



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Commission Secretary's Office

DATE: October 2, 2014

SUBJECT: Comments on Draft AO 2014-14 (Trammell)

Attached is a late submitted comment received from Patricia Fiori on behalf of Trammell for Congress Committee.

Attachment

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October 1, 2014

**Federal Election Commission
Office of General Counsel
999 East Street, N.W.
Washington, D.C. 20463**

Re: AO 2014-14 Comments

Dear Commissioners:

Our Firm represents the Trammell for Congress Committee. This comment is submitted on behalf of Mr. Trammell and the Committee. We believe the Commission has reached the correct conclusion in Draft B of AO 2014-14. Draft B follows precedent established in previous advisory opinions dealing with facts similar to those presented in this request. Further, the conclusion reached in Draft B is consistent with the Commission's regulations.

The Commission applies the appropriate legal interpretation to the facts surrounding Mr. Trammell's receipt of benefits from his employer. In particular, Draft B follows the three controlling facts used to reach a conclusion in Advisory Opinion 1992-03 (Reynolds Metal Company). First, as is noted in Draft B, the leave of absence policy pre-dated Mr. Trammell's request of leave and is consistently applied among employees of Randolph-Macon College. Each employee that seeks a leave of absence must enter into a discussion with the Provost of the College and each faculty member is entitled to request a leave of absence. AOR at 6. The employee-candidate was not treated in a different or more favorable way due to the reason he is seeking a leave of absence as alleged in Draft A; in fact, the employee-candidate was subject to the same process for requesting and obtaining a leave of absence as every other employee who seeks a leave of absence. As in AO 1993-02, Randolph-Macon College's policy for requesting and approving leaves of absence was in place before Mr. Trammell requested his leave of absence. While it is not written policy to grant a continuation of the payment of fringe benefits to employees on leaves of absence, in practice it is a standing policy for the Provost to approve such payments if the leave request is approved. It would be a departure from customary practice for the Provost to deny the continuation of the payment of these fringe benefits; "if the leave request is approved, the Provost will generally approve the continuation of benefits." AOR at 7.

Second, Commission regulations provide that a corporation's payment of an employee-candidate's fringe benefits is not considered a contribution to the employee's campaign when the employee-candidate's leave is taken using *bona fide* earned leave time and the payments in

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question are a form of compensation earned by the employee. 11 C.F.R. § 100.54(c), 11 C.F.R. § 113.1(g)(6)(iii). As a member of the full-time faculty at Randolph-Macon College, Mr. Trammell is permitted to take a leave of absence pending the completion of the request process discussed above. Draft B correctly interprets that the "leave of absence and associated continuation of benefits may be viewed as a form of conditional compensation and leave earned or accrued by employees who garner 'faculty rank'." The MOU states that Mr. Trammell will not be considered ineligible to receive the benefits that he is entitled to as an employee of the College by virtue of taking the leave of absence. AOR at 4. The Faculty handbook discusses the insurance benefits as "one of the most valuable faculty benefits" and it can therefore be inferred that these benefits are considered by Randolph-Macon College to be a form of compensation for their employees of faculty rank. AOR at 8. In Draft B of the AO, the continuation of the payment of Mr. Trammell's fringe benefits is properly deemed by the Commission to be a form of Mr. Trammell's compensation that was earned by his status as a faculty member at the College.

Finally, as the Commission notes in Draft B, the benefits will be received for a fixed and "relatively brief" time period. The MOU specifically states that Randolph-Macon College will continue to provide the same rate of financial insurance subsidy until December 31, 2014. It does not provide for the College to continue to pay Mr. Trammell's fringe benefits for an undetermined amount of time. AOR at 4.

The Commission should adopt Draft B of AO 2014-14. In a previous opinion under similar circumstances, the Commission approved the continued payment by a corporation of an employee-candidate's fringe benefits when said employee was on unpaid leave to engage in electoral activity. As the Advisory Opinion Request makes clear, the leave of absence policy had been in effect prior to the candidacy and subsequent request of leave by Mr. Trammell, and the policy and procedure to request a leave of absence is the same for each faculty member of Randolph-Macon College. The Commission is also correct in Draft B in determining that the payment of the fringe benefits should be considered an accrued compensation by Mr. Trammell as a member of the faculty. Moreover, neither Randolph-Macon College nor Mr. Trammell are proposing that the payment of these fringe benefits shall continue in perpetuity; the MOU outlines a specific and fixed time period that this arrangement would continue until. These are the three factors previously used by the Commission to determine that such an arrangement is permissible under FECA rules and regulations. Finally, both candidates are employed by the College, and therefore it is obvious that Randolph-Macon College is applying its policy without the intent to influence an election. In conclusion, we urge the Commission to adopt Draft B of AO 2014-14.

Sincerely,

Patricia A. Fiori
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