



**AGENDA DOCUMENT NO. 05-01**

**MINUTES OF AN OPEN MEETING  
OF THE  
FEDERAL ELECTION COMMISSION**

**THURSDAY, DECEMBER 16, 2004**

**PRESENT:**

**Bradley A. Smith, Chairman, presiding**

**Ellen L. Weintraub, Vice Chair**

**David M. Mason, Commissioner**

**Danny L. McDonald, Commissioner**

**Scott E. Thomas, Commissioner**

**James A. Pehrkon, Staff Director**

**Lawrence H. Norton, General Counsel**

**James A. Kahl, Deputy General Counsel,  
representing Lawrence H. Norton,  
General Counsel, for a portion of the  
meeting**

**Mary W. Dove, Secretary**



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representing Lawrence H. Norton,  
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meeting**

**Mary W. Dove, Secretary**

**Chairman Bradley A. Smith called the Federal Election Commission to order in an open meeting at 10:10 A.M. on Thursday, December 16, 2004, with a quorum present.**

**I. CORRECTION AND APPROVAL OF MINUTES**

**Minutes for December 2, 2004  
Agenda Document No. 04-109**

**Chairman Smith recognized Vice Chair Weintraub, who**

**MOVED to approve the minutes for the Open Meeting of Thursday, December 2, 2004, as submitted in Agenda Document No. 04-109.**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**II. MERIT AND SERVICE AWARDS**

**Chairman Smith, assisted by Staff Director Pehrkon, presented the following service awards:**

**TEN YEAR SERVICE AWARDS**

**Vicktoria J. Allen, ITD  
William A. Antosz, Audit  
Patricia A. Brown, EEO  
Edna M. Ford-Roberts, ITD  
Reginald W. Freeman, OGC  
Ruth A. Godding, Personnel  
Frankie D. Hampton, OGC**

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**Chairman Smith recognized Vice Chair Weintraub, who**

**MOVED to approve the minutes for the Open Meeting of Thursday, December 2, 2004, as submitted in Agenda Document No. 04-109.**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

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**Reginald W. Freeman, OGC**

**Ruth A. Godding, Personnel**

**Frankie D. Hampton, OGC**

**II. MERIT AND SERVICE AWARDS (continued)**

**TEN YEAR SERVICE AWARDS (continued)**

Jonathan A. Hatfield, OIG  
Hoperline J. Herbert, ITD  
David B. Kolker, OGC  
Elizabeth S. Kurland, Information  
Erica D. Lee, Audit  
Tracey L. Ligon, OGC  
Dorothy W. Maddox-Holland, OIG  
Robert L. Morcomb, Audit  
Kamau S. Philbert, OGC  
Rosa E. Swinton, Finance  
Rhonda J. Vosdingh, OGC  
Reginald I. Watts, Admin.

**TWENTY YEAR SERVICE AWARDS**

Vivian O. Graham, OGC  
James L. Jones, Admin.  
Ida L. Reavis, ITD  
Deborah L. Rice, OGC  
Rosemary C. Smith, OGC

At the conclusion of the presentations, Chairman Smith reviewed the accomplishments of the Federal Election Commission in 2004.

**III. ELECTION OF OFFICERS**

**A. Election of Chairman**

Chairman Smith recognized Commissioner Mason, who

**MOVED to elect Commissioner Scott E. Thomas to serve as Chairman of the Federal Election Commission beginning January 1, 2005.**

II. MERIT AND SERVICE AWARDS (continued)

TEN YEAR SERVICE AWARDS (continued)

Jonathan A. Hatfield, OIG  
Hoperline J. Herbert, ITD  
David B. Kolker, OGC  
Elizabeth S. Kurland, Information  
Erica D. Lee, Audit  
Tracey L. Ligon, OGC  
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Deborah L. Rice, OGC  
Rosemary C. Smith, OGC

At the conclusion of the presentations, Chairman Smith reviewed the accomplishments of the Federal Election Commission in 2004.

III. ELECTION OF OFFICERS

A. Election of Chairman

Chairman Smith recognized Commissioner Mason, who

MOVED to elect Commissioner Scott E. Thomas to serve as Chairman of the Federal Election Commission beginning January 1, 2005.

**III. ELECTION OF OFFICERS (continued)**

**A. Election of Chairman (continued)**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**B. Election of Vice Chairman**

**The Chairman recognized Vice Chair Weintraub, who**

**MOVED to elect Commissioner Michael E.  
Toner in absentia to serve as Vice Chairman  
of the Federal Election Commission beginning  
January 1, 2005.**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**IV. ADVISORY OPINIONS**

**A. Draft Advisory Opinion 2004-41**

**CUNA Mutual Insurance Society, by counsel  
Cleta Mitchell**

**Agenda Documents No. 04-110 and  
No. 04-110-A**

**Chairman Smith recognized the Vice Chair, who**

**MOVED to suspend the rules on the timely  
submission of agenda documents in order to  
consider Agenda Document No. 04-110-A.**

**III. ELECTION OF OFFICERS (continued)**

**A. Election of Chairman (continued)**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**B. Election of Vice Chairman**

**The Chairman recognized Vice Chair Weintraub, who**

**MOVED to elect Commissioner Michael E.  
Toner in absentia to serve as Vice Chairman  
of the Federal Election Commission beginning  
January 1, 2005.**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**IV. ADVISORY OPINIONS**

**A. Draft Advisory Opinion 2004-41**

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Cleta Mitchell**

**Agenda Documents No. 04-110 and  
No. 04-110-A**

**Chairman Smith recognized the Vice Chair, who**

**MOVED to suspend the rules on the timely  
submission of agenda documents in order to  
consider Agenda Document No. 04-110-A.**

**IV. ADVISORY OPINIONS (continued)**

**A. Draft Advisory Opinion 2004-41 (continued)**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**Chairman Smith recognized Mr. Ron Katwan of the General Counsel's Office who presented draft Advisory Opinion 2004-41 and the proposed amendment in Agenda Document No. 04-110-A concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations regarding confirmation that CUNA Mutual's new separate segregated fund ("SSF"), CUNA Mutual PAC, is not affiliated with the Credit Union Legislative Action Council ("CULAC"), the longstanding SSF of the Credit Union National Association ("CUNA").**

**The Chairman recognized Commissioner Mason, who**

**MOVED to approve draft Advisory Opinion 2004-41, as submitted in Agenda Document No. 04-110, as amended by Agenda Document No. 04-110-A.**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**IV. ADVISORY OPINIONS (continued)**

**A. Draft Advisory Opinion 2004-41 (continued)**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**Chairman Smith recognized Mr. Ron Katwan of the General Counsel's Office who presented draft Advisory Opinion 2004-41 and the proposed amendment in Agenda Document No. 04-110-A concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations regarding confirmation that CUNA Mutual's new separate segregated fund ("SSF"), CUNA Mutual PAC, is not affiliated with the Credit Union Legislative Action Council ("CULAC"), the longstanding SSF of the Credit Union National Association ("CUNA").**

**The Chairman recognized Commissioner Mason, who**

**MOVED to approve draft Advisory Opinion 2004-41, as submitted in Agenda Document No. 04-110, as amended by Agenda Document No. 04-110-A.**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**IV. ADVISORY OPINIONS (continued)**

**B. Draft Advisory Opinion 2004-43**

**Missouri Broadcasters Association, by counsel**  
**Gregg P. Skall**

**Agenda Document No. 04-113**

Chairman Smith recognized Ms. Cheryl Hemsley of the General Counsel's Office who presented draft Advisory Opinion 2004-43 concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations regarding whether a broadcaster would be making a corporate in-kind contribution by selling advertising time at the Lowest Unit Charge ("LUC") to a candidate who fails to include the required BCRA Statement in one of his advertisements and, therefore, is not "entitled" to the LUC under the Communications Act of 1934, as amended. 47 U.S.C. 315(b).

A discussion followed.

It was agreed without objection to return the draft to the Office of General Counsel in order to seek more information from the requester pursuant to the meeting discussion and to circulate a revised draft for a future meeting.

**IV. ADVISORY OPINIONS (continued)**

**B. Draft Advisory Opinion 2004-43**

**Missouri Broadcasters Association, by counsel  
Gregg P. Skall**

**Agenda Document No. 04-113**

Chairman Smith recognized Ms. Cheryl Hemsley of the General Counsel's Office who presented draft Advisory Opinion 2004-43 concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations regarding whether a broadcaster would be making a corporate in-kind contribution by selling advertising time at the Lowest Unit Charge ("LUC") to a candidate who fails to include the required BCRA Statement in one of his advertisements and, therefore, is not "entitled" to the LUC under the Communications Act of 1934, as amended. 47 U.S.C. 315(b).

A discussion followed.

It was agreed without objection to return the draft to the Office of General Counsel in order to seek more information from the requester pursuant to the meeting discussion and to circulate a revised draft for a future meeting.

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The meeting recessed at 11:30 A.M. and reconvened at 11:40 A.M. with a quorum present.

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**IV. ADVISORY OPINIONS (continued)**

**C. Draft Advisory Opinion 2004-42**

**Pharmavite LLC, by counsel Robert K. Kelner**

**Agenda Document No. 04-111**

Chairman Smith recognized Ms. Esa Sferra of the General Counsel's Office who presented draft Advisory Opinion 2004-42 which responds to an inquiry regarding (1) whether Pharmavite LLC ("Pharmavite"), a California limited liability company, may pay the administrative and solicitation costs of a separate segregated fund ("SSF"), for which Pharmavite's sole member will be the connected corporate organization, and (2) whether the SSF may be named after Pharmavite under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.

A discussion followed.

The Chairman recognized Vice Chair Weintraub, who

**MOVED to approve draft Advisory  
Opinion 2004-42, as set forth in Agenda  
Document No. 04-111.**

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The meeting recessed at 11:30 A.M. and reconvened at 11:40 A.M. with a quorum present.

\* \* \* \* \*

**IV. ADVISORY OPINIONS (continued)**

**C. Draft Advisory Opinion 2004-42**

**Pharmavite LLC, by counsel Robert K. Kelner**

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A discussion followed.

The Chairman recognized Vice Chair Weintraub, who

**MOVED to approve draft Advisory  
Opinion 2004-42, as set forth in Agenda  
Document No. 04-111.**

**IV. ADVISORY OPINIONS (continued)**

**C. Draft Advisory Opinion 2004-42 (continued)**

**The motion carried on the vote of 4-1 with Commissioners**

**Mason, Smith, Thomas, and Weintraub voting affirmatively.**

**Commissioner McDonald dissented.**

**V. DRAFT NOTICE OF PROPOSED RULEMAKING ON FILING  
DOCUMENTS BY PRIORITY MAIL, EXPRESS MAIL, AND  
OVERNIGHT DELIVERY SERVICE**

**Agenda Document No. 04-112**

**The Chairman recognized Ms. Esa Sferra of the General Counsel's  
Office who presented the subject document. The Vice Chair, on behalf  
of Commissioner Toner, expressed his concerns about several issues in  
the draft, and then**

**MOVED to approve the draft Notice of Proposed  
Rulemaking on Filing Documents by Priority Mail,  
Express Mail, and Overnight Delivery Service, as  
set forth in Agenda Document No. 04-112, for  
publication in the *Federal Register*.**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

**IV. ADVISORY OPINIONS (continued)**

**C. Draft Advisory Opinion 2004-42 (continued)**

The motion carried on the vote of 4-1 with Commissioners

Mason, Smith, Thomas, and Weintraub voting affirmatively.

Commissioner McDonald dissented.

**V. DRAFT NOTICE OF PROPOSED RULEMAKING ON FILING  
DOCUMENTS BY PRIORITY MAIL, EXPRESS MAIL, AND  
OVERNIGHT DELIVERY SERVICE**

**Agenda Document No. 04-112**

The Chairman recognized Ms. Esa Sferra of the General Counsel's Office who presented the subject document. The Vice Chair, on behalf of Commissioner Toner, expressed his concerns about several issues in the draft, and then

**MOVED to approve the draft Notice of Proposed Rulemaking on Filing Documents by Priority Mail, Express Mail, and Overnight Delivery Service, as set forth in Agenda Document No. 04-112, for publication in the *Federal Register*.**

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

**VI. DRAFT NOTICE OF PROPOSED RULEMAKING ON PAYROLL DEDUCTIONS BY MEMBER CORPORATIONS FOR CONTRIBUTIONS TO A TRADE ASSOCIATION'S SEPARATE SEGREGATED FUND**

**Agenda Document No. 04-114**

(General Counsel Norton recused himself with respect to this matter and he was not present during the discussion.)

The Chairman recognized Ms. Amy Rothstein of the General Counsel's Office who presented an overview of the subject draft.

Chairman Smith recognized Commissioner McDonald,  
who

**MOVED to approve the draft Notice of Proposed Rulemaking regarding contributions to the separate segregated fund of a trade association by employee-stockholders and executive and administrative personnel of corporations that are members of the trade association, as set forth in Agenda Document No. 04-114, for publication in the *Federal Register*.**

**The motion carried on the vote of 4-1 with Commissioners**

**Mason, McDonald, Smith, and Thomas voting affirmatively.**

**Commissioner Weintraub dissented.**

VI. **DRAFT NOTICE OF PROPOSED RULEMAKING ON PAYROLL  
DEDUCTIONS BY MEMBER CORPORATIONS FOR  
CONTRIBUTIONS TO A TRADE ASSOCIATION'S SEPARATE  
SEGREGATED FUND**

**Agenda Document No. 04-114**

(General Counsel Norton recused himself with respect to this matter and he was not present during the discussion.)

The Chairman recognized Ms. Amy Rothstein of the General Counsel's Office who presented an overview of the subject draft.

Chairman Smith recognized Commissioner McDonald,

who

**MOVED to approve the draft Notice of Proposed Rulemaking regarding contributions to the separate segregated fund of a trade association by employee-stockholders and executive and administrative personnel of corporations that are members of the trade association, as set forth in Agenda Document No. 04-114, for publication in the *Federal Register*.**

**The motion carried on the vote of 4-1 with Commissioners**

**Mason, McDonald, Smith, and Thomas voting affirmatively.**

**Commissioner Weintraub dissented.**

**VII. TREASURER POLICY – OFFICIAL AND INDIVIDUAL CAPACITIES**

**Agenda Documents No. 04-115,  
No. 04-115-A, and No. 04-115-B**

Chairman Smith recognized Vice Chair Weintraub, who

**MOVED to suspend the rules on the  
timely submission of agenda documents  
in order to consider Agenda Documents  
No. 04-115, No. 04-115-A, and No. 04-115-B.**

**The motion carried on the vote of 5-0 with Commissioners**

**Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.**

Chairman Smith recognized Mr. Peter Blumberg of the General  
Counsel's Office who presented the subject draft.

The Chairman then recognized Commissioner Thomas who  
reviewed his alternative draft, as set forth in Agenda Document No. 04-  
115-A.

A discussion followed.

Chairman Smith recognized Commissioner McDonald, who

**MOVED to approve the Statement of Policy, as  
set forth in Agenda Document No. 04-115, as  
amended by Agenda Document No. 04-115-B,  
for publication in the *Federal Register*, and, to  
direct the Office of General Counsel to trans-  
mit the Statement of Policy to Congress in  
accordance with the Congressional Review  
Act, 5 U.S.C. § 801 *et seq.***

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VII. TREASURER POLICY – OFFICIAL AND INDIVIDUAL CAPACITIES

Agenda Documents No. 04-115,  
No. 04-115-A, and No. 04-115-B

Chairman Smith recognized Vice Chair Weintraub, who

**MOVED** to suspend the rules on the  
timely submission of agenda documents  
in order to consider Agenda Documents  
No. 04-115, No. 04-115-A, and No. 04-115-B.

The motion carried on the vote of 5-0 with Commissioners

Mason, McDonald, Smith, Thomas, and Weintraub voting affirmatively.

Chairman Smith recognized Mr. Peter Blumberg of the General  
Counsel's Office who presented the subject draft.

The Chairman then recognized Commissioner Thomas who  
reviewed his alternative draft, as set forth in Agenda Document No. 04-  
115-A.

A discussion followed.

Chairman Smith recognized Commissioner McDonald, who

**MOVED** to approve the Statement of Policy, as  
set forth in Agenda Document No. 04-115, as  
amended by Agenda Document No. 04-115-B,  
for publication in the *Federal Register*, and, to  
direct the Office of General Counsel to trans-  
mit the Statement of Policy to Congress in  
accordance with the Congressional Review  
Act, 5 U.S.C. § 801 et seq.

**VII. TREASURER POLICY – OFFICIAL AND INDIVIDUAL CAPACITIES  
(continued)**

**The motion carried on the vote of 4-1 with Commissioners**

**Mason, McDonald, Smith, and Weintraub voting affirmatively.**

**Commissioner Thomas dissented.**

**VIII. ROUTINE ADMINISTRATIVE MATTERS**

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

**The meeting adjourned at 12:15 P.M.**

**Signed:**

**Bradley A. Smith  
Chairman of the Commission**

**Attest:**

**Mary W. Dove  
Secretary of the Commission**

**VII. TREASURER POLICY - OFFICIAL AND INDIVIDUAL CAPACITIES  
(continued)**

**The motion carried on the vote of 4-1 with Commissioners**

**Mason, McDonald, Smith, and Weintraub voting affirmatively.**

**Commissioner Thomas dissented.**

**VIII. ROUTINE ADMINISTRATIVE MATTERS**

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

**The meeting adjourned at 12:15 P.M.**

**Signed:**

**Bradley A. Smith  
Chairman of the Commission**

**Attest:**

**Mary W. Dove  
Secretary of the Commission**



