

October 1, 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 2004-36 is available for public comments under this procedure. It was requested by Mark Risley for Congress.

Proposed Advisory Opinion 2004-36 is scheduled to be on the Commission's agenda for its public meeting of Thursday, October 7, 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 October 6, 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 2004-36, 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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Washington, DC 20463

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Associate General Counsel  
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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 1, 2004

**AGENDA ITEM**

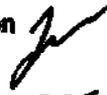
For Meeting of: 10-07-04

**SUBMITTED LATE**

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** James A. Pehrkon   
Staff Director

**FROM:** Lawrence H. Norton   
General Counsel

Rosemary C. Smith   
Associate General Counsel

Mai T. Dinh   
Assistant General Counsel

Michael Marinelli   
Attorney

**Subject:** Draft AO 2004-36

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 7, 2004.

Attachment

1 **ADVISORY OPINION 2004-36**

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**Mr. Mark Risley  
Mark Risley for Congress  
P.O. Box 1285  
Monterey, CA 93942**

**DRAFT**

**Dear Mr. Risley:**

**We are responding to your inquiry regarding the proper way for your principal campaign committee, Risley for Congress ("the Committee"), to report in-kind contributions received under the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations. Because the donation of office space is an in-kind contribution to the Committee and an expenditure by the Committee, the Committee must report its share of the contributed rental cost on the report covering the period in which the in-kind contribution is received.**

***Background***

**The facts of this request are presented in your letters dated August 23, and September 17, 2004.**

**Commission records indicate that you are a Republican candidate for election to the U.S. House of Representatives for the 17<sup>th</sup> Congressional District in California.**

**There are five other candidates seeking election for this office. Four of these candidates are members of political parties (the Democratic Party, the Peace and Freedom Party, the Green Party and the Libertarian Party). The fifth candidate is a write-in candidate.**

**Mr. Anthony Davi, Sr., an individual contributor, has donated office space he owns for your use and the use of the four other candidates, excluding the Democratic Party candidate. This space is a 3,000 square foot office which is to be shared equally by**

1 all five candidates. You state that the value of this rental property is \$2,000 a month,  
2 which we assume is the usual and normal rental charge for the property.

3 All five candidates sharing this office space operate five independent campaigns.  
4 You do not share telephone lines or any other campaign related expenses. The campaign  
5 committees do not share information or intermingle funds. Campaign staff and  
6 volunteers working for one campaign do not assist any of the other four.

7 ***Question Presented***

8 *How should a Congressional candidate report an in-kind contribution of office*  
9 *space made to his campaign committee?*

10 ***Legal Analysis and Conclusions***

11 The definition of "contribution" in 2 U.S.C. 431(8) includes a gift of "anything of  
12 value made by any person for the purpose of influencing any election for Federal office."  
13 431(8)(A)(i); see also 11 CFR 100.52(a). Commission regulations define "anything of  
14 value" in this context as an in-kind contribution. This type of contribution includes "the  
15 provision of any goods or services without charge or at a charge that is less than the usual  
16 and normal charge for such goods or services." 11 CFR 100.52(d)(1). Because it is as if  
17 funds were given to pay for the goods or services in question, an in-kind contribution is  
18 treated as both a "contribution" to and an "expenditure" by the political committee  
19 receiving the in-kind contribution. 11 CFR 100.111(e); 104.13(a)(2). Thus, the donation  
20 of the free use of the rental property for a campaign office would be an in-kind  
21 contribution to your campaign and the campaigns of the four other candidates, meaning it  
22 would be treated as both a contribution to and an expenditure by the five campaign  
23 committees.

1           The value of this in-kind contribution to your campaign would be your  
2 proportionate share of the usual and normal rental value of the property each month you  
3 use the property. Consequently, based on the information you provided, Mr. Davi is  
4 contributing \$400 to the Committee on each rental due date.<sup>1</sup>

5           An authorized committee of a candidate must report and itemize all contributions  
6 received from individuals that aggregate in excess of \$200 per election cycle. 11 CFR  
7 104.3(a)(4). To itemize a contribution, a committee must provide information regarding  
8 the contributor (including the name, mailing address, occupation and employer), the date  
9 of the receipt, the amount of the contribution, and the election cycle-to-date total  
10 contributions from that individual. 11 CFR 104.3(a)(4) and 104.8(a). Thus, the  
11 Committee must report and itemize the in-kind contribution of office space in the report  
12 covering the dates on which the in-kind contribution was received, and the election cycle-  
13 to-date total for contributions from Mr. Davi. *See* 11 CFR 104.13(a)(1). The rental  
14 charge must also be reported as an expenditure on the same report. 11 CFR 104.13(a)(2);  
15 *see* Campaign Guide for Congressional Candidates and Committees (FEC 2004),  
16 available at [www.fec.gov](http://www.fec.gov), pp.12, 74.

17           For example, Mr. Davi provided the office space to the five candidates for the  
18 months of August, September, and October. Assuming the rent is due the first of each  
19 month of occupancy, the Committee must report and itemize the in-kind contributions of  
20 office space for August 1 and September 1 on Schedule A of the Committee's October  
21 Quarterly Report, with a corresponding entry for the expenditures on Schedule B of the

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<sup>1</sup> This contribution is subject to the amount limitation under the Act which is \$2,000 per election to a candidate's campaign. 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(a) and (b)(1). The contribution must be aggregated with any other contribution made by Mr. Davi to the Committee in connection with the 2004 general election campaign. *See id.*

1 same report. The Committee must also report and itemize the in-kind contribution of  
2 office space for October on Schedule A of the 12-Day Pre-General Report with a  
3 corresponding entry for the expenditure on Schedule B of the same report.

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

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Sincerely,

Bradley A. Smith  
Chairman