



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM FOR THE COMMISSION

FROM: DAVID M. MASON
COMMISSIONER *Dm*

SUBJECT: AMENDMENT TO ADVISORY OPINION 2004-1
(ALICE FORGY KERR FOR CONGRESS)

DATE: JANUARY 29, 2004

AGENDA ITEM
For Meeting of: 01-29-04

SUBMITTED LATE

I intend to propose the following amendment to Advisory Opinion 2004-1 (Alice Forgy Kerr for Congress), Agenda Document No. 04-08:

1. Change p. 10, line 7 through p. 11, line 2 as follows:
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16 The Commission concludes that because the advertisements publicly distributed after
17 January 18, 2004 are coordinated communications, they Any communications that would be
18 subject to the described review by the President's agents must be considered communications
19 authorized by State Senator Kerr and the President under 11 CFR 110.11(b) and (c)(3), in
20 addition to State Senator Kerr. Therefore, and the disclaimer requirements apply both to Ms.
21 Kerr and President Bush with respect to all of the Kerr Committee these advertisements.
22 This conclusion is consistent with the Commission's treatment of political party
23 expenditures. There, the Commission stated that if an advertisement paid for by a political
24 party committee as a coordinated expenditure under 2 U.S.C. 441a(d) is, in fact, authorized
25 by the candidate, an authorization statement by the candidate would be required for that
26 advertisement, in addition to the disclaimer requirements for party coordinated expenditures
27 in 11 CFR 110.11(d). See Disclaimers, Fraudulent Solicitation, Civil Penalties, and

28 ~~Personal Use of Campaign Funds; Final Rules, 67 Fed. Reg. 76962, at 76968 (Dec. 13,~~
29 ~~2002).~~

30 In this instance, for example, the disclaimer for the advertisements distributed after
31 January 18, 2004, could state: "Paid for and authorized by Alice Forgy Kerr for Congress
32 and Bush/Cheney '04." 11 CFR 110.11(b)(1).¹ ~~The disclaimer for the Kerr Committee~~
33 ~~advertisements publicly distributed before January 19, 2004, could state: "Paid for by Kerr~~
34 ~~for Congress and authorized by Kerr and Bush/Cheney '04." Both disclaimers also would be~~
35 ~~appropriate text for written statements required under 11 CFR 110.11(e)(3)(iii).~~

¹ Although this opinion's discussion of advertisements publicly distributed before January 19, 2004 is necessary because there are future reporting obligations for such activity, the question of what disclaimer was required on prior advertisements has been rendered moot by the passage of time and is thus an improper subject of an advisory opinion. 11 CFR 112.1.