



AGENDA DOCUMENT NO. 09-41
APPROVED JULY 16, 2009

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, JUNE 25, 2009

PRESENT:

Steven T. Walther, Chairman, presiding

Matthew S. Petersen, Vice Chairman

Cynthia L. Bauerly, Commissioner

Caroline C. Hunter, Commissioner

Donald F. McGahn II, Commissioner

Ellen L. Weintraub, Commissioner

Robert A. Hickey, Staff Director

Thomasenia P. Duncan, General Counsel

Mary W. Dove, Secretary

Chairman Steven T. Walther called the Federal Election Commission to order in an open meeting at 10:30 A.M. on Thursday, June 25, 2009, with a quorum present.

The Chairman announced Agenda Item III. (Federal Register Notice – Website and Internet Communications Improvement Initiative), Agenda Document No. 09-36, had been approved on a tally vote basis, and it was removed from the agenda.

I. DRAFT ADVISORY OPINIONS

A. Draft Advisory Opinion 2009-07

**Representative Randy Neugebauer, by
Benjamin L. Ginsberg, Esq. and
Kathryn Biber Chen, Esq.**

Agenda Document No. 09-35

(Commissioner McGahn recused)

Chairman Walther recognized Mr. David Adkins of the General Counsel's Office who presented the draft opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use and rental of a recreational boat that is owned by a limited liability company ("LLC"), which in turn is partly owned by Representative Neugebauer.

A discussion followed.

I. DRAFT ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2009-07 (continued)

The Chairman recognized Vice Chairman Petersen, who

**MOVED to approve draft Advisory Opinion
2009-07, as set forth in Agenda Document
No. 09-35.**

**The motion carried on the vote of 4-1 with Commissioners Bauerly,
Hunter, Petersen, and Weintraub voting affirmatively. Commissioner
Walther dissented. Commissioner McGahn recused himself with respect
to this matter and did not vote.**

B. Draft Advisory Opinion 2009-11

**Senator John Kerry and the John Kerry for
Senate Committee, by Marc E. Elias, Esq.
and Kate S. Keane, Esq.**

**Agenda Documents No. 09-32 and No. 09-32-A
Continued from the meeting of June 18, 2009**

(Commissioner Weintraub recused)

**Chairman Walther recognized Mr. Joshua Blume of the General
Counsel's Office who presented proposed drafts A, B, and C of the subject
advisory opinion concerning the application of the Federal Election
Campaign Act of 1971, as amended (the "Act"), and Commission
regulations to the Committee's proposed provision of campaign funds to**

I. DRAFT ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2009-11 (continued)

the White Mountain Films company to help it develop a documentary film, for which Senator Kerry will serve as an uncompensated executive producer.

Following discussion, Chairman Walther recognized Vice Chairman Petersen, who

MOVED to instruct the General Counsel's Office to prepare a letter to the requestor indicating the Commission was unable to issue an opinion and it had concluded its review of the advisory opinion request.

The motion carried on the vote of 5-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, and Walther voting affirmatively. Commissioner Weintraub recused herself with respect to this matter and did not vote.

C. Draft Advisory Opinion 2009-12

Senator Norm Coleman, by Benjamin L. Ginsberg, Esq., William J. McGinley, Esq., and Kathryn Biber Chen, Esq.

Agenda Document No. 09-34

Chairman Walther recognized Ms. Jessica Selinkoff of the General Counsel's Office who presented proposed alternative drafts of the

I. DRAFT ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2009-12 (continued)

subject advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of campaign funds for the payment of certain legal fees and expenses incurred by Senator Coleman.

There was a discussion of Footnote 4, Page 6, in Draft B.

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A recess was held at 11:20 A.M., and the meeting reconvened at 11:25 A.M. with a quorum present.

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I. DRAFT ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2009-12 (continued)

Chairman Walther recognized Commissioner Bauerly, who

MOVED to approve Draft A of Advisory Opinion 2009-12, as set forth in Agenda Document No. 09-34.

The motion failed by a vote of 2-4 with Commissioners Bauerly and Walther voting affirmatively. Commissioners Hunter, McGahn, Petersen, and Weintraub dissented.

I. DRAFT ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2009-12 (continued)

Chairman Walther recognized Commissioner Weintraub, who

MOVED to approve Draft B of Advisory Opinion 2009-12, as set forth in Agenda Document No. 09-34, subject to the following amendment:

Page 6, Draft B, Footnote 4 to read:

“This advisory opinion concerns only the use of campaign funds to pay for the requested legal fees and expenses. Senator Coleman is involved in a continuing recount of the 2008 election. This advisory opinion should not be relied on as allowing the use of recount funds because it does not address the use of recount funds.”

The motion carried on the vote of 4-2 with Commissioners

Hunter, McGahn, Petersen, and Weintraub voting affirmatively.

Commissioners Bauerly and Walther dissented.

II. DRAFT FINAL RULES AND EXPLANATION AND JUSTIFICATION ON CIVIL MONETARY PENALTIES INFLATION ADJUSTMENTS

Agenda Document No. 09-33

Chairman Walther recognized Ms. Cheryl Hemsley of the General Counsel’s Office who presented the subject document.

Chairman Walther recognized Vice Chairman Petersen, who

**II. DRAFT FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON CIVIL MONETARY PENALTIES INFLATION ADJUSTMENTS
(continued)**

MOVED to approve the draft Final Rules and Explanation and Justification for Civil Monetary Penalties Inflation Adjustments for publication in the *Federal Register*, as set forth in Agenda Document No. 09-33, and to authorize the General Counsel's Office to make any necessary technical and conforming amendments.

The motion carried on the vote of 6-0.

**III. FEDERAL REGISTER NOTICE – WEBSITE AND INTERNET
COMMUNICATIONS IMPROVEMENT INITIATIVE
Agenda Document No. 09-36
(Approved on tally.)**

IV. PROPOSED AGENCY PROCEDURES

**Agenda Documents No. 09-37, No. 09-37-A,
No. 09-38, and No. 09-39 (submitted late)**

Chairman Walther recognized Vice Chairman Petersen, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Documents No. 09-37, No. 09-37-A, No. 09-38, and No. 09-39.

The motion carried on the vote of 6-0.

**PROPOSED RULE OF AGENCY PROCEDURES:
AUDIT HEARINGS**

**Agenda Document No. 09-37-A
(replaces Agenda Document No. 09-37)**

IV. PROPOSED AGENCY PROCEDURES (continued)

**PROPOSED RULE OF AGENCY PROCEDURES:
AUDIT HEARINGS (continued)**

Following discussion, Chairman Walther recognized

Commissioner McGahn, who

MOVED to approve the proposed rule of agency procedures for audit hearings, as set forth in Agenda Document No. 09-37-A, as amended, for publication in the *Federal Register*, and to authorize the General Counsel's Office to make any necessary technical and conforming amendments.

The motion carried on the vote of 6-0.

**PROPOSED RULE OF AGENCY PROCEDURES: NOTICE TO
RESPONDENTS IN NON-COMPLAINT GENERATED MATTERS**

**Agenda Document No. 09-38
(Held over to the meeting of July 16, 2009)**

**PROPOSED RULE OF AGENCY PROCEDURES:
ADVISORY OPINIONS**

Agenda Document No. 09-39

A discussion was held.

Chairman Walther recognized Commissioner Weintraub, who

IV. PROPOSED AGENCY PROCEDURES (continued)

**PROPOSED RULE OF AGENCY PROCEDURES:
ADVISORY OPINIONS (continued)**

MOVED to approve the proposed rule of agency procedures regarding advisory opinions, as set forth in Agenda Document No. 09-39, for publication in the *Federal Register*, and to authorize the General Counsel's Office to make any necessary technical and conforming amendments.

The motion carried on the vote of 6-0.

V. MANAGEMENT AND ADMINISTRATIVE MATTERS

On a point of personal privilege, Chairman Walther recognized Commissioner Weintraub, who has served as a Commissioner for the past six and one-half years. Commissioner Weintraub, in turn, acknowledged former and present colleagues, and the staff at the Commission.

The meeting adjourned at 12:20 P.M.

Signed:



Steven T. Walther

Chairman of the Commission

Attest:



Mary W. Dove

Secretary of the Commission