



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 23-10-D
AGENDA ITEM
For the meeting of May 4, 2023

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| | PREVIOUS NO. | NO. 69 |
| COMMISSION DIRECTIVE | RESCINDS: July 1, 2010 | EFFECTIVE DATE: May 4, 2023 |
| FEC DIRECTIVE ON LEGAL GUIDANCE TO THE OFFICE OF COMPLIANCE | | |

The Commission’s Office of Compliance (“OC”) (which includes the Reports Analysis Division (“RAD”), the Audit Division, the Alternative Dispute Resolution Office, and the Office of Administrative Review) may seek formal or informal legal guidance from the Office of General Counsel (“OGC”) regarding questions of law that arise in the ordinary course of each office’s responsibilities.¹ This is an important intra-agency function, because OC does not make legal determinations. Moreover, such legal guidance often affects whether: (1) OC seeks additional information from a person or entity on a particular reporting issue, or (2) whether a matter is referred for further action by the Commission.

1. Requests by Office of Compliance for Legal Guidance from Office of General Counsel

OGC shall respond timely to any request by OC for legal guidance. Specifically, OGC shall respond to all such requests for informal legal guidance from OC within 30 calendar days.²

¹ This Directive supplements, and does not replace, OGC’s obligation to provide legal advice during the audit process as set forth in the operative audit procedure. Where a request for legal guidance is made pursuant to this Directive and contains an analysis of an issue raised in a proposed finding in an audit of a committee that does not receive public funds, such analysis shall be provided to the committee pursuant to the operative audit procedure.

² This 30-day deadline does not apply in instances in which it conflicts with an applicable deadline set forth in the Commission’s separately published audit procedures or a deadline governing OGC advice to the Audit Division in the administration of the public financing programs as set forth in Directive 23, Directive 24, and regulations at 11 C.F.R. Subchapters E and F.

2. Status Reports Regarding Office of Compliance Requests for Legal Guidance

OC and OGC will provide the Commission with joint monthly status reports on all pending internally generated requests for formal legal guidance.³

The status report shall include the following information:

- a. the name of the person or matter about which the request is being made by OC;
- b. the date that the request was received by OGC;
- c. a brief summary of the issue; and
- d. a reasonable estimate as to the date by which OGC is expected to render the requested guidance or present the issue to the Commission for its consideration.

3. Commission Consideration of Novel, Complex, or Significant Legal Questions

Certain legal issues may warrant Commission consideration and, in such instances, OGC and OC may at their own discretion bring the issue before the Commission for consideration. The types of legal issues that OGC and OC are encouraged to bring before the Commission under this process include:

- a. Relatively close questions of law and questions of law on which the Commission has discretion to decide;
- b. Questions of law which, depending on the answer, would determine whether a significant amount of Commission resources would or would not be required on the particular matter involved;
- c. Questions of law that have been expressly reserved by the Commission in a prior audit, enforcement matter, or advisory opinion for subsequent consideration; and
- d. Novel or unsettled questions of law, or questions prompted by developments in the law since the Commission last considered the same issue (including legislation, court decisions, or rulemakings) or technology.

Any legal issue presented to the Commission by OGC and OC under this procedure shall be accompanied by a statement of the issue and a recommendation by OGC and OC, and shall be circulated for a vote on the OGC and OC recommendation in accordance with all applicable Commission directives. After the OGC and OC recommendation is circulated for a Commission vote, in the event of an objection, the matter shall be automatically placed on the next meeting agenda consistent with the Sunshine Act, 5 U.S.C. § 552b(g), and applicable Commission regulations, 11 C.F.R. part 2. However, if the Commission is unable to resolve the issue or to provide guidance on how to proceed with the matter by the affirmative vote of four or more Commissioners within 60 calendar days after the legal issue has been presented to the Commission for a vote, OC may proceed with the matter.

³ The status report will only include those requests for guidance for which OGC is preparing a written analysis in response to a question from OC, and does not create an obligation for OGC to prepare a written response where it would not otherwise do so.

This Directive was adopted on May 4, 2023

Alec Palmer, Staff Director