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June 18, 2004

MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas
Commissioner

SUBJECT: Reconsideration of Advisory Opinion 2004-12 (Democrats for the West)

AGENDA ITEM
For Meeting of: 6-24-04

SUBMITTED LATE

On June 10, 2004, the Commission approved the above-referenced opinion. Before the final motion for approval, an amendment proposed by Commissioner Toner was adopted 4-2. That amendment dealt with the ability of the requestor to use federal funds raised at federal/nonfederal fundraising events to pay for staff salaries that qualify as federal election activity (FEA). The effect of the amendment was to allow such federal funds to be used in the manner suggested.

While I voted for that motion, I now am of the view that we simply cannot take that position legally. While others may have fully appreciated the import of the language at 11 CFR 106.7(c)(4), I did not. It provides:

State, district, and local party committees may allocate the direct costs of certain fundraising programs or events between their Federal and non-Federal accounts provided that none of the proceeds from the activities or events will ever be used for Federal election activities. The proceeds of fundraising allocated pursuant to this paragraph must be segregated in bank accounts that are never used for Federal election activity.

While there are policy arguments for saying this regulation is too restrictive, I cannot get around its clear language. As a result, I ask that this item be scheduled for an upcoming open session and I intend to offer a motion for reconsideration at that time. I hope that this memorandum can be circulated as an agenda document as soon as possible so that interested persons can comment if they choose.