



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 17, 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-34

The Honorable Jesse L. Jackson, Jr.  
PO Box 490286  
Chicago, IL 60649-9906

Dear Representative Jackson:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to your appearance on a billboard<sup>1</sup> to endorse a non-Federal candidate for the position of State's Attorney in Cook County, Illinois.

The Commission concludes that you may appear on the proposed billboard because the communication would not be a coordinated communication under the Act and Commission regulations, and would therefore not be an in-kind contribution to you or to your authorized committee.

### ***Background***

The facts presented in this advisory opinion are based on your letter received on November 13, 2007, on a telephone conversation of November 28, 2007, and on other publicly available sources as indicated below.

Representative Jackson represents the 2<sup>nd</sup> District of Illinois in the United States House of Representatives and is a candidate for re-election in 2008. The primary election

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<sup>1</sup> Although your initial request refers both to a billboard and to a radio communication, you indicated in a subsequent telephone conversation of November 28, 2007, that you wished to limit the request to the billboard. The Commission therefore will only address the issue of whether your appearance on the billboard would result in an in-kind contribution to you or to your authorized committee.

for that office is scheduled for February 5, 2008.<sup>2</sup> Also scheduled for that date is the primary election for the office of State's Attorney in Cook County, Illinois.<sup>3</sup> Representative Jackson proposes to appear on a billboard to endorse Mr. Larry Suffredin, who is running for State's Attorney in Cook County. The billboard would feature Representative Jackson's image and that of Mr. Suffredin and the text reads: "Justice has no color. LARRY SUFFREDIN FOR STATE'S ATTORNEY[.] Vote February 5<sup>th</sup>. Paid for by Larry Suffredin for State's Attorney." The billboard would be located in Representative Jackson's Congressional district. As indicated on the billboard itself, the communication would be paid for by Mr. Suffredin's campaign organization using funds that comply with Illinois law but not with the Act.

### ***Question Presented***

*May Representative Jackson appear on a billboard and endorse a non-Federal candidate if the billboard is paid for with non-Federal funds?*

### ***Legal Analysis and Conclusions***

Yes, Representative Jackson may appear on a billboard and endorse a non-Federal candidate even though the billboard is paid for with non-Federal funds because the billboard would not be a coordinated communication, and it would not promote, support, attack or oppose any clearly identified Federal candidate, including Representative Jackson.

The Act and Commission regulations define the terms "contribution" and "expenditure" to include any gift of money or "anything of value" made by any person for the purpose of influencing a Federal election. 2 U.S.C. 431(8)(A) and (9)(A); 11 CFR 100.52(a) and 100.111(a). The term "anything of value" includes all "in-kind contributions." See 11 CFR 100.52(d)(1) and 100.111(e)(1). The Act defines an "in-kind contribution" to include an expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate, a candidate's authorized committees, or their agents. 2 U.S.C. 441a(a)(7)(B)(i).

A payment for a communication that is made "in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate, a candidate's authorized committees, or their agents, also known as a "coordinated communication," is an in-kind contribution to the candidate or candidate's authorized committee with whom or which it is coordinated. 11 CFR 109.21(b). As a contribution, such a payment is subject to the amount limitations and source prohibitions of the Act.

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<sup>2</sup> This information is provided on the official website for the Illinois State Board of Elections at [www.elections.il.gov/Downloads/ElectionInformation/PDF/08ElecSchedule.pdf](http://www.elections.il.gov/Downloads/ElectionInformation/PDF/08ElecSchedule.pdf).

<sup>3</sup> See State of Illinois Candidate's Guide 2008, i, at [www.elections.il.gov/Downloads/ElectionInformation/PDF/08CanGuide.pdf](http://www.elections.il.gov/Downloads/ElectionInformation/PDF/08CanGuide.pdf) (indicating that all primary elections for the office of State's Attorney throughout the State of Illinois will be conducted on this day).

However, there are exceptions to the general definition of “coordinated communication.” *See* 11 CFR 109.21(f)-(h). In particular, the regulation exempts from the definition of “coordinated communication” public communications<sup>4</sup> in which a Federal candidate endorses another candidate for Federal or non-Federal office unless the communication promotes, supports, attacks or opposes the endorsing candidate or another candidate who seeks election to the same office as the endorsing candidate. 11 CFR 109.21(g)(1).

Here, the billboard advertisement is a “public communication” because it is a communication made through an “outdoor advertising facility.” In addition, Representative Jackson appears on the billboard only to endorse a non-Federal candidate for office. Finally, the public communication only identifies Representative Jackson without additional comment or statement. The Commission has previously determined that the mere identification of an individual who is a Federal candidate is not of itself tantamount to promoting, supporting, attacking, or opposing that candidate. *See* Advisory Opinions 2007-21 (Holt), 2006-10 (Echostar), and 2003-25 (Weinzapfel). Thus, the billboard does not promote, support, attack, or oppose Representative Jackson or any other Federal candidate. Accordingly, the Commission concludes that the billboard is not a coordinated communication under the Act and Commission regulations.

Thus, because the billboard as described above is not a coordinated communication, Representative Jackson’s appearance on the billboard would not result in an in-kind contribution from Mr. Suffredin’s campaign organization to Representative Jackson or his authorized committee. Therefore, the Commission concludes that Representative Jackson may appear on the proposed billboard.

The Commission also notes that a non-Federal candidate may spend non-Federal funds for a public communication in connection with an election for State or local office that refers to a clearly identified Federal candidate so long as the communication does not promote, support, attack or oppose any candidate for Federal office. *See* 2 U.S.C. 441i(f)(2); 11 CFR 300.72; Advisory Opinion 2003-25 (Weinzapfel). In this case, the billboard does not promote, support, attack, or oppose Representative Jackson or any other Federal candidate. Consequently, the billboard may be paid for with non-Federal funds.

The Commission expresses no opinion regarding whether the proposed activity is permissible under the laws of Illinois or Chicago.

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<sup>4</sup> A “public communication” is “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 11 CFR 100.26; *see also* 2 U.S.C. 431(22).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)  
Robert D. Lenhard  
Chairman