



AGENDA DOCUMENT NO. 05-42
APPROVED OCTOBER 19, 2005

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, SEPTEMBER 22, 2005

PRESENT:

- Scott E. Thomas, Chairman, presiding**
- Michael E. Toner, Vice Chairman**
- David M. Mason, Commissioner**
- Danny L. McDonald, Commissioner**
- Ellen L. Weintraub, Commissioner**
- James A. Pehrkon, Staff Director**
- Lawrence H. Norton, General Counsel**
- Mary W. Dove, Secretary**

Chairman Scott E. Thomas called the Federal Election Commission to order in an open meeting at 2:00 P.M. on Thursday, September 22, 2005, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for August 18, 2005
Agenda Document No. 05-38**

Chairman Thomas recognized Vice Chairman Toner, who

MOVED to approve the minutes for the Open Meeting of Thursday, August 18, 2005, as submitted in Agenda Document No. 05-38.

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

II. ADVISORY OPINIONS

**A. Draft Advisory Opinion 2005-11
Friends of Duke Cunningham, by Kenneth Batson,
Treasurer**

Agenda Document No. 05-41 (Submitted late)

Chairman Thomas recognized Vice Chairman Toner, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Document No. 05-41.

The motion carried on the vote of 5-0.

II. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2005-11 (continued)

**Friends of Duke Cunningham, by Kenneth Batson,
Treasurer**

Chairman Thomas recognized Ms. Esa Sferra of the General Counsel's Office who presented draft Advisory Opinion 2005-11, 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 legal fees and expenses incurred by Representative Cunningham in connection with a grand jury investigation.

A discussion followed, and Ms. Sferra and Ms. Rosemary Smith of the General Counsel's Office responded to questions and comments.

Chairman Thomas recognized Vice Chairman Toner, who

MOVED to approve draft Advisory Opinion 2005-11, as set forth in Agenda Document No. 05-41, as amended pursuant to the meeting discussion, and to make any technical and conforming amendments as necessary.

The motion carried on the vote of 5-0.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2005-12

**Representative Chaka Fattah, by counsel,
Neil Reiff**

Agenda Document No. 05-39

Chairman Thomas recognized Mr. Richard Ewell of the General Counsel's Office who presented draft Advisory Opinion 2005-12, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to fundraising and spending by Representative Fattah and his exploratory committee for the 2007 Philadelphia mayoral election.

The Chairman recognized Commissioner McDonald, who

MOVED to approve draft Advisory Opinion 2005-12, as set forth in Agenda Document No. 05-39.

The motion carried on the vote of 5-0.

**III. NOTICE OF PROPOSED RULEMAKING: DEFINITIONS OF
"SOLICIT" AND "DIRECT" (11 CFR 300.2(m) and (n))**

Agenda Document No. 05-40

Chairman Thomas recognized Mr. Ron Katwan of the General Counsel's Office who presented the subject draft. During his presentation, Mr. Katwan noted the following amendment:

Page 22, Line 1, delete "In contrast," .

A discussion followed.

Chairman Thomas recognized Commissioner Weintraub, who

MOVED to approve the draft Notice of Proposed Rulemaking, as set forth in Agenda Document No. 05-40, as amended, above for publication in the *Federal Register*.

The motion carried on the vote of 5-0.

IV. ROUTINE ADMINISTRATIVE MATTERS

The Chairman recognized Staff Director Pehrkon who reported on the Conference for Campaigns, Parties and Corporate/Labor/Trade PACs held in San Diego on September 14-15, stating there were 125 people in attendance. The next Conference is scheduled on October 25-26, 2005, in San Antonio.

The meeting adjourned at 2:45 P.M.

Signed



**Scott E. Thomas
Chairman of the Commission**

Attest:



**Mary W. Dove
Secretary of the Commission**