

AGENDA DOCUMENT NO. 04-06
APPROVED JANUARY 29, 2004

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

WEDNESDAY, JANUARY 7, 2004

PRESENT: Bradley A. Smith, Chairman, presiding

 Ellen L. Weintraub, Vice Chair

 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

 Mary W. Dove, Secretary

Chairman Bradley A. Smith called the Federal Election Commission to order in an open meeting at 10:07 A.M. on Wednesday, January 7, 2004, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

- A. Minutes for December 11, 2003
Agenda Document No. 04-02
- B. Minutes for December 18, 2003
Agenda Document No. 04-03

Chairman Smith recognized Vice Chair Weintraub,
who

MOVED to approve the minutes for the Open Meetings of Thursday, December 11, 2003, and Thursday, December 18, 2003, as submitted in Agenda Documents No. 04-02 and No. 04-03, respectively.

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

II. DRAFT ADVISORY OPINION 2003-36

Republican Governors Association by
Executive Director Edward T. Tobin, III

Agenda Documents No. 04-04, No. 04-04-A,
and No. 04-04-B

Chairman Smith recognized Vice Chair Weintraub,

who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Documents No. 04-04-A
and No. 04-04-B.

The motion carried on the vote of 6-0.

Chairman Smith recognized Mr. Jonathan Levin of
the General Counsel's Office who presented two proposed
drafts of Advisory Opinion 2003-36 concerning the application
of the Federal Election Campaign Act of 1971, as amended
("the Act"), and Commission regulations to the participation
of Federal candidates and officeholders in fundraising
activities on behalf of the Republican Governors Association.

A discussion followed.

II. DRAFT ADVISORY OPINION 2003-36 (continued)

Chairman Smith recognized Commissioner Mason,
who

MOVED to approve Draft A of
Advisory Opinion 2003-36, as
submitted in Agenda Document
No. 04-04.

The motion failed by a vote of 3-3 with
Commissioners Mason, Smith, and Toner voting affirmatively.
Commissioners McDonald, Thomas, and Weintraub dissented.

The Chairman recognized Commissioner Thomas who
reviewed his amendments to Draft B, as contained in Agenda
Document No. 04-04-A. The Chairman then presented his
amendments to Draft B, as set forth in Agenda Document
No. 04-04-B, and offered an amendment at the table to amend
Page 9, Footnote 8, of Draft B, in Agenda Document No. 04-04,
by deleting the words "explicitly solicits" on the second line
from the bottom and replacing with the following words: "would
constitute a solicitation by the covered person of."

II. DRAFT ADVISORY OPINION 2003-36 (continued)

Chairman Smith recognized Mr. Jonathan Levin who proposed an amendment to Agenda Document No. 04-04-B, Number 6, Page 11, Line 11, whereby the new sentences would

read:

"Additionally the requestor may have claimed that conference account income is exempt function income under 26 U.S.C. 527. In the absence of other legal or factual considerations, the Commission would accept this characterization of the requestor's conference account activities."

The Chairman accepted the proposed language by the Office of General Counsel as a friendly amendment.

There was further discussion.

Chairman Smith recognized Vice Chair Weintraub, who

MOVED to approve Page 1 through Page 11, Line 15 of Draft B, of Advisory Opinion 2003-36, as submitted in Agenda Document No. 04-04, as amended by Agenda Document No. 04-04-A, as amended by deletion of Item No. 8, and as amended by Agenda Document No. 04-04-B, subject to the amendments noted above, and to instruct the Office of General Counsel to make any necessary technical amendments.

The motion carried on the vote of 6-0.

II. DRAFT ADVISORY OPINION 2003-36 (continued)

The Chairman recognized Vice Chair Weintraub,
who

MOVED to approve Page 11, beginning
with Line 16 through the end of the
document on Page 12, of Draft B of
Advisory Opinion 2003-36, as submitted
in Agenda Document No. 04-04.

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

III. PETITION FOR RULEMAKING ON PUBLIC ACCESS TO
MATERIALS RELATING TO CLOSED ENFORCEMENT
CASES: NOTICE OF AVAILABILITY

Agenda Document No. 04-01

The Chairman recognized Mr. Anthony Buckley of
the General Counsel's Office who presented the subject
document. During his presentation, Mr. Buckley noted
the following amendments in the Notice of Availability:

III. PETITION FOR RULEMAKING ON PUBLIC ACCESS TO
MATERIALS RELATING TO CLOSED ENFORCEMENT
CASES: NOTICE OF AVAILABILITY

(continued)

Page 1, change the word "Commissioned" to "Commission" on in the first line of the Summary of the Notice;

Page 2, change the first word on Page 2 of the Notice from "send" to "sent";

Page 3, insert "256" after "Request Document #" on Page 3 of the Notice at the end of the second paragraph.

A discussion followed.

Chairman Smith recognized Commissioner Thomas,

who

MOVED to approve the Notice of Availability, as submitted in Agenda Document No. 04-01, as amended above, for publication in the *Federal Register*.

The motion carried on the vote of 6-0.

IV. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 11:45 A.M.

Signed:

Bradley A. Smith
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the Commission