



Glen Shor <gshor@campaignlegalcenter.org> on 09/25/2003 05:06:38 PM

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To: [mailinglists@fec.gov](mailto:mailinglists@fec.gov)

cc:

Subject: Comments

Attached (in Microsoft Word format) are comments of the Campaign Legal Center on Notice 2003-17, Mailing Lists of Political Committees.

Please call me if you have any trouble opening this attachment.

Thank you in advance for your consideration.

Glen Shor

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Glen Shor

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Sincerely,

*/s/ Glen Shor*

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Under the factual circumstances described above, the LNC may lease its mailing list to any person . . . without a contribution resulting if the following conditions [pertaining to the nature of the transaction] are met.”<sup>1</sup>

As the Commission acknowledges in the NPRM, this sort of analysis is absent from its criteria for determining whether the proceeds of a political committee’s sale or rental of a mailing list should be considered a “contribution.” We believe that the Commission should continue to employ an analysis which accounts for the use and development of the mailing list by the political committee seeking to sell or rent it. The Commission’s regulations elsewhere recognize that the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution (*see* 11 C.F.R. § 100.53); given the nature of these organizations, it is logical to presume that their sales and leases of assets are fundraising transactions. Only if the sale or lease of a mailing list is an isolated event, and the list had been developed over time primarily for the committee’s own particular use, should there be any potential to avoid characterization of the proceeds as a “contribution” (and in the event such threshold criteria are satisfied, the analysis could turn to whether the sale or rental is for fair value in a *bona fide* arm’s length transaction with commercially reasonable contractual terms).

On a separate issue, we do not believe that a leadership PAC’s sale or rental of a mailing list to an authorized committee of the candidate controlling the leadership PAC can fairly be characterized as a “bona fide arm’s length” transaction. Moreover, at a minimum, the fact that a mailing list developed by a candidate’s leadership PAC is uniquely suited for fundraising solicitations on behalf of his or her authorized committee should be accounted for in the Commission’s analysis of whether the authorized committee has provided sufficient value to the leadership PAC to offset any in-kind contribution. Of course, the Commission could and should also more comprehensively address the evasion of contribution limits achieved by leadership PACs by treating these entities as affiliated with the authorized committees of candidates.

Finally, we believe that where national parties sell or lease a mailing list developed with a mix of federal and non-federal funds (the list would have been developed prior to the enactment of BCRA), they should be able to accept (at most) only the portion of the proceeds which corresponds to the federal portion of the costs of the list’s development. For (other) political committees permitted to have a non-federal account, only the portion of mailing list sale or rental proceeds that corresponds to the federal portion of the costs of the list’s development should be eligible for deposit in the federal account. Otherwise, there is a conversion of a soft money donation into a hard money contribution.

Thank you in advance for your consideration of these comments.

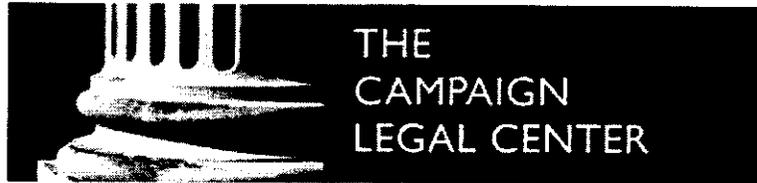
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<sup>1</sup> *See also* FEC Advisory Opinion 2003-19 (“The office equipment and furniture that the DCCC proposes to sell was purchased for use in everyday business operations, and not as a means of raising funds. Moreover, used office equipment and furniture generally has an ascertainable market value. The Commission also notes that this transaction, like the sale of a campaign’s unusable van sanctioned in Advisory Opinion 1986-14, would result in the isolated disposal of unwanted and depreciated committee assets, and is thus not inherently susceptible to use for political fundraising.”).

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- mailing listsnprm.doc



September 25, 2003

Mai T. Dinh  
Acting Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

**Re: Notice 2003-17**

Dear Ms. Dinh:

I am writing on behalf of the Campaign Legal Center regarding Notice 2003-17, an FEC Notice of Proposed Rulemaking concerning Mailing Lists of Political Committees.

We would like to address three specific issues presented in the Notice.

First, the draft rules on political committee rental or sale of mailing lists to others (draft 11 C.F.R. § 110.21) omit an important component of the Commission's past analysis of asset sale or rental by political committees: scrutiny as to the nature of the seller's or lessor's development and use of the asset. The Commission has previously indicated that a "contribution" would result where the purpose behind a political committee's purchase or development of an asset being offered for sale or rental was to raise funds through sale or rental, or the sale or rental of the asset was more than an isolated transaction. Even in recent Advisory Opinion 2002-14, the Commission's approval of a national party committee's proposal to continue renting its mailing list (without the proceeds being treated as "contributions") rested in part on "the nature of the list development and use" (in addition to "the nature of the lease transaction"). The Advisory Opinion noted:

"The LNC's mailing list appears to have been developed by the LNC over a period of time, and does not constitute merely a list or lists that were purchased from other sources. The list was developed primarily for the LNC's use for its own political or campaign purposes, and not for sale or lease of the names on the list to others. The Commission notes that the lease of the list by the LNC was only a small percentage of the overall use of the list by the LNC.