



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ADVISORY OPINION 2010-19

**CONCURRING STATEMENT OF
CHAIRMAN MATTHEW S. PETERSEN**

At issue in Advisory Opinion 2010-19 was whether, consistent with the Federal Election Campaign Act of 1971, as amended (“the Act”), Google Inc. could sell text ads generated by its Google AdWords program to federal candidates, their authorized committees, and other political committees without having to include full disclaimers in the ads.¹ My colleagues and I all agreed that the proposed text ads were not required to contain full disclaimers; however, we could not agree upon a rationale. I, along with Commissioners Hunter and McGahn, supported the reasoning in Draft B,² which concluded that the text ads were exempt from the disclaimer requirements under the “impracticable” exception set forth at 11 C.F.R. § 110.11(f)(1)(ii). But as just mentioned, neither this approach nor the approach favored by Vice Chair Bauerly and Commissioners Walther and Weintraub enjoyed majority support.

Because the Commission unanimously agreed that Google’s text ad proposal was not legally problematic, I concluded that Google was owed the protection provided by an advisory opinion, even if the resulting opinion lacked a basis for its conclusions. Though this was not a satisfying way to resolve Google’s request, the alternative of not issuing an opinion at all would have been even less so. For this reason, I voted to issue an Advisory Opinion that concluded, without analysis, “that, under the circumstances described in the request, the conduct is not in violation of the Act or Commission regulations.”³ As stated above, the reasoning in Draft B forms the basis of my “Yes” vote.

12/30/2010
Date


Matthew S. Petersen
Chairman

¹ The rules governing when disclaimers are required and what content they must contain are set forth in 11 C.F.R. § 110.11.

² AO 2010-19 (Google), Draft B, Agenda Document No. 10-61, *available at* <http://saos.nictusa.com/saos/searchao?SUBMIT=ao&AO=3108&START=1148772.pdf>.

³ AO 2010-19 (Google), Certification dated October 7, 2010 (4-2 vote).