



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SECTION
COMMISSION
SECRETARIAT

2011 JUL 21 A 7 12

AGENDA ITEM

For Meeting of 7-21-11

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther,
Commissioner *Stu*

DATE: July 21, 2011

SUBJECT: Policy Statement Regarding a Program for Requesting Consideration of
Legal Questions by the Commission

SUBMITTED LATE

I request that the attached draft Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission be placed on the agenda for today's Open Session.

Attachment

FEDERAL ELECTION COMMISSION

[NOTICE 2011-XX]

Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission

AGENCY: Federal Election Commission

ACTION: Agency Policy Statement

SUMMARY: The Federal Election Commission (“Commission”) is adopting a program providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit process.

DATES: Effective [upon publication in the Federal Register].

FOR FURTHER INFORMATION

CONTACT: _____, Assistant General Counsel, or _____, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

The Commission is adopting a program providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit process. Specifically, when the Office of Compliance (“OC”) (which includes the Reports Analysis Division and the Audit Division) requests that a person or entity take corrective action during the report review or audit process, if the person or entity disagrees with the request based upon a material dispute on a question of law, the person or entity may seek Commission consideration of the issue pursuant to this procedure.

I. Procedures

Within 15 business days of a determination by the Reports Analysis Division or Audit Division that a person or entity remains obligated to take corrective action to resolve an issue that has arisen during the report review or audit process, the person or entity

may seek Commission consideration if a material dispute on a question of law exists with respect to the recommended corrective action.¹ A “determination” for purposes of triggering the 15 business days is either: (1) notification to the person or entity of legal guidance prepared by the Office of General Counsel (“OGC”) at the request of the Reports Analysis Division recommending the corrective action; or (2) the end of the Committee’s Audit Exit Conference response period.

Any request for consideration by a Committee during the report review process or the audit process shall be limited to questions of law on material issues, when: (1) the legal issue is novel, complex, or pertains to an unsettled question of law, (2) there has been intervening legislation, rulemaking, or litigation since the Commission last considered the issue, or (3) the request to take corrective action is contrary to or otherwise inconsistent with prior Commission matters dealing with the same issue. The request must specify the question of law at issue and why it is subject to Commission consideration. It should discuss, when appropriate, prior Commission matters raising the same issue, relevant court decisions, and any other analysis of the issue that may assist the Commission in its decision-making. The Commission will not consider factual disputes under this procedure, and any requests for consideration other than on questions of law on material issues will not be granted.

All requests, including any extension requests, should be directed to the Commission Secretary, Federal Election Commission, 999 E Street, NW, Washington, DC 20463, and must be received within 15 business days of the determination of corrective action. Upon receipt of a request, the Commission Secretary shall forward a copy of any Request to each Commissioner, the General Counsel, and the Staff Director.

Any request for an extension of time to file will be considered on a case-by-case basis and will only be granted if good cause is shown, and the Commission approves the extension request by four affirmative votes within five business days of receipt of the extension request. Within five business days of notification to the Commissioners of a Request for Consideration of a Legal Question, if two or more Commissioners agree that the Commission should consider the Request, OGC will prepare a recommendation and, within 15 business days thereafter, circulate the recommendation in accordance with all applicable Commission directives.

After the recommendation is circulated for a Commission vote, in the event of an objection, the matter shall be automatically placed on the next meeting agenda consistent with the Sunshine Act, 5 U.S.C. § 552b(g), and applicable Commission regulations, 11 C.F.R. part 2. However, if within 60 business days of the filing of a request for consideration, the Commission has not resolved the issue or provided guidance on how to proceed with the matter by the affirmative vote of four or more Commissioners, the OC may proceed with the matter. After the 60 business days has elapsed, any requestor will be provided a copy of OGC’s recommendation memorandum and an accompanying vote certification, or if no such certification

¹ Many disputes involving corrective action requests hinge on questions of fact rather than questions of law, and thus are not appropriate for this procedure.

exists, a cover page stating the disposition of the memoranda. Confidential information will be redacted as necessary.

After the request review process has concluded, or a Final Audit Report has been approved, a copy of the request for consideration, as well as the recommendation memorandum and accompanying vote certification or disposition memorandum, will be placed with the Committee's filings or audit documents on the Commission's website within 30 days. These materials will also be placed on a Commission webpage dedicated to legal questions considered by the Commission under this program.

This procedure is not intended to circumvent or supplant the Advisory Opinion process provided under 2 U.S.C. § 437f and 11 C.F.R. part 112. Accordingly, any legal issues that qualify for consideration under the Advisory Opinion process are not appropriate for consideration under this new procedure. Additionally, this policy statement does not supersede the procedures regarding eligibility and entitlement to public funds set forth in Commission Directive 24 and 11 C.F.R. 9005.1, 9033.4, 9033.6 or 9033.10.

II. Annual Review

No later than July 1 of each year, the Office of Compliance and the Office of General Counsel shall jointly prepare and distribute to the Commission a written report containing a summary of the requests made under the program over the previous year and a summary of the Commission's consideration of those requests and any action taken thereon. The annual report shall also include the Chief Compliance Officer's and the General Counsel's assessment of whether, and to what extent, the program has promoted efficiency and fairness in both the Commission's report review process and in the audit process, as well as their recommendations, if any, for modifications to the program.

The Commission may terminate or modify this program through additional policy statements at any time by an affirmative vote of four of its members.

Cynthia L. Bauerly
Chair
Federal Election Commission

DATED _____