

## **AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

ALTERNATIVE DRAFTS OF ADVISORY OPINION 2007-10 are available for public comments under this procedure. The advisory opinion was requested by Ronald E. Pate, Treasurer, on behalf The Reyes Committee, Inc.

Alternative Drafts of Advisory Opinion 2007-10 are scheduled to be on the Commission's agenda for its public meeting of Wednesday, August 1, 2007.

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 9:00 a.m. (Eastern Time) on August 1, 2007.

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 2007-10, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at [www.fec.gov](http://www.fec.gov).

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

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WASHINGTON, D.C. 20463

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OFFICE OF THE CHAIRMAN

**MEMORANDUM**

**AGENDA ITEM**  
**For Meeting of: 08-01-07**

**TO:** The Commission  
**FROM:** Chairman Robert D. Lenhard  
**DATE:** July 31, 2007  
**RE:** AO 2007- 10 Reyes

**SUBMITTED LATE**

Below is a draft alternative of AO 2007-10 for consideration at tomorrow's Open Session.

1 ADVISORY OPINION 2007-10

2  
3 Mr. Ronald E. Pate  
4 The Reyes Committee, Inc.  
5 1011 Montana Avenue  
6 El Paso, Texas 79902

**DRAFT**

7  
8 Dear Mr. Pate:

9 We are responding to your advisory opinion (“AO”) request on behalf of the Reyes  
10 Committee, Inc., concerning the application of the Federal Election Campaign Act of  
11 1971, as amended (the “Act”), and Commission regulations to a proposed golf-tournament  
12 fundraiser on October 6, 2007.

13 The Commission concludes that the Act and Commission regulations do not  
14 prohibit the Reyes Committee from identifying the title and corporate employer of  
15 individual contributors, provided the identification does not include the corporate  
16 employer’s logo or similar mark.

17 ***Background***

18 The facts in this advisory opinion are based on your letters received on June 11,  
19 2007, and June 22, 2007, and on your phone conversation with Commission staff on June  
20 21, 2007.

21 The Reyes Committee, the principal campaign committee of Representative  
22 Silvestre Reyes, plans to host a golf-tournament fundraiser where individuals or separate  
23 segregated funds (“SSFs”) sponsor each of the 18 holes. It plans to recognize each  
24 sponsor with a sign at the corresponding hole. In the case of individual contributors, the  
25 Reyes Committee would recognize their corporate employers with signs stating, “Hole  
26 sponsored by [Individual] [Title] of [Corporation’s Name].” The corporation’s name

1 would be identified using either the corporation's logo or by wording only. *See*  
2 Attachment A [Attachment provided by Committee]. Individual contributors would pay  
3 for their sponsorships, and the contributions would apply to each individual's contribution  
4 limit. *See* 2 U.S.C. 441a(a). Corporate employers would not reimburse the individuals.  
5 *See id.* 441b(a).

6 During your telephone conversation with Commission staff, you stated that the  
7 committee would like to display the corporate names as a "marketing tool" to increase  
8 participation in the fundraiser. The committee expects that individuals will be more likely  
9 to contribute and sponsor a hole on the golf course if the committee publicizes the  
10 corporate employers.

11 ***Question Presented***

12 *May the Reyes Committee recognize the corporate employers of individual*  
13 *contributors at its golf-tournament fundraiser as proposed?*

14 ***Legal Analysis and Conclusions***

15 Yes, the Reyes Committee may recognize the corporate employers of individual  
16 contributors at its golf-tournament fundraiser, provided the identification does not include  
17 the corporate employer's logo.

18 The Act and Commission regulations prohibit corporations from making a  
19 contribution in connection with a Federal election. *See* 2 U.S.C. 441b(a); 11 CFR  
20 114.2(b)(1). A "contribution" includes "any gift, subscription, loan, advance, or deposit  
21 of money or anything of value made by any person for the purpose of influencing any  
22 election for Federal office." 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a). Commission  
23 regulations also limit the circumstances under which corporations may communicate their

1 endorsements of candidates beyond the corporations' restricted class. *See* 11 CFR  
2 114.4(c)(6) and Advisory Opinion 1997-16 (ONRC Action) (a corporation may circulate  
3 beyond its restricted class no more than a *de minimis* number of copies of a corporate  
4 publication containing candidate endorsements).

5         In two previous Advisory Opinions, the Commission considered whether the  
6 identification of an individual's title and corporate employer in a campaign advertisement  
7 constituted an impermissible corporate contribution. Advisory Opinion 1984-43  
8 (Brunswick); Advisory Opinion 1978-77 (Aspin). In both cases, the Commission first  
9 determined that the individuals' participation in the ads was permissible volunteer  
10 activity. *Id.* The Commission then analyzed whether the identification of the individuals'  
11 title and corporate employers altered the applicability of the volunteer exemption. In both  
12 cases, the Commission concluded that the otherwise permissible volunteer activity was  
13 not prohibited by the mere identification of the individuals' titles and corporate  
14 employers. Advisory Opinion 1984-43 ("where, as here, no corporate endorsement has  
15 been made, a statement that merely identifies Mr. Charvat as a corporate official would  
16 not implicate the company in a prohibited contribution or expenditure."); Advisory  
17 Opinion 1978-77 ("The fact that ... and he will be identified as an officer of AMC do not  
18 mean that a contribution of 'anything of value' has been made to your campaign.").

19         Similarly, your proposal involves otherwise permissible contributions. The  
20 sponsorships would be paid with contributions by individuals, rather than by the  
21 individuals' corporate employers. Moreover, the individuals would not be reimbursed by  
22 their corporate employers for making the contributions. Nor would the proposed signs  
23 acknowledging the corporate employers of individual contributors to the Reyes campaign

1 implicate the limitation on corporate endorsements of candidates beyond the restricted  
2 class, insofar as the signs would be communications to the public by the Reyes  
3 Committee, rather than by a corporation. Accordingly, consistent with the Commission's  
4 prior determinations, the identification of the individual contributor's title and corporate  
5 employer by the Reyes Committee would not make these otherwise permissible  
6 contributions impermissible. Advisory Opinion 1984-43; 1978-77. Under Commission  
7 regulations, however, a corporation or its agents may not use the corporation's resources  
8 to facilitate the making of contributions to a federal political committee other than the  
9 corporation's SSF. *See* 11 CFR 114.2(f)(1); *cf. id.* 114.2(f)(4)(ii). Corporate logos are  
10 corporate resources, and generally not subject to use without the corporation's express  
11 permission. *See, e.g., New Kids on the Block v. News America Pub., Inc.*, 971 F.2d 302  
12 (9th Cir. 1992) ("The law has protected trademarks since the early seventeenth century ...  
13 ." "... trademarks have been covered by a comprehensive federal statutory scheme since  
14 the passage of the Lanham Act in 1946.").<sup>1</sup> Moreover, the Reyes Committee's stated  
15 reason for including the corporate employers' names is to encourage contributions to the  
16 fundraisers. Accordingly, as proposed, the use of a corporation's logo would constitute an  
17 impermissible use of corporate resources to facilitate the making of contributions. As a  
18 federal political committee, the Reyes Committee may not knowingly accept or receive  
19 facilitated contributions. *See* 11 CFR 114.2(d).

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<sup>1</sup> Conversely, the use of a corporate name or title to truthfully identify an individual is not necessarily the use of a corporate resource. *See, e.g., Playboy Enterprises, Inc. v. Welles*, 7 F. Supp. 2d 1098 ("The problem in this case is that the trademarks that defendant uses, and the manner in which she uses them, describe her and identify her. This raises a question of whether there is a 'fair use' of these marks ... . In this case, Ms. Welles has used PEI's trademarks to identify herself truthfully ... . Such use is not "taboo" under the law.").

1           Therefore, the Reyes Committee may recognize the corporate employers of  
2 individual contributors at its golf-tournament fundraiser, provided the identification does  
3 not include the corporate employer's logo.

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. The Commission emphasizes that, if there is a change in any  
7 of the facts or assumptions presented, and such facts or assumptions are material to a  
8 conclusion presented in this advisory opinion, then the requestor may not rely on that  
9 conclusion as support for its proposed activity. The advisory opinions cited here are on  
10 the Commission's website, [www.fec.gov](http://www.fec.gov).

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Sincerely,

Robert D. Lenhard  
Chairman