

MARC E. ELIAS
202/434-1625
MELIAS@PERKINSCOIE.COM

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December 12, 2003

BY MESSENGER (AND FACSIMILE)

Larry Norton, Esq.
General Counsel
Federal Election Commission
999 E St., NW
Washington, DC 20463

Re: MUR 5390

Dear Mr. Norton:

We are writing on behalf of Galileo restaurant in response to the complaint filed on October 16, 2003 by Public Citizen. Because the complaint fails to allege an actual violation of law by Galileo we ask that it be summarily dismissed. Specifically, because Galileo acted in the ordinary course of its business in its arrangement with Mitchell Delk it did not violate the law. Furthermore, even had Galileo chosen to offer an extraordinary discount to one or more federal campaign, such a discount would have still been permissible under Commission regulation.

A. Background

Galileo is one of Washington, DC's popular dining establishments. Located at 1110 21st Street, NW, it is a perfect locale for hosting important business and political events. It is frequented by politicians of both parties as well as by individuals with no connection to politics at all. Neither it nor its owner has any history of partisan political activity supporting particular candidates. In short, Galileo is a restaurant interested in making a profit as a restaurant, not in engaging in the political arena.

As the complaint alleges, in 2001 Galileo and Delk entered into an agreement whereby Delk would hold 50 events during the two year period at a cost of \$25 per person with a guaranteed minimum of 20 persons for each event. Galileo agreed that it would provide a fixed menu for such events, consisting of "tasting" or smaller portions of some of the restaurant's dishes. Though Galileo knew that these events would be used by Delk for fundraising purposes, the restaurant was unaware and disinterested, in who the candidates were or whether funds were actually solicited or received.

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Galileo's motivation in entering into this agreement was purely economic. First and foremost, Galileo saw this as a way to ensure a high volume of restaurant traffic during a pronounced down-turn in the economy in general and the restaurant business in particular. Second, as noted above, Galileo was not offering its normal menu at these events. Rather it was offering a fixed "tasting" menu. Finally, the deal was attractive because it contained a guaranteed minimum number of guests – when fewer than 20 persons attended, Galileo still billed for 20. Thus on a number of occasions the actual per person charge was significantly above \$25.

B. Argument

It is worth noting at the outset that Galileo did not provide anything at all to a federal candidate or its committee. As the complaint acknowledges, Galileo struck its deal with Delk. Neither the Act nor any Commission regulation restricts the terms of an agreement between Galileo and Delk personally. Delk approached the restaurant with a proposal that he personally wanted to enter into an agreement for which he personally would be responsible. Delk personally gave the restaurant a personal check to act as a deposit for the costs of the first set of events. In each instance it was Delk and/or his spouse, not the campaigns, who paid the invoices for each event.

Which, if any, campaigns attended these events; whether the events even were used to raise money for federal candidates; or whether the events were used for a lobbying, non-campaign purpose was outside of the control or interest of the restaurant. Galileo had no reason to concern itself with the manner in which the campaigns or the FEC would account for Delk's payment of the events. It simply knew that it had contracted with Delk personally for 50 events over a two-year period. Because Galileo did not provide any service directly to the campaigns, the Commission need not look any further into the legal analysis of this matter.

However, assuming that the Commission reviews this matter as if Galileo had made its arrangements with the individual campaigns, it still did not violate the law. Commission regulations provide that a vendor, such a Galileo, will not be deemed to have made a contribution if it receives the usual and normal charge for the goods it offered for sale. 11 C.F.R. § 100.52 (d)(1). Over time the Commission has taken a pragmatic approach to when a prohibited corporate contribution has been made by a vendor. Specifically, the Commission has focused on whether the prices offered political committees are the same as those offered to comparably situated non-political customers. See Advisory Opinions 1989-14; 1987-24.

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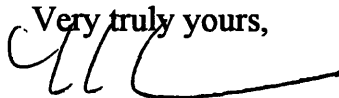
In AO 1989-14, the Commission recognized the flexibility enjoyed by vendors, in particular restaurants, in pricing their goods. In that opinion the Commission approved a restaurant's proposal to price fundraising event costs on two models. First, the restaurant stated that it charged some fundraising hosts a flat \$19.95 per person. Second, the restaurant stated that it wished to charge hosts on a "cost plus" basis – where the host paid the actual cost of the food and beverage multiplied by a factor of 3.5 or 4.5. The Commission approved the restaurant's plans on the theory that they represented the usual and normal charge.

In this case there is little question that the terms upon which Galileo offered its goods comport with the standards previously recognized by the Commission. In an exercise of its sound business judgment Galileo decided to offer a fixed price contract for 50 events held over two years where there was a guaranteed minimum attendance. It did this for reasons completely unrelated to politics or campaigns and did it in a manner consistent with the routine practices of a highly competitive industry.¹

Finally, although Galileo did not seek to benefit any particular candidate, even if it had intended to offer an extraordinary discount its conduct would not have been unlawful. Commission regulations specifically allow a vendor to provide discounted food and beverages so long as the discount is not below actual cost and does not exceed \$1000 per campaign. 11 C.F.R. § 100.78. Even if the Commission found that the costs charged was below the usual and customary amounts, it clearly was above cost and within \$1000 of the amount the complaint believes should have been levied. Thus, on that basis as well the complaint should be dismissed.

In sum, there is nothing in this case or the complaint that should cause the Commission to consider this matter against Galileo any further.

Very truly yours,



Robert F. Bauer
Marc E. Elias
Counsel to Galileo Restaurant

¹ Nor are these discounts extraordinary or unprecedented. In January 2003, for example, Galileo participated in D C Restaurant week during which it offered a three-course lunch for a fixed price of \$20.03.

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