

August 7, 2015

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Office of General Counsel
Attn: Adav Noti, Esq., Acting Associate General Counsel for Policy
Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Mr. Noti:

Pursuant to 52 U.S.C. § 30108 we seek an advisory opinion on behalf of Hillary for America (“HFA” or the “Campaign”). HFA seeks confirmation that it is permissible under the Federal Election Campaign Act (the “Act”) and Commission regulations for (1) campaign event attendees to pay for their own food and beverage expenses at HFA events, where the Campaign will otherwise not be providing those food or beverages, without making in-kind contributions to the Campaign and (2) campaign donors to pay to valet their cars at campaign fundraising events, where the host has arranged for valet services to be available, without making in-kind contributions to the Campaign.

I. BACKGROUND

A. Food and Beverage Expenses

HFA plans to organize and host numerous events throughout the election cycle in restaurants, hotels, or similar event spaces. In connection with at least some of these events, the Campaign does not plan to make significant food or beverages available to event attendees. Invitations for such events will not include any mention of food or beverages, and will not imply that a meal is part of the HFA event itself.

As the Campaign does not plan to provide significant food or beverages to attendees at these events, it anticipates that individuals in attendance may want to personally purchase food or beverages at the location of the event. In these cases, HFA anticipates that an event attendee would be able to order food and/or beverages for herself from the venue at her discretion. Attendees will not be required to purchase anything at the event, and there will not be any

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monetary consequences for HFA if attendees choose to purchase, or not to purchase, food or beverages.

B. Valet Car Services

Restaurants often provide valet services at a specified price (*e.g.*, \$10/car) for their patrons. In general, when campaigns hold events at restaurants that provide such valet services in the ordinary course, attendees utilize these services and the campaigns do not pay for either (i) the costs of having the valet service available to attendees (as the restaurant provides it for all patrons regardless of whether they are attending a campaign event or not) or (ii) the individual fees incurred by attendees to valet their cars.

However, campaigns also host fundraising events in venues that do not provide valet services as an option in the regular course of business, such as private homes, museums, or office conference rooms. While HFA will not request it, HFA anticipates that for events at these venues, the hosts will want to arrange for valet services to be available for attendees. HFA anticipates that the host will pay the cost of making the valet service available, such as paying a negotiated contract price to have the valet service employees at the location of the event, to the extent that such a fee is required by the service provider. Individual attendees that seek to take advantage of the valet service will pay the individual per-car price (*e.g.*, \$10) and any accompanying tip.

HFA seeks to confirm the permissibility of event attendees paying for their own food and beverages at HFA events and of attendees paying for valet parking services at HFA events without such payments being treated as in-kind contributions to the Campaign.

II. LEGAL ANALYSIS

A. Event attendees may pay for their own food and beverages at an HFA event without such payments being treated as in-kind contribution to HFA.

The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹ “Anything of value” is defined to include in-kind contributions, such as goods or services provided to a campaign without charge or at a charge that is less than the usual and normal charge for such goods or services.²

¹ 52 U.S.C. § 30101(8)(A)(i).

² 11 C.F.R. § 100.52(d)(1).

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In the context of fundraising events, the Commission has noted that the payment of expenses for each event, including food and beverages, if made by anyone other than the benefitting campaign, are campaign contributions.³ The Commission specifically determined that when events are held to induce contributions from attendees, any "necessary expenses incurred to provide an inducement for the making of a contribution" are campaign expenditures.⁴

In contrast, the food and beverage expenses HFA anticipates here are clearly not "necessary expenses" of the Campaign. HFA does not plan to have the food and beverages that individuals may want to purchase available at these events, nor will it imply on the invitations for the events that such food and beverages will be available. Contributions made to HFA in connection with these events may be motivated by any number of factors, but they simply are not induced by the availability of food or beverages.

A donor's independent decision to order and pay for her own food and beverages at an HFA event does not alter this conclusion. The mere availability of food or beverages at a venue where HFA chooses to hold an event does not transform payment for such food or beverages into in-kind contributions to the Campaign.

Any contrary conclusion here is proven unsound when taken to its logical extreme: if an event attendee purchases a hot dog at a cart that happens to be set up outside of a Campaign event, clearly the payment for the hot dog is not considered an in-kind contribution to the Campaign. The facts presented here are no different. In each case, the Campaign has not provided the event attendees with food or beverages, and the attendee has independently made the decision to eat or drink. Further, in each case, that decision has no impact - financial or otherwise - on the Campaign.

Accordingly, the payment for such an expense is not a "necessary expense" of the Campaign, and should not be considered an in-kind contribution the Campaign.

- B. Event attendees may pay for valet parking services at a fundraising event where the host has arranged for such services to be available without the host or the attendees making an in-kind contribution to HFA.

The Act and FEC regulations provide that "any unreimbursed payment for travel expenses made by any individual on behalf of any candidate...to the extent that the cumulative value...does not

³ See FEC Op. of Counsel 1975-128; Adv. Op. Request 1975-130; FEC Adv. Op. 1975-15; FEC Adv. Op. 1979-39.

⁴ FEC Adv. Op. 1975-15.

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exceed \$1,000 with respect to any single election” is exempt from the definition of contribution.⁵ However, in interpreting this provision, the Commission has noted that when travel is not incurred “on behalf of any candidate,” payment for such travel is not considered a contribution, and therefore is not subject to this \$1,000 threshold.⁶

The Commission has further determined that when a donor travels to a fundraising event where she has agreed to make a contribution to a campaign in order to be admitted, her travel is not “on behalf of the campaign.”⁷ Such travel is considered to be undertaken at the discretion of the donor herself, and therefore, payments for such travel are not considered in-kind contributions to the campaign hosting the event.⁸

Here, HFA anticipates that event hosts will choose to make valet parking available to individuals who are attending events held at their homes or venues where valet parking is not ordinarily available. As was the case with the food and beverage expenses described above, these are not “necessary expenses” of the Campaign. HFA does not plan to request the provision of such services, or otherwise make valet parking available at these events. Contributions received by HFA in connection with the events are clearly not induced by such availability. Accordingly, any payment by an event host to make valet parking available should not be treated as an in-kind contribution to the Campaign.

Further, if event attendees choose to take advantage of the valet parking that is provided, it should simply be considered part of the attendees travel expenses to attend the fundraising event. Any payment made for such travel is made at the discretion of the individual in connection with

⁵ 52 U.S.C. § 30101(8)(B)(iv); 11 C.F.R. § 100.79(a).

⁶ MUR 5937 (Romney for President), Statement of Reasons of Vice-Chairman Matthew S. Petersen and Comm’rs Caroline C. Hunter and Donald F. McGahn (March 10, 2009) at 2; MUR 5937 (Romney for President), Statement of Reasons of Comm’rs Cynthia L. Bauerly and Ellen L. Weintraub (March 16, 2009) at 4 (“[O]ur colleagues who voted against the General Counsel’s recommendation in this matter correctly state the corollary of this provision (that travel undertaken independently of a campaign is not subject to the limits of the Act).”).

⁷ MUR 5937 (Romney for President), Statement of Reasons of Comm’rs Cynthia L. Bauerly and Ellen L. Weintraub (March 16, 2009) at 5.

⁸ MUR 5937 (Romney for President), Statement of Reasons of Vice-Chairman Matthew S. Petersen and Comm’rs Caroline C. Hunter and Donald F. McGahn (June 16, 2009) at 2 (“[T]he Commission, in its entire history, has never held that merely receiving an invitation to a campaign fundraising event subjects any resulting travel expenses to the Act’s limits, prohibitions, or reporting requirements.”); MUR 5937 (Romney for President), Statement of Reasons of Comm’rs Cynthia L. Bauerly and Ellen L. Weintraub (March 16, 2009) at 5; *see also* MUR 2050 (Trump Hotels and Casinos *et al.*), General Counsel’s Report #3 (Oct. 22, 2004) at 13 (explaining that a contributor’s payment of his plane ticket and a plane ticket for a friend to attend a candidate’s fundraiser was not an in-kind contribution to the candidate because both individuals attended the event as contributors and not on behalf of the candidate).

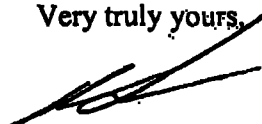
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her attendance at an event. Such payments are then clearly not made "on behalf of the campaign," and therefore, should not be treated as in-kind contributions.

III. CONCLUSION

We respectfully request that the Commission confirm that attendees at HFA events may pay for their own food and beverage expenses and valet parking at the event without treating such payments as in-kind contributions to HFA.

Very truly yours,



Marc E. Elias