



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 12, 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-08

Marc E. Elias, Esq.  
Caroline P. Goodson, Esq.  
Perkins Coie, LLP  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

Dear Mr. Elias and Ms. Goodson:

We are responding to your advisory opinion request on behalf of Michael King, regarding whether, under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations, Mr. King may donate funds to certain charitable organizations to encourage or commemorate performances by professional entertainers at Federal election campaign events. Also, we are responding to your request regarding whether Mr. King may establish a foundation under section 501(c)(3) of the Internal Revenue Code ("the Foundation") to collect and donate funds for the same purpose.

The Commission concludes that Mr. King and the Foundation may donate funds to the charities described in your request to encourage or commemorate these performances. Mr. King and the Foundation may publicize their donations, as described below, and Mr. King may also solicit Federal candidate committees for donations to the charities.

***Background***

The facts presented in this advisory opinion are based on your letter received on May 7, 2007, your e-mail received on May 18, 2007, and telephone conversations on May 11 and May 17, 2007.

Mr. King wishes to focus the public's attention on the importance of certain charities that provide assistance to the families of U.S. military personnel who are

serving, or have served, in Iraq. Each of these organizations is organized under section 501(c)(3) of the Internal Revenue Code, and examples of these organizations are provided at <[www.americasupportsyou.mil/AmericaSupportsYou/military\\_family.html](http://www.americasupportsyou.mil/AmericaSupportsYou/military_family.html)>. In addition, Mr. King would like to encourage greater volunteer participation in Federal campaigns by musicians and other performers. Mr. King is neither a candidate for public office, nor a public officeholder.

To accomplish his goals, Mr. King plans to donate a portion of his personal funds to one or more of the charities in honor of certain performances at campaign events of political party committees or candidates for Federal office. Mr. King hopes that the performances at the campaign events, in combination with the publicity surrounding his donations to the charities, will provide a platform to raise public awareness of these charities. Mr. King also intends to establish the Foundation, which would also be organized under section 501(c)(3) of the Internal Revenue Code, to collect donations from other persons and distribute them for the same purposes described above.

Mr. King or the Foundation would select the recipient charities, determine the amount of each donation, and choose which performances to honor with donations, possibly with suggestions from the performers. Each performer would volunteer in an individual capacity only (rather than as an incorporated entity) and would select the campaign events at which he or she performs, but would not receive any financial, tax, or other tangible benefit from Mr. King, the Foundation, or any of the charities receiving the donations. In some cases, Mr. King and the Foundation may make donations honoring performers who have, independently of Mr. King, committed to perform at a campaign event. In other cases, Mr. King may take a more active role in arranging the performances by using his personal contacts in the entertainment industry to identify performers who might be willing to volunteer their services at specific campaign events and encouraging them to do so. He may take those actions either independently of any political campaign or in coordination with a Federal candidate or political party committee. Mr. King would not be compensated for his services, and all costs associated with the performances themselves (such as expenses for the rental of the venue and performer's travel) would be paid for by the campaign or political party committee, not by Mr. King, the Foundation, or the performers.

In addition, Mr. King and the Foundation intend to publicize their charitable donations on their own websites to draw attention to the work of the charitable organizations. They will not make any "public communications" within the meaning of 11 CFR 100.26.

### ***Questions Presented***

1. *May Mr. King make the proposed donations to the section 501(c)(3) charitable organizations described in the request?*

2. *May the Foundation make the proposed donations to the section 501(c)(3) charitable organizations described in the request?*
3. *May Mr. King and the Foundation publicize their activities through communications other than “public communications” under 2 U.S.C. 431(22) and 11 CFR 100.26?*
4. *May Mr. King solicit the authorized committees of Federal candidates for donations to the section 501(c)(3) charitable organizations described in the request?*

### ***Legal Analysis and Conclusions***

1. *May Mr. King make the proposed donations to the section 501(c)(3) charitable organizations described in the request?*

Yes, under the conditions described in the request, Mr. King may make the proposed donations to the charitable organizations described in the request.<sup>1</sup>

#### **A. Contributions**

Under the Act and Commission regulations, contributions from individuals to Federal candidates or political committees are subject to specific disclosure requirements, limits, and prohibitions. *See* 2 U.S.C. 434, 441a, and 441b; 11 CFR 104.3, 110.1, 110.19, 110.20, and 115.2. A “contribution” is defined as: (1) “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,” and (2) “the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.” 2 U.S.C. 431(8)(A)(i) and (ii); *see also* 11 CFR 100.52 and 100.54.

The Act exempts from the definition of “contribution” “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.” 2 U.S.C. 431(8)(B)(i), 11 CFR 100.74; *see also* Advisory Opinions 1980-42 (Hart) (entertainer may agree to provide free services to a political committee without the value of those services being considered as a contribution) and 1982-04 (Apodaca) (uncompensated volunteer services provided by carpenters, plumbers, electricians, carpet-layers, and other tradesmen in renovating political committee building were not contributions).

Mr. King proposes to volunteer his time and assistance to Federal candidates and political party committees by arranging for performers to appear at campaign events. He

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<sup>1</sup> In reaching this conclusion, the Commission assumes that Mr. King would not make donations as an agent of any candidate for Federal office, Federal officeholder, or any political party committee. *See* 2 U.S.C. 441i(a)(1), 441i(b)(1), 441i(d), 441i(e)(1)(B); 11 CFR 300.10, 300.37, 300.60, 300.62. “Agent” is defined as “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.” 11 CFR 300.2(b)(3).

would not be compensated for any of these services. As such, the value of Mr. King's services would fall within the volunteer exception of 2 U.S.C. 431(8)(B)(i) and 11 CFR 100.74, and would not constitute a contribution to any Federal candidate or political committee.<sup>2</sup>

Similarly, the value of the performers' services would also be exempted under 2 U.S.C. 431(8)(B)(i) and 11 CFR 100.74 from the definition of "contribution." Under Mr. King's proposal, the performers would provide personal services to a Federal candidate or political party committee in their individual capacities and without compensation, and all costs associated with the performances themselves (such as expenses for the rental of the venue and the performers' travel) would be paid for by the Federal candidate committee or political party committee, not by Mr. King, the Foundation or the performers.

The Commission concludes that Mr. King's proposed charitable donations would not constitute the payment of compensation to the performers or a contribution by Mr. King to a Federal candidate or political committee. Under the Act and Commission regulations, "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose" is a contribution. *See* 2 U.S.C. 431(8)(A)(ii); 11 CFR 100.54. Mr. King proposes to make donations directly to charitable organizations, not to the performers who are rendering these services. Furthermore, the performers would not receive any financial, tax, or other tangible benefit from Mr. King, the Foundation, or the recipient charitable organizations. Accordingly, Mr. King's donations to charities would not constitute "compensation" to the performers, and in turn, the donations would not render the performers ineligible for the volunteer exception.

The Commission's conclusion that the charitable donations would not constitute compensation to the performers is consistent with the Commission's previous guidance regarding donations to charitable organizations in other contexts. In one series of advisory opinions, the Commission reviewed the permissibility of "matching" programs proposed by corporations to encourage contributions to their separate segregated funds ("SSFs"). *See* Advisory Opinions 2003-04 (Freeport-McMoRan), 1994-07 (GEON PAC), 1994-06 (Coors PAC), 1994-03 (EnviroSource), 1990-06 (Pacific Power & Light), 1989-09 (General Dynamics), 1989-07 (New Jersey Bell), 1988-48 (Grocers), 1987-18 (Texas Industries PAC), and 1986-44 (EdPAC). Under these programs, a corporation would agree to match otherwise permissible contributions to its SSF with donations of

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<sup>2</sup> The exception for volunteer activities is restricted to donations of the volunteer's own time and services and does not generally exempt actual costs incurred on behalf of a Federal candidate or political party committee. For example, if Mr. King travels across the country at the request of a Federal candidate to arrange for an entertainer to perform at the candidate's campaign event, then Mr. King's unreimbursed payment for that travel would be a contribution to that candidate's committee to the extent that the travel costs exceed \$1,000 per candidate or \$2,000 per year. *See* 2 U.S.C. 431(8)(B)(iv) and 11 CFR 100.79 (unreimbursed payment for transportation and subsistence expenses); *see also* 2 U.S.C. 431(8)(B)(ii) and 11 CFR 100.75 (use of volunteer's real or personal property), 11 CFR 100.76 (use of church or community room), and 11 CFR 100.77 (invitations, food, and beverages).

corporate treasury funds to charitable organizations.<sup>3</sup> In each instance, the Commission concluded that the corporation's matching donations would not be prohibited compensation to the SSF contributor, so long as the contributor did not receive any financial, tax, or other tangible benefit from either the corporation or the recipient charity. *See, e.g.*, Advisory Opinion 1994-07 (GEON PAC) ("Central to this conclusion is that the individual contributor to the separate segregated fund would not receive a financial, tax, or other tangible benefit from either the corporation or the recipient charities, thus avoiding an exchange of corporate treasury monies for voluntary contributions.").

Similarly, in advisory opinions relating to honoraria provided to Federal officials, the Commission recognized that donations to charitable organizations in honor of Federal officials speaking at events are not "accepted" by those Federal officials.<sup>4</sup> *See* Advisory Opinions 1982-09 (Dole) ("Under the Act, an honorarium is not accepted by a federal officeholder if that officeholder makes a suggestion that the honorarium be given instead to a charitable organization which is selected by the person paying the honorarium from a list of five or more charitable organizations provided by the officeholder."), 1978-96 (Brown), and 1978-73 (Rostenkowski).

Thus, under the conditions described in the request, neither the provision of Mr. King's own personal services nor his donations to charities would be a contribution to a Federal candidate or political committee, nor would they be compensation to the performers.

#### B. Expenditures

Under the Act and Commission regulations, an "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, or gift 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(9)(A)(i); 11 CFR 100.111(a). The purpose of these donations is to motivate musicians, performers, and other types of talent to volunteer on behalf of Federal campaigns. The donations do not act as an incentive to any person to vote for or against any Federal candidate. Nor do the donations act as an incentive to any person to make a contribution to or expenditure on behalf of a Federal candidate or committee.<sup>5</sup>

The only connection the proposed donations have to a Federal election is that they encourage volunteer activity on behalf of Federal candidates. But volunteer activity on

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<sup>3</sup> Because all contributions to an SSF must be voluntary and made from personal funds, corporations are prohibited from providing any compensation to the individual contributors or otherwise exchanging corporate treasury funds for contributions to the SSF. *See* 11 CFR 114.5(b)(1).

<sup>4</sup> Prior to 1991, the Commission was responsible for enforcing certain limitations and prohibitions on the acceptance of honoraria by Federal officials. These restrictions, which were then set forth at 2 U.S.C. 441i, were repealed effective August 14, 1991. *See* the Legislative Branch Appropriations Act, 1992, Pub. L. No. 102-90, sec. 6(d), 105 Stat. 447, 451 (1991).

<sup>5</sup> If charitable donations were used to motivate contributions to a Federal candidate or committee, they would qualify as expenditures. *See* Advisory Opinion 1986-44 (stating that a corporation's charitable donations matching contributions to its separate segregated fund would be prohibited corporate expenditures but for the "establishment, administration, and solicitation" costs exemption).

behalf of candidates is explicitly exempt from regulation by the Act so long as it is “without compensation,” as is the case here. 2 U.S.C 431(8)(B)(i). Thus, the connection between these donations and a Federal election is limited to activities that Congress explicitly left unregulated. The Commission therefore concludes that the charitable donations described here are not for the purpose of influencing an election, and therefore do not warrant treatment as expenditures under the Act and Commission regulations. Mr. King may choose to make at least some donations to the 501(c)(3) charitable organizations regardless of whether the performers appear at any campaign events, and at least some of the performers would choose to volunteer their services to candidates regardless of whether Mr. King makes any donation to any 501(c)(3) charitable organizations. In addition, each performer would select the campaign events at which he or she would perform, while Mr. King would choose the charitable organizations. The request does not indicate that any performer’s appearance would depend on Mr. King making a donation.

2. *May the Foundation make the proposed donations to the section 501(c)(3) charitable organizations described in the request?*

Yes, the Foundation may make the proposed donations to the charitable organizations described in the request.

The Act prohibits corporations, including corporations organized under section 501(c)(3) of the Internal Revenue Code, from using corporate treasury funds to make contributions or expenditures in connection with any election for Federal office. *See* 2 U.S.C. 441b(a); 11 CFR 114.2(b). The request does not state whether the Foundation would be incorporated. Even assuming that it would be, however, the proposed charitable donations would be permissible. For the reasons explained above, the donations would not be contributions and would not warrant treatment as expenditures under the Act and Commission regulations.

3. *May Mr. King and the Foundation publicize their activities through communications other than “public communications” under 2 U.S.C. 431(22) and 11 CFR 100.26?*

Yes, Mr. King and the Foundation may publicize their activities as described in the request, provided the Foundation is not incorporated and making communications that constitute endorsements or independent expenditures to individuals outside its restricted class. The provisions in the Act and Commission regulations regarding coordinated communications and “disclaimer” requirements would not apply. Those provisions apply only to a “public communication” under 2 U.S.C. 431(22) and 11 CFR 100.26, and you have stated that none of the communications by Mr. King would be “public communications” within the meaning of 2 U.S.C. 431(22) and 11 CFR 100.26. *See* 11 CFR 109.21 and 110.11.

Mr. King’s communications to the public through his own website would not be “public communications,” and they would not be “contributions” or “expenditures”

because they would be exempt as individual Internet activity.<sup>6</sup> The communications by the Foundation on its own website would likewise not be “public communications,” and the Foundation would not make an expenditure or contribution merely by engaging in the website activity proposed in the request: listing the work done by the charity, the volunteers, and committees for which they volunteered, and the charitable donations made on their behalf.

If the Foundation is an incorporated entity, however, it would be generally prohibited from making endorsements beyond its restricted class and prohibited from making independent expenditures beyond its restricted class.<sup>7</sup> *See* 2 U.S.C. 431(17) and 441b, 11 CFR 100.16 and 114.2(b); *see also* 11 CFR 114.4(c)(6) and Advisory Opinion 1997-16 (ONRC Action).

4. *May Mr. King solicit the authorized committees of Federal candidates for donations to the section 501(c)(3) charitable organizations described in the request?*

Yes, Mr. King may solicit the authorized committees of Federal candidates for donations to the charitable organizations described in the request. Although agents of any political party committee are prohibited from soliciting funds on behalf of tax-exempt organizations that make disbursements in connection with any Federal election, there is no indication that Mr. King would make such solicitations as an agent of a political party committee. *See* 2 U.S.C. 441i(d) and (e), 11 CFR 300.37 and 300.50-300.52. Moreover, you have informed us that all of the potential recipient charitable organizations described in the request would be screened to ensure that they do not conduct any activities in connection with any Federal or State election.

In addition, Federal candidates may donate contributions they receive to 501(c)(3) organizations. *See* 2 U.S.C. 439a(a)(3), 11 CFR 113.2(b); *see also* Advisory Opinions 2005-06 (McInnis), 2005-05 (LaHood), and 2003-32 (Tenenbaum). Accordingly, Mr. King’s solicitation of donations from Federal candidate committees to the charitable organizations described in the request would be consistent with 2 U.S.C. 439a(a) and permissible under the Act and Commission regulations.

The Commission expresses no opinion regarding any tax ramifications of the proposed activities because those issues are not within the Commission’s jurisdiction.

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<sup>6</sup> The term “public communication” does not include communications over the Internet, except for communications placed for a fee on another person’s Web site. *See* 11 CFR 100.26. Moreover, uncompensated Internet activities by individuals and groups of individuals, which includes creating, maintaining or hosting a Web site, is exempted from both the definitions of “contribution” and “expenditure.” *See* 11 CFR 100.94 and 100.155.

<sup>7</sup> The request does not indicate whether Mr. King or the Foundation will make any communication that would expressly advocate the election or defeat of a clearly identified candidate for Federal office such that it would qualify as an “independent expenditure” under 2 U.S.C. 431(17) and 11 CFR 100.16. Mr. King and the Foundation, if not incorporated, would incur reporting obligations for independent expenditures aggregating in excess of \$250 with respect to a given election within a calendar year. *See* 2 U.S.C. 434(c); 11 CFR 104.4 and 109.10.

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 requestor may not rely on that conclusion as support for its proposed activity. The advisory opinions cited herein may be found on the Commission's website at [www.fec.gov](http://www.fec.gov).

Sincerely,

(signed)

Robert D. Lenhard  
Chairman