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OFFICE OF GENERAL COUNSEL

555 Eleventh Street, Northwest, Suite 700, Washington, DC, 20004

RGAA

REPUBLICAN GOVERNORS ASSOCIATION

2003 OCT 16 P 4:46

October 16, 2003

AOR 2003-36

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2003 OCT 16 P 3:36

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

Dear Commissioners:

On behalf of the Republican Governors Association ("RGA"), this letter seeks an Advisory Opinion pursuant to 2 U.S.C. § 437f concerning the rules under which federal officeholders, candidates and their agents can participate in fundraising activities for the RGA under the Bipartisan Campaign Reform Act ("BCRA").

The RGA is an independent, unincorporated association established in October 2002 under section 527 of the Internal Revenue Code. It is the official political and public policy organization of the Republican Governors and is not affiliated with a national, state or local political party committee, is not a Federal political committee, does not raise funds pursuant to the Federal Election Campaign Act, and does not participate in federal elections. It is operated and governed independently from any national party committee or any other federal political committee, federal candidate or federal officeholder.

The RGA's mission is to aid the 27 Republican Governors, candidates for Governor and other state candidates by: (1) assisting in their elections as permitted by the laws of the different states through direct contributions and participation in the discussion of state and local issues of public importance; (2) providing policy assistance through conferences, debates and public messages; and (3) by providing a platform so the Governors can express, develop and promote their governing philosophies. The RGA has not and does not anticipate engaging in "Federal Election Activity" as defined in 2 U.S.C.431(20) and 11 C.F.R. 100.24.

The RGA raises exclusively non-federal funds through a series of fundraising events. It deposits these funds into a series of accounts that allows the RGA to participate in elections under the laws of the 50 states. The RGA also maintains a segregated Conference Account. Funds in the Conference Account are not used to influence any election, but rather to pay for non-fundraising policy conferences that the RGA sponsors periodically and for overhead expenses.

The RGA discloses all contributions to it (including those made to the Conference Account) on its regularly filed reports to the Internal Revenue Service ("IRS"). It also registers and files reports as required by the various states in which it conducts activities.

The RGA wishes to involve federal officeholders, candidates and their agents covered by 2 U.S.C. 441i(e) ("covered individuals") in its fundraising efforts in a variety of ways. As a starting point, the RGA recognizes the Commission's holding in Advisory Opinion ("AO") 2003-3:

By defining 'to solicit' and 'to direct' as 'to ask,' the regulations establish that a Federal candidate will not be held liable for soliciting funds in violation of section 441i(e) or section 300.62 of the regulations merely by virtue of attending or participating in *any* manner in connection with a fundraising event at which non-Federal funds are raised. Nor will a Federal candidate or officeholder be held liable based on private conversations that would require an examination to infer the Federal candidate's or officeholder's intent.

Id. at 4 (emphasis in original).

Questions

Beyond just attending events, the RGA wishes to know specifically if it is permissible to have federal candidates, officeholders and their agents participate in the following fundraising activities:

1. As the featured guest or speaker at a fundraising event where the (1) donations solicited exceed the Federal limits or are from Federally prohibited sources; (2) notice is given that the covered individual is not raising funds outside the federal limits and source prohibitions, *see* AO 2003-03; (3) funds are explicitly solicited for the purpose of assisting only in the election or re-election of state candidates or in messages on state issues mentioning only state officials; or (4) funds are solicited only for the RGA and not to support any specific state candidate.
2. By having their names appear on written solicitations for an RGA fundraising event as the featured guest or speaker where the (1) donations solicited exceed the Federal limits or are from Federally prohibited sources; (2) notice is given that the covered individual is not raising funds outside the federal limits and source prohibitions, *see* AO 2003-03; (3) funds are explicitly solicited for the purpose of assisting only in the election or re-election of state candidates or in messages on state issues mentioning only state officials; or (4) funds are solicited only for the RGA and not to support any specific state candidate.

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3. Through signing written fundraising solicitations for the RGA where (1) the funds solicited do not comply with the BCRA source and amount limitations; (2) but such solicitations include the disclaimer prescribed in AO 2003-03; and (3) funds are explicitly solicited for the purpose of assisting only in the election or re-election of state candidates or in messages on state issues mentioning only state officials; or (4) the funds are solicited only for the RGA and not to support any specific state candidate.
4. Appearing on written fundraising solicitations in a fundraising capacity such as signing invitation letters or as a featured guest or speaker at fundraising event for the RGA Conference Account, where the donations solicited exceed the Federal limits or are from Federally prohibited sources but the solicitation does or does not include the disclaimer prescribed in AO 2003-03.

In addition, the RGA seeks answers to the following questions:

1. If federal candidates and officeholders participate in RGA fundraising activities in any scenario above, would they be "solicit[ing] . . . funds in connection with an [] election other than an election for federal office," 2 U.S.C. § 441i(e)(1)(B)?
2. Related to these issues, may corporations chartered by the Congress and otherwise prohibited from making a contribution or expenditure "in connection with any election", 2 U.S.C. § 441b(a), such as the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, contribute to the RGA's Conference Accounts?

We appreciate the Commission's review of these pressing issues.

Respectfully submitted,

A handwritten signature in black ink that reads "Edward T. Tobin III". The signature is written in a cursive, slightly stylized font.

Edward T. Tobin III
Executive Director



FEDERAL ELECTION COMMISSION

Washington, DC 20463

October 24, 2003

Edward T. Tobin III
Executive Director
Republican Governors Association
555 11th Street, N.W.
Suite 700
Washington, D.C. 20004

Dear Mr. Tobin:

This refers to your letter dated October 16, 2003, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the participation of Federal candidates or officeholders, and their agents, in the fundraising activities of the Republican Governors Association ("RGA").

You describe RGA as an "independent," unincorporated association that is the "official political and public policy organization of the Republican Governors." You assert that it is not affiliated with a national, State, or local party committee, is not a Federal political committee, does not raise funds pursuant to the Act, and does not "participate in Federal elections." You state that it is operated and governed independently from any national party committee, or Federal candidate or officeholder.

The RGA's mission is to aid Republican governors and gubernatorial and other State candidates by assisting in their elections through direct contributions and discussion of State and local issues; by providing policy assistance through conferences, debates, and public message, and by "providing a platform" for the governors to express, develop and promote their philosophies. You state that the RGA has not and will not engage in "Federal election activity," as defined in 2 U.S.C. 431(20) and 11 CFR 100.24.

The RGA raises exclusively non-Federal funds through a series of fundraising events and deposits those funds into a number of accounts that enable it to participate in elections under different State laws. It also maintains a segregated Conference Account. You state that the funds in that account are used to pay for non-fundraising RGA-sponsored policy conferences and for overhead expenses. The RGA discloses all contributions made to it (including those made to the Conference Account) in its filings with the IRS, and registers and files reports with various States.

The RGA wishes to involve Federal candidates and officeholders, and their agents, in its fundraising efforts in a variety of ways. You ask a number of general questions about the permissibility of various types of participation, and a question about the permissibility of donations by corporations organized by authority of a law of Congress to the Conference Account.

The Act authorizes the Commission to issue an advisory opinion request in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). A request presenting a general question of interpretation or posing a hypothetical situation does not qualify as an advisory opinion request. 11 CFR 112.1(b). The Office of General Counsel shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. *See* 11 CFR 112.1(d).

Pursuant to the above requirements, this Office asks for clarification regarding your questions and asks for more specific information as to certain facts underlying your request.

- (1) In its reports filed with the Commission, the Republican National Committee ("RNC") reported the activities of the "Republican Governors Association Conference" on its Schedule I, as one of its soft money accounts, on reports up to and including the 2002 Post-General Report.
 - (a) Please confirm that the RGA severed its ties to the RNC prior to November 6, 2003, and since that date has not been maintained or controlled by the RNC within the meaning of 11 CFR 300.2(c).
 - (b) Prior to November 6, 2002, did RGA receive funding from the RNC or other national Republican party committees? If so, were all of those funds disposed of before November 6, 2002. If a full disposition has not occurred, state how much of those funds remain in the RGA's accounts, which RGA accounts retain these funds, and how this sum compares to the RGA's total funds on hand. State whether such funding continues and the amount of such funding.
- (2) Please state whether the solicitations by the Federal candidates or officeholders (or their agents), including solicitations for the Conference Account, whether oral or in writing, will refer to any Federal candidates or non-Federal candidates, or any election. If such references are to be made, describe them.
- (3) For "messages on State issues mentioning only State officials," please explain:
 - (a) What medium will be used to convey the messages, e.g., radio, television, mass mailing, phone banks, periodicals?

- (b) Will the State officials mentioned be either Federal or non-Federal candidates?
 - (c) What will be the purposes of these messages, e.g., (i) to promote the Republican Party or its candidates generically or oppose the candidates of another party generically, (ii) to register voters or get out the vote, (iii) to promote, support, attack, or oppose the State official, or (iv) to discuss issues that are associated with particular elections without mentioning candidates?
 - (d) Will these messages be coordinated with any Federal candidates?
 - (e) When will these messages be sent in relation to a Federal election date?
- (4) Explain further the use of funds solicited "only for RGA and not to support any specific State candidate." For example, state whether such funds will be used for administration or overhead, or will also be used for communications, such as public communications. If the funds will be used for purposes other than administration or overhead, describe those uses.
- (5) Describe the activities funded by the RGA Conference Account. Your description should include, but not be limited to, a description of the purposes of the conferences and other activities funded by the account; whether the conferences and activities include planning for campaigning or fundraising and what such campaigning or fundraising specifically entails; and whether the conferences and activities themselves include solicitation of contributions or donations for Federal or non-Federal candidates or political committees, or speeches and presentations advocating the election or defeat of candidates.
- (6) Are the funds received and disbursed by the Conference Account incorporated into the reports filed by RGA with the States in which it conducts its activities? In the filings, are such receipts and disbursements separated out in any way from the RGA's other receipts and disbursements. In its filings with the IRS, does the RGA separate out, in any way, the receipts and disbursements of the Conference Account? Explain your responses.

Upon receipt of your responses, this Office and the Commission will give further consideration to your inquiry. If you have any questions about the advisory opinion process or this letter, please contact Jonathan Levin, a senior attorney in this Office, at 202-694-1542.

Sincerely,


Rosemary C. Smith
Acting Associate General Counsel

RGA

555 Eleventh Street . Northwest . Suite 700 . Washington, DC . 20004

REPUBLICAN GOVERNORS ASSOCIATION

November 12, 2003

Edward T. Tobi III

2003 NOV 13 P 3:01
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COUNSEL

COURIER

Rosemary C. Smith, Esquire
Acting Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

2003 NOV 13 P 1:32
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Dear Ms. Smith:

This will respond to your letter of October 24, 2003, which we received on October 30, 2003. We are pleased to answer the Office of General Counsel's additional questions on the Republican Governors Association's ("RGA") request for an Advisory Opinion. We trust that this answers all your inquiries. The matters raised in our Advisory Opinion Request are pressing and we would appreciate an expedited response.

- (1) In its reports filed with the Commission, the Republican National Committee ("RNC") reported the activities of the "Republican Governors Association Conference" on its Schedule I, as one of its soft money accounts, on reports up to and including the 2002 Post-General Report.
- (a) Please confirm that the RGA severed its ties to the RNC prior to November 6, 2003, and since that date has not been maintained or controlled by the RNC within the meaning of 11 CFR 300.2(c).

The RGA severed its ties to the RNC prior to November 6, 2003. We have reviewed 11 C.F.R. 300.2(c) with counsel and can confirm that since that date the RGA has not been maintained or controlled by the RNC within the meaning of 11 CFR 300.2(c).

- (b) Prior to November 6, 2002, did RGA receive funding from the RNC or other national Republican party committees? If so, were all of those funds disposed of before November 6, 2002. If a full disposition has not occurred, state how much of those funds remain in the RGA's accounts, which RGA accounts retain these funds, and how this sum compares to the RGA's total funds on hand. State whether such funding continues and the amount of such funding.

Prior to November 6, 2002, the RGA received funding from the RNC. It disposed of those funds before November 6, 2002 and has not received any funds from the RNC or any other national party committee since that date.

- (2) **Please state whether the solicitations by the Federal candidates or officeholders (or their agents), including solicitations for the Conference Account, whether oral or in writing, will refer to any Federal candidates or non-Federal candidates, or any election. If such references are to be made, describe them.**

Solicitations for RGA accounts by the Federal candidates or officeholders (or their agents), whether oral or in writing, will not refer to any Federal candidates. Such solicitations may refer to non-Federal candidates since the purpose of the organization is to support Republican Governors and other state officials. RGA solicitations often do refer to state (not federal) candidates running in state elections since a major purpose of such letters is to inform potential donors of the states in which gubernatorial elections are being held and which candidates are running for Governor in those states.

Solicitations for the RGA's Conference Account will not refer to any candidates.

- (3) **For "messages on State issues mentioning only State officials," please explain:**

- (a) **What medium will be used to convey the messages, e.g., radio, television, mass mailing, phone banks, periodicals?**

Radio, television, mass mailings and phone banks, subject to the laws of the various states.

- (b) **Will the State officials mentioned be either Federal or non-Federal candidates?**

The state officials mentioned may be non-federal candidates. They will not be federal candidates.

- (c) **What will be the purposes of these messages, e.g., (i) to promote the Republican Party or its candidates generically or oppose the candidates of another party generically, (ii) to register voters or get out the vote, (iii) to promote, support, attack, or oppose the State official, or (iv) to discuss issues that are associated with particular elections without mentioning candidates?**

The RGA is aware of the Bipartisan Campaign Reform Act amendments and has no intention of disseminating generic messages for the Republican Party or its candidates. The RGA will promote, support, attack or oppose only state officials or candidates, as permitted by the laws of the different states. Any issues discussed will only pertain to state government and name only state officials, or as permitted by the Commission in AO 2003-3. Although there has been much discussion in the media about a large-scale effort in this area by non-federal section 527 committees with the stated mission of "defeating President Bush," to the RGA's knowledge the Commission has not yet ruled whether unincorporated, non-federal section 527 political committees may disseminate messages designed to register voters or conduct get-out-the-vote efforts. If the Commission allows -- or does not object to -- such activities and communications, the RGA may well wish to engage in similar activity.

(d) Will these messages be coordinated with any Federal candidates?

No.

(e) When will these messages be sent in relation to a Federal election date?

Both within and prior to 120 days before a Federal election.

- (4) Explain further the use of funds solicited "only for RGA and not to support any specific State candidate." For example, state whether such funds will be used for administration or overhead, or will also be used for communications, such as public communications. If the funds will be used for purposes other than administration or overhead, describe those uses.**

Such funds will be used for administration and overhead expenses by the RGA. However, since the definition of "public communications", 11 C.F.R. 100.26, would include, for example, a "mass mailing" fundraising letter not mentioning any federal candidate and signed by the Chair of the RGA or an issue message concerning a state issue, such funds could also be used for "public communications."

- (5) Describe the activities funded by the RGA Conference Account. Your description should include, but not be limited to, a description of the purposes of the conferences and other activities funded by the account; whether the conferences and activities include planning for campaigning or fundraising and what such campaigning or fundraising specifically entails; and whether the conferences and activities themselves include solicitation of contributions or donations for Federal**

or non-Federal candidates or political committees, or speeches and presentations advocating the election or defeat of candidates.

The RGA Conference Account funds the administrative and event costs associated with the RGA's Annual Conference and its series of Governors Forums that are conducted throughout the country during the year. The events funded by the conference account are policy discussions and not political events. They do not include planning for campaigning or fundraising, solicitation of contributions or donations for Federal or non-Federal candidates or political committees. Conference speeches and presentations are not made by RGA staff. These speeches and presentations center on issues and not elections. They do not include advocacy of the election or defeat of Federal candidates and are primarily concerned with public policy at the state and local government level. If any speakers include advocacy of the election or defeat of state candidates, such advocacy is beyond the purpose for which speakers are invited to make presentations at RGA conferences. The large majority of RGA Conference Account expenses pay for hotel fees, food and beverage charges (catering), and meeting space usage.

- (6) **Are the funds received and disbursed by the Conference Account incorporated into the reports filed by RGA with the States in which it conducts its activities? In the filings, are such receipts and disbursements separated out in any way from the RGA's other receipts and disbursements. In its filings with the IRS, does the RGA separate out, in any way, the receipts and disbursements of the Conference Account? Explain your responses.**

Funds received and disbursed by the Conference Account are not incorporated into the reports filed by RGA with the States in which it conducts its activities because they are not required to be so incorporated. In its filings with the IRS, the RGA does not separate out its receipts into, and disbursements from, its Conference Account because it is not required to make such a separation. All receipts and disbursements, regardless of the account, are reported in IRS filings.

Respectfully submitted,



Edward T. Tobin III