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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

March 7, 2001

AO-01-02

Kevin Conroy, Esq.
Foley, Hoag & Eliot, LLP
One Post Office Square
Boston, MA 02109-2170

Re: Natasha Perez/Gravestar, Inc.

Dear Mr. Conroy:

This letter is in response to your request for an opinion regarding the employment of Natasha Perez by Gravestar, Inc. in the event that Ms. Perez accepts a position with the Massachusetts Democratic State Committee (the "Committee").

You have stated that Gravestar, Inc. is an asset management corporation based in Cambridge, Massachusetts. Gravestar's Community and Public Affairs Manager, Natasha Perez, has recently been offered the position of Deputy Director at the Massachusetts Democratic State Committee and would like to accept employment with the Committee, as well as remain in the same position with Gravestar.

Ms. Perez presently is responsible for obtaining local permits for Gravestar's real estate development projects. While she generally works about forty hours a week for Gravestar, her hours there are flexible. Much of her role is to meet with local officials and attend public meetings, some of which are in the evening, and therefore she is not expected to always be available during normal working hours. Ms. Perez receives a set salary in her role at Gravestar.

As Gravestar understands it, Ms. Perez will work between fifteen and twenty hours a week for the Committee and will be paid \$25,000 a year. Her responsibilities in her job with the Committee will include communications and outreach and she will be responsible for setting up meetings with different constituencies. Her hours in that position will also be flexible. Generally, she will perform her

activities for the Committee during the evenings and on weekends; however, she may need to perform activities for the Committee on weekdays.

Ms. Perez will have an office and perform most of the work for the Committee at the Committee's office, but she may from time to time be required to undertake activities within her employment by the Committee from Gravestar's offices. Activities she undertakes for the Committee at Gravestar's offices may include infrequent use of telephones and computers owned by Gravestar. The Committee will reimburse Gravestar for Ms. Perez's use of Gravestar's office equipment.

As a general policy, Gravestar allows its employees to perform non-business related activities during normal work hours and also allows its full-time employees to take on a second job. However, Gravestar expects its employees to make up the time that the employee misses performing these non-business activities. Similarly, despite her employment with the Committee, Gravestar expects Ms. Perez to remain as a full time employee, to perform the same roles as she had before and to devote the same amount of time to those roles. Ms. Perez will continue to receive the same salary from Gravestar.

Pursuant to M.G.L. c. 55 § 8, a corporation cannot contribute to a political committee. To ensure compliance with section 8, you have asked the following questions on behalf of Gravestar:

Questions and Answers

1. Would Ms. Perez's employment by Gravestar and the Committee be considered a contribution by Gravestar to the Committee?

No. Employment by Gravestar would not constitute a contribution by Gravestar to the Committee unless employment with the Committee is made a condition of her employment at Gravestar or Gravestar accommodates her employment with the Committee in a manner inconsistent with Gravestar's normal employment practices.

2. Would Ms. Perez's infrequent use of the telephone, computers or other office equipment at Gravestar be considered a contribution by Gravestar to the Committee?

No. Use of the telephone, computers or other equipment would not be a contribution, assuming the Committee promptly reimburses Gravestar for such use.

Discussion

The campaign finance law defines "contribution" in part as "compensation for the personal services of another person which are rendered to [a] candidate or committee." See M.G.L. c. 55, § 1. Therefore, if Gravestar were to compensate Ms. Perez for work she will do for the Committee, such compensation would be considered a corporate contribution made in violation of section 8. However, since Gravestar will be requiring Ms. Perez to perform the same roles and devote the same amount of time for Gravestar as she did before employment with the Committee and is not requiring her to provide her services to the Committee, her compensation from Gravestar will not be a contribution to the Committee. Furthermore, Gravestar allows its employees to undertake non-work related activities during business hours and allows its full-time employees to take on a second job. Therefore, Gravestar will be treating Ms. Perez like other employees and will not be making a special exception for her. See Op. Atty. Gen., Nov. 6, 1980, p.119, (the Attorney General, in interpreting section 8, stated that if a corporation "generally allows employees to perform non-business functions during normal working

hours, then the corporation could allow an employee to perform volunteer political work in a similar manner”).

Pursuant to 970 CMR 2.07(3), *if not reimbursed*, Ms. Perez's use of office equipment at Gravestar would involve the making of a contribution by Gravestar to the Committee. You have stated that the Committee will reimburse Gravestar. Such reimbursement, assuming the amount paid is the fair market value and that reimbursement is promptly made, negates any “value” that the Committee would receive from the corporation. The office has stated that if there is a delay in providing reimbursement, the delay may constitute something of value, or an “advance” and therefore a “contribution.” *See* M-97-04 (stating that a committee that does not reimburse an individual who has provided a good or service to the committee within 30 days has received a contribution from that person).

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in black ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director