

AGENDA DOCUMENT NO. 02-75

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, OCTOBER 10, 2002

PRESENT: David M. Mason, Chairman, presiding
Karl J. Sandstrom, Vice Chairman
Danny L. McDonald, Commissioner
Bradley A. Smith, Commissioner
Scott E. Thomas, Commissioner
Michael E. Toner, Commissioner
Alison Doone, Deputy Staff Director
for Management, representing
James A. Pehrkon, Staff Director
Lawrence H. Norton, General Counsel
Mary W. Dove, Secretary

Chairman David M. Mason called the Federal Election Commission to order in an open meeting at 10:05 A.M. on Thursday, October 10, 2002, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for September 26, 2002
Agenda Document No. 02-71

Chairman Mason recognized Vice Chairman Sandstrom, who

MOVED to approve the minutes for the open meeting of Thursday, September 26, 2002, as submitted in Agenda Document No. 02-71.

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

II. ADVISORY OPINIONS

A. Draft AO 2002-07

Careau & Co. and Mohre Communications
by Richard F. Carrott, President

Agenda Document No. 02-69

(Commissioner Toner recused himself with respect to this matter and was not present during the discussion.)

Chairman Mason recognized Mr. Michael Marinelli of the General Counsel's Office who presented revised draft Advisory Opinion 2002-07 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to what you describe as "the sale and use of Internet Service Provider ("ISP") services for Internet-based political fundraising to make contributions to Federal political committees."

II. ADVISORY OPINIONS (continued)

A. Draft AO 2002-07 (continued)

During his presentation, Mr. Marinelli noted the following amendments:

1. Change the word "America" to "American" on Page 2, Line 5; Page 3, Line 14; Page 7, Lines 8 and 14.
2. Change the word "Mohr" to "Mohre" on Page 7, Lines 10 and 14; Page 8, Line 4.

Without objection, it was agreed to accept these amendments.

A discussion followed, and it was agreed without objection to delay consideration of this advisory opinion until later in the meeting.

(NOTE: FURTHER CONSIDERATION OF AO 2002-07 CONTINUES ON PAGE 15 OF THESE MINUTES.)

B. Draft AO 2002-11

Mortgage Bankers Association of America (MBAA) and MBAA PAC by counsel, Jan Witold Baran and Carol A. Laham

II. ADVISORY OPINIONS (continued)

B. Draft AO 2002-11 (continued)

Chairman Mason recognized Mr. Jonathan Levin of the General Counsel's Office who presented draft Advisory Opinion 2002-11 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the relationship of MBAA PAC to the Texas Mortgage Bankers Association PAC ("TMBA PAC").

At the conclusion of the presentation, Mr. Levin noted the following amendments:

1. Page 4, Line 9: delete the words "are eligible for" and substitute the words "may participate in a" in lieu thereof;
2. Page 4, Line 9: insert the word "role" after the word "'membership'";
3. Page 13, Line 8: delete the word "differences" and substitute the word "concerns" in lieu thereof.

Without objection, it was agreed to accept these amendments.

II. ADVISORY OPINIONS (continued)

B. Draft AO 2002-11 (continued)

Chairman Mason recognized Commissioner
Thomas, who

MOVED to approve draft Advisory
Opinion 2002-11, as submitted in
Agenda Document No. 02-70, subject
to the amendments noted above.

The motion carried on the vote of 6-0.

III. INTERIM FINAL RULES AND EXPLANATION
AND JUSTIFICATION ON ELECTIONEERING
COMMUNICATIONS

Agenda Document No. 02-72

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to suspend the rules
on the timely submission of
agenda documents in order to
consider Agenda Document
No. 02-72.

The motion carried on the vote of 6-0.

III. INTERIM FINAL RULES AND EXPLANATION
AND JUSTIFICATION ON ELECTIONEERING
COMMUNICATIONS (continued)

Chairman Mason recognized Mr. Tony Buckley of the General Counsel's Office who presented the subject document. During his presentation, Mr. Buckley noted the following amendments:

1. Page 10, Line 4: delete the words "more than"; insert the words "or more" before the word "persons."
2. Page 11, Line 5: insert the following at the end of the sentence:

"in the specified Congressional district or State."
3. Page 20, Line 18: delete the words "more than"; insert the words "or more" before the word "persons"; insert the word "specified" before the word "Congressional."

Without objection, it was agreed to accept these amendments.

III. INTERIM FINAL RULES AND EXPLANATION
AND JUSTIFICATION ON ELECTIONEERING
COMMUNICATIONS (continued)

Chairman Mason recognized Commissioner Smith,
who

MOVED to delete the language
which begins on Page 12, Line 18,
through the end of the sentence
on Page 13, Line 3.

The motion carried on the vote of 6-0.

A discussion followed. It was agreed without
objection to amend the Summary on Page 1, Lines 10 and 11,
to read as follows:

".....and that are targeted to the
relevant electorate within 60 days
before a general election or within
30 days before a primary election
for Federal..."

III. INTERIM FINAL RULES AND EXPLANATION
AND JUSTIFICATION ON ELECTIONEERING
COMMUNICATIONS (continued)

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to approve the Explanation and Justification of the Interim Final Rules on Electioneering Communications, as set forth in Agenda Document No. 02-72, as amended; to direct the Office of General Counsel to transmit the Interim Final Rules and Explanation and Justification for publication in the *Federal Register*; and to transmit them to Congress.

The motion carried on the vote of 6-0.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR ELECTIONEERING COMMUNICATIONS

Agenda Document No. 02-73

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 02-73.

The motion carried on the vote of 6-0.

Chairman Mason recognized Mr. Duane Pugh of the
General Counsel's Office who presented an overview of the
subject document.

There was a discussion of 26 U.S.C. 501(c)(3)
organizations, and the Chairman recognized Commissioner
Smith, who

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR ELECTIONEERING COMMUNICATIONS

(continued)

MOVED to reopen the portion of the final rules at § 100.29(c)(6) and amend the text on Page 104, Line 13 to delete the words "religious, educational, or charitable"; and, to amend the Explanation and Justification on Page 49, by deleting the sentence which begins on Line 19 and ends on Line 21, and substituting the following in lieu thereof: "It is the communications of these organizations that the Commission exempts from Title II, subtitle A of BCRA at 11 CFR § 100.29(c)(6)."

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

On behalf of Chairman Mason, a motion was offered by Commissioner Smith, who

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR ELECTIONEERING COMMUNICATIONS

(continued)

MOVED to revise the Explanation
and Justification on Page 81,
Line 14, by deleting the words
"when conducting activities in
that specific jurisdiction."

A discussion followed.

The motion carried on the vote of 6-0.

There was a discussion of the text on Page 42
at Line 15, and Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to amend Page 42, Line 15,
by deleting the following:

"Under certain circumstances,"

The motion carried on the vote of 6-0.

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The meeting recessed at 11:15 A.M. and reconvened at 11:45 A.M. with a quorum present.

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IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION FOR ELECTIONEERING COMMUNICATIONS (continued)

Chairman Mason recognized Commissioner Smith, who

MOVED to amend the text on Page 31 by inserting a period after the word "exemptions" on Line 11, and deleting Lines 12, 13, 14, and 15.

A discussion followed.

The motion carried on the vote of 6-0.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR ELECTIONEERING COMMUNICATIONS

(continued)

There was a discussion of the major purpose
test.

Chairman Mason recognized Commissioner Thomas,
who

MOVED to amend Page 37, Line 6, by
deleting the words "its major purpose
is something other than influencing
Federal elections" and substituting
in lieu thereof the words "it does
not meet the major purpose test."

The motion carried on the vote of 6-0.

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to approve the regulatory
text to 11 CFR § 114.10(e)(1) and
the Explanation and Justification,
as amended, and to direct the Office
of General Counsel to transmit the
Final Rules and Explanation and
Justification for publication in
the *Federal Register* and to transmit
them to Congress.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR ELECTIONEERING COMMUNICATIONS (continued)

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

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It was agreed without objection to reorder the
agenda and resume consideration of Item II. A.

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II. ADVISORY OPINIONS (continued)

A. Draft AO 2002-07 (continued)

Careau & Co. and Mohre Communications
by Richard F. Carrott, President

Agenda Document No. 02-69

(Commissioner Toner recused himself with
respect to this matter and was not present
during the discussion.)

II. ADVISORY OPINIONS (continued)

A. Draft AO 2002-07 (continued)

Chairman Mason recognized Mr. Michael Marinelli of the General Counsel's Office who reviewed additional information received from the requester. A discussion followed.

Chairman Mason recognized Commissioner McDonald, who

MOVED to approve draft Advisory Opinion 2002-07, as set forth in Agenda Document No. 02-69, incorporating the technical amendments previously discussed.

The motion carried on the vote of 4-0 with Commissioners Mason, McDonald, Smith, and Thomas voting affirmatively. Commissioner Sandstrom abstained.

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The meeting recessed at 12:55 P.M. and reconvened at 2:30 P.M. with a quorum present.

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V. NOTICE OF PROPOSED RULEMAKING ON CONSOLIDATED
BCRA REPORTING

Agenda Documents No. 02-74
and No. 02-74-A

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Documents No. 02-74 and
No. 02-74-A.

The motion carried on the vote of 6-0.

Chairman Mason recognized the following members
of the General Counsel's staff: Ms. Rosemary Smith,
Mr. John Vergelli, Ms. Mai Dinh, Mr. Jonathan Levin,
Mr. Tony Buckley, and Ms. Cheryl Fowle. Mr. Vergelli
presented the subject document and reviewed the proposed
revisions, as recommended by the Office of General Counsel,
in Agenda Document No. 02-74-A.

V. NOTICE OF PROPOSED RULEMAKING ON CONSOLIDATED
BCRA REPORTING

(continued)

Ms. Alison Doone, Deputy Staff Director for
Management, participated in the discussion which followed.

Chairman Mason recognized Commissioner Thomas,
who

MOVED to amend the draft Notice
of Proposed Rulemaking, as set
forth in Agenda Document No. 02-74,
as follows:

- a) Delete Line 5 on Page 50 and
redesignate the subsequent
sections appropriately;
- b) Insert the following sentence
on Page 19 at Line 1 after the
period:

"In particular, the Commission
seeks comment on what, if any,
in-house production costs should
be considered direct costs."

The motion carried on the vote of 6-0.

V. NOTICE OF PROPOSED RULEMAKING ON CONSOLIDATED
BCRA REPORTING

(continued)

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to approve the amendments,
as set forth in Agenda Document
No. 02-74-A; and, to insert the
following sentence to the end of
108.1(b):

"The list of States that
have obtained waivers under
this section is available on
the Commission's website."

The motion carried on the vote of 6-0.

Chairman Mason recognized Commissioner Smith,
who

MOVED to amend Agenda Document
No. 02-74 as follows:

On Page 29 at Line 6 insert the
following:

V. NOTICE OF PROPOSED RULEMAKING ON CONSOLIDATED
BCRA REPORTING

(continued)

"10. Filing with the Secretary of State

"Unlike the proposed provisions for independent expenditures, the proposed rules for electioneering communications do not include provisions that remove the requirement to file reports of electioneering communications with the Secretary of State if that state has obtained a waiver under 11 CFR 108.1(b). See proposed 11 CFR 104.4(e), below. The Commission seeks comments on whether proposed 11 CFR 104.20 should include such a provision. (At the current time, only two states, Massachusetts and Montana, and two territories, Guam and Puerto Rico, have not obtained waivers.)"

The motion carried on the vote of 6-0.

(Note: On October 18, 2002, The Commonwealth of Massachusetts was certified for the state paper-filing waiver program.)

V. NOTICE OF PROPOSED RULEMAKING ON CONSOLIDATED
BCRA REPORTING

(continued)

Chairman Mason recognized Vice Chairman
Sandstrom, who

MOVED to approve the Notice of
Proposed Rulemaking on Consolidated
BCRA Reporting, as set forth in
Agenda Document No. 02-74, as amended
by Agenda Document No. 02-74-A, and
further amended at the table for
publication in the *Federal Register*.

The motion carried on the vote of 6-0.

VI. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 3:15 P.M.

Signed:

David M. Mason
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the Commission

