



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MAY 2 2006

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AGENDA ITEM

For Meeting of: 5-04-06

SUBMITTED LATE

MEMORANDUM

TO: The Commission

THROUGH: Robert J. Costa *RJC*
Acting Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Mai T. Dinh *MTD by JDL*
Assistant General Counsel

Daniel K. Abramson *DKA*
Attorney

Subject: Draft AO 2006-08

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 4, 2006.

Attachment

1 ADVISORY OPINION 2006-08

2
3 Mr. Craig Engle, Esq.
4 Arent Fox PLLC
5 1050 Connecticut Ave., NW
6 Washington, DC 20036

DRAFT

7
8 Dear Mr. Engle:

9 We are responding to your advisory opinion request on behalf of Matthew Brooks
10 concerning the application of the Federal Election Campaign Act of 1971, as amended
11 (the “Act”), and Commission regulations to an as-yet unnamed corporation (the
12 “Corporation”) to be formed by Mr. Brooks. The Corporation intends to collect and
13 forward contributions from individuals at their request to political committees, Federal
14 candidates, and other entities. The Commission concludes that the proposed activities are
15 permissible.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letters received on
18 February 17, February 21, and April 19, 2006, and email received on April 24, 2006.

19 Mr. Brooks intends to form a for-profit corporation that would provide
20 commercial services to individuals (“subscribers”) interested in making contributions and
21 donations to Federal and non-Federal candidates, political committees, and non-profit
22 organizations.¹ The Corporation plans to accept funds from subscribers who will, at a
23 later date, direct those funds to be contributed to the candidates or political committees,
24 or donated to other non-profit organizations the subscriber selects. The subscribers will
25 also pay a service fee that will be deposited into the Corporation’s treasury. The money
26 the subscriber allocates for future contributions and donations will be deposited into a

¹ This advisory opinion is limited to addressing your proposal as it relates to Federal candidates and political committees.

1 separate merchant account, where it will remain until the subscriber designates a
2 candidate, political committee, or other non-profit organization as the recipient of the
3 funds, or asks for the funds to be returned. Once the subscriber indicates to the
4 Corporation that he or she would like to make a contribution or donation, the Corporation
5 will forward the designated amount of funds to the recipient political committee,
6 candidate, or other non-profit organization within ten days.

7 The Corporation will obtain each subscriber's mailing address, occupation, and
8 employer information and provide it to the recipients, whenever necessary. The
9 Corporation will employ various screening and verification procedures to prevent the
10 making of prohibited contributions, and will forward contributions only insofar as the
11 Corporation deems them permissible. It will disallow subscribers from exceeding
12 contribution limits if that can be determined based on records maintained by the
13 Corporation. Upon registration for the service, subscribers will be informed of the Act's
14 contribution limits and source restrictions, and State laws where applicable, and will be
15 required to attest that they are complying with the Act.² The Corporation will provide

² The attestation language will include the following:

Federal law prohibits contributions from the general treasury funds of corporations, labor organizations, or national banks. Therefore we are required to ask you to confirm the following statements:

1. This contribution is made from my own funds, and not those of another.
2. This contribution is not made from the general treasury funds of a corporation, labor organization or national bank.
3. I am not a Federal government contractor, nor am I a foreign national who lacks permanent resident status in the United States.
4. For credit or debit card transactions: This contribution is made on a personal credit or debit card for which I have the legal obligation to pay, and is made neither on a corporate or business entity card nor on the card of another.

1 up-to-date information to subscribers regarding their remaining contribution limits and
2 account balance.

3 The Corporation will use its best efforts to monitor subscriber contributions made
4 independently of the arrangement with the Corporation to ensure compliance with the
5 Act. If a subscriber makes a contribution using funds not held by the Corporation, the
6 subscriber may report the contribution to the Corporation, and the Corporation will
7 ensure the contribution is recorded in its records and counted towards all relevant
8 contribution limits. The Corporation will not forward any contributions it knows do not
9 comply with the Act and will notify subscribers when they have reached any applicable
10 contribution limit.

11 The Corporation will not place any limits on how a subscriber disburses his or her
12 money, other than refusing to forward contributions it knows do not comply with the Act.
13 The Corporation will not engage in Federal election activity or expressly advocate the
14 election or defeat of any clearly identified candidates or advocate on behalf of any
15 causes. All money in the merchant account will remain the property of the individual
16 subscriber, and the Corporation will provide only an accounting and forwarding service.

17 Under the business model the Corporation has proposed, the Corporation will be
18 funded entirely by service fees paid by subscribers. The Federal and non-Federal
19 candidates, political committees, and non-profit organizations that receive forwarded
20 contributions and donations will not pay the Corporation for its services, and the
21 Corporation will not enter into a contractual relationship with these entities.

[continued]

Failure to sign or attest to any of the attestations above will result in rejection of the funds. Additionally, the Corporation plans to inform prospective subscribers that their contributions will be publicly identified on the recipient's disclosure reports.

1 The Corporation is considering providing commentary and analysis of various
2 State and Federal officeholders, non-profit organizations, campaigns, and events as an
3 additional service to its individual subscribers. This may include providing biographical
4 information, voting records of a candidate on particular issues, ratings of a candidate
5 given by various organizations, reelection percentages, the candidate's campaign
6 contribution position, the strength of the candidate's party loyalty, and any relevant
7 media articles.

8 Subscribers would be asked to identify issues that are of general interest to them.
9 The Corporation would then provide its subscribers with information and analysis
10 relevant to that issue. In some cases, the subscriber may request specific information or
11 analysis from a list of organizations provided by the Corporation. Subscribers may also
12 request specific media articles to be forwarded to them. However, the Corporation may
13 also forward general information, such as biographies of Members of Congress, to all its
14 subscribers, without their making a specific request. Under no circumstances will the
15 Corporation create any of the information or analysis that is forwarded to subscribers.

16 The Corporation expects that it may receive solicitations directly from candidates,
17 political committees, and non-profit organizations. The Corporation intends to ask its
18 subscribers to fill out a questionnaire that will be used to develop a "donor profile" for
19 each of them. Solicitations matching a subscriber's donor profile will be forwarded to
20 the subscriber. While the Corporation will accept solicitations from any candidate,
21 political party, political committee, or non-profit organization, some solicitations may not
22 be forwarded to the subscriber due to screening based on the subscriber's donor profile.

1 The Corporation does not propose to charge any fee to candidates or political committees
2 for this service.

3 Finally, the Corporation intends to recruit individuals to serve on its Board of
4 Directors who may also be officers of political committees and non-profit organizations.

5 ***Questions Presented***

6 *1. May the Corporation receive and distribute deposits for subscribers' contributions?*

7 *2. May the Corporation forward commentary and analysis of Federal candidates to its*
8 *subscribers?*

9 *3. May the Corporation maintain two accounts: one for its corporate treasury, and one*
10 *for funds held for subscribers to be used to make donations and contributions?*

11 *4. May the Corporation receive and forward contribution suggestions from political*
12 *committees to its subscribers?*

13 *5. May the Corporation recruit individuals to serve on its Board of Directors who may*
14 *also be officers of political committees?*

15 ***Legal Analysis and Conclusions***

16 *1. May the Corporation receive and distribute deposits for subscribers' contributions?*

17 Yes, the Corporation may receive and distribute deposits for subscribers'
18 contributions. The Corporation would provide services to individual subscribers to assist
19 them in making contributions, similar to corporations that provide delivery services, bill
20 paying services, or check writing services. The individual subscribers would compensate
21 the Corporation as an incidental cost in making contributions. Therefore, the
22 Corporation's receipt and distribution of subscribers' contributions would be permissible
23 under the Act and Commission regulations.

1 2. *May the Corporation forward commentary and analysis of Federal candidates to its*
2 *subscribers?*

3 Yes, the Corporation may forward the proposed commentary and analysis of
4 Federal candidates to subscribers. This service will be provided to subscribers at their
5 request for an additional fee. As such, it is a part of the Corporation's overall business
6 plan to assist subscribers in the making of contributions. Under all of the circumstances
7 present, the proposed activity would be permissible under the Act and Commission
8 regulations.

9 3. *May the Corporation maintain two accounts: one for its corporate treasury, and one*
10 *for funds held for subscribers to be used to make donations and contributions?*

11 Yes, the Corporation is required to maintain two accounts under the proposal that
12 has been submitted. In order to prevent a contribution by the Corporation to any political
13 committee or candidate it must use a separate merchant account for funds that will be
14 dispersed as contributions. *See* 2 U.S.C. 441b; 11 CFR 114.2(b). This account must be
15 entirely segregated from the Corporation's general treasury to ensure that the funds are
16 not commingled.

17 4. *May the Corporation receive and forward contribution suggestions from political*
18 *committees to its subscribers?*

19 No, forwarding contribution suggestions from political committees would
20 constitute impermissible solicitations to persons outside the restricted class of the
21 Corporation.

22 The Corporation proposes to forward solicitations that it receives from political
23 committees to some or all of its subscribers. If the Corporation were to disseminate,

1 distribute, or republish, in whole or in part, any campaign materials prepared by a
2 candidate, this may be considered a prohibited expenditure by the Corporation. 2 U.S.C.
3 441a(a)(7)(B)(iii). Furthermore, because these communications would reach beyond the
4 Corporation's restricted class, the communications would not qualify for the exemption
5 in 2 U.S.C. 441b(b)(2)(A). *See* 11 CFR 114.4.³ The proposed activity may also
6 constitute facilitation of contributions by the Corporation, and would be prohibited. *See*
7 11 CFR 114.2(f).⁴

8 *5. May the Corporation recruit individuals to serve on its Board of Directors who may*
9 *also be officers of political committees?*

10 Yes, the Corporation may recruit individuals to serve on its Board of Directors
11 who may also be officers of political committees. However, if these individuals are
12 acting on behalf of a Federal candidate or political party committee while participating on
13 the Corporation's Board of Directors, the Corporation might be directly or indirectly
14 established, financed, maintained, or controlled by a Federal candidate, officeholder, or
15 political party committee, and thus subject to the applicable limitations and prohibitions
16 in 2 U.S.C. 441i(a), 441i(b), and 441i(e)(1)(A) and (B). *See* Advisory Opinion 2005-02
17 (Corzine) (organization directly or indirectly established, financed, maintained or
18 controlled by Federal candidate may only solicit funds that comply with the limits and
19 prohibitions of the Act, even in connection with a non-Federal election). If the
20 individuals are not acting on behalf of any Federal candidate or officeholder or any

³ Because the Corporation will be forwarding solicitations for political committees other than their own separate segregated fund, they may not avail themselves of the narrow exception allowing certain communications outside of their restricted class contained in 2 U.S.C. 441b(4)(A)(i).

⁴ If the Corporation were to receive solicitations directed to individual subscribers, and not to the Corporation itself, it would be permitted to forward those solicitations to the proper recipient. This would be a service provided solely to the individual for which the Corporation was properly compensated.

