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By Office of the Commission Secretary at 12:26 pm, Jul 05, 2019



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 19-29-A
AGENDA ITEM
For meeting of July 11, 2019
SUBMITTED LATE

July 5, 2019

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by JSW*
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Subject: Draft AO 2019-08 (Omar 2020) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on July 10, 2019.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2019-08
2
3 Omar Reyes
4 Omar2020
5 4613 N University Drive #297
6 Coral Springs, FL 33076
7

DRAFT A

8 Dear Mr. Reyes:

9 We are responding to your advisory opinion request on behalf of your principal
10 campaign committee, Omar2020 (“the Committee”), regarding the application of the
11 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
12 regulations to the Committee’s proposal to distribute digital blockchain tokens with no
13 monetary value to volunteers and supporters as an incentive to engage in volunteer
14 activities. The Commission concludes that the proposed activities as described in the
15 request are permissible under the Act and Commission regulations.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on
18 May 29, 2019 and the Omar2020 Token Frequently Asked Questions attached thereto.

19 Omar Reyes is an independent candidate for election to the U.S. House of
20 Representatives from the 22nd Congressional District of Florida in the 2020 general
21 election. The Committee is his principal campaign committee.¹ The Committee has
22 created 10,000,000 unique digital blockchain tokens (“OMR Tokens”) using the
23 Ethereum blockchain network, an online platform that uses blockchain encryption
24 technology to publicly track the distribution and ownership of digital information.

¹ Omar2020, Statement of Organization, FEC Form 1 (Oct. 14, 2018),
<https://docquery.fec.gov/pdf/370/201810149124769370/201810149124769370.pdf>.

1 Advisory Opinion Request at 001.² The Committee intends to distribute the OMR
2 Tokens to volunteers and supporters as an incentive to host events, register to vote and
3 engage in other activities in support of the campaign.³ AOR001, AOR003-004. OMR
4 Tokens have no monetary value and cannot be used to purchase goods or services.
5 AOR001, AOR004. The Committee will not sell OMR tokens nor will it permit
6 volunteers to trade in OMR Tokens for “campaign swag.” AOR004.

7 To receive OMR Tokens, volunteers must install one of several commercially
8 available digital “wallets” on their smartphones or internet browsers. AOR003. The
9 Committee will then transfer OMR Token(s) to an individual recipient’s unique digital
10 wallet address, and will pay a small transaction fee to the Ethereum network for each
11 transfer. AOR003-004. Because the distribution of OMR Tokens requires the payment
12 of a transaction fee, the Committee believes recipient volunteers will be unlikely to
13 further transfer OMR Tokens to third-party recipients. AOR001.

14 Near the end of the campaign, the Committee will reward the three individuals
15 with the greatest number of OMR Tokens with prizes for their volunteer activities.
16 AOR002. After the campaign has ended, the Committee intends to terminate its
17 Ethereum contract and delete the remaining OMR Tokens held by the Committee, if any.

² See Usha R. Rodrigues, *Law and the Blockchain*, 104 IOWA L. REV. 679, 698 (2019) (“The Ethereum blockchain permits the central recording not just of an exchange, but of contractual conditions and limitations on the circumstances under which an exchange can occur. Indeed, while Bitcoin was designed intentionally as a cryptocurrency, Ethereum was created specifically for users to develop new app designs to layer on top of its blockchain to facilitate smart contracts.”).

³ OMR Tokens will be distributed to volunteers based on an “involvement scale” ranging from one OMR Token given to each attendee of a blockchain technology informational tutorial organized by the Committee to 1,000 OMR Tokens for hosting a campaign event. AOR001, AOR003-004. The Committee notes that the involvement scale included in the advisory opinion request is not final and may be subject to change. *Id.*

1 AOR005. OMR Tokens that have been transferred to volunteers will remain in their
2 digital wallets as a “souvenir for their involvement with the campaign.” *Id.*

3 ***Question Presented***

4 *Is it permissible under the Act and Commission regulations for the Committee to*
5 *distribute OMR Tokens, digital blockchain tokens with no monetary value, to volunteers*
6 *and supporters as an incentive to engage in volunteer activities?*

7 ***Legal Analysis and Conclusion***

8 Yes, the Committee may distribute OMR Tokens to volunteers and supporters as
9 an incentive to engage in volunteer activities as described in the request because OMR
10 Tokens do not constitute compensation; rather, OMR Tokens are materially
11 indistinguishable from traditional forms of campaign souvenirs, and nothing in the Act or
12 Commission regulations prohibits a campaign committee from distributing free campaign
13 souvenirs to volunteers or supporters.

14 The Act defines a “contribution” as “any gift, subscription, loan, advance, or
15 deposit of money or anything of value made by any person for the purpose of influencing
16 any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52. The
17 Act, however, exempts from the definition of “contribution” “the value of services
18 provided without compensation by any individual who volunteers on behalf of a
19 candidate or political committee.” 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74; *see*
20 *also* Advisory Opinion 2007-08 (King) (uncompensated individual may volunteer his
21 time and assistance to Federal candidates and party committees to arrange for
22 performance by professional entertainers at campaign events without the value of such
23 time and services being considered as a contribution); Advisory Opinion 1980-42 (Hart)

1 (entertainer may agree to provide free services to a political committee without the value
2 of those services being considered as a contribution); and Advisory Opinion 1982-04
3 (Apodaca) (uncompensated volunteer services provided by carpenters, plumbers,
4 electricians, carpet-layers, and other tradesmen in renovating political committee building
5 are not contributions). The key issue here is whether providing OMR tokens to campaign
6 volunteers would constitute a form of compensation for their services. If the OMR
7 Tokens are a form of compensation, the volunteer services exemption at 11 C.F.R. §
8 100.74 will not apply, and the services rendered by such campaign volunteers (1) must be
9 fully compensated by the Committee at the usual and normal rate for such services, or (2)
10 if any services are compensated by the Committee at less than the usual and normal rate,
11 the value of such services will be treated as an in-kind contribution to the Committee in
12 the amount of the difference between the usual normal charge for the services and the
13 amount actually paid by the Committee. *See* 11 C.F.R. § 100.52(d).

14 The Commission concludes that the provision of OMR Tokens to volunteers
15 would not constitute compensation for their services. The Committee has represented
16 that OMR Tokens have no monetary value, are not a type of cryptocurrency, and cannot
17 be used to purchase goods or services. AOR001, AOR004. The only purpose of OMR
18 Tokens is to provide campaign volunteers and supporters with a novel means of showing
19 their support for Mr. Reyes' campaign: unique tokens in their digital wallets earned by
20 volunteering for and supporting the campaign.⁴ Accordingly, because the volunteers'
21 services would be provided without compensation from the Committee, these services

⁴ The OMR Tokens would appear in a holder's digital wallet as an "OMAR2020Token," clear references to the candidate and his 2020 campaign.

1 fall within the volunteer services exemption at 11 C.F.R. § 100.74 and would not result in
2 a contribution to the Committee.⁵

3 Rather than constituting a form of compensation, OMR Tokens are analogous to
4 more traditional types of campaign souvenirs, such as bumper stickers, yard signs or
5 buttons — all of which are regularly distributed by campaigns to volunteers and
6 supporters at no cost to the volunteer or supporter, and without implicating federal
7 campaign finance law. In fact, the distribution of such campaign souvenirs has been an
8 essential component of American political campaigns since the earliest American
9 elections. Campaigns rely on supporters wearing or displaying campaign insignia to
10 promote their candidates and demonstrate the breadth of their support, while supporters
11 display these souvenirs to express their pride in the campaign. That free campaign
12 souvenirs can now be distributed and displayed through a digital, rather than physical,
13 medium is immaterial for purposes of the Act and Commission regulations.
14 Consequently, the Commission concludes that nothing in the Act or Commission
15 regulations would limit or prohibit the Committee from distributing OMR Tokens as
16 described in the request.

17 The Commission assumes that any transaction fees incurred by the Committee for
18 transferring OMR Tokens to volunteers and supporters will be properly reported by the
19 Committee as expenditures pursuant to the Act and Commission regulations. The

⁵ The Committee's proposal to award prizes to the top three volunteers with the most OMR Tokens in their digital wallets near the end of the campaign does not alter this analysis. Although the prizes (which the Committee has represented have not yet been determined but likely will be property or items used by the Committee for the campaign) likely will constitute a thing of value, awarding Committee property to the campaign's top volunteers is not a form of compensation because the majority of volunteers will not receive any financial or tangible benefit in consideration of their services. The purpose of the prizes is to incentivize volunteer activity in general, not to compensate each volunteer for specific services rendered.

1 Commission expresses no opinion regarding the application of federal securities law, tax
2 law, or other law outside the Commission's jurisdiction.

3 ***Conclusion***

4 The Commission concludes that the Committee may distribute OMR Tokens to
5 volunteers and supporters as an incentive to engage in volunteer activities as described in
6 the request because OMR Tokens do not constitute compensation; rather, OMR Tokens
7 are materially indistinguishable from traditional forms of campaign souvenirs and
8 nothing in the Act or Commission regulations prohibits a campaign committee from
9 distributing free campaign souvenirs to volunteers or supporters.

10 This response constitutes an advisory opinion concerning the application of the
11 Act and Commission regulations to the specific transaction or activity set forth in your
12 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change
13 in any of the facts or assumptions presented, and such facts or assumptions are material to
14 a conclusion presented in this advisory opinion, then the requestor may not rely on that
15 conclusion as support for its proposed activity. Any person involved in any specific
16 transaction or activity which is indistinguishable in all its material aspects from the
17 transaction or activity with respect to which this advisory opinion is rendered may rely on
18 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or
19 conclusions in this advisory opinion may be affected by subsequent developments in the

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1 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

2 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

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Ellen L. Weintraub

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Chair

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