



AGENDA DOCUMENT NO. 05-10

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION**

MONDAY, FEBRUARY 14, 2005

PRESENT:

Scott E. Thomas, Chairman, presiding

Michael E. Toner, Vice Chairman

David M. Mason, Commissioner

Danny L. McDonald, Commissioner

Bradley A. Smith, Commissioner

Ellen L. Weintraub, Commissioner

**Robert J. Costa, Deputy Staff Director
for Audit and Review, representing
James A. Pehrkon, Staff Director**

Lawrence H. Norton, General Counsel

Mary W. Dove, Secretary

Chairman Scott E. Thomas called the Federal Election Commission to order in an open meeting at 10:20 A.M. on Monday, February 14, 2005, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for January 27, 2005
Agenda Document No. 05-07

Chairman Thomas recognized Vice Chairman Toner, who

MOVED to approve the minutes for the Open Meeting of Thursday, January 27, 2005, as submitted in Agenda Document No. 05-07.

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

II. DRAFT ADVISORY OPINION 2004-43

Missouri Broadcasters Association, by
counsel Gregg P. Skall

Agenda Documents No. 05-08;
No. 05-08-A, and No. 05-08-B (Submitted late)

Chairman Thomas recognized Vice Chairman Toner, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Documents No. 05-08-A and No. 05-08-B.

II. DRAFT ADVISORY OPINION 2004-43 (continued)

The motion carried on the vote of 6-0.

The Chairman recognized Ms. Cheryl Hemsley of the General Counsel's Office who presented draft Advisory Opinion 2004-43 regarding whether, under the Federal Election Campaign Act of 1971, as amended ("FECA"), a broadcaster would be making a corporate in-kind contribution by selling advertising time at the Lowest Unit Charge ("LUC") to a candidate who fails to include the required Communications Act Statement in one of his advertisements and, therefore, is not "entitled" to the LUC under the Communications Act of 1934, as amended.

Vice Chairman Toner was recognized to present his proposed amendment to the General Counsel's draft, as set forth in Agenda Document No. 05-08-B.

Commissioner Weintraub reviewed her proposed alternative draft, as contained in Agenda Document No. 05-08-A.

A discussion followed.

II. **DRAFT ADVISORY OPINION 2004-43** (continued)

Chairman Thomas recognized Commissioner Toner, who

MOVED to approve the General Counsel's proposed draft, as submitted in Agenda Document No. 05-08, as amended by Agenda Document No. 05-08-B.

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

The Chairman recognized Commissioner Weintraub, who

MOVED to approve the alternative draft, as set forth in Agenda Document No. 05-08-A.

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

III. **NOTICE OF PROPOSED RULEMAKING ON CANDIDATE SOLICITATION AT STATE, DISTRICT, AND LOCAL PARTY FUNDRAISING EVENTS**

Agenda Document No. 05-09 (Submitted late)

Chairman Thomas recognized Vice Chairman Toner who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Document No. 05-09.

**III. NOTICE OF PROPOSED RULEMAKING ON CANDIDATE
SOLICITATION AT STATE, DISTRICT, AND LOCAL PARTY
FUNDRAISING EVENTS (continued)**

The motion carried on the vote of 6-0.

**Chairman Thomas recognized Ms. Margaret Perl of the General
Counsel's Office who presented an overview of the subject document.**

A discussion followed.

The Chairman recognized Commissioner McDonald, who

**MOVED to approve the draft Notice of
Proposed Rulemaking, as set forth in
Agenda Document No. 05-09, as amended
to direct the Office of General Counsel to
include language which would seek comment
on whether the regulation should be revised
to allow candidates and officeholders to
solicit Levin funds; and, that the amended
Notice be submitted for publication in the
Federal Register.**

The motion carried on the vote of 6-0.

IV. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 11:40 A.M.

Signed:

**Scott E. Thomas
Chairman of the Commission**

Attest:

**Mary W. Dove
Secretary of the Commission**