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THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM

For Meeting of: 08-01-07

MEMORANDUM TO THE COMMISSION SECRETARY

SUBMITTED LATE

FROM: VICE CHAIRMAN DAVID MASON 

SUBJECT: ADVISORY OPINION 2007-10

DATE: JULY 31, 2007

I would ask that this alternative draft of Advisory Opinion 2007-10 be considered at the August 1 Open Session of the Commission.

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1 ADVISORY OPINION 2007-10

2
3 Mr. Ronald E. Pate
4 The Reyes Committee, Inc.
5 1011 Montana Avenue
6 El Paso, Texas 79902

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8 Dear Mr. Pate:

9 We are responding to your advisory opinion ("AO") request on behalf of the Reyes
10 Committee, Inc., concerning the application of the Federal Election Campaign Act of
11 1971, as amended (the "Act"), and Commission regulations to a proposed golf-tournament
12 fundraiser on October 6, 2007.

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

16 ***Background***

17 The facts in this advisory opinion are based on your letters received on June 11,
18 2007, and June 22, 2007, and on your phone conversation with Commission staff on June
19 21, 2007.

20 The Reyes Committee, the principal campaign committee of Representative
21 Silvestre Reyes, plans to host a golf-tournament fundraiser where individuals or political-
22 action committees sponsor each of the 18 holes. It plans to recognize each sponsor with a
23 sign at the corresponding hole. In the case of each individual contributor, the Reyes
24 Committee would recognize the individual's corporate employer¹ with a sign stating,

¹ Not a separate segregated fund ("SSF"), which is a separate entity. *California Med. Ass'n v. FEC*, 453 U.S. 182, 196 (1981); *cf.* 11 CFR 114.12(a) (stating that a political committee incorporated only for liability purposes is not subject to Part 114).

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

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

9 ***Question Presented***

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

12 ***Legal Analysis and Conclusions***

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

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

18 Corporate names, trademarks, and service marks are corporate resources. For
19 example, a trademark is a limited property right in a "particular word, phrase or symbol."
20 *New Kids on the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992).
21 Trade names are also protected when they acquire a "secondary meaning" in that they
22 "symbolize a particular business." *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d
23 814, 822 (2d Cir. 1986); *see also American Steel Foundries v. Robertson*, 269 U.S. 372,

1 380 (1926) (“The effect of assuming a corporate name by a corporation under the law of
2 its creation is to exclusively appropriate that name. It is an element of the corporation’s
3 existence”). Therefore, neither a corporation nor its agents may use the corporation’s
4 names, trademarks, or service marks to facilitate the making of contributions to a federal
5 political committee, and a federal political committee may not knowingly accept or
6 receive facilitated contributions. *See* 11 CFR 114.2(d).

7 Your stated reason for including a corporate employer’s name, trademark, or
8 service mark is to encourage an employee of the corporation to contribute to the Reyes
9 Committee. By allowing the committee to use the corporation’s resources – in effect, by
10 lending the corporation’s resources to the committee – the corporation is using its
11 resources to facilitate a contribution from the employee of the corporation to the
12 committee. By approving or accepting the use of the corporation’s resources, the
13 employee ratifies this use as an agent of the corporation.

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

17 In two previous AOs, the Commission considered broadcast campaign ads that
18 corporate officials did for members of Congress. AO 1984-43 (*Brunswick*); AO 1978-77
19 (*Aspin*). Neither previous AO involved any reported use of corporate resources *to*
20 *facilitate contributions* to a political committee. *See* 11 CFR 114.2(f)(1); *cf. id.*
21 114.2(f)(4)(ii). Moreover, the previous AOs preceded the corporate-facilitation
22 regulation. *See Corporate and Labor Organization Activity; Express Advocacy and*
23 *Coordination With Candidates*, 60 FED. REG. 64260, 64274-75 (Dec. 14, 1995).

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

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Sincerely,

Robert D. Lenhard
Chairman