



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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COMMISSION
SECRETARIAT

JAN 3 4 02 PM '96

January 3, 1996

AGENDA ITEM
For Meeting of: JAN 10 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Hitchfield
Associate General Counsel

Paul S. Sanford
Staff Attorney

SUBJECT: Draft AO 1995-44

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for January 10, 1996.

Attachment

1 CERTIFIED MAIL
2 RETURN RECEIPT REQUESTED

3
4 **ADVISORY OPINION 1995-44**

5
6 Paul E. Sullivan, Esq.
7 The Singletary Mansion
8 1565 The Alameda
9 San Jose, California 95126
10

DRAFT

11 Dear Mr. Sullivan:

12 This responds to your letter of November 13, 1995 requesting an advisory opinion
13 on behalf of the Forbes for President Committee, Inc. ("FPC"). Your request concerns
14 the application of the Federal Election Campaign Act of 1971, as amended ("the Act"),
15 and Commission regulations, to the Committee's receipt of contributions of \$1000 or
16 more during the 1996 presidential primary season.

17 You state that FPC is the principal campaign committee of Malcolm S. Forbes,
18 Jr., a candidate for the Republican Party nomination for President in 1996. Mr. Forbes
19 intends to be a candidate in some or all of the primary elections to be held during the
20 1996 primary election season.

21 You ask a series of questions regarding the 48 hour notification requirement in
22 section 431(a)(6)(A) of the Act. First, you note that several states hold caucuses rather
23 than primary elections. You ask whether any, and if so, which, states' caucus procedures
24 qualify as an election under 2 U.S.C. §431(1) such that 48 hour notifications would be
25 required for contributions made with respect to that caucus. Second, if the Commission
26 concludes that none of the caucuses qualify as an election, you seek confirmation that the
27 New Hampshire primary scheduled for February 20, 1996 will be the first election for
28 which FPC will be required to submit 48 hour notifications. Finally, you also seek
29 confirmation that the 20 day period for which 48 hour notifications would be required is
30 measured from each primary or caucus date independently, and only for those primaries
31 or caucuses in which Mr. Forbes is a candidate.

1 As your letter indicates, section 434(a)(6)(A) of the Act generally requires the
2 principal campaign committee of a candidate to notify the Clerk of the House, the
3 Secretary of the Senate, or the Commission, as appropriate, of any contribution of \$1000
4 or more received after the 20th day but more than 48 hours before an election. See also
5 11 CFR 104.5(f). These notifications work in conjunction with the quarterly, pre-
6 election, and post-election reports required by section 434(a)(2) to fulfill the disclosure
7 purposes of the Act. The pre-election reports required by paragraph (a)(2)(A)(i) of that
8 section disclose all contributions received through the 20th day before an election. The
9 48 hour notification requirement ensures that large contributions received after that day,
10 but before the election, are disclosed before the election is held.¹

11 The interpretation of the 48 hour notification requirement in the presidential
12 primary process requires consideration of very different circumstances from its
13 application to Congressional primary elections. Unlike nonpresidential primary
14 elections, where it is clear to which election the notification requirement applies, the
15 presidential primary season is made up of a series of separate primary elections. If the 48
16 hour notification requirement were to be interpreted to apply to presidential primary
17 candidates, their campaign committees would have to simultaneously track overlapping
18 20 day notification periods for several different primary elections. At the same time, the
19 committee would also have to attribute the contributions it receives to a particular
20 primary election, a task that can be difficult or arbitrary given the national nature of most
21 presidential primary campaigns. Then, the committee would have to submit notifications
22 of contributions received with respect to a particular primary election within the 20 day
23 period before that election. The result is that, during the presidential primary season,

¹ Your letter also correctly recognizes that this notification requirement applies to loans made by a candidate to his or her campaign, since loans from individuals are generally considered contributions to the extent that they remain unpaid. See 11 CFR 100.7(a)(1)(i).

1 these committees would be required to submit 48 hour notifications on an almost
2 continual basis.

3 At the same time, many presidential primary candidates do not file reports on the
4 quarterly, pre-election, post-election schedule. Section 434(a)(3)(A) requires the
5 principal campaign committee of a presidential primary candidate to file monthly reports
6 if the candidate has received contributions or made expenditures aggregating \$100,000 or
7 more on January 1 of the election year, or anticipates receiving contributions or making
8 expenditures aggregating \$100,000 or more during the election year. This more frequent
9 reporting schedule results in timely disclosure of contribution and expenditure activity
10 during the presidential primary season.

11 Given the overall structure of the presidential primary process, including the
12 monthly reporting requirement, the Commission concludes that the better interpretation
13 of the Act and Commission regulations is that 48 hour notifications should not be
14 required from the principal campaign committees of presidential primary candidates if
15 they are required to file monthly reports.

16 According to reports submitted for the period ending September 30, 1995, FPC
17 has already exceeded the \$100,000 threshold, and thus will be required to file monthly
18 reports during the 1996 election year. Therefore, the Commission concludes that FPC
19 will not be required to submit 48 hour notifications of contributions received while Mr.
20 Forbes is a presidential primary candidate. Since the three questions you pose relate to
21 when you must submit 48 hour notifications, this conclusion obviates the need to provide
22 responses to your specific questions.

1 **This response constitutes an advisory opinion concerning application of the Act**
2 **and Commission regulations to the specific transaction or activity set forth in your**
3 **request. See 2 U.S.C. §437f.**

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6
7 **Sincerely,**

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11 **Lee Ann Elliott**
12 **Chairman**
13