

June 16, 2005

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 2005-06 is available for public comments under this procedure. It was requested by Orville F. Petersen, on behalf of Friends of McInnis Canyons National Conservation Area.

Proposed Advisory Opinion 2005-06 is scheduled to be on the Commission's agenda for its public meeting of Thursday, June 23, 2005.

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 June 22, 2005.

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 2005-06, 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**

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2005 JUN 16 A 9:19

June 16, 2005

AGENDA ITEM
For Meeting of: 06-23-05

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

Rosemary C. Smith *RS*
Associate General Counsel

Mai T. Dinh *MTD*
Assistant General Counsel

Robert M. Knop *RMK*
Staff Attorney

Subject: Draft AO 2005-06

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 23, 2005.

Attachment

1 **ADVISORY OPINION 2005-6**

2

3

4 **Orville F. Petersen, C.P.A.**

5 **Treasurer**

6 **Friends of McInnis Canyons NCA**

7 **225 North Fifth Street, Suite 401**

8 **Grand Junction, CO 81501**

9

10 **Dear Mr. Petersen:**

11 **We are responding to your inquiry on behalf of Friends of McInnis Canyons**
12 **National Conservation Area ("Friends of McInnis Canyons NCA"), and on behalf of**
13 **former Representative Scott McInnis and Friends of Scott McInnis, Inc. ("the**
14 **Committee"), concerning the application of the Federal Election Campaign Act of 1971,**
15 **as amended ("the Act"), and Commission regulations to a donation that the Committee is**
16 **planning to make to Friends of McInnis Canyons NCA. Because Friends of McInnis**
17 **Canyons NCA is in the process of applying for tax exempt status under section 501(c)(3)**
18 **of the Internal Revenue Code ("IRC") and will neither employ nor otherwise compensate**
19 **former Representative McInnis or any member of his family or former Congressional**
20 **staff, the Committee may make a donation to Friends of McInnis Canyons NCA.**

21 ***Background***

22 **The facts of this request are presented in your letters received on April 5 and 29,**
23 **2005.**

24 **Friends of McInnis Canyons NCA is a not-for-profit organization that is named**
25 **after former Representative Scott McInnis and is incorporated in Colorado. This**
26 **organization is in the process of completing its application to qualify under 26 U.S.C.**
27 **501(c)(3), which will be filed with the United States Internal Revenue Service. Friends**
28 **of McInnis Canyons NCA's mission is to support the McInnis Canyons National**

DRAFT

1 Conservation Area by providing funds and volunteers to do such things as trail
2 maintenance, habitat improvement, and educational activities. None of the organization's
3 funds will be used to influence any Federal election.

4 Former Representative McInnis wishes to donate campaign funds from the
5 Committee to Friends of McInnis Canyons NCA. Former Representative McInnis neither
6 serves on Friends of McInnis Canyons NCA's board of directors nor does he have any
7 control over, or financial interest in, the organization. Neither former Representative
8 McInnis nor any member of his family will receive any income from the organization.
9 Finally, no former member of Representative McInnis's former Congressional staff will
10 be employed by Friends of McInnis Canyons NCA.

11 ***Question Presented***

12

13 *May the Committee donate campaign funds to Friends of McInnis Canyons NCA?*

14

15 ***Legal Analysis and Conclusions***

16 Yes, the Committee may donate campaign funds to Friends of McInnis Canyons
17 NCA.

18 The Act provides that campaign funds may be donated to any organization
19 described in 26 U.S.C. 170(c), but may not be "converted by any person to any personal
20 use." 2 U.S.C. 439a(a)(3) and (b)(1); 11 CFR 113.2(b) and 113.1(g)(2). The regulations
21 provide that donations from campaign funds to section 170(c) organizations are not
22 personal use, unless the candidate (former or current) receives compensation from the
23 donee organization before that organization has expended, for purposes unrelated to the
24 candidate's personal benefit, the entire amount donated to it. 11 CFR 113.1(g)(2).

1 **Previous advisory opinions have considered the application of the Act and**
2 **Commission regulations to factual situations somewhat similar to your circumstances.**
3 **For example, in Advisory Opinion 1997-1, a former Representative proposed to donate**
4 **the remaining cash balance of his former principal campaign committee to create a**
5 **charitable foundation which would make grants solely to various educational, charitable,**
6 **literary, scientific, and religious organizations. Similarly, in Advisory Opinion 1996-40,**
7 **a retiring Member of Congress proposed to donate the balance of his campaign funds to**
8 **an organization that qualified as an educational foundation under section 501(c)(3) of the**
9 **IRC. In both situations, the Commission determined that the proposed donations were**
10 **permissible under the Act and Commission regulations.**

11 **The Commission considers a number of factors in determining whether a**
12 **proposed donation of campaign funds is permissible. As a threshold matter, the**
13 **Commission considers whether the donee organization had obtained or is planning to**
14 **apply for status as an entity described in section 170(c) of the IRC.¹ See Advisory**
15 **Opinions 1997-1 and 1996-40. As you indicated in your request, Friends of McInnis**
16 **Canyons NCA is in the process of applying for tax exempt status under section 501(c)(3)**
17 **of the IRC. The Commission cautions you that the conclusion in this advisory opinion is**
18 **predicated on Friends of McInnis Canyons NCA's successful application for tax exempt**
19 **status as a 501(c)(3) organization with the Internal Revenue Service. Friends of McInnis**
20 **Canyons NCA may not rely on this advisory opinion should it fail to obtain or maintain**
21 **such status.**

¹ Charities that qualify for tax exempt status under section 501(c)(3) of the IRC are described in section 170(c) of the IRC.

1 The Commission also considers whether the current or former Member of
2 Congress or any member of his or her family will receive any compensation from the
3 donee organization. *See* Advisory Opinions 1997-1 and 1996-40. According to your
4 request, Friends of McInnis Canyons NCA will not employ or otherwise compensate
5 former Representative McInnis or any member of his family. In addition, the proposed
6 donation of funds to Friends of McInnis Canyons NCA will not benefit former
7 Representative McInnis in any apparent financial respect. Under these circumstances, the
8 Commission concludes that Friends of McInnis Canyons NCA may accept the planned
9 donation of campaign funds from the Committee.

10 The Committee is required to report all disbursements of its campaign funds. 2
11 U.S.C. 434(b)(4), (b)(5); 11 CFR 104.3(b). Its donation to Friends of McInnis Canyons
12 NCA would be reportable as other disbursements. 2 U.S.C. 434(b)(4)(G), 434(b)(6)(A);
13 11 CFR 104.3(b)(2)(vi) and 104.3(b)(4)(vi).

14 The Commission expresses no opinion regarding any tax ramifications of the
15 proposed activities because those issues are not within its jurisdiction.

16 This response constitutes an advisory opinion concerning the application of the
17 Act and Commission regulations to the specific transaction or activity set forth in your
18 request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any
19 of the facts or assumptions presented, and such facts or assumptions are material to a

1 conclusion presented in this advisory opinion, then the requestor may not rely on that
2 conclusion as support for its proposed activity.

3
4
5
6
7
8
9
10
11
12

Sincerely,

Scott E. Thomas
Chairman

Enclosures (AOs 1997-1 and 1996-40)