



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 20, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-04

Duke Williams
Chief Executive Officer
Atlatl, Inc.
P.O. Box 2936
Durham, NC 27715-2936

Dear Mr. Williams:

We are responding to your inquiry regarding the ability of Atlatl, Inc. and its service, Simply Easier Payments, to offer its credit card processing services to political committees under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. The Commission concludes that Atlatl, Inc. may offer its credit card processing services to political committees, but that any processing fees paid by contributors would be contributions by the contributors to the respective political committees.

Background

The facts presented in this advisory opinion are based on your letter received on February 14, 2007, and your email received on February 26, 2007.

Atlatl, Inc., through its service, Simply Easier Payments (collectively "the Corporation"), is a corporation that sells processing services for online credit card transactions, but is not itself a financial service provider or a credit card company. The Corporation would like to offer its services to political committees to process online credit card contributions.

Under your proposal, an individual wishing to make contributions to a political committee would click on a link on a committee's website. This link would take the individual to the Corporation's website. A page on the website would show the amount of the contribution the individual intended to provide to the political committee, as well as a separate "convenience fee" to be paid by the individual to the Corporation. The individual would have to agree to pay the "convenience fee" to make the contribution. In addition to credit card information, the individual would be required to input information consistent with contributor information required to be reported by political committees.¹ The individual would also be required to attest to various facts to show compliance with the Act's amount limitations and source prohibitions.²

The "convenience fee" would cover all of the costs of the financial institutions involved in the credit card transaction (*i.e.*, the bank issuing the credit card, the card association, the card processor, the card network, and the Corporation) and provide a profit to the Corporation. The "convenience fee" is composed of two amounts. The first amount is a "discount fee," which is paid to the bank issuing the credit card, the card association, and the card network. This discount fee amount is negotiated among the parties and can be either a fixed amount per transaction, or a percentage of each transaction. The second amount is set by the Corporation and is generally an additional one percent added to the discount fee. This additional amount is set to cover the card processor's costs, the Corporation's costs, and to provide a profit to the Corporation.³

Questions Presented

1. *Would the Corporation's proposal to process online credit card contributions for political committees result in impermissible corporate contributions by the Corporation to those political committees?*

2. *Would the payment of processing fees to the Corporation by contributors result in contributions by the contributors to the political committees?*

¹ Such information includes the individual's name, mailing address, employer and occupation. See 2 U.S.C. 434(b)(3)(A) and 431(13); 11 CFR 104.8(a) and 100.12.

² The website will include the following attestation language:

By checking this box, I confirm that the following statements are true and accurate:

1. I acknowledge that this contribution is made from my own funds, and not those of another.
2. I acknowledge that it is not made from the general treasury funds of a corporation, labor organization or national bank.
3. I am not a Federal government contractor.
4. I am not a foreign national who lacks permanent resident status in the United States.
5. I am at least 18 years of age.
6. This contribution is made on a personal credit or debit card for which I have the legal obligation to pay, and is made neither on a corporate or business entity card nor on the card of another.

³ The Corporation's ability to show profits depends on a significant volume of transactions. You have estimated that there is a large enough volume of transactions to offer the possibility of achieving a level of profit to justify your efforts.

Legal Analysis and Conclusions

1. *Would the Corporation's proposal to process online credit card contributions for political committees result in impermissible corporate contributions by the Corporation to those political committees?*

No, the Corporation's proposal to process online credit card contributions for political committees would not result in impermissible corporate contributions by the Corporation to those political committees because the Corporation would be acting permissibly as a commercial vendor in providing these services to the political committees in the ordinary course of business and at the usual and normal charge.

The Act and Commission regulations specifically prohibit corporations from making a contribution in connection with a Federal election. *See* 2 U.S.C. 441b(a); 11 CFR 114.2(b)(1). A "contribution" includes "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." 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.52(a); *see also* 2 U.S.C. 441b(b)(2) and 11 CFR 114.2(b)(1). "Anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge that is less than the usual and normal charge. *See* 11 CFR 100.52(d)(1). "Usual and normal charge" is defined as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution, or the commercially reasonable rate prevailing at the time the services were rendered. *See* 11 CFR 100.52(d)(2).

In addition to this general prohibition on corporate contributions, corporations are prohibited from facilitating the making of contributions to candidates or political committees. *See* 11 CFR 114.2(f)(1). Facilitation means using corporate resources to engage in fundraising activities in connection with any Federal election. *Id.* Therefore, the Corporation's proposal to process credit card contributions for political committees would be impermissible under the Act and Commission regulations unless it meets this "commercial vendor" exception.

A "commercial vendor" is any person "providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services." 11 CFR 116.1(c). Commission regulations permit a commercial vendor to provide goods or services to political committees in the ordinary course of business and at the usual and normal charge. *See* 11 CFR 114.2(f)(1).

In Advisory Opinions 2004-19 (DollarVote) and 2002-7 (Careau), the Commission determined that corporations could collect and forward online contributions to candidates as commercial vendors. The Commission determined that these corporations qualified as "commercial vendors" under 11 CFR 114.2(f)(1) because: (1) their services were rendered in the ordinary course of business for the usual and normal charge; (2) they forwarded earmarked contributions to candidates through separate

merchant accounts; and (3) their websites incorporated adequate screening procedures to ensure that they were not forwarding illegal contributions.

Your proposal also establishes that the Corporation will be acting permissibly as a commercial vendor. First, the agreements between the Corporation and the political committees would be commercially reasonable because the Corporation would be acting in the ordinary course of its business by providing secure credit card processing services to political committees. Further, the “convenience fee” would constitute the usual and normal charge because it would compensate the Corporation for the costs it incurs in processing and forwarding contributions to the political committees and also would provide the Corporation with a reasonable profit.

Second, the funds intended for the political committees would transfer from the issuing bank to an account held by the card processor for the sole purpose of holding funds intended for political contributions. The funds would transfer from the card processor account to the designated political committees. Thus, the funds transferred to the political committees would be the funds of the individual contributors and not the funds of the Corporation.

Finally, based on your representations, the Corporation’s screening and verification procedures for online payments meet the standards approved in previous advisory opinions. *See* Advisory Opinions 2004-19 (DollarVote) and 2002-7 (Careau).

Accordingly, your proposal to process online credit card contributions for political committees would not result in impermissible corporate contributions by the Corporation to those political committees.

2. *Would the payment of processing fees to the Corporation by contributors result in contributions by the contributors to the political committees?*

Yes, the payment of processing fees to the Corporation by contributors would result in contributions by the contributors to the political committees that must comply with the Act’s amount limitations and source prohibitions and be reported as operating expenditures by the recipient political committees.

Typically, a financial service provider that processes credit card contributions for a political committee deducts the processing fees from the amount of the contribution authorized by the contributor and thus transmits to the political committee an amount smaller than the one authorized by the contributor. In past advisory opinions, the Commission has determined that for purposes of the Act’s amount limitations and reporting requirements, the contribution includes the entire amount authorized by the contributor, including any processing fees deducted by the financial service provider. *See, e.g.,* Advisory Opinions 1999-8 (Specter) (noting that where a “contribution by credit card is made and expenses are deducted by the credit card company or other processors[,] . . . the entire amount of the cardholder’s transaction is a contribution even though the amount that the committee receives is reduced by the deducted expenses, and

those expenses are reportable as operating expenses of the committee”); 1995-34 (Politechs) (“While the amount Politechs actually remits to the political committee will be reduced by the clearing, processing, and service charges deducted . . . (which service charges will be considered expenditures by the political committees), the entire amount of the caller’s credit card transaction will be treated as a contribution to the political committee”); 1995-9 (NewtWatch) (requiring the requesting political committee to “treat the full amount of a donor’s contribution as the contributed amount for purposes of the limits and reporting provisions of the Act, even though the [political committee] will receive a lesser amount because of the [financial service company’s] fees”); 1994-33 (VITEL) (“In the case of [credit card] contributions to the authorized committee, the amount actually remitted to the committee would be reduced by charges deducted by the card issuer (although this would not reduce the amount of the reportable contribution).”); and 1991-1 (Deloitte & Touche) (“The amount of any contribution by credit card is the amount authorized by the contributor. Any deductions or discounts taken by . . . the credit card issuer[] against the proceeds of such contributions should be reported by the Committee as operating expenditures.”).

Here, the Corporation proposes to enter into agreements to provide services to political committees (*i.e.*, processing contributions made to political committees) for a “convenience fee.” The amount of the “convenience fee” will be negotiated between the Corporation and the political committees. The “convenience fee” will cover the costs that political committees, like other organizations that accept credit card payments, would have to pay for the processing services they receive. However, instead of deducting the processing fees from the amount of the contribution, the Corporation proposes to transmit to the political committees the entire amount authorized by the contributor and have the contributor pay the processing fees in a separate transaction directly to the Corporation.

The Commission concludes that, for FECA purposes, there is no distinction between a contributor paying processing fees through a deduction from the amount of the contribution authorized by that contributor and paying such processing fees in a separate transaction. Both are contributions because by paying the “convenience fee,” contributors would relieve recipient political committees of a financial obligation that political committees would otherwise have to pay for themselves, thereby providing something of value to these committees.

The situation presented here differs materially from that in Advisory Opinion 2006-8 (Brooks), on which you rely in your request. Unlike the current situation, in Advisory Opinion 2006-8 (Brooks), the corporation did not anticipate entering into any contractual relationship with any political committee. Instead, the corporation intended to sell a variety of services to its subscribers. Specifically, the corporation proposed to accept funds from subscribers, which would be deposited into a merchant account. These funds would be disbursed to candidates and political committees at a later date, at the direction of the subscribers. The subscribers would compensate the corporation for the incidental cost in making contributions. The Commission likened this service to corporations that provide delivery services, bill-paying services, or check writing services, and determined that it was permissible under the Act and Commission

regulations. For additional fees, the corporation also offered other services to its subscribers, such as monitoring their contribution limits, forwarding commentary and analysis of political candidates including their voting records, and forwarding contribution solicitations from candidates meeting certain criteria chosen by the subscribers.

Thus, in Advisory Opinion 2006-8 (Brooks), the corporation contemplated entering into agreements to provide services to contributors that went well beyond the mere processing of contributions. These services were to be provided at the request and for the benefit of the contributors, not of the recipient political committees. By paying for these services, the contributors in Advisory Opinion 2006-8 (Brooks) would not, as they do here, relieve the recipient political committees of a financial burden they would otherwise have had to pay for themselves.

The Commission notes that recipient political committees would have to report the payments of “convenience fees” by contributors as operating expenditures. *See, e.g.* Advisory Opinions 1999-8 (Specter), 1995-34 (Politechs) and 1991-1 (Deloitte & Touche).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission’s website at www.fec.gov.

Sincerely,

(Signed)

Robert D. Lenhard
Chairman