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January 26, 2005

Beth Mizuno, Esquire
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 5635

Dear Ms. Mizuno:

This letter responds to the Commission's January 11, 2005 notice of its having found reason to believe that our client, Mail Fund, Inc. (MFI) has violated 2 U.S.C. § 441b(a). According to the Commission's January 11 letter, its reason to believe finding was based on Finding Three of its Final Audit Report (Report), which was attached to its letter.

As we read that Report, the Commission contends that MFI violated 2 U.S.C. § 441b(a) by advancing funds for direct mail programs on behalf of Conservative Leadership Political Action Committee (CLPAC). It is true that MFI advanced funds for CLPAC's direct mail programs. It is not true that doing so is unlawful.

In AO 1979-36, the Commission addressed whether contracts that limit the risk of a committee to pay fundraising costs advanced by a vendor automatically resulted in a contribution to that committee if expenses exceed receipts. The Commission found that such arrangements did not constitute a prohibited contribution, provided that: 1) the financing arrangement is of a type that is normal industry practice; 2) the type of credit extended is in the vendor's ordinary course of business; and 3) the costs charged for the services to the committee are normal for services of the kind at issue.

Implicit in AO 1979-36 is the recognition and approval of extensions of credit by vendors to committees who raise funds through the mails. That AO was the first of many, all of them recognizing that vendors advance credit to committees. To be sure, the Commission has been consistent in requiring that, in fundraising situations, committees that receive extensions of credit from vendors ultimately pay for all of the costs of the fundraising program. *See, e.g.*, 1990-14, 1990-1 and 1989-21.[1]

There is, then, a body of law created by the Commission that sanctions the extension of credit by vendors to committees like CLPAC so long as the committee ultimately bears all of the cost of the fundraising program.

The Commission's regulations, too, recognize and sanction such extensions of credit, even extensions of credit by incorporated vendors, like MFI. 11 C.F.R. § 116.3. According to the Commission's regulations, a vendor is one who provides goods or services to a political committee and whose usual and normal business involves the sale rental, lease or provision of those goods or services. 11 C.F.R. § 116.1(c).

Here, MFI provided a service to CLPAC, for which MFI charged a fee in the form of interest. That service involved paying third party vendors who provided direct mail services, including postage, to CLPAC. CLPAC in turn repaid MFI for those payments, plus interest and expenses.

The Commission's regulation stresses even-handedness in a vendor's dealings with those to whom it extends credit in determining the propriety of extensions of credit to a committee. So, too, does AO 1979-36 and its progeny. MFI has structured its dealings with those to whom it makes postage and related loans in accordance with

[1] That is just what happened here. Although the Report correctly notes that at year-end 2000 there was a balance due from CLPAC to MFI for services rendered on the direct mail program, CLPAC ultimately repaid MFI all that it had advanced, plus interest and expenses, leaving no unpaid remaining balance owed to MFI by CLPAC.

the requirements of 11 C.F.R. § 116.3. It should not now be punished for doing what the Commission's regulations permit.

The Report's reading of MUR 3027 and 5173 appears to conflict with 11 C.F.R. 116.3, which expressly permits the extension of credit by corporate vendors, provided that the conditions set out in that regulation are met, as they have been here. MFI is in the business of funding direct marketing programs for non-profit organizations. Report at 8. Its dealings with CLPAC in this case follow its practice with its other clients, political and nonpolitical alike.

The Report contends that MUR 3027 supports the Commission's reason to believe finding in this case against MFI. That is not so. In MUR 3027, the Commission found reason to believe that an agreement by which a vendor that made loans to a committee's direct mail vendor for postage and mailing expenses violated 2 U.S.C. § 441b(a). That is not what happened here. Moreover, although the Commission found reason to believe in that MUR, it took no action against the vendor there.

In this case, MFI did not make loans to ATA, CLPAC's direct mail vendor, as happened in MUR 3027; instead, it made payments to vendors on behalf of CLPAC. That factual scenario was not addressed by the Commission until 2002 in MUR 5173. The loans at issue in this case cover the period 1999-2000, several years *before* MUR 5173 was announced. MUR 5137 therefore cannot fairly serve to support the conclusion in the Report that MFI's payments to third-party vendors on behalf of CLPAC - payments made several years before MUR 5173 was announced - violated 2 U.S.C. § 441b(a).[2]

The Commission should find an appropriate, public and transparent way of resolving the apparent conflict between, on the one hand, what is permitted under 11 C.F.R.

[2] The Report also errs in computing the amount at issue. The amounts invoiced to CLPAC by MFI represent funds actually advanced to other vendors for CLPAC, *plus* interest and expenses. Only the amount actually advanced to others for CLPAC should be at issue here.

§ 116.3 and sanctioned by AO 1979-36; and the audit staff's reading and application of MUR 3027 and 5173, on the other.

The Report mentions difficulties encountered by the staff in obtaining documents from others in this matter. We are not aware that there have been any difficulties in obtaining documents from MFI. In any event, should your office need any further information, including documents, to expedite the conclusion of this matter, please let me know. We would be happy to supplement the record.

We look forward to hearing from you.

Sincerely,

Robert R. Sparks, Jr.

Mr. James E. Flemma