



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 6, 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2009-26

William J. McGinley, Esq.  
Kathryn Biber Chen, Esq.  
Patton Boggs LLP  
2550 M Street, NW  
Washington, D.C. 20037

Dear Mr. McGinley and Ms. Chen:

We are responding to your advisory opinion request on behalf of Illinois State Representative Elizabeth Coulson, Coulson for Congress, and Representative Coulson's State Campaign Committee concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to Representative Coulson's use of State Campaign Committee and officeholder funds while a candidate for Federal office.

The Commission concludes that Representative Coulson may use State Campaign Committee funds or State officeholder funds to sponsor a seniors fair and to mail a postcard publicizing that event because those activities are not in connection with any Federal or non-Federal election. The Commission also concludes that Representative Coulson may use either of those State accounts to pay for the "health care legislative update" letter because the letter is not in connection with any Federal or non-Federal election, and neither the postcard nor the letter would constitute a coordinated communication with respect to Coulson for Congress if paid for by either of the State accounts.

### ***Background***

The facts presented in this advisory opinion are based on your letter received on September 9, 2009, email received on September 16, 2009, and a telephone conversation with Commission attorneys on October 29, 2009.

Elizabeth Coulson is an Illinois State Representative and a candidate for the United States House of Representatives in 2010. She has served the 17<sup>th</sup> State legislative district of Illinois since 1997. On August 22, 2009, Representative Coulson declared her candidacy to represent the 10<sup>th</sup> Congressional district of Illinois. She will continue serving in the Illinois State legislature while she campaigns for Federal office. Representative Coulson is not a candidate for State office.

Coulson for Congress (“Federal Committee”) is Representative Coulson’s principal campaign committee. The Coulson Campaign Committee (“State Campaign Committee”) is Representative Coulson’s State campaign committee. Illinois law allows State and local candidates to raise funds from individuals without limits and from corporations and labor organizations. *See generally* 10 Illinois Compiled Statutes 5/Article 9. At least some of the donations in the State Campaign Committee account were raised from sources prohibited by the Act or exceed the Act’s amount limitations. Since becoming a Federal candidate, Representative Coulson has not solicited any donations to the State Campaign Committee. Under Illinois law, Representative Coulson also receives an office allowance (“State Office Account”) for the purpose of defraying official office, personnel, and constituent services expenses. *See* 25 Illinois Compiled Statutes 115/Article 4. Illinois law allows her to use State campaign funds for these expenses. *See* 10 Illinois Compiled Statutes 5/Article 9-8.10(c).

Representative Coulson plans to undertake three activities. She plans (1) to organize a seniors fair; (2) to mail a postcard publicizing the seniors fair; and (3) to mail a “health care legislative update” letter to health care professionals in her State legislative district.

#### *1. Seniors Fair*

Representative Coulson plans to organize a seniors fair at a local seniors’ community center in her State legislative district. The community center does not charge a fee for its use. The purpose of the event is to promote health and safety programs available to seniors in Representative Coulson’s State legislative district. A variety of local business organizations are expected to participate at the event. These organizations will set up exhibit booths at the community center and provide information to the participants about their goods and services. Some organizations may distribute free samples and water bottles that display company logos, none of which will reference Representative Coulson. A local hospital may provide free flu shots and cholesterol screening to attending seniors. Representative Coulson, in her role as a State officeholder, has sponsored such seniors fairs for the past eight years.

Representative Coulson states that this event will not be used to expressly advocate her election, or to promote or support her Federal candidacy, or to attack or oppose any of her Federal election opponents. The seniors fair will not include any Federal election activity as defined in 2 U.S.C. 431(20) and 11 CFR 100.24. The event also will not be used by Representative Coulson or her agents to solicit any contributions.

Nor will Representative Coulson provide any information about the participants to her Federal Committee.

## *2. Promotional Postcard*

Representative Coulson will mail approximately 12,000 postcards to seniors residing in her State legislative district publicizing the seniors fair. The postcards will be sent approximately two weeks before the event.<sup>1</sup> The mailing will not be distributed outside her State legislative district.

The postcard will state the date, time, and location of the seniors fair. Representative Coulson provides a sample of a postcard she mailed to her constituents in a previous year.<sup>2</sup> The sample postcard identifies Representative Coulson as a State Representative and contains her picture. One side of the postcard states: "You're Invited to State Representative Elizabeth Coulson's Senior Expo [Year]." The other side states: "State Representative Elizabeth Coulson's Senior Expo [Year]. Free Admission! Free refreshments! Representatives of state and local organizations will be on hand to promote senior citizen's health and safety programs and services that are available. This is an opportunity for senior citizens to visit various booths and gather information." It also includes Representative Coulson's district office telephone number that the recipients may call for more information.

The contents, timing, and distribution of the planned mailing will be the same in all material respects as in previous years when Representative Coulson was not a Federal candidate. Representative Coulson plans to pay for the mailing with funds from her State Office Account or the State Campaign Committee's account.

## *3. Legislative Update Letter*

Representative Coulson plans to mail a letter to approximately 4,000 health care professionals in her State legislative district. The mailing will not be distributed outside her State legislative district. Representative Coulson has mailed such a "legislative update" letter for the past four years. Representative Coulson provides a copy of one such letter.<sup>3</sup> In relevant part the letter states:

"As both your State Representative and a colleague in the health care field, I have made every effort to ensure that Illinois offers a climate where doctors can thrive. As many of you know, our state is facing immense challenges to survive, recover and grow in today's daunting

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<sup>1</sup> Representative Coulson plans to mail the postcards sometime after November 4, 2009.

<sup>2</sup> The Commission assumes that the postcards at issue in this request will be the same in all material respects as the sample postcard that Representative Coulson submitted with her advisory opinion request.

<sup>3</sup> Like the seniors fair postcard, Representative Coulson plans to mail the legislative update letter sometime after November 4, 2009. The Commission assumes that the letter at issue in this request will be the same in all material respects as the sample letter that Representative Coulson submitted with her advisory opinion request.

economic conditions. Despite the volatile climate that has plagued Springfield during this past legislative session, I have remained committed to making progress for the residents of this State.

To bring necessary improvements and resources to the medical industry, I am proud to have supported several initiatives, all Illinois State Medical Society priorities, which have passed both chambers and await action by the Governor.”

The letter then lists and describes health care legislative proposals being considered by the Illinois legislature. It also describes a State health care bill that Representative Coulson co-sponsored and explains why she supports the bill. The letter further states: “I will continue to look for innovative ideas to help improve the health care system in Illinois, as well as help improve the lives of those who need our care. As always, I welcome your ideas and input as many of my best proposals originate from constituents in the 17<sup>th</sup> district.” The letter is signed “Beth Coulson[,] State Representative.”

The contents, timing, and distribution of the planned mailing will be the same in all material respects as in previous years when Representative Coulson was not a Federal candidate. Representative Coulson plans to pay for the mailing with funds from her State Office Account or the State Campaign Committee account.

### ***Questions Presented***

1. *May Illinois State Representative Coulson sponsor the seniors fair as a service to constituents in her State legislative district?*
2. *May Illinois State Representative Coulson pay for the postcard publicizing the seniors fair using funds in her State Office Account or her State Campaign Committee's account?*
3. *May Illinois State Representative Coulson pay for the “health care legislative update” letter using funds in her State Office Account or her State Campaign Committee's account?*
4. *If the Commission determines that the activities described in questions 1, 2, and 3 are not permissible, may the State Campaign Committee instead use a reasonable accounting method to identify donations permissible under the Act, Commission regulations and Illinois law to pay for all of the activities described above?*
5. *If the Commission determines that the activities described in questions 1, 2, 3, and 4 are not permissible, may her Federal Committee pay for the activities described above?*

***Legal Analysis and Conclusions***

1. *May Illinois State Representative Coulson sponsor the seniors fair as a service to constituents in her State legislative district?*

Yes, Representative Coulson may sponsor the event because the seniors fair is not in connection with any Federal or non-Federal election, and it does not involve making any "public communications" as defined in 2 U.S.C. 431(22). Nor would it result in the making of any contributions to Representative Coulson. The Commission does not address whether relevant State law permits Representative Coulson to use funds from her State Campaign Committee's account for this event.

Federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, Federal candidates, may not raise or spend funds in connection with an election for Federal office, including any funds for Federal election activity, unless the funds are subject to the Act's limitations, prohibitions, and reporting requirements. 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.61. Persons subject to Section 441i(e) also may not raise or spend funds in connection with any election other than an election for Federal office unless the funds are raised within the Act's contribution limits and are not from prohibited sources. 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62.

Representative Coulson is a Federal candidate, and her State Campaign Committee is an entity that is directly established, financed, maintained, or controlled by her and is acting on her behalf. Accordingly, Section 441i(e) would apply here if the activity involved were in connection with any Federal or non-Federal election. *See* Advisory Opinions 2003-20 (Reyes) and 2004-14 (Davis). As the Commission previously stated, "[i]f the funds are not raised or spent in connection with an election, then the funds do not fall within the scope of Section 441i(e)." *See* Advisory Opinion 2003-20 (Reyes) at 2.

Representative Coulson plans to sponsor an event for seniors residing in her State legislative district, and the core issue is whether this event is in connection with any Federal or non-Federal election. The Commission concludes that it is not. Although Representative Coulson is a Federal candidate, there is no indication that this event is in connection with her Federal election. The seniors fair will not be used to solicit any contributions to Representative Coulson's Federal Committee, nor will any information about the participants at the event be provided to Representative Coulson's Federal Committee. The event will not involve any express advocacy of Representative Coulson's election or the defeat of her opponents. Nor will the seniors fair be used for any Federal election activity as defined in 2 U.S.C. 431(20) and 11 CFR 100.24.

Similarly, there is no indication that the seniors fair is in connection with any election other than an election for Federal office. Representative Coulson is not a candidate for State office and the seniors fair will not be used to solicit any donations to Representative Coulson's State Campaign Committee. Instead, this event is a service to

Representative Coulson's constituents, to be held as part of her State officeholder duties and in a manner consistent with similar events she held in previous years when she was not a Federal candidate. Because the seniors fair is not in connection with any Federal or non-Federal election, Section 441i(e) would not apply to it.

In addition to being a Federal candidate, Representative Coulson is currently an Illinois State Representative. State officeholders and their agents<sup>4</sup> may spend only Federal funds for a public communication that refers to a clearly identified Federal candidate and that promotes or supports, or attacks or opposes ("PASO") any candidate for that Federal office. 2 U.S.C. 441i(f); 11 CFR 300.70 and 300.71.<sup>5</sup> Federal funds are defined as "funds that comply with the limitations, prohibitions, and reporting requirements of the Act." 11 CFR 300.2(g). Based upon the facts as presented by requestor, the seniors fair will not PASO any Federal candidate.

There is no indication that Representative Coulson or her agents will make any communications at the event that would constitute public communications. 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." 2 U.S.C. 431(22) and 11 CFR 100.26. Any communication made at the event would not be made by the means listed in this definition. Accordingly, the Commission concludes that 2 U.S.C. 441i(f) would not apply to the seniors fair.<sup>6</sup>

For the foregoing reasons, Representative Coulson may use non-Federal funds to pay for any costs associated with sponsoring this event.<sup>7</sup>

2. *May Illinois State Representative Coulson pay for the postcard publicizing the seniors fair using funds in her State Office Account or her State Campaign Committee's account?*

Yes, Representative Coulson may pay for the postcard publicizing the seniors fair using funds in her State Office Account or her State Campaign Committee account because the postcard is not in connection with any Federal or non-Federal election and because the postcard would not be a coordinated communication. The Commission does not address whether relevant State law permits Representative Coulson to use funds from her State Campaign Committee's account for this postcard.

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<sup>4</sup> The State Campaign Committee is an agent for purposes of section 441i(f) because it raised and spent funds in connection with Representative Coulson's election to State office. See 11 CFR 300.2(b)(3).

<sup>5</sup> The Commission currently is considering options for a regulatory definition of PASO. See Notice of Proposed Rulemaking on Coordinated Communications, 74 FR 53,893 (Oct. 21, 2009).

<sup>6</sup> For the same reasons, an analysis under the Commission's coordinated communications regulations also is unnecessary (to wit, the seniors fair would not involve any public communications). 11 CFR 109.21.

<sup>7</sup> In addition, although the Act and Commission regulations govern the use of real estate and personal property for "candidate-related" and "party-related" events, as explained above, here, the community center is not being used for either purpose. Accordingly, the Commission does not analyze the use of the community center free-of-charge for the seniors fair. See 2 U.S.C. 431(8)(B)(ii) and 11 CFR 100.76.

The postcard will promote an event that the Commission determined above is not in connection with any Federal or non-Federal election under 2 U.S.C. 441i(e). The Commission similarly concludes that the postcard publicizing that event is not in connection with either a Federal or non-Federal election under 2 U.S.C. 441i(e).

Additionally, a State officeholder may not spend funds for a public communication that clearly identifies a Federal candidate and promotes or supports a candidate “unless the funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.” 2 U.S.C. 441i(f); 2 U.S.C. 431(20)(A)(iii).

The postcard clearly identifies a Federal candidate because it identifies Representative Coulson by name and includes her photograph. 2 U.S.C. 431(18); 11 CFR 100.17. The postcard, moreover, would be a “public communication” under the Act. 2 U.S.C. 431(22) and 11 CFR 100.26. The definition of a “public communication” includes any communication by means of a mass mailing. *Id.* A “mass mailing,” in turn, is defined as “a mailing...of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.” 2 U.S.C. 431(23); 11 CFR 100.27. Representative Coulson plans to mail an identical or substantially similar postcard to 12,000 persons approximately two weeks before the seniors fair occurs. The postcard, thus, would be a mass mailing and a public communication.

The question, then, is whether the postcard PASOs a candidate for Federal office. Based on the description of the postcard, the Commission concludes that it does not. Although the postcard clearly identifies Representative Coulson, the Commission has previously determined that the mere identification of an individual who is a Federal candidate does not, in itself, promote, support, attack or oppose that candidate. *See* Advisory Opinions 2007-34 (Jackson), 2007-21 (Holt), 2006-10 (Echostar), and 2003-25 (Weinzapfel). Because the postcard merely identifies Representative Coulson, without more, the postcard does not PASO Representative Coulson. Nor does the postcard PASO any other candidate because no other candidate is clearly identified. Accordingly, Representative Coulson is not required to pay for the costs of creating and mailing the postcard with Federal funds.

The Commission further concludes that payment for the postcard by the State Campaign Committee would not constitute a coordinated communication because the communication would not meet the payment prong of 11 CFR 109.21(a)(1).<sup>8</sup> As such, the communication would not be treated as an in-kind contribution to Representative Coulson’s Federal campaign.

Commission regulations set forth a three-prong test to determine whether a payment for a communication is an in-kind contribution as a result of coordination between the person making the payment and the candidate. *See* 11 CFR 109.21(a)(1)-(3).

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<sup>8</sup> It is necessary to analyze the postcard under the coordinated communications regulations because the requestor has represented that the postcard will be publicly disseminated in a portion of the Federal congressional district Representative Coulson seeks to represent within 90 days of the primary election, and the postcard contains a reference to Representative Coulson. *See* 11 CFR 109.21(c)(4)(i).

Under the first prong of the “coordinated communication” definition, a communication is only subject to the regulations if it “is paid for in whole or in part, by a person *other than that candidate*, authorized committee, or political party committee.” 11 CFR 109.21(a)(1) (emphasis added).

Here, the proposed postcard for the seniors fair would be paid for by Representative Coulson's State Office Account or her State Campaign Committee. Thus, this situation is similar to the situation in Advisory Opinion 2007-01 (McCaskill). In that advisory opinion, the Commission concluded that the payment prong was not met if Senator McCaskill’s former State campaign committee paid for solicitations for the purpose of retiring debts remaining from her previous candidacies for State offices, because “the candidate and her agents are paying for these communications.”<sup>9</sup> Accordingly, Representative Coulson may use her State Office Account or State Campaign Committee to pay for the postcard without such payment being treated as an in-kind contribution to, or an expenditure by, Representative Coulson’s Federal campaign, because Representative Coulson and her agents are paying for these communications.<sup>10</sup>

3. *May Illinois State Representative Coulson pay for the “health care legislative update” letter using funds in her State Office Account or her State Campaign Committee's account?*

Yes, Representative Coulson may use funds in either of these accounts to pay for the “health care legislative update” letter because the letter is not in connection with any Federal or non-Federal election and it does not PASO any Federal candidate. As above, the Commission does not address whether relevant State law permits Representative Coulson to use funds from her State Campaign Committee’s account for the letter.

As explained in the answer to Question 2 above, 2 U.S.C. 441i(e) would only apply to Representative Coulson if the activity involved were in connection with any Federal or non-Federal election, including any Federal election activity. The activity at issue here – the “health care legislative update” letter – would not be in connection with any election.

The letter describes Illinois State legislative developments to health care professionals residing in Representative Coulson’s State legislative district. Representative Coulson indicates that this communication would be made solely as part of her State officeholder duties. The letter does not solicit any donations, nor does it expressly advocate Representative Coulson’s election, or the defeat of her opponents.

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<sup>9</sup> Senator McCaskill was a Federal officeholder at the time the proposed communications were to be disseminated.

<sup>10</sup> This request only involves payment of communications from a State officeholder's official account or State candidate committee's account. This advisory opinion does not address a situation where a candidate may have control over some other type of entity, such as a business entity.



As discussed above, a State officeholder may not spend funds for a public communication that clearly identifies a candidate for Federal office and PASOs a candidate for that office “unless the funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.” 2 U.S.C. 441i(f); 2 U.S.C. 431(20)(A)(iii).

The “health care legislative update” letter clearly identifies a Federal candidate because it mentions Representative Coulson by name. 2 U.S.C. 431(18); 11 CFR 100.17. The letter would be a public communication because Representative Coulson plans to mail the letter to 4,000 persons. 2 U.S.C. 431(22) and 431(23); 11 CFR 100.26 and 100.27. However, the Commission concludes that the letter would not PASO Representative Coulson or any of her Federal opponents.

Over the proposed two–page letter, only two clauses contain language that could be construed to PASO Representative Coulson: (1) “I have made every effort to ensure that Illinois offers a climate where doctors can thrive”; (2) “I have remained *committed to making progress* for the residents of this State”; and (3) “I will *continue to look for innovative ideas to help improve* the health care system in Illinois, as well as help improve the lives of those who need our care” (emphasis added). These adjectives address Representative Coulson's past and ongoing legislative actions as a State officeholder. Moreover, the letter’s opening sentence states that Representative Coulson is sending the letter “as both your State Representative and a colleague in the health care field.” Finally, this health care legislative update letter neither “promotes” nor “supports” (nor “attacks” nor “opposes”) Representative Coulson.

The requestor states that the letter will be sent to 4,000 health care professionals in her State district, but will not be sent beyond the State district. She also states that she sent this letter last year and that its scope and frequency will not be altered. This letter is consistent with the types of mailers State representatives typically send to their constituents as one of their responsibilities as State officeholders. The Commission previously has recognized that a State officeholder’s declaration of Federal candidacy does not automatically alter the character of the candidate’s activities routinely engaged in as a State officeholder. In Advisory Opinion 1999-11 (Byrum), the Commission found that a State senator’s disbursements for billboards advertising weekly coffee meetings with constituents and the State senator were not for the purpose of influencing her Federal election. The Commission noted that the State senator’s “continuation” of this practice would not alter the purpose of the disbursements “simply because [she] has become a Federal candidate.” *Id.* at 3, n.6.<sup>11</sup> Similarly, Representative Coulson is merely continuing activities she had previously undertaken as a State officeholder prior to her Federal candidacy. Accordingly, the Commission concludes that the Act does not prohibit Representative Coulson from using non-Federal funds to pay for the “health care legislative update” letter.

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<sup>11</sup> Although this advisory opinion was issued prior to the enactment of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), the analysis to which this advisory opinion refers is unchanged by BCRA’s amendments to FECA.

The Commission further concludes that the payment for the “health care legislative update” letter by the State Campaign Committee would not constitute a coordinated communication for the same reasons that the payment for the postcard in the answer to Question 2 above would not constitute a coordinated communication.<sup>12</sup> Specifically, the letter would not satisfy the payment prong under 11 CFR 109.21(a)(1) because Representative Coulson and her agents would be paying for the communication. *See* AO 2007-01 (McCaskill).

4. *If the Commission determines that the activities described in questions 1, 2 and 3 are not permissible, may the State Campaign Committee instead use a reasonable accounting method to identify donations permissible under the Act, Commission regulations and Illinois law to pay for all of the activities described above?*

This question is moot given the answers to Questions 1, 2, and 3 above.

5. *If the Commission determines that the activities described in questions 1, 2, 3, and 4 are not permissible, may her Federal Committee pay for the activities described above?*

This question is moot given the answers to Questions 1, 2, and 3 above.

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 requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available on the Commission’s Web site at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)  
Steven T. Walther  
Chairman

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<sup>12</sup> It is necessary to analyze the “legislative update” letter under the coordinated communications regulations for the same reasons stated in footnote 8, *supra*.