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FEDERAL ELECTION COMMISSION

Washington, DC 20463

April 14, 1999

AGENDA ITEM
For Meeting of: 4-21-99

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1999-07

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 21, 1999.

Attachment

1
2 **ADVISORY OPINION 1999-7**

3
4 **Mary Kiffmeyer**
5 **Secretary of State**
6 **State of Minnesota**
7 **100 Constitution Ave., 180 State Office Bldg.**
8 **St. Paul, MN 55155-1299**

DRAFT

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11 **Dear Ms. Kiffmeyer:**

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13 **This refers to your letter dated March 12, 1999, requesting an advisory opinion**
14 **concerning the application of the Federal Election Campaign Act of 1971, as amended**
15 **("the Act"), and Commission regulations to certain activities performed by your office to**
16 **promote voter participation in Minnesota elections.**

17 **You state that the Secretary of State for Minnesota is authorized to sponsor or**
18 **participate in nonpartisan activities that promote voter participation. See Minnesota**
19 **Statutes, section 204B.27.¹ One of the activities your office sponsors is a web site that**
20 **contains information about all candidates who have filed for Federal, State and county**
21 **level offices.² You now propose to provide free hyperlinks between the web site**
22 **maintained by your office and the web site of any candidate who provides your office**
23 **with the Uniform Resource Locator (URL) for that candidate's web site. With the**
24 **increasing use of the Internet and web sites, you anticipate that requests to provide these**
25 **hyperlinks will be submitted by Federal candidates. You further explain that your office**
26 **is also considering a disclaimer on its web site that would inform viewers that: (1)**

¹ This subdivision specifically states: The secretary of state may sponsor or participate in nonpartisan activities to promote voter participation in Minnesota elections and efforts to increase voter registration and voter turnout.

² The Secretary of State's web site listing the 1998 candidates in Minnesota's nonfederal elections is: <http://www.sos.state.mn.us/elections/statewide.html>.

1 hyperlinks to candidate sites are done in reliance on the addresses (URLs) provided by
2 the candidates; (2) the hyperlinks are displayed for voter information purposes and not to
3 influence the nomination or election of a candidate; and (3) candidate web sites are not
4 monitored or regulated by your office.

5 You ask whether this activity is permissible under the Act and Commission
6 regulations. For the reasons discussed below, the Commission concludes that your
7 described activity is permissible.

8 The core issue posed by your request is whether the disbursements or expenses
9 of your office to perform the described activities would constitute an expenditure or
10 contribution, as defined in the Act and Commission regulations. Both terms are
11 similarly defined to include, in part, any gift or payment of money or anything of value
12 "made by any person for the purpose of influencing any election for Federal office." 2
13 U.S.C. §§431(8)(A)(i), 431(9)(A)(i).³ Commission regulations further define these
14 terms stating that the provision of anything of value (to influence a Federal election)
15 includes all in-kind contributions and that furnishing goods or services without charge
16 is a covered expenditure, unless specifically exempted by the regulations. 11 CFR
17 100.8(a)(1)(iv)(A). The Commission has also previously concluded that the costs
18 associated with the creation and maintaining of a web site that supported the campaign of

³ The term "person" defined at 2 U.S.C. §431(8) includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal government or any authority of the Federal government. The Commission has not extended this exclusion to State governments or their instrumentalities. See Advisory Opinions 1977-22, 1982-26, 1984-48, and 1992-34. In Advisory Opinions 1977-22 and 1982-26, the Commission determined that State owned corporations were subject to the corporate prohibitions of section 441b. In Advisory Opinions 1984-48 and 1992-34, the Commission reviewed the proposals by State officeholders, who were Federal candidates, to reimburse their respective State governments for assistance and services provided to their Federal campaigns.

1 a Federal candidate would be considered an expenditure. See Advisory Opinion 1998-22.
2 However, a specific exemption does apply in the situation presented here. The Act
3 provides that the term "expenditure" does not include "nonpartisan activity designed to
4 encourage individuals to vote or to register" to vote. 2 U.S.C. §431(9)(B)(ii). The
5 regulations amplify this statutory exemption stating, in pertinent part, that: "Any cost
6 incurred for activity designed to encourage individuals to register to vote or to vote is
7 not an expenditure if no effort is or has been made to determine the party or candidate
8 preference of individuals before encouraging them to register to vote or to vote." 11
9 CFR 100.8(b)(3).

10 The web linking services provided to Federal candidates in your proposal are
11 offered to all candidates who qualify for the ballot and pursuant to a State statutory
12 directive to "sponsor or support nonpartisan activities that promote voter participation."
13 The providing of links in a nonpartisan manner to all ballot qualified candidates running
14 for office in Minnesota is a method encouraging participation in the political process and,
15 as such, is viewed by the Commission as nonpartisan activity "designed to encourage
16 individuals to vote or to register to vote." The Commission concludes, therefore, that
17 your proposal would fall under the exemption from the definition of expenditure provided
18 by section 431(9)(B)(ii) and would not be viewed as either an expenditure or contribution
19 to a Federal candidate.⁴

⁴ The Commission notes that 11 CFR 114.4(c)(3)(iii) permits the use of corporate funds to support State or local government agencies responsible for the administration of elections to help defray the costs of printing or distributing voter registration or voting information and forms. This regulation would not only permit corporate and labor organization donations to your office for the described activity, but it also implies that the underlying activity by the State or local agency is permissible under the Act.

