

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2004 OCT -1 P 4: 23


October 1, 2004


MEMORANDUM


AGENDA ITEM
For Meeting of: 10-07-04


SUBMITTED LATE


TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

Rosemary C. Smith 
Associate General Counsel

Mai T. Dinh 
Assistant General Counsel

Michael Marinelli 
Attorney

Subject: Draft AO 2004-36

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 7, 2004.

Attachment

1 ADVISORY OPINION 2004-36

DRAFT

2
3
4 Mr. Mark Risley
5 Mark Risley for Congress
6 P.O. Box 1285
7 Monterey, CA 93942

8
9 Dear Mr. Risley:

10
11 We are responding to your inquiry regarding the proper way for your principal
12 campaign committee, Risley for Congress (“the Committee”), to report in-kind
13 contributions received under the Federal Election Campaign Act of 1971, as amended
14 (“the Act”), and Commission regulations. Because the donation of office space is an in-
15 kind contribution to the Committee and an expenditure by the Committee, the Committee
16 must report its share of the contributed rental cost on the report covering the period in
17 which the in-kind contribution is received.

18 ***Background***

19 The facts of this request are presented in your letters dated August 23, and
20 September 17, 2004.

21 Commission records indicate that you are a Republican candidate for election to
22 the U.S. House of Representatives for the 17th Congressional District in California.
23 There are five other candidates seeking election for this office. Four of these candidates
24 are members of political parties (the Democratic Party, the Peace and Freedom Party, the
25 Green Party and the Libertarian Party). The fifth candidate is a write-in candidate.

26 Mr. Anthony Davi, Sr., an individual contributor, has donated office space he
27 owns for your use and the use of the four other candidates, excluding the Democratic
28 Party candidate. This space is a 3,000 square foot office which is to be shared equally by

1 all five candidates. You state that the value of this rental property is \$2,000 a month,
2 which we assume is the usual and normal rental charge for the property.

3 All five candidates sharing this office space operate five independent campaigns.
4 You do not share telephone lines or any other campaign related expenses. The campaign
5 committees do not share information or intermingle funds. Campaign staff and
6 volunteers working for one campaign do not assist any of the other four.

7 ***Question Presented***

8 *How should a Congressional candidate report an in-kind contribution of office*
9 *space made to his campaign committee?*

10 ***Legal Analysis and Conclusions***

11 The definition of “contribution” in 2 U.S.C. 431(8) includes a gift of “anything of
12 value made by any person for the purpose of influencing any election for Federal office.”
13 431(8)(A)(i); *see also* 11 CFR 100.52(a). Commission regulations define “anything of
14 value” in this context as an in-kind contribution. This type of contribution includes “the
15 provision of any goods or services without charge or at a charge that is less than the usual
16 and normal charge for such goods or services.” 11 CFR 100.52(d)(1). Because it is as if
17 funds were given to pay for the goods or services in question, an in-kind contribution is
18 treated as both a “contribution” to and an “expenditure” by the political committee
19 receiving the in-kind contribution. 11 CFR 100.111(e); 104.13(a)(2). Thus, the donation
20 of the free use of the rental property for a campaign office would be an in-kind
21 contribution to your campaign and the campaigns of the four other candidates, meaning it
22 would be treated as both a contribution to and an expenditure by the five campaign
23 committees.

1 The value of this in-kind contribution to your campaign would be your
2 proportionate share of the usual and normal rental value of the property each month you
3 use the property. Consequently, based on the information you provided, Mr. Davi is
4 contributing \$400 to the Committee on each rental due date. ¹

5 An authorized committee of a candidate must report and itemize all contributions
6 received from individuals that aggregate in excess of \$200 per election cycle. 11 CFR
7 104.3(a)(4). To itemize a contribution, a committee must provide information regarding
8 the contributor (including the name, mailing address, occupation and employer), the date
9 of the receipt, the amount of the contribution, and the election cycle-to-date total
10 contributions from that individual. 11 CFR 104.3(a)(4) and 104.8(a). Thus, the
11 Committee must report and itemize the in-kind contribution of office space in the report
12 covering the dates on which the in-kind contribution was received, and the election cycle-
13 to-date total for contributions from Mr. Davi. *See* 11 CFR 104.13(a)(1). The rental
14 charge must also be reported as an expenditure on the same report. 11 CFR 104.13(a)(2);
15 *see* Campaign Guide for Congressional Candidates and Committees (FEC 2004),
16 available at www.fec.gov, pp.12, 74.

17 For example, Mr. Davi provided the office space to the five candidates for the
18 months of August, September, and October. Assuming the rent is due the first of each
19 month of occupancy, the Committee must report and itemize the in-kind contributions of
20 office space for August 1 and September 1 on Schedule A of the Committee's October
21 Quarterly Report, with a corresponding entry for the expenditures on Schedule B of the

¹ This contribution is subject to the amount limitation under the Act which is \$2,000 per election to a candidate's campaign. 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(a) and (b)(1). The contribution must be aggregated with any other contribution made by Mr. Davi to the Committee in connection with the 2004 general election campaign. *See id.*

1 same report. The Committee must also report and itemize the in-kind contribution of
2 office space for October on Schedule A of the 12-Day Pre-General Report with a
3 corresponding entry for the expenditure on Schedule B of the same report.

4 This response constitutes an advisory opinion concerning the application of the
5 Act and Commission regulations to the specific transaction or activity set forth in your
6 request. *See* 2 U.S.C. 437f. We emphasize that if there is a change in any of the facts or
7 assumptions presented, and such facts or assumptions are material to a conclusion
8 presented in this advisory opinion, then the requestor may not rely on that conclusion as
9 support for its proposed activity.

10
11
12
13
14
15
16
17
18

Sincerely,

Bradley A. Smith
Chairman