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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA ITEM**  
For Meeting of: 5-20-99

May 13, 1999

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon *Chw for GAP*  
Staff Director

FROM: Lawrence M. Noble *[Signature]*  
General Counsel

N. Bradley Litchfield *[Signature]*  
Associate General Counsel

Michael G. Marinelli *[Signature]*  
Staff Attorney

SUBJECT: Draft AO 1999-11

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 20, 1999.

Attachment

1  
2 **ADVISORY OPINION 1999-11**

3  
4 **Mary Kay Scullion**  
5 **325 Bartlett St.**  
6 **Lansing MI 48915**

**DRAFT**

7  
8 **Dear Ms. Scullion:**

9  
10 **This refers to your letters dated March 23 and April 12, 1999, requesting an**  
11 **advisory opinion concerning the application of the Federal Election Campaign Act of**  
12 **1971, as amended ("the Act"), and Commission regulations to the funding of**  
13 **advertisements for meetings by Ms. Dianne Byrum with constituents.**

14 **Ms. Byrum is currently a member of the Michigan State Senate and a**  
15 **Congressional candidate for the 2000 election cycle. She has previously served as a**  
16 **member of the Michigan House of Representatives. On January 1, 1999, she began**  
17 **-serving a 4-year term in the Michigan State Senate. You state that in the near future she**  
18 **will announce her candidacy for the U.S. House of Representatives to represent the 8<sup>th</sup>**  
19 **Congressional District of Michigan.**

20 **You explain that for a period of at least seven years Ms. Byrum has conducted a**  
21 **series of weekly "coffees" in restaurants in various locations in both the house and senate**  
22 **districts she has represented. These events have been used as a forum for constituents to**  
23 **discuss items of State interest or pending State legislation.**

24 **The coffees have been advertised periodically on billboards located in her State**  
25 **legislative district. The billboards have a picture of Ms. Byrum and invite the public to**  
26 **join her for coffee and conversation. Rather than specify a location (because the locations**  
27 **change), the billboards list her State senate phone number and advise the public to call**

1 there for time and location. For the last seven years, there has been one coffee at one  
2 location per week. The coffees are always held on Thursday morning. The only  
3 deviation from this has been when scheduling conflicts arise and a coffee is canceled.  
4 There is no intention at this time to increase the number of coffees or change the locations  
5 of these events.

6 The proposed billboards have not been nor would they be displayed outside of  
7 Ms. Byrum's State senate district.<sup>1</sup> There would will be no increase in the number or  
8 location of billboards during the pendency of the Congressional campaign. Prior to this  
9 request for an advisory opinion, Ms. Byrum had been displaying the notice of the coffees  
10 on one billboard per month. (The contract for the one billboard per month is on hold  
11 pending the outcome of the opinion request). There are no plans or intention to increase  
12 the number or duration of the billboards if Ms. Byrum is permitted to resume utilizing  
13 them.<sup>2</sup>

14 You further explain that prior to recent changes in the Michigan Campaign  
15 Finance Act, the billboards were paid out of her office holder expense fund. They are  
16 now paid out of Ms. Byrum's State Senate campaign account as an office-related  
17 expense. This expense, you affirm, is consistent with and permitted under Michigan's  
18 Campaign Finance Act.

19 During the pendency of her candidacy for the U.S. House of Representatives, Ms.  
20 Byrum will continue to serve as a Member of the Michigan Senate. Ms Byrum intends,

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<sup>1</sup> Pursuant to Michigan law, the billboards will be paid for out of State senate campaign funds and may not be placed outside of the boundaries of her senatorial district.

<sup>2</sup> It is anticipated that Ms. Byrum's chief of staff of her State senate office will continue to be in attendance at these coffees. As with past State office elections, he will be a volunteer on the Congressional campaign.

1 during her term of State office, to continue conducting and advertising the coffees as  
2 outlined above. It is also her intention to confine points of discussion at the coffee to  
3 State matters. You further explain that because discussions at the coffees are generally  
4 one on one or in very small groups, they more often than not focus on constituent service  
5 needs or specific concerns about pending or enacted Michigan law. In order to provide  
6 effective assistance, Ms. Byrum's senate office records the name, address and phone  
7 number of the individual making a request. Because Ms. Byrum's senate office operates  
8 on a policy of protecting the privacy of constituents, that information is never translated  
9 into files that can be utilized in any campaign effort.<sup>3</sup>

10 You ask whether Ms. Byrum may continue to advertise the coffees using  
11 billboards paid for by her Michigan State Senate campaign account or whether her  
12 announced candidacy for the U.S. House requires that the billboards be paid for by her  
13 Federal campaign committee.

14 The Act and Commission regulations define the terms "contribution" and  
15 "expenditure" to include gifts of anything of value and any purchase or payment made for  
16 the purpose of influencing the election of any person to Federal office. 2 U.S.C.  
17 §431(8)(A)(i) and (9)(A)(i), 11 CFR 100.7(a)(1) and 100.8(a)(1). See 2 U.S.C.  
18 §441b(b)(2); 11 CFR 114.1(a)(1). Any contribution or expenditure is required to be  
19 disclosed by the receiving and disbursing committee. 2 U.S.C. §434(b), 11 CFR  
20 104.3(a) and (b), 104.13. Contributions are subject to the limitations of the Act at 2

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<sup>3</sup> In addition to the more generic coffees which involve Ms. Byrum sitting at a table and talking with constituents—perhaps in a group of 2 or 3 or individually—she occasionally will host a community meeting on a specific issue that is targeted for a specific audience. These community meetings are generally held in the evenings or on weekends and are not advertised via the billboard method. More

1 U.S.C. §441a(a) and prohibitions at 2 U.S.C. §§441b, 441c, 441e, and 441f. If the  
2 activity in question is for the purpose of influencing your election, this will implicate the  
3 limits or permissibility of the source of funds to be used to fund the expenditures in  
4 question, and the candidate committee's need to report the amounts expended as  
5 contributions and/or expenditures.

6 The Commission has frequently considered whether particular activities involving  
7 the participation of a Federal candidate, or communications referring to a Federal  
8 candidate, result in a contribution to or expenditure on behalf of such a candidate under  
9 the Act. The Commission has determined that financing such activities will result in a  
10 contribution to or expenditure on behalf of a candidate if the activities involve (i) the  
11 solicitation, making or acceptance of contributions to the candidate's campaign, or (ii)  
12 communications expressly advocating the nomination, election or defeat of any  
13 candidate. See Advisory Opinions 1996-11, 1994-15, 1992-37, 1992-6, 1992-5, and  
14 opinions cited therein. The Commission has also indicated that the absence of  
15 solicitations for contributions or express advocacy regarding candidates will not preclude  
16 a determination that an activity is "campaign-related." Advisory Opinions 1996-11,  
17 1990-5, and 1989-32.

18 More specifically, the Commission has concluded that events in which Federal  
19 officeholders participate in the performance of their duties as officeholders are not  
20 campaign-related simply because the officeholders may be candidates for election or re-  
21 election to Federal office, and that payments associated with the expenses of such events

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importantly, they are designed to address a specific issue that is pending in the State legislature. These sessions are held infrequently (less than 4 in a calendar year).

1 are not contributions to that officeholder's campaign, absent any campaign-related  
2 activity at that event. See Advisory Opinions 1994-15 and 1992-5 (Member of Congress  
3 hosting public affairs cable program); Advisory Opinion 1991-17 (Congressman's  
4 participation in a voter education video program); Advisory Opinion 1988-27 (involving  
5 a speech at a PAC fundraiser by a Congressman in return for an honorarium within four  
6 months of an election, where the PAC, in an unrelated action, might also contribute to his  
7 campaign). See also Advisory Opinions 1981-37 (corporate and union purchases of  
8 tickets for a series of public affairs forums to be moderated by a Member of Congress)  
9 and 1980-89 (donation of refreshments to a reception held by a Member of Congress for  
10 his advisory committee on the arts).

11           These opinions are relevant to your situation. The fact that they concerned  
12 Federal rather than State officeholder duties is not a significant distinction since the basic  
13 expectations, duties and obligations of both levels of public service are similar.<sup>4</sup> In this  
14 regard, the Commission notes your representations that Ms. Byrum will limit the  
15 discussion to issues relating to her constituents' needs or issues affecting her State  
16 senatorial district.<sup>5</sup> The Commission also notes the other representations made in this  
17 request: that the proposal described in your clients request has been an ongoing activity

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<sup>4</sup> The Commission has also examined the participation of non-Federal officeholders in public issue related events or activities. These have involved the same analysis as for candidate related events, whether the circumstances of the event will expressly advocate the election of the candidate or the defeat of his opponent, whether the event will permit the solicitation, making or acceptance of contributions, or whether there are other circumstances that indicate that the event or activity should otherwise be considered campaign related. See Advisory Opinions 1992-37 (candidate hosting radio programs); 1992-5 (candidate involved in a university run public speaker's program); 1990-5 (candidate publishing newsletter), 1989-32 (State officeholder heading a committee involved in a State ballot initiative effort which was considered campaign related).

<sup>5</sup> The Commission also assumes, as in the above opinions, that at the events themselves, the organizers will not place banners, posters or any similar item advertising Ms. Byrum's candidacy for Congress. See Advisory Opinions 1994-15, 1992-6, and 1992-5.

1 for several years, that the advertisements will be limited in scope and frequency to the  
2 State Senate district she represents, and that no additional promotional efforts will be  
3 made to account for the fact that Ms. Byrum has become a candidate for Federal office.  
4 These circumstances indicate the planned "coffees" will not expressly advocate her  
5 election or the defeat of her opponent and that there will be no soliciting, making or  
6 accepting of contributions. Further, it does not appear that there are other circumstances  
7 that indicate that these events are related to her Congressional campaign.

8 In these specific factual circumstances, since the coffees are not campaign related,  
9 Ms. Byrum may continue to advertise the coffees using billboards paid for by her  
10 Michigan State Senate campaign account during her Federal candidacy. She is not  
11 required to pay for the billboards using funds raised for her Federal campaign.

12 This response constitutes an advisory opinion concerning the application of the  
13 Act, or regulations prescribed by the Commission, to the specific transaction or activity  
14 set forth in your request. See 2 U.S.C. §437f.

15 Sincerely,

16 Scott E. Thomas  
17 Chairman

18  
19 Enclosures (AOs 1996-11, 1994-15, 1992-37, 1992-6, 1992-5, 1991-17, 1990-5, 1989-32,  
20 1981-37, and 1980-89)  
21