



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 12, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2013-04

Marc E. Elias, Esq.
Jonathan S. Berkon, Esq.
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Suite 600
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Dear Messrs. Elias and Berkon:

We are responding to your advisory opinion request on behalf of the Democratic Governors Association (“Association”) and Jobs & Opportunity. The Association and Jobs & Opportunity seek to spend nonfederal funds on “federal election activity” — specifically voter registration, get-out-the-vote (“GOTV”), voter identification, and generic campaign activity — to support Democratic gubernatorial candidates in the 2014 elections. The Commission concludes that the Association must use federal funds to finance its federal election activity.

Background

The facts presented in this advisory opinion are based on your letter received on June 12, 2013, and your email dated June 25, 2013.

The Association is an unincorporated political organization that holds tax-exempt status under section 527 of the Internal Revenue Code. Its membership consists only of incumbent Democratic governors. The Association is not affiliated with a national, state, or local party committee.

The Association’s mission is to support Democratic governors and gubernatorial candidates. It maintains a staff that provides strategic advice to gubernatorial campaigns, highlights achievements of Democratic governors, provides policy guidance to Democratic governors, and criticizes the policies of Republican governors.

To pay for its operations, the Association accepts contributions outside the amount limitations and source prohibitions of the Act (“nonfederal funds”). As required by state law, the Association registers committees with state campaign-finance agencies and maintains state-specific accounts that comply with state source restrictions and amount limitations. Through these state-specific accounts, the Association spends nonfederal funds.

Jobs & Opportunity will be a political organization under section 527 of the Internal Revenue Code and an unincorporated association under Washington, D.C., law. Jobs & Opportunity’s members will consist only of the Association’s executive director and its chief operating officer; no officeholders or candidates will be members of Jobs & Opportunity. Jobs & Opportunity plans to make “independent expenditures” in selected gubernatorial races. To comply with state prohibitions on coordination, the Association’s members “will generally not play a role” in decisions about Jobs & Opportunity’s daily operations or how it spends its funds.

The Association and Jobs & Opportunity will make disbursements for voter registration, GOTV activities, voter identification, and generic campaign activities in connection with the 2014 elections. The Association and Jobs & Opportunity plan to use nonfederal funds to pay for these activities. Neither organization, however, will use nonfederal funds to pay for public communications that promote, support, attack, or oppose federal candidates.

Questions Presented

- 1. Is the Association required to use federal funds to pay for voter registration, GOTV, voter identification, and generic campaign activity that meet the definition of federal election activity?*
- 2. Is Jobs & Opportunity required to use federal funds to pay for voter registration, GOTV, voter identification, and generic campaign activity that meet the definition of federal election activity?*

Legal Analysis and Conclusions

- 1. Is the Association required to use federal funds to pay for voter registration, GOTV, voter identification, and generic campaign activity that meet the definition of federal election activity?*

Yes, because it is an “association . . . of individuals holding State or local office,” the Association is required to use federal funds to pay for voter registration, GOTV, voter identification, and generic campaign activity that meet the definition of federal election activity.

The Act and Commission regulations require any “association or similar group” of state or local candidates or officeholders to pay for “federal election activity” using

funds subject to the limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(b)(1); 11 C.F.R. § 300.32(a)(1). Federal election activity includes voter registration activity within 120 days before a federal election, and voter identification, GOTV, and generic campaign activity conducted in connection with an election in which a candidate for federal office appears on the ballot. 2 U.S.C. § 431(20)(A)(i)-(ii); 11 C.F.R. § 100.24(b).

The Association falls squarely within the express terms of section 441i(b): It is “an association . . . of individuals holding State office,” *i.e.*, incumbent Democratic governors. The plain text of the statute encompasses groups like the Association. The Commission therefore concludes that 2 U.S.C. § 441i(b)(1) and 11 C.F.R. § 300.32(a)(1) require the Association to use federal funds to pay for federal election activity, as defined at 2 U.S.C. § 431(20).

2. *Is Jobs & Opportunity required to use federal funds to pay for voter registration, GOTV, voter identification, and generic campaign activity that meet the definition of federal election activity?*

The Commission was unable to approve a response to Question 2 by the required four affirmative votes. *See* 2 U.S.C. §§ 437c(c), 437d(a)(7); *see also* 11 C.F.R. § 112.4(a).

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 requestors may not rely on that conclusion as support for their proposed activity. Any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.

On behalf of the Commission,

(signed)
Ellen L. Weintraub
Chair