matter to the FEC, and consequently, was eligible for a significant reduction in the penalties that would otherwise follow. The FEC fined ACA and ACPAC \$4,400 each. Mr. Henke did not fare so well, paying \$23,419 in his personal capacity and admitting to making an illegal corporate contribution and contributions in the name of another. The Commission took no action on the reporting violation resulting from the embezzlement, in part because ACA had reported the crime to the appropriate law enforcement authorities.

Important Lessons for Corporate and Trade Association Affiliated PACs

The NATA and ACA cases contain several important lessons.

1. **PAC treasurers and the organizations that operate the PAC must keep careful watch to ensure compliance with federal campaign finance laws.** In both NATA and ACA, the function of PAC treasurer had been effectively carried out by the *assistant treasurer*, who in both cases worked for the affiliated entity. In NATA, the PAC treasurer claimed he was a “treasurer in name only,” and had been assured by Mr. Byer that the role was ceremonial. In ACA, the assistant treasurer was accused of withholding information from the treasurer, resulting in the filing of false reports. Closer monitoring of PAC-related activities by senior corporate officers, including the treasurer, could have reduced or avoided the misconduct in both instances.
2. **Individuals managing PAC funds risk personal liability for intentional misconduct.** Although personal liability for FECA violations is rare, the FEC won five-figure penalties against individual PAC officials in *both* of these cases because they organized and carried out conduct they were aware was a violation of FECA. The FEC’s lawyers also cited the fact that both sought to conceal the true nature of the improper transactions. It is worth remembering that the FEC does not limit liability to the PAC when it believes the Treasurer or others have knowingly and willfully violated the law.
3. **Periodic audits of PAC and corporate books can help identify potential issues early.** Regular compliance and financial audits of corporate and PAC ledgers, including an outside audit at least once every election cycle, can help spot problems and compliance weak-points. After discovering these violations, NATA and ACA adopted a number of internal controls. For example, ACA began a monthly review and reconciliation of its accounting records to ensure activities were appropriate and NATA began biennial compliance audits.
4. **Compliance training of individuals managing PAC funds is essential.** PAC treasurers, as well as any corporate employees involved in PAC activities should receive regular training to ensure compliance with the law. The FEC offers training materials and maintains an ongoing list of “[Tips for Treasurers](#)” on its website as a resource for PAC officials.
5. **Seek legal advice before approving certain campaign finance activities.** In NATA, the trade association board approved the reimbursement regime and the corresponding salary increases presuming they were legal. At no time did any board member, officer, employee, or PAC official actually seek legal advice or confirm that others had sought legal advice regarding the plan, and nobody so much as expressed concern for nearly *eight years* after its implementation. By then, NATA had already made over \$200,000 in illegal contributions to its PAC.

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