

AOR 2003-40

U.S. Navy Veterans' Good Government Fund
1628 East 17th Avenue



Tampa FL 33605

November 29, 2003

2003 DEC -8 P 1:22

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

FEC OGC

Re: Advisory Opinion Request
BCRA \$10,000 Aggregate Independent Expenditure Per Calendar
Year 48-Hour Notice Rule

Gentlemen:

A copy of the post-BCRA Schedule E Instructions ("Instructions for FEC Form 3X and Related Schedules" (Rev. 2/2003, FE3AN037) pertaining to this rule is enclosed. In pertinent part, it reads:

"48-hour Reports

Any political committee that makes or contracts to make independent expenditures regarding a particular election (e.g. a particular party's Presidential nomination or a particular Senate general election) aggregating \$10,000 or more during the calendar year ... [must file 48 hour reports.]" [Emphases added.]

We read this Instruction first as being more specific than either the BCRA or the regs, albeit still unclear as to the exact meaning of an "election" and, second, as being in consonance both with the BCRA and the post-BCRA regs, and as not requiring 48-hour notices unless the \$10,000 aggregate is ~~or has~~ met for a particular election in a particular state (including state electors who vote for Presidential and Vice-Presidential candidates in a General Election) and for a particular office, and propose that PACs, absent an advisory opinion from you to the contrary, file or not file 48-hour notices accordingly.

The Committee plans to undertake the following specific transactions:

We plan to make an approximate \$9,000 independent expenditure for Candidate X in the Alaska Senatorial Election (the General Election scheduled for November 2, 2004) on February 15, 2004.

We plan to make an approximate \$9,000 independent expenditure for Candidate Y in a Florida House Election (the General Election scheduled for November 2, 2004) on February 17, 2004.

And we plan to make an approximate \$9,000 independent expenditure for candidate Z in the Kentucky Senate Election (the General Election scheduled for November 2, 2004) on February 26, 2004.

One can assume, for purposes of the question posed, there are no other independent expenditures during the referred to time period and that advocacy print communications would go out simultaneously with the date of the respective expenditures.

When if at all, for these three transactions, does the FEC expect 48 hour notices, and why?

Our question is prompted by apparently differing interpretations of what the words "election," "any given election," and "a particular election" specifically mean, respectively, in the BCRA, the regs¹, and the cited Instruction, and whether those terms refer to an election race (and, if so, how defined, e.g. in a particular state for a particular office, or for the Senate as a whole, etc.) or, merely, to a specific election date.

1. There is one oblique example, for purposes of the question asked, which is cited in the Federal Register explanation of the Final Rules for 11 CFR 104.4 which, in our opinion, raises more questions than it answers.

Respectfully,



BILL MEYERS
Treasurer

BM/cs

INSTRUCTIONS FOR SCHEDULE E, ITEMIZED INDEPENDENT EXPENDITURES (FEC FORM 3X)

General

Definition

The term "independent expenditure" means: "an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or their agents, or a political party committee or its agents."

When to File

Any political committee that makes independent expenditures must report such independent expenditures on Schedule E for the applicable reporting period. Special additional reporting procedures apply to expenditures aggregating \$1,000 or more and made within 20 days before an election; these are described below under "24-hour Reports". In addition, special reporting procedures apply to expenditures aggregating \$10,000 or more and are described below under "48-hour Reports."

48-hour Reports

Any political committee that makes or contracts to make independent expenditures regarding a particular election (e.g., a particular party's Presidential nomination or a particular Senate general election) aggregating \$10,000 or more during the calendar year up to and including the 20th day before an election must ensure that the Commission receives a report of these expenditures no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which the independent expenditure meeting the \$10,000 threshold is publicly distributed

or otherwise publicly disseminated. See Explanation and Justification for 11 CFR 104.4(f). The committee must continue to file additional 48-hour reports each time subsequent independent expenditures reach the \$10,000 threshold with respect to the same election to which the first report related. For purposes of determining whether 48-hour reports must be filed, aggregations of independent expenditures must be calculated as of the first date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. See 11 CFR 104.4(f). The report must include all of the information required on Schedule E and be filed with the Federal Election Commission. Committees that are not electronic filers may file 48-hour reports by fax or electronic mail. All filers may submit 48-hour reports online at www.fec.gov.

24-hour Reports

The committee must file a report of any independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours before an election, before 12:01 A.M. of the day of the election. The committee must ensure that the Commission receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the \$1,000 threshold is reached during the final 20 days before the election. For purposes of determining whether 24-hour reports must be filed, aggregations of independent expenditures must be calculated as of the first date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. See Explanation and Justification for 11 CFR 104.4(f). The report must include all of the information required on Schedule E and be filed with the Federal Election Commission. The committee must file a new 24-hour report each time it makes subsequent independent expenditures relating to the same election and aggregating \$1,000 or more. Committees that are not electronic filers may file 24-hour reports by fax or electronic mail. All fil-

ers may submit 24-hour reports online at www.fec.gov.

Line By Line Instructions

For Schedule E, enter the full name of the committee and the FEC Identification Number in the appropriate boxes at the top of the page. Check the box "48-hour Report" or "24-hour Report" if applicable.

For each person who receives a payment or disbursement during the calendar year aggregating in excess of \$200 in connection with an independent expenditure, provide on Schedule E the full name, mailing address and zip code of the payee receiving any disbursement, the date and amount of any independent expenditure aggregating in excess of \$200, and the purpose of the independent expenditure (e.g., radio, television, newspaper). Also indicate, in the election check-off box, the election for which the independent expenditure was made.

In situations where the committee incurs a reportable obligation for an independent expenditure in one reporting period, and the communication will be publicly disseminated in a future reporting period, report the obligation on Schedule D (Debts and Obligations) in the first period and, in the future reporting period, report the independent expenditure on Schedule E referencing the debt on Schedule D (using a memo entry if actual payment has not been made). Continue to report the debt on Schedule D and itemize payments on it using Schedule E until the debt is extinguished.

In situations where the committee pays in advance for an independent expenditure in one reporting period and the communication will be publicly disseminated in a future reporting period, report the payment on Schedule B as an operating expenditure. When, in a subsequent reporting period, the communication is publicly disseminated, itemize the independent expenditure and its date of dissemination on Schedule E, and itemize the previous expenditure again as a negative entry on Schedule B so that total disbursements are not inflated.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 18, 2003

Mr. Bill Meyers
Treasurer
U.S. Navy Veterans' Good Government Fund
1628 East 17th Avenue
Tampa, Florida 33605

Dear Mr. Meyers:

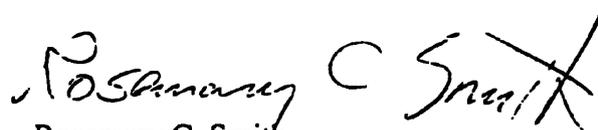
This refers to your letter dated November 29, 2003 asking for guidance on reporting obligations related to three proposed independent expenditures by the U.S. Navy Veterans' Good Government Fund.

The Federal Election Campaign Act of 1971, as amended, authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a). Under the Commission's regulations, the Office of General Counsel is charged with reviewing requests for advisory opinions for completeness. 11 CFR 112.1(c) and (d).

After reviewing your request, further information will be needed in order to prepare an advisory opinion. Your letter discusses generally Presidential and Vice-Presidential elections. However, none of the three contemplated independent expenditures addresses Presidential elections. If you would like the advisory opinion to address reporting independent expenditures related to the Presidential elections, please describe a contemplated independent expenditure related to the Presidential primaries or general elections.

Please send your responses to these questions presented above to the Office of General Counsel. Upon receipt of your response, this Office will give further consideration to your inquiry. If you have any questions about the advisory opinion process or this letter, please contact Duane Pugh at 202-694-1650.

Sincerely,


Rosemary C. Smith
Acting Associate General Counsel



charles thompson <navpac2000@yahoo.com> on 12/20/2003 02:26:06 PM

To: dpugh@fec.gov
cc:

Subject: NAVPAC AOR dated November 29, 2003

Dear Mr. Pugh:

As an addendum to this AOR, we would like to add some other examples of transaction plans of NAVPAC in 2004. Since the original AOR referred to what we considered a paucity of FEC generated examples in the regs relating to the 48-Hour Notice Rule; since we provided no examples of NAVPAC transaction plans relating to either the 2004 Presidential election or Presidential primaries, and since we believe that a large list of annotated examples by the FEC would be one of the best ways to explicate the pertinent reg, we are stating in this addendum that the Committee also plans to undertake the following specific transactions:

We plan to make an approximate \$9,000 independent expenditure for Candidate A in the New York Democratic Presidential Primary scheduled for March 2, 2004, on February 1, 2004.

We plan to make an approximate \$9,000 independent expenditure for that same Candidate A in the California Democratic Presidential Primary scheduled for March 2, 2004, on February 3, 2004.

We also plan to make an approximate \$9,000 independent expenditure for that same Candidate A in the New Jersey Democratic Presidential Primary scheduled for June 8, 2004, on February 5, 2004.

And we plan to make an approximate \$4,000 independent expenditure for Candidate B in the California Democratic Presidential Primary scheduled for March 2, 2004, on February 1, 2004.

As to the Presidential General Election scheduled in each state for November 2, 2004, we plan to make an approximate \$9,000 independent expenditure on behalf of the electors pledged in the State of Arizona to Candidate C, on July 1, 2004. The pertinent print advocacy materials will only go out in Arizona and be targetted exclusively at Arizona voters; and we plan to make an approximate \$9,000 independent expenditure on behalf of the electors pledged in the State of Arkansas to that same Candidate C, on July 6, 2004. Likewise, pertinent print advocacy materials from this expenditure will go out only in Arkansas and be targetted exclusively at Arkansas voters.

For the purposes of the original question posed in the AOR, one should assume there are no other pertinent independent expenditures for the Presidential primaries or the Presidential General Election during the referred to time period, and that advocacy print communications (which would be the only communications made) would go out simultaneously with the date of the respective expenditures.

We believe that annotating these additional examples of independent expenditures, as well as the original examples given as to non-Presidential races, with the how and why the 48-Hour Rule applies, or does not apply, to them, would greatly enhance the understanding of the BCRA 48-Hour Rule as to Independent Expenditure Communications.

Sincerely,

Bill Meyers
Treasurer

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