

AGENDA DOCUMENT NO. 03-31
APPROVED MAY 8, 2003

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, APRIL 24, 2003

PRESENT: Ellen L. Weintraub, Chair, Presiding
Bradley A. Smith, Vice Chairman
David M. Mason, Commissioner
Danny L. McDonald, Commissioner
Scott E. Thomas, Commissioner
Michael E. Toner, Commissioner
Robert J. Costa, Deputy Staff Director
for Audit and Review, representing
James A. Pehrkon, Staff Director
Lawrence H. Norton, General Counsel
Darlene Harris, Deputy Secretary

Chair Ellen L. Weintraub, assisted by her daughter Miss Natanya Dauster, called the Federal Election Commission to order in an open meeting at 10:07 A.M. on Thursday, April 24, 2003, with a quorum present. To celebrate "Take Our Children to Work Day," the Chair welcomed special guests in attendance and noted the occupations of various FEC employees.

I. CORRECTION AND APPROVAL OF MINUTES

- A. Minutes for April 3, 2003
Agenda Document No. 03-23
- B. Minutes for April 9, 2003
Agenda Document No. 03-24

Chair Weintraub recognized Vice Chairman Smith, who

MOVED to approve the Minutes for the open meetings of Thursday, April 3, 2003, and Wednesday, April 9, 2003, as submitted in Agenda Documents No. 03-23 and No. 03-24, respectively.

The motion carried on a vote of 6-0 with Commissioners Mason, McDonald, Smith, Thomas, Toner, and Weintraub voting affirmatively.

II. ADVISORY OPINIONS

A. Draft Advisory Opinion 2003-04

Freeport-McMoRan Copper & Gold, Inc.,
("Freeport") and the Freeport-McMoRan
Copper & Gold, Inc. Citizenship
Committee ("the PAC") by counsel,
R. Patrick Vance

Agenda Documents No. 03-25 and
No. 03-25-A

Chair Weintraub recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 03-25-A.

The motion carried on a vote of 6-0.

The Chair then recognized Mr. Albert Kiss of the
General Counsel's Office who presented draft Advisory
Opinion 2003-04 concerning the application of the Federal
Election Campaign Act of 1971, as amended ("the Act") and
Commission regulations, to a proposed plan under which
Freeport would match contributions to the PAC with
contributions to a charity.

II. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-04
(continued)

During his presentation, Mr. Kiss outlined amendments to the proposed draft, as set forth in Agenda Document No. 03-25-A.

Discussion was held.

Following discussion, the Chair recognized Vice Chairman Smith, who

MOVED to approve draft Advisory Opinion 2003-04, as set forth in Agenda Document No. 03-25, as amended by Agenda Document No. 03-25-A.

The motion carried on a vote of 4-2 with Commissioners Mason, Smith, Toner, and Weintraub voting affirmatively. Commissioners McDonald and Thomas dissented.

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Chair Weintraub, assisted by her daughter
Miss Emma Dauster, called a recess at 10:24 A.M.
The meeting reconvened at 10:40 A.M.

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II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03

State Senator Bill Boling, State Delegate
Bill Janis, Chesterfield County School
Board Member Beth Davis, and United States
Representative Eric Cantor by counsel,
Jan Witold Baran

Agenda Documents No. 03-26

Agenda Documents No. 03-26-A,
No. 03-26-B, and No. 03-26-C
(Submitted Late)

Chair Weintraub recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Documents No. 03-26-A,
No. 03-26-B, and No. 03-26-C.

The motion carried on a vote of 6-0.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03
(continued)

The Chair then recognized Mr. John Vergelli of the General Counsel's Office who presented draft Advisory Opinion 2003-03 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations, to fundraising that Representative Cantor wishes to undertake on behalf of the other requestors in State elections in Virginia.

Chair Weintraub recognized Vice Chairman Smith and Commissioner Mason who presented alternative drafts in Agenda Documents No. 03-26-A and No. 03-26-B, respectively. The Chair noted her amendments as outlined in Agenda Document No. 03-26-C.

A discussion followed.

Following discussion, the Chair recognized Vice Chairman Smith, who presented motions which resulted in the following:

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03
(continued)

1. Failed by a vote of 3-3 to
pass a motion to:

Approve alternative draft
Advisory Opinion 2003-03,
as set forth in Agenda
Document No. 03-26-A.

Commissioners Mason, Smith, and Toner voted
affirmatively for the motion. Commissioners McDonald,
Thomas, and Weintraub dissented.

2. Failed by a vote of 3-3 to
pass a motion to:

Approve draft Advisory Opinion
2003-03, as set forth in Agenda
Document No. 03-26, as amended
by Agenda Document No. 03-26-C.

Commissioners McDonald, Thomas, and Weintraub
voted affirmatively for the motion. Commissioners Mason,
Smith, and Toner dissented.

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The meeting recessed at 11:54 A.M. and reconvened at 12:30 P.M. with a quorum present.

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II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

Discussion resumed and Chair Weintraub then recognized Commissioner Mason, who

MOVED to approve Pages 1-7 of Agenda Document No. 03-26-B, subject to the following amendment on Page 6, Line 12 by inserting the word "private" after the word "a."

The motion carried on a vote of 6-0.

The Chair again recognized Commissioner Mason, who

MOVED to approve the Answer to Question 1. a., as set forth on Page 8, Lines 8-16, of Agenda Document No. 03-26-B.

The motion carried on a vote of 6-0.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

Agenda Documents No. 03-26-D
(Submitted Late)

Chair Weintraub recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 03-26-D.

The motion carried on a vote of 6-0.

The Chair then recognized Commissioner Toner who
presented an alternative Answer to Question 1. b. in Agenda
Document No. 03-26-D.

Discussion followed.

Chair Weintraub recognized Commissioner Toner,
who

MOVED to approve the Answer to
Question 1. b., as set forth
in Agenda Document No. 03-26-D,
as amended to read as follows:

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

- "1. b. Are 'general solicitations' of funds that do not request specific amounts permissible?

"Yes, provided written notices are clearly and conspicuously displayed (FOOTNOTE 1) at state candidate fundraising events at which Federally permissible funds are raised indicating that the covered person is only soliciting federally permissible funds. (FOOTNOTE 2) If written notices are provided the covered person may legally make general requests for financial support at state candidate fundraising events without any oral disclaimer that only Federally permissible funds are being requested. Alternatively, if written notices are not provided at the event, the covered official may make the following public oral disclaimer: 'I am only asking for up to \$2000 from individuals and I am not asking for corporate, labor or minor's funds.' If such a public oral disclaimer is made at the event it only need be made once, and is not required to be made during a covered person's one-on-one discussions with donors or other people at the event. This should not, however, be construed to permit a covered person to inoculate a solicitation of non-Federal funds by reciting a rote limitation, but then encouraging the potential donor to disregard the limitation."

"1 See 11 CFR §110.11(c) for the Commission's interpretation of clear and conspicuous in related contexts."

"2 Written solicitations which are not limited to Federally permissible amounts or which are directed to impermissible sources must include a written disclaimer. See 1.c. below."

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

The motion carried on a vote of 6-0.

Discussion resumed and Chair Weintraub then
recognized Vice Chairman Smith, who

MOVED to approve the Answer to
Question 1. c., as set forth
in Agenda Document No. 03-26-B,
subject to the following amend-
ments:

1. Page 9, Line 13:

Retain the words "must
expressly" and delete
the word "may."

2. Page 9, Line 14: Insert the
word "the" before the word
"Act's."

The motion carried on a vote of 6-0.

Chair Weintraub recognized Commissioner Mason,
who

MOVED to approve Answers, as
set forth in Agenda Document
No. 03-26-B, to the following:

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

1. Question 2;
2. Question 3. a.;
3. Question 3. b.;
4. Question 3. c., as amended,
as follows:
 - a) Page 11, Line 12:
Delete the word "that" and
substitute the words "where
that publicity" in lieu
thereof;
 - b) Page 12, Line 1:
Insert the words "and
prohibitions" after
the word "limitations;"
 - c) Page 12, Line 1:
After the word "Act" replace
the comma with a period.
5. Question 3. d.; and
6. Question 4.

The motion carried on a vote of 6-0.

A discussion followed.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

Following discussion, the Chair recognized
Vice Chairman Smith, who

MOVED to approve the Answer to
Question 5., as set forth in
Agenda Document No. 03-26-B,
subject to the following amend-
ments:

1. Delete the language which begins
on Page 13, Line 15 through
Page 14, Line 11, and insert the
words "The Commission concludes
that" at the beginning of the
sentence on Page 14, Line 12.
2. Page 14, Line 12:
Insert the words "in a position
specifically related to fundrai-
sing, such as serving" after the
word "serve."
3. Page 14, Lines 16-17:
Delete the words "must not be ...
to Federal candidates" and substi-
tute the words "prohibitions of
the Act" in lieu thereof.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

4. Page 14, Line 17: Insert the following at the end of Line 17: "The Commission could not agree on whether the use of a covered person's name in a position not specifically related to fund raising, such as 'honorary chairperson,' on a solicitation not signed by the covered person, is prohibited under the Act."

Chair Weintraub then recognized Vice Chairman
Smith, who

MOVED IN A SUBSTITUTE MOTION to
approve the Answer to Question 5.,
as set forth in Agenda Document
No. 03-26-A.

A discussion followed.

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The meeting recessed at 1:38 P.M. and
reconvened at 1:43 P.M. with a quorum present.

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II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

Discussion of draft AO 2003-03 resumed.

The Chair recognized Vice Chairman Smith, who withdrew his previous (substitute) motion, and

MOVED IN A SUBSTITUTE MOTION to approve the Answer to Question 5., as set forth in Agenda Document No. 03-26-B, subject to the following amendments:

1. Delete the language which begins on Page 13, Line 15 through Page 14, Line 11, and insert the words "The Commission concludes that" at the beginning of the sentence on Page 14, Line 12.
2. Page 14, Line 12:
Insert the words "in a position specifically related to fundraising, such as serving" after the word "serve."
3. Page 14, Lines 16-17:
Delete the words "must not be ... to Federal candidates" and substitute the words "prohibitions of the Act" in lieu thereof.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

4. Page 14, Line 17: Insert the following at the end of Line 17: "The use of a covered person's name in a position not specifically related to fund raising, such as 'honorary chairperson,' on a solicitation not signed by the covered person, would require a statement indicating that the covered person is not soliciting funds in excess of the limitations of or from sources prohibited by the Act."

The substitute motion failed on a vote of 3-3

with Commissioners Mason, Smith, and Toner voting affirmatively. Commissioners McDonald, Thomas, and Weintraub dissented.

The original motion carried on a vote of 6-0.

Chair Weintraub then recognized Commissioner Mason, who

MOVED to approve the Answer to Question 6., as set forth in Agenda Document No. 03-26-B, subject to the following amendments:

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

1. Page 16, Line 15:
Amend the beginning of the sentence as follows: "Absent any other factors relevant to establishing an agency relationship, a..."
2. Page 16, Line 19:
Delete the words "or implied" after the word "actual" and insert the words "express or implied" after the word "authority."

The motion carried on a vote of 5-1 with Commissioners Mason, McDonald, Smith, Toner, and Weintraub voting affirmatively. Commissioner Thomas dissented.

The Chair recognized Vice Chairman Smith,
who

MOVED to approve alternative draft Advisory Opinion 2003-03, as set forth in Agenda Document No. 03-26-B, as amended by Agenda Document No. 03-26-D, and further amended at the table.

The motion carried on a vote of 6-0.

III. FINAL AUDIT REPORT: LAROUCHE'S COMMITTEE FOR A
NEW BRETTON WOODS

Agenda Document No. 03-27

Chair Weintraub recognized Vice Chairman Smith,
who

MOVED to hold over the Report
of the Audit Division on
Larouche's Committee for a
New Bretton Woods, as set forth
in Agenda Document No. 03-27,
for consideration at the next
open meeting of the Commission.

The motion carried on the vote of 6-0.

IV. DRAFT NOTICE OF PUBLIC HEARING AND REQUEST FOR
COMMENT REGARDING ENFORCEMENT PROCEDURES

Agenda Document No. 03-28 (Submitted Late)

Chair Weintraub recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 03-28.

The motion carried on a vote of 6-0.

IV. DRAFT NOTICE OF PUBLIC HEARING AND REQUEST FOR
COMMENT REGARDING ENFORCEMENT PROCEDURES

(continued)

The Chair then recognized General Counsel Norton who presented the subject document.

A discussion followed.

Following discussion, Chair Weintraub recognized Vice Chairman Smith, who

MOVED to approve the Draft Notice of Public Hearing and Request for Comment Regarding Enforcement Procedures, as set forth in Agenda Document No. 03-28, for publication in the *Federal Register*.

The motion carried on a vote of 6-0.

V. ROUTINE ADMINISTRATIVE MATTERS

There were no routine administrative matters to come before the Commission.

The meeting adjourned at 2:10 P.M.

Signed:

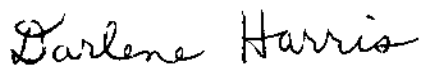


Ellen L. Weintraub
Chair of the Commission

Attest:



Mary W. Dove
Secretary of
the Commission



Darlene Harris
Deputy Secretary
of the Commission