

July 9, 2004

AO DRAFT COMMENT PROCEDURES

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2004-22 is available for public comments under this procedure. It was requested by the Honorable Doug Bereuter

Proposed Advisory Opinion 2004-22 is scheduled to be on the Commission's agenda for its public meeting of Thursday, July 22, 2004.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern) on July 21, 2004.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2004-22, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

MAILING ADDRESSES

Commission Secretary
Federal Election Commission
999 E Street NW
Washington, DC 20463

Rosemary C. Smith
Associate General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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2004 JUL -9 P 12:03

July 9, 2004

MEMORANDUM

AGENDA ITEM
For Meeting of: 7-22-04

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Mai T. Dinh *MTD*
Assistant General Counsel

Anthony Buckley *AB*
Staff Attorney

Subject: Draft AO 2004-22

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 22, 2004.

Attachment

2

3 **The Honorable Doug Bereuter**
4 **P.O. Box 94794**
5 **Lincoln, NE 68509**

DRAFT

6

7 **Dear Congressman Bereuter:**

8

9 **This responds to your letter dated June 7, 2004, requesting an advisory opinion**
10 **concerning the application of the Federal Election Campaign Act of 1971, as amended**
11 **("the Act"), and Commission regulations to your proposal to transfer campaign funds to**
12 **the Nebraska State Republican Party.**

12

Background

13

14 **You state that you are leaving the U.S. House of Representatives, effective**
15 **August 31, 2004.¹ You further state that the Nebraska State Republican Party has**
16 **purchased an office building to be renovated and used as its headquarters. Your principal**
17 **campaign committee, Bereuter for Congress, recently transferred \$5,000 from its**
18 **campaign account to the Nebraska State Republican Party for remodeling the building,**
19 **and you are contemplating transferring another \$10,000 to \$15,000 for those same**
20 **purposes. You ask if Bereuter for Congress is permitted to transfer such funds, and if so,**
21 **whether they may be transferred before August 31, 2004. You further ask if there are any**
22 **other factors that may affect your ability to transfer funds for this purpose.**

22

¹ On December 16, 2003, you publicly announced that you would not be seeking reelection in 2004.

1 ***Legal Analysis and Conclusions***

2 Under the Act, as amended by the Bipartisan Campaign Reform Act of 2002, a
3 candidate's campaign funds may be spent only for one or more of the four permitted uses
4 enumerated in 2 U.S.C. 439a, and must not be converted to the personal use of any
5 individual (2 U.S.C. 439a(b)). A candidate's principal campaign committee may transfer,
6 without limitation, any contributions received to a State committee of a political party.
7 See 2 U.S.C. 439a(a)(4); see also 11 CFR 113.2(c). These provisions do not limit the
8 purposes that any transferred funds may be put to, nor do they restrict the amount that
9 may be transferred in any specific period of time.² The Commission understands that
10 Bereuter for Congress has sufficient funds in its campaign account to make the proposed
11 transfers.

12 Accordingly, the Commission concludes that Bereuter for Congress may transfer
13 \$10,000 to \$15,000 in campaign funds to the Nebraska State Republican Party for the
14 purpose of remodeling its party headquarters, and that any or all of the funds you wish to
15 transfer may be transferred before August 31, 2004.

16 This response constitutes an advisory opinion concerning the application of the
17 Act and Commission regulations to the specific transactions or activities set forth in your

² A transfer pursuant to 2 U.S.C. 439a(a)(4) and 11 CFR 113.2(c) is not subject to the contribution limitation in 2 U.S.C. 441a(a)(1)(D) or 11 CFR 110.1(c)(5). Such a transfer is also consistent with the regulations addressing office buildings of State or local party committees in 11 CFR 300.35.

1 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
2 of the facts or assumptions presented, and such facts or assumptions are material to a
3 conclusion presented in this advisory opinion, then the requestor may not rely on that
4 conclusion as support for its proposed activity.

5

6

Sincerely,

7

8

Bradley A. Smith
Chairman

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