



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 9, 2006

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-08

Craig Engle, Esq.  
Arent Fox PLLC  
1050 Connecticut Ave., NW  
Washington, DC 20036

Dear Mr. Engle:

We are responding to your advisory opinion request on behalf of Matthew Brooks concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to an as-yet unnamed corporation (the "Corporation") to be formed by Mr. Brooks. The Corporation intends to collect and forward contributions from individuals at their request to political committees, Federal candidates, and other entities. The Commission concludes that the proposed activities are permissible.

***Background***

The facts presented in this advisory opinion are based on your letters received on February 17, February 21, and April 19, 2006, and email received on April 24, 2006.

Mr. Brooks intends to form a for-profit corporation that would provide commercial services to individuals ("subscribers") interested in making contributions and donations to Federal and non-Federal candidates, political committees, and non-profit organizations.<sup>1</sup> The Corporation plans to accept funds from subscribers who will, at a later date, direct those funds to be contributed to the candidates or political committees, or donated to other non-profit organizations the subscriber selects. The subscribers will also pay a service fee that will be deposited into the Corporation's treasury. The money the subscriber allocates for future contributions and donations will be deposited into a

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<sup>1</sup> This advisory opinion is limited to addressing your proposal as it relates to Federal candidates and political committees.

separate merchant account, where it will remain until the subscriber designates a candidate, political committee, or other non-profit organization as the recipient of the funds, or asks for the funds to be returned. Once the subscriber indicates to the Corporation that he or she would like to make a contribution or donation, the Corporation will forward the designated amount of funds to the recipient political committee, candidate, or other non-profit organization within ten days.

The Corporation will obtain each subscriber's mailing address, occupation, and employer information and provide it to the recipients, whenever necessary. The Corporation will employ various screening and verification procedures to prevent the making of prohibited contributions, and will forward contributions only insofar as the Corporation deems them permissible. It will disallow subscribers from exceeding contribution limits if that can be determined based on records maintained by the Corporation. Upon registration for the service, subscribers will be informed of the Act's contribution limits and source restrictions, and State laws where applicable, and will be required to attest that they are complying with the Act.<sup>2</sup> The Corporation will provide up-to-date information to subscribers regarding their remaining contribution limits and account balance.

The Corporation will use its best efforts to monitor subscriber contributions made independently of the arrangement with the Corporation to ensure compliance with the Act. If a subscriber makes a contribution using funds not held by the Corporation, the subscriber may report the contribution to the Corporation, and the Corporation will ensure the contribution is recorded in its records and counted towards all relevant contribution limits. The Corporation will not forward any contributions it knows do not comply with the Act and will notify subscribers when they have reached any applicable contribution limit.

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<sup>2</sup> The attestation language will include the following:

Federal law prohibits contributions from the general treasury funds of corporations, labor organizations, or national banks. Therefore we are required to ask you to confirm the following statements:

1. This contribution is made from my own funds, and not those of another.
2. This contribution is not made from the general treasury funds of a corporation, labor organization or national bank.
3. I am not a Federal government contractor, nor am I a foreign national who lacks permanent resident status in the United States.
4. For credit or debit card transactions: 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.

Failure to sign or attest to any of the attestations above will result in rejection of the funds. Additionally, the Corporation plans to inform prospective subscribers that their contributions will be publicly identified on the recipient's disclosure reports.

The Corporation will not place any limits on how a subscriber disburses his or her money, other than refusing to forward contributions it knows do not comply with the Act. The Corporation will not engage in Federal election activity or expressly advocate the election or defeat of any clearly identified candidates or advocate on behalf of any causes. All money in the merchant account will remain the property of the individual subscriber, and the Corporation will provide only an accounting and forwarding service.

Under the business model the Corporation has proposed, the Corporation will be funded entirely by service fees paid by subscribers. The Federal and non-Federal candidates, political committees, and non-profit organizations that receive forwarded contributions and donations will not pay the Corporation for its services, and the Corporation will not enter into a contractual relationship with these entities.

The Corporation is considering providing commentary and analysis of various State and Federal officeholders, non-profit organizations, campaigns, and events as an additional service to its individual subscribers. This may include providing biographical information, voting records of a candidate on particular issues, ratings of a candidate given by various organizations, reelection percentages, the candidate's campaign contribution position, the strength of the candidate's party loyalty, and any relevant media articles.

Subscribers would be asked to identify issues that are of general interest to them. The Corporation would then provide its subscribers with information and analysis relevant to that issue. In some cases, the subscriber may request specific information or analysis from a list of organizations provided by the Corporation. Subscribers may also request specific media articles to be forwarded to them. However, the Corporation may also forward general information, such as biographies of Members of Congress, to all its subscribers, without their making a specific request. Under no circumstances will the Corporation author any of the information or analysis that is forwarded to subscribers.

The Corporation expects that it may receive solicitations directly from candidates, political committees, and non-profit organizations. The Corporation intends to ask its subscribers to fill out a questionnaire that will be used to develop a "donor profile" for each of them. Solicitations matching a subscriber's donor profile will be forwarded to the subscriber. While the Corporation will accept solicitations from any candidate, political party, political committee, or non-profit organization, some solicitations may not be forwarded to the subscriber due to screening based on the subscriber's donor profile. The Corporation does not propose to charge any fee to candidates or political committees for this service.

Finally, the Corporation intends to recruit individuals to serve on its Board of Directors who may also be officers of political committees and non-profit organizations.

***Questions Presented***

- 1. May the Corporation receive and distribute deposits for subscribers' contributions?*
- 2. May the Corporation forward commentary and analysis of Federal candidates to its subscribers?*
- 3. May the Corporation maintain two accounts: one for its corporate treasury, and one for funds held for subscribers to be used to make donations and contributions?*
- 4. May the Corporation receive and forward contribution suggestions from political committees to its subscribers?*
- 5. May the Corporation recruit individuals to serve on its Board of Directors who may also be officers of political committees?*

***Legal Analysis and Conclusions***

- 1. May the Corporation receive and distribute deposits for subscribers' contributions?*

Yes, the Corporation may receive and distribute deposits for subscribers' contributions. The Corporation would provide services to individual subscribers to assist them in making contributions, similar to corporations that provide delivery services, bill paying services, or check writing services. The individual subscribers would compensate the Corporation as an incidental cost in making contributions. Therefore, the Corporation's receipt and distribution of subscribers' contributions would be permissible under the Act and Commission regulations.

- 2. May the Corporation forward commentary and analysis of Federal candidates to its subscribers?*

Yes, the Corporation may forward the proposed commentary and analysis of Federal candidates to subscribers. This service will be provided to subscribers at their request for an additional fee. As such, it is a part of the Corporation's overall business plan to assist subscribers in the making of contributions. Under all of the circumstances present, the proposed activity would be permissible under the Act and Commission regulations.

- 3. May the Corporation maintain two accounts: one for its corporate treasury, and one for funds held for subscribers to be used to make donations and contributions?*

Yes, the Corporation is required to maintain two accounts under the proposal that has been submitted. In order to prevent a contribution by the Corporation to any political

committee or candidate it must use a separate merchant account for funds that will be dispersed as contributions. *See* 2 U.S.C. 441b; 11 CFR 114.2(b). This account must be entirely segregated from the Corporation's general treasury to ensure that the funds are not commingled.

*4. May the Corporation receive and forward contribution suggestions from political committees to its subscribers?*

Yes, the Corporation may forward contribution suggestions from political committees to its subscribers. The Corporation intends to forward only contribution suggestions that the subscribers have previously indicated they wish to receive, and the cost to forward any contribution suggestions will be paid for entirely with subscribers' fees. The Corporation will not exercise any discretion, beyond matching contribution suggestions to the subscribers' donor profile, in determining which contribution suggestions, if any, to forward. This service will be provided to the subscribers as part of the Corporation's overall business plan to assist subscribers in the making of contributions. Under these circumstances, the proposed activity would be permissible under the Act and Commission regulations.<sup>3</sup>

*5. May the Corporation recruit individuals to serve on its Board of Directors who may also be officers of political committees?*

Yes, the Corporation may recruit individuals to serve on its Board of Directors who may also be officers of political committees. However, if these individuals are acting on behalf of a Federal candidate or political party committee while participating on the Corporation's Board of Directors, the Corporation might be directly or indirectly established, financed, maintained, or controlled by a Federal candidate, officeholder, or political party committee, and thus subject to the applicable limitations and prohibitions in 2 U.S.C. 441i(a), 441i(b), and 441i(e)(1)(A) and (B). *See* Advisory Opinion 2005-02 (Corzine) (organization directly or indirectly established, financed, maintained or controlled by Federal candidate may only solicit funds that comply with the limits and prohibitions of the Act, even in connection with a non-Federal election). If the individuals are not acting on behalf of any Federal candidate or officeholder or any political party committee while participating on the Board of Directors, then the Corporation would not be considered to be directly or indirectly established, financed, maintained, or controlled by the Federal candidate or officeholder or political party committee. *See* Advisory Opinion 2003-10 (Reid) (the activities of an individual who acts in his own capacity and not on behalf of a Federal candidate or officeholder will not be attributed to that Federal candidate or officeholder despite an existing agency relationship).

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<sup>3</sup> In addition, if the Corporation were to receive solicitations directed to individual subscribers, and not to the Corporation itself, it would be permitted to forward those solicitations to the proper recipient. This would be a service provided solely to the individual for which the Corporation would be properly compensated.

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.

Sincerely,

(signed)

Michael E. Toner  
Chairman

Enclosures (AOs 2005-02 and 2003-10)