

AGENDA DOCUMENT NO. 03-31

MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION

THURSDAY, APRIL 24, 2003

PRESENT: Ellen L. Weintraub, Chair, Presiding  
Bradley A. Smith, Vice Chairman  
David M. Mason, Commissioner  
Danny L. McDonald, Commissioner  
Scott E. Thomas, Commissioner  
Michael E. Toner, Commissioner  
Robert J. Costa, Deputy Staff Director  
for Audit and Review, representing  
James A. Pehrkon, Staff Director  
Lawrence H. Norton, General Counsel  
Darlene Harris, Deputy Secretary

Chair Ellen L. Weintraub, assisted by her daughter Miss Natanya Dauster, called the Federal Election Commission to order in an open meeting at 10:07 A.M. on Thursday, April 24, 2003, with a quorum present. To celebrate "Take Our Children to Work Day," the Chair welcomed special guests in attendance and noted the occupations of various FEC employees.

I. CORRECTION AND APPROVAL OF MINUTES

- A. Minutes for April 3, 2003  
Agenda Document No. 03-23
- B. Minutes for April 9, 2003  
Agenda Document No. 03-24

Chair Weintraub recognized Vice Chairman Smith, who

MOVED to approve the Minutes for the open meetings of Thursday, April 3, 2003, and Wednesday, April 9, 2003, as submitted in Agenda Documents No. 03-23 and No. 03-24, respectively.

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

II. ADVISORY OPINIONS

A. Draft Advisory Opinion 2003-04

Freeport-McMoRan Copper & Gold, Inc.,  
("Freeport") and the Freeport-McMoRan  
Copper & Gold, Inc. Citizenship  
Committee ("the PAC") by counsel,  
R. Patrick Vance

Agenda Documents No. 03-25 and  
No. 03-25-A

Chair Weintraub recognized Vice Chairman Smith,

who

MOVED to suspend the rules on  
the timely submission of agenda  
documents in order to consider  
Agenda Document No. 03-25-A.

The motion carried on a vote of 6-0.

The Chair then recognized Mr. Albert Kiss of the  
General Counsel's Office who presented draft Advisory  
Opinion 2003-04 concerning the application of the Federal  
Election Campaign Act of 1971, as amended ("the Act") and  
Commission regulations, to a proposed plan under which  
Freeport would match contributions to the PAC with  
contributions to a charity.

II. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-04  
(continued)

During his presentation, Mr. Kiss outlined amendments to the proposed draft, as set forth in Agenda Document No. 03-25-A.

Discussion was held.

Following discussion, the Chair recognized Vice Chairman Smith, who

MOVED to approve draft Advisory Opinion 2003-04, as set forth in Agenda Document No. 03-25, as amended by Agenda Document No. 03-25-A.

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

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Chair Weintraub, assisted by her daughter  
Miss Emma Dauster, called a recess at 10:24 A.M.  
The meeting reconvened at 10:40 A.M.

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II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03

State Senator Bill Boling, State Delegate  
Bill Janis, Chesterfield County School  
Board Member Beth Davis, and United States  
Representative Eric Cantor by counsel,  
Jan Witold Baran

Agenda Documents No. 03-26

Agenda Documents No. 03-26-A,  
No. 03-26-B, and No. 03-26-C  
(Submitted Late)

Chair Weintraub recognized Vice Chairman Smith,  
who

MOVED to suspend the rules on  
the timely submission of agenda  
documents in order to consider  
Agenda Documents No. 03-26-A,  
No. 03-26-B, and No. 03-26-C.

The motion carried on a vote of 6-0.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03  
(continued)

The Chair then recognized Mr. John Vergelli of the General Counsel's Office who presented draft Advisory Opinion 2003-03 concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations, to fundraising that Representative Cantor wishes to undertake on behalf of the other requestors in State elections in Virginia.

Chair Weintraub recognized Vice Chairman Smith and Commissioner Mason who presented alternative drafts in Agenda Documents No. 03-26-A and No. 03-26-B, respectively. The Chair noted her amendments as outlined in Agenda Document No. 03-26-C.

A discussion followed.

Following discussion, the Chair recognized Vice Chairman Smith, who presented motions which resulted in the following:

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03  
(continued)

1. Failed by a vote of 3-3 to  
pass a motion to:

Approve alternative draft  
Advisory Opinion 2003-03,  
as set forth in Agenda  
Document No. 03-26-A.

Commissioners Mason, Smith, and Toner voted  
affirmatively for the motion. Commissioners McDonald,  
Thomas, and Weintraub dissented.

2. Failed by a vote of 3-3 to  
pass a motion to:

Approve draft Advisory Opinion  
2003-03, as set forth in Agenda  
Document No. 03-26, as amended  
by Agenda Document No. 03-26-C.

Commissioners McDonald, Thomas, and Weintraub  
voted affirmatively for the motion. Commissioners Mason,  
Smith, and Toner dissented.

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The meeting recessed at 11:54 A.M. and reconvened at 12:30 P.M. with a quorum present.

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II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

Discussion resumed and Chair Weintraub then recognized Commissioner Mason, who

MOVED to approve Pages 1-7 of Agenda Document No. 03-26-B, subject to the following amendment on Page 6, Line 12 by inserting the word "private" after the word "a."

The motion carried on a vote of 6-0.

The Chair again recognized Commissioner Mason, who

MOVED to approve the Answer to Question 1. a., as set forth on Page 8, Lines 8-16, of Agenda Document No. 03-26-B.

The motion carried on a vote of 6-0.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

Agenda Documents No. 03-26-D  
(Submitted Late)

Chair Weintraub recognized Vice Chairman Smith,  
who

MOVED to suspend the rules on  
the timely submission of agenda  
documents in order to consider  
Agenda Document No. 03-26-D.

The motion carried on a vote of 6-0.

The Chair then recognized Commissioner Toner who  
presented an alternative Answer to Question 1. b. in Agenda  
Document No. 03-26-D.

Discussion followed.

Chair Weintraub recognized Commissioner Toner,  
who

MOVED to approve the Answer to  
Question 1. b., as set forth  
in Agenda Document No. 03-26-D,  
as amended to read as follows:

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

"1. b. Are 'general solicitations' of funds that do not request specific amounts permissible?

"Yes, provided written notices are clearly and conspicuously displayed (FOOTNOTE 1) at state candidate fundraising events at which Federally permissible funds are raised indicating that the covered person is only soliciting federally permissible funds. (FOOTNOTE 2) If written notices are provided the covered person may legally make general requests for financial support at state candidate fundraising events without any oral disclaimer that only Federally permissible funds are being requested. Alternatively, if written notices are not provided at the event, the covered official may make the following public oral disclaimer: 'I am only asking for up to \$2000 from individuals and I am not asking for corporate, labor or minor's funds.' If such a public oral disclaimer is made at the event it only need be made once, and is not required to be made during a covered person's one-on-one discussions with donors or other people at the event. This should not, however, be construed to permit a covered person to inculcate a solicitation of non-Federal funds by reciting a rote limitation, but then encouraging the potential donor to disregard the limitation."

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"1 See 11 CFR §110.11(c) for the Commission's interpretation of clear and conspicuous in related contexts."

"2 Written solicitations which are not limited to Federally permissible amounts or which are directed to impermissible sources must include a written disclaimer. See 1.c. below."

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

The motion carried on a vote of 6-0.

Discussion resumed and Chair Weintraub then  
recognized Vice Chairman Smith, who

MOVED to approve the Answer to  
Question 1. c., as set forth  
in Agenda Document No. 03-26-B,  
subject to the following amend-  
ments:

1. Page 9, Line 13:

Retain the words "must  
expressly" and delete  
the word "may."

2. Page 9, Line 14: Insert the  
word "the" before the word  
"Act's."

The motion carried on a vote of 6-0.

Chair Weintraub recognized Commissioner Mason,  
who

MOVED to approve Answers, as  
set forth in Agenda Document  
No. 03-26-B, to the following:

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

1. Question 2;
2. Question 3. a.;
3. Question 3. b.;
4. Question 3. c., as amended,  
as follows:
  - a) Page 11, Line 12:  
Delete the word "that" and  
substitute the words "where  
that publicity" in lieu  
thereof;
  - b) Page 12, Line 1:  
Insert the words "and  
prohibitions" after  
the word "limitations;"
  - c) Page 12, Line 1:  
After the word "Act" replace  
the comma with a period.
5. Question 3. d.; and
6. Question 4.

The motion carried on a vote of 6-0.

A discussion followed.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

Following discussion, the Chair recognized

Vice Chairman Smith, who

MOVED to approve the Answer to Question 5., as set forth in Agenda Document No. 03-26-B, subject to the following amendments:

1. Delete the language which begins on Page 13, Line 15 through Page 14, Line 11, and insert the words "The Commission concludes that" at the beginning of the sentence on Page 14, Line 12.
2. Page 14, Line 12:  
Insert the words "in a position specifically related to fundraising, such as serving" after the word "serve."
3. Page 14, Lines 16-17:  
Delete the words "must not be ... to Federal candidates" and substitute the words "prohibitions of the Act" in lieu thereof.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

4. Page 14, Line 17: Insert the following at the end of Line 17: "The Commission could not agree on whether the use of a covered person's name in a position not specifically related to fund raising, such as 'honorary chairperson,' on a solicitation not signed by the covered person, is prohibited under the Act."

Chair Weintraub then recognized Vice Chairman  
Smith, who

MOVED IN A SUBSTITUTE MOTION to  
approve the Answer to Question 5.,  
as set forth in Agenda Document  
No. 03-26-A.

A discussion followed.

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The meeting recessed at 1:38 P.M. and  
reconvened at 1:43 P.M. with a quorum present.

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II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

Discussion of draft AO 2003-03 resumed.

The Chair recognized Vice Chairman Smith, who withdrew his previous (substitute) motion, and

MOVED IN A SUBSTITUTE MOTION to approve the Answer to Question 5., as set forth in Agenda Document No. 03-26-B, subject to the following amendments:

1. Delete the language which begins on Page 13, Line 15 through Page 14, Line 11, and insert the words "The Commission concludes that" at the beginning of the sentence on Page 14, Line 12.
2. Page 14, Line 12:  
Insert the words "in a position specifically related to fundraising, such as serving" after the word "serve."
3. Page 14, Lines 16-17:  
Delete the words "must not be ... to Federal candidates" and substitute the words "prohibitions of the Act" in lieu thereof.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

4. Page 14, Line 17: Insert the following at the end of Line 17: "The use of a covered person's name in a position not specifically related to fund raising, such as 'honorary chairperson,' on a solicitation not signed by the covered person, would require a statement indicating that the covered person is not soliciting funds in excess of the limitations of or from sources prohibited by the Act."

The substitute motion failed on a vote of 3-3

with Commissioners Mason, Smith, and Toner voting affirmatively. Commissioners McDonald, Thomas, and Weintraub dissented.

The original motion carried on a vote of 6-0.

Chair Weintraub then recognized Commissioner Mason, who

MOVED to approve the Answer to Question 6., as set forth in Agenda Document No. 03-26-B, subject to the following amendments:

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-03 (continued)

1. Page 16, Line 15:  
Amend the beginning of the sentence as follows: "Absent any other factors relevant to establishing an agency relationship, a..."
2. Page 16, Line 19:  
Delete the words "or implied" after the word "actual" and insert the words "express or implied" after the word "authority."

The motion carried on a vote of 5-1 with Commissioners Mason, McDonald, Smith, Toner, and Weintraub voting affirmatively. Commissioner Thomas dissented.

The Chair recognized Vice Chairman Smith,  
who

MOVED to approve alternative draft Advisory Opinion 2003-03, as set forth in Agenda Document No. 03-26-B, as amended by Agenda Document No. 03-26-D, and further amended at the table.

The motion carried on a vote of 6-0.

III. FINAL AUDIT REPORT: LAROCHE'S COMMITTEE FOR A  
NEW BRETTON WOODS

Agenda Document No. 03-27

Chair Weintraub recognized Vice Chairman Smith,  
who

MOVED to hold over the Report  
of the Audit Division on  
Larouche's Committee for a  
New Bretton Woods, as set forth  
in Agenda Document No. 03-27,  
for consideration at the next  
open meeting of the Commission.

The motion carried on the vote of 6-0.

IV. DRAFT NOTICE OF PUBLIC HEARING AND REQUEST FOR  
COMMENT REGARDING ENFORCEMENT PROCEDURES

Agenda Document No. 03-28 (Submitted Late)

Chair Weintraub recognized Vice Chairman Smith,  
who

MOVED to suspend the rules on  
the timely submission of agenda  
documents in order to consider  
Agenda Document No. 03-28.

The motion carried on a vote of 6-0.

IV. DRAFT NOTICE OF PUBLIC HEARING AND REQUEST FOR  
COMMENT REGARDING ENFORCEMENT PROCEDURES

(continued)

The Chair then recognized General Counsel Norton who presented the subject document.

A discussion followed.

Following discussion, Chair Weintraub recognized Vice Chairman Smith, who

MOVED to approve the Draft Notice of Public Hearing and Request for Comment Regarding Enforcement Procedures, as set forth in Agenda Document No. 03-28, for publication in the Federal Register.

The motion carried on a vote of 6-0.

V. ROUTINE ADMINISTRATIVE MATTERS

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

The meeting adjourned at 2:10 P.M.

Signed:

Ellen L. Weintraub  
Chair of the Commission

Attest:

Mary W. Dove  
Secretary of  
the Commission

Darlene Harris  
Deputy Secretary  
of the Commission