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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

**CONCURRING OPINION
OF COMMISSIONER SCOTT E. THOMAS
ADVISORY OPINION 1991-16**

I agree with the result reached by the Commission in Advisory Opinion 1991-16. I write this concurrence, first, to emphasize that the Commission's opinion does not reach the question of whether the Indiana reporting statute at issue here is preempted under 2 U.S.C. §453. See Advisory Opinion 1991-16 at 2, n.1. That question is postponed for another day. For the reasons I expressed in Advisory Opinion Request 1989-31, though, I continue to believe that "the reporting responsibilities of a federal political committee are governed by federal law, not state law." See Advisory Opinion Request 1989-31, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶6987 (Statement for the Record by Vice Chairman McGarry and Commissioners McDonald and Thomas).

To the extent that the Indiana statute requires a federally-registered political committee to make filings at the state level, it may well be preempted under §453. If so, the filings made by federally-registered political committees would be voluntary, not mandatory.

Under the facts presented by the requestor, even copying the individual contributor data from such voluntary filings for subsequent commercial use would be barred under 2 U.S.C. §438(a)(4). Though it is a close question, the Commission's regulations and precedents suggest that because the contributor information would be copied from a copy of a filing made pursuant to the Act, the ban applies.

The foregoing result may seem rather technical. The very same information probably could be copied for commercial use if it were instead transferred by the filer to non-federal reporting forms. Moreover, if the filer were to make copies of its federal reports and give them directly to the requestor, there would appear to be no prohibition. Though these examples might seem to undermine the efficacy of §438(a)(4), the fact remains that Congress used broad language in the statute and clearly wished to protect the privacy interests of individual contributors. Unless the Commission is directed otherwise, I must construe the provision to have its intended effect.

17 July 1991
Date



Scott E. Thomas
Commissioner