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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

September 14, 1995

MEMORANDUM

TO: The Commission
THROUGH: John C. Surina
Staff Director
FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Rita Reimer
Staff Attorney

SUBJECT: Draft AO 1995-35

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for September 21, 1995.

Attachment

AGENDA ITEM

For Meeting of: SEP 21 1995

1
2
3 ADVISORY OPINION 1995-35

DRAFT

4 N. B. Forrest Shoaf, Esq.
5 General Counsel
6 Alexander for President, Inc.
7 1808 West End Avenue, Suite 600
8 Nashville, Tennessee 37203

9 Dear Mr. Shoaf:

10 This responds to your letter dated August 31, 1995,
11 requesting an advisory opinion on behalf of Alexander for
12 President, Inc., concerning the application of the Federal
13 Election Campaign Act of 1971, as amended ("FECA"), the
14 Presidential Primary Matching Payment Account Act ("the
15 Matching Payment Act"), and Commission regulations to
16 campaign contribution solicitations you propose for the 1996
17 presidential election.

18 You state that Alexander for President, Inc. ("the
19 Committee"), is the principal campaign committee advocating
20 the election of Lamar Alexander to the Presidency of the
21 United States. The Committee proposes to use the Internet,
22 the World Wide Web, and related technology (collectively "the
23 Internet") to solicit contributions in support of Governor
24 Alexander's presidential candidacy.

25 You further state that, while the Committee has not
26 settled on an actual text for the Internet solicitations, it
27 contemplates making only a generic statement that supporters
28 of Mr. Alexander can contribute to the Committee by sending
29 personal checks to the Treasurer of the Committee at
30 Committee headquarters. The Committee will solicit and

accept only contributions made by natural persons who are not "foreign nationals," as defined in 2 U.S.C. §441(e), and drawn on personal checks. The Committee anticipates that all such contributions will qualify as potential "matchable contributions" for purposes of 26 U.S.C. §9034 and 11 CFR 9034.2.

The Internet solicitation message will include the disclaimers required by Federal election law and Internal Revenue Service regulations and will state that the Committee must report certain identifying information on individuals whose contributions aggregate more than \$200 in a calendar year. The solicitation will also include the Committee's standard disclaimer that it cannot accept corporate contributions. In sum, the Internet solicitations will not differ in any material way from the Committee's direct mail solicitations. Your advisory opinion request includes a sample of such a solicitation.

You propose that, once a contribution made in response to an Internet solicitation arrives at Committee headquarters, the Committee's Treasurer will process the contribution as he does any other contribution that arrives without a contributor response card. Specifically, he will send a "follow up" mailing to the contributor attempting to ascertain the donor's name, mailing address, occupation, name

3 of employer, and telephone number.1/ If these procedures are
4 followed, it appears that the Committee's solicitation,
5 acceptance and processing of contributions made in response
6 to its Internet solicitations will not differ in any material
7 respect from the treatment of contributions it solicits and
8 accepts through direct mail.2/

9 In Advisory Opinion 1995-9, the Commission concluded
10 that solicitations over the Internet are permissible under
11 the FECA provided that certain requirements, including the
12 use of appropriate disclaimers, are met.3/ Your sample
13 solicitation includes the disclaimer, "Paid for by Alexander
14 for President, Inc."

15 The Commission concludes that the wording of this
16 disclaimer complies with 2 U.S.C. §441d(a)(1) and 11 CFR

17 1/ Commission regulations do not require further Committee
18 contact with any contributor whose contributions do not
19 aggregate in excess of \$200 for the calendar year. In
20 addition, the Act and Commission regulations do not require
21 the Committee to obtain the telephone numbers of its
22 contributors. See 2 U.S.C. §§431(13), 432(i), and
23 434(b)(3)(A); see also 11 CFR 100.12, 104.3(a)(4)(i), and
24 11 CFR 104.7. However, requesting telephone numbers is
25 permissible and having them would facilitate the Committee's
26 "best efforts" if it expects that it will make oral requests
27 to obtain full contributor identification under 11 CFR 104.7.

28 2/ You have stated that the Committee will not use the
29 Internet media to seek or obtain missing contributor
30 identification data. Accordingly, this opinion does not
reach the issue whether doing so would satisfy the "best
efforts" rules in the Act and Commission regulations.

3/ Advisory Opinion 1995-9 also addressed other issues not
raised in your request, such as the use of credit cards,
electronic fund transfers and other electronic means to make
contributions.

110.11(a)(1)(i).4/ In addition, the sample direct mailing (as submitted with this advisory opinion request) includes a request for identifying information on individuals whose contributions aggregate in excess of \$200 in a calendar year; this request meets the requirements of 11 CFR 104.7(b)(1). You further indicate that the Committee will make a follow-up mailing to any contributor whose contribution does not contain this information, consistent with the Commission's "best efforts" regulations at 11 CFR 104.7(b)(2).

Because Advisory Opinion 1995-9 did not involve an authorized committee of a presidential candidate, it did not address additional issues that might be raised by the Matching Payment Act. Advisory Opinion 1995-9, n. 1. In particular, it did not address the concept of "matchability" which allows only certain contributions, or certain portions of contributions, to be matched with Federal payments from the Presidential Primary Matching Payment Account. 26 U.S.C. §59033, 9034; 11 CFR 9034.2. For example, no more than \$250 of the aggregate amount contributed by an individual may be so matched. 26 U.S.C. §9034; 11 CFR 9034.2(a)(2).5

4/ Because Alexander for President, Inc., has been authorized by Mr. Alexander (pursuant to 2 U.S.C. §432(e)(2), 26 U.S.C. §9032(1) and 11 CFR 9032.1), there is no requirement that the contribution solicitations include a candidate-authorization statement. They are required to clearly state that the Committee has paid for the solicitation communication; the sample includes such a statement.

5/ The regulations also include other conditions or restrictions on matchable contributions, and in some cases preclude the matchability of the contribution. See 11 CFR

You state that the Committee intends to solicit only matchable contributions under 11 CFR 9034.2. The sample solicitation you have provided notes that only \$250 of a contribution can be matched. The Commission concludes that this language is appropriate, but notes that other options are available. For example, the Committee is free to accept contributions that exceed \$250, subject to the general contribution limits set forth at 2 U.S.C. §441a(a)(1)(A), even though no more than \$250 of each such contribution may be matched.

Similarly, you state that all Committee solicitations will include a standard disclaimer that the Committee cannot accept corporate contributions. Again, while the FECA does not require the Committee to include this notice, it is an appropriate safeguard to help minimize the possibility of receiving prohibited corporate contributions.^{6/} Also advisable is your statement that the Committee will accept no contributions from "foreign nationals" as defined at 2 U.S.C.

(Footnote 5 continued from previous page)
9034.2(c)(6) (contributions in form of purchase price paid for admission to activity that is "essentially political" are matchable) and 11 CFR 9034.3(j) (contributions in cash, i.e., US currency or foreign currency, are not matchable).

^{6/} The Commission has held that principal (or other authorized) campaign committees may not establish non-federal accounts. Advisory Opinion 1990-23. Accordingly, the requirement of Commission regulations, 11 CFR 102.5(a)(2), that contributors to unauthorized committees be notified of the FECA contribution prohibitions, is not applicable to the Committee.

§441e.7/

The Commission concludes that the Committee may solicit contributions for Mr. Alexander's presidential campaign over the Internet, if the procedures set forth in your letter and this opinion are followed. Furthermore, the fact that the Internet is used to convey the solicitations does not affect whether the resulting contributions would qualify for Federal matching payments.

This response constitutes an advisory opinion concerning application of the Federal Election Campaign Act, the Presidential Primary Matching Payment Account Act, and Commission regulations, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Sincerely,

Danny L. McDonald
Chairman

Enclosures (AOs 1995-9 and 1990-23)

7/ The Commission notes that the Committee is also barred from accepting contributions made in the name of another, as well as contributions from labor organizations, national banks, and Federal government contractors. 2 U.S.C. §§441b, 441c, and 441f. See also 11 CFR 110.1(i)(2) (circumstances under which contributions may be accepted from minor children); Advisory Opinion 1995-9.