

AGENDA DOCUMENT NO. 03-54

MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION

THURSDAY, JULY 24, 2003

PRESENT: Ellen L. Weintraub, Chair, presiding  
Bradley A. Smith, Vice Chairman,  
presiding for a portion of the meeting  
David M. Mason, Commissioner  
Danny L. McDonald, Commissioner  
Scott E. Thomas, 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, July 24, 2003, with a quorum present.

I. ADVISORY OPINIONS

A. Draft Advisory Opinion 2003-17

James W. Treffinger and Treffinger for Senate Committee by counsel, Karin Riecker

Agenda Documents No. 03-49  
and No. 03-49-A

Chair Weintraub stated she had recused herself with respect to this matter and would not be present during the discussion.

Vice Chairman Smith, now presiding, recognized Commissioner Thomas, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Document No. 03-49-A.

I. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-17  
(continued)

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

The Vice Chairman recognized Mr. Jonathan Levin of the General Counsel's Office who presented draft Advisory Opinion 2003-17 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 for legal expenses related to criminal charges against Mr. Treffinger.

Following discussion, Vice Chairman Smith recognized Commissioner Toner, who

MOVED to allow the use of campaign funds by Mr. Treffinger to pay for legal expenses arising out of Counts 1 through 18 and Count 20 in the indictment.

I. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-17  
(continued)

The motion failed by a vote of 3-2 with Com-  
missioners McDonald, Thomas, and Toner voting affirmatively.  
Commissioners Mason and Smith dissented.

Vice Chairman Smith recognized Commissioner Mason,  
who

MOVED to approve draft Advisory  
Opinion 2003-17, as set forth in  
Agenda Document No. 03-49, as  
amended by Agenda Document No.  
03-49-A, and further amended to  
delete the last sentence of Foot-  
note 4 on Page 7 and substitute  
the following language in lieu  
thereof:

"This case turns on whether  
the legal expenses at issue  
were in connection with a  
candidate's campaign for  
federal office under 2 USC  
§ 439a(a)(1), and meet the  
'irrespective test' of  
11 CFR 113.1(g)."

I. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-17  
(continued)

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

B. Draft Advisory Opinion 2003-18

Bob Smith for U.S. Senate

Agenda Document No. 03-50

Chair Weintraub, now presiding, recognized Mr. Jonathan Levin of the General Counsel's Office who presented draft Advisory Opinion 2003-18 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed transfer of funds contributed for the general election to the American Patriot Foundation ("APF"), which is a public charitable foundation that Senator Smith recently established.

I. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-18 (continued)

A discussion followed, and Mr. Barry Conway of the Reports Analysis Division responded to questions and comments.

Chair Weintraub recognized Vice Chairman Smith,  
who

MOVED to approve draft Advisory Opinion 2003-18, as submitted in Agenda Document No. 03-50, as amended, to delete Lines 1 and 2 on Page 5, and substitute the following language in lieu thereof:

"The regulations provide that refund checks must be issued once a candidate is no longer a candidate in the general election. 11 CFR 102.9(e)(3). However, the regulations do not specify a time-frame in which the refund process must be completed; i.e. when the refund checks must clear the campaign committee's accounts. In this case, the Committee properly issued refund checks but provided 90 days for the checks to become stale. The Commission concludes that it is appropriate to grant the Committee more time to finish the refund process already properly begun before requiring the funds in question to be disgorged to the U.S. Treasury. Therefore, the Committee may continue to complete the refund process within 90 days of the receipt of this opinion. Any unrefunded general election contributions still in the Committee's possession at the end of the 90 days must be disgorged to the U.S. Treasury."

I. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-18  
(continued)

And, further, to instruct the Office of General Counsel to draft a sentence to be included in the amendment above which addresses refunds of contributions under the "Millionaire's Amendment"; that refund checks must be processed within six months of the check's date.

The motion carried on the vote of 6-0.

\* \* \* \* \*

The meeting recessed at 11:15 A.M. and reconvened at 12:40 P.M. with a quorum present.

\* \* \* \* \*

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES

Agenda Documents No. 03-51, No. 03-51-A,  
No. 03-51-B, No. 03-51-C, No. 03-51-D,  
No. 03-51-E, No. 03-51-F, and No. 03-51-G

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. 03-51, and  
Agenda Documents No. 03-51-A  
through No. 03-51-G.

The motion carried on the vote of 6-0.

The Chair recognized Mr. Duane Pugh of the General  
Counsel's Office who presented an overview of the subject  
document and the proposed amendments in Agenda Document  
No. 03-51-A.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

The Chair presented her amendments, as submitted  
in Agenda Document No. 03-51-G, which were amended as follows:

1. Page 21, Line 10 change the last word  
on the amendment page to "parentheses."
2. Page 30, Lines 22-23, delete the amendment  
as stated, and insert the word "should" at  
the end of Line 22.
3. Page 70, Line 3 through Line 5 amended  
further by inserting the word "single"  
before the word "passing."

It was agreed without objection to accept the  
amendments in Agenda Document No. 03-51-G, as amended above.

The Chair recognized Commissioner Toner who  
presented Agenda Document No. 03-51-E. It was agreed  
without objection to accept the proposed language in this  
document.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

There was a discussion of the winding down costs paid by the GELAC, and Mr. Duane Pugh of the General Counsel's Office and Mr. Joseph Stoltz of the Audit Division responded to questions and comments. It was agreed without objection to accept the amendments in Agenda Document No. 03-51-A on Page 2, Lines 10 through 19, and to amend Agenda Document No. 03-51, on Page 16, Lines 20 - 21, by deleting the words "without having to allocate them between the primary and general election committees." Further, it was agreed without objection to include a sentence to make it clear that left over primary bills paid by the GELAC, other than winding down expenses, would be charged to the primary spending limit.

Commissioner Mason presented an amendment at 11 CFR 9004.4(a)(6) (Gifts and Bonuses), and it was agreed without objection to delete Lines 8 through 14, on Page 20 of Agenda Document No. 03-51, and insert the language set forth in Agenda Document No. 03-51-B, in lieu thereof.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

Following a discussion of host committees and municipal funds, Chair Weintraub recognized Commissioner Toner, who

MOVED to amend Agenda Document No. 03-51 on Page 39, Lines 5 through 7, Line 9, Lines 10 through 17, Line 18, and Line 19, as set forth in the proposed amendments in Agenda Document No. 03-51-C, Page 1, and to modify the corresponding regulation on Page 147 at Line 4.

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

It was agreed without objection to amend Page 40, Lines 1 and 2 of Agenda Document No. 03-51, as proposed by Commissioner Toner in Agenda Document No. 03-51-C on Page 1.

\* \* \* \* \*

The meeting recessed at 2:05 P.M. and reconvened at 2:25 P.M. with a quorum present.

\* \* \* \* \*

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

Chair Weintraub recognized Commissioner Thomas who reviewed his proposed amendments which related to national party solicitations of funds for host committees and municipal funds.

Following discussion, the Chair recognized Commissioner Thomas, who

MOVED to amend Agenda Document No. 03-51, as set forth in Agenda Document No. 03-51-D, and to modify the text of the regulations on Page 154, by deleting Paragraph (d) on Lines 17 through 20 and renumbering the following paragraph as "(d)."

The motion carried on the vote of 6-0.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

Chair Weintraub recognized Commissioner Mason who reviewed his proposed amendment in Agenda Document No. 03-51-F. It was agreed without objection to accept the proposed language as submitted.

The Chair recognized Commissioner Toner who presented his proposed amendment which related to convention expenses of ineligible candidates.

A discussion followed.

Chair Weintraub recognized Commissioner Toner, who

MOVED to amend Agenda Document No. 03-51 on Page 96, Lines 7, 15, 21, 22, 23 and Page 159, Line 12, as set forth in Agenda Document No. 03-51-C on Page 1.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

The motion carried on the vote of 5-1 with Commissioners Mason, McDonald, Smith, Thomas, and Toner voting affirmatively. Commissioner Weintraub dissented.

There was a discussion of 11 CFR 9034.10 (Pre-Candidacy Payments by Multicandidate Political Committees Deemed In-kind Contributions and Qualified Campaign Expenses; Effect of Reimbursement.)

It was agreed without objection to accept the amendments to Page 98, Lines 8 and 20, of Agenda Document No. 03-51, as proposed by Commissioner Toner in Agenda Document No. 03-51-C on Page 2.

The discussion resumed.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

Chair Weintraub recognized Commissioner McDonald,  
who

MOVED to delete 11 CFR 110.2  
(Contributions by multicandidate  
political committees) and 9034.10  
(Pre-candidacy payments by multi-  
candidate political committees  
deemed in-kind contributions and  
qualified campaign expenses;  
effect of reimbursement), as set  
forth in Agenda Document No. 03-51.

The motion failed by a vote of 2-4 with  
Commissioners McDonald and Weintraub voting affirmatively.  
Commissioners Mason, Smith, Thomas, and Toner dissented.

It was agreed without objection to instruct the  
Office of General Counsel to include language at 110.2  
which states a candidate may have offices in or near the  
District of Columbia and the candidate's home state.

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

It was agreed without objection to accept the  
amendments in Agenda Document No. 03-51-A, (Continuing  
to campaign costs) as outlined on Page 2, Lines 21  
through 26.

There was a discussion of repayments at section  
9038.2. It was agreed without objection to take out the new  
section in Agenda Document No. 03-51 and substitute similar  
language used in 2000, as follows:

"The Commission has decided to make no  
changes to the regulation at 11 CFR  
9038.2(b)(2), which currently requires  
publicly funded Presidential primary  
campaigns to make repayments on the  
basis of exceeding the Congressionally-  
mandated spending limits. The current  
rule is not being changed at this time  
because there is no consensus in favor  
of changing the regulation."

II. FINAL RULES AND EXPLANATION AND JUSTIFICATION  
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES  
(continued)

Chair Weintraub recognized Vice Chairman Smith,  
who

MOVED to take the following actions  
in the above-captioned matter:

1. Approve the Final Rules and  
Explanation and Justification,  
as submitted in Agenda Document  
No. 03-51, as amended at the  
table;
2. Authorize the Office of General  
Counsel to make any necessary  
technical and conforming  
amendments; and
3. Direct the Office of General  
Counsel to transmit the revised  
Final Rules and Explanation and  
Justification to Congress and  
for publication in the *Federal  
Register*.

The motion carried on the vote of 6-0.

III. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 4:10 P.M.

Signed:

Ellen L. Weintraub  
Chair of the Commission

Bradley A. Smith  
Vice Chairman of the  
Commission

Attest:

Mary W. Dove  
Secretary of the  
Commission