

Recent Advisory Opinions from the FEC

May 2004

FEC Allows Use of Name "AirPAC"

In FEC Advisory Opinion 2004-1, the Federal Election Commission allowed the Air Transportation Association of America PAC to use the shortened name "AirPAC" on its checks and stationery. This March 11, 2004 opinion allowed such use because the association was the only trade association representing the American airline industry, the shortened name gave adequate notice to the public about the PAC's sponsor and the name incorporated the first and most important part of the association's name. The FEC did mandate that the PAC begin to identify itself publicly as "AirPAC" so that it begins to be commonly known by that name.

FEC Limits Converted Campaign Committees

In an advisory opinion issued on March 11, 2004, the FEC allowed the campaign committee of a retiring Congressman to remain as a multicandidate PAC. However, in FEC Advisory Opinion 2004-3, the Commission limited the PAC, called Dooley for the Valley, to contributing \$1,000 per election to federal candidates from funds the PAC had received as a campaign committee. This limit emanates, according to the FEC, from the Bipartisan Campaign Reform Act of 2002 (BCRA) four-prong limit on expenditures by campaign committees. The four areas of permissible disbursements are as follows:

- Expenditures in connection with the federal candidate's election.
- Ordinary and necessary officeholder expenses.
- Donations to 501(c)(3) charities.
- Transfers, without limit, to party committees.

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The statute and corresponding FEC regulations no longer have a fifth option, which applied to disbursements for "any other legal purpose." Without this open-ended option available for disbursements from campaign committees, the FEC imposed the \$1,000 contribution limit. (In a related matter, the FEC intends to ask Congress to increase this limit to \$2,000 per election.)

Federal Candidates and PACs May Use Meetup.com

On March 25, 2004, the FEC allowed federal candidates and political committees to be included by Meetup, Inc. in a list of Meetup topics and as "Featured Meetups" on Meetup.com. In FEC Advisory Opinion 2004-6, the FEC found Meetup's inclusion of federal candidates and committees in these features not to be contributions or expenditures for two reasons. First, Meetup provided its basic services without charge to all participants, so basic services were not "anything of value." Second, the premium services, such as the "Featured Meetup" services to be provided to federal candidates and committees, were allowable as long as the premium services were the same as those provided to similarly situated non-political customers for the same fee.

MTV May Conduct ITS 'Prelection' under BCRA

In FEC Advisory Opinion 2004-7, issued on April 1, 2004, the FEC allowed MTV and its parent Viacom to conduct surveys of young people about the candidates for president and to air television shows about the results, albeit with two limits. The production and airing of "Prelection" was deemed by the Commission to qualify for the press exemption applicable to news stories, commentaries and editorials.

According to the advisory opinion, the press exemption extends to promoting the show and announcing and publicizing the results of the surveys. None of the promotional or broadcast activities are deemed to be "electioneering communications" under BCRA, even though candidates for president are featured. Moreover, the FEC is allowing MTV to announce and publicize the show and results on the Internet and through email and text messages because Internet sites are common features of media organizations and because such organizations are turning to the latter two mediums.

The FEC did impose two important limits on MTV. First, the FEC said that providing election-related educational materials at community events was not within the normal sphere of press functions. Therefore, the dissemination of such information must follow the usual FEC regulations, including the rule against express advocacy. Second, the FEC stated that the distribution of follow-up emails and text messages some time after the results of "Prelection" had been announced did not qualify for the press exemption. As a result, such messages fall under the usual corporate communication rules, including a prohibition on express advocacy in corporation communications with the general public.