

FEDERAL ELECTION
COMMISSION
SECRETARIAT



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2012 MAY 31 P 4: 39

May 31, 2012

AGENDA ITEM

MEMORANDUM

TO: The Commission

FROM: Anthony Herman *pch AH*
General Counsel

Kevin Deeley *KD*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

David C. Adkins *DCA by RMK*
Attorney

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Attorney

Subject: Draft AO 2012-18 (National Right to Life Committee, Inc.)

For Meeting of 6-7-12

Attached is a proposed draft of the subject advisory opinion. We have been asked to have this draft placed on the Open Session agenda for June 7, 2012.

Attachment

1 ADVISORY OPINION 2012-18

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James Bopp, Jr., Esq.
The Bopp Law Firm
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510

DRAFT

10 Dear Mr. Bopp:

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12 We are responding to your advisory opinion request on behalf of the National
13 Right to Life Committee, Inc. (“NRLC”), concerning the application of the Federal
14 Election Campaign Act (the “Act”) and Commission regulations to NRLC’s payments for
15 the establishment, administration, and solicitation costs of its independent expenditure-
16 only political committee, the National Right to Life Victory Fund (the “Victory Fund”).
17 NRLC asks whether such payments would constitute reportable contributions to the
18 Victory Fund.

19 The Commission concludes that NRLC’s payment of the Victory Fund’s
20 establishment, administration, and solicitation costs constitutes a contribution from
21 NRLC to the Victory Fund and must be reported as such.

22 ***Background***

23 The facts presented in this advisory opinion are based on your letter received on
24 February 23, 2012, your email received on April 23, 2012, and phone conversations with
25 Commission attorneys.

26 NRLC is an incorporated non-profit social welfare organization exempt from
27 taxation under section 501(c)(4) of the Internal Revenue Code. It has a separate
28 segregated fund (“SSF”), National Right to Life PAC (“NRLPAC”), and recently

1 established an independent expenditure-only political committee, the Victory Fund. The
2 Victory Fund is organized as a tax-exempt organization under section 527 of the Internal
3 Revenue Code. Both NRLPAC and the Victory Fund are registered and file with the
4 Commission reports as required. The Victory Fund and NRLPAC share a treasurer.

5 The Victory Fund will solicit contributions in unlimited amounts from individuals
6 in the general public, other political committees,¹ corporations, and labor organizations
7 for the purpose of financing independent expenditures. The Victory Fund will not make
8 any contributions or transfers of funds to any other political committee or other entity,
9 including NRLC and NRLPAC. Nor will the Victory Fund coordinate any expenditures
10 or make any coordinated communications with any Federal candidate or officeholder,
11 authorized committee, political party committee, or agent of such persons.

12 The Victory Fund will receive unlimited, reportable contributions from NRLC. In
13 addition, NRLC will finance the Victory Fund's establishment, administration, and
14 solicitation costs.

15 ***Question Presented***

16 *Must payments by NRLC for the Victory Fund's establishment, administration, and*
17 *solicitation costs be treated as contributions from NRLC to the Victory Fund?*

¹ The Victory Fund will accept from NRLPAC contributions of up to \$5,000 annually.

1 ***Legal Analysis and Conclusions***

2 Yes, payments by NRLC for the Victory Fund’s establishment, administration, or
3 solicitation costs are contributions from NRLC to the Victory Fund and must be reported
4 as such.

5 Under the Act and Commission regulations, a corporation’s payments for the
6 costs of establishing, administering, or soliciting contributions to its SSF are exempt from
7 the definition of contribution or expenditure and are therefore not usually subject to
8 reporting requirements.² See 2 U.S.C. 431(8)(B)(vi), (9)(B)(v), 441b(b)(2)(C); 11 CFR
9 100.81, .141, 114.5(b); see also Advisory Opinion 1979-27 (Committee for Thorough
10 Agricultural Political Education). A corporation’s payments for the costs of establishing,
11 administering, or soliciting contributions to an independent expenditure-only political
12 committee are not exempt from the definition of contribution or expenditure, because
13 such an independent expenditure-only political committee is not an SSF. See Advisory
14 Opinion 2010-09 (Club for Growth). Such payments therefore must be reported as
15 contributions from the corporation to the independent expenditure-only political
16 committee. *Id.*

17 The Victory Fund is not an SSF of NRLC but is instead an independent
18 expenditure-only political committee established by NRLC. As such, NRLC’s payments
19 of the Victory Fund’s establishment, administration, and solicitation costs are not exempt
20 from the definition of “contribution” or “expenditure” and any such payments by NRLC

² Payments for establishment, administration, or solicitation costs that are initially made by the SSF and subsequently reimbursed by the SSF’s connected organization are, however, subject to the reporting requirements of the Act and Commission regulations. See 2 U.S.C. 434(b)(2)(J), (4)(A); 11 CFR 102.6(c)(2)(ii), 104.3(a)(2)(viii), (b)(1)(i), 114.5(b)(3); Advisory Opinion 1983-22 (Northwest Central Pipeline Corporation PAC).

