



AGENDA DOCUMENT NO. 05-01
APPROVED JANUARY 27, 2005

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, DECEMBER 16, 2004

PRESENT:

Bradley A. Smith, Chairman, presiding

Ellen L. Weintraub, Vice Chair

David M. Mason, Commissioner

Danny L. McDonald, Commissioner

Scott E. Thomas, Commissioner

James A. Pehrkon, Staff Director

Lawrence H. Norton, General Counsel

**James A. Kahl, Deputy General Counsel,
representing Lawrence H. Norton,
General Counsel, for a portion of the
meeting**

Mary W. Dove, Secretary

Chairman Bradley A. Smith called the Federal Election Commission to order in an open meeting at 10:10 A.M. on Thursday, December 16, 2004, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for December 2, 2004
Agenda Document No. 04-109**

Chairman Smith recognized Vice Chair Weintraub, who

MOVED to approve the minutes for the Open Meeting of Thursday, December 2, 2004, as submitted in Agenda Document No. 04-109.

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

II. MERIT AND SERVICE AWARDS

Chairman Smith, assisted by Staff Director Pehrkon, presented the following service awards:

TEN YEAR SERVICE AWARDS

**Vicktoria J. Allen, ITD
William A. Antosz, Audit
Patricia A. Brown, EEO
Edna M. Ford-Roberts, ITD
Reginald W. Freeman, OGC
Ruth A. Godding, Personnel
Frankie D. Hampton, OGC**

II. MERIT AND SERVICE AWARDS (continued)

TEN YEAR SERVICE AWARDS (continued)

**Jonathan A. Hatfield, OIG
Hoperline J. Herbert, ITD
David B. Kolker, OGC
Elizabeth S. Kurland, Information
Erica D. Lee, Audit
Tracey L. Ligon, OGC
Dorothy W. Maddox-Holland, OIG
Robert L. Morcomb, Audit
Kamau S. Philbert, OGC
Rosa E. Swinton, Finance
Rhonda J. Vosdingh, OGC
Reginald I. Watts, Admin.**

TWENTY YEAR SERVICE AWARDS

**Vivian O. Graham, OGC
James L. Jones, Admin.
Ida L. Reavis, ITD
Deborah L. Rice, OGC
Rosemary C. Smith, OGC**

**At the conclusion of the presentations, Chairman Smith reviewed
the accomplishments of the Federal Election Commission in 2004.**

III. ELECTION OF OFFICERS

A. Election of Chairman

Chairman Smith recognized Commissioner Mason, who

**MOVED to elect Commissioner Scott E. Thomas
to serve as Chairman of the Federal Election
Commission beginning January 1, 2005.**

III. ELECTION OF OFFICERS (continued)

A. Election of Chairman (continued)

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

B. Election of Vice Chairman

The Chairman recognized Vice Chair Weintraub, who

**MOVED to elect Commissioner Michael E.
Toner in absentia to serve as Vice Chairman
of the Federal Election Commission beginning
January 1, 2005.**

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

IV. ADVISORY OPINIONS

A. Draft Advisory Opinion 2004-41

**CUNA Mutual Insurance Society, by counsel
Cleta Mitchell**

**Agenda Documents No. 04-110 and
No. 04-110-A**

Chairman Smith recognized the Vice Chair, who

**MOVED to suspend the rules on the timely
submission of agenda documents in order to
consider Agenda Document No. 04-110-A.**

IV. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2004-41 (continued)

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

Chairman Smith recognized Mr. Ron Katwan of the General Counsel's Office who presented draft Advisory Opinion 2004-41 and the proposed amendment in Agenda Document No. 04-110-A concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations regarding confirmation that CUNA Mutual's new separate segregated fund ("SSF"), CUNA Mutual PAC, is not affiliated with the Credit Union Legislative Action Council ("CULAC"), the longstanding SSF of the Credit Union National Association ("CUNA").

The Chairman recognized Commissioner Mason, who

MOVED to approve draft Advisory Opinion 2004-41, as submitted in Agenda Document No. 04-110, as amended by Agenda Document No. 04-110-A.

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

IV. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2004-43

**Missouri Broadcasters Association, by counsel
Gregg P. Skall**

Agenda Document No. 04-113

Chairman Smith recognized Ms. Cheryl Hemsley of the General Counsel's Office who presented draft Advisory Opinion 2004-43 concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations regarding whether a broadcaster would be making a corporate in-kind contribution by selling advertising time at the Lowest Unit Charge ("LUC") to a candidate who fails to include the required BCRA Statement in one of his advertisements and, therefore, is not "entitled" to the LUC under the Communications Act of 1934, as amended. 47 U.S.C. 315(b).

A discussion followed.

It was agreed without objection to return the draft to the Office of General Counsel in order to seek more information from the requester pursuant to the meeting discussion and to circulate a revised draft for a future meeting.

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The meeting recessed at 11:30 A.M. and reconvened at 11:40 A.M. with a quorum present.

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IV. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2004-42

Pharmavite LLC, by counsel Robert K. Kelner

Agenda Document No. 04-111

Chairman Smith recognized Ms. Esa Sferra of the General Counsel's Office who presented draft Advisory Opinion 2004-42 which responds to an inquiry regarding (1) whether Pharmavite LLC ("Pharmavite"), a California limited liability company, may pay the administrative and solicitation costs of a separate segregated fund ("SSF"), for which Pharmavite's sole member will be the connected corporate organization, and (2) whether the SSF may be named after Pharmavite under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.

A discussion followed.

The Chairman recognized Vice Chair Weintraub, who

MOVED to approve draft Advisory Opinion 2004-42, as set forth in Agenda Document No. 04-111.

IV. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2004-42 (continued)

The motion carried on the vote of 4-1 with Commissioners

Mason, Smith, Thomas, and Weintraub voting affirmatively.

Commissioner McDonald dissented.

V. DRAFT NOTICE OF PROPOSED RULEMAKING ON FILING DOCUMENTS BY PRIORITY MAIL, EXPRESS MAIL, AND OVERNIGHT DELIVERY SERVICE

Agenda Document No. 04-112

The Chairman recognized Ms. Esa Sferra of the General Counsel's Office who presented the subject document. The Vice Chair, on behalf of Commissioner Toner, expressed his concerns about several issues in the draft, and then

MOVED to approve the draft Notice of Proposed Rulemaking on Filing Documents by Priority Mail, Express Mail, and Overnight Delivery Service, as set forth in Agenda Document No. 04-112, for publication in the *Federal Register*.

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

VI. DRAFT NOTICE OF PROPOSED RULEMAKING ON PAYROLL DEDUCTIONS BY MEMBER CORPORATIONS FOR CONTRIBUTIONS TO A TRADE ASSOCIATION'S SEPARATE SEGREGATED FUND

Agenda Document No. 04-114

(General Counsel Norton recused himself with respect to this matter and he was not present during the discussion.)

The Chairman recognized Ms. Amy Rothstein of the General Counsel's Office who presented an overview of the subject draft.

**Chairman Smith recognized Commissioner McDonald,
who**

MOVED to approve the draft Notice of Proposed Rulemaking regarding contributions to the separate segregated fund of a trade association by employee-stockholders and executive and administrative personnel of corporations that are members of the trade association, as set forth in Agenda Document No. 04-114, for publication in the *Federal Register*.

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

Commissioner Weintraub dissented.

VII. TREASURER POLICY - OFFICIAL AND INDIVIDUAL CAPACITIES

**Agenda Documents No. 04-115,
No. 04-115-A, and No. 04-115-B**

Chairman Smith recognized Vice Chair Weintraub, who

**MOVED to suspend the rules on the
timely submission of agenda documents
in order to consider Agenda Documents
No. 04-115, No. 04-115-A, and No. 04-115-B.**

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

**Chairman Smith recognized Mr. Peter Blumberg of the General
Counsel's Office who presented the subject draft.**

**The Chairman then recognized Commissioner Thomas who
reviewed his alternative draft, as set forth in Agenda Document No. 04-
115-A.**

A discussion followed.

Chairman Smith recognized Commissioner McDonald, who

**MOVED to approve the Statement of Policy, as
set forth in Agenda Document No. 04-115, as
amended by Agenda Document No. 04-115-B,
for publication in the *Federal Register*, and, to
direct the Office of General Counsel to trans-
mit the Statement of Policy to Congress in
accordance with the Congressional Review
Act, 5 U.S.C. § 801 et seq.**

VII. TREASURER POLICY – OFFICIAL AND INDIVIDUAL CAPACITIES
(continued)

The motion carried on the vote of 4-1 with Commissioners

Mason, McDonald, Smith, and Weintraub voting affirmatively.

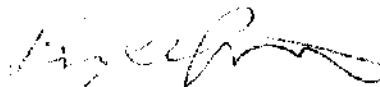
Commissioner Thomas dissented.

VIII. ROUTINE ADMINISTRATIVE MATTERS

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

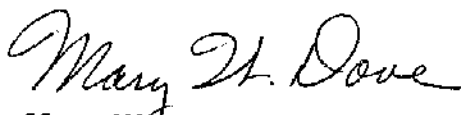
The meeting adjourned at 12:15 P.M.

Signed:



**Bradley A. Smith
Chairman of the Commission**

Attest:



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

