

DISSENTING OPINION OF COMMISSIONER JOAN D. AIKENS AND  
COMMISSIONER ROBERT O. TIERNAN TO ADVISORY OPINION 1975-27

In issuing Advisory Opinion 1975-27, the Federal Election Commission has ruled that expenses incurred by a candidate or committee for legal and accounting fees paid for the purpose of general compliance with the Federal Election Campaign Act of 1971, as amended, must be charged against the expenditure limitations of the Act, whereas such fees paid to prepare and respond to formal compliance actions will be exempted from the ceilings.

This Dissenting Opinion expresses the views of Commissioner Joan D. Aikens and Robert O. Tiernan who voted against Advisory Opinion 1975-27.

It is the view of Commissioners Aikens and Tiernan that expenditures for accounting and attorney fees which are made to assure adherence to the mandates of this complex new law at every stage of a campaign for federal office have an equal claim for an exemption from the expenditure limits of the Act, and should not merely be limited to the later point of defending against formal complaints. Early and timely preventive actions are the very essence of voluntary compliance; such efforts can easily be distinguished from political strategy and tactical advice. Good faith attempts to anticipate and meet the requirements of the Act well in advance of formal complaint actions should also be recognized and given strong encouragement and endorsement.

It should be noted that, to date, the Commission has received a significant input from numerous sources regarding this Advisory Opinion Request--all of which were unanimous in their support of the exclusion of all these expenses from the expenditure limitations.

The Chairmen of the Republican Senatorial and Democratic Senatorial Campaign Committees in their comments regarding this Request stated,

"The burdens of complying with the Federal campaign laws and Commission regulations are far in excess of that anticipated by Congress when the 1974 Amendments were passed. Because of the complexity of the new law, nearly every Federal candidate will need an accountant and an attorney to strictly comply with its numerous requirements."

They went on to note, "The difficulties of compliance are particularly acute for non-incumbent challengers . . ."

The newcomer to politics, the volunteer campaign official, and the modestly funded candidate should not be dissuaded from entering the electoral arena because of difficulties in interpreting the Act; once involved in a political campaign, they should not be restrained in their actions or expressions because of uncertainty about the consequences of every deed. Expert professional legal and accounting advice is an integral part of a political campaign for federal office. This assistance should be available to every candidate, no matter whether it is used prospectively to guide a campaign within the boundaries of the Act, or subsequently to defend against formal complaints.

*Joan D. Aikens*  
Commissioner Joan D. Aikens  
*Robert O. Tiernan (deo)*  
Commissioner Robert O. Tiernan