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Sent Via Fax and E-Mail

12 July 2002

Michael Marinelli, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Comments to

Re: Request for Clarification

AOR 2002-07

Dear Mr. Marinelli:

Thank you for faxing me the copy of the staff's Draft Opinion. As we have discussed, ours is not an adversarial relationship, and we have established a relationship of asking and receiving clarifications. This time, I would like to ask for the clarifications.

Let me begin, however, by addressing the point you raise at footnote 9. This is important to my understanding of the Draft and the points I would like clarified because it seems to set the stage for whether the committees would be uncompensated under our proposed program.

The footnote states that creation of the Website "is itself a form of marketing" for which Careau and Mohre need to be compensated and that past Opinions, specifically AO 1992-40, have found that parties bearing the marketing burden "has not been viewed as a meaningful distinction."

Given the facts in AO 1992-40, and relying in part on AO 1988-12, the Commission concluded that it was not a meaningful distinction whether LEC or the political party marketed the service. At page 5, the Draft points out that LEC shares a similarity other "affinity marketing arrangements" that the Commission has not approved:

- The offering entity/corporation ("entity") sought to gain access to political committee membership lists and the use of the party's name and goodwill to market the entity's products
- In exchange for this access, the entity proposed to pay the political party a fee or percentage from the entities accounts

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However, this ignores the line of Opinions where the Commission has allowed vendor-assisted fundraising programs; i.e., the 900-Line Programs referenced in our second May 20th memo. These programs also share similar features:

- As with the affinity marketing arrangements, the offering entity sought to gain access to political committee membership lists and the use of the party's name and goodwill to market the entity's products
- A contract relationship was established to ensure that the vendor would not be left financially at risk
- No funds were to be paid from commingled corporate treasury accounts

In addition to the exceptions, the Commission has identified to the affinity marketing programs, both the Act and the amendments created under the BCRA share a specific feature:

- The unequivocal right for a citizen (a non-prohibited individual) to make voluntary political contributions

During our informal discussions, we have not disagreed on these points. That is why I need to ask for some clarification before responding to the Draft.

First, in the continuation of footnote 8, at the bottom of page 7, the Draft states that "Careau and Mohre do not seem to be in a vendor relationship with the political committees." [Emphasis added.] Could you explain what is meant by this?

Second, the Draft concludes, at page 7, that because Careau and Mohre "are not receiving any payment for their Internet marketing services, your proposal, as presented, is subject to the corporate prohibitions of 2 U.S.C. 441b." The clarification I am seeking regarding this conclusion is in two parts:

1. Does this specifically refer to the points raised in footnote 9? That is, your apparent belief either that Careau and Mohre are not being paid the usual and normal charge for their services or that the point of the this compensation is not fully addressed.
2. Is the converse correct? If Careau and Mohre were being paid for their Internet marketing services, would the program, as presented, be allowable?

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These clarifications are important to our response to the Draft you sent and, I believe, might weigh into the decision process for the Commissioners.

Based on the schedule you sent me for submitting comments, the timing for your response is critical to us. We would like to have a response prepared and filed with your offices on Tuesday, at the latest. Thank you.

Respectfully,



Richard F. Carrott
Chrm. and C.E.O.

cc: Lawrence H. Norton, Esq.
Mary Dove, Commission Secretary
Theodore G. Johnsen

02.07.11 LETTER to MMarinelli_FEC