



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 14, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-6

Jan W. Baran, Esquire
Wiley & Rein
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Baran:

This responds to your letter of January 22, 1986, requesting an advisory opinion on behalf of the Fund for America's Future, Inc., concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to expenditures for activities during the 1986 election cycle in support of the Republican Party and its candidates, and the treatment of such expenditures with respect to any potential future candidacy by Vice President George Bush.

The Fund for America's Future, Inc., ("the Fund"), is a multicandidate political committee that registered with the Commission on April 25, 1985. You state that Vice President George Bush is the founder and honorary chairman of the Fund but that the Fund is not authorized by any candidate.¹ You state that the Fund was created to support the Republican Party and Republican candidates for state and local office as well as for both houses of Congress. You add that the Fund seeks to build a stronger Republican Party at all levels, including local party organizations. In this respect, you note that the Fund has made contributions to Republican Party organizations in Arizona, California, Iowa, Michigan, New Jersey, Ohio, Oregon, South Dakota, Virginia, and Washington and has contributed to more than 100 Republican candidates for local, state, and Federal office.

You explain that the Fund's party-building and direct candidate support activities necessitate publications, fundraising solicitations, and travel and speechmaking by the Vice President, other Fund officials, and other well-known Republicans. You state that Vice President

¹ The Act precludes a multicandidate political committee from being designated as an authorized committee.
2 U.S.C. 432(e)(3).

Bush, a former chairman of the Republican National Committee, is one of the Republican Party's most active campaigners and is highly sought as a speaker, fundraiser, and supporter by party candidates and party officials. You state that the Vice President's and the Fund's activities in this regard will increase as the 1986 election season continues.

You further state that the Vice President is not a candidate for any office and that he has publicly stated that he will not consider any such potential candidacy until after the 1986 elections.² You acknowledge that, by virtue of his office as the Vice President, he is frequently mentioned in the press as a potential presidential candidate in 1988. You state, however, that Vice President Bush has not established a "testing-the-waters" fund pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1) and that he has not authorized the Fund to make any expenditures toward his consideration of any potential candidacy or which the Commission may view as "testing-the-waters" for a potential candidacy. Accordingly, you state the Fund is concerned that the Commission may view its expenditures for activities in support of the Republican Party and Republican candidates as allocable toward any potential future candidacy by the Vice President in 1988.

In this regard, you present several activities (and questions related to them) which the Fund proposes to undertake. The Commission emphasizes, however, that this advisory opinion responds solely to the proposed activities with the facts as you present them (and as interpreted in this opinion) and that its conclusions provide guidance, on which the Fund and others may in good faith rely, only for activities that are indistinguishable in all material aspects from the activities described and addressed in this opinion.³ See 2 U.S.C. 437f(c)(1). Furthermore, the conclusions expressed in this advisory opinion relate only to expenditures and activities by the Fund in the period before the Vice President qualifies, if he does, under the Act and regulations as a candidate for Federal office. See, e.g. Advisory Opinion 1983-12.

Your request, in essence, first asserts that the Fund is not authorized to undertake activities and make expenditures with the purpose of influencing the nomination or election of the Vice President to Federal office, such as the Presidency, and thereby assumes that its expenditures for the activities described in your request are not made for this purpose. The Commission interprets your request as nevertheless asking whether the Fund's expenditures for these proposed activities must necessarily be treated as made for the purpose of influencing the Vice President's nomination or election to Federal office, notwithstanding any specific, express

² The Vice President's status as a candidate is determined according to the criteria of 2 U.S.C. 431(2) and 11 CFR 100.3(a). See Advisory Opinion 1977-11. The Commission, however, does not herein make any decision that he is, or that he is not, a candidate.

³ The stated assumption underlying your request--that the Fund is not authorized to "make any expenditures towards" Vice President Bush's "consideration of any potential candidacy" for 1988--is set forth in the form of a negative factual representation. In addition, the Fund is "particularly concerned" that none of its expenditures be allocable toward any "potential future candidacy" by the Vice President. In this context, your request provides a somewhat limited and conclusional description of Fund activities that involve the participation of the Vice President and others on his behalf. Accordingly, this opinion is limited to the specific activities as described in your request and as interpreted in this opinion. It does not represent, and should not be read as, a Commission determination that any of the Fund's past or future payments are or are not made for the purpose of either evaluating Vice President Bush's potential 1988 candidacy or assisting him to determine whether he should become a 1988 candidate. See generally, 2 U.S.C. 437f; 11 CFR 112.1 and 112.5.

authorization or candidacy determination.⁴ If any of these expenditures must be so treated, they will, of course, constitute in-kind contributions to the Vice President with regard to his becoming a candidate for Federal office and will be subject to the Act's aggregate \$5,000 contribution limitation. See 2 U.S.C. 431(2), 432(e)(2), 441a(a)(2)(A) and (a)(6); 11 CFR 100.3(a), 101.2, 110.2(a) and (d); Advisory Opinion 1985-40.

The Fund's proposed activities described in your request include: (1) appearances by the Vice President on behalf of Republican candidates and the Republican Party; (2) references to the Vice President in the Fund's publications and solicitations; (3) the establishment and operation of the Fund's steering committees; (4) the Fund's program to organize volunteers for the Republican Party; and (5) the Fund's recruitment and financial assistance to persons seeking election to party offices, particularly with regard to the Michigan precinct delegate election in August 1986. With regard to the first four questions, as set forth below, the Commission concludes the activities described can be undertaken without necessarily involving contributions to the potential candidacy, so long as they are restricted in the fashion described. With regard to questions five and six, the Commission concludes under the circumstances that the activity does not necessarily involve candidate-related activities.

I. Candidate and Party Appearances

You state that the Fund seeks to support Republican candidates and the Republican Party with appearances on their behalf by the Vice President. For these appearances, the Fund makes expenditures for travel, meals, and lodging for the Vice President, his staff, the Secret Service and other security protection, other Fund officials, and any others involved in preparing for the Vice President's appearances. In conjunction with the appearances at party events by the Vice President or other Fund officials, the Fund may host a hospitality suite to accommodate party dignitaries and the press. You state that the Vice President and Fund officials will urge support for Republican candidates, the Republican Party, and the President and his policies at these appearances, but that their remarks will not refer to the possibility the Vice President may seek any Federal office in 1988, except in an incidental manner or in response to questions by the public or press.

⁴ Since you state that the Fund does not want to make any expenditures that will be treated as allocable to a potential candidacy by the Vice President, the Commission interprets the questions you present in this request as asking whether the Fund's expenditures for such activities must necessarily be allocated to such a candidacy. In addition, with the exception of certain disbursements for Michigan precinct delegates (part V of this opinion), the request does not seek guidance whether any particular Fund expenditures would be seen as relating to the Vice President's "potential" candidacy. Accordingly, the opinion does not address issues that may arise with respect to any particular expenditure of the Fund. Since the Fund is a Federal multicandidate political committee, the Commission assumes that your request relates only to the Fund's expenditures for these proposed activities that will be made from funds permissible under the Act. See, e.g., 2 U.S.C. 441a, 441b, 441c, 441e, and 441f. Thus, this opinion should not be interpreted as permitting expenditures for any of these proposed activities from a non-Federal account or any allocation of expenditures between Federal and non-Federal accounts. See 11 CFR 102.5(a).

You ask whether the Fund may pay the expenses of the Vice President, his traveling party, those representing him, and other Fund officials for travel to party functions, candidate rallies, fundraisers, and similar events, and for hospitality suites at such events.

Commission regulations provide that authorized expenditures made by a political committee on behalf of a candidate shall be reported as in-kind contributions to the candidate on whose behalf they are made. 11 CFR 106.1(b). The regulations also provide that expenditures by a political committee on behalf of more than one candidate shall be attributed to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived. 11 CFR 106.1(a). Two of the Commission's advisory opinions provide further guidance in this respect.

In Advisory Opinion 1982-56, the Commission recognized that payment by a local candidate for an advertisement featuring a Federal candidate's endorsement of that local candidate did not constitute an in-kind contribution to the endorsing Federal candidate provided the advertisement was not intended to influence the endorser's own candidacy and did not mention his candidacy, advocate his election or the defeat of an opponent, or solicit funds for his campaign. More recently, in Advisory Opinion 1985-40, the Commission concluded that where an individual made appearances on behalf of Federal candidates and also held private meetings with party leaders regarding his own potential candidacy, the payment for his travel costs would be allocated between his potential candidacy and the candidate on whose behalf he made his appearance. The opinion also noted that the payments related to this individual's appearances at party-sponsored events, where he made public statements about his interest in becoming a candidate and hosted hospitality suites involving activities related to such a candidacy, would also be allocable as in-kind contributions to his potential candidacy.

According to your description of the Fund's proposed activity, the only references to any potential candidacy by the Vice President in 1988 at his appearances in 1986 will be made "in an incidental manner or in response to questions by the public or press." In the Commission's view, this statement should be narrowly interpreted to apply only to incidental contacts and incidental remarks, such as those in response to questions. Thus, the Commission assumes that it excludes public statements referring to the Vice President's possible intent to campaign for Federal office in the 1988 election cycle or to the campaign intentions of potential opponents for Federal office in 1988. See also the remarks described in Advisory Opinions 1985-40 and 1982-56. Furthermore, the Commission also interprets your description of these appearances as excluding such activities on behalf of the Vice President's potential candidacy as soliciting funds, holding meetings (which constitute more than incidental contacts) with individuals or the press regarding such a potential candidacy or regarding the formation of a campaign organization, or distributing campaign paraphernalia related to such a candidacy. The Commission further interprets your request as referring only to the Vice President's appearances on behalf of local, state, or Federal congressional or senatorial candidates or party-building events as described by 11 CFR 110.8(e) rather than appearances primarily related to the presidential nomination process, such as the delegate selection process. Compare Advisory Opinion 1985-40.

Accordingly, if the Fund makes expenditures for this activity as described by you in your request and as interpreted in this opinion, such expenditures so limited need not be allocated to a potential candidacy by the Vice President in 1988.⁵ This conclusion, of course, does not apply to the Fund's expenditures for this activity after the Vice President qualifies, if he does, under the Act and regulations, as a candidate for Federal office.

II. Publications and Solicitations

You state that the Fund makes expenditures for a variety of publications to inform contributors of the Fund's purposes and progress and to seek out and encourage potential contributors. These publications identify the Vice President as the Fund's founder and honorary chairman and state that the Vice President hopes recipients will support his efforts to aid the Republican Party and Republican candidates through gifts to the Fund. You state that these publications and solicitations will not suggest that the Fund will promote the Vice President's candidacy for any office in 1988 and will not represent that contributors to the Fund will be viewed as early supporters of such a candidacy.

You ask whether the Fund may, in the course of encouraging potential contributors and reporting to existing contributors, note the Vice President's association with the Fund and his desire that contributions be made to the Fund to support Republican Party activities and Republican candidates, so long as the materials do not refer to the possibility that the Vice President may decide to become a candidate for President in 1988 or actively consider such a candidacy.

Commission regulations provide that a political committee's expenditures for newsletters and fundraising solicitations need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditures can be directly attributed to that candidate. 11 CFR 106.1(c)(1). The Commission notes differences between your description of the Fund's proposed activity in the narrative portion of your request and the description in your question, but it views both descriptions as cumulative. Thus, you state, in effect, that the Fund in issuing publications and in soliciting contributions will make no references to any possible candidacy by the Vice President in 1988 and no representations to contributors about their being viewed as supporters of such a candidacy or about their benefiting such a candidacy through their contributions to the Fund. Furthermore, the Commission assumes by your factual presentation that the Fund will not solicit contributions for any candidacy by the Vice President, such as for an authorized committee or a testing-the-waters fund. Thus, the Fund's proposed activity as you have described it, and as the Commission understands your description, is distinguishable from that addressed in Advisory opinion 1985-40. See also Advisory Opinion 1985-38.

Accordingly, if the Fund's publications and solicitations merely note the Vice President's association with the Fund and his desire that individuals contribute to the Fund to support Republican candidates and the Republican Party without references to any potential 1988

⁵ These expenditures may be allocable as in-kind contributions to the candidates and political committees for whom appearances are made. See 11 CFR 100.7(a)(1)(iii), 106.1(b), and 110.2(a); Advisory Opinion 1985-40.

candidacy by him,⁶ the Fund's expenditures for such materials need not be allocated to a potential candidacy by the Vice President in 1988. This conclusion also applies only to expenditures made before the Vice President qualifies, if he does, under the Act and regulations, as a candidate for Federal office.

III. Steering Committees

You state that the Fund has established steering committees with members from every state. You add that the purpose of these committees is to involve local party officials, leaders, and officeholders in the Fund's activities and to permit them to advise and consult with the Fund concerning contributions to Republican candidates for Federal, state, local, and party office in such states. You explain that membership on the Fund's steering committees does not signify any commitment to support the Vice President, or to organize or serve in a campaign if he should become a candidate for Federal office in 1988.

You ask whether the Fund may establish such steering committees in an attempt to encourage participation in the Fund and to assist in distributing aid to Republican organizations and candidates.

The Commission notes that the establishment of steering committees by itself is a permissible activity for a multicandidate political committee. Expenditures for such steering committees need not be attributed to any individual candidate unless they are made on behalf of a clearly identified candidate and are directly attributable to that candidate. 11 CFR 106.1(c). With your description of the Fund's steering committees in terms of their purpose, composition, and activities, you seek to distinguish them from the steering committees addressed in Advisory Opinion 1985-40. Thus, the Commission assumes that the Fund's steering committee's activities will only be related to the Fund's stated purposes of aiding the Republican Party and Republican candidates and will not be related to any potential candidacy by the Vice President in 1988, such as the formation of a campaign organization on the Vice President's behalf or participation in the presidential nomination process, such as the delegate selection process, on his behalf. The Commission also assumes that the committees will not link the distribution of aid to Republican candidates and organizations to the recipients' support for any potential future candidacy by the Vice President in 1988.

Accordingly, if the Fund operates its steering committees in the manner described above, its expenditures relating to these steering committees need not be allocated to a potential candidacy by the Vice President in 1988. This conclusion would not apply, however, if the role or activities of these steering committees should change or if the Vice President should become a candidate.

IV. Volunteer Program

You state that the Fund conducts volunteer programs to aid the Republican Party and Republican candidates for party, local, state, and Federal office. You explain that these programs

⁶ You have not submitted any past or future publications or solicitations by the Fund as examples of this activity. Therefore, this opinion's conclusion refers only to your description of what the materials will and will not contain.

include the establishment of local offices in many states in order to identify, encourage, and organize Republican volunteers and make it possible for them to play a role in local party efforts and campaigns.

You ask whether the Fund may pay expenses, such as personnel and offices, as may be necessary to conduct volunteer programs outside of Washington, D.C., to aid the Republican Party and party, local, state, and Federal candidates in 1986.

Commission regulations provide that expenditures for educational campaign seminars, for training of campaign workers, and other types of volunteer activities need not be attributed to individual candidates unless these expenditures are made on behalf of a clearly identified candidate and are directly attributable to that candidate. 11 CFR 106.1(c)(2). Your description of this proposed activity makes no reference to the Vice President or any 1988 candidacy by him. Thus, by implication, your description suggests that the Fund will not conduct this activity in order to benefit any potential candidacy by the Vice President in 1988, such as the formation of a campaign organization on the Vice President's behalf or participation in the presidential nomination process, such as the delegate selection process, on his behalf. Of course, if the Fund conducts its volunteer program to aid other Federal candidates, its expenditures for this activity may be allocable to the Federal candidates in accordance with 11 CFR 106.1(c).

Nevertheless, if the Fund undertakes the volunteer program as described and interpreted above, its expenditures for this activity need not be allocated to any potential candidacy by the Vice President in 1988. This conclusion also applies only to expenditures made before the Vice President qualifies, if he does, under the Act and regulations, as a candidate for Federal office.

V. Precinct Delegate Recruitment and Assistance

You state that the Fund plans to aid persons seeking party office in various states, particularly the candidacies of individuals seeking election in the August 1986 Republican primary election in Michigan as precinct delegates to county/district conventions. You add that the names of precinct delegate candidates are listed alphabetically on the ballot without any other designation or identification. You explain that precinct delegates in Michigan serve a two-year term and participate in the selection process for delegates to both state and national Republican Party conventions.

Those elected as precinct delegates in August 1986 will attend two county/district conventions in 1986. One convention will select delegates to the 1986 fall state convention. The second convention, in November 1986, will select the party's county executive committees. In early 1987 the precinct delegates meet again in a county/district convention to select delegates to a state convention held to select Michigan party leaders.

In January 1988, these precinct delegates meet yet again in a county/district convention to select delegates for the state convention called to select delegates to the 1988 Republican national convention. The state convention meets first in caucuses according to congressional districts to elect a number of national convention delegates and then as a whole to elect the remainder. In this regard, you note that precinct delegates meeting in county/district conventions

do not vote directly for delegates to the Republican national convention. The state convention will also nominate candidates to be the Michigan members of the Republican National Committee.

You characterize the August 1986 Michigan precinct delegate election as an intra-party election, where those elected will participate in party affairs, such as the nomination of candidates for state office or selection of candidates for party leadership posts. You note that under Michigan law individuals running for precinct delegate posts are not "candidates" and thus are not subject to Michigan campaign financing laws. You further state that the position of precinct delegate is not a Federal office and thus assert that the Fund should be free to promote participation in the Michigan precinct delegate election and to contribute to the campaigns of individuals for these positions without Federal restriction.

You note that since after the February 1987 state convention these precinct delegates will become involved in selecting delegates to the 1988 Republican national convention, the Fund will not defray any expenses relating to Michigan Republican Party activities after February 1987. Prior to the 1987 state convention, however, the Fund plans to disseminate information, including qualifying petitions, regarding the legal requirements for becoming a Republican precinct delegate. You add that the Fund will "recruit and encourage individuals to run" for precinct delegate and "intends to support specific candidates with donations to defray campaign expenses."

In question five, you ask whether the Fund may incur the expense of recruiting and encouraging individuals to run for party office, including Michigan Republican precinct delegate, and disseminating information, including qualifying petitions, regarding election for such positions. In question six, you also ask whether the Fund may donate to the campaigns of individuals who seek party office, including election as precinct delegates to county and district Republican conventions in Michigan.

The only specific activities or transactions you have presented in this regard is the Fund's recruitment of individuals as precinct delegate candidates in the August 1986 Michigan precinct delegate election, the dissemination of information with regard to this election, and the making of donations to the campaigns of specific precinct delegate candidates. Therefore, the Commission responds to your questions with respect to only these specific activities. See 2 U.S.C. 437f(a)(1); 11 CFR 112.1(b) and (c).

The Commission has adopted regulations governing contributions to and expenditures by delegates to national nominating conventions (11 CFR 110.14), based on the assumption that such contributions and expenditures are made for the purpose of influencing a federal election and, therefore, fall under the regulatory scheme of the FECA. These regulations expressly apply only to the activities of delegates to national nominating conventions or to the activities of those who seek to become national nominating convention delegates, or, as in the case of the Michigan process, the activities of the delegates to the state convention in 1988 who select the national nominating convention delegates. The Commission has acknowledged that even a national convention delegate is not a candidate for federal office under the Act. 11 CFR 110.14, Explanation and Justification of Regulations Concerning Contributions to and Expenditures by

Delegates to National Nominating Conventions, citing 2 U.S.C. 431(2). See also Advisory Opinion 1980-5.

Individuals seeking election as precinct delegates in 1986 are not necessarily or presumptively seeking positions as national or state convention delegates for 1988. Individuals do not have to be elected a precinct delegate in 1986 to qualify for selection by their party as a national delegate in 1988. The individuals seeking election as precinct delegates in 1986 are not identified on a ballot as committed to or supporting any potential Presidential candidate, nor is any such commitment or support a requirement for their seeking a precinct delegate position. Furthermore, the precinct delegates elected in 1986 do not themselves select national convention delegates. Rather, Michigan precinct delegates, among their other responsibilities, will select delegates to a state party convention in 1988 that choose the national convention delegates.

As noted earlier in this opinion, you state that the Fund for America's Future was created to support the Republican Party and Republican candidates at the state and local, as well as federal, levels. You further state that Vice President Bush is not a candidate for any office at this time and does not intend to consider any such potential candidacy until after the 1986 elections.

The Commission concludes that the Fund's proposed activity in recruiting, assisting, and donating to individuals seeking election as precinct delegates in Michigan in August of 1986 as described in your request will not, of itself, constitute contributions or expenditures for the purpose of influencing the Vice President's or any candidate's nomination or election to federal office, nor require allocation to any candidacy for federal office nor trigger any such candidacy.

The Commission notes, however, that activity in conjunction with the aiding of precinct delegates that goes beyond that described in your request, such as the soliciting of support for Vice President Bush's candidacy or potential candidacy for President, or any other campaign activity on behalf of a clearly identified presidential candidate, could warrant a different conclusion by the Commission.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1985-40, 1985-38, 1983-12, 1982-56, 1980-5, and 1977-11)