

AGENDA DOCUMENT NO. 03-92

MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION

THURSDAY, NOVEMBER 20, 2003

PRESENT: Ellen L. Weintraub, Chair, presiding
Bradley A. Smith, Vice Chairman
David M. Mason, Commissioner
Danny L. McDonald, Commissioner
Scott E. Thomas, Commissioner
Michael E. Toner, Commissioner
Alison Doone, Deputy Staff Director
for Management, representing
James A. Pehrkon, Staff Director
Lawrence H. Norton, General Counsel
Mary W. Dove, Secretary

Chair Ellen L. Weintraub called the Federal Election Commission to order in an open meeting at 10:07 A.M. on Thursday, November 20, 2003, with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

Minutes for November 6, 2003

Agenda Document No. 03-84

Chair Weintraub recognized Vice Chairman Smith, who

MOVED to approve the Minutes for the open meeting of Thursday, November 6, 2003, as submitted in Agenda Document No. 03-84.

The motion carried on the vote of 6-0 with Commissioners Mason, McDonald, Smith, Thomas, Toner, and Weintraub voting affirmatively.

II. ADVISORY OPINIONS

A. Draft Advisory Opinion 2003-28

Horizon Lines, LLC by counsel,
Thomas F. Walls

Agenda Document No. 03-86

Chair Weintraub recognized Mr. Duane Pugh of the General Counsel's Office who presented draft Advisory Opinion 2003-28 concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the establishment of a separate segregated fund ("SSF") for which Horizon Lines would pay the administrative and solicitation expenses and which would solicit members of the restricted class of Horizon Lines and its affiliates. During his presentation, Mr. Pugh noted the following amendment:

On Page 6, Line 8, change "question 3" to "question 2."

The Chair recognized Commissioner Toner,
who

II. ADVISORY OPINIONS (continued)

A. Draft Advisory Opinion 2003-28
(continued)

MOVED to approve draft Advisory
Opinion 2003-28, as submitted in
Agenda Document No. 03-86, subject
to the amendment noted above.

The motion carried on the vote of 6-0.

B. Draft Advisory Opinion 2003-29

National Fraternal Order of Police Political
Action Committee (NFOP PAC) by Bridget Vigue,
Legislative Liaison

Agenda Documents No. 03-87, No. 03-87-A,
and No. 03-87-B

The Chair recognized Vice Chairman Smith,

who

MOVED to suspend the rules on
the timely submission of agenda
documents in order to consider
Agenda Documents No. 03-87-A
and No. 03-87-B.

The motion carried on the vote of 6-0.

II. ADVISORY OPINIONS (continued)

B. Draft Advisory Opinion 2003-29
(continued)

Chair Weintraub recognized Mr. Robert Knop of the General Counsel's Office who presented draft Advisory Opinion 2003-29 concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the receipt of funds from the Fraternal Order of Police of Ohio Political Action Committee ("Ohio FOP PAC").

A discussion followed.

The Chair recognized Commissioner Thomas,
who

MOVED to return draft Advisory Opinion 2003-29 to the Office of General Counsel for redrafting pursuant to the meeting discussion, and to circulate the revised draft on a tally vote.

The motion carried on the vote of 6-0.

II. ADVISORY OPINIONS (continued)

C. Draft Advisory Opinion 2003-30

Fitzgerald for Senate Committee and Senator
Peter Fitzgerald by counsel, Benjamin L.
Ginsberg and Glenn M. Willard

Agenda Document No. 03-88

The draft advisory opinion was withdrawn by the
Office of General Counsel for further review of the legal
analysis and conclusions based on additional facts received
from counsel for the requesters.

III. ANNOUNCEMENT OF EFFECTIVE DATE FOR FINAL RULES
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
AND NOMINATING CONVENTIONS

Agenda Document No. 03-85

The Chair recognized Mr. Duane Pugh of the General
Counsel's Office who presented the subject draft.

III. ANNOUNCEMENT OF EFFECTIVE DATE FOR FINAL RULES
ON PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES
AND NOMINATING CONVENTIONS

(continued)

Chair Weintraub recognized Commissioner Mason,
who

MOVED to approve the Announcement
of Effective Date, as submitted in
Agenda Document No. 03-85, for
publication in the *Federal Register*.

The motion carried on the vote of 5-0 with
Commissioners Mason, Smith, Thomas, Toner, and Weintraub
voting affirmatively.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON LEADERSHIP PACs

Agenda Document No. 03-89

The Chair recognized Vice Chairman Smith,
who

MOVED to suspend the rules
on the timely submission of
agenda documents in order to
consider Agenda Document
No. 03-89.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON LEADERSHIP PACs

(continued)

The motion carried on the vote of 5-0 with Commissioners Mason, Smith, Thomas, Toner, and Weintraub voting affirmatively.

Chair Weintraub recognized Mr. Anthony Buckley of the General Counsel's Office who presented the subject document. During his presentation, Mr. Buckley noted the following amendments:

Page 16, Line 7, the cite should read "431(8)";

Page 23, Line 2, insert the word "authorized" before the word "committees";

Page 23, Line 3, (in the cross out) delete the word "that" and insert "which are" in lieu thereof.

A discussion followed.

IV. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON LEADERSHIP PACs (continued)

The Chair recognized Commissioner McDonald,
who

MOVED to approve the Final Rules
and Explanation and Justification
on Leadership PACs, as submitted
in Agenda Document No. 03-89,
subject to the amendments noted
above, and further amended as
follows:

on Page 2, delete the sentence
which begins on Line 7 and ends
on Line 8; on Page 15, Line 17
insert "a" at the end of the line;

and to authorize the Office of General
Counsel to make any necessary technical
and conforming amendments.

The motion carried on the vote of 5-1 with
Commissioners Mason, McDonald, Smith, Thomas, and
Toner voting affirmatively. Commissioner Weintraub
dissented.

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The meeting recessed at 11:45 A.M. and reconvened at 12:05 P.M. with a quorum present.

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V. FINAL RULES AND EXPLANATION AND JUSTIFICATION ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL COMMITTEES

Agenda Documents No. 03-90, No. 03-90-A, No. 03-90-C, No. 03-90-D, and No. 03-90-E

Chair Weintraub recognized Vice Chairman Smith, who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Documents No. 03-90, No. 03-90-A, No. 03-90-C, No. 03-90-D, and No. 03-90-E.

The motion carried on the vote of 6-0.

The Chair recognized Mr. Richard Ewell of the General Counsel's Office who reviewed Alternative A and Alternative B of the subject document.

Mr. Joseph Steltz of the Audit Division also participated in the discussion which followed.

V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

Chair Weintraub recognized Commissioner Toner,
who

MOVED to approve the reimbursement
rate, as described in Alternative A
of Agenda Document No. 03-90, that
first-class air fare across the
board be adopted.

The motion failed by a vote of 3-3 with
Commissioners Mason, Smith, and Toner voting
affirmatively. Commissioners McDonald, Thomas, and
Weintraub dissented.

The Chair recognized Commissioner Thomas,
who

MOVED to approve charter rate as
the reimbursement rate, as described
in Agenda Document No. 03-90-D.

The motion failed by a vote of 3-3 with
Commissioners McDonald, Thomas, and Weintraub voting
affirmatively. Commissioners Mason, Smith, and Toner
dissented.

V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

Chair Weintraub recognized Commissioner Toner who addressed certain proposed amendments, as contained in Agenda Document No. 03-90-C. A discussion followed, and without objection, the following amendments were accepted in Agenda Document No. 03-90, Alternative B:

Page 5, Line 23: change "as" to "is";

Page 22, Line 21: delete "time of departure" and replace with "dates traveled or within seven calendar days thereof"

Page 23, Lines 6 and 7: delete "at the time the means of campaign travel is secured" and replace with "for the dates traveled or within seven calendar days thereof."

Page 29, Lines 16 through 18: delete "time and date of departure as determined on the date on which the means of travel is secured by the campaign traveler" and replace with "dates traveled or within seven calendar days thereof."

Page 31, Line 5: delete "at the time of travel" and replace with "for the dates traveled or within seven calendar days thereof."

V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

Page 33, Lines 17 and 18: delete the words "time when the travel was scheduled and actually occurred" and replace with "dates traveled or within seven calendar days thereof."

Page 34, delete the language which begins with the sentence on Line 2 through Line 10.

Page 34, Line 12: insert the words "at an unrestricted non-discounted fare" after the word "flight."

Page 19, Line 5: strike the word "the" before "candidates"

Page 16, Footnote 4, Line 3: delete the word "party", and insert the words "of each political party" after the word "committees"

Page 16, Line 11: delete the word "the" and replace with the word "campaign"

Page 16, Lines 11 and 12: delete the words "to her candidate's fundraiser" and replace with the words "without the payment constituting an in-kind contribution."

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The meeting recessed at 1:45 P.M. and reconvened at 3:05 P.M. with a quorum present.

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V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

The discussion resumed, and without objection,
the following amendments were accepted in Agenda Document
No. 03-90, Alternative B:

Page 25, Line 14: delete the second
reference to the words "the amount"

Page 49, Lines 22 and 23: delete the
remainder of the sentence which begins
the word "time" on Line 22, and replace
with "dates traveled or within seven
calendar days thereof. The payment
rate must be determined by the time the
payment is due under paragraph (c) of
this section."

Page 51, Line 8: delete the words
"and times"

Page 26, Line 3: insert the words
"its pro-rata share of" after the
word "pay"

V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

Page 26, Line 4: delete the words "its own" and replace with "all"

Page 12, delete the sentence which begins on Line 6 and ends on Line 10

Page 46, Lines 7 and 8: delete the words "when identified as such to the Commission by the reporting entity on whose behalf the travel is conducted."

Page 30, Line 17: insert after the last sentence "A political committee also may treat the matter as a disputed debt under 11 CFR 116.10."

Page 28: delete Lines 21 through 23; and, on Page 29, delete Lines 1 and 2, and insert the following language in lieu thereof:

"To promote uniformity between the treatment of publicly funded candidates and all other candidates, the Commission is removing 11 CFR 9004.7(b)(5)(ii) and 9034.7(b)(5)(ii)."

V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

Following discussion of the preemption issue, the
Chair recognized Commissioner Toner, who

MOVED to delete the language in
Agenda Document No. 03-90 on
Page 50, paragraph (g), and
replace with the following:

"(g) Preemption. In all other
respects, state or local laws are
preempted with respect to travel
in connection with a Federal
election to the extent they purport
to supplant the rates or timing
requirements of 11 CFR 100.93."

The motion carried on the vote of 5-1 with
Commissioners Mason, McDonald, Smith, Thomas, and Toner
voting affirmatively. Commissioner Weintraub dissented.

There was a discussion of government aircraft
at 9004.7.

V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

Chair Weintraub recognized Commissioner Toner,

who

MOVED to amend Alternative B in
Agenda Document No. 03-90 on
Page 48 by renumbering "(2)" as
"(3)" and inserting the following
new language at (2):

"In the case of travel between
airports served by regularly
scheduled coach commercial air-
line service, but not regularly
scheduled first-class airline
service, the lowest unrestricted
and non-discounted coach air fare;
or".

The motion carried on the vote of 4-2 with
Commissioners Mason, McDonald, Smith, and Toner voting
affirmatively. Commissioners Thomas and Weintraub
dissented.

V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

There was a discussion of government conveyances.

Chair Weintraub recognized Commissioner Toner,

who

MOVED to delete the language in Agenda Document No. 03-90, Alternative B, on Page 49, Lines 8 through 12, and replace with the following:

"(i) The lowest unrestricted and non-discounted first-class air fare to or from the city with regularly scheduled first-class commercial service, or the airport that is geographically closest to the location actually used that has regularly scheduled first-class commercial service; or"

And, further, to include an amendment to cast a provision in terms of Air Force One and Air Force Two, given the unique issues associated with those aircraft.

The motion failed by a vote of 3-3 with

Commissioners Mason, Smith, and Toner voting affirmatively.

Commissioners McDonald, Thomas, and Weintraub dissented.

V. FINAL RULES AND EXPLANATION AND JUSTIFICATION
ON TRAVEL ON BEHALF OF CANDIDATES AND POLITICAL
COMMITTEES (continued)

It was agreed without objection to return the Final Rules and Explanation and Justification to the Office of the General Counsel for redrafting pursuant to the meeting discussion and for Commission consideration at a future meeting.

VI. ROUTINE ADMINISTRATIVE MATTERS

There were no routine administrative matters to come before the Commission.

The meeting adjourned at 4:25 P.M.

Signed:

Ellen L. Weintraub
Chair of the Commission

Attest:

Mary W. Dove
Secretary of the Commission