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Washington, DC 20463

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January 13, 2010

AGENDA ITEM

MEMORANDUM

For Meeting of 1 - 14 - 10

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RCJ*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joshua S. Blume *JSB*
Attorney

Subject: Draft AO 2009-29 (Retiree Support Group of Contra Costa County)

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 14, 2010.

Attachment

1 **ADVISORY OPINION 2009-29**

DRAFT

2
3 **L. Douglas Pipes, Esq.**
4 **House Counsel**
5 **Retiree Support Group of Contra Costa County**
6 **23201 N.E. 47th Avenue**
7 **Ridgefield, WA 98642**

8 **Dear Mr. Pipes:**

9 **We are responding to your advisory opinion request on behalf of the Retiree**
10 **Support Group of Contra Costa County (“Contra Costa Retirees”), concerning the**
11 **application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and**
12 **Commission regulations to the Contra Costa Retirees’ plan to form a separate segregated**
13 **fund (“SSF”).**

14 **The Commission concludes that neither the Act nor Commission regulations**
15 **requires the Contra Costa Retirees Board of Directors to submit a proposal to establish an**
16 **SSF to the organization’s members for a vote before it may establish an SSF. Once**
17 **Contra Costa Retirees creates an SSF to be used wholly or partly for Federal elections, it**
18 **will have to register with the Commission within ten days.**

19 ***Background***

20 **The facts presented in this advisory opinion are based on your letter dated**
21 **November 23, 2009 and on a telephone conversation with Commission attorneys on**
22 **November 20, 2009.**

23

1 Contra Costa Retirees is a non-profit incorporated membership organization¹
2 established under California law and pursuant to section 501(c)(4) of the Internal
3 Revenue Code. 26 U.S.C. 501(c)(4). Its members are retired employees of the Contra
4 Costa County government, including the county's special districts, and surviving spouses
5 of retired employees who are receiving survivors' pensions. Its bylaws provide for a
6 Board of Directors ("Board"), elected by the members, which manages the organization.
7 The Board reviews and approves expenditures and selects officers. The members may
8 approve or disapprove certain actions undertaken by the Board.

9 Contra Costa Retirees is considering whether to establish an SSF that would make
10 political contributions in connection with both Federal and State elections.

11 ***Question Presented***

12 *Do the Act and Commission regulations require an incorporated membership*
13 *organization planning to establish an SSF to use a specific internal procedure, such as a*
14 *vote of its members, to do so?*

15 ***Legal Analysis and Conclusions***

16 No, the Act and Commission regulations do not require an incorporated
17 membership organization planning to establish an SSF to use a specific internal
18 procedure in order to do so. Thus, under the Act and Commission regulations, an
19 incorporated membership organization may pursue the internal policy it prefers to
20 establish an SSF.

¹ Contra Costa Retirees does not ask whether it qualifies as a "membership organization" pursuant to 11 CFR 114.1(e)(1). The Commission assumes for the purpose of this advisory opinion, without deciding, that Contra Costa Retirees qualifies as such an organization that is composed, at least in part, of "members," as that term is defined in 11 CFR 114.1(e)(2) and (e)(3).

1 The Act and Commission regulations allow various kinds of entities, including
2 incorporated membership organizations, to establish SSFs for the purpose of making
3 contributions or expenditures in connection with Federal elections. *See* 2 U.S.C.
4 441b(b)(2)(C), 11 CFR 114.5. The Act and Commission regulations further govern the
5 manner and methods by which membership organizations solicit contributions to their
6 SSFs and make communications. *See* 2 U.S.C. 441b(b)(4)(C), 11 CFR 114.5 and 114.7.

7 Commission regulations do not specifically address how an incorporated
8 membership organization must form the SSF. Commission regulations do state that each
9 SSF must file a Statement of Organization with the FEC no later than 10 days after the
10 occurrence of certain “establishment events” if the SSF is to be used wholly or partly for
11 Federal elections. 11 CFR 102.1(c). Section 102.1(c) provides a non-exhaustive list of
12 examples of events that may suffice to create a registration requirement. These examples
13 include: “[a] vote by the board of directors or comparable governing body of an
14 organization to create a[n SSF] to be used wholly or in part for federal elections;
15 selection of initial officers to administer such a fund; or payment of the initial operating
16 expenses of such a fund.” 11 CFR 102.1(c).

17 Registration entails, among other things, filing an FEC Form 1 (Statement of
18 Organization) no later than 10 days after establishment of the SSF. *See* 11 CFR 102.2.²
19 The act of registration triggers further reporting requirements. *See* 11 CFR 104.1(a). For
20 additional information regarding the establishment and registration of SSFs, Contra Costa
21 Retirees may wish to consult the latest version of the Commission’s *Campaign Guide for*

² The Commission notes that when an SSF registers with the Commission by filing an FEC Form 1, the treasurer of the SSF must certify that, to the best of his or her knowledge and belief, the SSF has been established, maintained, financed, or controlled by the corporation to serve as the political committee connected to the sponsoring organization.

1 *Corporations and Labor Organizations*, a copy of which is available on the
2 Commission's website.³

3 Based on the foregoing, the Commission concludes that neither the Act nor
4 Commission regulations requires Contra Costa Retirees to use any specific internal
5 method, such as submitting the question to its members for a vote, in order to establish an
6 SSF.

7 The Commission expresses no opinion as to the possible application of any State
8 or local law or the Contra Costa Retirees' charter or bylaws to the formation of an SSF to
9 the extent that that formation involves the SSF's engagement in non-Federal activity, or
10 as to the possible tax ramifications of the described activity, because those issues are
11 outside its jurisdiction.

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

³ *See* <http://www.fec.gov/info/publications.shtml#guides>. A brochure answering basic questions about SSFs and nonconnected committees is also available on the Commission's website at <http://www.fec.gov/pages/brochures/ssfvnonconnected.pdf>.

1 in this advisory opinion may be affected by subsequent developments in the law
2 including, but not limited to, statutes, regulations, advisory opinions and case law.

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On behalf of the Commission,

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Matthew S. Petersen

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Chairman

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