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May 7, 2007

AOR 2007-08

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2007 MAY -1 P 4: 26

BY HAND DELIVERY

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

Re: Advisory Opinion Request

Dear Ms. Duncan:

We are writing on behalf of Michael King, a former television executive and philanthropist. Pursuant to 2 U.S.C. § 437f, we seek an advisory opinion on whether under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations, Mr. King may establish a program that encourages, through contributions to charities on their behalf, professional musicians and other performers to volunteer their services to federal campaigns and political parties.

Background

As campaign costs rise steeply, campaigns look to all available means to expand the community of potential donors. Well established among the choices is the use of professional entertainers to donate their services to fundraising events. These events are highly effective, often drawing wide audiences and raising substantial sums efficiently, but only a select number of campaigns can attract the talent to make this possible.

At a time when campaigns are engaged in efforts to raise unprecedented sums for their own campaigns, Mr. King would like to use volunteer political activity for federal campaigns as a platform to help raise awareness about the important work of certain

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charities. Mr. King's request is prompted by his desire to focus the public's attention on the importance of charitable activity and the good work charities are doing to serve the families of our nation's service members and veterans during this time of war. Mr. King proposes to do this by encouraging musicians, performers, and other types of talent to volunteer on behalf of federal campaigns. As an incentive for these volunteers, Mr. King intends to make a charitable donation, either individually or through a charitable foundation, to one or more 501(c)(3) organizations that provide assistance to the families of service members who are serving or have served in Iraq.¹ Examples of such charities can be found at http://www.americasupportsyoudo.com/AmericaSupportsYou/military_family.html.

Mr. King's hope is that his plan will accomplish several related objectives. First, he hopes he will be simultaneously encouraging greater volunteer participation in federal campaigns, while also highlighting the importance of supporting these charitable organizations that serve a crucial role in supporting those who make tremendous sacrifices on behalf of our country. He also hopes that by building an affinity between the musician/performer and the charity, these same volunteer musicians and performers will choose to volunteer their own time for the charitable organizations to which he is donating on their behalf. If successful, Mr. King hopes to attract the support of other individuals willing to make donations in the same fashion. Thus, if possible, Mr. King would like to establish a 501(c)(3) charitable foundation through which other individuals could also make donations for this effort (the "Foundation").

The Law

It appears from a review of the relevant provisions of the Act and regulations that this proposed program does not contravene any requirements of the Act or related regulations.

(1) No contribution in the form of "compensation" to the talent.

For example, the Act exempts "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee" from the definition of "contribution." 2 U.S.C. § 431(8)(B)(i); 11 C.F.R. § 100.74. The proposed program does not result in "compensation" to the volunteer

¹ These organizations would be screened to ensure that they do not conduct activities in connection with any federal or state election.

musicians/performers in whose name the charitable contributions would be made.² The entertainers would not receive payment for their services; they would not realize any indirect benefit such as a tax deduction for their charitable donation. In fact, as planned, the program would advise all professional talent that any charitable contribution made on their behalf could not result in any tax, financial, or other tangible personal benefits or premiums.

It is noted that while the Commission does not appear to have ruled on a program structured in the manner described here, on a number of occasions, the agency has approved charitable matching programs devised by corporations to encourage employee contributions to the corporation's separate segregated fund ("PAC"). As here, the Commission has required that the charitable organization not provide any tax, financial, or other tangible benefits or premiums to the employee on whose behalf the contribution was made. *See* Advisory Opinions 2003-4, 1994-7, 1994-6, 1994-3, 1990-6, 1989-9, 1989-7, 1988-48, 1987-18, and 1986-44;³ *see also* 11 C.F.R. § 114.5(b) (prohibiting the exchange of treasury monies for voluntary contributions, and payment through a bonus, expense account, or other form of direct or indirect compensation to a contributor for his or her contribution).

In fact, here the incentive is not for a contribution, since the entertainers provided with this incentive would perform, in turn, on a purely volunteer basis, with the value of their services exempt from treatment as a contribution as a matter of law. Under this program, entertainers would be doing what they do regularly, for a variety of causes: giving their time and talent in the service of a civic or charitable cause.

(2) No other form of contribution from Mr. King or the Foundation to a campaign.

Nor does it appear that any other form of contribution would result from Mr. King and/or the Foundation's work in establishing and administering this program. Mr. King and/or the Foundation would not target their assistance to any specific campaign in

² The indirect benefit that would flow from the campaign committees' activities to the charitable organizations does not appear to be restricted by the Act. *See* Advisory Opinion 2006-18; 2 U.S.C. § 439a(a)(3).

³ More recently, the Commission permitted a token gift through a United Way Program that overlapped with a charitable matching program for a corporate PAC. *See* Advisory Opinion 2003-33.

recruiting specific talent or in more generally helping to achieve its fundraising objectives.⁴ In other words, the Foundation would not be making the contribution on behalf of a particular campaign, and would not be acting on its behalf. The talent chooses the campaign and provides the performance. Mr. King or the Foundation then makes the charitable contribution on that performer's behalf.

The Policy Considerations

As noted, in the past, the Commission has encouraged charitable contributions in a number of contexts. It has approved the corporate "charitable" match, as noted, to enable corporations to encourage contributions to their PACs. In its administration of the "soft money" solicitation restrictions, it has followed Congress' lead in providing continued broad opportunities for Members of Congress to solicit contributions for charities not engaged in federal or state election activities.

In this instance, the proposed program aims to channel the well-publicized commitment of entertainers to campaigns into opportunities for entertainers to support well-deserving charities. No contributions are made, and so no limits are implicated. The only organizational involvement is that of a bona fide charity, exempt from tax under section 501(c)(3) of the Internal Revenue Code and prohibited from partisan intervention in any political campaign.

In these circumstances, where the law presents no impediment and the program would engage professional musicians and entertainers in supporting charitable activity while they volunteer in support of candidates, it would appear that the relevant policy considerations would favor Commission approval.

Questions Presented

Before engaging in the activities described above, however, Mr. King seeks confirmation from the Commission that his efforts to encourage volunteer political activity and greater charitable giving will comply with the Act.

1. May Mr. King individually make a charitable contribution to a 501(c)(3) organization to encourage or commemorate a volunteer musician or performer's

⁴ It is noted that as a 501(c)(3) organization, the Foundation would be prohibited from intervention in any campaign, for the support of any specific candidate.

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performance for a federal campaign or political party, provided that the musician does not receive any tax, financial, or other tangible benefits or premiums in connection with the charitable contribution?

2. May Mr. King make the charitable contribution described in question 1 through a charitable foundation that he establishes for this purpose, which would be funded with donations from himself and other individuals, as described above?

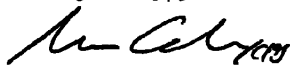
3. Would there be any restrictions under the Act or Commission regulations on Mr. King's ability to generate publicity for his activities and for the charities, such as informing the candidates, volunteer musicians and performers, and members of the press of his intentions, and creating a website listing the work done by the charity, the volunteers and the committees for which they volunteered, and the charitable donations made on their behalf?

Request for Expedited Review

Finally, while recognizing that 11 C.F.R. § 112.4 permits the Commission to issue an advisory opinion up to 60 calendar days after receiving an advisory opinion request, Mr. King would like to begin these proposed activities as soon as possible, if permitted, and respectfully requests that the Commission process this request on an expedited basis.

Thank you for your consideration of this matter. If you have any questions or require any additional information, please do not hesitate to contact us immediately.

Very truly yours,



Marc E. Elias
Caroline P. Goodson
Counsel to Michael King

MEE:CPG:dcw



"Goodson, Caroline
(Perkins Coie)"
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m>

05/18/2007 09:59 AM

To <ARothstein@fec.gov>

cc "Elias, Marc (Perkins Coie)" <MElias@perkinscoie.com>

bcc

Subject: RE: Advisory Opinion Request

History: This message has been forwarded.

Dear Ms. Rothstein,

The statements below are accurate. Also, it is Mr. King's hope that some of the campaigns themselves will make donations to charitable organizations (as permitted under 2 USC 439a(a)(3)), and he may solicit them to do so. However, a campaign's decision to donate (or not) will not affect Mr. King's proposed activities in the request. If there are any concerns about him asking campaigns to donate to charitable organizations, please let us know.

Thanks,

Caroline Goodson

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From: ARothstein@fec.gov [mailto:ARothstein@fec.gov]
Sent: Friday, May 18, 2007 9:47 AM
To: Goodson, Caroline (Perkins Coie); Elias, Marc (Perkins Coie)
Subject: Advisory Opinion Request

Dear Mr. Elias and Ms. Goodson:

In telephone conversations on Friday, May 11, and yesterday, you provided us with additional information regarding Mr. King's request for an advisory opinion. We have set out below our understanding of certain points that you made during these conversations. We'd appreciate it if you would please review the statements below and either confirm their accuracy or correct any misperceptions.

(1) Under Mr. King's proposal, performers would volunteer their time to candidates in their individual capacities only, not as corporations.

(2) Mr. King could be involved with the proposed performances as follows:

(a) By making donations to 501(c)(3) charities in honor of a performer who has, independently of Mr. King, committed to performing at a campaign event;

(b) By using his personal contacts in the entertainment world to identify performers who might be willing to volunteer their services to a campaign event, and by encouraging them to appear at a campaign event, without coordinating with any Federal candidate or political party committee; and/or

(c) By using his personal contacts in the entertainment world to identify performers who might be willing to volunteer their services to a campaign event, and by encouraging them to appear at a campaign event, in coordination with a Federal candidate or political party committee.

(3) The foundation that Mr. King wishes to establish to accept and make donations for the purposes described in the request ("the Foundation") would not be established, financed, maintained, or controlled by any Federal candidate, officeholder, political committee, or by the agents of any of the foregoing. Moreover, the Foundation would not engage in any activity with respect to any Federal, State, or local election.

(4) Mr. King might also use the Foundation to make occasional donations to disaster relief and similar causes.

(5) Either Mr. King or the Foundation would select which performances to honor with charitable donations, which charitable organizations would receive the donations, and the amount of funds to be donated. However, if a performer requested that a donation be made to a specific charitable organization, Mr. King would likely honor that request.

(6) Mr. King has not yet decided on the size of the donations.

(7) The campaign or political party that would receive a donated performance, not Mr. King or the Foundation, would pay for all of the costs associated with the performances (such as the venue and the performer's travel) and the costs of promoting the events.

(8) Mr. King and the Foundation would not make any "public communication," within the meaning of 11 CFR 100.26, concerning the proposed activities set forth in the request.

Thank you very much for your cooperation.

Sincerely,

Amy L. Rothstein
Assistant General Counsel for Policy
Federal Election Commission

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