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FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

May 8, 1996

AGENDA ITEM

For Meeting of: 5-16-96

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael G. Marinelli *mm*  
Staff Attorney

SUBJECT: Draft AO 1996-15

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 16, 1996.

Attachment

**DRAFT**

1 ADVISORY OPINION 1996-15  
2

3 Marilyn Hughes, Executive Director  
4 Ethics Commission of the State of Oklahoma  
5 B-2A State Capitol  
6 Oklahoma City, Oklahoma 78105  
7

8 Dear Ms. Hughes:  
9

0 This refers to your letter of April 11, 1996, on behalf of the State of Oklahoma Ethics  
1 Commission (the "State Commission"). Your request concerns the application of the Federal  
2 Election Campaign Act of 1971, as amended ("the Act"), to the State Commission's obligation to  
3 retain envelopes that accompany Federal reports filed with your agency.

4 You state that as the executive director of the State Commission you are charged by State  
5 law to maintain State election reports. You are also the designated State officer who receives and  
6 maintains a copy of all statements and reports required by the Act to be filed in Oklahoma. You  
7 note your obligations under 2 U.S.C. §439(b) to "receive and maintain" these reports and "keep  
8 such reports and statements." Your request inquires whether "receiving, maintaining and  
9 keeping" Federal reports, within the meaning of this provision, also requires the State  
0 Commission to maintain and keep the envelopes in which the reports are sent.

1 You note that the space available to store State and Federal reports is very limited.  
2 Further, there is no more room for expansion in your facilities and no realistic prospects for a  
3 move into a larger facility.<sup>1</sup> You state that requiring the preservation of the envelopes, which are

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<sup>1</sup> In addition to Federal filings, the State Commission acts as a repository for State candidate and ballot measure campaigns, county candidates, and financial disclosure statements of some 4,926 State officers and employees, as well as 351 such statements for county election board members. Registered lobbyists also file with your office. You note that your file cabinet space is limited to 400 square feet.

kept attached to reports to show the date of the postmark, increases the space necessary for the storage. You therefore propose to discard the envelopes and instead use a file stamp, which would be attached to each document, indicating the envelope's postmark.<sup>2</sup>

The Act at 2 U.S.C. §439(b) and Commission regulations at 11 CFR 108.1 and 11 CFR 108.6 require that:

The Secretary of State (or equivalent State officer), or the officer designated under subsection (a)(1) of this section, shall--

(1) receive and maintain in an orderly manner all reports and statements required by this Act to be filed therewith;

(2) keep such reports and statements (either in original filed form or in facsimile copy by microfilm or otherwise) for 2 years after their date of receipt;

(3) make each report and statement filed therewith available as soon as practicable (but within 48 hours of receipt) for public inspection and copying during regular business hours, and permit copying of any such report or statement by hand or by duplicating machine at the request of any person, except that such copying shall be at the expense of the person making the request; and

(4) compile and maintain a current list of all reports and statements pertaining to each candidate.

Commission regulations state that a document is timely filed upon delivery to the Commission or the Secretary of the United States Senate. A document is also timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before the date of the election. Reports

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<sup>2</sup> You state that the State Commission currently file stamps all reports -- State, county and Federal -- with your own stamp showing the date and time received. The State Commission does not record envelope postmarks with respect to state and county filings because, under Oklahoma law, it is the time of receipt, as opposed to mailing, which determines whether reports are timely filed.

1 and Statements sent by first class mail must be received by the close of the business of the  
2 prescribed filing date to be timely filed. See 11 CFR 100.19(a) and(b). A copy of any report or  
3 statement required to filed with a State office under Commission regulations shall be filed at the  
4 same time as the original report is filed, and each copy of such report or statement shall be a  
5 complete, true and legible copy of the original report or statement filed. 11 CFR 108.5.

6 The quoted provisions of Act and the cited Commission regulations indicate that a copy  
7 of the required reports and statements are to be sent to the appropriate State authority. The  
8 regulations do not mention the need to maintain the envelopes or other packaging used to send  
9 the reports. Furthermore, the obligation to file timely is viewed from the aspect of when the  
10 filing is made with the Commission or other filing office or, alternatively, the postmarked date  
11 when placed in the mail transmittal process using registered or certified mail. The envelopes  
12 themselves are only an incidental part of the filing process. Therefore, the Commission  
13 concludes that your proposal to dispose of the envelopes is permissible. Your current procedure  
14 to use a file stamp to show the date of receipt by your office would indicate when the filing was  
15 received. Likewise, the additional file stamp giving the date of the postmark (when the report is  
16 sent by certified or registered mail) would preserve information contained on the envelopes as to  
17 when the filing was submitted to a U.S. Post Office.

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

Sincerely,

Lee Ann Elliott  
Chairman