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AUGUST 16, 1999

Lawrence M. Noble, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 1999-22

Re: *Request for Advisory Opinion*

Dear Mr. Noble:

Enclosed is the supplemental information requested by Michael Marinelli, Esq., of your office in the matter of Aristotle Publishing, Inc.'s request for an Advisory Opinion from the Federal Election Commission.

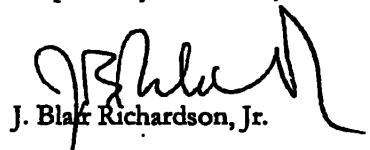
1. Aristotle currently has Internet contribution clients who will be seeking matching funds under the Presidential Primary Matching Payment Act, 26 U.S.C. 9031 *et seq.*
2. A contribution is not declined if the contributor does not appear in the Aristotle voter file match. However, that fact is forwarded to the client Committee in order to assist the campaign in screening prohibited contributions. The result of the match also is retained for the benefit of the Commission for use in any audit of contributions.
3. Each contributor is notified in the "real time" confirmation of his or her contribution that the credit card bill will reflect a contribution processed through "campaigncontribution.com", not the name of the committee.
4. Aristotle does not offer a service of assisting campaigns with the process of obtaining their own merchant IDs for each credit card they will be using. 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 will only add layers of complication to the process. This decision is based on a number of reasons derived from Aristotle's experience, including, but not limited to the following:

Each campaign would have to go through the credit application process with each card issuer. In addition to the time lost, there would be additional costs such as extra e-commerce licenses, and additional account fees with each card issuer. Additional time would be needed to test the security of transmissions under each new ID. The process with some issuers takes weeks. Others may take as long as six months. There is no perceptible efficiency from having separate numbers, given that Aristotle already is keeping separate book accounts of

all transactions. In fact, Aristotle's costs would be far higher because volume discounts from the use of single merchant IDs would be lost by unnecessarily creating a multitude of duplicative accounts. Those higher costs would be passed on to campaigns, making campaigning even more expensive. In Aristotle's view, there is simply no business or accounting justification for such a cumbersome, wasteful, redundant, and far more expensive process.

If additional information is required, please do not hesitate to contact me.

Respectfully submitted,



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AUGUST 9, 1999

Lawrence M. Noble, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: *Request for Advisory Opinion*

Dear Mr. Noble:

Pursuant to 2 U.S.C. §437f, on behalf of Aristotle Publishing, Inc., this letter respectfully requests an Advisory Opinion from the Federal Election Commission.

Introduction

Aristotle asks the Commission to interpret the Federal Election Campaign Act, 2 U.S.C. §431 *et seq.* (the "Act"), the Presidential Primary Matching Payment Act, 26 U.S.C. 9031 *et seq.* (the "Matching Funds Act"), and the Commission's regulations, to permit the company to use its own "merchant ID" numbers for clients for whom the Aristotle is collecting and forwarding credit card contributions made through the Internet.

Aristotle makes this request in light of the Internet's role as an important tool to increase democratic participation, Congress's strong support for greater use of the Internet, and the Commission's prior approval of single merchant account structures for multiple committees. Aristotle also makes this recommendation in light of the desirability of increasing efficiency and security, reducing the cost of campaigns, and eliminating the specter of allegations that credit card companies may have discriminatorily denied merchant IDs to certain campaigns.

Factual Discussion

Contributions to a political campaign by credit card through the Internet are already legal under the Act, provided that certain safeguards are utilized. The Commission recently gave provisional approval under the Matching Funds Act for Internet credit card contributions.¹ The Commission also has approved the use of single merchant accounts for contributions to multiple candidates,

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¹ As noted in the Commission's recent submission to Congress on the proposed rule change, Aristotle was one of the six original petitioners who requested that the Matching Funds Act be amended to allow such treatment of Internet credit card contributions.

provided certain steps are taken to segregate corporate funds from committee contribution proceeds and to facilitate audits.

Aristotle publishes software and offers related services allowing federal candidates to receive contributions by credit card through the Internet. An increasing number of campaign clients (presidential and non-presidential) utilizes such software and services. The company has been providing political products and services to thousands of candidates nationwide since 1983. In addition, the company's FEC reporting software has been tested and approved by the FEC for electronic filing by federal campaigns.

Screening

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

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

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

- The contributor's name
- The contributor's name as it appears on the card
- The billing address on record with the issuer of the card
- The card number
- The expiration date
- The contributor's mailing address; and
- The amount of the contribution

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

Fourth, any contribution to a candidate in excess of \$1000 will be rejected at the web site.

Fifth, all contributor names are matched against a nationwide file of public voter registration records².

² 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 to assist the campaigns in meeting their "best efforts" reporting obligations. The match also is intended to facilitate audits by providing

Processing Contributions

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

If the processing company rejects the contribution, the contributor will be informed of this fact. All approved contributions are deposited into a bank account, established by Aristotle exclusively for political committee proceeds. This account not only is separate from Aristotle's other corporate accounts, but also is maintained at an entirely different financial institution. This separate account for political committee contributions is established at the Wachovia Bank, an FDIC-insured depository institution.

Aristotle will inform the committees of the identity of the depository bank so that each committee may disclose the depository on an amended statement of organization, in accordance with the Committee's guidance in Advisory Opinion 1995-34.

To facilitate any audit process and avoid commingling of committee proceeds and Aristotle's corporate funds, Aristotle also will maintain separate book accounts for each political customer.

All Internet contributions are forwarded to the campaigns (less any agreed processing fees) in accordance with the time requirements of 2 U.S.C §432(b)(1) and (2), and 11 CFR 102.8.

The information provided to the Committee treasurer is sufficient for the treasurer to fulfill all record-keeping duties under 11 CFR 102.9 and other provisions of the Act and the regulations. The information provided by Aristotle to the committee includes, at a minimum:

- The committee's account number
- The contributor's name and address
- The contributor's employer and occupation
- Date and total amount of contribution
- Processing fees deducted
- Unique contribution confirmation number
- Address verification used (billing address and zip code; also voter record match (if applicable)

For security reasons, the contributor's credit card number and expiration date are not forwarded to the political customer, so that such information is not included in a committee's database. Aristotle's policy is intended to reduce the risk of compromising the data's security and contributor privacy. This risk may exist because of such factors as human error or other security oversights stemming from the temporary nature of many campaign organizations and their workers.

Aristotle will retain all contributor-supplied information, all records of each deposit into each political committee account, and all records of transfers to each political committee.

additional contributor information from public records for the audit trail, whenever a contribution may be questioned.

Aristotle will make such records available at the Commission's request or as otherwise required by law.

Cost of Service

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

Such costs, along with costs associated with account servicing, record-keeping, accounting, billing review, and legal review, would normally be accounted for in overhead, and are intended and projected to be covered by the fees deducted by Aristotle from actual contributions received. The pricing for each committee will include allowance for an adequate profit.

The Forwarding of Campaign Contributions Collected By Aristotle Does Not Constitute An Illegal Corporate Contribution If The Company Receives The Usual and Customary Charge for Its Services

The Commission has considered a number of business arrangements between political committees and companies to assist the committees in raising funds. See FEC Advisory Opinions 1991-20 (900-number calls), 1991-26 (same), 1994-33 (pre-paid phone calling cards), and 1995-34 (credit card contributions through 900-number). The Commission has repeatedly stated that if the vendor does not receive the "usual and customary charges" for its services, it will have made an illegal corporate contribution. In discussing the proper charge, "the Commission has focused with particularity on the need for an adequate profit and on the advance of services or contribution proceeds without assurance of adequate compensation to the vendor." See Advisory Opinion 1994-33.

From Aristotle's perspective, the company has priced and will price its fees to satisfy this standard.

Although Aristotle may charge an initial fee for a campaign to use the service, the company does not believe that an up-front deposit to cover "set-up" costs should be mandated. The cost of downloading Aristotle's contribution software and establishing a link to Aristotle's web server is minimal. Such acts will be performed by the campaigns, and thus these minimal costs will be borne by the campaigns themselves. Furthermore, unlike more elaborate direct mail or 900-number fundraising arrangements that require significant customization, once the software is downloaded and the link is established with the server, the candidate is effectively ready to begin accepting contributions.

Finally, unlike some 900-number contribution programs where contributors may elect not to pay, credit card authorizations are far less likely to be subject to refund. As the Commission has previously noted:

When a person makes a 900 line phone call, he or she has not yet made a contribution. The caller has merely pledged to make a contribution, and according to the facts presented by you, may decide not to make the payment. The contribution does not occur until the caller pays, e.g., on the phone bill. When a person makes a contribution by credit card, however, the contribution is considered to have been made at the time that the card or card number is

presented. See Advisory Opinion 1990-4. The contributor is strictly obligated by the card agreement to make payment of the credit card bill and incurs substantial penalties with possible collection fees and cancellation of future credit privileges for nonpayment.

FEC Advisory Opinion 1990-14 (emphasis added).

Therefore, to provide for the unlikely event that a refund is required under unusual circumstances, Aristotle's campaign clients are responsible for all refunds. If the campaign failed to pay in a reasonable time, Aristotle would deduct the amount from any future contributions. *See* FEC Advisory Opinion 1991-20. To the extent Aristotle must pay any refund before collecting from the client committee, the arrangement would simply need to comply with permissible standards for extensions of credit in the ordinary course of business. This analysis would be performed on a case-by-case basis, in accordance with existing standards.³ *See also* FEC Advisory Opinion 1995-34, n.4 ("[S]hould there be unexpected losses due to a large amount of refusals by callers to pay, any payment by [the vendor] that is not covered by the amounts charged to the committee or the revenues from paid calls must be paid by the committee within a reasonable period of time.")

The concern that the vendor would bear all, or nearly all of the risk, with the Committee assuming little or no risk, therefore is not present. *Cf.* FEC Advisory Opinion 1991-20. As long as Aristotle charges its usual and customary charge for the services, including an adequate profit, and does not grant improper extensions of credit, then no unlawful corporate contribution will have been made.

The Use Of A Vendor's Merchant Account To Collect And Disburse Contributions For Multiple Clients Should Be Permissible If Certain Conditions Are Met

The Commission has previously considered business arrangements where a vendor has collected and disbursed contributions, utilizing a single depository account for multiple clients. *See* FEC Advisory Opinion 1991-26 (vendor's single depository account used for campaign contributions made to multiple clients as a result of 900-number calls); FEC Advisory Opinion 1991-20 (same); FEC Advisory Opinion 1995-34 (vendor's single depository account used for credit card contributions made through 900-number to multiple political clients).

The Commission has approved such arrangements where the vendor a) has a potentially large number of political customers, b) maintains separate book accounts for each committee customer, and c) maintains an account for political committee proceeds separate from the vendor's other corporate accounts. *See id.*

³ As the Commission stated in FEC Advisory Opinion 1991-20, n. 4:

In determining whether credit is being extended in the ordinary course of business, the Commission will consider whether the commercial vendor is following its established procedures and past practices in approving the extension of credit, whether the commercial vendor received prompt and full payment if it previously extended credit to the same candidate or committee, and whether the extension of credit conforms to the usual and normal practice of the vendor's trade or industry. 11 CFR 116.3 (c)(1)-(3)

The rationale underlying such Advisory Opinions is equally applicable to a situation where Aristotle expects to collect a significant number of Internet contributions for multiple clients under a single merchant ID in a single account. For a potentially large number of political customers, the arrangement would create efficiencies and reduce campaign costs. Separate book accounts for each committee customer would facilitate any audit that may be necessary. Creation of a separate account for political committee funds would prevent, "insofar as it is practicable, the commingling of political committee funds with corporate funds". See FEC Advisory Opinion request 1991-20.

Aristotle respectfully urges that Commission conclude that Aristotle's use of a single merchant ID for multiple clients is lawful, provided that:

1. no unlawful extension of credit is involved;
2. Aristotle has established a bank account for its political committee contributions, separate from the company's other business accounts; and
3. Aristotle maintains separate book accounts for each political customer.

Compelling Policy Reasons Support Approving The Use Of A Single Merchant Account To Collect Campaign Contributions From Multiple Clients

Compelling policy reasons further support the approval of the use of a single merchant account under the conditions described above.

The structure creates efficiencies by freeing a campaign from the burden of devoting time and resources to obtaining separate merchant IDs from each credit card issuer that the candidate wishes to utilize. Aristotle currently offers a candidate the immediate ability to take contributions through American Express, Visa, MasterCard, and shortly, Discover Card. Each issuer has its own application forms, rules, time frames, and "creditworthiness" requirements.

The sheer logistics and administrative requirements of duplicating this availability and dealing with these entities -- particularly if the amounts involved are relatively small -- would unnecessarily burden a campaign's staff and resources. A vendor collecting contributions under its own merchant ID, however, assumes the responsibility of efficiently managing these contacts for all of its clients, thus reducing the costs to campaigns.

On a broader level, a greater potential problem may be created by denying candidates the right to utilize a vendor that provides a merchant ID with a wide range of related services for collecting Internet contributions. A principle benefit of the use of the Internet for campaigning is the cost-effectiveness of the medium to raise funds. Yet a requirement that allows only campaigns deemed by issuers to be "credit-worthy" to take contributions online would be inherently problematic, and would place too much importance on the varying standards used by credit card companies in issuing merchant IDs. This scenario further creates the specter of allegations that credit card companies may have discriminatorily denied certain campaigns merchant IDs for Internet contributions, and thus possibly influenced elections.

The Matching Funds Act Also Permits Use of Single Merchant Account for Multiple Clients

As noted above, in Advisory Opinion 1999-9, the Commission provisionally approved the matchability of credit card contributions for Internet contributions. In Advisory Opinions 1991-20,

1991-26 and 1995-34, the Commission has approved the use of single merchant accounts for contributions to multiple committees.

Under an analysis that is consistent with the "safe harbor" provisions of 1999-9 and the Advisory Opinions permitting the use of single merchant IDs for multiple accounts, there are no provisions of the Matching Funds Act that require a higher standard for treatment of the contributions that are processed through Aristotle, for the following reasons:

- Like the entities in Advisory Opinions 1991-26, 1991-20 and 1995-34, Aristotle is an independent contractor, authorized to collect and forward contributions to each political committee treasurer that has been designated to receive contributions and make expenditures under 11 CFR 102.9.
- Aristotle's screening procedures exceed those approved in Advisory Opinion 1999-9. These procedures allow the committee "to verify the identity of those who contribute via credit card with the same degree of confidence that political committees generally accept checks via direct mail and other forms of solicitation that are consistent with Commission regulations". *See* Advisory Opinion 1999-9.
- Aristotle's service of matching each contributor against a nationwide file of public voter records provides an additional screening element for verification of the contributor's identity, exceeding the steps approved in the Advisory Opinions pertaining to matchability of Internet contributions and use of single merchant accounts for multiple clients.
- All contributions are forwarded to each political committee treasurer within the time requirements of 2 U.S.C. §432(b)(1) and (2), and 11 CFR 102.8.
- The information provided to the Committee treasurer is sufficient for the treasurer to fulfill all record-keeping duties under 11 CFR 102.9 and other provisions of the Act and the regulations.
- Any additional contributor-supplied information (including card number and expiration dates) that might be required by the FEC for an audit is maintained by Aristotle, in separate book accounts for each political customer, and would be made available as required.
- Wachovia, the bank into which the contributions are initially deposited, is an FDIC-insured bank, whose name the campaigns would disclose on their statements of organization. *See* 11 CFR 103.2 and 103.3. *See also* FEC Advisory Opinion 1995-34 (the vendor "should inform the committees of the identity of the depository so that each committee may disclose the depository on a amended statement of organization").
- Aristotle offers those who use the Internet contribution software the ability to integrate with Aristotle's FEC-tested reporting software. The ability to audit the contributions is therefore further increased by this electronic record keeping, particularly when compared with record-keeping for credit card contributions handled manually.
- The Aristotle system exceeds the standards approved by the Commission for the use of single merchant numbers, and the use of separate book accounts for each customer will enable Aristotle to record every contribution made to each particular campaign. *See* Advisory Opinion 1991-26.

- In general, Aristotle is experienced in FEC reporting matters and in working cooperatively with the Commission.

Conclusion

Aristotle's system exceeds the "safe harbor" standards approved in Advisory Opinion 1999-9 for collecting matchable credit card contributions through the Internet. It also exceeds the standards approved by the Commission for the use of single merchant accounts for multiple customers. Satisfaction of such standards facilitates the auditing of contributions, and no provision of the Matching Funds Act requires a higher screening or record-keeping standard than that utilized by Aristotle.

For the foregoing reasons, Aristotle respectfully urges the Commission to interpret the Act, the Matching Funds Act, and the Commission's regulations as permitting Aristotle's use of a single merchant ID in collecting and processing Internet campaign contributions for multiple clients under the circumstances described herein.

Respectfully submitted,



J. Blair Richardson, Jr.

Counsel for Aristotle Publishing, Inc.