

May 3, 2006

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.

Today, DRAFT ADVISORY OPINION 2006-16 is available for public comments under this procedure. It was requested by, Richard E. Coates, Esq. on behalf of Florida State Representative Nancy Detert.

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 5:30 pm (Eastern Time) on May 8, 2006.

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 2006-16, 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

May 3, 2006

MEMORANDUM

TO: The Commission

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Brad C. Deutsch
Assistant General Counsel

Jonathan M. Levin
Senior Attorney

Esa L. Sferra
Attorney

Subject: Draft AO 2006-16

Attached is a proposed draft of Advisory Opinion 2006-16. The subject advisory opinion request was made public on April 28, 2006, and therefore the deadline for written comments on the request itself is May 8, 2006. See 2 U.S.C. 437f(d); 11 C.F.R. 112.3(e). OGC has also set May 8, 2006, as the deadline for comments on the attached draft. OGC plans to circulate a draft of Advisory Opinion 2006-16 as a tally-vote item on May 9, 2006.

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

REGISTRATION
SECTION
SECRETARIAT

2006 MAY -9 A 11: 21

May 9, 2006

MEMORANDUM

TO: The Commission

THROUGH: Robert J. Costa
Staff Director

FROM: Lawrence H. Norton *LHN (by HAE)*
General Counsel

Rosemary C. Smith *RCM*
Associate General Counsel *RCM*

Brad C. Deutsch *BCD*
Assistant General Counsel

Jonathan M. Levin *JL*
Senior Attorney

Esa L. Sferra *ELS*
Attorney *ES*

SUBJECT: Tally Vote Draft AO 2006-16

The attached draft is being circulated for Commission approval on a tally vote basis.

Attachment

1 **ADVISORY OPINION 2006-16**

2
3 **Richard E. Coates, Esquire**
4 **200 West College Avenue, Suite 311 B**
5 **Tallahassee, FL 32301**

DRAFT

6
7 **Dear Mr. Coates:**

8 **We are responding to your advisory opinion request on behalf of Florida State**
9 **Representative Nancy Detert, concerning the application of the Federal Election Campaign Act**
10 **of 1971, as amended (“the Act”) and Commission regulations, to the reimbursement and**
11 **reporting of \$94,616.90 in funds misappropriated by the former treasurer of the Campaign to**
12 **Elect Nancy Detert (“the Detert Committee”). The Detert Committee has already accepted a**
13 **partial reimbursement in the amount of \$67,450, representing funds that were not spent by the**
14 **former treasurer. You ask whether the Detert Committee may also accept reimbursement of the**
15 **remaining \$27,166.90 from funds that have been provided to the former treasurer by his parents.**

16 **The Commission concludes that the Detert Committee may immediately accept the**
17 **\$27,166.90.¹ As discussed below, the Detert Committee should report all misappropriated funds**
18 **as an “Other Disbursement,” and report any reimbursement separately as an “Other Receipt” on**
19 **its July Quarterly Report.**

20 ***Background***

21 **The facts presented in this advisory opinion are based on your letters received on April**
22 **24 and April 28, 2006, and an e-mail communication on May 3, 2006.**

23 **Ms. Detert is a candidate for the Republican nomination for the U.S. House of**
24 **Representatives from the 13th Congressional District of Florida. In June 2005, Ms. Detert**
25 **appointed Randy Maddox to be the treasurer of her principal campaign committee, the Detert**

1 Committee.² On April 3, 2006, Randy Maddox “misappropriated \$94,616.90, via an
2 unauthorized wire transfer” from the Detert Committee to his personal bank account. Two days
3 later, he withdrew the funds from his bank account and took the funds with him to Argentina.
4 Ms. Detert was informed of the misappropriation on April 9, 2006.³

5 On April 13, 2006, Randy Maddox returned to the United States with \$67,450 in cash,
6 which was then deposited into a bank account. On that same date, Randy Maddox’s parents,
7 Robert and Ingrid Maddox, wishing to aid their son, applied for a home equity loan. On April
8 14, 2006, Ingrid Maddox obtained a bank check for \$94,616.90, consisting of the \$67,450
9 deposited on the previous day and \$27,166.90 in funds drawn from the parent’s home equity
10 loan, and delivered it to her son’s attorney, Mark Reinhold. Mr. Reinhold placed the funds in his
11 client trust account where the disposition of the funds is within Randy Maddox’s sole discretion.
12 On April 28, 2006, Ms. Detert accepted \$67,450 from the client trust account and deposited the
13 funds into the Detert Committee’s account, leaving \$27,166.90 of Randy Maddox’s funds in his
14 attorney’s client trust account.

15 Ms. Detert has notified the Federal Bureau of Investigation of the misappropriation and
16 has appointed a new committee treasurer to replace Randy Maddox.

17 ***Questions Presented***

¹ Similarly, the Commission concludes that the Detert Committee’s acceptance of the \$67,450 was permissible. See footnote 4.

² The Detert Committee filed its Statement of Organization with the Commission on June 27, 2005.

³ At the time of the misappropriation, the Detert Committee had raised approximately \$125,000 and had expended some funds for campaign expenses. You indicate that the misappropriation left the Committee without sufficient funds to conduct Ms. Detert’s campaign effectively; the copy of the wire transfer document attached to your April 24 letter discloses that only \$3,921.82 remained in the account after the transfer. You note that Ms. Detert is honoring the Rules of the Florida House of Representatives by not personally soliciting campaign contributions during the current State legislative session, which runs through May 5, 2006. See Rules of the Florida House of Representatives, Rule 15.3(b)(1).

1 ***1. May the Detert Committee accept and deposit reimbursement of misappropriated***
2 ***funds from the \$27,166.90 that remains in Randy Maddox's attorney's client trust account?***

3 ***2. How should the Detert Committee report the misappropriated funds and the receipt of***
4 ***any reimbursement?***

5 ***Legal Analysis and Conclusions***

6 ***1. May the Detert Committee accept and deposit reimbursement of misappropriated***
7 ***funds from the \$27,166.90 that remains in Randy Maddox's attorney's client trust account?***

8 **Yes, the Detert Committee may immediately accept and deposit the \$27,616.90 from**
9 **funds held in the client trust account as a reimbursement by Randy Maddox of misappropriated**
10 **funds.⁴**

11 **Unlike the \$67,450 that has already been reimbursed by Randy Maddox to the Detert**
12 **Committee, the funds provided by Mr. Maddox's parents replace a portion of the**
13 **misappropriated funds that Mr. Maddox spent and therefore are not directly traceable back to the**
14 **misappropriated funds. Nevertheless, where Randy Maddox's parents have provided their son**
15 **with funds solely in an effort to mitigate potentially severe criminal liability and financial**
16 **jeopardy for their son, the provision of funds by Mr. Maddox's parents is not for the purpose of**
17 **influencing a Federal election and would not constitute a contribution by his parents to the Detert**

⁴ Although the Detert Committee has already accepted a reimbursement of \$67,450 from Mr. Maddox, which as past activity is not the subject of this advisory opinion (*see* 11 CFR 112.1(b)), the Commission notes that the acceptance of these funds was permissible because the returned \$67,450 was directly traceable to the very funds misappropriated from the Detert Committee. Thus, the transfer of these funds from the client trust account to the Detert Committee was not a contribution to the committee but merely a return of misappropriated funds. *See* Advisory Opinion 2000-26 (Citizens for Deckard) (regarding traceable funds); *see also* Advisory Opinion 1991-38 (DeConcini '88 Committee and DeConcini '94 Committee) (regarding the treatment of repayments of embezzled funds).

1 Committee.⁵ Randy Maddox's parents are only interested in aiding their son, not the Detert
2 Committee. The fact that the victim of the misappropriation, and hence the ultimate recipient of
3 the restitution, is the Detert Committee is merely incidental to Mr. Maddox's parents providing
4 the funds to their son.

5 *2. How should the Detert Committee report the misappropriated funds and its receipt of*
6 *any reimbursement?*

7 The misappropriation of the \$94,616.90 by Randy Maddox constituted a reduction in the
8 Detert Committee's cash on hand at that time and the committee should report the total amount
9 as an "Other Disbursement" on its 2006 July Quarterly Report. The Detert Committee should
10 include this amount in the total of "Other Disbursements" on Line 21 of the Detailed Summary
11 Page. The Detert Committee should also itemize the disbursement by disclosing, on Schedule B,
12 the name and address of Randy Maddox as the recipient, and the amount, and date of the
13 misappropriation. In addition, the Detert Committee should provide a brief description of the
14 circumstances. See 2 U.S.C. 434(b)(4)(G) and (6)(A); 11 CFR 104.3(b)(2)(vi) and (4)(vi); see
15 also Advisory Opinion 1989-10 (DeConcini '88 Committee).

16 The Detert Committee should report separately the receipt of both the \$67,450 and the
17 \$27,616.90, each as an "Other Receipt" on its July Quarterly Report. The Detert Committee
18 should include both amounts in the total of "Other Receipts" on Line 15 of the Detailed
19 Summary Page. The Detert Committee should also itemize these receipts by disclosing, on

20 _____
⁵ Randy Maddox is not himself a Federal candidate and this situation does not involve any payment by parents to assist a candidate-child with personal expenses that occur during his or her candidacy, which may constitute a contribution by the parents to the candidate. See 11 CFR 113.1(g)(6).

1 Schedule B, the name and address of Randy Maddox as the source, and the amounts, and
2 dates on which the funds were returned. In addition, the Detert Committee should provide a
3 brief description of the circumstances, including a cross-reference to the "Other Disbursement"
4 entry for the misappropriation. *See* 2 U.S.C. 434(b)(2)(J) and (3)(G); 11 CFR 104.3(a)(3)(x) and
5 (4)(vi); *see also* Advisory Opinion 1991-38.

6 The Commission expresses no opinion regarding any tax ramifications of the proposed
7 activities because those questions are not within the Commission's jurisdiction.

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

14

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Sincerely,

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Michael E. Toner
Chairman

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Enclosures (Advisory Opinions 2000-26, 1991-38, and 1989-10)