

August 11, 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 2004-26 is available for public comments under this procedure. It was requested by counsel, Jan Witold Baran, on behalf of Representative Gerald C. Weller and Zury Rios Sosa.

Proposed Advisory Opinion 2004-26 is scheduled to be on the Commission's agenda for its public meeting of Thursday, August 19, 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 August 18, 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 2004-26, 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

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August 11, 2004

AGENDA ITEM

For Meeting of: 8-19-04

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Brad C. Deutsch *BCD*
Assistant General Counsel

Ron Katwan *RK*
Staff Attorney

Subject: Draft AO 2004-26

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 19, 2004.

Attachment

1
2 **ADVISORY OPINION 2004-26**

3
4 **Jan Witold Baran, Esq.**
5 **Wiley Rein & Fielding LLP**
6 **1776 K Street, NW**
7 **Washington, DC 20006**

DRAFT

8
9 **Dear Mr. Baran:**

10
11 **This responds to your letter, dated July 7, 2004, requesting an advisory opinion on**
12 **behalf of Representative Gerald C. Weller and his fiancée, Zury Rios Sosa, concerning**
13 **the application of the Federal Election Campaign Act of 1971, as amended (the "Act"),**
14 **and Commission regulations to the participation of a foreign national in the activities of**
15 **two affiliated campaign committees and a nonconnected multicandidate committee on a**
16 **volunteer basis.**

17 ***Background***

18 **Representative Weller is a Member of the United States House of Representatives**
19 **and is currently a candidate for re-election. Representative Weller maintains two**
20 **affiliated campaign committees – Jerry Weller for Congress, Inc. and Gerald C 'Jerry'**
21 **Weller for Congress – and is the honorary chair of Reform PAC, a nonconnected**
22 **multicandidate committee (collectively, the "Committees"). On July 6, 2004,**
23 **Representative Weller became engaged to be married to Ms. Rios Sosa, who is a member**
24 **of the Guatemalan legislature.¹ Ms. Rios Sosa is not a citizen of the United States and**
25 **does not have permanent resident status in the United States. You state that Ms. Rios**
26 **Sosa plans to remain a citizen of Guatemala and does not intend to apply for United**
27 **States citizenship or for admission for permanent residence.**

¹ According to a press release published on Representative Weller's website, he and Ms. Rios Sosa plan to marry after the upcoming November election. See <http://weller.house.gov/News/DocumentSingle.aspx?DocumentID=4510> (visited on July 26, 2004).

1 ***Question Presented***

2 **May Ms. Rios Sosa participate in the activities of the Committees, including**
3 **decision-making, on a volunteer basis? Specifically, may Ms. Rios Sosa (1) attend**
4 **Committee events; (2) participate in Committee events by speaking or by soliciting funds**
5 **and support for the Committees; (3) participate in meetings with Representative Weller**
6 **and Committee personnel regarding Committee events or political strategy; and (4)**
7 **accompany Representative Weller to the fundraising and campaign events of other**
8 **political committees, provided she has not made a contribution of her personal funds in**
9 **order to attend?**

10 ***Legal Analysis and Conclusions***

11 **Your request raises two separate legal issues. First, would Ms. Rios Sosa's**
12 **proposed activities result in a prohibited foreign national contribution to the Committees,**
13 **under 2 U.S.C. 441e(a)(1)(A), or in the alternative would they come within an exception**
14 **for "volunteer activities?" Second, would Ms. Rios Sosa's proposed activities constitute**
15 **participation by a foreign national in the decision-making of the Committees, which is**
16 **prohibited by 11 CFR 110.20(i)?**

17 ***1. Foreign National Volunteer Activity***

18 **The Act and Commission regulations prohibit foreign nationals, directly or**
19 **indirectly, from making a "contribution or donation of money or other thing of value . . .**
20 **in connection with a Federal, State, or local election." 2 U.S.C. 441e(a)(1)(A). *See also***
21 **11 CFR 110.20(b). However, the Act and Commission regulations also provide that "the**
22 **term 'contribution' does not include the value of services provided without compensation**
23 **by any individual who volunteers on behalf of a candidate or political committee." 2**
24 **U.S.C. 431(8)(B)(i). *See also* 11 CFR 100.74.**

1 In Advisory Opinion 1987-25, the Commission addressed the issue of whether
2 uncompensated volunteer services provided by a foreign national constituted a prohibited
3 contribution. The Commission concluded that a foreign student's work for a campaign
4 without compensation would not result in a contribution because the value of the
5 uncompensated volunteer services was specifically exempt from the Act's definition of
6 contribution.² Similarly, the Commission concludes that Ms. Rios Sosa's performance of
7 the proposed campaign-related activities you describe for the Committees without
8 compensation would constitute exempt volunteer activity. Thus, these proposed
9 volunteer activities would not result in the making or receipt of a prohibited contribution
10 under the Act.

11 **2. Foreign National Participation in Decision-Making**

12 Commission regulations implementing 2 U.S.C. 441e prohibit foreign nationals
13 from participating in the decisions of any person involving election-related activities. *See*
14 11 CFR 110.20(i). Such participation in decisions includes directing, dictating,
15 controlling, or directly or indirectly participating "in the decision-making process of any
16 person, such as a corporation, labor organization, political committee, or political
17 organization with regard to such person's Federal or non-Federal election-related
18 activities, such as decisions concerning the making of contributions, donations,
19 expenditures, or disbursements in connection with elections for any Federal, State, or
20 local office or decisions concerning the administration of a political committee ." *Id.*
21 This broad prohibition encompasses foreign national involvement in the management of
22 any political committee, and its decisions regarding its receipts and disbursements in

² Compare Advisory Opinion 1987-25 with Advisory Opinion 1981-51 (concluding that the Act prohibited an artist who was a foreign national from donating his uncompensated services as an artist to create an original work of art for a political committee's use in fundraising).

1 connection with Federal and nonfederal elections. Explanation and Justification for
2 Regulations on Contribution Limitations and Prohibitions, *67 Fed. Register* 69946 (Nov.
3 19, 2002). Therefore, Ms. Rios Sosa must not participate in Congressman Weller's
4 decisions regarding his campaign activities. She must also refrain from managing or
5 participating in the decisions of the Committees.

6 With regard to the four types of activities about which you inquire, the
7 Commission concludes that Ms. Rios Sosa may, as an uncompensated volunteer, take
8 part in these Committee activities as long as she does not participate in the Committees'
9 decision-making processes. First, the Commission concludes that Ms. Rios Sosa may
10 attend Committee events, such as campaign rallies, debates, other public appearances,
11 and fundraisers. Second, as an uncompensated volunteer, she may solicit funds from
12 persons who are not foreign nationals, as long as she does not participate in the processes
13 of deciding from whom she is to solicit funds or determining the amount to request, or
14 devising the strategy for soliciting such funds. As an uncompensated volunteer, Ms. Rios
15 Sosa may also give speeches at Committee events if these speeches consist of personal
16 statements. To ensure that her role is not misinterpreted by the audience, she should
17 include a clear statement that she is not speaking on behalf of any of the Committees.
18 Third, Ms. Rios Sosa may attend meetings with Representative Weller and Committee
19 personnel regarding Committee events or political strategy. She may not, however, be
20 involved in the management of the Committees (including decisions regarding the
21 making or acceptance of contributions, donations, and disbursements by these
22 committees) and she must not participate in the Committees' decision-making process
23 regarding Committee events and political strategy when she attends these meetings.

1 Finally, Ms. Rios Sosa may accompany Representative Weller and attend
2 fundraising and campaign events of other political committees provided she does not
3 make a contribution of her personal funds in order to attend. However, her participation
4 in such events is subject to the same limitations detailed above that govern her
5 participation in events of the Committees.

6 This response constitutes an advisory opinion concerning the application of the
7 Act and Commission regulations to the specific transaction or activity set forth in your
8 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
9 of the facts or assumptions presented, and such facts or assumptions are material to a
10 conclusion presented in this advisory opinion, then the requestor may not rely on that
11 conclusion as support for its proposed activity.

12

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Sincerely,

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Bradley A. Smith
Chairman

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21 Enclosures (AOs 1987-25 and 1981-51)

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