

AGENDA DOCUMENT NO. 00-56

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, MAY 11, 2000

PRESENT: Darryl R. Wold, Chairman, presiding
Danny L. McDonald, Vice Chairman
David M. Mason, Commissioner
Karl J. Sandstrom, Commissioner
Scott E. Thomas, Commissioner
James A. Pehrkon, Staff Director
Lawrence M. Noble, General Counsel
Mary W. Dove, Acting Secretary

Chairman Darryl R. Wold called the Federal Election Commission to order in an open meeting at 10:05 a.m. with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for April 27, 2000
Agenda Document No. 00-50

Chairman Wold recognized Vice Chairznan McDonald, who

MOVED to approve the minutes for the open meeting of April 27, 2000, as submitted in Agenda Document No. 00-50.

The motion carried on the vote of 5-0 with Commissioners Mason, McDonald, Sandstrom, Thomas, and Wold voting affirmatively.

II. REVISED ALTERNATIVE DRAFTS ADVISORY
OPINION 2000-05

The Oneida Nation of New York by
counsel, Markham C. Erickson

Agenda Documents No. 00-52
and No. 00-52-A

Chairman Wold recognized Mr. Jonathan Levin of the General Counsel's office who presented an overview of the subject alternative drafts. Commissioner Sandstrom addressed his proposed revisions, as contained in Agenda Document No. 00-52-A.

A discussion followed.

Chairman Wold recognized Commissioner Sandstrom, who

MOVED to approve Alternative B of draft Advisory Opinion 2000-05, as set forth in Agenda Document No. 00-52, as amended by Agenda Document No. 00-52-A.

The motion carried on the vote of 5-0 with Commissioners Mason, McDonald, Sandstrom, Thomas, and Wold voting affirmatively.

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

Agenda Documents No. 00-53,
No. 00-53-A, and No. 00-53-B

Chairman Wold recognized Vice Chairman McDonald,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Documents No. 00-53 and
No. 00-53-A.

The motion carried on the vote of 5-0 with
Commissioners Mason, McDonald, Sandstrom, Thomas, and
Wold voting affirmatively.

Chairman Wold recognized Ms. Mai Dinh of the
General Counsel's office who reviewed the proposed Final
Rules to implement the Administrative Fine Program. During
her presentation, Ms. Dinh submitted the following amend-
ments:

1. Page 5, Line 13: Change the last
word to "procedures";
2. Page 5, Line 21: Change the year
from "1002" to "2001";
3. Page 6, Line 4: Insert the word
"Commission's" before the word,
"system";
4. Page 6, Line 23: Delete the word
"their";

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

5. Delete the sentence which begins on Page 23, Line 23, and ends on Page 24, Line 1. Insert the following sentence in lieu thereof:

"The respondents will be notified by letter of the final determination.";
6. Page 26, Line 22: Correct the spelling of the word "situation";
7. Page 41, Line 19: Delete the letter "a" at the end of the sentence;
8. Page 42, Lines 7 and 8: Delete the following:

"...the Commission shall authorize the reviewing officer to notify.." and end the sentence with the word "penalty.";
9. Page 42, Line 8: Delete the following:

"...the respondent by letter of its final determination.";
and insert the following new sentence:

"The respondent shall be notified by letter of its final determination.";

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

10. Page 42, Line 11: Delete the letter "a" at the end of the sentence;
11. Page 23, Line 10: Delete the words "considered as";
12. Page 23, Line 10: Delete the word "federal" and insert the words "United States" in lieu thereof;
13. Page 23, Line 12: Insert the word "the" before the word "Treasury";
14. Page 23, Line 13: Delete the word "of" after the word "days" and insert the word "after" in lieu thereof;
15. Page 23, Line 14: Insert the following citations after the sentence which ends with the word "determination."

"31 U.S.C. 3711(g);
31 U.S.C. 3716(c)(6)";
16. Page 24, Line 3: Delete the words "considered as";
17. Page 24, Line 3: Delete the words "federal government" and insert the words "United States" in lieu thereof;
18. Page 24, Line 4: Insert "U.S." before the word "Department";

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

19. Page 24, Line 4: Insert the word "the" before the word "Treasury";
20. Page 24, Line 4: Insert the following citations after the sentence which ends with the word "collection."
- "31 U.S.C. 3711(g);
31 U.S.C. 3716(c)(6)";
21. Page 30, Delete Lines 11 through 20, and substitute the following in lieu thereof:

"Section 111.45 What actions will be taken to collect unpaid civil money penalties?"

"The Commission may take any and all appropriate actions authorized and required by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C.3701 et. seq.). This section adopts the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office, 4 CFR parts 101-105, to provide procedures for the collection of the debt. This section also adopts by cross-reference the U.S. Department of the Treasury at 31 CFR 285.2, 285.4, and 285.7. Changes are being made to this section in the final rules for clarification purposes. The Commission did not receive any substantive comments on this section.";

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

22. Page 51, Delete Lines 1 through 6, and substitute the following in lieu thereof:

"§111.45. What actions will be taken to collect unpaid civil money penalties?

"The Commission may take any and all appropriate collection actions authorized and required by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 et.seq.). The U.S. Department of the Treasury regulations at 31 CFR 285.2, 285.4, and 285.7 and the Federal Claims Collection Standards issued jointly by the Department of Justice and the Government Accounting Office at 4 CFR parts 101 through 105 also apply."

At the conclusion of the presentation by the General Counsel's Office, a discussion was held relating to the proposed non-filer penalty schedule. Commissioner Mason noted he would be introducing an alternate schedule after the recess.

* * * * *

The meeting recessed at 11:40 a.m. and reconvened at 11:50 a.m. with a quorum present.

* * * * *

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

Chairman Wold recognized Commissioner Mason,
who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Document No. 00-53-B.

The motion carried on the vote of 5-0 with
Commissioners Mason, McDonald, Sandstrom, Thomas, and
Wold voting affirmatively.

Commissioner Mason described his proposed
alternate non-filer penalty schedule, as submitted
in Agenda Document No. 00-53-B, and a discussion
followed.

The next item for discussion was the 48-hour
violation and the percentage used to calculate the base
penalty.

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

Chairman Wold recognized Commissioner
Sandstrom, who

MOVED to revise §111.44 to
change the civil money penalty
on 48-hour violations from
fifteen percent to ten percent,
and to make the corresponding
revisions to the Explanation
and Justification.

The motion carried on the vote of 5-0 with
Commissioners Mason, McDonald, Sandstrom, Thomas, and
Wold voting affirmatively.

Chairman Wold recognized Commissioner
Sandstrom, who

MOVED to revise §111.44 to reduce
the civil penalty on candidate loans
and contributions from the campaign
from ten percent to five percent, and
to make the corresponding revisions
to the Explanation and Justification.

The motion failed on a vote of 1-4 with
Commissioner Sandstrom voting affirmatively.
Commissioners Mason, McDonald, Thomas, and Wold
dissented.

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

There was a discussion of §111.36 relating to the reviewing officer's review of the respondent's written response.

Chairman Wold recognized Commissioner Sandstrom, who

MOVED to take the following actions on the above-captioned matter:

- a. Include a sentence in §111.36(g), to wit:

"This response may not raise any arguments not raised in the respondent's original written response or not directly responsive to the reviewing officer's recommendations."

- b. Include the following sentence at Page 17, Line 21 of the Explanation and Justification:

"However, the respondent will not be able to make any new arguments, that is, the respondent may not make arguments that the respondent did not make in its original written response or that are not in direct response to the arguments made by the reviewing officer in his/her recommendation to the Commission."

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

The motion carried on the vote of 5-0 with Commissioners Mason, McDonald, Sandstrom, Thomas, and Wold voting affirmatively.

* * * * *

The meeting recessed at 12:40 p.m. and reconvened at 2:10 p.m. with a quorum present.

* * * * *

Chairman Wold recognized Commissioner Sandstrom, who

MOVED to revise §111.35(d) to read as follows:

"All documents required to be submitted by the respondent pursuant to this section and §111.35 should be submitted in the form of affidavits or declarations."

And, further, to amend the Explanation and Justification accordingly.

The motion carried on the vote of 5-0 with Commissioners Mason, McDonald, Sandstrom, Thomas, and Wold voting affirmatively.

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

Chairman Wold recognized Commissioner Mason,
who

MOVED to approve the Alternate
Non-Filer Penalty Schedule, as
submitted in Agenda Document
No. 00-53-B, amended as follows:

Level of Activity: 100,000-149,999.99
Change Non-Filer Base: Normal
to \$4,500;

Level of Activity: 150,000-199,999.99
Change Non-Filer Base: Normal
to \$5,500.

The motion carried on the vote of 5-0 with
Commissioners Mason, McDonald, Sandstrom, Thomas, and
Wold voting affirmatively.

It was agreed without objection to make a
technical amendment on Page 48, Line 1, of Agenda
Document No. 00-53 by changing the amount of \$6250
to \$6750.

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

Chairman Wold recognized Commissioner
Sandstrom, who

MOVED to amend §111.35(a) to read:

— "Within thirty (30) days
of the Commission's reason to
believe finding..." and, that
the Explanation and Justification
be amended to reflect the change.

The motion failed on a vote of 2-3 with
Commissioners McDonald and Sandstrom voting
affirmatively. Commissioners Mason, Thomas, and
Wold dissented.

The Commission discussed the General
Counsel's proposal to grant the reviewing officer
the authority to conduct an oral hearing if
requested by the respondent.

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

Chairman Wold recognized Vice Chairman
McDonald, who

MOVED to revise §111.36 by
eliminating paragraph (c),
to renumber the other
paragraphs accordingly, and
to make the corresponding
revisions in the Explanation
and Justification.

The motion carried on the vote of 5-0 with
Commissioners Mason, McDonald, Sandstrom, Thomas, and
Wold voting affirmatively.

Chairman Wold recognized Commissioner
Sandstrom, who

MOVED to approve the Final Rules,
as contained in Agenda Document
No. 00-53, as amended by Agenda
Document No. 00-53-B, as amended,
subject to further amendments
presented by the General Counsel's
Office and motions adopted at this
meeting, and to authorize the
General Counsel's office to make
any technical and conforming
revisions, as appropriate, prior
to publication in the FEDERAL
REGISTER and transmittal to
Congress.

III. FINAL RULES AND EXPLANATION AND JUSTIFICATION
FOR THE ADMINISTRATIVE FINE PROGRAM

(continued)

There was further discussion, and Mr. John Gibson of the Reports Analysis Division responded to questions and comments.

The following amendments was accepted for inclusion in the pending motion:

Page 36, Lines 7 and 8:

- a) Delete the words "it shall authorize";
- b) Delete the word "to" after the word "Vice-Chairman" and substitute the word "shall" in lieu thereof.

The motion carried on the vote of 4-0 with Commissioners Mason, Sandstrom, Thomas, and Wold voting affirmatively.

Chairman Wold recognized Deputy Staff Director Alison Doone, who reviewed Agenda Document No. 00-53-A, which addresses the public outreach phase of the administrative fine program. She noted the planned implementation date is July 15, 2000.

IV. ADMINISTRATIVE MATTERS

Chairman Wold stated there was only one agenda item scheduled for the open meeting on May 18, and he suggested that the matter be held over to the following week and the meeting cancelled.

Chairman Wold recognized Commissioner Thomas, who

MOVED to cancel the open meeting scheduled for Thursday, May 18, 2000.

The motion carried on the vote of 4-0 with Commissioners Mason, Sandstrom, Thomas, and Wold voting affirmatively.

The meeting adjourned at 3:15 p.m.

Signed:

Darryl R. Wold
Chairman

Attest:

Mary W. Dove
Acting Secretary

