



# Alerts & Publications

PDF



## Fiesta Bowl Indictment: The Perils of Political Contributions

November 18, 2011

On Wednesday, a federal grand jury returned an indictment against Natalie Wisneski, formerly the Chief Operating Officer of the Fiesta Bowl, on charges stemming from alleged violations of the Federal Election Campaign Act (“FECA”). The indictment underscores the need for robust political law compliance in corporations whose executives are politically active during the current election season. And it emphasizes a fundamental rule of federal campaign contributions: no one can be reimbursed for a political contribution.

The indictment alleges that Wisneski solicited campaign contributions from employees of the Fiesta Bowl on behalf of political campaigns on the federal, state and local level, then “devised different mechanisms to reimburse” the contributions, including: the use of manual checks, cash reimbursements, reimbursements on top of bonuses, reimbursements for out-of-pocket expenses that differed from actual expenditures, and adding reimbursements on top of vehicle reimbursements. In effect, the indictment alleges that these employees, and in some cases their spouses, served as conduits for corporate contributions. The indictment also alleges violations of the federal income tax laws, a relatively unusual and potentially dangerous additional allegation.

None of these alleged activities would be lawful. That’s because the FECA prohibits a person, including a corporation or partnership, from making contributions in the name of another person, or from knowingly permitting another person’s name to be used to effect a contribution.

That principle is particularly important within a workplace, where executives who make contributions are simultaneously passing on the compensation that will be received by subordinates. Moreover, federal law not only prohibits reimbursement, it similarly prohibits actions that give the appearance that an employee will benefit from or be disadvantaged for contributing or not contributing to a campaign or Political Action Committee (“PAC”).

What should an in-house counsel do? Any compliance program should include training executives and employees about the boundaries of campaign finance law. It may also include the adoption of a formal corporate policy codifying the federal rules. Some corporations, particularly those in heavily regulated or politically sensitive industries, may also consider the implementation of pre-clearance procedures for the campaign contributions of their executives and employees. No two compliance programs will be the same, but finding a program that ensures adherence to the law while suiting the culture of the corporation is essential.

In addition to charging counts of Conspiracy, Making Federal Campaign Contributions in the Name of Another, and False Statements, **the indictment** also includes two counts of False and Fraudulent Statements in a Federal Tax Return. Specifically, the indictment alleges that Wisneski, acting on behalf of the sponsoring organization for the Fiesta Bowl, willfully filed a federal Form 990 tax return stating that the organization made no direct or indirect political expenditures, “even though she well knew and believed that the Fiesta Bowl had made political contributions to local, state and federal candidates running for elective office using its employees and their spouses as conduits.” The indictment thus ties enforcement of campaign law requirements together with tax compliance enforcement.

Convictions on these and similar charges would not only impose reputational damage but also potential incarceration and substantial fines.

In-house counsel and compliance officials should be mindful of these prohibitions, as well as **other political law restrictions**, and ensure that corporate compliance and training programs are in place so that the risk can be minimized during the 2012 election cycle and beyond.

\* \* \*

If you would like to discuss this matter further, please contact Bob Rizzi at (202) 383-5322, Jonathan Singer at (202) 383-5238, or your primary contact at O’Melveny & Myers LLP.