



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission
Staff Director
General Counsel
FEC Press Office
FEC Public Disclosure

FROM: Office of the Commission Secretary *peg*

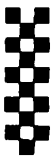
DATE: September 22, 2011

SUBJECT: Comment on Draft AO 2011-14 (Draft C)
(Utah Bankers Association and Utah Bankers
Association Action PAC)

Transmitted herewith is a comment from Kirk L. Jowers
and Matthew T. Sanderson regarding the above-captioned matter.

Draft Advisory Opinion 2011-14 is on the agenda for
September 22, 2011.

Attachment



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. 8: 44

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September 22, 2011

VIA ELECTRONIC MAIL AND FACSIMILE

P. Christopher Hughey, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: Comment on Commission Draft C for Pending Advisory Opinion Request
2011-14**

Dear Mr. Hughey:

We have thoroughly commented on Advisory Opinion Request 2011-14's merits. We write now only to express our opinion that the Commission's position—particularly, the actual point of disagreement between Commissioners—is not accurately reflected in portions of Draft C's text.

Our impression is that Commissioners hold two different positions on affiliated state bankers associations underwriting and participating in Friends of Traditional Banking ("FOTB"). One position (as reflected in Drafts A and B) would allow an affiliated association to pay FOTB-related administrative costs and/or allow its employee to serve on FOTB's councils, but would find a violation if UBAA PAC failed to list the association as a "connected organization" on the PAC's amended Statement of Organization within 10 days. The other position would also allow an affiliated association to pay FOTB-related administrative costs and/or allow its employee to serve on FOTB's councils, but would not require UBAA PAC to list the association as a "connected organization," at least in the conventional manner.

Thus, an affiliated association's eligibility to pay FOTB-related administrative costs and/or allow its employee to serve on FOTB's councils is not at issue. The point of contention is limited to whether support triggers "connected organization" status for an association that must be subsequently noted on UBAA PAC's Statement of Organization.

Draft C's Questions 2 and 3, however, address this issue by only briefly and vaguely noting disagreement among the Commissioners. No effort is made to analyze the subject. The specific area of dispute is not described. And agreement among Commissioners on an affiliated association's eligibility to pay FOTB-related administrative costs and/or allow its employee to serve on FOTB's councils is not recorded. This textual arrangement essentially makes it so that disagreement on a subsidiary issue needlessly casts a pall on the permissibility of the overall conduct.

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The Commission's practice in prior Advisory Opinions has been to advance the analysis as far along as possible, until it reaches a point at which the analysis no longer has four Commissioners' support. (Indeed, Question 4 of Draft C is a model of this approach—the Commission thoroughly analyzes the overall question of whether certain individuals may serve as volunteers, but then notes its inability to reach a decision on the subsidiary issue of whether use of corporate titles for identification purposes would result in corporate facilitation.)

We believe that Draft C should be modified to follow the Commission's past practice of advancing the analysis as far along as possible, until it reaches a point at which the analysis no longer has four Commissioners' support. In other words, Draft C should state that affiliated associations are eligible to pay FOTB-related administrative costs and/or allow employees to serve on FOTB's councils before remarking that Commissioners disagree on whether UBAA PAC must list an association as a "connected organization."¹

Because this written comment is submitted shortly before the Open Meeting at which you will consider Advisory Opinion Request 2011-14, we are happy to supplement this comment by answering any questions the Commission might have through an appearance at the Meeting.

Sincerely,



Kirk L. Jowers
Matthew T. Sanderson
Caplin & Drysdale, Chtd.

cc: Office of the Commission Secretary

¹ For example, we suggest that Question 3's conclusion could be modified to read: "Yes, employees of incorporated State bankers associations that are affiliated with Utah Bankers Association may serve on the Councils as part of their regular employment responsibilities, without the value of their services constituting a contribution to UBAAPAC. The Commission, however, could not approve a response by the required four affirmative votes on whether these employees' participation would trigger "connected organization" status for an association that must be subsequently noted on UBAA PAC's Statement of Organization." We also suggest that the Final Paragraph of Question 2 could be modified to read: "Utah Bankers Association may also accept payments from its affiliated State bankers associations to help pay the Project's administrative costs. The Commission considered, but could not approve a response by the required four affirmative votes on, the consequences of Utah Bankers Association's acceptance of payments from its affiliated State bankers associations to help pay the Project's administrative costs."