

January 9, 2009

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2008-19 is available for public comments under this procedure. It was requested by Pike Powers on behalf of Texans for Lamar Smith.

Draft Advisory Opinion 2008-19 is scheduled to be on the Commission's agenda for its public meeting of Thursday, January 15, 2009.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00pm noon (Eastern Time) on January 14, 2009.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2008-19, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at www.fec.gov.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

MAILING ADDRESSES

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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 *PCS*
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,

Steven T. Walther
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").