

AGENDA DOCUMENT NO. 04-38

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, APRIL 1, 2004

PRESENT: Bradley A. Smith, Chairman, presiding

 Ellen L. Weintraub, Vice Chair

 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

Chairman Bradley A. Smith called the Federal Election Commission to order in an open meeting at 10:05 A.M. on Thursday, April 1, 2004, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for March 25, 2004
Agenda Document No. 04-32

Chairman Smith recognized Vice Chair Weintraub,
who

MOVED to approve the minutes
for the Open Meeting of
Thursday, March 25, 2004, as
submitted in Agenda Document
No. 04-32.

The motion carried on the vote of 6-0 with
Commissioners Mason, McDonald, Smith, Thomas, Toner,
and Weintraub voting affirmatively.

II. ADVISORY OPINIONS

- A. Draft Advisory Opinion 2004-07
Viacom/MTV by counsel, Elizabeth Kingsley
Agenda Document No. 04-33

II. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2004-07 (continued)

Chairman Smith recognized Mr. Anthony Buckley of the General Counsel's Office who presented draft Advisory Opinion 2004-07, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to certain planned activities during the 2003-2004 election cycle.

The Chairman recognized Commissioner Toner who presented an amendment for consideration.

At the conclusion of the discussion, Chairman Smith recognized Commissioner Toner, who

MOVED to approve the proposed amendment as follows:

On Page 10, Lines 8-21: Insert a period after the word "exemption" on Line 8, delete the remainder of the language beginning with the words "but only to the" on Line 8 through the end of the paragraph on Line 21, and replace with the following:

II. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2004-07 (continued)

"As noted above, application of the press exemption turns on whether an activity is typically performed by a press entity. The Commission's understanding is that the media is increasingly using electronic mails and text messages to disseminate breaking news stories, weather and sports information, and stock market information. The Commission therefore views MTV's proposal as consistent with established industry practice and therefore within the press exemption."

The motion carried on the vote of 6-0.

Following further discussion, the Chairman recognized Vice Chair Weintraub, who

MOVED to approve draft Advisory Opinion 2004-07, as submitted in Agenda Document No. 04-33, subject to the amendment noted above.

The motion carried on the vote of 6-0.

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Without objection, Draft Advisory Opinion 2004-08

(Item II. B.) was moved to the end of the agenda.

II. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2004-09

Green-Rainbow Party by Grace Ross and David
Ebony Allen Barkley, Co-Chairs

Agenda Document No. 04-31

Chairman Smith recognized Mr. Michael Marinelli of the General Counsel's Office who presented draft Advisory Opinion 2004-09, concerning the status of the Green-Rainbow Party as a State committee of a political party under the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations.

The Chairman recognized Commissioner Toner, who

MOVED to approve draft Advisory
Opinion 2004-09, as submitted in
Agenda Document No. 04-31.

The motion carried on the vote of 6-0.

III. LEGISLATIVE RECOMMENDATIONS 2004

Agenda Documents No. 04-29 and No. 04-29-A

Chairman Smith noted the above-referenced documents had been withdrawn by the Information Division and that legislative recommendations would be considered in a future meeting.

IV. NOTICE OF PROPOSED RULEMAKING ON INAUGURAL
COMMITTEES

Agenda Document No. 04-35

Chairman Smith recognized Ms. Esa Sferra of the
General Counsel's Office who presented an overview
of the subject document.

The Chair recognized Vice Chair Weintraub,
who

MOVED to approve the draft Notice
of Proposed Rulemaking, as set
forth in Agenda Document No. 04-35,
for publication in the *Federal
Register*.

The motion carried on the vote of 6-0.

V. NOTICE OF PROPOSED RULEMAKING ON CONTRIBUTIONS
BY MINORS

Agenda Document No. 04-36 (Submitted late)

Chairman Smith recognized Vice Chair Weintraub,
who

MOVED to suspend the rules on the
timely submission of agenda documents
in order to consider Agenda Document
No. 04-36.

The motion carried on the vote of 6-0.

V. NOTICE OF PROPOSED RULEMAKING ON CONTRIBUTIONS
BY MINORS (continued)

Chairman Smith recognized Mr. Steve Hajjar of the General Counsel's Office who presented the proposed rules which addressed issues relating to contributions and donations by minors. The following amendments were offered without objection:

Page 5, Line 15, change the word "of" before "controlled" to "or";

Page 5, Line 23, insert the words "to manage their finances and" after the word "capacity."

The Chairman recognized Vice Chair Weintraub, who

MOVED to approve the draft Notice of Proposed Rulemaking on Contributions by Minors, as submitted in Agenda Document No. 04-36, subject to the amendments noted above, for publication in the *Federal Register*.

A discussion followed.

V. NOTICE OF PROPOSED RULEMAKING ON CONTRIBUTIONS
BY MINORS (continued)

The Vice Chair accepted as a friendly amendment by Commissioner Toner to instruct the General Counsel's Office to incorporate language in the narrative to seek comment on children's bank accounts where the parents have the ability to authorize expenditures out of the account.

The motion, as amended, carried on the vote of 6-0.

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The meeting recessed at 11:00 A.M. and reconvened at 11:15 A.M. with a quorum present.

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VI. CERTIFICATION FOR PAYMENT OF PRESIDENTIAL PRIMARY
MATCHING FUNDS: REV. ALFRED C. SHARPTON/
SHARPTON 2004

Agenda Document No. 04-37

(Placed on the agenda pursuant to the filing of objections by Commissioners Mason and Toner following circulation on a 24-hour tally vote.)

VI. CERTIFICATION FOR PAYMENT OF PRESIDENTIAL PRIMARY
MATCHING FUNDS: REV. ALFRED C. SHARPTON/
SHARPTON 2004 (continued)

Chairman Smith recognized Mr. Lorenzo Holloway of the General Counsel's Office who described the administrative process at this time relating to the matching fund payment to Rev. Alfred C. Sharpton.

At the conclusion of the discussion which followed, Chairman Smith, who had not voted previously, cast a vote of approval; Commissioner Mason withdrew his objection and cast a vote of approval; and Commissioner Toner withdrew his objection and abstained.

Therefore, the amended pre-meeting tally reflected a Commission decision by a vote of 5-0 to notify the Secretary of the Treasury that Rev. Alfred C. Sharpton/Sharpton 2004 is entitled to receive payment from the Presidential Primary Matching Payment Account in the amount of \$79,708.99.

II. ADVISORY OPINIONS (continued)

- B. Draft Advisory Opinion 2004-08
(Alternative Drafts)
American Sugar Cane League by counsel,
Paul G. Borrón, III

Agenda Document No. 04-34

Chairman Smith recognized Ms. Rosemary Smith of the General Counsel's Office who requested Advisory Opinion 2004-08 be withdrawn at this time pending receipt of supplemental facts from the counsel for the requester, which may change the analysis. Without objection, the advisory opinion was withdrawn from the agenda to be considered at the next open meeting on April 29, 2004.

VII. ROUTINE ADMINISTRATIVE MATTERS

The Chairman recognized Ms. Rosemary Smith who presented an update on the status of the political committee rulemaking, noting that requests to testify at the hearing must be received by April 5, and those who do not wish to testify have until April 9 to submit written or electronic comments. The hearing is scheduled for April 14-15. In closing, she stated the General Counsel's Office has received 30,000 comments to date.

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The meeting adjourned at 11:47 A.M.

Signed:

Bradley A. Smith
Chairman of the Commission

Attest:

Mary W. Dove
Secretary of the Commission

