



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 29, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2009-30

Marc E. Elias, Esq.
Rebecca H. Gordon, Esq.
Perkins Coie LLP
607 Fourteenth Street, NW
Washington, DC 20005-2003

Dear Mr. Elias and Ms. Gordon:

We are responding to your advisory opinion request on behalf of TechNet, concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to payments by TechNet’s corporate members for fundraising consulting services for their separate segregated funds (“SSFs”). The Commission concludes that TechNet’s corporate members may pay TechNet for fundraising consulting services for their SSFs.

Background

The facts presented in this advisory opinion are based on your letter received on November 18, 2009 and e-mail received on December 3, 2009, and publicly available materials, including reports filed with the Commission.

TechNet is an incorporated trade association with tax-exempt status under Section 501(c)(6) of the Internal Revenue Code. 26 U.S.C. 501(c)(6). TechNet’s members include companies and executives in fields related to the technology industry, including information technology, e-commerce, clean technology, venture capital, and investment banking. As a condition of membership, TechNet’s corporate members pay annual dues, which help defray the costs TechNet incurs to provide its services to the members, including government relations work, issues briefings, and continuing education.

Many of TechNet's corporate members have federally registered SSFs. TechNet would like to offer a new service to its corporate members consisting of SSF fundraising services to assist its corporate members' SSFs. The proposed SSF fundraising package would include an assessment of the SSF's recent fundraising activities and recommendations for future efforts, a periodic newsletter, fundraising and marketing materials custom-designed and printed for the SSF, and planning and execution of fundraising events.

The fundraising package would be optional, and would be provided only to corporate members who pay an extra dues assessment for the fundraising services plus expenses. The amount of this extra dues assessment would be set at a level that ensures that TechNet receives the fair market value of its services, and would be tailored to the particular services provided to each participating corporate member.

TechNet asks whether the corporate members of the trade association may pay the extra dues assessment and expenses out of their corporate treasuries to obtain the fundraising package for their SSFs.

Question Presented

May TechNet's corporate members pay TechNet for fundraising consulting services provided to the corporations' SSFs?

Legal Analysis and Conclusions

Yes, TechNet's corporate members may use corporate treasury funds to pay the fair market value for fundraising services TechNet provides to the corporate members' SSFs.

The Act prohibits corporations from using general treasury funds to make any contributions in connection with any Federal election. 2 U.S.C. 441b; *see* 11 CFR 114.2. However, the Act and Commission regulations permit a corporation's payment of costs incurred in the establishment, administration and solicitation of contributions to a separate segregated fund. 2 U.S.C. 441b(b)(2)(C); *see also* 11 CFR 114.1(a)(2)(ii). The terms "establishment, administration and solicitation costs" are, in turn, defined as "... the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in setting up and running a separate, segregated fund established by a corporation." 11 CFR 114.1(b).

The Commission has previously concluded that payments by corporations and trade associations to help their SSFs increase their fundraising, similar to those described in TechNet's request, constitute "establishment, administration and solicitation" costs and thus are permissible. In Advisory Opinion 2006-33 (National Association of Realtors), the Commission concluded that the requestor, a not-for-profit corporation exempt from Federal income tax under section 501(c)(6) of the Internal Revenue Code, was permitted to make payments of corporate treasury monies to its affiliated State and local

associations as incentives to increase their contributions to the requestor's SSF, because such payments would constitute "establishment, administration and solicitation" costs.

In Advisory Opinion 1980-50 (United Merchants & Manufacturers, Inc.), the Commission concluded that the costs of meals at a meeting designed to introduce members of a corporation's restricted class to the corporation's SSF would constitute "fundraising and other expenses," and could therefore be paid by the corporation. Likewise, the Commission concluded that the costs of transporting the participants to the meeting "falls within the meaning of 'expenses incurred in setting up and running a separate, segregated fund,' " which the corporation could also pay.

Like the proposed payments in those advisory opinions, TechNet's proposal would involve corporations paying for something to help their SSFs raise more contributions. The extra dues assessments and associated expenses for TechNet's fundraising consulting services would constitute fundraising expenses that may be paid by a corporation for the benefit of its SSF.

TechNet itself, as an incorporated trade association, is also prohibited from making contributions. Under the Act, a contribution includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization" in connection with any Federal election. 2 U.S.C. 441b(b)(2); *see also* 11 CFR 100.52(a). The term "anything of value" includes all in-kind contributions, and "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution." 11 CFR 100.52(d)(1). The "usual and normal charge" for goods means "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution," and the "usual and normal charge" for services means "the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered." 11 CFR 100.52(d)(2). Since TechNet is not the connected organization with respect to any of the SSFs, if TechNet were to provide any services, or any goods associated with its services (*e.g.*, printed fundraising materials, food and beverages for fundraising events) to any of the SSFs, without charge or at less than the usual and normal charge for such goods or services, the value of those goods or services would be a contribution to the political committee to which they were provided. Likewise, if TechNet were to provide an extension of credit to the political committees that is not on terms substantially similar to that provided by commercial vendors in the normal course of business, the result would be a prohibited contribution.

Under the terms of its proposal, TechNet would set the extra dues assessment at an amount that would ensure that TechNet would be paid the fair market value of the services it would provide. Therefore TechNet will not be making any contributions to the participating corporations' SSFs.¹

Under TechNet's proposal, therefore, participating corporate members would make permissible payments for fundraising expenses for their SSFs, and TechNet itself would not make any prohibited contributions to those SSFs. Thus the Commission concludes that TechNet's proposal would not violate any provision of the Act or Commission regulations. The Commission expresses no opinion regarding the application of the Internal Revenue Code to the proposed activities because those questions are not within the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth 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 presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See 2 U.S.C. 437f(c)(1)(B).* Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions and case law. The cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Matthew S. Petersen
Chairman

¹ TechNet indicated in a telephone conversation with Commission attorneys that both the extra dues and the estimated expenses would be paid by the participating corporate member before services are provided, with any difference between estimated and actual expenses reconciled after such expenses are incurred. Accordingly, TechNet is not extending any credit whatsoever to the participating corporate members.