



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MWD*

DATE: September 8, 2004

SUBJECT: COMMENT: DRAFT AO 2004-33
U.S. Representative Sue Kelly and
The Ripon Society

Transmitted herewith is a timely submitted comment by Jan Witold Baran and Lee E. Goodman regarding the above-captioned matter.

Proposed draft Advisory Opinion 2004-33 is on the agenda for Thursday, September 9, 2004.

Attachment



Wiley Rein & Fielding LLP

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September 8, 2004

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Federal Election Commission
Commission Secretary
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VIA FACSIMILE & HAND

Re: Comments to Draft Advisory Opinion 2004-33

Dear Commissioners:

We have received and reviewed Draft Advisory Opinion 2004-33 ("Draft") that was issued in response to this office's August 16 and 24, 2004, submissions on behalf of Representative Sue Kelly and The Ripon Society.

The Draft concludes (at 2-3) that Ripon may "pay to televise the communication outside the 19th Congressional District so long as it does not coordinate its plans with any officials of the Republican Party." However, the Draft declines (at 9) to provide Requestors any guidance on the question of whether the message has been coordinated with Rep. Kelly:

With respect to Representative Kelly, the Commission does not reach the issue of whether Ripon, as a corporation, would be prohibited from paying for the advertisement as a coordinated communication because the Commission has already determined that the electioneering communications provisions bar Ripon from paying to televise "A Little Safer Now" in the 19th Congressional District of New York between August 15, 2004 and November 2, 2004.

As Requestors made clear in their August 24 submission to the Commission (at 2): "As for Rep. Kelly's conduct, we ask whether her involvement in producing the message constitutes 'coordination' and is restricted by the FEC's coordination regulation." The answer to that question is important, particularly in light of the Draft's conclusion that Ripon may not coordinate with "any officials of the Republican Party." Because Rep. Kelly might be deemed an official or agent of the Republican Party, Requestors renew their Request as to whether Rep. Kelly's conduct constitutes "coordination."

Wiley Rein & Fielding LLP

Federal Election Commission
September 8, 2004
Page 2

Accordingly, we respectfully request that the Commission provide guidance on this issue.

Sincerely,



Jan Witold Baran
Lee E. Goodman

cc: Office of General Counsel