



Judgment of the USC Appeals Board in the matter of:

Team Palin-Cohen v Elections Governance Committee, 2016:1 Election

Judgment Date: January 29, 2016

Panel: Brandt Chu (Chair), Laura Lepine (Deputy Chair), and Sukhbir Thind

Reasons for Judgment: Lepine

1. This is an appeal from a decision of the Elections Governance Committee (hereafter the “EGC”) that found that an agreement between the petitioner, Team Palin-Cohen (hereafter “TPC”) and the London Taphouse to provide the petitioner’s guests with free bar admission (free cover) constituted a contribution under s. 6 of the EGC Finance Procedure. The section reads as follows:

6. Contributions and Expenses

Candidate shall have a spending limit for the campaign consisting of expenses and contributions.

1. Expenses shall be defined as costs incurred by, or on behalf of, a candidate for goods, privileges, or services for use in their election campaign
 - a. If a candidate receives goods, privileges, or services at a discounted price that is not available to the public, the expense shall be recorded at fair market value, as per its definition in By-Law #2
1. Contributions shall be defined as goods, privileges, or services donated or given in whole or in part, to a candidate or their campaign for the purposes of campaigning.

2. The definition of Fair Market Value (FMV), contained in s.8.i of By-Law #2 reads:

8. The calculation of a candidate’s spending shall be made according to the fair market value of all purchases, services, donations, and items, which are deemed by the Committee to be used for the purposes of the campaign.

i. Fair Market Value (“FMV”) of a product or service shall be the lowest price, without special concessions or discounts that is available in London for that product or service, to all persons who approach a person that sells, or deals in, that product or service

3. In its submissions to the Board, TPC argued that free cover offered by a bar or nightclub does not constitute a contribution under s. 6(2) of the EGC Finance Procedure. TPC argued that free cover is not a contribution as it was offered by the London Taphouse in the bar’s own self-interest, and not in support of TPC’s electoral campaign. Furthermore, the petitioner argued that free cover in exchange for bringing

guests is a standard offer by a bar or nightclub, an offer available to the public and not exclusive to the petitioner. The petitioner also submitted that, if free cover were found to be a contribution, the FMV of free cover should be assessed at \$0, instead of \$5 as established by the EGC.

4. After reviewing the response of the EGC to TPC's application, the Appeals Board (hereafter the "Board") accepted to hear the appeal on the following two issues.

1. Does a special arrangement with a bar or nightclub wherein a particular candidate's guests are offered free admission (i.e. free cover) by the bar/nightclub's management constitute a campaign contribution at Fair Market Value?

2. Does a special arrangement with a bar or nightclub wherein a candidate arranges with the bar/night club's management to have free cover offered for all patrons who attend regardless of whether or not the patron is there in support of the candidate constitute a campaign contribution at Fair Market Value?

5. On the first issue, the Board rules in favour of the respondent, finding that such an arrangement would constitute a campaign contribution to be assessed at FMV. On the second issue, the Board rules in favour of the petitioner, finding that such an arrangement wherein free cover is offered to all patrons whether or not they supported a candidate's campaign would not constitute a campaign contribution. The Board's reasons are as follows.

Issue 1: Free Cover to a Candidate's Guests

6. The Board determines that under this first scenario, free cover would constitute a contribution and would therefore be required to be recorded at Fair Market Value for the purposes of the electoral campaign. Under s. 6(2) of the EGC Finance Procedure, contributions are defined as "goods, privileges, or services donated or given in whole or in part, to a candidate or their campaign for the purposes of campaigning." While there is no dispute that the London Taphouse was willing to provide TPC with free cover to its campaign supporters, the Board assessment is concerned with whether such an arrangement would constitute a good, privilege, or service; and if so, whether this good, privilege, or service would be for the purposes of campaigning.

7. The Board is of the opinion that free cover, in the circumstances, constitutes a service for the purposes of s. 6(2) of the EGC Finance Procedure. The EGC Finance Procedure does not provide clear definitions of what constitutes goods, services, and privileges. As a result, the Board must attempt to categorize free cover in a way consistent with the Procedure and its enabling By-Law. While free cover can be manifested physically as a tangible object that can be traded and exchanged (a good), free cover is in essence an intangible provided by bars and similar establishments to designated patrons (a service). It would not be inconsistent with the EGC Finance Procedure if free cover were deemed a privilege and it may well be in some circumstances. However, the facts of this case suggest that the free cover obtained by TPC in this case is something offered to any group of patrons of a large enough quantity. As it is offered to groups based on objective criteria rather than subjectively and haphazardly, it should constitute a service rather than a privilege in the circumstances.

8. After determining that free cover constitutes a service in the circumstances, the Board must now turn to the question of whether such a service is provided in whole or in part "for the purposes of campaigning". The Board accepts that the London Taphouse's financial self-interest is likely its primary

purpose in giving TPC and its supporters free cover. However, it is the purposes of the candidate that are relevant for determining whether a campaign contribution is being made. Under the first scenario, a candidate is securing a service for the benefit of campaign supporters alone. This is a clear advantage to one set of campaign supporters over other campaign teams, and can therefore be seen as increasing the advantaged group's likelihood of electoral success. TPC's motivation then in securing the arrangement is to benefit their campaign team, resulting in a service received for the purposes of campaigning.

9. Under such a scenario, the appropriate FMV calculation should be left to the expertise and discretion of the EGC.

10. The appeal on the first issue is thus dismissed.

Issue 2: Free Cover to All Patrons

11. The Board determines that under the second scenario, in which a candidate organizes free cover for all patrons at a bar or nightclub – regardless of whether the patron attended in support of the candidate – such an arrangement would not constitute a campaign contribution, and must therefore not be assessed at FMV for the purposes of the electoral campaign.

12. Unlike under the first scenario, a candidate arranging free cover for all patrons irrespective of whether or not they support their campaign would not trigger the application of s. 6. While such an arrangement may confer some benefit to the candidate's electoral prospects, the role of the EGC is not to police all aspects of the lives of candidates but to ensure fairness in the electoral process. A candidate simply negotiating with a bar or nightclub to remove its cover charge for a given period of time for all patrons does not engage the same considerations as when a candidate obtains free cover for exclusive use by her supporters. The connection between the free cover and support of a particular campaign are much more limited under the second scenario since the candidate has significantly less control of the environment and the direct benefit to their campaign is less obvious. Such an arrangement would therefore fall outside the "purposes of campaigning."

13. Absent this purpose, the Board allows the appeal on the second issue, holding that this type of arrangement would not constitute a campaign contribution.

14. It should be noted that the Board did not consider in either issue whether the good, privilege, or service was available to the public. The clause containing this consideration is s. 6(1)(i). Since s. 6(1)(i) clearly indicates that it only applies to expenses and not contributions, it was not relevant to the Board's decision.

DISPOSITON SUMMARY:

The appeal of TPC is allowed in part.