



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**CONCURRENCE OF VICE CHAIRMAN DAVID M. MASON IN THE RESULT OF
ADVISORY OPINION 2007-04**

In this advisory opinion ("AO"), the Commission concludes, *inter alia*, that the payment of particular processing fees to a corporation results in a contribution to a candidate. AO 2007-04 at 4-6 (*Atlatl*) (F.E.C. April 19, 2007).¹

Although I concluded that such fees do not result in a contribution and although I agree with the dissent, *see id.* (Commissioner von Spakovsky, dissenting), I voted with three Commissioners who concluded that the fees do result in a contribution, so that the Commission could answer the question presented. *See* 2 U.S.C. § 437(c) (1997). All Commissioners agreed that *Atlatl* could provide services at the fees proposed to political committees, and that the services would not constitute in-kind contributions. The only disputed issue was whether the \$2.49 per-transaction fee (amounting to approximately 0.1 percent of the per-election limit on contributions to candidates), charged in this proposal to the contributor, should be reported as an additional contribution to the candidate. This amount is clearly insubstantial. I was willing to go along with my colleagues because what they supported is a reasonable (though not my preferred) interpretation of the statute given the currently overwhelmingly prevalent (though not universal) commercial practice of the payment recipient (here, the political committee) paying the credit card processing fee. Should commercial practices evolve or technologies develop to a point where recipient payment of the processing fee is no longer overwhelmingly predominant, a requirement that payment of the fee be treated as a contribution to the recipient political committee would no longer be reasonable.

May 1, 2007

A handwritten signature in cursive script that reads "David M. Mason".

David M. Mason
Vice Chairman

¹ Voting affirmatively were Chairman Lenhard, Vice Chairman Mason, and Commissioners Walther and Weintraub. Dissenting was Commissioner von Spakovsky. AOs and related documents are available at <http://saos.nictusa.com/saos/searchao> (visited April 27, 2007).