

FEDERAL ELECTION COMMISSION

[Notice 1975-23]

ADVISORY OPINION 1975-14

Contributions by Banks, Corporations, and Labor
Unions to Defray Constituent Service Expenses

This advisory opinion is rendered under 2 U.S.C. SS 437f in response to requests for advisory opinions submitted by Congressman M. Caldwell Butler, Congressman W. Hensen Moore, and William J. Holayter, which were published together as AOR 1975-14 in the July 17, 1975, Federal Register (40 FR 30258). Interested parties were given an opportunity to submit written comments relating to the requests.

The requests generally ask the Commission whether, under the Federal Election Campaign Act of 1971 as amended (the Act), corporate, labor and banking contributions may be accepted for office account related purposes. Specifically, the following requests were made:

(a) Congressman W. Henson Moore states that he intends to send under the frank a questionnaire to his constituents in order to learn their feelings on various issues. Congressman Moore asks whether the Commission will treat as a corporate contribution to his campaign the donation by a corporation of the use of its computer to analyze the results of the questionnaire;

(b) William J. Holayter, Director of the Machinists Non-Partisan Political League, asks whether money in the League's educational fund, which is composed of dues money from various local lodges, may be donated to incumbent United States Senators and Representatives for their office accounts; and

(c) Congressman M. Caldwell Butler states that he intends to hold a Farm Conference for the purpose of allowing farmers and other agricultural interests in his district the opportunity to present their views to him and officials of Federal and State agricultural agencies. Congressman Butler asks whether the Commission will consider the conference to be official business so that contributions by incorporated state banks and bank holding companies will be permitted in order to defray expenses.

It is clear that the Federal Election Commission has the duty to formulate general policy with respect to the Act (2 U.S.C. 437d(a)(9)), has the power to regulate amounts contributed to a holder of Federal office in order to defray expenses arising in connection with that office (2 U.S.C. 439a), has the power to formulate general policy regarding contributions and expenditures (18 U.S.C. 608), and has the power to formulate general policy regarding contributions or expenditures by national banks, corporations or labor organizations (18 U.S.C. 610). Pursuant to these powers and duties, it is the determination of the Commission that contributions to and expenditures by an office

account are to be treated as political contributions and expenditures, and are subject to the limitations and prohibitions on such transactions.

Further, Congress has recognized the political value and campaign-related nature of material mailed under the frank and has provided in 3210(f) of Title 39, United States Code, that

"the equivalent amount of postage* * *on franked mail mailed under the frank of the Vice President or a Member of Congress, and the cost of preparing or printing such frankable matter for such mailing under the frank, shall not be considered as a contribution to, or an expenditure by, the Vice President or a member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to any such official, imposed by any Federal, State, or local law or regulation, in connection with any campaign of such official for election to any Federal office."
(Emphasis added)

Accordingly, contributions to and expenditures by a separate segregated franking account are contributions and expenditures for the purposes of the Federal Election Campaign Act of 1971, as amended, and Title 18, United States Code, except for the limitations contained in 18 U.S.C. 608.

It is the opinion of the Commission that Congressional appropriations for staff salaries, newsletters, stationery, and travel are for legislative activities and, therefore are not subject to the limitations and prohibitions of the Act. It is the Commission's conclusion that these appropriations represent a Congressional determination of the amount necessary for the continued performance of the public duties of a Member of Congress, and that Congress has thus knowingly appropriated sufficient funds for the performance of these duties. Accordingly, additional money which is raised by a Member or his supporters shall be treated as a contribution made for purposes of influencing a Federal election and shall be governed by all appropriate limitations. Similarly, any expenditure from any office account shall be treated as an expenditure intended for purposes of influencing a Federal election and shall be controlled by all appropriate limitations. If Congress concludes that activities currently supported by an office account are in fact essential legislative functions, it remains the prerogative of Congress to appropriate additional funds necessary to fulfill these functions.

Support for the Commission's views may be found in United States v. Brewster, 408 U.S. 501, 92 S. Ct. 2531, 33 L.Ed 2d 507 (1972) in which the Supreme Court stated:

"It is well known, of course, that Members of Congress engage in many activities other than the purely legislative activities. . . These include a wide range of legitimate 'errands' performed for constituents, the making of appointments with

Government agencies, assistance in securing Government contracts, preparing so-called 'newsletters' to constituents, news releases, and speeches delivered outside the Congress. The range of these related activities has grown over the years. They are performed in part because they have come to be expected by constituents, and because 'they are a means of developing continuing support for future elections'. Although these are entirely legitimate activities, they are political in nature rather than legislative, in the sense that term has been used by the Court in prior cases."

As an office account will be conclusively presumed to be used solely for political purposes, contributions to, expenditures by, and the general operation of an office account should be reported and otherwise treated as provided in Notice 1975-18 of the Federal Election Commission "Office Accounts and Franking Accounts; Excess Campaign Contributions", as published in the Federal Register.

The Commission intends to apply its policy on office accounts as follows:

(a) It is the opinion of the Commission that a corporate donation of the use of a computer to analyze the results of a question would constitute a corporate contribution made for purposes of influencing a Federal election. The fact that the questionnaire was mailed under the frank would not extend the coverage of 39 U.S.C. 3210(f) to the analysis of questionnaire results, and accordingly the donation of the services of the corporate computer would constitute a corporate contribution prohibited under 18 U.S.C. 610.

(b) It is the opinion of the Commission that money from the "educational fund" of a labor union may not be donated to the office accounts of incumbent United States Senators and Representative if the fund is composed of dues money from various local lodges of the union. Since the money in the fund would be derived from dues, and not from separate voluntary donations by union members to support the office accounts of Congressmen, contributions of this money by a union would be prohibited under 18 U.S.C. 610.

(c) It is the opinion of the Commission that contributions by incorporated state banks, or bank holding corporations, to an agricultural conference organized by a Member of Congress would constitute a direct or indirect contribution by these banking institutions in connection with a federal election. If the agricultural conference is not funded directly through a Congressional appropriation, it will be conclusively presumed to be funded from an office or constituent service account utilized by the member of Congress for political purposes. Accordingly, contributions by state bank corporations or bank holding corporations to the conference would be prohibited under 18 U.S.C. 610.

The Commission does not wish to discourage conferences involving policy development of important economic and other issues, but will examine the particulars of each such proposed conference for any implications under 18 U.S.C. 610.

The provisions of this opinion represent the opinion of the Commission as to the effect of 2 U.S.C. 437d(a)(9), 2 U.S.C. 439a, 18 U.S.C. 608, and 18 U.S.C. 610 on contributions and expenditures from the office account of a Federal officeholder. The provisions of this opinion are reflected in the proposed regulations which the Commission has submitted to Congress (see The Federal Register, Notice 1975-18 of 40 FR 32951, "Office Accounts and Franking Accounts; Excess Campaign Contributions"). However, in order to provide sufficient notice for orderly compliance with this opinion, the provisions of this opinion shall become effective on October 1, 1975, notwithstanding any contrary language in this opinion.

Date: _____

(signed) _____
Thomas B. Curtis
Chairman for the
Federal Election Commission