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AOR 1999-11

8 April 1999

Mr. N. Bradley Litchfield
Associate General Counsel/Policy
Federal Elections Commission
999 E. St., NW
Washington, DC 20463

[Signed original

via 1st classmail]

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

Dear Mr. Litchfield:

RE: FECA Advisory Opinion re Billboards
Michigan State Senator Dianne Byrum

I appreciate your timely response to my inquiry and apologize for the delay in getting back to you. I was out of the city last week and therefore unavailable.

In response to your inquiries:

1. I am acting as Counsel to Ms. Byrum in her campaign for the US House of Representatives. This request for an advisory opinion is filed pursuant to Ms. Byrum's specific request.
2. The proposed billboards have not been nor would they be displayed outside of Ms. Byrum's state Senate district. 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.
3. 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.



4. 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 cancelled. There is no intention at this time to increase the number of coffees or the locations of those events.

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).

5. 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 elections, he will be a volunteer on the congressional campaign.

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 respond appropriately, the name, address and phone number of the individual making a request will be recorded so that the case can be followed up on or the necessary information provided. Because Sen. Byrum's 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.

6. It is hard to anticipate how events will be scheduled during the campaign; however, based on past experience, I do not anticipate that there will be overlapping of event scheduling. Further, the sites where the coffees are currently held, small restaurants and coffee shops in the Senatorial district, are not conducive to holding an event for a congressional campaign.

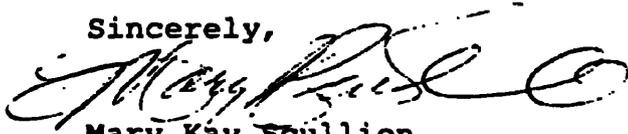
Even more important to the question at hand is the fact that during her two candidacies for the State Senate, Ms. Byrum has not utilized any billboards for her campaign efforts.

It is the intention of the congressional campaign managers to follow this policy.

7. As noted above, Sen. Byrum's office operates on the assumption that all constituent inquiries or contacts are confidential. In this context, there is no intention to use any constituent information related to the identity of participants at the coffees in the congressional campaign.

If there is further information or assistance which I can provide on this matter, please feel free to contact me.

Sincerely,



Mary Kay Scullion
Attorney at Law

Subject: Letter to FEC dated March 23, 1999
Date: Wed, 31 Mar 1999 15:49:03 -0500
From: Bradley Litchfield <brlitch@fec.gov>
Organization: Federal Election Commission
To: mk1644@aol.com

Ms. Scullion:

I received the subject letter on March 29. It requests an FECA advisory opinion regarding billboard advertising placed by Dianne Byrum who is presently a Michigan State Senator and may soon become a Congressional candidate for the 2000 election cycle.

As you may know, the FEC's advisory opinion procedures are found in 2 USC 437f and 11 CFR Part 112. Of particular relevance here is the requirement that counsel or another agent of a requester be authorized to represent the principal. I assume that you have made this inquiry as counsel to Ms. Byrum or in some other capacity on her behalf and with her authorization. I do need you to confirm that with a further letter.

In addition, you will need to provide a more complete factual description of the activity you have presented so that my office can frame the issues and propose an opinion for the Commission's consideration. Your full responses to the following questions may enable us to go forward with the inquiry as an advisory opinion request.

- 1) To what extent, if at all, would the billboards be displayed in areas outside Ms. Byrum's State Senate district, although within the 8th Congressional District?
- 2) To what extent, if at all, would the number of billboards and the duration of their display (featuring her picture and related information about the "coffee and conversation" events) be increased during her anticipated Federal candidacy as compared to the number and display duration during the past seven years while she was a State officeholder but not a Federal candidate?
- 3) To what extent, if at all, would the number of coffee/conversation events be increased during her Federal campaign as compared to the past seven years when she was a State officeholder? Same question as to changes and increases in the number of locations for these events.
- 4) Do you anticipate that persons who are advising or assisting Ms. Byrum in her Congressional campaign, on either a paid or volunteer basis, would attend these events? If so, would they perform any functions that would support Ms. Byrum's Federal office campaign; such as (but not limited to) soliciting contributions or pledges for same, recruiting campaign volunteers or paid campaign staff, creating lists or collecting data from attendees including names, addresses and phone numbers for possible future use in her Federal campaign?
- 5) Do you expect that these coffee/conversation events and the billboards related to them will occur in close proximity to other events or billboards that are explicitly related to the Congressional campaign? For example and to illustrate the thrust of this question: would a "coffee only" billboard be placed within one or two blocks of a separate billboard that has express reference to Ms. Byrum Congressional campaign? Similarly, would a coffee/conversation event be held in same location and on same day (but earlier or later) as a campaign event for the Congressional race?
- 6) Describe and give examples of any circumstances in which information obtained, or personal contacts made, in connection with the coffee/conversation events would be shared with or made available for

use by the Congressional campaign.

You can respond to these questions by email, if desired, but you will need to follow up with an identical, signed letter via FCM.

Regards,


N. Bradley Litchfield
Associate General Counsel/Policy
Federal Election Commission

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Mary Kay Scullion

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March 23, 1999

Federal Elections Commission
Office of General Counsel
999 E. St., NW
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAR 29 3 29 PM '99

Dear Gentlepersons:

Re: Request for Advisory Opinion

Dianne Byrum is currently a member of the Michigan State Senate. Prior to that time she served as a Member of the Michigan House of Representatives. On January 1, 1999, she began serving a 4-year term in the Michigan Senate.

Ms. Byrum will in the near future be announcing her candidacy for the United States House of Representatives for the 8th Congressional District of Michigan.

For a period of at least seven (7) years, Ms. Byrum has conducted a series of weekly "coffees" in restaurants in various locations in both the House and Senate districts. Those 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 the 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 location changes), the billboard list her State Senate phone number and advises the public to call there for time and location.

Prior to recent changes in the Michigan Campaign Finance Act, the billboards were paid for out of her office holder expense fund. They are now paid for out of her State Senate campaign

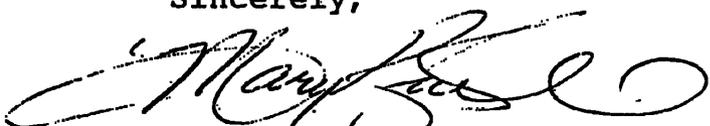
account as an office-related expense. This expenditure is consistent with and permitted under Michigan's Campaign Finance Act.

During the pendency of her candidacy for the US House of Representatives, Ms. Byrum will continue to serve as a Member of the Michigan Senate. It is her intention during the course of that service to continue conducting and advertising the coffees as outlined above. It is also her intention to confine points of discussion to state matters.

The purpose of this Advisory Opinion Request is ask if 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 US House requires that the billboards be paid for by her federal campaign committee. As part of the response, it would be helpful if Ms. Byrum and her committee could be given general guidance on the question of how to determine from which account expenditures should be drawn when they are paying for activities related to her role as a member of the Michigan Senate.

Thank you for your assistance with this matter.

Sincerely,



Mary Kay Scullion
Attorney at Law