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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA ITEM**  
For Meeting of: 11-10-99

November 4, 1999

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

Subject: Draft AO 1999-24

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 10, 1999.

Attachment

1 ADVISORY OPINION 1999-24

**DRAFT**

2  
3 Ryan C. Arney, President and CEO  
4 Election Zone LLC  
5 625 Manhattan Place  
6 #213  
7 Boulder, CO 80303

8  
9 Dear Mr. Arney:

10  
11 This responds to your letters dated August 23 and September 1, 25, and 26, 1999,  
12 on behalf of Election Zone LLC ("EZone"), requesting an advisory opinion concerning  
13 the application of the Federal Election Campaign Act of 1971, as amended ("the Act"),  
14 and Commission regulations to the operation of a web site to provide a means of  
15 communication from candidates to voters on a nonpartisan basis.

16 EZone is a limited liability company ("LLC") organized under Colorado law in  
17 1999, and will be taxed as a partnership. Your wife and you are the members of EZone;  
18 you own 90 percent and your wife owns ten percent. You describe it as "a non-partisan  
19 company, not affiliated with any political candidate, political party, political action  
20 committee or advocacy group." You state that EZone "seeks to expand democracy"  
21 through the Internet by operating its website, "ElectionZone.com," and that the website  
22 will serve as a channel for communication between voters and candidates. EZone will  
23 invite participation from candidates in Federal and non-Federal races. With respect to  
24 each race covered, other than the presidential general election, EZone will invite  
25 participation to every candidate who has qualified for the ballot for the particular race.  
26 With respect to the presidential general election, EZone will invite only those candidates  
27 who are qualified for the ballot in enough States to achieve an Electoral College majority.

28 You state that the key feature of the website will be the "Q & A Zone" which  
29 provides the opportunity for viewers to submit questions to the candidates in a selected  
30 political race. When the question is received by the website, it will be transmitted to each  
31 of the race's participating candidates for her response. Once the question is answered, the  
32 questions and answers will be posted on the website. You state that EZone does not want  
33 to engage in the traditional forms of filtering and editing found in other media but that

1 incoming questions from voters will be restricted as follows: (1) questions must rationally  
2 relate to the selected race; (2) questions must not be repetitious of any previously posed  
3 question; (3) questions must be addressed to each of the participating candidates in a race,  
4 not just one candidate; (4) questions whose purpose is to request that candidates offer  
5 opinions or make comments about the other candidates will be prohibited; and (5)  
6 questions must be no longer than a specified number of words (most likely 100). If a  
7 question does not abide by these restrictions, it will not be posed to the candidates, but  
8 the questioner will receive notice of this rejection and will be encouraged to resubmit the  
9 question in accordance with the rules. In addition, if a question is incoherent, EZone will  
10 ask for clarification from the questioner.

11 There will also be certain restrictions with respect to the candidates' responses.  
12 There will be a word limit on each response. The limit has not yet been determined but  
13 will be based on capacity and periodic review of the website's operation. At the outset  
14 candidates will be informed of the limit and instructed to answer the question posed or  
15 give a reply of "no comment." You also state that, "because the purpose of the Q & A  
16 Zone is to allow voters to elicit the candidates' personal beliefs, stances, and platforms on  
17 certain issues, the candidates will be encouraged to strictly answer the question posed."  
18 If a response does not comply with the restrictions, the candidate will be allowed to re-  
19 issue the response but EZone will not edit a response on its own.

20 Two other features will be available at the option of the candidates. The first of  
21 these is a "Candidate Chat Zone." This is an online chat session where each candidate  
22 will have an equal opportunity to schedule a time period during which that candidate  
23 alone can have a live discussion with her voting constituency. The second feature is the  
24 "On-Line Debate Zone" which you characterize as a debate forum. This feature will also  
25 be available for each race covered by EZone. All participating candidates in a race will  
26 be invited to debate, but a debate will be conducted only if two or more candidates in the  
27 particular race agree to debate. You state that this feature "will operate much like any  
28 other debate." The viewer will see a dialogue box. The moderator's question will appear  
29 in the box and subsequently the candidates' responses will appear in the scheduled order.

1           You state that EZone has not yet determined the extent to which hyperlinks will  
2 be part of the site. It may permit hyperlinks to candidate sites through the Q & A Zone.  
3 On the web page where a viewer's question and the candidates' responses are posted,  
4 each of the candidates names will be underscored in blue, providing the hyperlink. You  
5 state that, if there are hyperlinks to political parties, the opportunity to have a hyperlink  
6 will be offered to each political party.

7           EZone will not charge viewers for use of the site, and will not charge candidates  
8 for participation in the site. It will seek sponsorship or advertising revenues from  
9 commercial entities only.<sup>1</sup> It will not solicit or accept sponsorship fees or advertisements  
10 from political parties, candidates, political action committees, interest group advocates, or  
11 other social, political, or ideological sources. You state that the website may contain  
12 hyperlinks to the websites of the sponsors or advertisers.

13           You ask whether EZone may engage in the foregoing activity without violating  
14 the Act or regulations.

15           The core issue posed by your request is whether the proposed activity would  
16 constitute an expenditure or contribution as defined in the Act and Commission  
17 regulations. Both terms are similarly defined to include, in part, any gift or payment of  
18 money or anything of value "made by any person for the purpose of influencing any  
19 election for Federal office." 2 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1)  
20 and 100.8(a)(a)(1). The phrase "anything of value" includes goods or services provided  
21 without charge or at less than the usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A)  
22 and 100.8(a)(1)(iv)(A). In past advisory opinions, the Commission has concluded that  
23 the costs associated with creating and maintaining a website could be considered an  
24 expenditure (or in-kind contribution), depending upon the content of the site and whether  
25 exceptions are applicable. See Advisory Opinions 1999-25, 1999-7, 1998-22, and 1997-  
26 16. As an LLC with partnership status for income tax purposes, EZone may not make

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<sup>1</sup> You state that EZone is aiming for advertising or sponsorships from the "computer-related, technology, internet, and media industries."

1 contributions in excess of \$1,000 per election to a Federal candidate. 2 U.S.C. §§431(11)  
2 and 441a(a)(1)(A); 11 CFR 110.1(g)(2)<sup>2</sup> and 110.1(e).

3 The Act provides, however, that the term "expenditure" does not apply to  
4 "nonpartisan activity designed to encourage individuals to vote or to register to vote." 2  
5 U.S.C. §431(9)(B)(ii). In a recent advisory opinion, the Commission examined an online  
6 project known as Democracy Network ("DNet"), which was created and sponsored by  
7 two 501(c)(3), tax-exempt corporations, that operated a website containing certain  
8 features that were similar to your proposed website. Advisory Opinion 1999-25. Briefly  
9 stated, the website provided Federal candidate-related information on a nonpartisan basis,  
10 including issue statements by candidates, candidate responses to questions from the  
11 public and rebuttals to statements of opponents, biographies and endorsements provided  
12 by the candidates, hyperlinks to the candidate websites, links to press sites and editorials,  
13 voting and voter registration information, and links to official contribution data.  
14 Advisory Opinion 1999-25.

15 In that opinion, the Commission analyzed the nature of DNet and its sponsors, and  
16 the purposes and functions of the website, and determined that the activity was  
17 permissible under the nonpartisan activities exception cited above. Reviewing the  
18 functions of the website, the Commission observed that DNet would invite participation  
19 on its website by all ballot-qualified candidates and, for presidential general elections,  
20 would use a valid neutral standard. The candidates would be given similar space for  
21 statements, and placements for the statements would be based on objective criteria. The  
22 website would not be targeted to any specific audience. DNet's selection of materials  
23 from sources other than the campaigns would be done on a nonpartisan basis. DNet's  
24 communications with the campaign would be limited to certain administrative or  
25 technical purposes that would not entail coordination with the campaigns, such as  
26 applying content-neutral editorial criteria to candidate-submitted statements. Finally,  
27 communications by DNet itself would not favor one candidate or political party over

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<sup>2</sup> The effective date of the Commission's new regulations on contributions by LLCs, at 11 CFR 110.1(g), is November 12, 1999.

1 another. An examination of similar aspects of EZone and its website is useful in  
2 determining whether the proposed activity is permitted under the cited exception.

3 Although EZone is not tax exempt under 26 U.S.C. §501(c)(3) and is, instead, a  
4 for profit company that is not constrained by the Federal tax code from participation in  
5 political campaigns, EZone is not affiliated with any candidate, political party, PAC, or  
6 advocacy group. It has been created for the purpose of "expanding democracy" by  
7 serving as a channel between candidates and voters on a nonpartisan basis.

8 The standards proposed by EZone as to candidate participation provide for the  
9 invitation of each ballot-qualified candidate in an election other than a presidential  
10 general election. This is the same standard approved in Advisory Opinion 1999-7 when  
11 the State of Minnesota proposed an informational website that would provide campaign  
12 mailing addresses, phone numbers, and hyperlinks to candidate websites. The limitation  
13 with respect to presidential candidates in the general election conforms to standards set  
14 out in another context where Commission regulations seek to ensure that corporate  
15 contributions or expenditures would not result. See the voter guide regulations at 11 CFR  
16 114.4(c)(5)(ii). Similarly, EZone will provide equal word limits and equal criteria to each  
17 candidate for responses to questions, and will pose the questions to each candidate.

18 With respect to the Chat Zones, the Commission assumes that time will be apportioned  
19 equally to candidates and that time slots for each candidate's use of the Chat Zone will be  
20 allotted on a basis that ensures that no candidate is purposely given a more active or more  
21 popular time slot than another. The Commission assumes that these same characteristics  
22 will apply to the time periods allotted, the scheduled order of responses, and time limits  
23 on responses during the candidate exchanges in the "On-Line Debate Zone."<sup>3</sup> Moreover,  
24 it appears from your proposed format that, if hyperlinks to candidate's websites are  
25 posted, this will be done for each participating candidate with a website.

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<sup>3</sup> Although you characterize this exchange as a candidate "debate," the Commission does not need to address the issue of whether its debate regulations would govern this aspect of EZone's website since it views this feature as part of a multifaceted program to present candidate views in several different ways. Therefore, the regulations as to permissible debate-staging organizations at 11 CFR 110.13(a) and 114.4(f) would not be applicable in this situation.

1           The EZone website will be available for viewing and interaction by the general  
2 public.<sup>4</sup> No effort will be made to determine the political party or candidate preference of  
3 the viewers. See 11 CFR 100.8(b)(3). As such, the website will not be targeted toward  
4 encouraging participation or voting by a selected group of persons of a particular party or  
5 other group. Moreover, you are applying objective standards for participation (e.g.,  
6 posing questions) by viewers.

7           You have noted that each political party will have an opportunity to post its  
8 website. This is consistent with an effort by EZone to communicate on a nonpartisan  
9 basis. Also consistent with this purpose is that EZone will not seek advertising revenue  
10 or other payments from political parties, PACs, interest group advocates, or other social,  
11 political, or ideological sources.

12           The Commission notes that the EZone site will have commercial advertisements  
13 and, possibly, hyperlinks to the advertiser's websites. As indicated by the conclusions  
14 stated below, if EZone's website activity conforms to the cited nonpartisan exception,  
15 the payments for the ads or sponsorship references will not be contributions for the  
16 purpose of influencing a Federal election.

17           EZone will communicate with the candidates (or their campaigns) in order to  
18 invite and arrange their participation in the various features of the website; to pose  
19 viewers' or the moderator's questions to all the candidates; and to inform them when a  
20 response does not meet the criteria discussed above and afford them a chance to  
21 reformulate their responses. The Commission assumes that EZone's communications  
22 with the candidates will pertain to the substance of the candidates' statements (e.g., issue  
23 positions) only to ensure that they "strictly answer the question posed." The Commission  
24 also assumes that, in engaging in the proposed communications, EZone will not discuss  
25 the candidate's plans, projects, or needs. Under these facts and assumptions, EZone's  
26 communications with the candidates will be limited to those necessary for the effective  
27 operation of the website. Thus, with respect to the statements provided by the candidates,  
28 EZone will merely serve a passive function to provide complete information about

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<sup>4</sup> Because of the general availability of access to the Internet, the Commission has concluded that communication via a website would be considered a form of communication to the general public. See

1 elections and will communicate with candidates to fulfill that function. In view of these  
2 circumstances, EZone's communication with a campaign would not constitute acting in  
3 cooperation or with the prior consent of, or in consultation with, or at the request or  
4 suggestion of, a candidate, her committee, or her agent. See 2 U.S.C. §§431(17) and  
5 441a(a)(7)(B)(i); 11 CFR 100.16, 109.1(a) and (b)(4)(i)(A). As such, EZone's efforts to  
6 provide candidates with an opportunity to participate in the website would not constitute  
7 an in-kind contribution by EZone to those candidates.

8 Finally, the information presented indicates that EZone itself will not score or rate  
9 the candidates or make any statements expressly advocating the election or defeat of any  
10 clearly identified candidate, or of the candidates of any political party. Moreover, as  
11 indicated and subject to the assumptions stated above, EZone will function in such a way  
12 that none of the statements made by candidates or persons supporting the candidates can  
13 be imputed to EZone.

14 Based on the foregoing discussion of the nature of EZone and the website itself,  
15 the Commission concludes that EZone's proposed activity is exempt from the definition  
16 of "expenditure" at 2 U.S.C. §431(9)(B)(ii), and is therefore permissible under the Act.  
17 As indicated with respect to DNet, a website need not be identical to the EZone site,  
18 either as to the kinds of information presented or as to the technology used on the  
19 website, in order to fall within the exception. In addition, the Commission notes that it  
20 has examined a number of factors in reaching its conclusion. Although all of these  
21 factors are relevant, different facts with respect to a particular factor, may or may not lead  
22 to a conclusion that a website's activities are permissible.

1           **This response constitutes an advisory opinion concerning application of the Act**  
2 **and Commission regulations to the specific transaction or activity set forth in your**  
3 **request. 2 U.S.C. §437f.**

4

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**Sincerely,**

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**Scott E. Thomas**  
**Chairman**

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10 **Enclosures (AOs 1999-25, 1999-7, 1998-22, 1997-16, and 1995-9)**

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