

AGENDA DOCUMENT NO. 03-54
APPROVED AUGUST 14, 2003

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, JULY 24, 2003

PRESENT: Ellen L. Weintraub, Chair, presiding
Bradley A. Smith, Vice Chairman,
presiding for a portion of the meeting
David M. Mason, Commissioner
Danny L. McDonald, Commissioner
Scott E. Thomas, Commissioner
Michael E. Toner, Commissioner
James A. Pehrkon, Staff Director
Lawrence H. Norton, General Counsel
Mary W. Dove, Secretary

Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 10:05 A.M. on Thursday, July 24, 2003, with a quorum present.

I. ADVISORY OPINIONS

A. Draft Advisory Opinion 2003-17

James W. Treffinger and Treffinger for
Senate Committee by counsel, Karin Riecker

Agenda Documents No. 03-49
and No. 03-49-A

Chair Weintraub stated she had recused herself with respect to this matter and would not be present during the discussion.

Vice Chairman Smith, now presiding, recognized Commissioner Thomas, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Document No. 03-49-A.

I. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-17
(continued)

The motion carried on the vote of 5-0 with Commissioners Mason, McDonald, Smith, Thomas, and Toner voting affirmatively.

The Vice Chairman recognized Mr. Jonathan Levin of the General Counsel's Office who presented draft Advisory Opinion 2003-17 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of campaign funds to pay for legal expenses related to criminal charges against Mr. Treffinger.

Following discussion, Vice Chairman Smith recognized Commissioner Toner, who

MOVED to allow the use of campaign funds by Mr. Treffinger to pay for legal expenses arising out of Counts 1 through 18 and Count 20 in the indictment.

I. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-17
(continued)

The motion failed by a vote of 3-2 with Commissioners McDonald, Thomas, and Toner voting affirmatively. Commissioners Mason and Smith dissented.

Vice Chairman Smith recognized Commissioner Mason,
who

MOVED to approve draft Advisory Opinion 2003-17, as set forth in Agenda Document No. 03-49, as amended by Agenda Document No. 03-49-A, and further amended to delete the last sentence of Footnote 4 on Page 7 and substitute the following language in lieu thereof:

"This case turns on whether the legal expenses at issue were in connection with a candidate's campaign for federal office under 2 USC § 439a(a)(1), and meet the 'irrespective test' of 11 CFR 113.1(g)."

I. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-17
(continued)

The motion carried on the vote of 4-1 with Commissioners Mason, McDonald, Thomas, and Toner voting affirmatively. Commissioner Smith dissented.

B. Draft Advisory Opinion 2003-18

Bob Smith for U.S. Senate

Agenda Document No. 03-50

Chair Weintraub, now presiding, recognized Mr. Jonathan Levin of the General Counsel's Office who presented draft Advisory Opinion 2003-18 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed transfer of funds contributed for the general election to the American Patriot Foundation ("APF"), which is a public charitable foundation that Senator Smith recently established.

I. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-18 (continued)

A discussion followed, and Mr. Barry Conway of the Reports Analysis Division responded to questions and comments.

Chair Weintraub recognized Vice Chairman Smith,
who

MOVED to approve draft Advisory Opinion 2003-18, as submitted in Agenda Document No. 03-50, as amended, to delete Lines 1 and 2 on Page 5, and substitute the following language in lieu thereof:

"The regulations provide that refund checks must be issued once a candidate is no longer a candidate in the general election. 11 CFR 102.9(e)(3). However, the regulations do not specify a time-frame in which the refund process must be completed; i.e. when the refund checks must clear the campaign committee's accounts. In this case, the Committee properly issued refund checks but provided 90 days for the checks to become stale. The Commission concludes that it is appropriate to grant the Committee more time to finish the refund process already properly begun before requiring the funds in question to be disgorged to the U.S. Treasury. Therefore, the Committee may continue to complete the refund process within 90 days of the receipt of this opinion. Any unrefunded general election contributions still in the Committee's possession at the end of the 90 days must be disgorged to the U.S. Treasury."

I. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-18
(continued)

And, further, to instruct the Office of General Counsel to draft a sentence to be included in the amendment above which addresses refunds of contributions under the "Millionaire's Amendment"; that refund checks must be processed within six months of the check's date.

The motion carried on the vote of 6-0.

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The meeting recessed at 11:15 A.M. and reconvened at 12:40 P.M. with a quorum present.

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II. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES

Agenda Documents No. 03-51, No. 03-51-A,
No. 03-51-B, No. 03-51-C, No. 03-51-D,
No. 03-51-E, No. 03-51-F, and No. 03-51-G

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. 03-51, and
Agenda Documents No. 03-51-A
through No. 03-51-G.

The motion carried on the vote of 6-0.

The Chair recognized Mr. Duane Pugh of the General
Counsel's Office who presented an overview of the subject
document and the proposed amendments in Agenda Document
No. 03-51-A.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
(continued)

The Chair presented her amendments, as submitted
in Agenda Document No. 03-51-G, which were amended as follows:

1. Page 21, Line 10 change the last word
on the amendment page to "parentheses."
2. Page 30, Lines 22-23, delete the amendment
as stated, and insert the word "should" at
the end of Line 22.
3. Page 70, Line 3 through Line 5 amended
further by inserting the word "single"
before the word "passing."

It was agreed without objection to accept the
amendments in Agenda Document No. 03-51-G, as amended above.

The Chair recognized Commissioner Toner who
presented Agenda Document No. 03-51-E. It was agreed
without objection to accept the proposed language in this
document.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
(continued)

There was a discussion of the winding down costs paid by the GELAC, and Mr. Duane Pugh of the General Counsel's Office and Mr. Joseph Stoltz of the Audit Division responded to questions and comments. It was agreed without objection to accept the amendments in Agenda Document No. 03-51-A on Page 2, Lines 10 through 19, and to amend Agenda Document No. 03-51, on Page 16, Lines 20 - 21, by deleting the words "without having to allocate them between the primary and general election committees." Further, it was agreed without objection to include a sentence to make it clear that left over primary bills paid by the GELAC, other than winding down expenses, would be charged to the primary spending limit.

Commissioner Mason presented an amendment at 11 CFR 9004.4(a)(6) (Gifts and Bonuses), and it was agreed without objection to delete Lines 8 through 14, on Page 20 of Agenda Document No. 03-51, and insert the language set forth in Agenda Document No. 03-51-B, in lieu thereof.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
(continued)

Following a discussion of host committees and municipal funds, Chair Weintraub recognized Commissioner Toner, who

MOVED to amend Agenda Document No. 03-51 on Page 39, Lines 5 through 7, Line 9, Lines 10 through 17, Line 18, and Line 19, as set forth in the proposed amendments in Agenda Document No. 03-51-C, Page 1, and to modify the corresponding regulation on Page 147 at Line 4.

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

It was agreed without objection to amend Page 40, Lines 1 and 2 of Agenda Document No. 03-51, as proposed by Commissioner Toner in Agenda Document No. 03-51-C on Page 1.

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The meeting recessed at 2:05 P.M. and reconvened at 2:25 P.M. with a quorum present.

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II. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
(continued)

Chair Weintraub recognized Commissioner Thomas who reviewed his proposed amendments which related to national party solicitations of funds for host committees and municipal funds.

Following discussion, the Chair recognized Commissioner Thomas, who

MOVED to amend Agenda Document No. 03-51, as set forth in Agenda Document No. 03-51-D, and to modify the text of the regulations on Page 154, by deleting Paragraph (d) on Lines 17 through 20 and renumbering the following paragraph as "(d)."

The motion carried on the vote of 6-0.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
(continued)

Chair Weintraub recognized Commissioner Mason who reviewed his proposed amendment in Agenda Document No. 03-51-F. It was agreed without objection to accept the proposed language as submitted.

The Chair recognized Commissioner Toner who presented his proposed amendment which related to convention expenses of ineligible candidates.

A discussion followed.

Chair Weintraub recognized Commissioner Toner, who

MOVED to amend Agenda Document No. 03-51 on Page 96, Lines 7, 15, 21, 22, 23 and Page 159, Line 12, as set forth in Agenda Document No. 03-51-C on Page 1.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
(continued)

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

There was a discussion of 11 CFR 9034.10 (Pre-
Candidacy Payments by Multicandidate Political Committees
Deemed In-kind Contributions and Qualified Campaign
Expenses; Effect of Reimbursement.)

It was agreed without objection to accept the
amendments to Page 98, Lines 8 and 20, of Agenda Document
No. 03-51, as proposed by Commissioner Toner in Agenda
Document No. 03-51-C on Page 2.

The discussion resumed.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
(continued)

Chair Weintraub recognized Commissioner McDonald,
who

MOVED to delete 11 CFR 110.2
(Contributions by multicandidate
political committees) and 9034.10
(Pre-candidacy payments by multi-
candidate political committees
deemed in-kind contributions and
qualified campaign expenses;
effect of reimbursement), as set
forth in Agenda Document No. 03-51.

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

It was agreed without objection to instruct the
Office of General Counsel to include language at 110.2
which states a candidate may have offices in or near the
District of Columbia and the candidate's home state.

III. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 4:10 P.M.

Signed:



Ellen L. Weintraub
Chair of the Commission



Bradley A. Smith
Vice Chairman of the
Commission

Attest:



Mary W. Dove
Secretary of the
Commission