

April 17, 2009

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.

DRAFT ADVISORY OPINION 2009-06 is available for public comments under this procedure. It was requested by David D. Goss, on behalf of Jim Risch for Lieutenant Governor Committee

Draft Advisory Opinion 2009-06 is scheduled to be on the Commission's agenda for its public meeting of Thursday, April 23, 2009.

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 12:00pm noon (Eastern Time) on April 22, 2009.

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: Judith Ingram (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2009-06, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at www.fec.gov.

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

MAILING ADDRESSES

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AGENDA ITEM
For Meeting of: 04-23-09

April 17, 2009

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *ACS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joshua S. Blume *JSB*
Attorney

Subject: Draft AO 2009-06 (Jim Risch for Lieutenant Governor Committee)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 23, 2009.

Attachment

1 ADVISORY OPINION 2009-06

2 **DRAFT**

3 Mr. David D. Goss, Treasurer
4 Jim Risch for Lieutenant Governor Committee
5 5400 S. Cole Rd.
6 Boise, ID 83709

7 Dear Mr. Goss:

8 We are responding to your advisory opinion request on behalf of Senator James E.
9 Risch and the Jim Risch for Lieutenant Governor Committee (the "Committee"),
10 concerning the application of the Federal Election Campaign Act of 1971, as amended
11 (the "Act"), and Commission regulations to the soliciting, receiving, and spending of
12 funds for the sole purpose of retiring the Committee's debt remaining from a previous
13 State campaign.

14 The Commission concludes that the Committee and its agents may solicit,
15 receive, and spend funds that exceed the amount limits contained in the Act and from
16 sources prohibited by the Act for the sole purpose of retiring debts from Senator Risch's
17 previous campaign for State office subject to the conditions described below.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 March 9, 2009.

21 Senator Risch is a United States Senator from Idaho, having been elected to that
22 position in the November 2008 general election. Before his election to the U.S. Senate,
23 Senator Risch served as Lieutenant Governor of Idaho. Senator Risch successfully
24 competed for this position in 2002 and in 2006. The Committee was established in 2002
25 as Senator Risch's official campaign vehicle for these contests.

1 According to a disclosure report the Committee filed with the Idaho Secretary of
2 State in January 2009, as of December 1, 2008 the Committee carried an outstanding debt
3 of \$331,319.14, which is the balance of a loan to the Committee by Senator Risch,
4 incurred in connection with the May 28, 2002 primary election.¹ The Committee wishes
5 to raise funds in accordance with Idaho State law to retire this debt. Pursuant to Idaho
6 law, individuals, corporations and other recognized legal entities may contribute up to
7 \$5,000 to political committees organized on behalf of candidates for statewide office,
8 with separate \$5,000 limits applying for the primary and for the general elections. *See*
9 Idaho Code § 67-6610A(1). Additionally, if a political committee has outstanding debt at
10 the end of a specified reporting period, it may accept additional contributions to retire the
11 debt, subject to the prescribed contribution limits. *See* Idaho Code § 67-6610B.

12 ***Question Presented***

13 *May the Committee and its agents solicit, receive, and spend funds in accordance*
14 *with Idaho State law for the sole purpose of retiring the Committee's debt that remains*
15 *from Senator Risch's previous candidacy for State office?*

16 ***Legal Analysis and Conclusions***

17 Yes, the Committee and its agents may solicit, receive, and spend funds in
18 accordance with Idaho State law for the sole purpose of retiring the Committee's debt
19 that remains from Senator Risch's previous candidacy for State office.

¹ *See* http://www.sos.idaho.gov/elect/Finance/2008/08Annual/Candidate/LtGov_Risch.pdf (last visited Mar. 23, 2009).

1 Under the Act, as amended by the Bipartisan Campaign Reform Act of 2002,²
2 Federal candidates and officeholders may not raise or spend funds in connection with an
3 election other than an election for Federal office unless those funds comply with the
4 amount limitations and source prohibitions of the Act. *See* 2 U.S.C. 441i(e)(1)(B) and
5 11 CFR 300.62. However, the Act provides a limited exception for Federal candidates
6 and officeholders who also seek, or have sought, State or local office. Specifically, the
7 restriction in section 441i(e)(1)(B) does not apply to any Federal candidate or
8 officeholder who is or was also a candidate for a State or local office so long as the
9 solicitation, receipt, or spending of funds: (1) is solely in connection with his or her State
10 or local campaign; (2) refers only to him or her, to other candidates for that same State or
11 local office, or both; and (3) is permitted under State law.³ 2 U.S.C. 441i(e)(2) and 11
12 CFR 300.63; *see also* Advisory Opinions 2007-01 (McCaskill), 2005-12 (Fattah), and
13 2005-02 (Corzine II).

14 Senator Risch is a Federal officeholder, and the Committee is an entity that is
15 directly established, financed, maintained, and controlled by him.⁴ Thus, the Committee
16 and its agents are subject to the restriction of 2 U.S.C. 441i(e)(1)(B). However, as the
17 Commission concluded in Advisory Opinion 2007-01 (McCaskill), soliciting, receiving,

² Pub. L. No. 107-155, 116 Stat. 81 (Mar. 27, 2002).

³ Even if they meet the qualifications for this exception, however, Federal candidates or officeholders who are also candidates for State or local office are still prohibited from soliciting or receiving funds from national banks, corporations organized by authority of Congress, and foreign nationals. 2 U.S.C. 441b(a) and 441e.

⁴ The Commission has previously concluded that the exception applies to the activities of agents and to entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf, the Federal officeholder or candidate as well as to the Federal officeholder or candidate. *See* Advisory Opinions 2007-01 (McCaskill), 2005-12 (Fattah), and 2005-02 (Corzine II).

1 and spending funds solely to retire Committee debts outstanding from previous State
2 candidacies are actions that are solely in connection with those elections to State offices.
3 Consequently, because the Committee intends to raise funds solely to retire debts
4 outstanding from a previous State campaign, it satisfies criterion (1) above. Further, so
5 long as the Committee's fundraising solicitations refer only to James E. Risch, to one or
6 more of his former opponents in the campaign for Lieutenant Governor of Idaho, or both,
7 then criterion (2) will be satisfied.⁵ Finally, so long as the Committee's fundraising is
8 permitted under Idaho law, criterion (3) will be satisfied, and thus the Committee's
9 proposed fundraising will be permissible.⁶

10 This response constitutes an advisory opinion concerning the application of the
11 Act and Commission regulations to the specific transaction or activity set forth in your
12 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
13 of the facts or assumptions presented and such facts or assumptions are material to a
14 conclusion presented in this advisory opinion, then the requester may not rely on that
15 conclusion as support for its proposed activity. Any person involved in any specific
16 transaction or activity which is indistinguishable in all its material aspects from the
17 transaction or activity with respect to which this advisory opinion is rendered may rely on
18 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or
19 conclusions in this advisory opinion may be affected by subsequent developments in the
20 law including, but not limited to, statutes, regulations, advisory opinions and case law.

⁵ In accordance with Advisory Opinion 2007-01 (McCaskill), the Committee may refer to Senator Risch as "Senator Risch" in the solicitations.

⁶ The Committee also asked whether Advisory Opinion 2007-01 (McCaskill) remains valid. The Committee may rely upon Advisory Opinion 2007-01 (McCaskill) to the extent that its conduct is not materially distinguishable from the facts as set forth in that advisory opinion. 2 U.S.C. 437f(c)(1)(B).

1 All cited advisory opinions are available on the Commission's website at

2 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

Steven T. Walther
Chairman