

August 27, 2004

AO DRAFT COMMENT PROCEDURES

The Commission 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 2004-28 is available for public comments under this procedure. It was requested by counsel, W. Charles Smithson, on behalf of Iowa Ethics and Campaign Disclosure Board.

Proposed Advisory Opinion 2004-28 is scheduled to be on the Commission's agenda for its public meeting of Thursday, September 9, 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 Time) on September 8, 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 2004-28, 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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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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August 27, 2004

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrson *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Brad C. Deutsch *BCD (RCS)*
Assistant General Counsel

Cheryl A.F. Hemsley *CAH*
Staff Attorney

Subject: Draft AO 2004-28

AGENDA ITEM
For Meeting of: 09-09-04

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for September 9, 2004.

Attachment

1 **ADVISORY OPINION 2004-28**

2

3 **W. Charles Smithson, Esq.**

4 **Executive Director and Legal Counsel**

5 **Iowa Ethics and Campaign Disclosure Board**

6 **501 East 12th, Suite 1A**

7 **Des Moines, Iowa 50319**

8

9 **Dear Mr. Smithson:**

DRAFT

10 **This responds to your letter dated July 14, 2004, on behalf of the Iowa Ethics and**
11 **Campaign Disclosure Board (the "Board") requesting an advisory opinion concerning the**
12 **application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and**
13 **Commission regulations to potential State disclosure requirements regarding donors to State**
14 **party committee non-Federal office building funds.**

15 ***Background***

16 **The Board administers the campaign finance laws in Iowa as those laws pertain to State**
17 **and local elections. You state that both the Iowa Democratic and Republican Parties have non-**
18 **Federal office building funds. These accounts were established after the Commission issued**
19 **Advisory Opinion 1998-8 to the Iowa Democratic Party ("IDP"). This advisory opinion**
20 **concluded that the Act and Commission regulations preempted the Iowa State law that had**
21 **sought to prohibit corporate donations to State party committee non-Federal office building**
22 **funds. Although Advisory Opinion 1998-8 did not directly address the issue of whether Federal**
23 **law would also prohibit Iowa from requiring disclosure of building fund donations, the advisory**
24 **opinion noted that the IDP had acknowledged Iowa's ability to regulate such disclosure.¹**

25 **You state that while the Board does not wish to prohibit corporate donations to State**
26 **party non-Federal office building funds, the Board seeks guidance as to whether Iowa is**

¹ Advisory Opinion 1998-8 at n. 2 (citing Advisory Opinions 1997-14 and 1991-5).

1 prohibited from requiring disclosure of donors to such office building funds, in light of the
2 passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA") and amended Commission
3 regulations.

4 ***Question Presented***

5 Is the Board prohibited by either the Act, as amended by BCRA, or Commission
6 regulations from requiring disclosure of donors to a State party committee non-Federal office
7 building fund?

8 ***Legal Analysis and Conclusions***

9 No, the Act and regulations do not prohibit the Board from requiring disclosure of donors
10 to a State party committee non-Federal office building fund. The Act and Commission
11 regulations now specifically allow a State to require disclosure of donors to State party non-
12 Federal office building funds. See 2 U.S.C. 453 and 11 CFR 300.35.

13 In BCRA, Congress amended 2 U.S.C. 453 such that a State party may, subject to State
14 law, "use exclusively funds that are not subject to the prohibitions, limitations, and reporting
15 requirements of the Act" [*i.e.*, non-Federal funds] for the purchase or construction of its office
16 building.

17 Consistent with this amendment to the Act, Commission regulations at 11 CFR 300.35(a)
18 and (b)(1) provide that if a State party committee uses non-Federal funds to purchase or
19 construct its office building, then the sources, uses and disclosure of those funds are subject to
20 State law (so long as funds are not donated by foreign nationals).²

² The Commission noted in the *Explanation and Justification* implementing 11 CFR 300.35 that pre-BCRA advisory opinions, including Advisory Opinion 1998-8, were partially superseded inasmuch as those advisory opinions concluded that Federal law preempted State laws regarding certain donations to State party non-Federal office building funds. See 67 *Fed. Reg.* 49064, 49191 (July 29, 2002). Note, however, that if a State party uses Federal funds for the purchase or construction of its office building, disclosure is subject to Federal law. See 2 U.S.C. 453 and 11 CFR 300.35.

