



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 20, 1999

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1999-34

The Honorable Michael Bilirakis  
Mike Bilirakis for Congress  
P.O. Box 1077  
Tarpon Springs, FL 34688-1077

Dear Mr. Bilirakis:

This responds to your letters dated October 6 and November 8, 1999, on behalf of Mike Bilirakis for Congress (“the Committee”), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to the Committee’s participation in a fundraising event for school organizations.

***Background***

The Committee is the principal campaign committee for your re-election to the U.S. House of Representatives from the Ninth District of Florida. The Committee’s 1999 midyear report, covering the last reporting period, discloses \$295,316 cash on hand and no outstanding liabilities. You do not anticipate any future expenditures that would cause the Committee to be a net debtor.

The Committee wishes to donate funds and make other payments in support of an event known as the “KIDS first Family Fair.” The event is an initiative by a group of local citizens who are working to improve education in area elementary schools. It is intended to raise money for elementary schools in the Ninth District through Parent-Teacher Associations or other organizations defined under 26 U.S.C. §170(c).<sup>1</sup> You state

---

<sup>1</sup> Under section 170(a) of the Internal Revenue Code, charitable contributions are tax deductible. Section 170(c) defines “charitable contribution,” stating that it means “a contribution or gift to or for the use of” certain categories of organizations. Among these organizations are “a corporation, trust, or community

that these funds will be used for such purposes as enabling PTAs to assist teachers in purchasing school supplies for children and to help make improvements on campus.

You will co-host the event with your son, State Representative Gus Bilirakis. It will be held on Saturday, January 29, 2000, in Tarpon Springs, Florida, at Astro Skate. The owner of Astro Skate, which is a skating facility, will provide space for the event at no charge. Each participating school will have the opportunity to set up a display, and various games and activities for children and adults will be provided. A local celebrity will be invited to make a presentation and appearance. You expect that 1,500 individuals will attend.

You state that the event is not a campaign fundraising opportunity for the Committee, and no funds will be made payable to, or accepted into, the Committee's account. Individuals attending the event will not be given an opportunity to sign up for volunteer work or other participation in your re-election campaign. Moreover, no campaign materials will be displayed or available at the event.

You describe how the event will be funded. The Committee plans to make in-kind donations for the event by paying printing and postage costs for promotional materials, such as flyers, and will assist with other expenses. The event volunteers have not yet identified all the other sponsors for event costs, but you identify other sponsors and the expenses to be paid by them. These are: \$500 by the State Farm Insurance regional office to print 10,000 flyers; the donation of space by Astro Skate valued at \$250; \$400 for the printing of 3,000 tickets by a local sponsor to be determined; \$1,500 to provide pizza for all attendees by one or more local restaurants; \$750 for soft drinks provided by a local grocery store; and computers valued at \$1,000 to be donated by a former local mayor to the school with the highest ticket sales and the school with the highest attendance at the event.

You state that the "minimum contribution level" to the event is the \$3 price for a ticket, but there is no limit on the amount an individual can donate. The Committee intends to match individual monetary donations dollar for dollar, up to a maximum of \$60,000 in total donations by the Committee. It is unknown whether any person or corporation will purchase a large quantity of tickets, but that is a possibility.

You describe how ticket purchases and other financial contributions will be collected and accounted for. The majority of donors are expected to obtain their tickets directly from an event volunteer. In that case, the donor will indicate only the name of the elementary school PTA (or other 170(c) organization established by the school) to which the contribution is directed. Only individuals who request tickets by mail will actually provide their name and address, and no list of those individuals will be made available to the Committee or used for campaign purposes. The ticket purchases and

---

chest, fund, or foundation" organized and operated exclusively for religious, charitable, or educational purposes, and which is not disqualified for other reasons such as use of net earnings to benefit a private shareholder or individual, or participation in political campaigns. 26 U.S.C. §170(a) and (c).

other donations will be made payable to the donor's choice of school PTA. They will be collected by a law firm in Palm Harbor, Florida, and deposited directly into the account of the PTA or 170(c) organization. The Committee will not collect donations to the event, and no ticket sale proceeds or other funds will be deposited in the Committee's account. The law firm will also take messages from persons interested in the event and will forward those messages to event volunteers. The law firm will also allow the Committee's treasurer to tally donation receipts to enable the Committee to determine the matchable donation it will make. The disbursements of the proceeds will be controlled by each benefiting PTA or other 170(c) organization.

The Committee will not purchase any media advertising, such as newspaper or broadcast ads, for the event. Event volunteers will publicize the event by word of mouth through the local elementary schools. Then, promotional flyers will be distributed by hand or mail. These will include a form to register to attend, purchase tickets, and designate a donation amount.

You enclose a copy of a draft, initial flyer that will be printed at the expense of the State Farm Insurance regional office. The front of the flyer states the title of the event and that it will be hosted by Congressman Mike Bilirakis and State Representative Gus Bilirakis. The flyer describes the "ABCs of the event;" that is, the list of activities, the benefits for the school by earning matching funds, and the computers awarded to the schools. The flyer describes the purpose of the event as "to help put dollars into local elementary school classrooms." It states that "parents, students, neighbors, and local businesses will have the opportunity to donate money to the school of their choice," and that individual donations will be matched "dollar for dollar" by the Committee up to \$60,000. The flyer describes forms of participation other than buying tickets. These entail persons selling tickets, schools setting up display tables and games, and sponsorship of the event by companies. The phone number of the above-mentioned law firm is provided for those interested in additional information. Finally, the flyer contains a detachable form to mail to the law firm. The form provides boxes for volunteers to indicate how they wish to help, and for persons to purchase tickets or to otherwise contribute financially; space is provided for name, address, and phone number. The form asks the purchaser or contributor to indicate which elementary school PTA would benefit and make checks payable to that PTA. The form also contains a statement in small print that the Committee will match the individual contributions up to \$60,000.

You indicate that the Committee may pay for a follow-up flyer that will include a disclaimer stating, "Paid for by Mike Bilirakis for Congress. Not at Government Expense."

### ***Question Presented***

You ask whether the Committee's proposed activities are permissible under the Act and regulations. Specifically, you ask whether the Committee's matching donations

and in-kind donations with respect to the fair are a permissible use of excess campaign funds, pursuant to 2 U.S.C. §439a.

### *Legal Analysis*

The analysis of the proposed activity depends in large part upon how the event is characterized. If the event and the activities surrounding it are, in reality, for the purpose of influencing Mr. Bilirakis' re-election to Congress, then donations for the event from individuals and businesses, both money and in-kind, may be contributions under the Act and subject to its limitations and prohibitions. If the fair is not a campaign event and is, instead, a charitable event, then the Committee's disbursements would be subject to the provisions of 2 U.S.C. §439a, and the donations in support of the event by others, which are made to entities other than the Committee, would not be contributions subject to the Act's provisions.

The Act provides that amounts "received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures . . . may be contributed to any organization described in section 170(c) of title 26," except that such amounts may not be converted by any person to any personal use. 2 U.S.C. §439a; 11 CFR 113.2(b) and (d).<sup>2</sup> The Act also permits the use of campaign funds to defray any ordinary and necessary expenses incurred by an individual or candidate in connection with his duties as a holder of Federal office. 2 U.S.C. §439a; 11 CFR 113.2(a).

The Act and Commission regulations define the terms "contribution" and "expenditure" to include gifts or payments of money or anything of value made for the purpose of influencing the election of any person to Federal office. 2 U.S.C. §431(8)(A)(i), 431(9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1); see 2 U.S.C. §441b(b)(2) and 114.1(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). Any contribution or expenditure is required to be disclosed by the receiving and disbursing committee. 2 U.S.C. §434(b); 11 CFR 104.3(a) and (b), 104.13. Contributions are subject to the limitations of the Act at 2 U.S.C. §441a(a) and prohibitions at 2 U.S.C. §§441b, 441c, 441e, and 441f.

In determining whether particular activities or events involving the participation of a Federal candidate result in contributions or expenditures by or on behalf of the candidate, the Commission has examined the stated purpose of the activities and whether the facts and circumstances presented comport with the stated purpose. See Advisory Opinion 1999-11. The Commission has concluded that events in which Federal officeholders participate in their capacity as officeholders are not for the purpose of influencing a Federal election simply because the officeholders may be candidates for

---

<sup>2</sup> Commission regulations define the term "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." 11 CFR 113.1(e).

election to Federal office.<sup>3</sup> Payments associated with such an event would not be contributions to the officeholder's campaign or expenditures by the campaign, absent any campaign activity at the event or with respect to the promotion and other arrangements for the event. See Advisory Opinion 1999-11.<sup>4</sup>

From your description of the event and the materials enclosed, the stated purpose of the fair is to improve the facilities at elementary schools in your Congressional District. The question of whether the event or your participation in the event is also for the purpose of promoting your candidacy may be answered by considering the various features of the event and its promotion, and the role of the Committee.

You state that, at the event, no individual may sign up to volunteer for or participate in your re-election campaign, and that no campaign material will be available at the fair. You also make clear that no funds will be made payable to the campaign or accepted by the campaign and that the disbursements of the proceeds will be controlled by each benefiting PTA or other 170(c) organization. The ticket purchases and other donations will be collected by a law firm and, although the Committee will be able to review and tally such donations, this will be for the purpose of determining the matching payments that the Committee will make to the 170(c) organizations.

The flyer indicates that the fair is for the purpose of benefiting local elementary schools. The only references to the campaign or Committee are the statements that the Committee will match individual donations to the school organizations. This statement does not appear to be for a campaign purpose. Instead, it informs potential donors that their donations will be matched by the Committee, and it does so as an incentive for others to donate in support of the school programs. Moreover, the election influencing aspect of the Committee reference is further abated by the fact that the flyers will be distributed in December 1999 or January 2000, while the primary election is not until September 5, 2000. The Commission assumes that the information and event advocacy presented in the follow-up flyer, which will be financed by the Committee, will not differ.<sup>5</sup>

---

<sup>3</sup> See Advisory Opinions 1994-15 and 1992-5 (Members of Congress hosting public affairs cable program), and Advisory Opinion 1991-17 (Member's participation in a voter education video program) where the Commission found that the activities were not for the purpose of influencing a Federal election. In contrast, the Commission determined in Advisory Opinion 1999-2 that a Member's participation in an event where he was invited because he was a candidate would cause the Commission to determine that the event was in connection with a Federal election.

<sup>4</sup> In Advisory Opinion 1999-11, the Commission concluded that the State Senate campaign committee of a State Senator running for Federal office could continue to fund billboards advertising coffees to discuss items of State interest with her State legislative constituents. The Commission noted that the scope of the billboard advertising, the frequency of, and scope of discussion at, the events would be unchanged from previous years; no advertising would occur outside the State Senate district, and no express advocacy or other Federal campaign activity would occur with respect to the events.

<sup>5</sup> You explain that the Committee intends to use a disclaimer statement in the follow-up flyer which identifies the Committee and also states that the flyer was not printed at government expense. The Commission notes that only general public political advertising (as described in the Act and regulations)

In order to conclude that the event and the surrounding activities are not for the purpose of influencing your re-election, the Commission relies upon your representations and also makes certain additional assumptions. One assumption is that any persons invited to speak, or to make a presentation at, the event will not make reference to the campaign or Committee. The Commission further assumes that neither you nor any agents of your Committee or campaign will use the event as an opportunity to discuss the campaign or to campaign for re-election. In addition, the Commission assumes that, in publicizing the event or soliciting donations to the event, the Committee and its agents will not refer to the campaign or Committee, although they may disclose your co-hosting of the event and that the Committee will match the donations. Likewise, the Committee should inform those who direct or coordinate the activity of the individuals who will promote the event that those conditions apply. Finally, the Commission notes your statement that the Committee will not obtain any list of donors to the event and will not use such a list for campaign purposes.<sup>6</sup>

Based on the foregoing information, conditions, and assumptions, the Commission concludes that the event and the related activities will not be for the purpose of influencing your election. The event is instead a charitable event, and the disbursements by the Committee fit within one of the allowable uses of excess campaign funds under 2 U.S.C. §439a and 11 CFR 113.2. This conclusion pertains both to the matching donations by the Committee and to the Committee's purchases and other payments (or in-kind donations) to advertise and facilitate the event; the matching donations will go directly to the 170(c) organizations and the other payments or donations will likewise be for their benefit. Thus, the Committee may engage in the above-described activities subject to the conditions and assumptions discussed, and the purchases and donations by individuals, corporations or other entities will not be contributions to the Committee or your campaign.<sup>7</sup>

Because the Committee's disbursements will not be for the purpose of influencing a Federal election, they should be reported within the category of "other disbursements." 2 U.S.C. §434(b)(4); 11 CFR 104.3(b)(2). The recipient of the disbursement (such as PTA donees, or vendors paid by the Committee for their services to the event), the purpose and other information must be disclosed for disbursements that aggregate in excess of \$200 to the same payee within the calendar year. 2 U.S.C. §434(b)(6)(A); 11

---

expressly advocating a Federal candidate's election or defeat or soliciting contributions to influence a Federal election is required to include a disclaimer. 2 U.S.C. §441d(a); 11 CFR 110.11(a).

<sup>6</sup> The Commission notes that the Committee may solicit campaign contributions from the same persons whose names are included on the event's donor list, but it may not obtain the names of potential contributors from the list or use other list information to determine whether any specific person should be solicited by the Committee. In addition, Commission regulations would not prohibit the Committee from purchasing use of the list if the amount paid was not less than "usual and normal charge." See 11 CFR 100.7(a)(1)(iii) [membership lists and mailing lists are things of value].

<sup>7</sup> In view of your intent to benefit the elementary schools of your Congressional district, the Committee's sponsorship of, and disbursements for, the event might also be characterized as a constituent service by you and, thus, the disbursements may also be permissible under another portion of 2 U.S.C. §439a. Because of the above conclusion, however, the Commission need not answer whether the spending for the event would be an ordinary and necessary expense incurred in connection with your duties as a Federal officeholder.

CFR 104.3(b)(4)(vi). The ticket purchases, money donations, and in-kind donations made by others for the event should not be reported since they are not receipts of the Committee.

The Commission expresses no opinion regarding the tax ramifications of your proposed activity, nor as to the application of any rules of the U.S. House of Representatives, because those issues are not within its jurisdiction. The Commission also expresses no opinion as to the possible application of Florida State law to the described activity, except to note that applicable State law may not be preempted by the Act or Commission regulations in these circumstances. See 2 U.S.C. §453 and 11 CFR 108.7 [Act and Commission regulations “supersede and preempt any provision of State law with respect to election to Federal office.”]

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

Sincerely,

(signed)  
Scott E. Thomas  
Chairman

Enclosures (AOs 1999-11, 1999-2, 1994-15, 1992-5, and 1991-17)