



AGENDA DOCUMENT No. 10-68

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, OCTOBER 7, 2010**

PRESENT:

Matthew S. Petersen, Chairman, presiding

Cynthia L. Bauerly, Vice Chair

Caroline C. Hunter, Commissioner

Donald F. McGahn II, Commissioner

Steven T. Walther, Commissioner

Ellen L. Weintraub, Commissioner

Alec Palmer, Acting Staff Director

Christopher Hughey, Acting General Counsel

Shawn Woodhead Werth, Secretary and Clerk

Chairman Matthew S. Petersen called the Federal Election Commission to order in an open meeting at 10:12 A.M. on Thursday, October 7, 2010, with a quorum present.

Chairman Petersen noted that the Draft Notice of Proposed Rulemaking on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, originally scheduled to be discussed at this meeting, would be held over to the next public meeting.

I. DRAFT ADVISORY OPINION 2010-19

Google by Marc E. Elias, Esq., and Jonathan S. Berkon, Esq.

(Held over from the meeting of September 23, 2010)

Agenda Document No. 10-61 (Alternative Drafts)

Agenda Document No. 10-61-A (Revised Draft A)

Agenda Document No. 10-61-B (Draft C)

Agenda Document No. 10-61-C (Draft D) – submitted late

**Agenda Document No. 10-61-D (Revised Draft C) –
submitted late**

The Chairman noted that counsel, Marc Elias, was present to answer any questions the Commission may have during the discussion.

Chairman Petersen recognized Vice Chair Bauerly who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider Agenda Documents No. 10-61-C, No. 10-61-D, No. 10-62, No. 10-63, No. 10-63-A, and No. 10-63-B.

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther and Weintraub voting affirmatively for the decision.

Chairman Petersen recognized Mr. Tony Buckley of the General Counsel's Office who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to Google Inc.'s proposal to sell text ads to candidates, their authorized committees, and other political committees, and whether disclaimers are required on text ads generated when Internet users use Google's search engine to perform searches. A discussion followed.

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The meeting recessed at 11:36 A.M. and reconvened at 12:33 P.M. with a quorum present.

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I. DRAFT ADVISORY OPINION 2010-19 (continued)

Discussion resumed on Advisory Opinion 2010-19.

Chairman Petersen recognized Commissioner Weintraub who

MOVED to adopt Revised Draft C (as set forth in Agenda Document No. 10-61-D) subject to changes on pages 2 and 3 pursuant to the meeting discussion.

The motion carried on a vote of 4-2 with Commissioners Bauerly, Petersen, Walther and Weintraub voting affirmatively for the decision. Commissioners Hunter and McGahn dissented.

II. DRAFT ADVISORY OPINION 2010-21

ReCellular, Inc. by Michael B. Trister, Esq., and Allen H. Mattison, Esq.

**Agenda Document No. 10-62
(Submitted Late)**

Chairman Petersen recognized Theodore Lutz of the General Counsel's Office who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to a proposed program under which ReCellular would transmit to political committees contributions from consumers resulting from the sale of used cell phones to ReCellular.

Chairman Petersen recognized Vice Chair Bauerly who

**MOVED to adopt Agenda Document No. 10-62, the
Advisory Opinion 2010-21 for ReCellular.**

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther and Weintraub voting affirmatively for the decision.

III. DRAFT ADVISORY OPINION 2010-25

RG Entertainment, Ltd. by Lee E. Goodman, Esq.

Agenda Document No. 10-63 (Alternative Drafts)

Agenda Document No. 10-63-A (Revised Draft A)

**Agenda Document No. 10-63-B (Revised Draft B)
(Submitted Late)**

The Chairman noted that counsel, Lee Goodman, was present to answer any questions the Commission may have during the discussion.

Chairman Petersen recognized Peter Reynolds of the General Counsel's Office who presented the draft advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to whether RG Entertainment's ("RGE") disbursements to produce, distribute, and advertise the documentary film I WANT YOUR MONEY (the "Film") are expenditures or electioneering communications; whether RGE's production and distribution of the Film would be a coordinated communication with Ms. Parker; whether a licensee's payment of the cost of screening the Film would be a contribution to Ms. Parker's authorized committee; and whether Ms. Parker's use of her personal funds to license a promotional screening of the Film would be an independent expenditure. A discussion followed.

Chairman Petersen recognized Commissioner Hunter who

**MOVED to approve Agenda Document No. 10-63-B,
Revised Draft B.**

The motion failed on a vote of 3-3 with Commissioners Hunter, McGahn and Petersen voting affirmatively for the motion. Commissioners Bauerly, Walther and Weintraub dissented.

Chairman Petersen recognized Commissioner Bauerly who

**MOVED to approve Agenda Document No. 10-63-A,
Revised Draft A.**

The motion failed on a vote of 3-3 with Commissioners Bauerly, Walther and Weintraub voting affirmatively for the motion. Commissioners Hunter, McGahn and Petersen dissented.

Chairman Petersen instructed the Office of General Counsel to prepare a draft that addresses the four areas of agreement between these two drafts. He also outlined the three areas in which there was not agreement between the drafts. Chairman Petersen noted that the Advisory Opinion Request is under expedited review and instructed the General Counsel to circulate the draft on an abbreviated tally vote basis, if necessary, by Tuesday, October 12.

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Chairman Petersen acknowledged Jonathan Levin's valued contributions and years of service with the Commission as this was Mr. Levin's last Open Meeting. Commissioners Walther, McGahn and Weintraub also expressed their appreciation for Mr. Levin's public service and wished him well in his future endeavors.

IV. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 1:31 P.M.

Signed:

**Matthew S. Petersen
Chairman of the Commission**

Attest:

**Shawn Woodhead Werth
Secretary and Clerk of the Commission**