



Comment on AOR 2009-26

October 22, 2009

Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Request for Advisory Opinion AOR 2009-26

VIA EMAIL

Dear Ms. Duncan:

I am campaign manager for Dold for Congress, the principal campaign committee of Robert Dold, a candidate for the U.S. House of Representatives from the 10th District of Illinois. I am writing in response to Illinois State Representative Elizabeth Coulson's request for an advisory opinion. Ms. Coulson seeks the FEC's permission to use either her state office account or her state campaign funds to mail "seniors fair" notices and "health care legislative updates" to her current constituents, who just happen to be her voters in the upcoming Congressional election.

While some believe that the existing federal campaign finance laws create unconstitutional barriers to participation in the political process and restrictions on core political speech, we must run our campaigns for federal office in accordance with the Federal Election Campaign Act and the changes imposed by the Bipartisan Campaign Finance Reform Act of 2002. Until such time as Congress sees fit to change the law or the courts invalid its provisions, the law as it currently exists must be adhered to by candidates for federal office.

Ms. Coulson's lawyers conclude in their request that her mailings will not "promote or support her federal candidacy." If these mailings are anything like her past mailings (as shown in Exhibits B and C of the original request), then we respectfully disagree.

Ms. Coulson's request states that she has held a "senior's fair" "for the last eight years," although the only mailer she provides is from 2004. Nevertheless, this 2004 mailer promotes "Elizabeth Coulson's Senior Expo 2004." Invitees are offered "FREE admission!" and "FREE refreshments!" A mailer of this character unquestionably "promotes and supports" Ms. Coulson, who is a candidate for federal office. Thus, the mailer is "a public communication that refers to a clearly identified candidate for Federal office, regardless of whether a candidate for State or local election is also mentioned or identified, and that promotes or supports, or attacks or opposes any candidate for Federal office," 2 U.S.C. § 431(20) and 11 C.F.R. § 100.24(b)(3), meaning the mailer is "federal election activity." Contrary to the suggestion in her advisory opinion request, the question is not whether the mailer "promotes or supports *her federal candidacy*," but whether it "promotes or supports *any candidate for Federal office*." These mailings clearly promote and support Ms. Coulson, a candidate for Federal office.

The same conclusions must also be drawn with respect to Ms. Coulson's "health care legislative update," the draft of which clearly promotes and supports Ms. Coulson and her work in the Illinois legislature. Being "federal election activity," these mailings may not be paid for with state office or campaign funds.

If either or both of these mailings are distributed within 90 days of the Congressional primary election (February 2, 2010), then both will also be illegal coordinated communications under 11 C.F.R. § 109.21. The mailers will be paid for by Ms. Coulson's state office account or state campaign account, she is unquestionably "materially involved" in their production, and they satisfy the fourth content standard. Both mailers will result in an impermissible in-kind contribution from either Ms. Coulson's state office or campaign account to her federal campaign committee.

None of the past Advisory Opinions cited in the request support Ms. Coulson's proposal. Advisory Opinion 2006-38 dealt with the disposal of surplus state campaign funds by a sitting U.S. Senator. The FEC agreed that Senator Casey could use *federally-permissible* state campaign funds to make donations to *other* state and local candidates, and for travel expenses in connection with *other candidates'* state and local campaign events. Senator Casey did *not* request to use his state campaign funds for the purpose of promoting himself and his own campaign, and Advisory Opinion 2006-38 cannot reasonably be read as allowing such a use of state campaign funds. Similarly, Advisory Opinion 2007-26 did not involve a request by a candidate to use state campaign funds for the purpose of promoting herself and her own campaign. As the Advisory Opinion specified, "Mr. Schock wishes to donate the Schock Committee's remaining [state campaign] funds to various committees and organizations and/or make refunds to the donors of those funds." (Advisory Opinion 1999-11 was decided prior to McCain-Feingold becoming law in 2002 and is no longer controlling.)

Finally, under 2 U.S.C. § 441i(e), Ms. Coulson may not spend any funds that are inconsistent with federal limits and prohibitions. See generally Advisory Opinion 2007-26. Thus, even if Ms. Coulson is permitted to proceed with his mailings, she may do so only with those funds in her state campaign account that are federally-permissible funds. No funds in her state office account are federally-permissible.

We appreciate the opportunity to offer our views in this matter.

Sincerely,

Kelley Folino
Campaign Manager