



AGENDA DOCUMENT NO. 07-34

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2007 APR 25 A 10:15

April 25, 2007

**AGENDA ITEM**  
For Meeting of: 05-03-07

**MEMORANDUM**

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*  
Acting General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Amy L. Rothstein *AR*  
Assistant General Counsel

J. Duane Pugh *JDP*  
Senior Attorney

Subject: Draft AO 2007-05

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 3, 2007.

Attachment

2007 APR 25 A 10: 15

**DRAFT**

1 ADVISORY OPINION 2007-05

2 Donald F. McGahn II, Esq.  
3 McGahn & Associates PLLC  
4 509 7th Street, N.W.  
5 Washington, D.C. 20004

6 Dear Mr. McGahn:

7 We are responding to your advisory opinion request on behalf of Erik Iverson,  
8 regarding whether, under the Federal Election Campaign Act of 1971, as amended (the  
9 “Act”), and Commission regulations, Mr. Iverson may solicit, direct, and spend non-  
10 Federal funds on behalf of the Montana Republican State Central Committee (“the State  
11 Committee”), while continuing his current employment as Chief of Staff to U.S.  
12 Representative Dennis Rehberg.

13 The Commission concludes that Mr. Iverson may solicit, direct and spend non-  
14 Federal funds as Chairman of the State Committee, while continuing to serve as Chief of  
15 Staff to Congressman Rehberg. He must, however, refrain from soliciting, directing, or  
16 spending non-Federal funds as an agent of the Congressman.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on  
19 February 14, 2007, and your e-mail received on March 8, 2007.

20 Mr. Iverson currently serves as the Chief of Staff to Congressman Dennis  
21 Rehberg of Montana. As Chief of Staff, Mr. Iverson manages the day-to-day affairs of  
22 Congressman Rehberg’s Washington, D.C., office and his four district offices in  
23 Montana. His responsibilities include the Congressman’s schedule, personnel matters,  
24 and the offices’ budgets.

1           Although Mr. Iverson has occasionally attended campaign events on his own  
2 time, he is not, and never has been, employed by Congressman Rehberg's principal  
3 campaign committee, Rehberg for Congress, nor has he raised or spent campaign funds  
4 for Congressman Rehberg. Rehberg for Congress employs a professional fundraising  
5 consultant, who handles the committee's fundraising, and the committee's treasurer  
6 controls its spending. Additionally, Rehberg for Congress is managed by a professional  
7 campaign manager. You suggest, however, that Mr. Iverson might "carry out some  
8 fundraising activity on behalf of Congressman Rehberg" at some point in the future "in  
9 an un-official, personal capacity."

10           Mr. Iverson has been active in Montana politics for several years and intends to  
11 run for election to the position of Chairman of the State Committee, which is the State  
12 committee of the Republican Party for the State of Montana. The State Committee  
13 maintains both a Federal and a non-Federal account, and it solicits and accepts donations  
14 into its non-Federal account that are prohibited by the Act and Commission regulations,  
15 including donations in unlimited amounts from individuals.<sup>1</sup> The State Committee makes  
16 donations and disbursements from its non-Federal account to support State and local  
17 Republican candidates in Montana.

18           If elected Chairman of the State Committee, Mr. Iverson's official responsibilities  
19 as Chairman would include representing the State Committee, managing its personnel,  
20 presiding over its meetings, appointing its committees, serving as an *ex-officio* member of

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<sup>1</sup> See Commissioner of Political Practices, Accounting and Reporting Manual for Political Committees, 14 (2005), available at <http://politicalpractices.mt.gov/5campaignfinance/politicalcomminfo.asp> (last visited Apr. 20, 2007). See also Mont. Code Ann. 13-35-227 (prohibiting corporate contributions) and 13-37-216 (2005) (limiting contributions to candidates).

1 all of its committees, and discharging the “usual powers of supervision and management”  
2 of a chairman. Mr. Iverson’s actions as Chairman of the State Committee would be  
3 undertaken exclusively on behalf of the State Committee, and not on behalf of  
4 Congressman Rehberg or the Rehberg campaign.

5 ***Questions Presented***

6 1. *May Mr. Iverson solicit, direct, and spend non-Federal funds as the Chairman of*  
7 *the State Committee while he continues to serve in his current position as Chief of Staff to*  
8 *Congressman Rehberg?*

9 2. *May Mr. Iverson solicit, direct, and spend non-Federal funds as the Chairman of*  
10 *the State Committee if he becomes a fundraising agent of Congressman Rehberg?*

11 ***Legal Analysis and Conclusions***

12 1. *May Mr. Iverson solicit, direct, and spend non-Federal funds as the Chairman of*  
13 *the State Committee while he continues to serve in his current position as Chief of Staff to*  
14 *Congressman Rehberg?*

15 Yes, Mr. Iverson may solicit, direct, and spend non-Federal funds as Chairman of  
16 the State Committee while continuing to serve as Chief of Staff to Congressman Rehberg.

17 The Act prohibits Federal candidates, officeholders<sup>2</sup> and their agents from  
18 soliciting, receiving, directing, transferring or spending funds in connection with an  
19 election for non-federal office, if those funds exceed the contribution limitations in  
20 2 U.S.C. 441a(a) or come from prohibited sources such as foreign nationals. *See*  
21 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62. Agents of Federal candidates and officeholders

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<sup>2</sup> Congressman Rehberg holds “Federal office” as defined in 2 U.S.C. 431(3) and 11 CFR 100.4.  
*See also* 11 CFR 300.2(o).

1 are prohibited from engaging in these activities when “acting on behalf of a Federal  
2 candidate or individual holding Federal office.” 11 CFR 300.60(c). The Commission has  
3 defined an “agent” of a Federal candidate or officeholder to be “any person who has  
4 actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend  
5 funds in connection with any election.” 11 CFR 300.2(b)(3). An agent’s actual authority  
6 is created by manifestations of consent (express or implied) by the principal to the agent  
7 about the agent’s authority to act on the principal’s behalf.<sup>3</sup>

8         The Commission concludes that Mr. Iverson is not currently an agent of  
9 Congressman Rehberg for purposes of 2 U.S.C. 441i(e). As Chief of Staff, Mr. Iverson’s  
10 responsibilities pertain only to the official duties of the Congressman, while campaign  
11 finance responsibilities are confined to the Congressman’s principal campaign  
12 committee, Rehberg for Congress. You have represented that Mr. Iverson has received  
13 no express instruction from Congressman Rehberg that he is the Congressman’s agent for  
14 fundraising purposes, nor has the Congressman’s conduct caused Mr. Iverson to believe  
15 that he is the Congressman’s agent for such purposes. Accordingly, Mr. Iverson’s role as  
16 Chief of Staff does not include actual authority, express or implied, to raise or spend  
17 campaign funds, and he is not an agent of Congressman Rehberg under  
18 11 CFR 300.2(b)(3). Consequently, Mr. Iverson’s actions as Chairman of the State  
19 Committee do not implicate 2 U.S.C. 441i(e)(1)(B) or 11 CFR 300.62, and he may

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<sup>3</sup> See Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures Revised Explanation and Justification, 71 Fed. Reg. 4975, 4976 (Jan. 31, 2006) [“Definition of ‘Agent’ Revised Explanation and Justification”] (citing Restatement (Second) of Agency, sec. 7 (1958)).

1 solicit, direct, or spend non-Federal funds as Chairman of the State Committee, while  
2 continuing to serve as Congressman Rehberg's Chief of Staff.

3 2. *May Mr. Iverson solicit, direct, and spend non-Federal funds as the Chairman of*  
4 *the State Committee if he becomes a fundraising agent of Congressman Rehberg?*

5 Yes, Mr. Iverson may continue to solicit, direct, and spend non-Federal funds as  
6 the Chairman of the State Committee, even if he becomes a fundraising agent of  
7 Congressman Rehberg.

8 If Congressman Rehberg provides Mr. Iverson with actual authority to solicit and  
9 receive contributions, then Mr. Iverson would be an agent of a Federal candidate and  
10 officeholder under 11 CFR 300.2(b)(3). Mr. Iverson would be required, therefore, to  
11 refrain from soliciting, directing, or spending non-Federal funds when acting on behalf of  
12 the Congressman. *See* 2 U.S.C. 441i(e)(1); 11 CFR 300.60(c), 300.61 and 300.62.<sup>4</sup>

13 Mr. Iverson's status as Congressman Rehberg's agent would not, however,  
14 necessarily preclude him from also serving as Chairman of the State Committee. *See*  
15 11 CFR 300.60(c). The Commission has explained that the purpose of the requirement  
16 that an agent act on behalf of an officeholder or candidate to be subject to the Act's  
17 prohibitions in 2 U.S.C. 441i(e)(1) was "to preserve an individual's ability to raise funds  
18 for multiple organizations." Definition of "Agent" Revised Explanation and Justification,  
19 71 Fed. Reg. at 4979 n.9. While the Act restricts the ability of Federal officeholders,  
20 candidates, and national party committees to raise non-Federal funds, it "does not  
21 prohibit individuals who are agents of the foregoing from also raising non-Federal funds  
22 for other political parties or outside groups." *Id.* at 4979.

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<sup>4</sup> As an employee and potential agent of Congressman Rehberg, the Commission also directs Mr. Iverson's attention to 11 CFR 109.21(d)(5) and 109.37(a)(3).

1           The Commission addressed a similar question in Advisory Opinion 2003-10  
2 (Reid). In that Advisory Opinion, Rory Reid, a Commissioner of Clark County, Nevada,  
3 asked if he was prohibited from raising non-Federal funds for a State party committee,  
4 given that (1) he was the son of a Federal candidate and officeholder, Senator Harry Reid  
5 of Nevada; (2) he was previously an agent of his father for raising contributions; and (3)  
6 he was contemplating raising contributions for his father in the future. The Commission  
7 concluded that Commissioner Reid could raise non-Federal funds for the State party  
8 committee, “as long as [he] solicits non-federal funds in his own capacity . . . and  
9 exclusively on behalf of the State Party, and not on the authority of any Federal candidate  
10 or officeholder, including Senator Reid.” *See* Advisory Opinion 2003-10 (Reid).

11           Consistent with its conclusion in Advisory Opinion 2003-10, the Commission  
12 concludes that Mr. Iverson, as Chairman of the State Committee, may continue to solicit,  
13 direct, and spend non-Federal funds on behalf of the State Committee, even if he  
14 becomes an agent of Congressman Rehberg for fundraising purposes, as long as Mr.  
15 Iverson solicits non-federal funds in his own capacity and exclusively on behalf of the  
16 State Committee, and not on the authority of any Federal candidate or officeholder,  
17 including Congressman Rehberg.

18           The Commission expresses no opinion regarding the application of the rules of  
19 the House of Representatives to the proposed activities because those questions are not  
20 within the Commission’s jurisdiction.

21           This response constitutes an advisory opinion concerning the application of the  
22 Act and Commission regulations to the specific transaction or activity set forth in your  
23 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any

1 of the facts or assumptions presented, and such facts or assumptions are material to a  
2 conclusion presented in this advisory opinion, then the requestor may not rely on that  
3 conclusion as support for its proposed activity. The advisory opinion cited herein may be  
4 found on the Commission's website at [www.fec.gov](http://www.fec.gov).

5 Sincerely,

6 Robert D. Lenhard  
7 Chairman