

AGENDA DOCUMENT NO. 04-02

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, DECEMBER 11, 2003

PRESENT: Ellen L. Weintraub, Chair, presiding
Bradley A. Smith, Vice Chairman
David M. Mason, Commissioner
Danny L. McDonald, 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, December 11, 2003, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for December 4, 2003

Agenda Document No. 03-99

Chair Weintraub recognized Vice Chairman Smith, who

MOVED to approve the Minutes for the open meeting of Thursday, December 4, 2003, as submitted in Agenda Document No. 03-99.

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

II. PROPOSED FEC POLICY STATEMENT REGARDING THE
PLACEMENT OF DOCUMENTS ON THE PUBLIC RECORD
IN CLOSED ENFORCEMENT, ADMINISTRATIVE FINES,
AND ALTERNATIVE DISPUTE RESOLUTION CASES

Agenda Document No. 03-100
(Submitted late)

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. 03-100.

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

The Chair recognized General Counsel Lawrence
Norton who presented the subject document and offered the
following amendment: On Page 8, Lines 1 and 2, delete the
remainder of the sentence which reads "once there is final
resolution of the litigation in AFL-CIO."

A discussion followed.

II. PROPOSED FEC POLICY STATEMENT REGARDING THE
PLACEMENT OF DOCUMENTS ON THE PUBLIC RECORD
IN CLOSED ENFORCEMENT, ADMINISTRATIVE FINES,
AND ALTERNATIVE DISPUTE RESOLUTION CASES

(continued)

The Chair recognized Commissioner McDonald,

who

MOVED to approve the Statement of Policy, as submitted in Agenda Document No. 03-100, as amended above, for publication in the *Federal Register* and to instruct the Office of General Counsel to submit the Statement of Policy to Congress in accordance with the Congressional Review Act, 5 U.S.C. § 801 et seq.

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

III. ENFORCEMENT DISCLOSURE INITIATIVES AND
DEMONSTRATION OF ENFORCEMENT QUERY SYSTEM

Agenda Document No. 03-98

Chair Weintraub recognized Staff Director James Pehrkon who presented an overview of the Commission's enforcement disclosure initiatives, as outlined in Agenda Document No. 03-98, followed by a demonstration of the new Enforcement Query System, assisted by a member of his staff, Ms. Kathy Ryan. The system will be available to the public through the FEC web site to access and examine public documents regarding closed enforcement actions.

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The meeting recessed at 10:55 A.M. and reconvened at 11:10 A.M. with a quorum present.

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IV. ADVISORY OPINIONS

A. Draft Advisory Opinion 2003-31

Senator Mark Dayton by counsel,
Marc E. Elias and Brian T. Svoboda

Agenda Documents No. 03-101,
No. 03-101-A, and No. 03-101-B
(Submitted late)

IV. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-31
(continued)

The Chair recognized Vice Chairman Smith,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Documents No. 03-101,
No. 03-101-A, and No. 03-101-B.

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

The Chair recognized Ms. Esa Sferra of the
General Counsel's Office who presented draft Advisory
Opinion 2003-31 concerning the application of the
Federal Election Campaign Act of 1971, as amended ("the
Act"), and Commission regulations to certain campaign
expenses paid for by Senator Dayton with personal funds
and later reimbursed by his principal campaign committee
for the purposes of the "Millionaire's Amendment" of the
Bipartisan Campaign Reform Act of 2002 ("BCRA").

IV. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-31
(continued)

During her presentation, Ms. Sferra recommended an amendment to Agenda Document No. 03-101 which would delete Lines 11 through 21 on Page 9.

A discussion followed, and it was agreed without objection to hold this matter over to the meeting of December 18, 2003.

B. Draft Advisory Opinion 2003-32
(Alternative Drafts)

Ms. Inez Tenenbaum by counsel,
Marc E. Elias

Agenda Document No. 03-97

Chair Weintraub recognized Mr. Michael Marinelli of the General Counsel's Office who presented two alternative drafts for draft Advisory Opinion 2003-32 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of funds remaining from Ms. Tenenbaum's 2002 State campaign account.

A discussion followed.

IV. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-32
(Alternative Drafts) (continued)

It was agreed without objection that draft
Advisory Opinion 2003-32 be returned to the Office of
General Counsel for redrafting pursuant to the meeting
discussion and for consideration at the next meeting on
December 18, 2003.

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The meeting recessed at 12:55 P.M. and reconvened
at 1:10 P.M. with a quorum present.

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C. Draft Advisory Opinion 2003-33

Anheuser-Busch Companies, Inc. by counsel,
Kenneth A. Gross and Ki P. Hong

Agenda Document No. 03-94

The Chair recognized Ms. Mai Dinh of the General
Counsel's Office who presented draft Advisory Opinion
2003-33 concerning the application of the Federal Election

IV. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2003-33
(continued)

Campaign Act of 1971 ("the Act"), and Commission regulations to a proposed plan involving A-B's federally registered political action committee, Anheuser-Busch Companies, Inc. Political Action Committee.

The Chair recognized Vice Chairman Smith,
who

MOVED to approve draft Advisory
Opinion 2003-33, as submitted in
Agenda Document No. 03-94.

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

D. Draft Advisory Opinion 2003-35

Gephardt for President, Inc. by Steven G.
Murphy, Campaign Manager

Agenda Document No. 03-96

Chair Weintraub recognized Mr. Duane Pugh of
the General Counsel's Office who presented draft Advisory

IV. ADVISORY OPINIONS (continued)

D. Draft Advisory Opinion 2003-35 (continued)

Opinion 2003-35 concerning whether the Federal Election Campaign Act of 1971, as amended ("the Act"), the Presidential Primary Matching Payment Account Act ("the Matching Payment Act"), and Commission regulations, permit a candidate in the Presidential primary elections to withdraw from the Matching Payment Act's public funding program after the Federal Election Commission has certified to the United States Treasury that the candidate is eligible to receive matching funds under that program, but prior to the payment date for such funds.

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

Delete the sentence that begins on Page 5, Line 21, and ends on Page 6, Line 2.

Insert on Page 6, Line 19, after the word "candidate" and before the period a comma and the words "provided that the certification of funds has not been pledged as security for private financing."

IV. ADVISORY OPINIONS (continued)

D. Draft Advisory Opinion 2003-35 (continued)

The Chair recognized Vice Chairman Smith,

who

MOVED to approve draft Advisory
Opinion 2003-35, as submitted in
Agenda Document No. 03-96, subject
to the amendments noted above.

The motion carried on the vote of 5-0 with

Commissioners Mason, McDonald, Smith, Toner, and Weintraub
voting affirmatively.

V. ELECTIONEERING COMMUNICATIONS DATES

Agenda Document No. 03-95

Chair Weintraub recognized Mr. Gregory Scott of
the Information Division who presented an overview of the
subject document, and the following amendments were noted:

Page 2, the first entry of the State of
Washington, change Presidential Caucus Date
to "2/7/04."

Page 2, change number of Footnote "3" to "2."

V. ELECTIONEERING COMMUNICATIONS DATES (continued)

A discussion followed.

The Chair recognized Vice Chairman Smith,

who

MOVED to approve the Electioneering
Communications Dates, as submitted
in Agenda Document No. 03-95, as
amended above.

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

VI. ROUTINE ADMINISTRATIVE MATTERS

Staff Director Pehrkon stated the Senate had
confirmed the new Election Assistance Commissioners, and
the transition of the FEC Office of Election Administration
would be made as smoothly as possible.

The meeting adjourned at 1:30 P.M.

Signed:

Ellen L. Weintraub
Chair of the Commission

Attest:

Mary W. Dove
Secretary of the Commission