

Advisory Opinion 1975-27

Attorney's or Accountant's Fees as Expenditures

The Federal Election Commission renders this advisory opinion under 2 U.S.C. § 437f in response to requests submitted by a candidate and a political committee. The requests were made public by the Commission and published in the Federal Register on August 20, 1975 (40 FR 36532). Interested parties were given an opportunity to submit comments relating to the requests.

The requesting parties seek an advisory opinion as to whether expenses incurred by a candidate or a committee for legal and accounting fees paid for the purpose of complying with the Federal Election Campaign Act of 1971, as amended, must be charged against the expenditure limitations of 18 U.S.C. § 608. 18 U.S.C. § 608 establishes expenditure limitations for candidates and committees with respect to any election for Federal office.

The term "expenditure" is specifically defined in 18 U.S.C. 591(f) to include and exclude certain types of transactions "made for the purpose of influencing" the nomination or election of a Federal candidate. This definition determines what transactions are subject to limit under 18 U.S.C. § 608(c) and those which are not. Section 591(f)(4) enumerates several exclusions, including a fundraising exclusion up to 20% of the applicable spending limit. None of these exclusions, extend to amounts paid for accounting or legal services rendered to assist a Federal candidate in complying with the Act and applicable provisions in Title 18, United States Code. Expenditures for accounting or legal services are at least indirectly made to influence the election of Federal candidates since one's election is jeopardized by conduct that may violate the law. Furthermore, compliance clearly enhances one's candidacy and may with good reason to be deemed to justify expenditures for the described professional services, even if the candidate must charge them against the applicable spending limit.

The Commission recognizes, however, that some disbursements to pay the described fees, while subject to disclosure, may under certain circumstances be outside the defined category of "expenditure" because they are not made for the purpose of influencing the election of a Federal candidate. For example, fees for accounting or legal services rendered in connection with preparing for or responding to formal compliance proceedings instituted against the candidate or committee by the Commission, would not be counted against the applicable spending limit. By contrast, however, accounting or legal fees paid to assure compliance generally, or to assist in a routine Commission audit, would be considered as expenditures subject to both disclosure and limitation.

This advisory opinion is issued on an interim basis pending promulgation by the Commission of rules and regulations or policy statements of general applicability.