



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MWD*

DATE: WEDNESDAY, DECEMBER 3, 2008

SUBJECT: COMMENT ON DRAFT AO 2008-17
Missourians for Kit Bond and KITPAC

Transmitted herewith is a timely submitted comment from Kathryn Biber Chen, Esquire, regarding the above-captioned matter.

Proposed Advisory Opinion 2008-17 is on the agenda for Thursday, December 4, 2008.

Attachment

December 3, 2008

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Office of the General Counsel
Federal Election Commission
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SENT VIA FAX AND EMAIL

To Whom It May Concern:

This letter provides comments on behalf of KITPAC regarding Drafts A and B for AO 2008-17.

Contrary to the conclusion of Draft A, our initial request does not support the notion that KITPAC payments would not be made irrespective of Senator Bond's reelection candidacy or his campaign. While Senator Bond's campaign is interested in the publication of the book, KITPAC's interest in the same book is *entirely separate and stands alone*. As articulated in the initial query to the Commission, KITPAC believes that the topic of the book is very important. It also believes that copies of the book would be helpful donor incentive gifts to *KITPAC* donors. KITPAC's interest would exist even in the absence of Senator Bond's candidacy for reelection or his campaign, and even if the campaign did not share KITPAC's interest in the book.

Thus, it is simply untrue that "the fact that the Committee has expressed interest in paying the expenses related to the book's publication confirms that the leadership PAC would not be making these payments irrespective of Senator Bond's candidacy." Draft A at 6. Because the payment would be made irrespective of Senator Bond's candidacy or campaign, designation of this third-party payment as a contribution under 11 CFR 113.1(g)(6) is not triggered, and the \$5,000 per election contribution limit does not apply.

Furthermore, we respectfully question how Draft A's conclusion that "[a] contractual obligation to write a book, even one devoted to issues of the day, *is a commitment or obligation that exists irrespective of a candidate's campaign or the duties of a Federal officeholder*," Draft A at 4 (emphasis added), could coexist with its conclusion that "the payment *would not be made irrespective of Senator Bond's candidacy because advancing Senator Bond's candidacy is a motivation in making the payment*." Draft A at 6 (emphasis added). Resolving this inconsistency provides further basis for concluding that KITPAC payments to Senator Bond's coauthor should not be subject to the \$5,000 limitation.

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Again, as articulated in the initial query to the Commission, KITPAC believes that the topic of the book is very important. It also believes that copies of the book would be helpful donor incentive gifts to *KITPAC* donors. As Draft B acknowledges, publication of the book would further the goals of *KITPAC*. Accordingly, we believe the conclusions in Draft B are correct.

We trust this clarification will aid you in your consideration of Drafts A and B.

Sincerely,



Kathryn Biber Chen