



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 21, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-10

Mr. Ronald E. Pate
The Reyes Committee, Inc.
1011 Montana Avenue
El Paso, Texas 79902

Dear Mr. Pate:

We are responding to your advisory opinion request on behalf of the Reyes Committee, Inc., concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to a proposed golf-tournament fundraiser on October 6, 2007.

The Commission concludes that the Act and Commission regulations prohibit the Reyes Committee from recognizing the corporate employers of individual contributors as proposed.

Background

The facts in this advisory opinion are based on your letters received on June 11, 2007, and June 22, 2007, and on your phone conversation with Commission staff on June 21, 2007.

The Reyes Committee, the principal campaign committee of Representative Silvestre Reyes, plans to host a golf-tournament fundraiser where individuals or political-action committees sponsor each of the 18 holes. It plans to recognize each sponsor with a sign at the corresponding hole. In the case of each individual contributor, the Reyes

Committee would recognize the individual's corporate employer¹ with a sign stating, "Hole sponsored by [Individual] [Title] of [Corporation's Name, Trademark, or Service Mark]." An individual contributor would pay for the sponsorship, and the contribution would apply to each individual's contribution limit. *See* 2 U.S.C. 441a(a). The corporate employer would not reimburse the individual. *See* 2 U.S.C. 441b(a).

During your telephone conversation with Commission staff, you stated that the committee would like to display the corporate names, trademarks, or service marks to increase participation in the fundraiser: The committee expects an individual will be more likely to sponsor a hole if the committee publicizes the individual's corporate employer.

Question Presented

May the Reyes Committee recognize the corporate employers of individual contributors at its golf-tournament fundraiser as proposed?

Legal Analysis and Conclusions

No, the Reyes Committee may not recognize the corporate employers of individual contributors at its golf-tournament fundraiser as proposed.

Neither a corporation nor its agents may use the corporation's resources to facilitate the making of contributions to a federal political committee other than the corporation's SSF. *See* 11 CFR 114.2(f)(1); *cf.* 11 CFR 114.2(f)(4)(ii).

Corporate names, trademarks, and service marks are corporate resources. For example, a trademark is a limited property right in a "particular word, phrase or symbol." *New Kids on the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also protected when they acquire a "secondary meaning" in that they "symbolize a particular business." *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986); *see also American Steel Foundries v. Robertson*, 269 U.S. 372, 380 (1926) ("The effect of assuming a corporate name by a corporation under the law of its creation is to exclusively appropriate that name. It is an element of the corporation's existence"). Therefore, neither a corporation nor its agents may use the corporation's names, trademarks, or service marks to facilitate the making of contributions to a federal political committee, and a federal political committee may not knowingly accept or receive facilitated contributions. *See* 11 CFR 114.2(d).

Your stated reason for including corporate employer's names, trademarks, or service marks is to encourage contributions to the Reyes Committee. By allowing the committee to use the corporation's resources – in effect, by lending the corporation's resources to the committee – the corporation is using its resources to facilitate

¹ The signs in question would recognize the corporate employer itself, not its separate segregated fund ("SSF"), which is a separate legal entity. *See California Med. Ass'n v. FEC*, 453 U.S. 182, 196 (1981).

contributions to the Reyes Committee. By approving or accepting the use of the corporation's resources, the employee ratifies this use as an agent of the corporation.

Such corporate facilitation is prohibited, and the Reyes Committee may not accept facilitated contributions. Therefore, the Reyes Committee may not recognize the corporate employers of individual contributors at its fundraiser as proposed.

In two previous advisory opinions, the Commission considered broadcast campaign ads that corporate officials did for members of Congress. Advisory Opinion 1984-43 (Brunswick); Advisory Opinion 1978-77 (Aspin). Neither previous advisory opinion involved any reported use of corporate resources *to facilitate contributions* to a political committee. *See* 11 CFR 114.2(f)(1); *cf.* 11 CFR 114.2(f)(4)(ii). Moreover, the previous advisory opinions preceded the corporate-facilitation regulation. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any of the facts or assumptions, and such facts or assumptions are material to a conclusion in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. The advisory opinions cited herein are on the Commission's website, www.fec.gov.

Sincerely,

(signed)
Ellen L. Weintraub
Commissioner