



# THE FEDERAL ELECTION COMMISSION

# RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 3, Number 11

November 1977

## FEC HOLDS HEARINGS

On September 12, 1977, the Commission held a full day of hearings on the issue of candidate debates. The hearings were conducted by Chairman Thomas Harris. (For a summary of the questions discussed, see the **Record**, August 1977, page 2.) The Commissioners heard testimony from nine witnesses, including representatives from the League of Women Voters and the National Citizens Committee for Broadcasting, an attorney for a 1976 independent candidate for President, two 1976 Federal candidates and several other individuals with an interest in campaign financing. In addition to hearing testimony, the Commission received 15 written comments. The Commission will review these comments and testimony and consider issuing regulations on the subject of candidate debates. (All written testimony and comments are available to the public by contacting the Office of Public Records at the Commission.)

## REQUEST FOR PUBLIC COMMENT -- INDEPENDENT EXPENDITURES

On October 18, 1977, the FEC published a notice in the **Federal Register** requesting public comment on the Commission's Regulations governing independent expenditures (§109). The notice asks for comment on all aspects of the subject of independent expenditures, including responses to the following questions:

- Do the present regulations offer sufficient guidance to a person who wishes to know whether a contemplated expenditure is independent?
- With reference to the statutory definition of "independent expenditure" as an expenditure "... expressly advocating the election or defeat of a clearly identified candidate . . .," what types of expenditures constitute express advocacy of the election or defeat of a clearly identified candidate?

- Should factual situations which give rise to the presumption that an expenditure is not independent include:
  - (a) The situation where there has been substantial or significant contact between the expending person and the candidate, committee or agents; or
  - (b) The situation where an individual who is, or has been, actively participating in the financing or management of a candidate's campaign either makes an independent expenditure or is in a decision-making position within a committee which makes an independent expenditure on behalf of that candidate?
- Are there constitutional or other considerations which require or allow a distinction between independent expenditures made by committees and those made by individuals?
- Should the definition of "agent" (§109.1(b)(5)) be expanded (or narrowed)? If it should be expanded, should it include any person who is an agent under the common law of agency, including an employee or an independent contractor?

Written comments should be submitted no later than November 30, 1977, to the Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Questions should be addressed to Walter Moore at 202/523-4102. Copies of comments received will be made available to the public in the Office of Public Records.

## 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.

*continued*

**AO 1977-35: Limitation on Honoraria**

Even though Senator Robert Dole returns all or a portion of some honoraria previously accepted, the honoraria are still considered accepted for purposes of the limitations contained in the Act. Once an honorarium is "accepted," as defined in §110.12(b)(5) of the Commission's regulations, the honorarium is charged to the limitations for that calendar year. An honorarium accepted, but then returned, can be distinguished from the return of an honorarium received, but not actually "accepted." The latter situation is not charged against the annual honorarium limit. The applicability of IRS regulations and Senate Rules to Senator Dole's situation falls outside the Commission's jurisdiction. (Length: 2 pages)

**AO 1977-38: Campaign Debt from State Election**

Charles Ravenel, candidate for the U.S. Senate in 1978, may simultaneously maintain separate organizations to 1) support his candidacy for Federal office and 2) retire a campaign debt from a prior State election campaign. The effort to retire the prior State election debt (which will involve separate solicitation materials, and separate bank accounts and will focus solely on retiring the State election debt) would not be subject to the Federal Election Campaign Act since it does not involve activity which influences the nomination or election of persons to Federal office. (Length: 2 pages)

The Commission asks in part that CCP be ordered to amend its reports to show the payments as contributions from Mr. McCarthy to his own campaign, and asks the Court to assess a penalty of not more than \$5,000 on CCP for "failing and refusing to comply with the Act."

On September 28, 1977, the FEC filed suit in U.S. District Court for the District of Columbia against the National Education Association (NEA) and 18 of its State affiliates. The suit was filed after the Commission failed to achieve a conciliation agreement with NEA in a compliance matter before it.

The suit charges that NEA's use of a reverse check-off procedure for the funding of its political action committee (PAC) violates §441b(b)(3)(A) of the Federal Election Campaign Act. The reverse check-off procedure requires members to authorize payroll deductions to NEA's PAC; the deductions may be retrieved, however, by means of a written request from the member.

The suit asks in part that NEA and its affiliates be enjoined from continuing the reverse check-off procedure and from continuing to make contributions and expenditures as defined in the Act. The suit also asks that a civil penalty be assessed of \$10,000 or 200 percent of all contributions and expenditures made with funds obtained through this procedure.



**FEC FILES SUITS**

On August 22, 1977, the Commission filed suit in the U.S. District Court for the District of Columbia against the Committee for a Constitutional Presidency - McCarthy '76 (CCP). The suit was filed after efforts to achieve conciliation failed.

The suit charges that CCP, the principal campaign committee for Eugene McCarthy, violated §434(b) of the Federal Election Campaign Act by failing to amend its reports to accurately reflect the sources of certain payments. The payments, made by colleges, universities and other groups, were for lectures given by Mr. McCarthy, independent candidate for the Presidency in 1976. Contributions to Federal candidates from these organizations are prohibited under §§441b and 441c of the Act.

**NATIONAL RIGHT TO WORK COMMITTEE v. VERNON W. THOMSON, et al.**

**PAUL E. CHAMBERLAIN, et al. v. VERNON W. THOMSON, et al. (Part IV)**

On September 21, 1977, the Federal Election Commission appealed the U.S. District Court's order in this consolidated case. The Court order required the FEC to take final action within 30 days on a complaint filed by the plaintiffs. (For a summary of the original complaint and the Court order, see, respectively, the June Record, p. 3 and the October Record, p. 3.)

*The RECORD is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Thomas E. Harris, Chairman; Joan D. Aikens, Vice-Chairman; William L. Springer; Neil Staebler; Vernon W. Thomson; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 523-4068 or toll free 800-424-9530.*

The Commission subsequently filed on September 30, 1977, a "stay of order" pending the appeal. The Commission's argument stated that a stay of 120 days would give it time to attempt to complete consent agreements with two of the respondents to the complaint. (Suit has been filed against the third respondent after failure to reach conciliation. See COMPLIANCE, p. 2.) The alternative, the Commission argues, would be the premature filing of a suit by the FEC or a private suit by the plaintiffs, precluding any possibility of conciliation.



FEC documents of general applicability are published regularly in the **Federal Register**. The following list identifies all FEC documents appearing in the **Federal Register** between September 16, 1977 and October 18, 1977.

Notice	Title	Federal Register Publication Date	Citation
1977-45	Privacy Act - System of Records	9/20/77	42 FR 47399
	Privacy Act - Regulations	9/20/77	42 FR 47506
1977-49	AORs 1977-45, 1977-46, 1977-47 and 1977-48	9/29/77	42 FR 51839
1977-50	AOR 1977-49	10/5/77	42 FR 54333
1977-51	Request for Comments -- Federal Candidates: Independent Expenditures	10/18/77	42 FR 55622



**PARTY SPENDING LIMITS**

Under the Federal Election Campaign Act, there are special limits on expenditures made by political parties on behalf of candidates in a general election (2 U.S.C. §441a (d)). In 1977, these limitations will be applicable only to special general elections conducted during calendar year 1977, or during calendar year 1978 before figures for 1978 are published. A new chart containing figures applicable to candidates in the 1978 general election will be published in the **Record** in 1978. These special party expenditures count neither as contributions to the candidate, nor as expenditures by the candidate or the candidate's authorized committees.

**National** political party committees have separate expenditure limits for Senate and House candidates in the general election.

**FEC PUBLIC APPEARANCES**

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations for its representatives to address public gatherings on the subject of campaign finance laws and the Commission itself. (For a summary of the Commission's policy on accepting invitations see the **Record**, June 1977, p. 6.) This regular column will list scheduled Commission appearances, detailing the name of the sponsoring organization, location of the event and the Commission's representative. Any inquiries concerning the event should be addressed to the sponsoring organization.

- 11/3-4 Southern Political Science Association  
University of Houston  
New Orleans, Louisiana  
Gary Greenhalgh, Chief, FEC Clearinghouse
- 11/4 National Association of Business Political  
Action Committees  
Washington, D.C.  
Jan Baran, Executive Assistant to Commissioner Joan Aikens
- 11/14 United States League of Saving Associations  
San Francisco, California  
Commissioner Joan Aikens
- 11/16 The Washington Journalism Center  
Washington, D.C.  
Commissioner Joan Aikens  
Dave Fiske, Press Officer
- 11/30 U.S. Chamber of Commerce Seminar Series  
Ft. Lauderdale, Florida  
Commissioner Joan Aikens

State political party committees are entitled to separate expenditure limits for Senate and House general elections in their State. Within a State, all expenditures made on behalf of one candidate by the State party committee or any subordinate party committees (e.g., county, district, local) are subject to one expenditure limit.

The formulas for the party spending limits in 1977 are calculated as follows:

Senatorial: State Voting Age Population (VAP) x \$0.02, plus the 1977 increase in the Consumer Price Index (CPI) of 15.4 percent or \$23,080.00, whichever is greater.

Congressional: 1) \$11,540.00, for candidates for Representative in States with more than one Representative, for Delegate (District of Columbia, Guam, Virgin Islands) and for Resident Commissioner (Puerto Rico); or

2) The Senate limit for the State, for candidates for Representative in States entitled to only one Representative. (See chart below.)

#### PARTY SPENDING LIMITS FOR SENATE CANDIDATES

The Commission has compiled the following chart for 1977 limits on party spending for Senate candidates in a general election. The figures are based on Voting Age Population estimates from the Department of Commerce and the Consumer Price Index increase certified by the Secretary of Labor on May 13, 1977.

In the chart, an asterisk (\*) indicates those States having only one Representative. In these instances, the Senate limit applies instead of the House limitation. This exception does not apply to candidates for Delegate (District of Columbia, Guam, Virgin Islands) or Resident Commissioner (Puerto Rico).

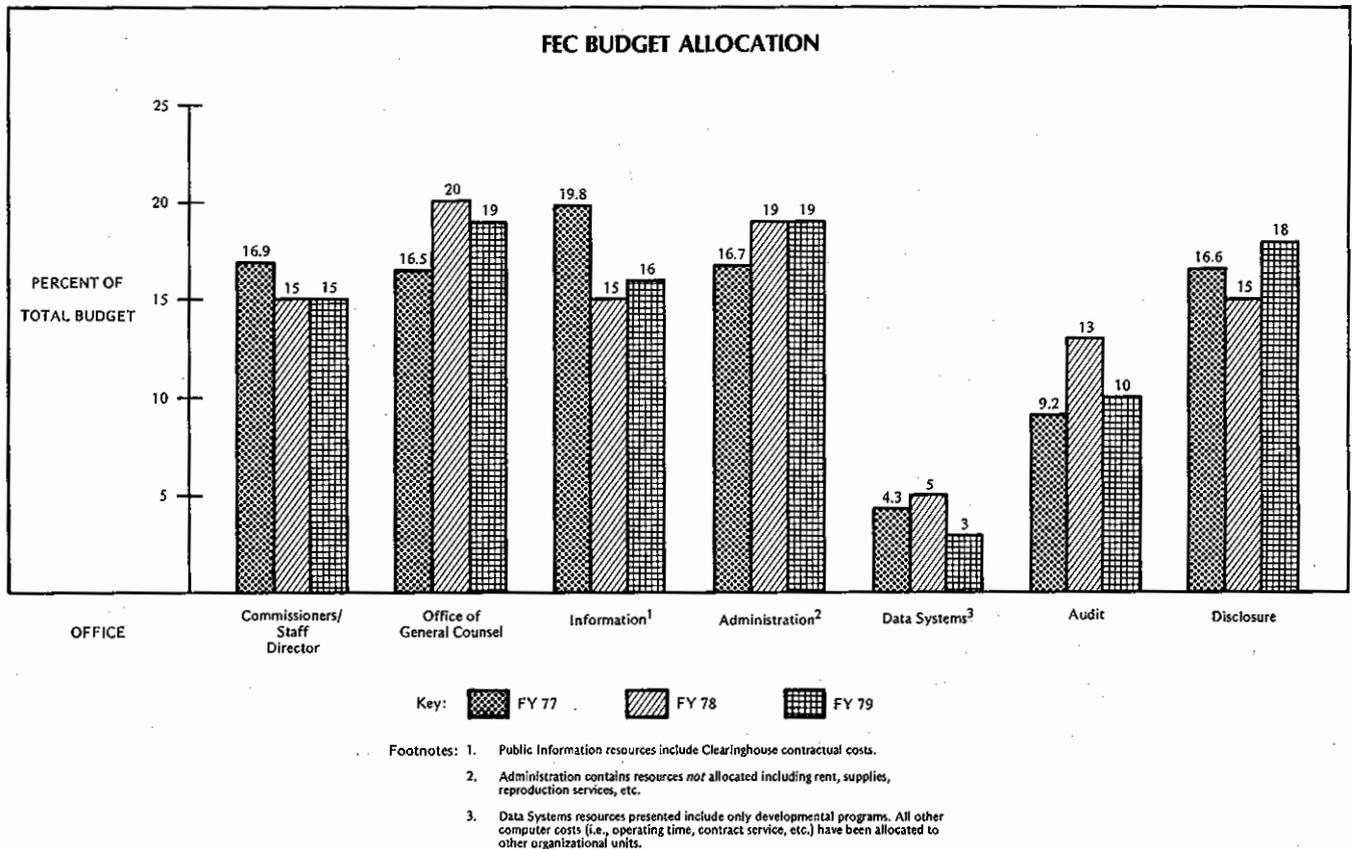
Georgia	3,363	77,618.04
Hawaii	603	23,080.00
Idaho	553	23,080.00
Illinois	7,787	179,723.96
Indiana	3,632	83,826.56
Iowa	1,997	46,090.76
Kansas	1,638	37,805.04
Kentucky	2,360	54,468.80
Louisiana	2,531	58,415.48
Maine	739	23,080.00
Maryland	2,884	66,562.72
Massachusetts	4,135	95,435.80
Michigan	6,192	142,911.36
Minnesota	2,723	62,846.84
Mississippi	1,540	35,543.20
Missouri	3,368	77,733.44
Montana	512	23,080.00
Nebraska	1,080	24,926.40
Nevada*	419	23,080.00
New Hampshire	569	23,080.00
New Jersey	5,175	119,439.00
New Mexico	760	23,080.00
New York	12,881	297,293.48
North Carolina	3,790	87,473.20
North Dakota*	469	23,080.00
Ohio	7,397	170,722.76
Oklahoma	1,949	44,982.92
Oregon	1,648	38,035.84
Pennsylvania	8,476	195,626.08
Rhode Island	661	23,080.00
South Carolina	1,917	44,244.36
South Dakota	469	23,080.00
Tennessee	2,941	67,878.28
Texas	8,472	195,533.76
Utah	773	23,080.00
Vermont*	328	23,080.00
Virginia	3,516	81,149.28
Washington	2,533	58,461.64
West Virginia	1,277	29,473.16
Wisconsin	3,176	73,302.08
Wyoming*	266	23,080.00
District of Columbia	510	11,540.00
Guam	52	11,540.00
Puerto Rico	1,794	11,540.00
Virgin Islands	60	11,540.00

STATE	VAP (in thousands)	1977 PARTY SPENDING LIMITATIONS
Alabama	2,501	\$57,723.08
Alaska*	240	23,080.00
Arizona	1,530	35,312.40
Arkansas	1,458	33,650.64
California	15,227	351,439.16
Colorado	1,786	41,220.88
Connecticut	2,215	51,122.20
Delaware*	403	23,080.00
Florida	6,131	141,503.48

## FEC BUDGET PROCESS

The Commission recently approved program-based budgets for Fiscal Years 1978 and 1979. Using zero-base budgeting techniques, the Commission's Budget Task Force based its recommendations on program alternatives sub-

mitted by division heads in the form of "program packages." The program packages were ranked according to the Commission's objectives and priorities (see the September Record, p. 3). The following graph compares the proposed allocation of resources among each of the divisions of the Commission during Fiscal Years 1977, 1978 and 1979. Fiscal Year 1977 figures are based on estimates from division heads for the final five months of the fiscal year (May through September). The Commission has also instituted a work reporting system to help monitor budget outlays and program results, and to provide more accurate data for future budget planning.



## INDEX ON CORPORATE-RELATED POLITICAL ACTION COMMITTEES

The Commission recently released an index on the political activity of 450 corporate political action committees (PACs) compiled from reports filed during the period January 1, 1975, through December 31, 1976. The Index consists of three parts: a summary of PAC activity, including the receipts and expenditures of 450 PACs; an alphabetical listing of corporations with two or more political action committees; and an alphabetical listing of all other PACs and their sponsoring organizations.

Highlights of the Index include:

- The nine largest PACs, those with receipts and/or expenditures in excess of \$100,000, spent 18.5 percent (\$1,074,208) of the total amount spent by all corporate PACs (\$5,803,415), even though they comprised only two percent of the total number of the PACs involved in 1976 election period.
- Most of the PACs (42 percent) reported receipts and expenditures of less than \$9,999.
- Of the 450 PACs registered with the Commission, 89 had registered by January 1, 1975; 208 registered between January 1, 1975, and May 10, 1976; and 153 registered after May 11, 1976, the effective date of the 1976 Amendments to the Federal Election Campaign Act.
- Over 94 percent of the PACs provided the names of their affiliated and/or connected organizations.

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## INDEX OF 1976 HOUSE CANDIDATES

The Commission also released an index compiled from the reports filed by 860 general election candidates for the U.S. House of Representatives in 1976 who received five percent or more of the vote. Included in the Index are 433 Democrats, 390 Republicans and 37 independent or minor party candidates. The Index summarizes receipts and expenditures of each candidate, providing a breakdown of candidates by party status, incumbent-challenger-open seat and winner-loser. The Index also includes an alphabetical listing of contributor data by State, district and candidate.

Highlights of the Index include:

- Donations from individuals of \$100 or less made up 36 percent of the total (\$65,701,942) received by all 860 candidates. Of these small contributions, \$11,530,030 was received by Democratic candidates, \$11,978,694 by Republican candidates and \$149,724 by independent or minor party candidates.
- Expenditures by Democratic candidates amounted to 53.2 percent of the total expenditures (\$60,741,111) made during the period covered: January 1, 1975, through December 31, 1976. Republican candidates made 46 percent of all expenditures and independent or minor party candidates made the remaining .8 percent.
- Winners (62.4 percent) and incumbents (50.2 percent) made more expenditures than losers and challengers respectively.

Further information on the indexes may be obtained from the Office of Public Records, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463 (Toll-free telephone: 800/424-9530).



The Public Communications Office of the Federal Election Commission receives numerous calls from the public on the toll-free line (800/424-9530). The following is an excerpt from the Federal Election Commission Regulations to help answer one of the most frequently asked questions, "how long must candidates and committees preserve their records?"

### RECORDS MUST BE RETAINED FOR THREE YEARS

"... (b) Each candidate, political committee or other person required to file any report or statement under [the FEC Regulations] shall --

(1) Maintain records with respect to matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness;

(2) Preserve a copy of each report or statement filed; and

(3) Keep those records and reports available for audit, inspection, or examination by the Commission or its authorized representatives for a period of not less than 3 years from the end of the year in which the report or statement was filed." (§104.12(b)) (Emphasis added)

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1325 K STREET, NW  
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