

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

SEP 16 1 03 PM '99



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 16, 1999

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael G. Marinelli  
Staff Attorney

SUBJECT: Draft AO 1999-22

**AGENDA ITEM**  
For Meeting of: 9-23-99

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for September 23, 1999.

Attachment

**DRAFT**

1 ADVISORY OPINION 1999-22

2  
3 J. Blair Richardson, Jr.  
4 1725 Larkmeade Drive  
5 Vienna, VA 22182

6  
7 Dear Mr. Richardson:

8  
9 This refers to your letters dated August 16 and August 9, 1999, which  
10 request an advisory opinion on behalf of Aristotle Publishing, Inc. ("Aristotle" or  
11 "the company") concerning the application of the Federal Election Campaign Act  
12 of 1971, as amended ("the Act"), the Presidential Primary Matching Payment  
13 Account Act ("the Matching Act"), 26 U.S.C. §§9031-9042, and Commission  
14 regulations to its proposed methods to assist various political committee and  
15 candidate clients in fundraising through the Internet.

16 **FACTUAL BACKGROUND**

17 Aristotle publishes software and offers related services allowing Federal  
18 candidates to receive contributions by credit card through the Internet. You state that an  
19 increasing number of campaign clients (presidential and non-presidential) utilize such  
20 software and services. The company has been providing political products and services to  
21 thousands of candidates nationwide since 1983. In addition, you state that the company's  
22 FEC reporting software has been tested and approved by the FEC for electronic filing by  
23 Federal campaigns. You affirm that Aristotle currently has Internet contribution clients  
24 who will be seeking matching funds under the Matching Act. Your request describes the  
25 procedures its clients would use.

1           ***Screening contributions***

2           A candidate utilizing Aristotle's Internet contributions service will download the  
3 software from Aristotle's web site and install it at his or her own campaign web site, all at  
4 the candidate's own expense. Internet contributions are then screened for impermissible  
5 or nonmatchable contributions through a series of sequential measures.

6           First, through the candidate's web site, contributors view the contribution  
7 solicitation form. The form may contain a customized introductory message from the  
8 candidate. You state that the form would contain attestation language, derived from the  
9 Commission's guidance in Advisory Opinion 1995-9, informing prospective donors of  
10 the Act's contribution limits and source restrictions. The candidate has the option of  
11 including an attestation concerning contributions from minors, which language also is  
12 derived from Advisory Opinion 1995-9. If the candidate does not wish to accept  
13 contributions from minors, the form will note this and will include an appropriate  
14 attestation that the contributor is at least 18 years old.

15           Second, a prospective donor, will be required to provide detailed information,  
16 including at least the same information identified as "required" in Advisory Opinion  
17 1999-9:

- 18           • The contributor's name
- 19           • The contributor's name as it appears on the card
- 20           • The billing address on record with the issuer of the card
- 21           • The card number
- 22           • The expiration date

- 1           • The contributor's mailing address; and
- 2           • The amount of the contribution

3           Third, you affirm that consistent with the Commission's guidance in Advisory  
4 Opinion 1999-9, if a prospective donor fails to provide any of the required information or  
5 fails to check any of the attestation boxes, the contribution will be rejected. The  
6 contributor will be prompted either to correct any omission or inaccurate information, or  
7 cancel the transaction.

8           Fourth, any contribution to a candidate in excess of \$1,000 will be rejected at the  
9 web site.

10           Fifth, all contributor names are matched against a nationwide file of public voter  
11 registration records.<sup>1</sup>

12           *Processing contributions*

13           When the online form has been successfully completed, the donor transmits it for  
14 "real time" processing. The credit card data is sent directly to the credit processing  
15 company, which will cross check the submitted information with the processing  
16 company's own records on the contributor's name, billing address, account number and  
17 card expiration date.

18           If the processing company rejects the contribution, the contributor will be  
19 informed of this fact. All approved contributions are deposited into a bank account

---

<sup>1</sup> You explain that, by Aristotle's analysis, almost 9 out of 10 online contributors are registered voters (and thus necessarily, U.S. citizens). This match provides an additional basis to verify identity, to screen for contributions by minors and for potentially prohibited contributions by non-citizens, and assist the campaigns in meeting their "best efforts" reporting obligations. You explain that a contribution is not declined if the contributor does not appear in the voter file match. Instead that fact is forwarded to the client committee in order to assist the campaign. The result of the match is also retained for the benefit of the Commission for use in any audit of contributions.

1 established by Aristotle exclusively for political committee proceeds. This account is not  
2 only separate from Aristotle's other corporate accounts, but is also maintained at an  
3 entirely different financial institution.<sup>2</sup>

4 You explain that Aristotle will inform the committees of the identity of the  
5 depository bank so that each committee may disclose the depository on an amended  
6 statement of organization, in accordance with the Commission's guidance in Advisory  
7 Opinion 1995-34.<sup>3</sup> Further, to facilitate any audit process and to avoid commingling of  
8 committee proceeds and Aristotle's corporate funds, Aristotle also will maintain separate  
9 book accounts for each political customer. All Internet contributions, you state, are  
10 forwarded to the campaigns (less any agreed processing fee) in accordance with the time  
11 requirements of 2 U.S.C. §432(b)(1) and (2), and 11 CFR 102.8.

12 You assert that the information provided to a committee treasurer is sufficient for  
13 the treasurer to fulfill all record-keeping duties under 11 CFR 102.9 and other provisions  
14 of the Act and the regulations. The information provided by Aristotle to the committee  
15 includes, at a minimum

- 16 • The committee's account number
- 17 • The contributor's name and address
- 18 • The contributor's employer and occupation
- 19 • Date and total amount of contribution

---

<sup>2</sup> This separate account for political committee contributions is established at the Wachovia Bank, an FDIC-insured depository institution.

<sup>3</sup> The Commission's guidance was based upon both 2 U.S.C. §432(h)(1) and 11 CFR 103.3(a) which requires that all receipts of a political committee be deposited in a qualified bank or credit union depository.

- 1                   • Unique contribution confirmation number
- 2                   • Address verification used (billing address and zip code; also voter
- 3                   record matches if applicable.)
- 4

5                   Aristotle will retain all contributor-supplied information, all records of each  
6 deposit into each political committee account, and all records of transfers to each political  
7 committee. Aristotle affirms that it will make such records available at the Commission's  
8 request or as otherwise required by law.<sup>4</sup>

9                   *Use of Aristotle's merchant ID number*

10                  An important part of the described transactions is that Aristotle will use its own  
11 "merchant ID number" for clients for whom it is collecting and forwarding the credit card  
12 contributions. Aristotle currently offers a candidate the immediate ability to take  
13 contributions through American Express, Visa, MasterCard, and shortly, Discover. Each  
14 of these credit card companies has its own application forms, rules, time frames, and  
15 credit worthiness requirements that a campaign would have to meet individually to have  
16 the same access. Each contributor is notified in the "real time" confirmation of the  
17 contribution that the credit card bill will reflect a contribution processed through  
18 "campaigncontribution.com" not the name of the committee. You explain that Aristotle  
19 does not offer a service to assist campaigns with the process of obtaining their own  
20 merchant ID's for each credit card they will be using.<sup>5</sup>

---

<sup>4</sup> For security reasons, you explain that the contributor's credit card number and expiration date are not forwarded to the political customer, so that such information is not included in the committee's database. The Commission notes, however, that further directions will be provided to Presidential campaigns seeking matching funds which will specify the required credit card information.

<sup>5</sup> You explain that it is Aristotle's business decision that the process of assisting each campaign in obtaining its own merchant ID for each credit card will be too expensive, too labor intensive, too inefficient and would only add layers of complication to the process.

1           ***Cost of service***

2           The company will receive, as its fee, a negotiated percentage of the contributions.  
3           Depending on the terms of the contract, the company or the campaign will pay the credit  
4           card processing fee. The company will pay other transaction-based fees associated with  
5           collecting and forwarding the funds. The amount of such fees will necessarily be directly  
6           related to the volume of contributions received by a campaign.

7           Such costs along with costs associated with account servicing, record-keeping,  
8           accounting, billing review, and legal review, would normally be accounted for in  
9           overhead, you explain, and are intended and projected to be covered by the fees deducted  
10          by Aristotle from actual contributions received. The pricing for each committee will  
11          include allowance for an adequate profit. You ask whether the above procedures are  
12          permissible under the Act and Commission regulations.

13          **ACT AND COMMISSION REGULATIONS**

14          The Act prohibits contributions and expenditures by a corporation in connection  
15          with a Federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). The term "contribution" is  
16          defined to include "any direct or indirect payment, distribution, loan, advance, deposit, or  
17          gift of money, or any services, or anything of value ... to any candidate, campaign  
18          committee, or political party or organization," in connection with any Federal election. 2  
19          U.S.C. §441b(b)(2); 11 CFR 114.1(a)(1). See 2 U.S.C. §431(8)(A)(i) and 11 CFR  
20          100.7(a)(1). The phrase "anything of value" includes goods or services provided without  
21          charge, or at less than the usual and normal charge. 11 CFR 100.7(a) (1)(iii)(A) and  
22          100.8(a)(1)(iv)(A).

1 For purposes of entitlement to Federal matching payments, the term contribution  
2 “means a gift of money made by a written instrument which identifies the person making  
3 the contribution by full name and mailing address, but does not include a subscription,  
4 loan, advance, or deposit of money, or anything of value or anything described in  
5 subparagraph (B), (C), or (D) of section 9032(4).” 26 U.S.C. §9034(a); see also 11 CFR  
6 9034.2.

7 With regards to a contribution made by credit card or debit card, the Commission  
8 regulations define “written instrument” to mean either a transaction slip or other writing  
9 signed by the cardholder, or in the case of such a contribution made over the Internet, an  
10 electronic record of the transaction created and transmitted by the cardholder, and  
11 including the name of the cardholder and the card number, which can be  
12 maintained electronically and reproduced in a written form by the recipient candidate or  
13 candidate’s committee. 11 CFR 9034.2(b).<sup>6</sup>

14 The written instrument shall be: Payable on demand; and to the order of, or  
15 specifically endorsed without qualification to, the Presidential candidate, or his or her  
16 authorized committee. The written instrument shall contain: The full name and signature  
17 of the contributor(s); the amount and date of the contribution; and the mailing address of  
18 the contributor(s). For purposes of this section, the term signature means, in the case of a  
19 contribution by a credit card or debit card, either an actual signature by the cardholder

---

<sup>6</sup> The Commission, as your request notes, has recently revised its regulations at 11 CFR 9034.2 to permit contributions through the Internet made by credit card. See *64 Fed.Reg.* 32394 (June 17, 1999). The new regulations will be promulgated in the next 10 to 15 days and will apply retroactively to contributions made on or after January 1, 1999. The Commission has also revised the regulations at 11 CFR 9036.1(b)(7) and 9036.2(b)(1)(vii) to give guidance as to the further documentation requirements for matchable contributions made by credit card (or debit card) through the Internet. See *64 Fed.Reg.* 42584



1 who is the donor on a transaction slip or other writing, or in the case of such a  
2 contribution made over the Internet, the full name and card number of the cardholder who  
3 is the donor, entered and transmitted by the cardholder. 11 CFR 9034.2(b)

4 Contributions by credit or debit card are matchable contributions provided that  
5 evidence is submitted by the committee that the contributor has affirmed that the  
6 contribution is from personal funds and not from funds otherwise prohibited by law.

7 11 CFR 9034.2(8)(ii)<sup>7</sup>

## 8 APPLICATION TO COMMITTEE PROPOSAL

### 9 *Screening and processing of contributions*

10  
11 The Commission notes that the screening procedures in your proposal for credit  
12 card contributions raised over the Internet are well within the "safe harbor" discussed in  
13 Advisory Opinion 1999-9 for matching contributions. See Advisory Opinion 1999-9 and  
14 the Explanation and Justification for the Commission's revised regulations permitting  
15 credit card contributions at 64 *Fed. Reg.* 32394 (June 17, 1999). They would permit the  
16 committee, relying on Aristotle's services, to submit evidence that "the contributor has  
17 affirmed that the contribution is from personal funds and not from funds otherwise  
18 prohibited by law." 11 CFR 9034.2(c)(8)(ii).<sup>8</sup>

---

(August 5, 1999). The official promulgation date for these regulations will be published in a notice in the Federal Register.

<sup>7</sup> There are other requirements for matching contributions by credit or debit card, including that they meet the conditions found at section 9034.2(b) and (c) concerning a written instrument and signature. Further, contributions by credit card or debit card are not matchable where the cardholder's name and card number are given to the recipient candidate or candidate's committee only orally. 11 CFR 9034.2(c)(8)(i).

<sup>8</sup> The Commission stated in its Explanation and Justification that:

A committee should take steps to insure that controls and procedures are in place to minimize the possibility of contributions by foreign nationals, by Federal Government contractors, and by labor organizations, or by an individual using corporate or other business entity credit accounts. Such controls and procedures should also help the recipient committee

1           The general contractual arrangements Aristotle proposes for its political  
2 committee and candidate clients also meet the requirements of sections 100.7(a)  
3 (1)(iii)(A) and 100.8(a)(1)(iv)(A). Aristotle's proposal would provide for adequate  
4 compensation and its procedures would seem to be in the normal course of business for a  
5 vendor within its industry dealing with a similarly situated non-political client. These  
6 arrangements avoid creating a situation where the vendor provides services to a political  
7 committee either without charge, or at less than the usual and normal charge, and thereby  
8 makes a corporate contribution prohibited by 2 U.S.C. §441b(b)(2).<sup>9</sup>

9           *Use of Aristotle's merchant ID number*

10           Your inquiry regarding the use of Aristotle own merchant ID number, however,  
11 requires poses a more complex issue that must be examined from the perspective of the  
12 Act and the Matching Act.

13           With regard to contributions that are not submitted for Federal matching payments  
14 under the Matching Act, the Commission notes that the manner in which a credit card bill  
15 or invoice records the transaction is less important than the treatment of the contributions  
16 raised through fundraising with vendor participation. The greater concern arises where  
17 the funds are deposited prior to their transmittal to the committee. The Commission  
18 concludes that placing such funds in the same corporate account where it places its other

---

identify contributions made by the same individual using different or multiple credit card accounts; and contributions by two or more individuals who are each authorized to use the same account, but where the legal obligation to pay the account only extends to one (or more) of the card holders, and not to all of them. 64 Fed. Reg. 32396.

<sup>9</sup> The Commission agrees with your observation that the procedures Aristotle proposes are consistent with the financial vendor arrangements approved in prior opinions cited in your request. See Advisory Opinions

1 funds would lead to a commingling of corporate funds and campaign funds prohibited by  
2 section 441b. See Advisory Opinions 1990-1 and 1991-20.<sup>10</sup>

3 Your proposal to place these funds in a separate banking account and to maintain  
4 separate book accounts for each political customer addresses concerns raised by the  
5 Commission in these previous opinions. The Commission also notes Aristotle's intention  
6 to use FDIC insured depository institutions for these accounts and to provide the  
7 treasurers of its political committee clients with the identity of the depository bank who,  
8 in turn, would disclose the required bank information to the Commission. See 2 U.S.C.  
9 §432(h)(1) and 11 CFR 102.3. In light of these precautions, the Commission concludes  
10 that for contributions that are not submitted under the Matching Act, the use of Aristotle's  
11 own merchant ID to collect contributions for multiple clients would be permissible under  
12 the Act; that is, 2 U.S.C. §431 *et seq.*

13 However, even with the above precautions, the Commission concludes that  
14 Aristotle may not use a single merchant account number for contributions to Presidential  
15 campaigns that are to be submitted for Federal matching payments. The Commission  
16 notes that the regulations for matchable contributions place much value on the

---

1991-20 and 1991-26 (900-number calls), Advisory Opinions 1994-33 (pre-paid calling cards) and 1995-34 (credit card contributions through 900-number).

<sup>10</sup> These prior advisory opinions concerning vendors who provided 900 line telephone services to campaigns are relevant to your situation. The Commission concluded that permitting a corporate vendor to place the funds raised through these services in its regular corporate account before transmitting them to its campaign clients would lead to a commingling of corporate and campaign funds prohibited by section 441b. The Commission determined that separate accounts were needed for a vendor's political committee clients. The Commission noted in Advisory Opinion 1991-20 that, in certain circumstances, a vendor may establish one separate account to process all funds raised for political committees. In Advisory Opinion 1991-20, the Commission noted that the requester providing 900 line services had "potentially large numbers of political customers" and that it maintained separate book accounts for each political committee customer. The proceeds passing through the one account for political committee customers was forwarded to each political committee within ten days or thirty days of its receipt by the 900 line provider, depending upon the type of committee. See U.S.C. §432(b)(1) and (2); 11 CFR 102.8(a) and (b).

1 identification of the committee receiving the contribution. The regulations implementing  
2 the Matching Act require that the instrument conveying the contribution be “payable on  
3 demand; and to the order of, or specifically endorsed without qualification to the  
4 Presidential candidate, or his or her authorized committee.” 11 CFR 9034.2(b). The  
5 Commission also notes that when Aristotle uses its own merchant ID, the name of the  
6 committee receiving the contribution will not be itemized on the monthly credit card bill  
7 received by the contributor. While Aristotle may be able to produce other records to  
8 indicate the campaign purpose and nature of the contribution, the requirement that the  
9 contribution be made payable to or endorsed to the Presidential campaign is only satisfied  
10 if the committee’s name appears on the contributor’s credit card bill. This requirement is  
11 necessary as a means of assuring not only that the contributor intended to make a  
12 campaign contribution, but also that the contributor intended his or her money to go to  
13 the specific candidate named on the credit card bill, as opposed to a different candidate  
14 who may also be doing business with the same vendor.<sup>11</sup> Such a disclosure on the bill  
15 also enables the contributor to review his or her contribution to verify the amount, date  
16 and other information regarding the use of a particular card (or its use by an authorized  
17 account owner) to make the contribution.

---

<sup>11</sup> In its Explanation and Justification for revisions to the regulations providing the documentation requirements for credit card contributions made through the Internet, the Commission noted it “has always held contributions submitted for matching to a higher documentation standard because the matching fund program involves the disbursement of millions of dollars in taxpayer funds.” See 64 *Fed. Reg.* 42584.

