

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

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

DRAFT ADVISORY OPINION 2012-18 is now available for comment. It was requested by James Bopp, Jr. Esq., on behalf of the National Right to Life Committee, Inc., and is scheduled to be considered by the Commission at its public meeting on June 7, 2012. The meeting will begin at 10:00 a.m. and will be held in the 9th Floor Hearing Room at the Federal Election Commission, 999 E Street, NW, Washington, DC. Individuals who plan to attend the public meeting and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary, at (202) 694-1040, at least 72 hours prior to the meeting date.

If you wish to comment on DRAFT ADVISORY OPINION 2012-18, 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 June 6, 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 2012-18, 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

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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May 31, 2012

MEMORANDUM

AGENDA ITEM

TO: The Commission

FROM: Anthony Herman *pch AH*
General Counsel

Kevin Deeley *26*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

David C. Adkins *DCA by RMK*
Attorney

Neven F. Stipanovic *NFS*
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).

1 must be reported as contributions to the Victory Fund. Alternatively, the Victory Fund
2 may pay its own establishment, administration, and solicitation costs. *Id.*

3 **This response constitutes an advisory opinion concerning the application of the**
4 **Act and Commission regulations to the specific transaction or activity set forth in your**
5 **request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any**
6 **of the facts or assumptions presented, and such facts or assumptions are material to a**
7 **conclusion presented in this advisory opinion, then the requestor may not rely on that**
8 **conclusion as support for its proposed activity. Any person involved in any specific**
9 **transaction or activity which is indistinguishable in all its material aspects from the**
10 **transaction or activity with respect to which this advisory opinion is rendered may rely on**
11 **this advisory opinion. See 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or**
12 **conclusions in this advisory opinion may be affected by subsequent developments in the**
13 **law including, but not limited to, statutes, regulations, advisory opinions, and case law.**
14 **The cited advisory opinions are available on the Commission's website, www.fec.gov, or**
15 **directly from the Commission's Advisory Opinion searchable database at**
16 **<http://www.fec.gov/searchao>.**

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On behalf of the Commission,

Caroline Hunter
Chair
Federal Election Commission