



THE FEDERAL ELECTION COMMISSION

RECORD

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ALLOCATION OF ADMINISTRATIVE EXPENSES

The Commission recently offered guidance to political committees obligated to allocate their administrative costs between activity to support Federal candidates and activity related to non-Federal candidates.

BACKGROUND

Section 102.6 of the Commission's Regulations provides that a political committee supporting both Federal and non-Federal candidates may fund its activities in one of two ways:

1. **Establish two committees.** The committee may establish one committee for non-Federal political activity which would be subject to applicable State or local election laws, and a separate Federal campaign committee with an account in a national or State bank. Only the Federal committee would have to register as a political committee under the Federal Election Campaign Act (FECA).
2. **Establish a single committee.** Alternatively, the political committee may establish a single committee with a single account which will make contributions to both Federal and non-Federal candidates. All contributions received by this committee would be subject to the limitations of the FECA, and all contributors would have to be informed that their contributions count against the FECA limitations.

Committees which establish Federal campaign committees pursuant to Alternative One above must allocate their administrative expenses between their Federal and non-Federal committees (11 CFR §106.1(e)). The Regulation requires that the allocation be "in proportion to the amount of funds expended on Federal or non-Federal elections, or on another reasonable basis."

NEW GUIDELINE

The Commission recently approved a staff guideline to help clarify what may be an example of "another reasonable basis." The staff guideline states:

The allocable Federal portion of the administrative expenses is determined by the ratio of (1) the total amount which the Federal campaign committee received into its Federal account to (2) the total of all receipts [of both the Federal and non-Federal committees].

The ratio should be based on cumulative figures, from the beginning of the year to the closing date of the report. Receipts such as refunds or loan repayments **would not be included** in the figure for total receipts.

Take, for example, a State-wide political party organization, whose total receipts for both its Federal and non-Federal committees is \$10,000; the amount received by the Federal committee is \$1,500. In this case, the administrative expenses which must be paid by the Federal committee would be 15 percent of the total administrative expenses of the State party organization.

Note: Certain categories of expenses, such as voter registration and get-out-the-vote drives, must be funded entirely from the Federal campaign committee and may not be regarded as part of the allocable administrative expenses payable under the formula outlined above **if the non-Federal committee accepts funds from sources which are prohibited by the Act from making contributions in connection with a Federal election.** Prohibited sources include national banks, corporations, labor organizations, government contractors and foreign nationals.

Further information and detailed reporting instructions will be sent to committees who indicate that they have established separate Federal/non-Federal committees under §102.6 of the Regulations. For further information, contact the Commission by telephone at 202/523-4068 or toll-free 800/424-9530.



of speech and association and their rights to due process and equal protection of the law, the Committee asks for a permanent injunction against enforcement of those provisions of the Act.

**BREAD POLITICAL ACTION COMMITTEE,
et al. v. FEC, et al. Part III**

On September 9, 1977, the U.S. District Court for the District of Columbia denied the Federal Election Commission's motion to dismiss the suit filed by the Bread Political Action Committee (Bread PAC) to challenge the provisions of the Act governing trade associations. On September 25, 1977, therefore, the FEC filed its answer to the original complaint. For a synopsis of the complaint and the FEC's motion to dismiss, see the Record, June 1977, p. 4 and July 1977, p. 4, respectively.

On October 6, 1977, the Court denied Bread PAC's motion for a preliminary injunction against enforcement of provisions of the Act prohibiting certain solicitations by Bread PAC at the trade association's imminent convention.

**NATIONAL RIGHT TO WORK COMMITTEE,
et al. v. FEC, et al. Part I**

On October 26, 1977, the National Right to Work Committee (the Committee) and its political action committee (Employees Rights Campaign Committee) et al. filed in U.S. District Court for the District of Columbia a suit for declaratory and injunctive relief against the Federal Election Commission. The Committee argues that the Commission "... refuses to provide Plaintiffs, through an advisory opinion or otherwise, with the definition of the term 'member'..." and therefore, in the Plaintiffs' view, the Committee does not know whom it may lawfully solicit.

The Committee alleges that, in addition to this refusal, the Commission has:

1. Not rendered an advisory opinion requested by the Committee on the subject within a "reasonable time," as required by the Act;
2. "... Unreasonably found a violation of the Act where no standards have been established for compliance with the Act..." and refused to enter into a conciliation agreement to correct the violation;
3. Inhibited political communications and solicitations by the Plaintiffs to their members; and
4. Applied a "unique and secret standard to the Plaintiffs alone regarding membership limitations."

Contending that the Commission's application of the Act has abridged the Plaintiffs' constitutional rights of freedom



ADVISORY OPINIONS: SUMMARIES

Designated as AO's, Advisory Opinions discuss the application of the Act to specific factual situations. Any qualified person requesting an advisory opinion who in good faith acts in accordance with the opinion will not be penalized under the Act. The opinion may also be relied on by any other person involved in a specific transaction which is indistinguishable in all material aspects from the activity discussed in the advisory opinion.

AO 1977-41: Retirement of Prior Campaign Debt

Samuel H. Young, Congressional candidate in 1976, may use excess campaign funds received before the date of the 1976 general election to retire all or a portion of a campaign debt from a 1969 Congressional campaign. The Act permits the use of excess campaign funds for supporting activities of a Federal officeholder, charitable purposes, and "any other lawful purpose." 2 U.S.C. §439a. The use of excess 1976 campaign funds by Mr. Young to repay a loan incurred during the course of a 1969 campaign would be a "lawful purpose" provided no State or Federal law outside the FEC's jurisdiction prohibits such use. Payments for this purpose must be disclosed by the Young for Congress Committee -1976. The application of IRS Regulations to such payments falls outside the jurisdiction of the Federal Election Commission. (Length: 2 pages)



FEC TESTIFIES BEFORE HOUSE ADMINISTRATION

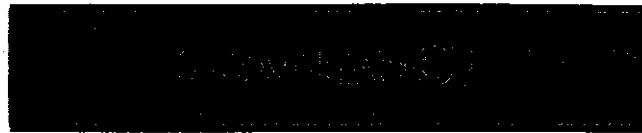
On October 13, 1977, Chairman Thomas E. Harris and Commissioner Vernon W. Thomson testified before the House Administration Committee on revisions to the Federal Election Campaign Act of 1971, as amended. The revisions included proposals drafted by the Committee staff and those contained in the bill (S. 926) passed by the Senate on August 3, 1977. (For a summary of S. 926, see the October Record, p. 2.)

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Endorsing many of the proposed changes, the Commission's testimony focused on four major areas in the House proposals:

1. Disclosure
2. Political party activity
3. Enforcement
4. Discretionary authority of the FEC.

In addition, the Commission offered several suggestions for needed changes which were not addressed by the staff proposals or S. 926, including legislative recommendations previously submitted by the FEC (see the *Record*, March 1977, p. 1) and solutions to other problem areas that have come to the Commission's attention. Detailed Commission comments on the specific House proposals were contained in an appendix to its written testimony.



FEC FILES SUIT AGAINST THREE CANDIDATES

On October 27, 1977, the Federal Election Commission announced it had filed civil suits in District Courts against two candidates for the U.S. Senate and one candidate for the U.S. House of Representatives. The suits ask the Courts to compel the candidates and/or their principal campaign committees to comply with the reporting requirements of the Federal Election Campaign Act.

The FEC asked that Joseph McInerney, Independent Senate candidate from Delaware, and his principal campaign committee be ordered to file three reports for the 1976 election (pre- and post-general election and year-end). In the case of Lenore Etchison, Democratic Senate write-in candidate from Nebraska, the Commission asked that the candidate's principal campaign committee be required to file two reports (year-end and April 10 quarterly). Finally, the FEC cited the principal campaign committee of James Sheehan, Republican candidate for the House from New Jersey's 7th District, for failure to file a "complete" pre-general election report for 1976. His committee's report did not contain the following required information:

- The full name, mailing address and principal place of business of each person who contributed in the aggregate more than \$100;
- In the case of each person making several contributions totaling more than \$100, the total sum of the contributions;
- The name and full address of each contributing political committee; and
- The amount and nature of debts owed by or to the campaign committee.

The Commission, prior to filing suit, had sent at least two notices to each candidate or committee concerning reporting obligations and at least three notices to the committee concerning its failure to file a "complete" report. The FEC asked the Courts to assess a penalty of not more than \$5,000 against the candidates and committees for "failing and refusing to comply with the requirements of the Act."

FEC v. COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY -- McCARTHY '76 Part II

On October 5, 1977, the Committee for a Constitutional Presidency -- McCarthy '76 (CCP) filed a motion in U.S. District Court for the District of Columbia asking that a suit filed by the Federal Election Commission be dismissed. The suit charges CCP with failure to amend its reports. For a complete summary of the original complaint, see the *Record*, November 1977, p. 2. CCP's motion to dismiss argues that:

1. The Court lacks personal jurisdiction over the case since the defendant (CCP) was not properly served with the summons and complaint by the plaintiff.
2. The complaint fails to allege a finding of "probable cause" which is a statutory prerequisite for bringing action (2 U.S.C. §437g(a)(5)(B)).
3. The FEC's statement of claim does not state a claim upon which relief can be granted.



The Public Communications Office of the Federal Election Commission receives numerous inquiries from the public on the toll-free line (800/424-9530). The following explanation of the reporting requirements for earmarked contributions is presented in response to one of the most frequently asked questions.

EARMARKED CONTRIBUTIONS: REPORTING

DEFINITION

"Earmarking" is defined in the FEC's Regulations (11 CFR §110.6) as:

... a designation, instruction or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

An earmarked contribution is one which the contributor directs to a candidate through an intermediary or conduit. The contribution is considered made by the original contributor for purposes of the contribution limitations. The contribution limitations of the conduit or intermediary are not affected unless the conduit exercises direction or control over the choice of the intended recipient of the contribution. In that case, the contribution is considered to have been made by both the original contributor and the intermediary or conduit.

The earmarking regulation does not apply to "occasional, isolated or incidental" delivery of checks or other written instruments made payable to a particular candidate. "Occasional, isolated or incidental" is defined as not more than \$1,000 delivered to any one candidate during a calendar year.

continued

REPORTS BY INTERMEDIARY:

The intermediary or conduit of an earmarked contribution must disclose the contribution on two separate reports: the next regularly scheduled report and a special report to the recipient.

1. Next Regular Report: The conduit's next regularly scheduled report (filed with the Commission, the Clerk of the House or the Secretary of the Senate, as appropriate) must indicate whether the earmarked contribution was (a) passed through the conduit's account, in which case each contribution regardless of size would be disclosed on the regular reporting schedules of itemized receipts and expenditures; or (b) passed on in the form of the contributor's check, in which case all earmarked contributions would be disclosed on a separate reporting schedule (Schedule A).

If the intermediary or conduit is not a reporting entity (e.g., an individual) the above reports must be filed by letter to the Federal Election Commission.

2. Report to Recipient: A report to the intended recipient must also be made at the time the conduit or intermediary passes the contribution on to the recipient.

Both the above reports by the intermediary or conduit must contain detailed information about the contribution including the identification of the contributor (and if the contribution is from an individual and exceeds \$100, the contributor's occupation and principal place of business), the amount of the contribution, the date the contribution was received by the conduit, the intended recipient as designated by the contributor, the date the contribution was passed on to the intended recipient, and whether the contribution was passed on in cash, by the contributor's check, or by the conduit's check.

REPORT BY RECIPIENT

In addition to reports by the intermediary or conduit, the recipient of an earmarked contribution must fully disclose the contribution (regardless of amount) identifying both the original contributor and each conduit through which the contribution passed.

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OFFICIAL BUSINESS

EQUAL EMPLOYMENT OPPORTUNITY PLAN

The Commission recently adopted an Equal Employment Opportunity (EEO) Plan to implement its policy of equal employment opportunity for all persons working at the FEC. (For a summary of the EEO guidelines previously adopted by the FEC, see the Record, May 1977, p. 6.) The Plan briefly outlines the EEO policy and organization at the FEC, including allocation, functions and training of EEO staff.

The Plan assesses action already taken by the Commission to implement EEO policy and outlines future action.

A section on "Specific Actions for the Coming Year" identifies problem areas and outlines actions to be taken to correct them. An analysis of the composition (as of May 1977) of the Commission's staff in terms of minority group and sex, provides a data base on which to make future evaluations and policy determinations.

FEC documents of general applicability are published in the Federal Register. The following list identifies all FEC documents appearing in the Federal Register between October 19, 1977 and November 15, 1977:

Notice	Title	Federal Register Publication Date	Citation
1977-52	Publication of Advisory Opinion Requests Discontinued	11/10/77	42 FR 58567
1977-53	Opinion and Regula- tion Index: Avail- ability	11/15/77	42 FR 59110

POSTAGE AND FEES PAID

