



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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**AGENDA ITEM**  
For Meeting of: 10-18-06

October 11, 2006

**MEMORANDUM**

TO: The Commission

FROM: Lawrence H. Norton *LHN (by date)*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

J. Duane Pugh *JDP.*  
Acting Assistant General Counsel

Anthony Buckley *AB*  
Attorney

Subject: Draft AO 2006-27

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 18, 2006.

Attachment

3 Ms. Cynthia Czuchaj  
4 Prime Choice Entertainment  
5 1845 S. El Molino  
6 San Marino, CA 91108

**DRAFT**

8 Dear Ms. Czuchaj:

9 We are responding to your advisory opinion request on behalf of Prime Choice  
10 Entertainment (“Prime Choice”) concerning the application of the Federal Election  
11 Campaign Act of 1971, as amended (the “Act”), and Commission regulations to Prime  
12 Choice’s planned website. Prime Choice plans to offer website viewers an opportunity to  
13 view commercials sponsored by certain corporations. In exchange for the viewers  
14 answering questions about commercials, Prime Choice would contribute funds from these  
15 corporations to political party committees as directed by the viewers.

16 The Commission concludes that Prime Choice may not carry out its plan without  
17 violating the Act and Commission regulations.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letters received on  
20 July 31 and August 22, 2006.

21 Prime Choice is a for-profit corporation that would operate a website located at  
22 <http://www.yourtimecounts.org>. This website would operate as follows: An individual  
23 accessing the website would choose a commercial to view on that website and either a  
24 national political party committee or a nonprofit organization to receive a contribution or  
25 donation. The individual will not be permitted to receive any payment under any  
26 circumstances. After the individual views the commercial and answers a question, the  
27 commercial’s corporate sponsor will forward a 25-cent payment to Prime Choice. Prime

1 Choice will keep ten percent of the payment as its share, and forward the remaining 90  
2 percent to the political committee or other recipient selected by the individual.

3 ***Question Presented***

4 *May Prime Choice forward funds it receives from corporations to national*  
5 *political party committees?*

6 ***Legal Analysis and Conclusions***

7 No, Prime Choice may not forward any funds it receives from corporations to  
8 national political party committees.

9 The Act provides that, “[a] national committee of a political party (including a  
10 national congressional campaign committee of a political party) may not solicit, receive,  
11 or direct to another person a contribution, donation, or transfer of funds or any other thing  
12 of value, or spend any funds, that are not subject to the limitations, prohibitions, and  
13 reporting requirements of this Act.” 2 U.S.C. 441i(a)(1).

14 The Act specifically prohibits any corporation from making a contribution or  
15 expenditure in connection with any Federal election. *See* 2 U.S.C. 441b(a). A  
16 “contribution” includes “any gift, subscription, loan, advance, or deposit of money or  
17 anything of value made by any person for the purpose of influencing any election for  
18 Federal office.” 2 U.S.C. 431(8)(A)(i); *see also* 2 U.S.C. 441b(b)(2). “Anything of  
19 value” is considered to include all in-kind contributions, including the provision of goods  
20 or services without charge. 11 CFR 100.52(d)(1).

21 A “commercial vendor” is any person “providing goods or services to a candidate  
22 or political committee whose usual and normal business involves the sale, rental, lease or  
23 provision of those goods or services.” 11 CFR 116.1(c). Commission regulations permit

1 a commercial vendor to provide goods or services to political committees in the ordinary  
2 course of business and at the usual and normal charge. *See* 11 CFR 114.2(f)(1).

3 A business model such as yours is permissible only under certain conditions.

4 First, to avoid prohibited corporate contributions, any funds given to a political  
5 committee must be the personal funds of individuals, not corporate funds. *See* Advisory  
6 Opinions 2006-8 (Brooks), 2004-19 (DollarVote), 2003-16 (Providian National Bank),  
7 and 2002-7 (Careau).

8 Your proposal would not result in personal funds of individuals being used to  
9 make contributions. Your website viewers would not have the option of keeping the  
10 payments for viewing ads for themselves. Without that option, the funds would remain  
11 the corporate sponsors' funds and would never become the personal funds of the  
12 individuals. Providing these funds to national party committees would result in corporate  
13 contributions in violation of 2 U.S.C. 441b.

14 Second, if a corporation such as Prime Choice were to operate as a commercial  
15 vendor, it must meet three conditions to avoid an impermissible corporate contribution.  
16 First, the commercial vendor must be compensated for the costs it incurs in processing  
17 and forwarding contributions to the political committees. Specifically, either individual  
18 contributors or the recipient political committees must reimburse the commercial vendor  
19 for its costs. Second, the funds from individuals must be placed in a separate merchant  
20 account and not commingled with corporate treasury funds. Third, contributors must  
21 attest to the legality of their contributions and provide certain identifying information,  
22 which the commercial vendor must then forward to the recipient political committees.  
23 *See* Advisory Opinions 2006-8 (Brooks), 2004-19 (DollarVote), and 2002-7 (Careau).

