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FEDERAL ELECTION COMMISSION
Washington, DC 20463

2007 DEC 11 P 4: 42

AGENDA ITEM
For Meeting of: 12-14-07

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

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Associate General Counsel

Ron Katwan *RBK*
Assistant General Counsel

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Attorney

Subject: Draft AO 2007-34

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 14, 2007.

Attachment

1 ADVISORY OPINION 2007-34
2 The Honorable Jesse L. Jackson, Jr.
3 PO Box 490286
4 Chicago, IL 60649-9906

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5 Dear Representative Jackson:

6 We are responding to your advisory opinion request concerning the application of
7 the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission
8 regulations to your appearance on a billboard¹ to endorse a non-Federal candidate for the
9 position of State's Attorney in Cook County, Illinois.

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

14 ***Background***

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

18 Representative Jackson represents the 2nd District of Illinois in the United States
19 House of Representatives and is a candidate for re-election in 2008. The primary election
20 for that office is scheduled for February 5, 2008.² Also scheduled for that date is the

¹ 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.

² 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.

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

10 ***Question Presented***

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

13 ***Legal Analysis and Conclusions***

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

19 The Act and Commission regulations define the terms “contribution” and
20 “expenditure” to include any gift of money or “anything of value” made by any person
21 for the purpose of influencing a Federal election. 2 U.S.C. 431(8)(A) and (9)(A); 11 CFR

³ See State of Illinois Candidate’s Guide 2008, i, at 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).

1 100.52(a) and 100.111(a). The term “anything of value” includes all “in-kind
2 contributions.” *See* 11 CFR 100.52(d)(1) and 100.111(e)(1). The Act defines an “in-kind
3 contribution” to include an expenditure made by any person “in cooperation,
4 consultation, or concert, with, or at the request or suggestion of” a candidate, a
5 candidate’s authorized committees, or their agents. 2 U.S.C. 441a(a)(7)(B)(i).

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

12 However, there are exceptions to the general definition of “coordinated
13 communication.” *See* 11 CFR 109.21(f)-(h). In particular, the regulation exempts from
14 the definition of “coordinated communication” public communications⁴ in which a
15 Federal candidate endorses another candidate for Federal or non-Federal office unless the
16 communication promotes, supports, attacks or opposes the endorsing candidate or another
17 candidate who seeks election to the same office as the endorsing candidate. 11 CFR
18 109.21(g)(1).

19 Here, the billboard advertisement is a “public communication” because it is a
20 communication made through an “outdoor advertising facility.” In addition,
21 Representative Jackson appears on the billboard only to endorse a non-Federal candidate

⁴ 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).

1 for office. Finally, the public communication only identifies Representative Jackson
2 without additional comment or statement. The Commission has previously determined
3 that the mere identification of an individual who is a Federal candidate is not of itself
4 tantamount to promoting, supporting, attacking, or opposing that candidate. *See*
5 Advisory Opinions 2007-21 (Holt), 2006-10 (Echostar), and 2003-25 (Weinzapfel).
6 Thus, the billboard does not promote, support, attack, or oppose Representative Jackson
7 or any other Federal candidate. Accordingly, the Commission concludes that the
8 billboard is not a coordinated communication under the Act and Commission regulations.

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

14 The Commission also notes that a non-Federal candidate may spend non-Federal
15 funds for a public communication in connection with an election for State or local office
16 that refers to a clearly identified Federal candidate so long as the communication does not
17 promote, support, attack or oppose any candidate for Federal office. *See* 2 U.S.C.
18 441i(f)(2); 11 CFR 300.72; Advisory Opinion 2003-25 (Weinzapfel). In this case, the
19 billboard does not promote, support, attack, or oppose Representative Jackson or any
20 other Federal candidate. Consequently, the billboard may be paid for with non-Federal
21 funds.

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

