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2003 OCT -8

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October 8, 2003

By Fax to (202) 208-3333

Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

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OFFICE OF GENERAL
COUNSEL
2003 OCT -8 A 11:19

Re: Advisory Opinion 2003-24 - National Center for Tobacco Free Kids

Dear Ms. Dove:

These comments are submitted in response to the draft of Advisory Opinion 2003-24 on behalf of the National Center for Tobacco Free Kids ("NCTFK"), the party requesting this opinion. NCTFK requests that the draft be clarified with respect to the manner in which NCTFK may use the names of individuals who respond to its direct mail solicitations by going to one of the organization's websites (Questions 5 and 6) or by returning a postcard (Question 4).

In three separate places on page 8, the draft indicates that the names of persons who respond to the direct mail communications by going to an organizational website or by returning a postcard may not be put on "NCTFK's general mailing list" because this list is "used for solicitation purposes." See page 8, line 6, line 8 and line 21. NCTFK maintains a single data base of names collected through its websites and other means. Consistent with the Advisory Opinion, NCTFK intends to include the names of all persons initially identified from FEC reports who respond to the direct mail communication by returning a postcard or going to a website in the data base. However, it will code all such FEC-derived names so that they will not receive future communications containing solicitations or commercial messages. We believe that this is consistent with the intent of the draft Advisory Opinion and with the condition that the FEC-derived names not be added to the organization's "general mailing list". In order to avoid any confusion on this point we request that the draft be revised to read as follows:

Page 8, lines 4-6: "The web page referred to in the communication must not require the individual to submit personal information that would automatically put the individual on NCTFK's general mailing list to receive future solicitations or commercial messages."

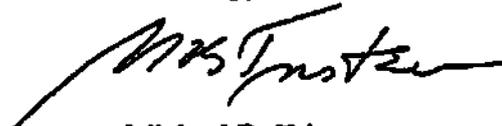
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Page 8, lines 6-8: "Similarly, if the web page asks for personal information while allowing the person to subscribe to a free newsletter, submitting the information must not automatically put the person on NCTFK's general mailing list to receive future solicitations or commercial messages."

Page 8, line 17 through page 9, line 2: "The communications described in questions 4 and 6 would provide either a pre-addressed post card (question 4) or would refer to a web page that the recipient could visit to 'take action' and send a form letter to elected officials (question 6). If the recipient responds by providing personal information either on the postcard or on the web page, this response would may not place the person on NCTFK's general mailing list, ~~which is used for solicitation purposes to receive future solicitations or commercial messages.~~" ~~Because being placed on NCTFK's general mailing list would ultimately result in a solicitation, this is not a permissible use of FEC contributor information.~~

Page 5, lines 8-11 (conforming changes): "The communications in questions 4, 5 and 6 ~~is~~ are permissible if certain conditions are met to preclude the possibility of later solicitation. The communications in questions 4, 6 and 7 ~~are~~ is impermissible because ~~they~~ it will lead directly to solicitation."

Sincerely,



Michael B. Trister

cc: Office of General Counsel (Jonathan Levin, Esq.)(By Fax to (202) 219-3923)