

FEC Advisory Opinion Corner

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Text Message Contributions: Advisory Opinion 2012-30 (Revolution Messaging)

In Advisory Opinion 2012-30, the Federal Election Commission (FEC) considered (1) whether text message contributions may be made in excess of \$50 per billing cycle and \$200 per calendar year/election cycle and (2) whether political committees may share a mobile short code to process text message contributions. (Earlier this year, the FEC approved a proposal to process political contributions by text message and subsequently issued additional advisory opinions providing further procedural guidance.)

The FEC determined that political committees may accept text message contributions that aggregate in excess of \$50 per billing cycle and \$200 per calendar year/election cycle, so long as there is a mechanism for the user to provide his or her name, address, occupation and name of employer. The requestor, a digital technology company, had established a procedure to collect and transmit this information to the political committees that complies with the FEC's recordkeeping and reporting requirements.

The FEC also determined that political committees may share a mobile short code that is used to process text message contributions, so long as there is a mechanism to ensure that contributions will be properly accounted for and that corporate funds will not inadvertently be transmitted to political committees. The requestor proposed to do this by assigning a unique keyword to each political committee that will be included in each responsive text message.

Text Message Contributions: Advisory Opinion 2012-31 (AT&T)

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In Advisory Opinion 2012-31, the FEC determined that wireless carriers may establish a rate structure for processing political committee text message contributions that is different and lower than the existing rate structure for commercial transactions.

The requestor, AT&T, explained that its current text message commercial transaction fee structure typically results in 30 to 50 percent overhead fees. AT&T further explained that political contributors often expect that a significant portion of their contribution will go to the recipient political committee. AT&T proposed to establish a fee structure that is lower than its commercial fee structure, but high enough to cover all of AT&T's operating costs plus a profit. This fee structure would be offered to all political committees.

In approving this lower fee structure, the FEC noted that since AT&T was taking commercial considerations into account, the political committee fee structure would constitute the usual and normal charge for the services and would not be considered a prohibited corporate in-kind contribution.

Multicandidate PAC Status: Advisory Opinion 2012-32 (Tea Party Leadership Fund)

In Advisory Opinion 2012-32, the FEC confirmed that a PAC must meet all three elements in the definition of multicandidate political committee in order to take advantage of a multicandidate committee's higher contribution limits. Under the Federal Election Campaign Act and FEC regulations, a PAC qualifies as a multicandidate PAC—and consequently may contribute an increased amount, up to \$5,000 per election, to federal candidates—once the PAC has been registered with the FEC for at least six months, accepted contributions from at least 50 individuals and made contributions to at least five federal candidates. The requestor, Tea Party Leadership Fund, satisfied the last two criteria but had only been registered with the FEC for five months.

The requestor asserted that the definition of multicandidate committee is unconstitutional. In response, the FEC explained that it lacked the power to deem a federal statute unconstitutional and would continue applying the definition of multicandidate committee as written in the statute.