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October 7, 2003

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General Counsel  
Federal Election Commission  
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Washington, DC 20463

AOR 2003-31

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Re: Mark Dayton

Dear Mr. Norton:

Pursuant to 2 U.S.C. § 437f (2003), this letter requests an advisory opinion from the Federal Election Commission on behalf of Senator Mark Dayton. Senator Dayton asks whether expenses that he incurs on behalf of his campaign will continue count toward the threshold for triggering the Millionaires' Amendment, even after he has been reimbursed by the campaign.

**DISCUSSION**

Senator Dayton is the senior United States Senator from Minnesota. Commission rules treat him as a candidate for the U.S. Senate in 2006, as he has raised and spent in excess of \$5,000. His principal campaign committee is Mark Dayton for Minnesota 2006. To his knowledge, no one else has yet filed a Statement of Candidacy for the Minnesota 2006 Senate election.

On April 11, 2003, after the Millionaires' Amendment took effect as part of the Bipartisan Campaign Reform Act of 2002, *see* 2 U.S.C. § 434(a)(6)(B), he filed a revised Statement of Candidacy, saying that he did not intend to spend personal funds in excess of the threshold amount in the primary or general election.

In the coming months, Senator Dayton expects to engage in campaign-related activities for which he or his principal campaign committee must ultimately pay. *See generally* 11 C.F.R. § 106.3. He may personally incur campaign expenses that are not travel-related, and which thus are treated as contributions, even when they are ultimately reimbursed by the campaign. *See* 11 C.F.R. § 116.5(b). He may incur

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travel expenses on his credit card in excess of \$1,000 that the campaign will reimburse, but not within 60 days after the closing date of the billing statement on which the charges first appear. *See* 11 C.F.R. § 116.5(b)(2). He may also incur travel expenses without using his credit card, and not receive reimbursement within 30 days. *See id.*

As he indicated on his most recent Statement of Candidacy, Senator Dayton does not intend to make expenditures in excess of personal funds in excess of the threshold amount under the Millionaire's Amendment. From the most recent Minnesota voting age population figures certified by the Secretary of Commerce to the Commission, *see* 2 U.S.C. § 441a(e), one can reasonably expect that figure to be approximately \$300,000. *See* 11 C.F.R. § 400.9(a); Estimates of the Voting Age Population for 2001, 67 Fed. Reg. 15,526 (2002).

Nonetheless, Senator Dayton's principal campaign committee remains obliged to track his expenditures from personal funds on an ongoing basis. His question is, whether in doing so, the campaign must consider expenditures like those described above that were initially treated as contributions, and yet for which he was ultimately reimbursed.

Under the Commission's Interim Final Rules on the Millionaires' Amendment, the answer is not immediately apparent. On the one hand, the statute and the regulations were plainly meant to provide candidates with relief when their opponent "spends significant amounts of his or her personal funds on the race." *See* Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates, 68 Fed. Reg. 3,970 (2003). This interest does not seem to be implicated when a candidate simply incurs reimbursable expenditures on a rolling basis.

Yet on the other hand, the plain language of the rule provides some basis to conclude that reimbursed expenditures count *permanently* toward the Millionaires' Amendment thresholds. An "expenditure from personal funds" is defined to mean "the aggregation" of all expenditures, contributions and loans made using a candidate's personal funds. *See* 11 C.F.R. § 400.4. Whether the expenditures, contributions or loans have been reimbursed, refunded or extinguished is not obviously relevant to the calculations.

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This question is important to Senator Dayton for two reasons. First, regardless of his intent not to exceed the threshold amount, his campaign remains obliged to track his activities in relation to that amount. Second, Senator Dayton may want to make expenditures from personal funds without triggering the Millionaires' Amendment's enhanced limits. He cannot know the extent to which he may make such expenditures, without knowing precisely what spending will count toward triggering those limits.

For these reasons, Senator Dayton respectfully requests an advisory opinion.

Very truly yours,



Marc E. Elias  
Brian G. Svoboda  
Counsel to Senator Dayton