

October 1, 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 2009-22 is available for public comments under this procedure. It was requested by Marc E. Elias, Esq., and Rebecca H. Gordon, Esq., on behalf of the Democratic Senatorial Campaign Committee.

Draft Advisory Opinion 2009-22 is scheduled to be on the Commission's agenda for its public meeting of Thursday, October 8, 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 October 7, 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 2009-22, 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: 10-08-09

October 1, 2009

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Cheryl A.F. Hemsley *CAH*
Attorney

Subject: Draft AO 2009-22 (Democratic Senatorial Campaign Committee)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 8, 2009.

Attachment

1 **ADVISORY OPINION 2009-22**

2
3 **Marc E. Elias, Esq.**
4 **Rebecca H. Gordon, Esq.**
5 **Perkins Coie**
6 **607 Fourteenth Street NW**
7 **Washington, DC 20005-2003**

8
9 **Dear Mr. Elias and Ms. Gordon:**

10
11 **We are responding to your request for an advisory opinion on behalf of the**
12 **Democratic Senatorial Campaign Committee (“Committee”), concerning the application**
13 **of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission**
14 **regulations to the Committee’s plan to report, on a quarterly basis rather than monthly,**
15 **information about lobbyists/registrants and lobbyist/registrant PACs that bundle**
16 **contributions.**

17 **The Commission concludes that if the Committee files its Reports of**
18 **Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs**
19 **(“Lobbyist Bundling Reports”) on a quarterly basis instead of monthly, the applicable**
20 **“covered periods” for these Lobbyist Bundling Reports in election years would be semi-**
21 **annually, quarterly, and the applicable pre- and post-election reporting periods. In non-**
22 **election years, the Committee need observe only the semi-annual covered periods**
23 **beginning on January 1 and July 1.**

24 **Background**

25 **The facts presented in this advisory opinion are based on your letter received on**
26 **August 10, 2009.**

27 **The Committee is a national political party committee registered with the**
28 **Commission. As such, the Committee files its campaign finance reports monthly in**

1 accordance with 2 U.S.C. 434(a)(4)(B) and 11 CFR 104.5(c)(4), and its Lobbyist
2 Bundling Reports monthly, as well, under 2 U.S.C. 434(i)(2)(C) and 11 CFR
3 104.22(a)(5)(iii). The Committee would like to elect to file its Lobbyist Bundling
4 Reports on a quarterly basis instead of monthly.

5 ***Question Presented***

6 *What is the "covered period" under 11 CFR 104.22(a)(5)(ii) and (iv) if the*
7 *Committee chooses to file its Lobbyist Bundling Reports on a quarterly basis instead of*
8 *monthly?*

9 ***Legal Analysis and Conclusions***

10 Even though the Committee is a monthly filer, if it elects to file its Lobbyist
11 Bundling Reports on a quarterly basis, then the applicable "covered periods" for Lobbyist
12 Bundling Reports would be (1) semi-annually in each non-election year; and (2) semi-
13 annually, quarterly, and pre- and post-election reporting periods in election years.

14 The Act and Commission regulations require certain political committees
15 ("reporting committees")¹ to disclose information about any lobbyist/registrant and
16 lobbyist/registrant PAC that forwards, or is credited with raising, two or more bundled
17 contributions aggregating in excess of a certain amount within a specific period of time
18 ("covered period"). 2 U.S.C. 434(i); 11 CFR 104.22. The covered periods for Lobbyist
19 Bundling Reports generally correspond to the reporting periods for the reporting
20 committee's regular campaign finance reports under 2 U.S.C. 434 and 11 CFR 104.5.
21 There are additional semi-annual covered periods for all reporting committees. However,
22 a reporting committee that files campaign finance reports monthly "may choose to file

¹ "Reporting committees" means political party committees, political committees authorized by candidates, and leadership PACs. 11 CFR 104.22(a)(1).

1 [its Lobbyist Bundling Reports] pursuant to the quarterly covered period . . . instead of
2 the monthly covered period”² 11 CFR 104.22(a)(5)(iv).

3 A reporting committee required to file its campaign finance reports quarterly
4 under 2 U.S.C. 434 and 11 CFR 104.5 must file its Lobbyist Bundling Reports for the
5 “quarters beginning January 1, April 1, July 1 and October 1 of each calendar year and
6 the applicable pre- and post-election reporting periods in election years; in a nonelection
7 year, reporting committees not authorized by a candidate need only observe the semi-
8 annual” reporting period. 11 CFR 104.22(a)(5)(ii). This schedule applies both to
9 reporting committees that file campaign finance reports quarterly and to those that file
10 campaign finance reports monthly but that choose to file Lobbyist Bundling Reports on a
11 quarterly basis instead. *See* 11 CFR 104.22(a)(5)(iv); *see also* Explanation and
12 Justification, Reporting Contributions Bundled by Lobbyists, Registrants and the PACs
13 of Lobbyists and Registrants, 74 Fed. Reg. 7285, 7291 (Feb. 17, 2009) (any monthly filer
14 that elects to file quarterly “must follow the same schedule as quarterly filers . . .”).

15 Thus, as an unauthorized political committee that elects to file its Lobbyist
16 Bundling Report on a quarterly basis, the Committee must file these reports on the same
17 schedule as an unauthorized political committee that files all of its campaign finance
18 reports quarterly under 11 CFR 104.5: that is, in election years, semi-annually, quarterly,
19 and the applicable pre- and post-election reporting periods. In non-election years, the
20 Committee need observe only the semi-annual covered periods beginning on January 1
21 and July 1. The Committee must also file Lobbyist Bundling Reports for any special

² A reporting committee must notify the Commission in writing when it files its monthly Lobbyist Bundling Report of its intention to exercise the quarterly filing option. The reporting committee must then file its next report under the new filing frequency. The reporting committee may change its filing frequency no more than once per calendar year. 11 CFR 104.22(a)(5)(iv).

1 election covered periods in which it receives bundled contributions above the threshold
2 amount from lobbyists/registrants and lobbyist/registrant PACs. *See* 11 CFR
3 104.22(a)(5)(v).

4 Additionally, the Committee must continue to file its monthly campaign finance
5 reports under 2 U.S.C. 434(a)(4)(B) and 11 CFR 104.5(c)(3).

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

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On behalf of the Commission,

Steven T. Walther
Chairman