



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-35

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

Dear Mr. Shoaf:

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

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

You further state that, while the Committee has not settled on an actual text for the Internet solicitations, it contemplates making only a generic statement that supporters of Mr. Alexander can contribute to the Committee by sending personal checks to the Treasurer of the Committee at 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.^{1/} If it arrives without a contributor response card, he will send a "follow up" mailing to the contributor attempting to ascertain the donor's name, mailing address, occupation, name of employer, and telephone number.^{2/} If these procedures are followed, it appears that the Committee's solicitation, acceptance and processing of contributions made in response to its Internet solicitations will not differ in any material respect from the treatment of contributions it solicits and accepts through direct mail.^{3/}

In Advisory Opinion 1995-9, the Commission concluded that solicitations over the Internet are permissible under the FECA provided that certain requirements, including the use of appropriate disclaimers, are met.^{4/} Your sample solicitation includes the disclaimer, "Paid for by Alexander for President, Inc."

The Commission concludes that the wording of this disclaimer complies with 2 U.S.C. 441d(a)(1) and 11 CFR 110.11(a)(1)(i).^{5/} 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. 9033, 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).^{6/}

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.^{7/} Also advisable is your statement

that the Committee will accept no contributions from "foreign nationals" as defined at 2 U.S.C. 441e.^{8/}

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)

1 The Commission notes that contribution processing by the Committee must include making a record of each contribution and disbursement pursuant to 2 U.S.C. 432(c) and Commission regulations at 11 CFR 102.9 and 104.14. The documentation required under these provisions must be preserved and remain available for audit, inspection or examination by the Commission for at least three years after the filing of the Committee report to which the documentation relates. See 2 U.S.C. 432(d). Furthermore, since Mr. Alexander expects to qualify for and receive Federal matching funds, both he and the Committee must also comply with the documentation rules of 26 U.S.C. 9033(a) and Commission regulations at 11 CFR 9033.1.

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

3 You have stated that the Committee will not use the Internet media to seek or obtain missing contributor 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.

4 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.

5 Because Alexander for President, Inc., has been authorized by Mr. Alexander (pursuant to 2 U.S.C. 432(e)(1), 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.

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

7 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.

8 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.