



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

**CONCURRING OPINION OF
VICE CHAIRMAN TREVOR POTTER
TO ADVISORY OPINION 1993-15**

I strongly support the result reached in Advisory Opinion 1993-15 ("AO 1993-15"). Any other conclusion would permit a Presidential campaign to raise and spend funds, without limit or disclosure of any kind, for legal expenses incurred directly as a result of regulated campaign activity. In my view, this would be clearly contrary to the purposes of the Federal Election Campaign Act of 1971, as amended, and the Presidential Election Campaign Fund Act.

This legal conclusion is not affected by Senator Tsongas's partnership in the law firm which is representing the campaign in the Department of Justice investigation. The prohibition on personal use of campaign funds, such as through the receipt by a candidate of legal fees from the campaign committee, is not before us in this Advisory Opinion. Rather, my concern here is with the source and disclosure of funds raised and spent by Presidential campaigns for campaign-related activities, including legal expenses.

In this regard, I think my fellow Commissioners were correct in noting during the Commission's public discussion of this Advisory Opinion that the rationale behind AO 1993-15 calls into question that portion of Advisory Opinion 1981-16 which allowed undisclosed and unlimited funds to be channeled through Presidential campaigns in certain (narrow) circumstances. As footnote one of this Advisory Opinion notes, there are certainly some instances in which individuals will incur personal legal expenses during or after a campaign for matters which are unrelated to the campaign. In those circumstances, the individuals may of course pay for those personal legal expenses out of private monies without regulation by the federal election laws. However, footnote one should not be read to permit fundraising and expenditures by the presidential committee itself for such non-campaign purposes (as opposed to activity by individuals on their own behalf).

Finally, I do sympathize with the inability of some presidential primary campaign committees to raise funds within the single \$1,000 limit in order to pay for legal expenses incurred long after the primary is over and the candidate has returned to private life. Equitable relief from these provisions of the Act, however, would best be considered through a notice of proposed rulemaking, which allows the Commission to consider all aspects of the issue without being bound by the particular, and perhaps fluid, situation of a single candidate.



Trevor Potter
Vice Chairman

August 24, 1993