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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

May 15, 2002
AO-02-22

Dwight Robson, Campaign Manager
Shannon O'Brien Committee
P.O. Box 8914
Boston, MA 02114

Re: Joint Campaign Expenditures

Dear Mr. Robson:

This letter is in response to your March 15 and April 1 requests for opinions regarding fundraising by EMILY's List, a federal political action committee ("PAC"), on behalf of the Shannon O'Brien Committee (the "Committee").

EMILY's List has endorsed Shannon O'Brien's candidacy for Massachusetts governor. Her photograph and profile are featured, along with other state and federal candidates, on the "Recommended Candidates" page of its website, www.emilyslist.org. The purpose of this page is to solicit political contributions for the candidates. The following text appears next to O'Brien's image, "To comply with state campaign finance regulations, we are not accepting contributions to this campaign via the Internet or phone. Please click below to download a printable form to mail in with your contribution. Contact EMILY's List at 202-326-1400 with any questions." The form provided invites contributors to mail checks, in amounts of \$123 or less, payable to the "Shannon O'Brien Committee," to a Washington, DC post office box belonging to EMILY's List.

You have asked two questions involving the extent to which EMILY's List may fundraise on behalf of the Committee. Before turning to these queries it is important to note that only political action committees organized and registered with OCPF may make contributions to influence state elections subject to the provisions of the campaign finance law, M.G.L. c. 55. See M.G.L. c. 55, § 7 and IB-82-01. EMILY's List may not donate money or provide anything of value to any Massachusetts candidates. In order to offset what would amount to in-kind contributions from the federal PAC to the Committee, therefore, the Committee must reimburse EMILY's List at a fair

market rate for all administrative services and supplies expended as the result of coordinated activity to benefit the Committee.¹

QUESTION

May EMILY's List provide a hyperlink on its website to the page of the Committee's website that solicits contributions?

RESPONSE

Yes, as long as the Committee reimburses EMILY's list for any administrative costs associated with the planning, creation or maintenance of the hyperlink, the provision of the link would not constitute a contribution by EMILY's List to the Committee because the hyperlink described does not otherwise appear to have an economic value.

The issue posed by your question is whether the inclusion of a Committee hyperlink on the federal PAC's website would result in a contribution from the PAC to the Committee. A political "contribution" is defined, in part, as "money or anything of value given to an individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate ... and shall include any: (1) gift, subscription, loan, advance, deposit of money, or *thing of value*" See M.G.L. c. 55, § 1. (emphasis added).

In construing what constitutes a "thing of value," this office must look at the context of the phrase. The rules of statutory construction require "that where general words follow specific words in an enumeration ... the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." See Ferguson v. Host International, 53 Mass. App. Ct. 96, 104 (2001), citing Dickson v. Riverside Iron Works, Inc., 6 Mass. App. Ct. 53, 55-6 (1978). In the above definition, "thing of value" follows a list of items that entail a monetary outlay of some sort or a service or transaction with a monetary value. Consequently, "thing of value" must also be read narrowly to include transactions or services that have some economic significance.

Unlike certain items, such as a mailing list or corporate logo, which have market values that are difficult to quantify, it does not appear as though a hyperlink, under the circumstances you have described, would have any market value at all. There have been no facts presented to suggest that the PAC normally charges for the providing of such a link. In fact, hyperlinks are virtually cost-free to provide and are not generally purchased or sold as other website content, such as banner advertisements, may be. Within the Internet industry, the ubiquitous hyperlink is often regarded as a navigational tool not a commodity.²

¹ Independent expenditures by EMILY's List in excess of \$100 that expressly advocate the gubernatorial candidacy of Shannon O'Brien, or any other Massachusetts candidate, must be disclosed by the PAC in accordance with M.G.L. c. 55, § 18A.

² Notwithstanding, this office recognizes that there are some entities that do seek to profit by selling hyperlinks. Owners of certain websites, such as commercial vendors or Internet service providers, may, in fact, charge a significant amount of money to include a link to another site on its page(s). Under those circumstances, it appears that a hyperlink would be a "thing of value" for the purposes of M.G.L. c. 55. Where such is the case, the provision of a hyperlink to a political committee at a discounted rate not available to other political committees would amount to a contribution to the relevant committee.

For these reasons, it appears that the provision of a hyperlink by EMILY's List in itself would not constitute a "thing of value," within the meaning of M.G.L. c. 55, § 1 even though it might result in a benefit to the Committee. And while the amount of staff time involved in creating the hyperlink would likely be minimal, there may be other administrative costs incurred by EMILY's List in conjunction with the placement of the link, including the staff time spent coordinating efforts for this with the Committee. These are amongst the costs that must be borne by the Committee to avoid the receipt of an in-kind contribution from the PAC. See AO-02-12 (advising that there is no minimum threshold for contributions under M.G.L. c. 55) and AO-00-03 ("*Regardless of amount, [a] federal PAC is prohibited from making contributions to a Massachusetts candidate committee*").

QUESTION

In fundraising on behalf of the Committee, is EMILY's List subject to the bundling restrictions set forth at M.G.L. c. 55, § 10A?

RESPONSE

No. Section 10A of the campaign finance law places certain limitations and restrictions on contributions to candidates by legislative agents, individuals charged with delivering pooled corporate contributions and by "political action committee[s], or an officer, employee or other agent of such political committee[s]." It has been the long standing opinion of this office that the definition of "political action committee" only applies to committees organized with OCPF to influence state elections.

A "political action committee" is one of a number of political committees provided for by M.G.L. c. 55. The term "political committee" is defined, in part, as any committee or other organization that receives contributions or makes expenditures "for the purpose of influencing the nomination or election of a candidate, or candidates." See M.G.L. c. 55, § 1. The word "candidate," which is also defined by § 1, includes only candidates for Massachusetts state, county or local office and does not include candidates for any federal office.

Based on the forgoing, EMILY's list is not a political committee or a political action committee for the purposes of the Massachusetts campaign finance law, including §10A. See IB-82-01 and AO-98-02, and compare AO-96-10 (advising that § 10A did not apply to a candidate for federal office). As long as EMILY's List is reimbursed by the Committee at a fair market rate for any administrative costs stemming from its bundling activity, EMILY's List may collect contributor checks made out to the Committee in amounts up to the legal limit.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and your conversations with OCPF staff.

Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive style and is positioned above the printed name and title.

Michael J. Sullivan
Director

MJS/bp

Not in Effect