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AGENDA ITEM

For Meeting of 1-29-10

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Robert M. Knop *RMK (Res)*
Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: Draft AO 2009-30 (TechNet)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 29, 2010.

Attachment

1 ADVISORY OPINION 2009-30

2 Marc E. Elias, Esq.
3 Rebecca H. Gordon, Esq.
4 Perkins Coie LLP
5 607 Fourteenth Street, NW
6 Washington, DC 20005-2003

DRAFT

7 Dear Mr. Elias and Ms. Gordon:

8 We are responding to your advisory opinion request on behalf of TechNet,
9 concerning the application of the Federal Election Campaign Act of 1971, as amended
10 (“the Act”), and Commission regulations to payments by TechNet’s corporate members
11 for fundraising consulting services for their separate segregated funds (“SSFs”). The
12 Commission concludes that TechNet’s corporate members may pay TechNet for
13 fundraising consulting services for their SSFs.

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received on
16 November 18, 2009 and e-mail received on December 3, 2009, and publicly available
17 materials, including reports filed with the Commission.

18 TechNet is an incorporated trade association with tax-exempt status under Section
19 501(c)(6) of the Internal Revenue Code. 26 U.S.C. 501(c)(6). TechNet’s members
20 include companies and executives in fields related to the technology industry, including
21 information technology, e-commerce, clean technology, venture capital, and investment
22 banking. As a condition of membership, TechNet’s corporate members pay annual dues,
23 which help defray the costs TechNet incurs to provide its services to the members,
24 including government relations work, issues briefings, and continuing education.

1 Many of TechNet's corporate members have federally registered SSFs. TechNet
2 would like to offer a new service to its corporate members consisting of SSF fundraising
3 services to assist its corporate members' SSFs. The proposed SSF fundraising package
4 would include an assessment of the SSF's recent fundraising activities and
5 recommendations for future efforts, a periodic newsletter, fundraising and marketing
6 materials custom-designed and printed for the SSF, and planning and execution of
7 fundraising events.

8 The fundraising package would be optional, and would be provided only to
9 corporate members who pay an extra dues assessment for the fundraising services plus
10 expenses. The amount of this extra dues assessment would be set at a level that ensures
11 that TechNet receives the fair market value of its services, and would be tailored to the
12 particular services provided to each participating corporate member.

13 TechNet asks whether the corporate members of the trade association may pay the
14 extra dues assessment and expenses out of their corporate treasuries to obtain the
15 fundraising package for their SSFs.

16 ***Question Presented***

17 *May TechNet's corporate members pay TechNet for fundraising consulting*
18 *services provided to the corporations' SSFs?*

19 ***Legal Analysis and Conclusions***

20 Yes, TechNet's corporate members may use corporate treasury funds to pay the
21 fair market value for fundraising services TechNet provides to the corporate members'
22 SSFs.

23 The Act prohibits corporations from using general treasury funds to make any

1 contributions in connection with any Federal election. 2 U.S.C. 441b; *see* 11 CFR 114.2.
2 However, the Act and Commission regulations permit a corporation's payment of costs
3 incurred in the establishment, administration and solicitation of contributions to a
4 separate segregated fund. 2 U.S.C. 441b(b)(2)(C); *see also* 11 CFR 114.1(a)(2)(ii). The
5 terms "establishment, administration and solicitation costs" are, in turn, defined as ". . .
6 the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees,
7 fundraising and other expenses incurred in setting up and running a separate, segregated
8 fund established by a corporation." 11 CFR 114.1(b).

9 The Commission has previously concluded that payments by corporations and
10 trade associations to help their SSFs increase their fundraising, similar to those described
11 in TechNet's request, constitute "establishment, administration and solicitation" costs and
12 thus are permissible. In Advisory Opinion 2006-33 (National Association of Realtors),
13 the Commission concluded that the requestor, a not-for-profit corporation exempt from
14 Federal income tax under section 501(c)(6) of the Internal Revenue Code, was permitted
15 to make payments of corporate treasury monies to its affiliated State and local
16 associations as incentives to increase their contributions to the requestor's SSF, because
17 such payments would constitute "establishment, administration and solicitation" costs.

18 In Advisory Opinion 1980-50 (United Merchants & Manufacturers, Inc.,
19 Manufacturing Division, Committee for Responsible Government), the Commission
20 concluded that the costs of meals at a meeting designed to introduce members of a
21 corporation's restricted class to the corporation's SSF would constitute "fundraising and
22 other expenses," and could therefore be paid by the corporation. Likewise, the
23 Commission concluded that the costs of transporting the participants to the meeting "falls

1 within the meaning of ‘expenses incurred in setting up and running a separate, segregated
2 fund,’ ” which the corporation could also pay.

3 Like the proposed payments in those advisory opinions, TechNet’s proposal
4 would involve corporations paying for something to help their SSFs raise more
5 contributions. The extra dues assessments and associated expenses for TechNet’s
6 fundraising consulting services would constitute fundraising expenses that may be paid
7 by a corporation for the benefit of its SSF.

8 TechNet itself, as an incorporated trade association, is also prohibited from
9 making contributions. Under the Act, a contribution includes “any direct or indirect
10 payment, distribution, loan, advance, deposit, or gift of money, or any services, or
11 anything of value . . . to any candidate, campaign committee, or political party or
12 organization” in connection with any Federal election. 2 U.S.C. 441b(b)(2); *see also*
13 11 CFR 100.52(a). The term “anything of value” includes all in-kind contributions, and
14 “the provision of any goods or services without charge or at a charge that is less than the
15 usual and normal charge for such goods or services is a contribution.” 11 CFR
16 100.52(d)(1). The “usual and normal charge” for goods means “the price of those goods
17 in the market from which they ordinarily would have been purchased at the time of the
18 contribution,” and the “usual and normal charge” for services means “the hourly or
19 piecework charge for the services at a commercially reasonable rate prevailing at the time
20 the services were rendered.” 11 CFR 100.52(d)(2). Since TechNet is not the connected
21 organization with respect to any of the SSFs, if TechNet were to provide any services, or
22 any goods associated with its services (*e.g.*, printed fundraising materials, food and
23 beverages for fundraising events) to any of the SSFs, without charge or at less than the

1 usual and normal charge for such goods or services, the value of those goods or services
2 would be a contribution to the political committee to which they were provided.
3 Likewise, if TechNet were to provide an extension of credit to the political committees
4 that is not on terms substantially similar to that provided by commercial vendors in the
5 normal course of business, the result would be a prohibited contribution.

6 Under the terms of its proposal, TechNet would set the extra dues assessment at
7 an amount that would ensure that TechNet would be paid the fair market value of the
8 services it would provide. Therefore TechNet will not be making any contributions to the
9 participating corporations' SSFs.¹

10 Under TechNet's proposal, therefore, participating corporate members would
11 make permissible payments for fundraising expenses for their SSFs, and TechNet itself
12 would not make any prohibited contributions to those SSFS. Thus the Commission
13 concludes that TechNet's proposal would not violate any provision of the Act or
14 Commission regulations. The Commission expresses no opinion regarding the
15 application of the Internal Revenue Code to the proposed activities because those
16 questions are not within the Commission's jurisdiction.

17 This response constitutes an advisory opinion concerning the application of the
18 Act and Commission regulations to the specific transaction or activity set forth in your
19 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
20 of the facts or assumptions presented and such facts or assumptions are material to a

¹ TechNet indicated in a telephone conversation with Commission attorneys that both the extra dues and the estimated expenses would be paid by the participating corporate member before services are provided, with any difference between estimated and actual expenses reconciled after such expenses are incurred. Accordingly, TechNet is not extending any credit whatsoever to the participating corporate members.

1 conclusion presented in this advisory opinion, then the requester may not rely on that
2 conclusion as support for its proposed activity. Any person involved in any specific
3 transaction or activity which is indistinguishable in all its material aspects from the
4 transaction or activity with respect to which this advisory opinion is rendered may rely on
5 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
6 conclusions in this advisory opinion may be affected by subsequent developments in the
7 law including, but not limited to, statutes, regulations, advisory opinions and case law.
8 The cited advisory opinions are available on the Commission's website at
9 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

Matthew S. Petersen
Chairman