



KENTUCKY REGISTRY OF ELECTION FINANCE

Steven L. Beshear
Governor

140 Walnut Street
Frankfort, Kentucky 40601-3240
Phone: (502) 573-2226
Fax: (502) 573-5622
www.kref.ky.gov

Craig C. Dilger
Chairman
John R. Steffen
Executive Director
Emily Dennis
General Counsel

ADVISORY OPINION 2015-001

Any Advisory Opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the Advisory Opinion is required. KRS 121.135(4).

September 22, 2015

VIA FASCIMILE TO (502) 632-5263
AND U.S. MAIL, FIRST CLASS, POSTAGE PREPAID

Mr. Thomas J. Schulz, Esq.
Priddy, Cutler, Naake & Meade, PLLC
800 Republic Building
429 W. Muhammed Ali Blvd.
Louisville, KY 40202

**In re: Posting of Candidate Video on Social Media/ Definition of Contribution
(AO 2015-001)**

Dear Mr. Schulz:

This Advisory Opinion is sent in response to your request regarding whether the posting of a candidate video on Facebook constitutes a "contribution" under Kentucky's Campaign Finance Law. The Registry received your request on August 24, 2015. As required by KRS 121.135(5)(a), your request was posted for public comment on September 1, 2015. No public comments were received.

In your request, you state that your client, the Jefferson County Teachers' Association (JCTA), has received a request to post on its Facebook page a video produced by a state political party concerning a candidate in the 2015 Gubernatorial Election. You explain that the Facebook page is registered to JCTA, whose personnel have administrator status and are able to remove posts. However, posts can be made by anyone, including the general public. You further state that JCTA does not charge any fee for posting on the Facebook page and does not receive any

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income from any commercial advertising in any way related to its Facebook page. Given these facts, you specifically request the Registry's opinion on the following issue:

Would the posting of the video by JCTA or a member of JCTA on the Facebook page fall within the definition of a contribution under KRS 121.015?

Your question concerns the posting of campaign messages on "social media." Candidates, committees, and persons interested in the political process are increasingly using "social media" to communicate with supporters. Candidates and committees can tweet, post campaign messages and photos to Facebook, and allow supporters to see rallies or other events on YouTube. Social media includes Twitter, Facebook, YouTube, Flickr and other sites. These are generally free networking sites.

The definition of "contribution" in KRS 121.015(6) includes "(g)oods, advertising, or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are furnished to a candidate without charge, or at a rate which is less than the rate normally charged for the goods or services. See KRS 121.015(6)(c). According to your request, the JCTA does not charge any fee for posting on its Facebook page and does not receive any income from any commercial advertising in any way related to its Facebook page. To the extent the posting of the video, similar to posting an endorsement on the JCTA website, involves some use of compensated staff time it would generally involve only a *de minimus* value, or would otherwise be exempt from the definition of contribution as a voluntary personal service in the event the video is posted by a JCTA member. See KRS 121.015(7)(a), which exempts "services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, slate of candidates, committee or contributing organization" from the definition of "contribution."

Therefore, under the facts as presented in your request, the posting of a video produced by a state political party concerning a candidate in the 2015 Gubernatorial Election on the JCTA Facebook page, either by JCTA staff or a member of JCTA, does not constitute a contribution as defined by KRS 121.015.

Please keep in mind that this Advisory Opinion is based on the specific facts set forth in your written request, does not cover past conduct, and only may be applied to cover the conduct in the transaction you describe. If you have any questions concerning this Advisory Opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,



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General Counsel

cc: Registry Members
John R. Steffen, Executive Director