AGENDA DOCUMENT NO. 04-04-B

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2004 JAN -7 A 9:06

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

January 6, 2004

AGENDA ITEM
For Meeting of: 01-07-04

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Bradley A. Smith
Chairman

SUBJECT: Draft Advisory Opinion 2003-36 (RGA)

I submit the following modifications to Draft B for your consideration.

1. Page 6, Line 9. Add a footnote, with the following text: *"In implementing BCRA, including section 441i(e)(2), the Commission defined "agent," as "any person who has actual authority, either express or implied," to act on behalf of a covered person. See 11 CFR 300.2(b). The Commission made clear that under BCRA, an agent "does not apply to individuals who do not have any actual authority to act on their [principal's] behalf, but only 'apparent authority'" to do so. Explanation and Justification, 67 Fed. Reg. 49063, 49082 (July 29, 2002). The Commission also made clear that a principal may only be held liable under BCRA for the actions of an agent when the agent is acting on behalf of the principal. Id. At 49083. "[I]t is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal. This additional requirement ensures that liability will not attach due solely to the agency relationship, but only to the agent's performance of prohibited acts for the principal." Id.*

2. Page 8, Lines 21 and 22. Delete sentence beginning with "A federal candidate . . ." and replace with the following: *"A federal candidate may not solicit funds in excess of the amount limitations or in violation of the source prohibitions of the Act."*

3. Page 9, Line 2. Add the following sentence: *"The mere mention of a covered individual in the text of a written solicitation does not, without more, constitute a solicitation or direction of non-federal funds by that covered individual."*

4. Page 9, Footnote 8. Add the following sentence: *"However, the Commission could not agree whether the use of a covered person's name in a position not specifically related to fundraising, such as "honorary chairperson," on a solicitation not signed by the covered person, is prohibited under the Act."*

5. Page 10, Line 25 through Page 11, Line 11. Delete all text, including Footnote 9.

6. Page 11, Line 11. Add the following sentence: *"Additionally, it appears that the requestors has claimed that conference account income is exempt under 26 U.S.C. 527. In the absence of other legal or factual considerations, the Commission accepts this characterization of the requestor's activities."*