

32BJ



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May 14, 2012

Sue Ellen Dodell
General Counsel
New York City Campaign Finance Board
40 Rector St., 7th Fl.
New York, New York 10006

Dear Ms. Dodell:

I write in response to your letter of May 7. As a preliminary matter, we strongly disagree with your characterization of the union's activities in our initial letter as "actions undertaken by a union in support of candidates" or that they constitute "[electoral] campaign activity." To the contrary, we described trade union actions and communications in support of a fair contract for workers. Our question concerns traditional labor activity that neither supports nor opposes any candidate, but which mentions candidates' names and thus is deemed "electioneering communications."

We reiterate our request for a definite response to the general question of whether an "electioneering communication" as defined in Rule 13-01 constitutes an in-kind contribution to a campaign if it was a "non-independent expenditure" within the meaning of Rule 13-05.

We do not understand why "analysis of these issues is necessarily fact-intensive." Nothing in the Charter, the Campaign Finance Act or the CFB's Rules suggests that distinctions among different "electioneering communications" or among different "non-independent expenditures" under the facts of our letter would produce different conclusions about in-kind contribution treatment. Without clear guidance on our general question, we, and many others, will be unable to determine what the law requires from us, and we respectfully suggest that in that event the Rules are too vague to be enforceable.

You ask for more details concerning: 1) which actions constitute "fostering or cooperation," and 2) the content of the flyer. If these additional details are relevant, please explain in your Advisory Opinion what forms, manner or extent of "fostering or cooperation" lead to a finding of an in-kind contribution and which do not. Similarly, please explain in your Advisory Opinion which forms of "electioneering contributions" would be considered in-kind contributions and which not, under the facts of our letter. At the very least, please explain why the additional facts we provide below are necessary to answering our general question above and what it is about those facts that is determinative in reaching that answer.

Without agreeing that the details you request are relevant to answer the question we posed, please assume the following additional facts.

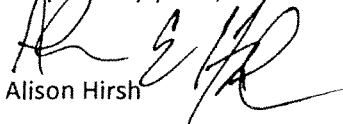
The candidates "fostered and cooperated" by:

1. The candidates requested that the Union do the mailing to publicize the rally; and
2. The candidates reviewed and approved the leaflet prior to mailing.

The content of the leaflet is:

"Come to a rally to support the [name of company] workers who are fighting for a fair contract. Speakers will include [names of candidates.] [date, time and place.]"

Respectfully yours,


Alison Hirsh