



ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

ELEC RECEIVED

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity
eContributor.com, Inc.

MAY 01 2000

Mailing Address
655 15th Street, NW, Suite 810
Washington, DC 20005

Day Telephone No.
(202) 628-0222

Evening Telephone No.

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes No

a. If yes, indicate in what capacity it is filing:

Candidate committee	<input type="checkbox"/>	Recall committee	<input type="checkbox"/>
Joint candidates committee	<input type="checkbox"/>	Recall defense committee	<input type="checkbox"/>
Political committee	<input type="checkbox"/>	Lobbyist	<input type="checkbox"/>
Continuing political committee	<input type="checkbox"/>	Legislative agent	<input type="checkbox"/>
Political party committee	<input type="checkbox"/>	Personal financial disclosure statement	<input type="checkbox"/>
Legislative leadership committee	<input type="checkbox"/>	Other (please describe): _____	<input type="checkbox"/>

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:

None

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

PLEASE SEE ATTACHMENT 1

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts:

PLEASE SEE ATTACHMENT 2

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

PLEASE SEE ATTACHMENT 3

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name: Cleta D. Mitchell, Esq.

Mailing Address:
 Sullivan & Mitchell, P.L.L.C.
 1100 Connecticut Avenue, NW
 Suite 330
 Washington, DC 20036

Day Telephone No.
 (202) 861-5900

Evening Telephone No.

Fax Number:
 (202) 861-6065

a. Official Capacity of Person Requesting Opinion:

- Candidate
- Treasurer
- Organizational Treasurer
- New Jersey Attorney representing requesting person, committee or entity
- Other (please describe): Counsel for eContributor.com, a Delaware corporation

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

April 28, 2000
 Dated:

Cleta Mitchell
 Signature

ATTACHMENT I

Question 3

Whether it is permissible, pursuant to The New Jersey Campaign Contributions and Expenditures Reporting Act, N.J. STAT. ANN. §§ 19:44A-1 to -47 (“the Act”), and the Regulations of the New Jersey Election Law Enforcement Commission, N.J. ADMIN. CODE tit. 19, §§ 25-1.1 to -21.1 (“the Regulations”), for a company that provides the services necessary to process credit card contributions made over the Internet to deposit the contributions into its merchant bank account and then transfer the contribution, less the contractual fee for services, into the campaign depository of candidates,¹ established pursuant to N.J. STAT. ANN. § 19:44A-9(c), or the organizational depositories of political parties and other political committees, established pursuant to N.J. ADMIN. CODE tit. 19, § 25-4.6 and N.J. STAT. ANN. § 19:44A-10, respectively.

¹ eContributor.com has also provided the Commission with written comments suggesting a change to the signature requirements for gubernatorial matching funds. Should the Commission adopt our suggestions, eContributor.com would offer its services to gubernatorial candidates who will seek matching funds.

ATTACHMENT 2

Question 4

eContributor.com provides its services to various entities including federal and state candidates, political parties, and other political committees ("clients"). However, eContributor.com has not yet begun offering such services to candidates, parties, or committees in New Jersey, but will do so with the Commission's permission and guidance. Because eContributor.com is awaiting approval to conduct these activities in New Jersey, none of the web sites¹ necessary for facilitating contributions in New Jersey have been designed.²

In order to simplify the contribution process, reduce fundraising costs to clients, encourage public participation in political campaigns, and reduce the likelihood of error from repeated manual data entry, the eContributor.com system allows an individual who makes a contribution over the Internet ("user") to one of eContributor.com's clients to create a personal account ("account") that stores the profile information about the user for later recall. The account will maintain a record of the user's name, address, occupation, employer, phone number, and e-mail address. Should the user be an authorized representative of a corporation or labor union, the system will record the name and address of the entity making the contribution as well as the name of the specific person authorized to make such a contribution.³ Once the user has created an account, should he make a contribution to another eContributor.com client, the profile information is electronically recalled and, unless the user wishes to update the information, it will not have to be manually reentered.

eContributor.com's clients are committees and candidates for public office. Contributor.com would contract with candidates for elective offices in New Jersey who have established a candidate committee pursuant to N.J. STAT. ANN. § 19:44A-9, political parties established pursuant to N.J. STAT. ANN. § 19:5-3, and other political committees established pursuant to N.J. STAT. ANN. § 19:44A-10. eContributor.com will provide all of the services necessary to receive contributions over the Internet including establishing client web site(s) and links between the client's and eContributor.com's web sites, processing credit card payments, transferring funds, and providing data necessary for client's reports pursuant to N.J. ADMIN. CODE tit. 19, §§ 25-10.16 and -7.1. In exchange for such services, eContributor.com will charge fees according to a fee schedule incorporated into its Client Contract. Once

¹ A web site is "[a] place made up of Web pages." Vincent James & Erin Jansen, NetLingo: The Internet Dictionary (visited Aug. 19, 1999) <<http://www.netlingo.com/lookup.cfm?term=web+site>>

² Should the Commission wish to view an example of eContributor.com's system, it may view a demonstration of the federal contribution system located at www.econtributor.com.

³ Thus, an individual could be registered to make contributions on his own behalf using a persona credit card and could be listed under the authorized representative of a corporate registration to make contribution on behalf of the corporation with a corporate credit card.

eContributor.com has been retained by a client to provide the referenced services, eContributor.com will establish links⁴ from the client's web site to its own site.

A user may click the link on the client's site if he wishes to contribute to the candidate, political committee, or political party. Once the user has clicked on the link, he is taken to a web site controlled by eContributor.com. The site will be customized by each client who will be able to tailor the top, bottom, and left side of the web page with customized graphics and text so as to maintain the appearance of the client's web site.

Once the user has either created a new account with all of the required information, or has entered his user name and password he is prompted to enter the amount of the contribution. The user then must check a series of boxes to affirm that he is eligible to make the contribution. Such boxes will include:

- This contribution is made from my own funds, on my personal credit or debit card for which I have the legal obligation to pay, and not those of another.
- I am not a foreign national who lacks permanent resident status in the United States.

If the contribution is from a corporation or labor union, the first box would state:

- I am authorized to make contributions for the corporation, labor union, or other business entity whose funds are used for this contribution.

Once eContributor.com has been given permission to undertake activities in New Jersey, it will establish other check boxes to screen for impermissible contributions. For example one such box for a corporate contributor may be:

- The corporation making this contribution is not a bank, insurance corporation, public utility, cable television corporation, or casino interest.

If the user does not check all of the boxes, the contribution is not accepted and warning messages are provided instructing the user why his contribution cannot be accepted.

Once the boxes are all checked, the system verifies with its own records that the user has not contributed more than his permissible limit. While this only screens contributions made through the eContributor.com system, it provides an additional mechanism to help prevent excessive contributions.

Once the contribution has been screened by the eContributor.com system, the contribution is cleared through the credit card processing company in "real time," which will verify that the billing address submitted matches the address on file. After the credit card processing company has authorized the transaction, the user will be notified on screen and

⁴ A link is "[t]ext and/or an image area on a Web page that a user can click on to 'connect to' or reference another document." Vincent James & Erin Jansen, NetLingo: The Internet Dictionary (visited Aug. 19, 1999) <<http://www.netlingo.com/lookup.cfm?term=link>>.

receive an e-mail message confirming the contribution. Should the transaction be rejected by the credit card processing company, the user will be informed that the transaction has been denied and that he is unable to make a contribution.

The on-screen notification will provide the user with a tracking number, the name of the political committee, and the amount of the contribution, which can be printed by the user if desired. Furthermore, it explains to the user that eContributor.com's name will appear on the user's credit card statement and not the name of the client.

After the contribution has been screened by both the eContributor.com system and by the credit card processing company, the contribution will be electronically deposited into a clearing account maintained by eContributor.com with its merchant bank. This account will be separate from eContributor.com's business accounts. eContributor.com will maintain a separate ledger account for each client whose funds are held in the clearing account. eContributor.com will then transfer the contribution(s) to the candidate or organizational depository account designated by the client less the fees for payment of the services as provided in the client contract.

The client will have real-time access to all of the necessary data to comply with the record keeping and reporting requirements of the Act and Regulations. This data will be downloadable into the client's record-keeping system to prevent the need for manual reentry. The contribution date shall be listed as the date the user authorized the contribution and the amount shall be the full amount of the contribution. The client will then have available the amount deducted for eContributor.com's fees for reporting as a candidate or campaign expenditure.

ATTACHMENT 3

Question 5

eContributor.com, Inc. seeks the Commission's approval to facilitate online credit card contributions for New Jersey candidates, political parties, and political committees utilizing a single merchant account and electronic transfer of such contributions to the candidate's campaign depository, less the contractual fee for services.

This should be a permissible arrangement because the system will screen for prohibited contributions, provide all required disclaimers, maintain all data needed to comply with the reporting requirements of the Act, and deposit the contribution in the official depository account of the client. Specifically, the system complies with all aspects of Section 10.16, "Contributions by electronic transfer of funds." The system will record the date of the contribution as the date the account owner authorizes the contribution as required by Section 10.16(a)(1). The system will record the total contribution charged as the amount of the contribution as required by Section 10.16(a)(2). Along with the full amount of the contribution, the system will record the name and address of the contributor and if the contributor is an individual, the occupation of the individual and the name and mailing address of the employer, fulfilling the requirements of Section 7.1, which is required by Section 10.16(a)(4). Additionally, the fees collected by eContributor.com will be reported as an expenditure by the client, paid to eContributor.com as required by Section 10.16(b).

Further, as described above, the eContributor.com system will require that the contributor certify that he is making the contribution on a credit card which he controls and will then verify that the billing address on file with the credit card company is the same as the address entered in the system. This fulfills the requirements of Section 10.16(a)(3).

Additionally, the system will electronically deposit the contributions into the campaign or organization depository as required by Section 10.16(c). Thus, the only political account ever to receive the contribution will be the official depository. While the contribution will be transferred into eContributor.com's merchant bank account, this is merely a vendor account, necessary for the processing of online contributions. This operates no differently from a bank in the chain of clearing any credit card payment.

Finally, as a matter of public policy, by allowing candidates to contract for all collection procedures with a third party expert vendor (eContributor.com), candidates will be able to invest more time in promoting their candidacies and issues and less time on technical matters. Additionally, because eContributor.com pays for a single merchant bank account it is much more economical for the clients who would otherwise be saddled with the costs of maintaining such an account as their primary depository. Similarly, by providing a standard system for contributors who wish to make online contributions and by providing an easy to use, standardized interface atop a secure system with privacy controls tailored to New Jersey's campaign finance laws, donor confidence and participation is enhanced. Thus, eContributor.com's system will further the policies behind Section 10.16 of "permitting candidates, treasurers, and committees...to take advantage of technological changes in the way financial transactions are conducted." See Rule

Proposal, 31 N.J. Reg. 1446(a) (1999). Furthermore, this system will “provid[e] complete disclosure of contributor information, and will assist candidates and committees who will be able to conduct fundraising activities using modern techniques.” *See id.* Finally, this system is consistent with the policy espoused in N.J. STAT. ANN. § 19:44A-2.1 that “[a]ccessible public disclosure of money...given to a candidate for public office by an individual...has proven to be the most effective means of fostering public awareness of and reducing public skepticism about the current system of financing elections for public office” in that it provides efficient and accurate record-keeping for candidates while assisting the client with screening for impermissible contributions.