

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFT ADVISORY OPINION 2011-26 is now available for comment. It was requested by Martin H. Freeman, Esq., on behalf of himself, and is scheduled to be considered by the Commission at its public meeting on January 19, 2012.

If you wish to comment on DRAFT ADVISORY OPINION 2011-26, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on January 18, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.**
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2011-26, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

January 13, 2012 For Meeting of 1/19/12

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Anthony Herman *AH*
General Counsel

Kevin Deeley *KD*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joanna Waldstreicher *JSW*
Attorney *by RMK*

Subject: Draft AO 2011-26 (Freeman)

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 January 19, 2012.

Attachment

1 ADVISORY OPINION 2011-26

2
3 Martin H. Freeman
4 Freeman's Meadows
5 9064 Falls Creek Main
6 Durango, CO 81301

DRAFT

7
8 Dear Mr. Freeman:

9 We are responding to your advisory opinion request concerning the application of
10 the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission
11 regulations to your proposed activities of raising and spending funds for the purposes of
12 identifying citizens who do not possess photographic identification in a number of States
13 that require a citizen to present a photographic identification to register to vote or to vote,
14 and to assist those citizens in obtaining photographic identification. The Commission
15 concludes that your proposed actions are not covered by the Act or Commission
16 regulations, so long as no effort is made to determine the individuals' candidate or party
17 preferences before assisting them.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 November 29, 2011.

21 A number of States require an individual to present photo identification when
22 registering to vote or voting. Not all individuals who would otherwise be eligible to
23 register to vote or vote possess photographic identifications. You intend to identify these
24 individuals and assist them in obtaining photographic identifications. You intend to seek
25 donations that you will use solely to fund your efforts to assist individuals in obtaining
26 photographic identifications. You will neither solicit nor accept funds from any political
27 candidate, political party, or political committee, or agent thereof. You will not

1 undertake your efforts on behalf of any political candidate, political party, or political
2 committee. You will not assist individuals whom you have helped to obtain photographic
3 identifications in registering to vote or in voting.

4 ***Question Presented***

5 *Is your proposal to raise and spend funds to assist individuals in obtaining*
6 *photographic identification, which may be used to register to vote or vote, covered by the*
7 *Act and Commission regulations?*

8 ***Legal Analysis and Conclusions***

9 No, the amounts you spend, either from your own funds or from amounts donated
10 by others, to assist individuals in obtaining photographic identifications, which they may
11 use to register to vote or to vote, do not constitute expenditures or contributions so long
12 as no efforts are made to determine party or candidate preferences of the individuals.
13 Therefore these funds are not subject to the requirements of the Act and Commission
14 regulations.¹

15 Under the Act and Commission regulations, persons who make expenditures are
16 subject to a number of provisions of the Act and Commission regulations. The Act
17 defines an “expenditure” as “any purchase, payment, distribution, loan, advance, deposit,
18 or gift of money or anything of value, made by any person for the purpose of influencing
19 any election for Federal office” 2 U.S.C. 431(9)(A); *see also* 11 CFR 100.111.

20 Commission regulations expressly exempt “any cost incurred for activity designed to

¹ Your advisory opinion request also asks whether chapters 95 and 96 of the Internal Revenue Code (26 U.S.C. 9001-9013 and 9031-9042) govern your proposed activities. As these statutes pertain to public funding of Presidential candidate campaigns and Presidential nominating conventions, and your proposed activities do not involve any candidates for President or any nominating conventions, nor are you a Presidential candidate, this advisory opinion does not analyze the application of these statutes.

1 encourage individuals to register to vote or to vote” from the definition of “expenditure,”
2 so long as “no effort is or has been made to determine the party or candidate preference
3 of individuals before encouraging them to register to vote or to vote” 11 CFR
4 100.133.

5 Your proposed activities appear to be intended to encourage or assist individuals
6 to register to vote or to vote, by making it possible for them to satisfy State laws requiring
7 photographic identification in order to register to vote or to vote. Under the exemption
8 cited above, the amounts you spend for these purposes will not constitute expenditures so
9 long as no effort is made to determine the party or candidate preference of the individuals
10 before encouraging or assisting them to register to vote or to vote. Further, because you
11 are not a candidate for Federal office and you are not volunteering for or acting on behalf
12 of any candidate, political party, or political committee, your activities will not implicate
13 provisions of the Act or Commission regulations regarding candidates, political parties,
14 political committees, corporations, or labor organizations.

15 Any funds you raise to engage in these activities will not constitute contributions
16 under the Act and Commission regulations. The Act defines “contribution” as “any gift,
17 subscription, loan, advance, or deposit of money or anything of value made by any
18 person for the purpose of influencing any election for Federal office.” 2 U.S.C.
19 431(8)(A); *see also* 11 CFR 100.52(a).

20 You propose to raise money to fund your efforts to assist individuals in obtaining
21 photographic identifications, and the funds you receive could constitute contributions
22 under the Act if your proposed activities are for the purpose of influencing a Federal

1 election. However, your proposed activities will not be performed on behalf of any
2 candidate for Federal office or any political party, and you will not accept any funds from
3 or solicited by a candidate or political party. Therefore, provided that you do not make
4 any effort to determine candidate or party preference in connection with your efforts,
5 your proposed activities will not be for the purpose of influencing any election for
6 Federal office, and the funds you receive will not constitute contributions.

7 Accordingly, the Commission concludes that your proposed activities will not be
8 subject to the requirements or limitations of the Act and Commission regulations,
9 provided no effort is made to determine party or candidate preferences of the individuals
10 before assisting them in obtaining photographic identifications.

11 This response constitutes an advisory opinion concerning the application of the
12 Act and Commission regulations to the specific transaction or activity set forth in your
13 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
14 of the facts or assumptions presented, and such facts or assumptions are material to a
15 conclusion presented in this advisory opinion, then the requestor may not rely on that
16 conclusion as support for its proposed activity. Any person involved in any specific
17 transaction or activity which is indistinguishable in all its material aspects from the
18 transaction or activity with respect to which this advisory opinion is rendered may rely on
19 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
20 conclusions in this advisory opinion may be affected by subsequent developments in the

1 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

2 On behalf of the Commission,

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Caroline C. Hunter
Chair
Federal Election Commission