BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	ADR 046B and ADR 046C
Custom Concrete Cutting,	)	
Inc., and Seven-Up Bottling	)	
Company of Reno	)	

STATEMENT OF REASONS

On October 23, 2002, the Federal Election Commission ("Commission") declined to accept the recommendation of the Alternative Dispute Resolution Office to approve negotiated settlements in ADR cases 046B and 046C which originated in MUR 5131. On October 31, 2002, the Commission voted 6-0 to dismiss this matter and directed the ADR Office to close the file.

In MUR 5131, the Complainant, Richard Daly, alleged that respondents Custom Concrete Cutting Inc. ("Custom Concrete") and Seven Up Bottling Co. of Reno ("Seven Up") made prohibited corporate in-kind contributions to the Ensign for Senate Campaign by displaying large campaign signs. The Complainant alleged that the large signs were placed on corporate property along a city street for display to the public.

Analysis and Conclusions

The Federal Election Campaign Act of 1971, as amended ("FECA" or "Act") prohibits corporations from making contributions in connection with federal elections. 2 U.S.C. § 441b(a). The Commission defines the term "contribution" as: "A gift, subscription, loan…advance or deposit of money or anything of value made…for the purpose of influencing any election for federal office." 11 C.F.R. § 100.7(a)(1).[1] The term *anything of value* includes all in-kind contributions. 11 C.F.R. § 100.7 (a)(1)(iii). In-kind contributions include the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services. Id.

[1] Because this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), all citations to the Commission's regulations refer to the provisions that were in effect prior to BCRA.

We voted to reject the ADR Office's recommendation and to dismiss this matter for two main reasons. First, the campaign signs at issue were placed on properties that were either privately owned or leased to a private individual and, therefore, were not placed on corporate property. Second, respondents incurred no out-of-pocket expenses for the signs as the signs were provided by the Ensign campaign. As a result, no corporate in-kind contributions were made to the Ensign for Senate Campaign.

The record indicates that respondent Custom Concrete, of which Dean Dorsey is President, leased office space from Dean and Kacey Dorsey, who were the private owners of the property in question. Pursuant to the lease agreement, no corporate signage on the property was to be visible to the public. Additionally, no vehicles with the corporation logo were allowed to be visible to the public.

Seven Up confirmed that a large campaign sign was displayed on land adjacent to corporate property. However, Seven Up had leased the property to an individual, Ed Frazer, in his personal capacity. Therefore, the record is clear that the signage was displayed on personal, not corporate property.

2 U.S.C. § 441b (a) prohibits "any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office." However, the record is clear that all of the campaign signs in question were placed on properties that were personal and not corporate. In addition, neither Dean Dorsey nor Ed Frazer incurred expenses to obtain the signs. Rather, the record indicates that the signs were provided by the Ensign campaign.

We do not believe that any in-kind contribution is made under the Act where, as here, campaign signs, which are provided to individuals by a campaign, are posted on private property.[2] To conclude otherwise would cast into legal doubt the tens of thousands of campaign signs that are placed on private property across the country every election cycle. Indeed, the Commission's regulations rightly recognize that no contribution or expenditure results under the Act when an individual permits a federal candidate to use his or her real or personal property for candidate-related activities without charge. See 11 CFR § 100.7(b)(4).

For all of the above reasons, we concluded that there is no reason to believe that the respondents violated any provisions of FECA; accordingly, we voted not to approve negotiated settlements in ADR cases 046B and 046C and to dismiss the matter.

[2] A different conclusion may be warranted if campaign signage is posted on corporately-owned property. Because the signage at issue was not placed on corporate property, we do not need to reach that issue here.

May 28, 2003

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David M. Mason, Commissioner

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Bradley A. Smith, Commissioner

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Michael E. Toner, Commissioner