



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CONCURRING OPINION IN ADVISORY OPINION 1986-18

of

COMMISSIONER THOMAS J. JOSEFIK

I agree with the conclusion reached by the Commission in AO 1986-18. The FECA and regulations thereunder would currently not permit the use of a Visa card provided through a Cash Management Account as a means for making campaign expenditures.

This result, however, may represent an example of federal election law that has outlived its original purposes and has been outpaced by developments in financial and commercial practices.

The intent of the provisions in the FECA and regulations requiring all invested funds to be returned to a designated and insured campaign depository before expenditures can be made from them would appear to be to assure both a complete and reliable "paper trail" for recordkeeping, disclosure and audit purposes and, judging from the 1979 amendments, some degree of fiduciary protection of contributors' money. Yet, the statute permits the use of more than one campaign depository, complicating recordkeeping, and the Commission has approved the use of a wide range of uninsured investment accounts as a temporary holding place for cash on hand, undermining the security of campaign funds as well as recordkeeping simplicity.

Most importantly, the Commission has recognized the practical difficulties in requiring each individual disbursement to be made by bank check and has approved the use of credit cards by candidates and campaigns to pay campaign expenses. Full disclosure of credit card disbursements has been achieved by special reporting requirements, and the intent of the law has been preserved in the payment of the credit card bill by check from a designated campaign depository.

In the factual situation presented by the requestor in AO 1986-18, the campaign has a permissible depository and is not seeking to make the CMA another depository or intending to directly deposit campaign contributions or other receipts into the CMA. In the Advisory Opinion, in fact, the Commission is approving the transfer of campaign funds from the depository into the CMA for investment purposes only.

Though the use of a Visa "debit" card from a CMA would seem to uniquely involve a prohibited "expenditure" from a non-depository "account", its use is not really distinguishable from a regular Visa card from an economic standpoint. Anyone who has ever failed to pay their regular credit card bill on time knows that they receive a notice that their "account" is past due. The regular credit card is essentially an "account" with the card provider, who floats the campaign a loan for the credit period (and often charges interest beyond the credit period) rather than paying interest to the cardholder who has paid in advance under the "debit" arrangement. Under both types of credit card, disbursements are "charged" on the card and paid for collectively by a lump-sum bank check from the depository; the "debit" card charges are paid by check in advance at the time of the investment, the regular card charges at the end of the credit period. Both card services provide complete records of all transactions.

The federal election laws and regulations currently discriminate between these two credit card accounts because the "debit" account has money already in it and draws interest (a tangible, conventional "account") and the other account has only a promise to pay money and charges interest when the promise is not timely kept. There are no other significant commercial, recordkeeping, disclosure or security differences between a "debit" or regular credit card. As long as each charge transaction is recorded, reported and disclosed, I fail to see any harm to the goals of the Federal Election Campaign Act by the use of a "debit" credit card. The "debit" card is actually a more prudent and conservative means to avoid debt.

The Commission has gone about as far as it can, under existing law and regulations regarding expenditures from campaign depositories, accommodate the changes and broadening choices in modern commercial activity, and may need to recommend legislative amendments to reflect new realities.