



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 8, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1999-2

Barbara Mehlert
Public Affairs Administrator
Premera Blue Cross
PO Box 327
Seattle, WA 9811-0327

Dear Ms. Mehlert:

This refers to your letters dated January 21 and 27, 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 holding of candidate lunch forums by Premera Blue Cross, a corporation ("Premera").

You state that Premera wishes to hold candidate forums for its employees at its corporate facilities which would include lunch for the attendees. The program would be held both in 1999 and 2000 and would include appearances by candidates for the U.S. House of Representatives and the U.S. Senate. All employees would be invited to attend what you characterize as a "bipartisan forum." Employee attendance would be strictly voluntary during the lunch hour. So as not to disrupt work schedules, you explain that no forum would be held outside the usual lunch period.

You also state that employees would be asked for their input as to which candidates they would like to hear. The candidate with the highest interest shown by employees would be first selected. A letter would be sent to this candidate's opponents offering him/her the same opportunity to appear at a later and separate forum. You further explain

that you and a senior vice president would oversee the process.¹ Lunch would be provided free of charge by Premera to the employees who attend the forums.

You state that candidates would speak about non-partisan issues and that no election materials would be available to employees at these sessions. Flyers would be posted throughout the corporate campus announcing the candidate forum and stating its purpose as “non-partisan” with a view to “educating employees on relevant issues and not a campaign-related forum.” You state that the flyers would not include any campaign language such as “Re-elect” or “Elect.” If any campaign signs of a candidate are placed around the corporate property to advertise the forum, you emphasize that any portion with words such as “elect or retain or re-elect” would be “literally cut off the sign so there would be no reference to a campaign.” Further, you state that any candidate who agrees to appear would be told, in writing, that no campaign literature would be accepted and that no contributions could be solicited while on corporate premises.

You ask, given this format, whether the financing of this forum program, including lunch for the participants, would be permitted by the Act and Commission regulations.

Act and Commission Regulations

The Act prohibits contributions and expenditures by a corporation in connection with a Federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). The term "contribution" (or "expenditure") is defined to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party or organization," in connection with any Federal election. 2 U.S.C. §441b(b)(2); 11 CFR 114.1(a)(1). See 2 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). The phrase "anything of value" includes goods or services provided without charge, or at less than the usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A).

Commission regulations provide that a corporation may make certain communications to its restricted class as well as to its other employees and their families.²

¹ In a phone conversation with Commission staff, you indicated that employees would use the corporate e-mail system to indicate their choices.

² A corporation's restricted class is its stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families. 11 CFR 114.1(j). Under Commission regulations, a corporation's executive and administrative personnel are defined as individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities. This definition consists of individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers; and individuals following the recognized professions, such as lawyers and engineers. Other classes of employees are excluded. 11 CFR 114.1(c).

The rules for candidate appearances to the restricted class differ from those appearances that extend to all employees. See 11 CFR 114.3(c)(1)—(4). Among the differences, the representatives of the corporation may expressly advocate the support of the candidate and the candidate may accept contributions from members of the restricted class during the course of the candidate appearance. Compare with 11 CFR 114.4(b)(1)(iv) & (1)(v).

11 CFR 114.4(a). Included in such communications are candidate and political party appearances on corporate premises or at a meeting, convention, or other function of the corporation. 11 CFR 114.4(b)(1).

However, if these communications do extend beyond the restricted class then, under 11 CFR 114.4(b)(1), they must meet a number of conditions:

- (a) If a candidate for the House or Senate or a candidate's representative is permitted to address or meet employees, all candidates for that seat who request to appear must be given a similar opportunity to appear;
- (b) The candidate's representative or party representative (other than an officer, director or other representative of a corporation) or the candidate, may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation be designated for his or her campaign or party. The candidate, candidate's representative or party representative shall not, however, accept contributions before, during or after the appearance while at the meeting, convention or other function of the corporation, but may leave campaign materials or envelopes for members of the audience. A corporation, its restricted class, or other employees of the corporation or its separate segregated fund shall not, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative, and shall not facilitate the making of contributions to any such candidate or party (see 11 CFR 114.2(f));
- (c) A corporation or its separate segregated fund shall not, in conjunction with any candidate, or candidate's representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party and shall not promote or encourage express advocacy by employees;
- (d) No candidate, candidate's representative or party representative shall be provided with more time or a substantially better location than other candidates, candidates' representatives or party representatives who appear, unless the corporation is able to demonstrate that it is clearly impractical to provide all candidates, candidates' representatives and party representatives with similar times or locations.

A further condition is that coordination with each candidate, candidate's agent, and candidate's authorized committee(s) may include discussions of the structure, format and timing of the candidate appearance and the candidate's positions on issues, but shall not include discussions of the candidate's plans, projects, or needs relating to the campaign. Finally, representatives of the news media may be present during the appearance of the candidate, candidate's representative or the party representative in

accordance with the procedures set forth at 11 CFR 114.3(c)(2)(iv).³ 11 CFR 114.4(b)(1)(i), (iv), (v), (vi), (vii) and (viii).

Finally, a corporation may not reproduce or distribute candidate campaign material. *See* 11 CFR 114.3(c)(1)(i)&(ii); *see also* 2 U.S.C. §441a(a)(7)(B)(ii) (prohibiting “dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate”).

Status of Premera Forums

Event’s connection with Federal election

The status of speakers as candidates appears to be the determining factor in extending the invitation to participate in the (candidate) forums. The Commission has stated in past opinions that invitations extended to multiple candidates for the same office, or invitations extended to candidates qua candidates, establish that the event planned is, in fact, in connection with a Federal election.⁴ Therefore, the Commission concludes that the forums you describe would be “in connection with a Federal election.”

Permissibility of Forums

Since the proposed lunch forums would be open to all employees, Premera must follow the requirements established by 11 CFR 114.4(b)(1). See summary above. Your proposal already contains elements that comply with some of these requirements. For example, you intend to invite candidates who are seeking the same office in the same election. Considering the structure of the forums, it appears that neither Premera nor its employees will expressly advocate the election or defeat of any candidate that participates. Further, because of the conditions set for candidate participation, no

³ Section 114.3(c)(2)(iv) provides, in part, that if the corporation permits more than one candidate for the same office to address its restricted class, and permits the news media to cover or carry an appearance by one candidate, the corporation shall also permit the news media to cover or carry the appearances by the other candidate(s) for that office. In addition, if the corporation permits a representative of the news media to cover or carry a candidate appearance, the corporation shall provide all other representatives of the news media with equal access for covering or carrying that appearance, but equal access permits “the use of pooling arrangements if necessary.” 11 CFR 114.3(c)(2)(iv)(B).

⁴ *Compare* Advisory Opinions 1984-13 and 1986-37, which are similar to your situation, with Advisory Opinion 1996-11. In Advisory Opinion 1984-13, Republican candidates from the 1984 national convention were invited to address a corporate public affairs conference. Similarly, in Advisory Opinion 1986-37, candidates with opposing views from different political parties were invited to participate in a policy forum. By contrast, in Advisory Opinion 1996-11, a nonprofit organization wished to invite a number of Federal candidates to address a convention. While noting several conditions to holding the event, the Commission permitted the corporation to fund the event, in part, because “[t]he invitations to the speakers are not based on their status as candidates, but rather are based on their roles as legislators who have had an impact upon current statutes and future legislation of interest to those attending the convention.” *See* Advisory Opinion 1996-11.

candidate will be able to accept contributions either before or after or during the event.⁵ The Premera forums would therefore be permissible as long as the other requirements of section 114.4(b)(1) regarding the limited coordination and presence of news media, as well as the need for similar or comparable treatment in location and timing, are also met.

The Commission understands that Premera will not use any campaign signs provided by the candidate or any other person as flyers, posters, or signs to announce the forums. Therefore, this opinion does not address any issues that would be raised in such circumstances. Premera may, however, produce and distribute, on its own, announcements for the candidate forum which identify the candidates who will attend the forum and the offices the candidates are seeking. In producing these announcements, Premera may use campaign-provided photographs and biographical information pursuant to 11 CFR 114.4(b)(1)(vii) (permitting limited coordination between corporations and candidates for purposes of arranging candidate communications).

Premera also proposes to provide a free lunch to forum attendees, apparently as an inducement to attract a higher rate of attendance from employees. The Commission has permitted, in other contexts, the payment of corporate funds to provide such inducements. In Advisory Opinion 1980-50, a corporation was permitted to pay the meal and transportation expenses of employees to attend a conference encouraging employee involvement in PAC activities.⁶ The Commission, again in a different context, has also permitted a labor union to pay the costs of attending a fundraising dinner where the event was viewed as permissible since it came within an exempt activity permitted by the Act. See Advisory Opinion 1979-33.⁷ The payment of these costs in the above situations was treated as an administrative or fundraising cost of the PAC. Nonetheless, these opinions are of some limited relevancy in that they addressed the payment of costs related to what was otherwise viewed as an exempt event or activity under section 441b. Likewise, the Commission views the expense of providing lunch to forum participants as a cost directly and reasonably related to the sponsoring of the event itself and thus permissible under Commission regulations to the extent that the event is otherwise conducted in accordance with the relevant regulations summarized above.⁸

⁵ Your proposal would seem more restrictive than the requirements of section 114.4(b)(1)(iv) in that a candidate participating in the Premera forum would not be allowed to discuss his or her candidacy or ask for contributions. Under section 114.4(b)(1), a candidate could discuss his or her candidacy and (while not permitted to accept contributions either before, during or after the event) still ask for financial support.

⁶ The Commission has also permitted corporate funds to pay the costs of a corporate representative to attend the fundraising function of a party committee. See Advisory Opinion 1991-36.

⁷ In Advisory Opinion 1979-33, a local union was permitted to reimburse its PAC for the cost to attend a fundraising banquet after it was discovered that the funds were to be used for non-partisan get-out-the-vote activities which came within an exemption under section 441b.

⁸ The Commission notes that the requirement, under 11 CFR 114.4(b)(1)(vi), to provide comparable and similar opportunities to each candidate participating would extend to the types of lunches offered by Premera at the different forums.

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 1996-11, 1991-36, 1986-37, 1984-13, 1980-50, and 1979-33).