



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 21, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1999-11

Mary Kay Scullion
325 Bartlett St.
Lansing MI 48915

Dear Ms. Scullion:

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

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

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

The coffees have been advertised periodically on billboards located in her State legislative district. The billboards have a picture of Ms. Byrum and invite the public to join her for coffee and conversation. Rather than specify a location (because the locations change), the billboards list her State senate phone number and advise the public to call there for time and location. For the last seven years, there has been one coffee at one

location per week. The coffees are always held on Thursday morning. The only deviation from this has been when scheduling conflicts arise and a coffee is canceled. There is no intention at this time to increase the number of coffees or change the locations of these events.

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

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

During the pendency of her candidacy for the U.S. House of Representatives, Ms. Byrum will continue to serve as a Member of the Michigan Senate. Ms. Byrum intends, during her term of State office, to continue conducting and advertising the coffees as outlined above. It is also her intention to confine points of discussion at the coffee to State matters. You further explain that because discussions at the coffees are generally one on one or in very small groups, they more often than not focus on constituent service needs or specific concerns about pending or enacted Michigan law. In order to provide effective assistance, Ms. Byrum's senate office records the name, address and phone number of the individual making a request. Because Ms. Byrum's senate office operates on a policy of protecting the privacy of constituents, that information is never translated into files that can be utilized in any campaign effort.³

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

¹ 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.

² 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.

³ 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 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).

The Act and Commission regulations define the terms "contribution" and "expenditure" to include gifts of anything of value and any purchase or payment made for the purpose of influencing the election of any person to Federal office. 2 U.S.C. §431(8)(A)(i) and (9)(A)(i), 11 CFR 100.7(a)(1) and 100.8(a)(1). See 2 U.S.C. §441b(b)(2); 11 CFR 114.1(a)(1). Any contribution or expenditure is required to be disclosed by the receiving and disbursing committee. 2 U.S.C. §434(b), 11 CFR 104.3(a) and (b), 104.13. Contributions are subject to the limitations of the Act at 2 U.S.C. §441a(a) and prohibitions at 2 U.S.C. §§441b, 441c, 441e, and 441f. If the activity in question is for the purpose of influencing Ms. Byrum's election, this will implicate the limits or permissibility of the source of funds to be used to fund the expenditures in question, and the candidate committee's need to report the amounts expended as contributions and/or expenditures.

In determining whether expenses for events in which Federal candidates participate are being incurred "for the purpose of influencing a Federal election," the Commission has examined the stated purpose of these activities. The Commission has concluded that events in which Federal officeholders participate in their capacities as officeholders are not for the purpose of influencing a Federal election simply because the officeholders may be candidates for election to Federal office. Thus, payments associated with the expenses of such events are not contributions to that officeholder's campaign, absent any campaign activity at that event.⁴

Your situation is similar to those presented in prior advisory opinions. The fact that these opinions concerned Federal rather than State officeholder activities is not a significant distinction since the basic expectations, duties and obligations of both levels of public service are similar.⁵

You have represented that the purpose of these disbursements is to support Ms. Byrum in her State legislative capacity.⁶ The facts as represented to the Commission bear

⁴ See, Advisory Opinions 1994-15 and 1992-5 (Member of Congress hosting public affairs cable program); Advisory Opinion 1991-17 (Congressman's participation in a voter education video program); Advisory Opinion 1988-27 (involving a speech at a PAC fundraiser by a Congressman in return for an honorarium within four months of an election, where the PAC, in an unrelated action, might also contribute to his campaign). See also Advisory Opinions 1981-37 (corporate and union purchases of tickets for a series of public affairs forums to be moderated by a Member of Congress) and 1980-89 (donation of refreshments to a reception held by a Member of Congress for his advisory committee on the arts). In contrast, the Commission determined in Advisory Opinion 1999-2 that a candidate's participation in an event as a candidate would cause the Commission to determine the event was in connection with an election.

⁵ Michigan law similarly describes the activities of an officeholder versus those of a candidate. See, Michigan Campaign Finance Act §169.221a ("[a] candidate committee of a candidate who is elected to an elective office may make an expenditure for an incidental expense for the elective office to which that candidate was elected").

⁶ You also stated that Ms. Byrum made disbursements for the billboards and "coffees" for the past several years. The Commission notes that there is nothing in the continuation of this long-standing practice which would make these disbursements "for the purpose of influencing" her election to Federal office simply because Ms. Byrum has become a Federal candidate.

this out. You stated that neither she nor any of her representatives will solicit any contribution or expressly advocate her election during the course of this activity. Discussion at the events will be limited to issues relating to her constituents' needs or issues affecting her State senatorial district.⁷ No advertising of the events will take place outside her senate district. The scope of advertising and the frequency of the events will be unchanged from previous years. Information relating to participants at the events will not be provided to nor made available for use by her Congressional campaign committee.

Under these facts, the Commission concludes that the costs related to these events are neither contributions nor expenditures for the purposes of the Federal Election Campaign Act. Thus, Ms. Byrum is not required to pay for the billboards using funds raised for her Federal campaign.

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

Sincerely,

(signed)

Scott E. Thomas
Chairman

Enclosures (AOs 1999-2, 1994-15, 1992-6, 1992-5, 1991-17, 1988-27, 1981-37, and 1980-89)

⁷ 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.