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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

August 24, 2001
AO-01-19

Edward McCormick, Esq.
60 Salisbury Road
Watertown, MA 02472

Re: Regulations for Credit Card Contributions

Dear Mr. McCormick:

This letter is in response to your June 15, 2001 request for guidance on behalf of the Libertarian Party of Massachusetts ("LPMA") regarding its acceptance of credit card contributions. You have set forth in detail certain procedures that the LPMA would like to adopt in order to accept Internet credit card contributions. You have asked whether these procedures comply with 970 CMR 1.09, the regulations promulgated by OCPF on April 27, 2001 governing the acceptance of credit card contributions.

Question

Do the procedures set forth in your June 15, 2001 letter, which has been attached as "Exhibit A," comply with 970 CMR 1.09?

Answer

Generally speaking, yes. Subject to the following comments pertaining to 970 CMR 1.09(2)(a)(4) and 970 CMR 1.09(6), the procedures set forth in Exhibit A appear to comply with 970 CMR 1.09.

Discussion

1. 970 CMR 1.09(2)(a)(4)

Prior to accepting a credit card contribution, 970 CMR 1.09(2)(a)(4) requires that "the name, address and other billing information" provided by a contributor be compared to cardholder information on file at the card issuing bank. If the information provided by the contributor is "substantially different" from the bank's information, the transaction must be rejected.

To comply with this requirement, you have indicated that LPMA will contract only with a merchant provider who uses the Address Verification System ("AVS"). Under AVS the billing addresses provided by contributors are compared to the billing addresses on record at the card issuing banks. Depending on the results of the comparisons, transactions are given a letter code. Letter codes are classified as either an "exact match," "partial match," "no match," "unavailable" or "retry." The LPMA proposes to accept only those contributions in the exact or partial match categories.

This proposal appears to be incomplete in light of the controlling regulation because, as it has been described, AVS is limited to billing address comparisons. The credit card regulations also require that a would-be contributor's name be verified by the card issuing bank along with any other pertinent billing information. This information is just as important as the billing address in assessing whether the contributor information is "substantially different" from the information supplied by the card issuing bank. In this regard, a strict reliance on AVS as proposed by LPMA without consideration of other information, such as the contributor-cardholder's name, may result in the LPMA's non-compliance with 970 CMR 1.09(2)(a)(4).

In fact, LPMA's reliance on any type of automatic code system, such as AVS, may prove problematic in achieving compliance with 970 CMR 1.09(2)(a)(4) unless there is a mechanism for the committee or merchant provider to independently review each transaction prior to its acceptance. This is because such a system fails to take into account the materiality of the detected inconsistencies. For example, a "Street" versus "Road" variance on a billing address may be an acceptable deviation under the regulation whereas a contributor claiming to live at "125 Main Street' with a "6 Elm Street" billing address may be problematic. Similarly, a situation where the card issuing bank mistakenly had contributor "Anderson" on record as "Andersen" might be acceptable while contributor "John Doe's" attempt to use a card in the name of "Jane Doe" might not. Accordingly, we recommend that any procedures adopted by LPMA to ensure compliance with 970 CMR 1.09(2)(a)(4) include an independent review of questionable data comparisons so that the propriety of attempted transactions may be determined on a case-by case basis.

970 CMR 1.09(2)(a)(4) goes on to state that the merchant provider or committee:

> Shall cause to be displayed on the contributor's computer screen all
> appropriate questions requiring a response from the contributor to
> determine whether the source and amount of a contribution complies
> with M.G.L. c. 55 and if applicable, M.G.L. c. 55A, and 970 CMR 1.09.
> Such questions shall require the contributor to answer with an
> affirmative act such as clicking the cursor in a box or pressing the enter
> key on the computer keyboard.

LPMA has proposed to solicit the following data from contributors to comply with this provision: name, residential address, credit card number and expiration date, occupation and employer. LPMA has stated that it will only reject a contribution when it cannot confirm the name and address of the contributor. This too appears insufficient to comply with the regulation, which requires

more than the collection of data and the verification of a name and address prior to accepting a contribution over the Internet.

As set forth above, a committee must be sure of more that the contributor's name and address before it accepts a contribution over the Internet. It must solicit and verify sufficient information from contributors to be satisfied that the source and amount of an intended contribution complies with the campaign finance law prior to its acceptance. LPMA must, therefore, make appropriate inquiries of its contributors and reject any contribution that does not conform to the law or regulations regardless of whether certain preliminary information has been verified.

2. 970 CMR 1.09(6)

The procedures contemplated by LPMA in Exhibit A also raise an issue concerning 970 CMR 1.09(6), the regulation governing the transmittal of credit card contribution information to depository banks. This regulation states that certain information regarding contributions, including merchant provider fees, must be provided to the depository bank on an OCPF-approved form within three days of the date the contribution was received from the issuing bank.

LPMA has correctly noted that to date OCPF has not issued any new forms in response to the credit card regulations. As such, LPMA proposes that it will report the information required by 970 CMR 1.09(6)(a)(2) to its depository bank on existing CPF Form D 106. Specifically, LPMA offers to report the fees to be paid to its merchant provider in the "Report of Expenditures" section of the form, designating "other" as the purpose of the expenditure.

While it is true that candidates and committees should continue to use OCPF's current form CPF Form D 106 to transmit all of its receipts, including credit card contributions, to its depository bank, the method suggested by LPMA should be avoided because the "Report of Expenditures" section on page two of Form CPF D 106 is for bank use only. Committee information regarding the receipt of credit card contributions should appear only in the "Report of Receipts" section on the front page of the form. Samples of CPF Form D 106 illustrating how LPMA and other depository committees should complete the form with regards to credit card transactions are attached to this opinion as "Exhibit B" and "Exhibit C."

First, the depository bank may find it helpful if LPMA indicates in the "Cash/Bank #" column which deposits are credit card contributions. The gross amounts of contributions received should be set forth and totaled in the "Amount $" column in the "Report of Receipts" section of CPF Form D106, and the fee(s) to be deducted by the merchant provider or vendor should be listed in parenthesis somewhere on the line with the deposit entry, such as next to the amount of the deposit.

How the merchant provider elects to deposit the proceeds of the credit card contributions and deduct its fees will then bear on how the aggregate deposit should be summarized on the form, as the final "Total Deposit" entry should reflect the amount actually deposited into the account. A merchant provider can deposit the proceeds from a credit card contribution into a committee account in one of two ways. The merchant provider may either deposit the gross amount of the contribution into the account and receive payment of its fee separately, or deposit a net amount reflecting the contribution less any per transaction fees contracted by the merchant provider or a vendor.

Where the merchant provider deposits contributions in gross, the amount to be deposited will automatically equal the totaled contributions received. In these instances, the total of the "Amount $,"

column(s) can be entered directly in the "Total Deposit" box. See Exhibit B. Where the merchant provider deducts its or a vendor fee prior to the committee's receipt of the contribution, the committee will need to make an adjustment before entering the "Total Deposit" amount. In these cases the aggregate fees withheld should be set forth in parenthesis and subtracted from the total of the "Amount $" column(s). The product of this subtraction will equal the amount actually deposited in the committee's account. As suggested above, this figure should appear as the "Total Deposit" entry. See Exhibit C.

OCPF recognizes that the LPMA may need to submit a CPF Form D 106 to its depository bank which solely reflects the deposit of credit card contributions and is unaccompanied by cash or check deposits. In these instances, LPMA should forward the completed CPF Form D 106 directly to the bank official or department responsible for completing the committee's paperwork and send a copy of the form directly to OCPF. This should be sent to the bank prior to the due date of the report that includes the credit card deposits. This step will avoid confusion amongst the bank's tellers and facilitate compliance with M.G.L. c. 55, § 19.

This opinion is issued on the basis of representations in your letter and is solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions about this opinion or any other aspect of the campaign finance law.

Sincerely,
/s/
Bradley S. Balzer
Deputy Director

BSB:bp