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AGENDA ITEM
For Meeting of: 1-15-09

January 9, 2009

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joanna S. Waldstreicher *JSW by ATB*
Attorney

Subject: Draft AO 2008-19

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 15, 2009.

Attachment

1 ADVISORY OPINION 2008-19

2 Pike Powers, Treasurer
3 Texans for Lamar Smith
4 1005 Congress, Suite 910
5 Austin, TX 78701

DRAFT

6 Dear Mr. Powers:

7 We are responding to your advisory opinion request on behalf of Texans for
8 Lamar Smith (“the Committee”), concerning the application of the Federal Election
9 Campaign Act of 1971, as amended (“the Act”), and Commission regulations to a
10 candidate’s principal campaign committee’s employment of a person who also serves as
11 the treasurer of a leadership PAC sponsored by the candidate. The Commission
12 concludes that such an arrangement is permissible, as neither the Act nor any
13 Commission regulation prohibits it.

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received on
16 October 9, 2008, an e-mail received from Campaign Financial Services on your behalf on
17 December 8, 2008, and telephone conversations with Commission attorneys.

18 The Committee is the principal campaign committee for Congressman Lamar
19 Smith, who is a United States Representative from the State of Texas. The Committee
20 employs an individual, Ms. O’Lene Stone, as its office manager; she collects the mail,
21 supervises volunteers, acts as an occasional contact point for fundraising firms, and
22 generally manages the day-to-day administration of the Committee’s office. Ms. Stone is
23 not involved in any fundraising or in preparing or filing any Commission reports for the
24 Committee.

1 Ms. Stone also serves as treasurer of the Longhorn Political Action Committee
2 (“Longhorn PAC”), a leadership PAC sponsored by Congressman Smith. Although
3 Ms. Stone signs Commission reports for the Longhorn PAC, she does not prepare them.
4 She has final approval on all disbursements, but she does not sign checks or make
5 deposits. An outside compliance firm, Campaign Financial Services, performs all these
6 tasks, and Ms. Stone and the Longhorn PAC rely on this firm in matters of Commission
7 compliance.

8 Ms. Stone maintains complete separation between her two roles. As she is a paid
9 staff member of the Committee, she performs all treasurer duties for the Longhorn PAC
10 on her own time, outside of her paid hours of employment for the Committee. No
11 Longhorn PAC resources or funds are used in the performance of Ms. Stone’s Committee
12 duties, and no Committee resources or funds are used in the performance of her
13 Longhorn PAC duties.

14 ***Question Presented***

15 *Does the Act or any Commission regulation prohibit an individual’s*
16 *simultaneously serving both as an employee of a candidate’s principal campaign*
17 *committee and as the treasurer of a leadership PAC sponsored by the candidate?*

18 ***Legal Analysis and Conclusions***

19 No, neither the Act nor any Commission regulation prohibits an individual from
20 serving as an employee of a principal campaign committee and as the treasurer of a
21 leadership PAC sponsored by the candidate at the same time. Therefore Ms. Stone may

1 continue to serve as the treasurer of the Longhorn PAC while she is employed by the
2 Committee.¹

3 This response constitutes an advisory opinion concerning the application of the
4 Act and Commission regulations to the specific transaction or activity set forth in your
5 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
6 of the facts or assumptions presented and such facts or assumptions are material to a
7 conclusion presented in this advisory opinion, then the requester may not rely on that
8 conclusion as support for its proposed activity. Any person involved in any specific
9 transaction or activity which is indistinguishable in all its material aspects from the
10 transaction or activity with respect to which this advisory opinion is rendered may rely on
11 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions
12 in this advisory opinion may be affected by subsequent developments in the law
13 including, but not limited to, statutes, regulations, advisory opinions and case law.

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On behalf of the Commission,

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Steven T. Walther

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Chairman

¹ So long as Ms. Stone's services for Longhorn PAC are performed by her on a voluntary basis, no in-kind contribution by the Committee to Longhorn PAC results. *See* 2 U.S.C. 431(8)(B)(i) and 11 CFR 100.74; *see also* Explanation and Justification, Leadership PACs, 68 FR 67013, 67017 (Dec. 1, 2003) (explaining that authorized committees and leadership PACs cannot be affiliated but, "[t]o the extent that leadership PACs are used to pay for costs that could and should otherwise be paid for by a candidate's authorized committee, such payments are in-kind contributions, subject to the Act's contribution limits and reporting requirements").