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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO.** 15-52-A  
**AGENDA ITEM**  
**For meeting of October 1, 2015**  
**SUBMITTED LATE**

September 30, 2015

**MEMORANDUM**

TO: The Commission

FROM: Daniel A. Petalas *DAP*  
Acting General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Joanna S. Waldstreicher *JSW*  
Attorney

Subject: AO 2015-07 (Hillary for America) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:30 am (Eastern Time) on October 1, 2015.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2015-07

2

3 Marc E. Elias

4 Perkins Coie LLP

5 700 13th Street, NW

6 Suite 600

7 Washington, DC 20005-3960

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9 Dear Mr. Elias:

**DRAFT A**

10 We are responding to your advisory opinion request on behalf of Hillary for America (the  
11 “Committee”) concerning the application of the Federal Election Campaign Act, 52 U.S.C.  
12 §§ 30101-46 (the “Act”), and Commission regulations to payments for food, beverages, and valet  
13 parking at campaign events. The Committee asks whether attendees at the Committee’s  
14 campaign events may pay for their own food, beverages, and valet parking without making in-  
15 kind contributions to the Committee. The Commission concludes that attendees at the  
16 Committee’s campaign events may pay for their own food, beverages, and valet parking as  
17 described in the request without making in-kind contributions to the Committee.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on August  
20 7, 2015 (the “AOR”), and public disclosure reports filed with the Commission.

21 The Committee is the principal campaign committee for presidential candidate Hillary  
22 Clinton. The Committee plans to organize campaign events during the 2016 election cycle in  
23 restaurants, hotels, and similar event spaces. For some of these events, the Committee does not  
24 plan to make food or beverages available to attendees and will not mention food or beverages in  
25 the invitations to the events nor imply that a meal is part of these events. The Committee  
26 anticipates that attendees at such events may nonetheless wish to purchase food and beverages  
27 for themselves directly from the venue. Attendees would not be required to purchase any food or

1 beverages at the event, and there would not be “any monetary consequences” for the Committee  
2 as a result of attendees’ decision to purchase or not purchase food or beverages during the event.

3 In addition, the Committee intends to hold some campaign events at venues that do not  
4 provide valet parking in the normal course of business, such as private homes, museums, or  
5 office facilities. For such events the Committee does not intend to provide valet parking and  
6 would not request that a host make valet parking available, but the Committee anticipates that  
7 valet parking services would be available to attendees at the event venue and that individual  
8 attendees who wish to use the valet service would pay a per-car fee and any accompanying tip.

9 ***Question Presented***

10 *May attendees at Committee campaign events pay for their own food and beverages and*  
11 *valet parking without such payments being treated as in-kind contributions to the Committee?*

12 ***Legal Analysis and Conclusion***

13 Yes, attendees at Committee campaign events may pay for their own food and beverages  
14 and valet parking as described in the request without such payments being treated as in-kind  
15 contributions to the Committee.

16 The Act and Commission regulations define a contribution as including “any gift,  
17 subscription, loan, advance, or deposit of money or anything of value made by any person for the  
18 purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R.  
19 § 100.52(a). “Anything of value” includes all in-kind contributions, *see* 11 C.F.R.  
20 § 100.52(d)(1), as well as “[t]he entire amount paid to attend a fundraiser or other political  
21 event,” *id.* § 100.53.

1 *Food and Beverages*

2 Payment of food and beverage expenses for a committee's campaign event by anyone  
3 other than the committee generally constitutes an in-kind contribution. Advisory Opinion 1980-  
4 63 (Wirth); Advisory Opinion 1980-89 (Coelho).<sup>1</sup> Thus, if a committee provides food and  
5 beverages to attendees at a campaign event, and an attendee reimburses or otherwise defrays the  
6 committee's expenses for such food and beverages, that reimbursement would constitute an in-  
7 kind contribution because it would relieve the committee of an expense that it would otherwise  
8 incur. *See* Advisory Opinion 2007-22 (Hurysz) at 6 ("The provision of . . . materials without  
9 charge would relieve your campaign of the expense that it would otherwise incur to obtain such  
10 materials. Thus, the provision of such items without charge would constitute a contribution . . .  
11 ."). And if a committee includes the cost of the food or beverages in the charge that donors must  
12 pay to attend the event, an attendee's payment of that charge constitutes a contribution as a  
13 payment "to attend a fundraiser" under 11 C.F.R. § 100.53. Amendments to Federal Election  
14 Campaign Act of 1971, 45 Fed. Reg. 15,080, 15,081 (Mar. 7, 1980) (regarding former 11 C.F.R.  
15 § 100.7(a)(2), later recodified in section 100.53).

16 Here, however, the Committee does not plan to provide food or beverages for any  
17 attendees at the relevant events. Thus, the attendees' payments to attend the event would not  
18 include food or drink expenses, nor would the attendees' purchase of their own food or  
19 beverages at a campaign event relieve the Committee of any expenses it would otherwise incur.  
20 Such purchases therefore would not constitute in-kind contributions to the Committee.

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<sup>1</sup> The Act and Commission regulations provide an exception for the cost of invitations, food, and beverages provided by an individual to a candidate committee "on the individual's residential premises." 52 U.S.C. § 30101(8)(B)(ii); 11 C.F.R. § 100.77. This exception is not applicable here, as the request describes events that will take place "in restaurants, hotels, or similar event spaces," rather than residential premises, with respect to the issue of food and beverage costs.

1           This conclusion relies on the Committee’s representation that there will “not be any  
2 monetary consequences” to the Committee related to whether attendees choose to purchase food  
3 or beverages at the events. *See* AOR at AOR001-002. The Commission understands this  
4 representation to mean that attendees’ purchasing or not purchasing food or beverages at an  
5 event will not in any way affect the Committee’s costs for the event. For example, the event  
6 venue will not offer the Committee any discounts based on attendees’ actual or anticipated  
7 purchases, and the Committee will not be obligated to pay a minimum charge for food and  
8 beverages if attendees do not purchase enough. Assuming that attendees’ purchases do not  
9 factor into the pricing of these or other charges to the Committee, the purchases by attendees of  
10 their own food or beverages would not constitute in-kind contributions for the reasons stated  
11 above.

#### 12 *Valet Parking*

13           The Committee represents that it “does not plan to request the provision of [valet  
14 parking] services, or otherwise make valet parking available” at the events under consideration.  
15 AOR004. As explained above, because the Committee will not be providing valet parking  
16 services to any attendees at these events, the attendees’ payments for their own valet parking will  
17 not relieve the Committee of expenses it would otherwise incur, and those payments therefore  
18 will not be in-kind contributions.

19           This response constitutes an advisory opinion concerning the application of the Act and  
20 Commission regulations to the specific transaction or activity set forth in your request. *See*  
21 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or  
22 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
23 this advisory opinion, then the requestor may not rely on that conclusion as support for its

1 proposed activity. Any person involved in any specific transaction or activity which is  
2 indistinguishable in all its material aspects from the transaction or activity with respect to which  
3 this advisory opinion is rendered may rely on this advisory opinion. *See id.* § 30108(c)(1)(B).  
4 Please note that the analysis or conclusions in this advisory opinion may be affected by  
5 subsequent developments in the law including, but not limited to, statutes,  
6 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
7 on the Commission's website.

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On behalf of the Commission,

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Ann M. Ravel

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Chair

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