FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1411

Date Filmed 10/25/82 Camera No. --- 1

Cameraman J.A.Q.

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FEDERAL ELECTION COMMISSION

1. First General Counsel's Report transmitted to Commission 6/2/82

2. Objection Comment Sheet of Commissioner Reiche, 7/30/82

3. 3 Routing Slips

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

____	(1) Classified Information	____	(6) Personal privacy
____	(2) Internal rules and practices	____	(7) Investigatory files
____	(3) Exempted by other statute	____	(8) Banking Information
____	(4) Trade secrets and commercial or financial information	____	(9) Well Information (geographic or geophysical)
X	(5) Internal Documents		

Signed ____________

date ____________

FEC 9-21-77

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 19, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joy Koletsky
Staff Counsel
National Education Association
1201 - 16th Street, N.W.
Washington, D.C. 20036

Re: MUR 1411

Dear Ms. Koletsky:

This is to advise you that the Federal Election Commission ("Commission") has considered whether or not the National Education Association ("NEA") and the National Education Association Political Action Committee ("NEA-PAC") violated 2 U.S.C. § 441b in connection with payments for certain fundraising costs of NEA-PAC in 1980. Specifically at issue were reimbursements by NEA to NEA-PAC for $18,276.95 spent on pens and TV sets for fundraising, as well as an initial payment by NEA for "Carter-Mondale-NEA" buttons used in connection with NEA-PAC solicitations. These transactions were described by you in some detail in two letters dated December 10, 1980, in response to requests for additional information from the Reports Analysis Division dated November 28, 1980.

On August 17, 1982, the Commission voted to take no further action in connection with NEA's reimbursement of NEA-PAC for $18,276.95 worth of pens and TV sets. For your information, the Commission also voted to find no reason to believe NEA and NEA-PAC violated 2 U.S.C. § 441b in connection with NEA's initial payment for the "Carter-Mondale-NEA" buttons. The General Counsel's Factual and

Legal Analysis which formed a basis for the Commission's findings is attached.

In view of the foregoing, the file in this matter has been closed. It will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to Scott Thomas, the attorney handling this matter, at (202) 523-4166.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A. Gross

By: Kenneth A. Gross
Associate General Counsel

Attachment
General Counsel's Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR 1411
STAFF MEMBER(S) & TEL. NO.
Cauman/Thomas

RESPONDENT National Education Association
National Education Association Political Action Committee

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

SUMMARY OF POSSIBLE VIOLATIONS

This matter was referred by the Reports Analysis Division ("RAD"). The National Education Association ("NEA") and the National Education Association Political Action Committee ("NEA-PAC") may have violated 2 U.S.C. § 441b(a) because a check to a button manufacturer for "Carter-Mondale-NEA" buttons used for NEA-PAC fundraising was drawn on an NEA account even though NEA-PAC quickly gave NEA money to cover the entire payment. NEA and NEA-PAC also may have violated 2 U.S.C. § 441b(a) because NEA reimbursed NEA-PAC for approximately $18,000 of fundraising costs.

FACTUAL AND LEGAL ANALYSIS

A. Facts concerning payment for Carter-Mondale-NEA buttons

In its monthly report filed in June of 1980, NEA-PAC reported an independent expenditure of $12,080.53 to the Weingeroff Laramie President Corporation for Carter-Mondale buttons. It was noted on the report that the check to the manufacturer was drawn on an NEA account for "administrative reasons" but that NEA-PAC funds were used to pay for the buttons. NEA Staff Counsel explained this transaction in a letter dated December 10, 1980, in response to a request for further information from RAD. According to the clarification, NEA-PAC proposed to raise PAC funds by selling members buttons inscribed "Carter-Mondale-NEA." The NEA General Counsel's Office was asked to approve the purchase of the buttons and did so. Initially, the position of counsel was that the buttons could be purchased with NEA treasury funds as they were to be used for fundraising/solicitation. However, counsel asked for additional time in which to consider the matter, and concluded that it would be safer for NEA-PAC to pay for the buttons to avoid dispute over whether NEA had made a prohibited treasury fund expenditure. Meanwhile, when the manufacturer's invoice was received the payment was charged to an NEA account by staff persons apparently unaware of the counsel's decision. When the staff learned shortly thereafter that NEA-PAC funds should have been used, an NEA-PAC check was promptly issued to NEA to reimburse NEA for the payment to the manufacturer.

B. Facts concerning reimbursement by NEA for other alleged NEA-PAC fundraising costs

In its monthly report filed in August of 1980, NEA-PAC reported receiving reimbursements from NEA totalling approximately $18,000 for payments made by NEA-PAC on June 5, 1980, for Cross pens and 10 Panasonic TV sets. In a second letter dated December 10, 1980, NEA Staff Counsel explained that the pens and TV's were to be used for a fundraiser. NEA-PAC paid for these items on June 5, 1980, because at that time NEA had not decided whether or not to use treasury funds for these items. Later, NEA decided to do so, and reimbursed NEA-PAC on July 29, 1980.

C. Relevant law and its application to the facts concerning the Carter-Mondale-NEA buttons

Pursuant to 2 U.S.C. § 441b(a) it is unlawful for any labor organization to make a contribution or expenditure in connection with any Federal election or for any political committee to knowingly accept or receive any such contribution. See also 11 C.F.R. §§ 114.1(a)(1) and 114.2(b) and (c). A labor organization may, however, expend funds from its general treasury for the purpose of bearing the costs of soliciting contributions to its separated segregated fund. See 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.1(b), and 114.5(b). A labor organization may also expend treasury funds on communications on any subject, including partisan communications, to its members and their families. See 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i) and 114.3.

Because NEA as a labor organization may use its general treasury funds for NEA-PAC solicitation costs, the issue here is whether the inscription "Carter-Mondale-NEA" on the buttons removed payment for the buttons from being a legitimate fundraising expense.

Neither 2 U.S.C. § 441b(b)(2)(C) nor the regulations specifically address the issue of whether partisan campaign buttons may be utilized in connection with PAC solicitations.1/ It should be noted, however, that allowable partisan communications by a labor organization to its members include express advocacy, and such communications may be made in a manner which includes but is not limited to the distribution of printed materials. See 11 C.F.R. § 114.3(b) and (c).

The letter from NEA counsel indicates that the buttons were going to be sold to members as part of solicitation/fundraising for PAC funds and that they were purchased from the manufacturer, not the Carter-Mondale campaign. See 11 C.F.R. § 114.3(c)(1)(i) and (ii). In the absence of any indication that, in the course of the solicitation, NEA-PAC instructed members to distribute the buttons outside of NEA membership, the General Counsel recommends that the Commission find no reason to believe that either NEA or

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1/ The Commission has previously considered the payment by a local of the Teamsters union for jackets bearing the insignia "D.R.I.V.E." (the PAC insignia) a legitimate fundraising expense. See AO 1981-7 at 3-4.

NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's initial payment for the buttons. 2/

D. Application of the law to facts concerning reimbursement by NEA of other NEA-PAC fundraising costs

The term "contribution or expenditure" as used in 2 U.S.C. § 441b(a) is defined to include any direct or indirect payment, loan, advance, or gift of money or anything of value to any candidate, campaign committee, or political party or organization in connection with a federal election. 2 U.S.C. § 441b(b)(2). A labor organization may, however, pay for the establishment, administration, and solicitation of contributions to a separate segregated political fund of its members and their families as such payments are excluded from the definition of § 441b contributions and expenditures. See 2 U.S.C. § 441b(b)(2)(C). Commission regulations specifically allow a labor organization to pay for fundraising plans that involve a raffle or prize as long as the prize is not disproportionately valuable. 11 C.F.R. § 114.5(b)(2).

2/ Although we construe this transaction to be a payment for solicitation costs, it is also arguable that it amounted to a communication expressly advocating the election of a clearly identified candidate which, under 2 U.S.C. § 431(9)(B)(iii) and 11 C.F.R. § 100.8(b)(4), must be reported by NEA on FEC Form 7. However, because the transaction was reported by NEA-PAC and was ultimately paid by NEA-PAC, we do not recommend making any further finding.

Assuming that NEA could have incurred the $18,276.95 cost of the pens and TV sets here involved, there remains the question of whether NEA's payment to NEA-PAC, rather than to the vendors involved, violated 2 U.S.C. § 441b. The statute prohibits "any payment ... of money ... to any ... political ... organization, in connection with any [federal] election." Though NEA may pay for NEA-PAC solicitation costs, NEA-PAC must remain a "separate segregated" fund.

The meaning of the phrase "separate segregated political fund" has been explored to some extent by the courts. In Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1972), the Supreme Court examined the legislative history of § 705 of the Federal Election Campaign Act of 1971, amending then 18 U.S.C. § 610. That addition, known as the Hansen amendment, both codified existing case law interpreting § 610, and introduced the exception to the general prohibition against union political activity, which permits separate segregated funds. The Court in Pipefitters concluded that the terms "separate" and "segregated", as used in § 205, were intended to be synonomous -- i.e., that neither term was meant to require any greater degree of separation of funds than would the other term, standing alone. 407 U.S. at 426. The Court construed the statute to permit a union to control its political fund, and stated that "a fund must be separate from the sponsoring union only in the sense that there must be a strict segregation of its monies from union dues and assessments." 407 U.S. at 414.

Referring to that holding, the Court of Appeals, in FEC v. American Federation of Labor Congress of Industrial Organizations, 628 F.2d 97 (D.C. Cir. 1979), cert. denied, 449 U.S. 982 (1980), stated that the Supreme Court had limited the scope of its Pipefitters decision by the latter-cited language. The appeals court said the question before it was not considered in Pipefitters (whether loans by a political fund to a treasury fund, and their repayment, were permissible), and that the Supreme Court's ruling did not provide specific notice that such inter-fund transfers are prohibited by the Act. 628 F.2d at 101. The court said the Pipefitters holding would not rule out a view that, "if carefully accounted for, loans by the [union's] political fund to the regular fund financed by dues were not inconsistent with the funds being 'separate' and therefore not in conflict with the requirement of 'segregation'." Id. at 102. The AFL-CIO court therefore appeared to suggest that the Act may not prohibit all commingling of treasury and voluntary funds. It nonetheless upheld the finding of a violation and noted that the law's purpose is to protect union members by preventing union treasury funds from being transferred to a political fund.

Certainly, there is a strong policy reason for preventing labor organizations (or corporations) from paying their separate segregated funds for solicitation costs, rather than directly paying the vendors involved. The potential for using such transfers to get excess treasury funds into the political fund is significant. If permitted without restriction, such transactions easily could become a mechanism for hiding payments to the political fund of more than the actual costs of the solicitation efforts. By requiring that the labor organization (or corporation) pay the vendors directly for solicitation costs, the possibility of placing treasury funds at the disposal of the political fund is removed. 3/

The Commission on some occasions has permitted a connected organization to reimburse its separate segregated fund, on a one time basis, for expenses initially paid for by the fund but which could have been paid for by the connected organization.

3/ In certain limited situations the Commission has allowed unions and corporations to collect both PAC funds and non-PAC funds in a combined payment and to then transfer the PAC funds to the separate segregated fund. For example, in Advisory Opinion 1978-98, the Commission permitted a union to transfer to its separate segregated fund that portion of the payments from members' employers that represented voluntary PAC contributions automatically deducted from members' paychecks. In Advisory Opinions 1978-42, 1979-19, and 1981-4, the Commission allowed incorporated entities to transfer to their separate segregated fund that portion of combined billing receipts that was for their PAC.
(cont'd. next page)

In Advisory Opinions 1979-72 and 1979-33 and in Re. AOR 1976-111, the Commission allowed the connected organization involved to reimburse its separate segregated fund for costs paid by the fund inadvertently or by mistake. Each of those situations is distinguishable from the present set of facts. Here, NEA's reimbursement of NEA-PAC appears to have stemmed simply from a reversal of position made after the initial decision to have NEA-PAC pay for the expenses. Accordingly, the above-cited advisory opinions do not serve to shield respondents' actions from the restrictions of § 441b. See Advisory Opinion 1982-42.

3/ (cont'd.)
It could be argued that these situations also raise the potential for the transfer of extra treasury funds to the separate segregated fund and that such payments for contributions collected also should be flatly prohibited. However, unlike a payment for solicitation costs, a payment for contributions collected is subject to certain safeguards under the statute. For example, the treasurer of a political committee is required to keep an account of all "contributions" received by the committee. See 2 U.S.C. § 432(c); 11 C.F.R. § 102.9(a). No such express requirement exists with regard to general receipts, such as payments for solicitation costs incurred. In addition, the payment for "contributions" collected must be done within at least 30 days of receipt, see 2 U.S.C. § 432(b)(2); 11 C.F.R. § 102.8(b), whereas no such time requirement exists for the payment of a committee's solicitation costs. These safeguards with respect to the transfer of contributions collected, i.e. accurate records and timely payment, assure that such transactions can be easily monitored. Absent such safeguards for payments of solicitation costs, the potential for improper transfers is greater and a more restrictive approach is warranted.

Recently, in connection with RAD referral 82L-5 the Commission declined to open a MUR even though there was no indication that the reimbursement resulted from a mistake. See Agenda Document #X82-055, dated April 30, 1982. However, the General Counsel's Office analyzed the transaction as a § 441b violation and recommended not opening a MUR because of the minor nature of the violation and the fact that the committee involved gave assurance that the problem would not recur.

Because NEA's reimbursement does not appear to have been an effort to correct an earlier mistake, and because this transaction falls within the scope of the prohibitions of the statute, the Office of General Counsel recommends that the Commission find reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) in connection with the $18,276.95 payment, but that no further action be taken.

RECOMMENDATIONS

1. Find no reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's initial payment for Carter-Mondale-NEA buttons used for NEA-PAC fundraising.

2. Find reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's reimbursement of $18,276.95 of NEA-PAC's fundraising costs, but take no further action.

3. Close the file in this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Education Association	)	MUR 1411
National Education Association	)	
Political Action Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on August 17, 1982, do hereby certify that the Commission took the following actions in MUR 1411:

1. Failed in a vote of 3-3 to pass a motion to find reason to believe that NEA and NEA-PAC violated 2 U.S.C. §441b(a) by NEA's reimbursement of $18,276.95 of NEA-PAC's fundraising costs, but take no further action.

   Commissioners Aikens, McDonald, and Reiche voted affirmatively for the motion; Commissioners Elliott, Harris, and McGarry dissented.

2. Failed in a vote of 3-3 to pass a motion to find no reason to believe that NEA and NEA-PAC violated 2 U.S.C. §441b(a) by NEA's reimbursement of $18,276.95 of NEA-PAC's fundraising costs.

   Commissioners Elliott, Harris, and McGarry voted affirmatively for the motion; Commissioners Aikens, McDonald, and Reiche dissented.

3. Decided by a vote of 5-1 to take no further action and close the file in MUR 1411.

   Commissioners Aikens, Elliott, Harris, McGarry, and McDonald voted affirmatively for the decision. Commissioner Reiche dissented.

Attest:

8-18-82 — Marjorie W Emmons

Date

Marjorie W. Emmons
Secretary of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Education Association;) MUR 1411
National Education Association)
Political Action Committee)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on August 10, 1982, do hereby certify that the Commission acted as follows in MUR 1411:

1. Decided by a vote of 4-0 to find no reason to believe that NEA and NEA-PAC violated 2 U.S.C. §441b(a) by NEA's initial payment for Carter-Mondale NEA buttons used for NEA-PAC fundraising.

   Commissioners Elliott, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioner Harris abstained in the vote and Commissioner Aikens was not present at the time of the vote.

2. Failed by a vote of 3-2 to pass a motion to find no reason to believe that NEA and NEA-PAC violated 2 U.S.C. §441b(a) by NEA's reimbursement of $18,276.95 of NEA-PAC's fundraising costs.

   Commissioners Elliott, Harris, and McGarry voted affirmatively for the motion; Commissioners McDonald and Reiche dissented; Commissioner Aikens was not present.

Attest:

8-10-82 Marjorie W. Emmons

Date

Marjorie W. Emmons
Secretary of the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joy Koletsky
Staff Counsel
National Education Association
1201 - 16th Street, N.W.
Washington, D.C. 20036

Re: MUR 1411

Dear Ms. Koletsky:

This is to advise you that the Federal Election Commission ("Commission") has considered whether or not the National Education Association ("NEA") and the National Education Association Political Action Committee ("NEA-PAC") violated 2 U.S.C. § 441b in connection with payments for certain fundraising costs of NEA-PAC in 1980. Specifically at issue were reimbursements by NEA to NEA-PAC for $18,276.95 spent on pens and TV sets for fundraising, as well as an initial payment by NEA for "Carter-Mondale-NEA" buttons used in connection with NEA-PAC solicitations. These transactions were described by you in some detail in two letters dated December 10, 1980, in response to requests for additional information from the Reports Analysis Division dated November 28, 1980.

On August 17, 1982, the Commission voted to take no further action in connection with NEA's reimbursement of NEA-PAC for $18,276.95 worth of pens and TV sets. For your information, the Commission also voted to find no reason to believe NEA and NEA-PAC violated 2 U.S.C. § 441b in connection with NEA's initial payment for the "Carter-Mondale-NEA" buttons. The General Counsel's Factual and

Legal Analysis which formed a basis for the Commission's findings is attached.

In view of the foregoing, the file in this matter has been closed. It will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to Scott Thomas, the attorney handling this matter, at (202) 523-4166.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

KG 8/19/82

Attachment
General Counsel's Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS /JODY C. RANSOM JCR
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: AUGUST 3, 1982

SUBJECT: ADDITIONAL OBJECTION - MUR 1411 First General Counsel's Report dated 7-29-82; Received in OCS, 7-29-82, 3:44

You were notified previously of an objection by Commissioners Reiche, Harris and Aikens.

Commissioner Elliott submitted an additional objection at 2:48, August 2, 1982.

This matter will be discussed in executive session on Tuesday, August 10, 1982.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS MWE /JODY C. RANSOM JCR
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: AUGUST 2, 1982

SUBJECT: ADDITIONAL OBJECTION - MUR 1411 First General Counsel's Report dated 7-29-82; Received in OCS, 7-29-82, 3:44

You were notified previously of an objection by Commissioner Reiche.

Commissioner Aikens submitted an additional objection at 2:25, August 2, 1982.

This matter will be discussed in executive session on Tuesday, August 10, 1982.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS /JODY C. RANSOM
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: AUGUST 2, 1982

SUBJECT: ADDITIONAL OBJECTION - MUR 1411 First General Counsel's Report dated 7-29-82; Received in OCS, 7-29-82, 3:44

You were notified previously of an objection by Commissioners Reiche and Aikens.

Commissioner Harris submitted an additional objection at 2:37, August 2, 1982.

This matter will be discussed in executive session on Tuesday, August 10, 1982.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY RANSOM

DATE: AUGUST 2, 1982

SUBJECT: OBJECTION - MUR 1411 First General Counsel's Report dated 7-29-82; Received in OCS, 7-29-82, 3:44

The above-named document was circulated to the Commission on July 30, 1982 at 2:00.

Commissioner Reiche submitted an objection at 11:27, August 2, 1982.

This matter will be placed on the agenda for the Executive Session of Tuesday August 10, 1982. A copy of Commissioner Reiche's vote sheet with comments is attached.

Attachment:
Vote sheet

July 29, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1411

Please have the attached First General Counsel's Report distributed to the Commission on a 48 hour tally basis. Thank you.

Attachment

cc: Thomas

SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION 7-29-82

MUR 1411
STAFF MEMBER
Scott Thomas

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS' NAMES: National Education Association
National Education Association Political Action Committee

RELEVANT STATUTE: 2 U.S.C. §§ 431(9)(B)(iii), 432(b)(2) and (c), 441b(a), 441b(b)(2)(A) and (C)
11 C.F.R. §§ 102.8(b), 102.9(a), 114.1(a)(1), 114.1(a)(2)(i) and (iii), 114.1(b), 114.2(b) and (c), 114.3, and 114.5(b)
Re. AOR 1976-111
AO's 1978-42, 1978-98, 1979-19, 1979-33, 1979-72, 1981-4, and 1981-7

INTERNAL REPORTS CHECKED: Reports filed by the National Education Association Political Action Committee, June - August of 1980

FEDERAL AGENCIES CHECKED: None

GENERATION OF MATTER

This matter was referred by the Reports Analysis Division ("RAD") .

SUMMARY OF POSSIBLE VIOLATIONS

The National Education Association ("NEA") and the National Education Association Political Action Committee ("NEA-PAC") may have violated 2 U.S.C. § 441b(a) because a check to a button manufacturer for "Carter-Mondale-NEA" buttons used for NEA-PAC fundraising was drawn on an NEA account even though NEA-PAC quickly gave NEA money to cover the entire payment. NEA and NEA-PAC also may have violated 2 U.S.C. § 441b(a) because NEA reimbursed NEA-PAC for approximately $18,000 of fundraising costs.

FACTUAL AND LEGAL ANALYSIS

A. Facts concerning payment for Carter-Mondale-NEA buttons

In its monthly report filed in June of 1980, NEA-PAC reported an independent expenditure of $12,080.53 to the Weingeroff Laramie President Corporation for Carter-Mondale buttons. (See Attachment 1, p. 5). It was noted on the report that the check to the manufacturer was drawn on an NEA account for "administrative reasons" but that NEA-PAC funds were used to pay for the buttons. (Id.). NEA Staff Counsel explained this transaction in a letter dated December 10, 1980, in response to a request for further information from RAD. (See Attachment 1, pp. 10-11 and 7-8). According to the clarification, NEA-PAC proposed to raise PAC funds by selling members buttons inscribed "Carter-Mondale-NEA." (See Attachment 1, p. 10). The NEA General Counsel's Office was asked to approve the purchase of the buttons and did so. Initially, the position of counsel was that the buttons could be purchased with NEA treasury funds as they were to be used for fundraising/solicitation. However, counsel asked for additional time in which to consider the matter, and concluded that it would be safer for NEA-PAC to pay for the buttons to avoid dispute over whether NEA had made a prohibited treasury fund expenditure. Meanwhile, when the manufacturer's invoice was received the payment was charged to an NEA account by staff persons apparently unaware of the counsel's decision. When the staff learned shortly thereafter that NEA-PAC funds should have been used, an NEA-PAC check was promptly issued to NEA to reimburse NEA for the payment to the manufacturer. (Attachment 1, p. 10).

B. Facts concerning reimbursement by NEA for other alleged NEA-PAC fundraising costs

In its monthly report filed in August of 1980, NEA-PAC reported receiving reimbursements from NEA totalling approximately $18,000 for payments made by NEA-PAC on June 5, 1980, for Cross pens and 10 Panasonic TV sets. (See Attachment 2, p. 3). In a second letter dated December 10, 1980, NEA Staff Counsel explained that the pens and TV's were to be used for a fundraiser. (See Attachment 1, pp. 14-15). NEA-PAC paid for these items on June 5, 1980, because at that time NEA had not decided whether or not to use treasury funds for these items. Later, NEA decided to do so, and reimbursed NEA-PAC on July 29, 1980. (Id.).

C. Relevant law and its application to the facts concerning the Carter-Mondale-NEA buttons

Pursuant to 2 U.S.C. § 441b(a) it is unlawful for any labor organization to make a contribution or expenditure in connection with any Federal election or for any political committee to knowingly accept or receive any such contribution. See also 11 C.F.R. §§ 114.1(a)(1) and 114.2(b) and (c). A labor organization may, however, expend funds from its general treasury for the purpose of bearing the costs of soliciting contributions to its separated segregated fund. See 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.1(b), and 114.5(b). A labor organization may also expend treasury funds on communications on any subject, including partisan communications, to its members and their families. See 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1 (a)(2)(i) and 114.3.

Because NEA as a labor organization may use its general treasury funds for NEA-PAC solicitation costs, the issue here is whether the inscription "Carter-Mondale-NEA" on the buttons removed payment for the buttons from being a legitimate fundraising expense.

Neither 2 U.S.C. § 441b(b)(2)(C) nor the regulations specifically address the issue of whether partisan campaign buttons may be utilized in connection with PAC solicitations. 1/ It should be noted, however, that allowable partisan communications by a labor organization to its members include express advocacy, and such communications may be made in a manner which includes but is not limited to the distribution of

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1/ The Commission has previously considered the payment by a local of the Teamsters union for jackets bearing the insignia "D.R.I.V.E." (the PAC insignia) a legitimate fundraising expense. See AO 1981-7 at 3-4.

printed materials. See 11 C.F.R. § 114.3(b) and (c).

The letter from NEA counsel indicates that the buttons were going to be sold to members as part of solicitation/fundraising for PAC funds and that they were purchased from the manufacturer, not the Carter-Mondale campaign. See Attachment 1, p. 10; 11 C.F.R. § 114.3(c)(1)(i) and (ii). In the absence of any indication that, in the course of the solicitation, NEA-PAC instructed members to distribute the buttons outside of NEA membership, the General Counsel recommends that the Commission find no reason to believe that either NEA or NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's initial payment for the buttons. 2/

D. Application of the law to facts concerning reimbursement by NEA of other NEA-PAC fundraising costs

The term "contribution or expenditure" as used in 2 U.S.C. § 441b(a) is defined to include any direct or indirect payment, loan, advance, or gift of money or anything of value to any candidate, campaign committee, or political party or organization in connection with a federal election. 2 U.S.C. § 441b(b)(2). A labor organization may, however, pay for the establishment, administration, and solicitation of contributions to a separate segregated political fund of its members and their families as

---

2/ Although we construe this transaction to be a payment for solicitation costs, it is also arguable that it amounted to a communication expressly advocating the election of a clearly identified candidate which, under 2 U.S.C. § 431(9)(B)(iii) and 11 C.F.R. § 100.8(b)(4), must be reported by NEA on FEC Form 7. However, because the transaction was reported by NEA-PAC and was ultimately paid by NEA-PAC, we do not recommend making any further finding.

such payments are excluded from the definition of § 441b contributions and expenditures. See 2 U.S.C. § 441b(b)(2)(C). Commission regulations specifically allow a labor organization to pay for fundraising plans that involve a raffle or prize as long as the prize is not disproportionately valuable. 11 C.F.R. § 114.5(b)(2).

Assuming that NEA could have incurred the $18,276.95 cost of the pens and TV sets here involved, there remains the question of whether NEA's payment to NEA-PAC, rather than to the vendors involved, violated 2 U.S.C. § 441b. The statute prohibits "any payment ... of money ... to any ... political ... organization, in connection with any [federal] election." Though NEA may pay for NEA-PAC solicitation costs, NEA-PAC must remain a "separate segregated" fund.

The meaning of the phrase "separate segregated political fund" has been explored to some extent by the courts. In Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1972), the Supreme Court examined the legislative history of § 705 of the Federal Election Campaign Act of 1971, amending then 18 U.S.C. § 610. That addition, known as the Hansen amendment, both codified existing case law interpreting § 610, and introduced the exception to the general prohibition against union political activity, which permits separate segregated funds. The Court in Pipefitters concluded that the terms "separate" and "segregated", as used in § 205, were intended to be synonomous

-- i.e., that neither term was meant to require any greater degree of separation of funds than would the other term, standing alone. 407 U.S. at 426. The Court construed the statute to permit a union to control its political fund, and stated that "a fund must be separate from the sponsoring union only in the sense that there must be a strict segregation of its monies from union dues and assessments." 407 U.S. at 414.

Referring to that holding, the Court of Appeals, in FEC v. American Federation of Labor Congress of Industrial Organizations, 628 F.2d 97 (D.C. Cir. 1979), cert. denied, 449 U.S. 982 (1980), stated that the Supreme Court had limited the scope of its Pipefitters decision by the latter-cited language. The appeals court said the question before it was not considered in Pipefitters (whether loans by a political fund to a treasury fund, and their repayment, were permissible), and that the Supreme Court's ruling did not provide specific notice that such inter-fund transfers are prohibited by the Act. 628 F.2d at 101. The court said the Pipefitters holding would not rule out a view that, "if carefully accounted for, loans by the [union's] political fund to the regular fund financed by dues were not inconsistent with the funds being 'separate' and therefore not in conflict with the requirement of 'segregation'." Id. at 102. The AFL-CIO court therefore appeared to suggest that the

Act may not prohibit all commingling of treasury and voluntary funds. It nonetheless upheld the finding of a violation and noted that the law's purpose is to protect union members by preventing union treasury funds from being transferred to a political fund.

Certainly, there is a strong policy reason for preventing labor organizations (or corporations) from paying their separate segregated funds for solicitation costs, rather than directly paying the vendors involved. The potential for using such transfers to get excess treasury funds into the political fund is significant. If permitted without restriction, such transactions easily could become a mechanism for hiding payments to the political fund of more than the actual costs of the solicitation efforts. By requiring that the labor organization (or corporation) pay the vendors directly for solicitation costs, the possibility of placing treasury funds at the disposal of the political fund is removed. 3/

3/ In certain limited situations the Commission has allowed unions and corporations to collect both PAC funds and non-PAC funds in a combined payment and to then transfer the PAC funds to the separate segregated fund. For example, in Advisory Opinion 1978-98, the Commission permitted a union to transfer to its separate segregated fund that portion of the payments from members' employers that represented voluntary PAC contributions automatically deducted from members' paychecks. In Advisory Opinions 1978-42, 1979-19, and 1981-4, the Commission allowed incorporated entities to transfer to their separate segregated fund that portion of combined billing receipts that was for their PAC.
(cont'd. next page)

The Commission on some occasions has permitted a connected organization to reimburse its separate segregated fund, on a one time basis, for expenses initially paid for by the fund but which could have been paid for by the connected organization. In Advisory Opinions 1979-72 and 1979-33 and in Re. AOR 1976-111, the Commission allowed the connected organization involved to reimburse its separate segregated fund for costs paid by the fund inadvertently or by mistake. Each of those situations is distinguishable from the present set of facts. Here, NEA's reimbursement of NEA-PAC appears to have stemmed simply from a reversal of position made after the initial decision to have NEA-PAC pay for the expenses. Accordingly, the above-cited advisory opinions do not serve to shield respondents' actions from the restrictions of § 441b. <u>See</u> Advisory Opinion 1982-42.

<u>3</u>/ (cont'd.)
It could be argued that these situations also raise the potential for the transfer of extra treasury funds to the separate segregated fund and that such payments for contributions collected also should be flatly prohibited. However, unlike a payment for solicitation costs, a payment for contributions collected is subject to certain safeguards under the statute. For example, the treasurer of a political committee is required to keep an account of all "contributions" received by the committee. <u>See</u> 2 U.S.C. § 432(c); 11 C.F.R. § 102.9(a). No such express requirement exists with regard to general receipts, such as payments for solicitation costs incurred. In addition, the payment for "contributions" collected must be done within at least 30 days of receipt, see 2 U.S.C. § 432(b)(2); 11 C.F.R. § 102.8(b), whereas no such time requirement exists for the payment of a committee's solicitation costs. These safeguards with respect to the transfer of contributions collected, i.e. accurate records and timely payment, assure that such transactions can be easily monitored. Absent such safeguards for payments of solicitation costs, the potential for improper transfers is greater and a more restrictive approach is warranted.

Recently, in connection with RAD referral 82L-5 the Commission declined to open a MUR even though there was no indication that the reimbursement resulted from a mistake. See Agenda Document #X82-055, dated April 30, 1982. However, the General Counsel's Office analyzed the transaction as a § 441b violation and recommended not opening a MUR because of the minor nature of the violation and the fact that the committee involved gave assurance that the problem would not recur.

Because NEA's reimbursement does not appear to have been an effort to correct an earlier mistake, and because this transaction falls within the scope of the prohibitions of the statute, the Office of General Counsel recommends that the Commission find reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) in connection with the $18,276.95 payment, but that no further action be taken.

RECOMMENDATIONS

1. Find no reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's initial payment for Carter-Mondale-NEA buttons used for NEA-PAC fundraising.

2. Find reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's reimbursement of $18,276.95 of NEA-PAC's fundraising costs, but take no further action.

3. Close the file in this matter.

4. Approve attached letter.

July 29, 1982
Date

Charles N. Steele
General Counsel

By:
Kenneth A. Gross
Associate General Counsel

Attachments
1. RAD referral with attachments (21 pages)
2. Selections from report filed by NEA-PAC in August of 1980 (3 pages)
3. Proposed letter (12 pages)

REFER TO INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING

RAD ~~D~~ 842 (4)

KAG

(1)

REPORTS ANALYSIS REFERRAL SHEET

DATE [illegible] 1981

ANALYST Penelope [illegible] ph

TO: Office of General Counsel

TEAM CHIEF Roberta [illegible] RB

THROUGH: STAFF DIRECTOR BC

COMPLIANCE REVIEW [illegible]

FROM: ASSISTANT STAFF DIRECTOR FOR REPORTS ANALYSIS JS

CANDIDATE/COMMITTEE: NEA-PAC
TREASURER: Mr. Terry Herndon
ADDRESS: 1201 - 16th Street, N.W., Washington, D.C. 20036 [illegible]

AFFILIATE(S): Not pertinent to the allegation

ALLEGATION(S): [illegible] labor organization made expenditure in connection with federal elections

CITE: 2 USC 441b(a)

ATTACHMENT(S) -0-

DATE INITIATED: November 25, 1980

MANNER IN WHICH REVIEW WAS INITIATED:
XX Normal Review
☐ Other:
☐ Special Project:

ATTACHMENT

REPORTS: All reports within the dates listed below have received initial basic review. For all reports reviewed, see Attachment 1.

PERIOD COVERED FROM January 1, 1979 TO August 31, 1980

TOTAL RECEIPTS $ 813,068

TOTAL EXPENDITURES $ [illegible]

CASH ON HAND $ [illegible]

DEBTS $ -0-

HISTORY:

RESULTS OF REVIEW: — ATTACHMENT

RFAI sent Nov. 25 on June Monthly report — [illegible]

Adequate response received Dec. 12 — [illegible]

COMMUNICATIONS WITH CANDIDATE/COMMITTEE: — ATTACHMENT

None

REASON(S) FOR REFERRAL: — ATTACHMENT

NEA was reimbursed in full, but amount involved ($12,080) exceeds $2,500 per calendar year threshold set forth in review and audit policy for review by the General Counsel

OTHER PENDING ACTIONS INITIATED BY RAD: — ATTACHMENT

None

OTHER RELEVANT INFORMATION: — ATTACHMENT

None

PREVIOUS OGC AUDIT REFERRALS FROM RAD:

MURs 015, 288, 291 & 293 were merged under MUR 293 which was closed on 1-17-79. MURs 283 & 350 were merged under MUR 350 which was closed on 1-4-78. MUR 913 was closed on 3-29-79.

MURs 1302 & 1313 are still open.

An Interim Audit Report was sent to OGC on 9-5-80.

Attachment 1, p. 1

RAD Form 1
REVISED Oct. 1979

ATTACHMENT 1

FEDERAL ELECTION COMMISSION
COMMITTEE INDEX OF DISCLOSURE DOCUMENTS (C) (79-80)
NON-PARTY RELATED

DATE 10DEC80
PAGE 1

2 0 1 1 5 3 4 1 2 1

ATIONAL EDUCATION ASSOCIATION POLITICAL ACTION COMMITTEE — ID #C00003251
ONNECTED ORGANIZATION: EDUCATION ASS'N: NAT'L

OMMITTEE	DOCUMENT	RECEIPTS		EXPENDITURES		COVERAGE DATES		# OF PAGES	MICROFILM LOCATION
1979	MISCELLANEOUS REPORT					2APR79	TO FEC	3	79FEC/123/3227
	STATEMENT OF ORGANIZATION - AMENDMENT					10OCT79		2	79FEC/140/0395
	FEBRUARY MONTHLY	17,656		0		1JAN79	31JAN79	5	79FEC/120/4244
	MARCH MONTHLY	22,833		0		1FEB79	28FEB79	4	79FEC/121/5042
	APRIL MONTHLY	14,517		8,001		1MAR79	31MAR79	7	79FEC/125/4906
	MAY MONTHLY	15,280		0		1APR79	30APR79	4	79FEC/127/4039
	JUNE MONTHLY	22,723		20,400		1MAY79	31MAY79	6	79FEC/129/1573
	JULY MONTHLY	38,373		500		1JUN79	30JUN79	5	79FEC/133/1439
	AUGUST MONTHLY	39,576		642,201		1JUL79	31JUL79	6	79FEC/135/0610
	SEPTEMBER MONTHLY	19,215		173,174		1AUG79	31AUG79	4	79FEC/136/4157
	OCTOBER MONTHLY	7,465		17,543		1SEP79	30SEP79	6	79FEC/140/0513
	NOVEMBER MONTHLY	23,432		59,437		1OCT79	31OCT79	7	79FEC/141/2609
	DECEMBER MONTHLY	23,134		1,476		1NOV79	30NOV79	3	79FEC/143/0154
	DECEMBER MONTHLY AMENDMENT			-		1NOV79	30NOV79	2	80FEC/143/4855
	YEAR-END	22,611		465		1DEC79	31DEC79	5	80FEC/145/5192
1980	STATEMENT OF ORGANIZATION - AMENDMENT					2JAN80		5	80FEC/143/3106
	MISCELLANEOUS REPORT					7JAN80	TO FEC	2	80FEC/143/4691
	STATEMENT OF ORGANIZATION - AMENDMENT					20MAY80		2	80FEC/157/1666
	STATEMENT OF ORGANIZATION - AMENDMENT					17JUN80		2	80FEC/158/0481
	STATEMENT OF ORGANIZATION - AMENDMENT					19SEP80		3	80FEC/165/3764
	FEBRUARY MONTHLY	26,710		11,523		1JAN80	31JAN80	6	80FEC/149/1160
	MARCH MONTHLY	27,200		4,423		1FEB80	29FEB80	5	80FEC/150/2253
	APRIL MONTHLY	17,000		20,021		1MAR80	31MAR80	6	80FEC/153/2822
	MAY MONTHLY	21,511		23,510		1APR80	30APR80	6	80FEC/156/1992
	JUNE MONTHLY	26,602		52,120		1MAY80	31MAY80	9	80FEC/158/0582
	REQUEST FOR ADDITIONAL INFORMATION					1MAY80	31MAY80	2	80FEC/181/3443
	JULY MONTHLY	31,507		31,457		1JUN80	30JUN80	9	80FEC/160/0524
	AUGUST MONTHLY	65,186		58,518		1JUL80	31JUL80	7	80FEC/163/5165
	REQUEST FOR ADDITIONAL INFORMATION					1JUL80	31JUL80	3	80FEC/181/3446
	SEPTEMBER MONTHLY	33,569		40,724		1AUG80	31AUG80	11	80FEC/165/3770
	OCTOBER MONTHLY	33,444		56,868		1SEP80	30SEP80	16	80FEC/169/5408
	PRE-GENERAL	12,165		23,750		1OCT80	15OCT80	6	80FEC/172/3362
	POST-GENERAL	48,065		55,619		16OCT80	24NOV80	18	80FEC/182/2702
	TOTAL	606,742	0	956,263	0			187	TOTAL PAGES

Attachment 1, p. 3

Reports reviewed

③

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ATTACHMENT 2

Attachment 1, p. 4

June Monthly

(5)

SCHEDULE E

ITEMIZED INDEPENDENT EXPENDITURES

(See Reverse Side for Instructions)

Page 1 of 1 Pages

Name of Committee (in Full)				I.D. No.
National Education Association Political Action Committee				C00003251
Full name, Mailing Address & ZIP Code of Each Payee	Purpose of Expenditure	Date (month, day, year)	Amount	Name of Federal Candidate supported or opposed by the expenditure & office sought
Weingeroff Laramie President Corporation 725 Branch Avenue Providence, Rhode Island 02904	~~Carter~~/Mondale buttons	5/31/80	$12,080.53	☐ Support ☐ Oppose
Although the actual check to the manufacturer was drawn on the NEA account, this was for administrative reasons. NEA-PAC Funds were used for the payment of the buttons.				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose

(a) SUBTOTAL of Itemized Independent Expenditures $ 12,080.53

(b) SUBTOTAL of Unitemized Independent Expenditures $

(c) TOTAL Independent Expenditures $ 12,080.53

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate or authorized committee. Furthermore, these expenditures did not involve the financing of dissemination, distribution, or republication, in whole or in part, of any campaign materials prepared by the candidate, his campaign committees, or their agents.

Signature Date

Terry Herndon

Subscribed and sworn to before me this 18th day of June, 1980

My Commission expires February 14, 1984

Susan A. Alexander

NOTARY PUBLIC

Attachment 1, p.5

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ATTACHMENT 3

Attachment 1, p.6

(7)

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 28, 1980

Terry Herndon, Treasurer
National Education Association
Political Action Committee
1201 16th Street, N.W.
Washington, DC 20036

Identification No: C00003251

Reference: JUNE MONTHLY (5/1/80-5/31/80)

Dear Mr. Herndon:

This letter is prompted by the Commission's preliminary review of your June Monthly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Schedule E of your report discloses a check "drawn on the N.E.A. account. . . for administrative reasons" written in payment for an independent expenditure. Please be advised that a contribution from a labor organization is prohibited by 2 U.S.C. 441b. The definition of contribution includes "any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any service, or anything of value to any. . . political organization".

Disbursements of funds made from a union treasury account for such an expenditure would constitute a prohibited expenditure under 2 U.S.C. 441b. If your Schedule E reflects your committee's reimbursement of the union treasury account for this disbursement, your report should be amended to reflect the N.E.A. treasury account as the ultimate payee.

You are advised that this sort of activity is subject to possible legal action by the Commission. Please clarify the nature of the "administrative reasons" this check was drawn on the N.E.A. account instead of your committee account.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel

Attachment 1, p. 7

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Terry Herndon 2
National Education Association
Political Action Committee

free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Penny Harms

Penny Harms
Reports Analyst
Reports Analysis Division

Attachment 1, p. 8

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ATTACHMENT 4

Attachment 1, p. 9

HAND DELIVERED

(10)

80 DEC 12 P 3: 34

LEGAL SERVICES
OFFICE OF GENERAL COUNSEL

nea
NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 833-4451
WILLARD H. McGUIRE, President
BERNIE FREITAG, Vice President
MARY HATWOOD FUTRELL, Secretary-Treasurer
TERRY HERNDON, Executive Director

December 10, 1980

Ms. Penny Harms
Report Analyst
Reports Analysis Division
Federal Elections Commission
Washington, D.C. 20463

Re: June Monthly (5/1/80-5/31/80)
I.D. No. C00003251

Dear Ms. Harms:

This letter is in response to your November 28, 1980 letter to Terry Herndon regarding the above matter, in which I have been authorized to represent the National Education Association Political Action Committee (NEA-PAC). Your letter states that Schedule E of the June Report of Receipts and Disbursements (June Monthly) filed by NEA-PAC "discloses a check 'drawn on the NEA account ... for administrative reasons' written in payment for an independent expenditure." After advising that 2 U.S.C. §441b prohibits contributions from labor organizations, you ask that NEA-PAC "clarify the nature of the 'administrative reasons' this check was drawn on the NEA account instead of [the NEA-PAC]account." The requested clarification is provided below.

In April, 1980, the NEA Office of General Counsel (OGC) was asked to approve the purchase by NEA of certain buttons inscribed with the words "Carter-Mondale-NEA," which NEA-PAC proposed to sell to members in order to raise political activity funds. We approved the concept of the button sale and since the buttons were to be used for purposes of solicitation/fundraising, we concluded that NEA treasury funds could be used to purchase them. (See A.O. 1978-17.) However, we asked for additional time to consider the matter and, upon further consideration, advised that NEA-PAC, rather than NEA, should bear the expense. This position was taken to avoid any dispute over whether the payment for the buttons by NEA might be deemed to constitute an independent expenditure. The staff persons administering the project for NEA-PAC apparently were unaware of the decision, however, and when the manufacturer's invoices for the buttons were received, payment was charged to an NEA account. Shortly thereafter, the staff persons learned that NEA-PAC funds should have been used, and NEA-PAC promptly issued a check to NEA reimbursing it for the earlier payment.

Attachment 1, p.10

(11)

n.o, NEA-[illegible]: funds were used to reimburse

Since NEA-PAC funds in fact were used to purchase the buttons, NEA-PAC reported its payment for the buttons as an independent expenditure and listed the manufacturer of the buttons, Weingeroff Larami President Corp. as "Payee" on Schedule E. In the interest of completeness, however, NEA-PAC included the explanatory note indicating that for "administrative reasons" the actual check was drawn on the NEA account. This note may have been too cryptic and, consistent with the recommendation in your letter of November 28, we have attached an amended Schedule E, which shows NEA as the payee of the NEA-PAC check, along with a brief explanation of the events described above.

I trust that this clarification adequately responds to the questions raised in your letter. Please contact me if you have any further questions.

Sincerely,

Joy Koletsky

Joy Koletsky
Staff Counsel

JK:dr

Attachment

82040354132

Attachment 1, p. 11

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RECEIVED

80 DEC 12 P3:34

(12)

REPORT OF RECEIPTS AND DISBURSEMENTS
For a Political Committee Other Than an Authorized Committee

(Summary Page)

1. Name of Committee (in Full)
National Education Association
Political Action Committee

Address (Number and Street)
1201 Sixteenth Street, N.W.

City, State and ZIP Code
Washington, D. C. 20036

☐ Check if address is different than previously reported.

2. FEC Identification Number
C00003251

3. ☐ This committee qualified as a multicandidate committee during this Reporting Period on ________ (date)

4. TYPE OF REPORT (check appropriate boxes)

(a) ☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year End Report
☐ July 31 Mid Year Report (Non-election Year Only)
☒ Monthly Report for May 1980
☐ Twelfth day report preceding ________ (Type of Election) election on ________ in the State of ________
☐ Thirtieth day report following the General Election on ________ in the State of ________
☐ Termination Report

(b) Is this Report an Amendment? ☒ YES ☐ NO

SUMMARY	Column A This Period	Column B Calendar Year-to-Date
5. Covering Period ________ Through ________		
6. (a) Cash on Hand January 1, 19__		$
(b) Cash on Hand at Beginning of Reporting Period	$	
(c) Total Receipts (from Line 18)	$	$
(d) Subtotal (add lines 6(b) and 6(c) for Column A and lines 6(a) and 6(c) for Column B)	$	$
7. Total Disbursements (from Line 28)	$	$
8. Cash on Hand at Close of Reporting Period (subtract line 7 from 6(d))	$	$
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C or Schedule D)	$	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C or Schedule D)	$	

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Terry Herndon
Type or Print Name of Treasurer

Terry Herndon
SIGNATURE OF TREASURER

12/10/80
Date

For further information, contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-523-4068

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used.

FEC FORM 3X (3/80)

Attachment 1, p. 12

SCHEDULE E

ITEMIZED INDEPENDENT EXPENDITURES

(See Reverse Side for Instructions)

 (13)

Name of Committee (in Full)	I.D. No
National Education Association Political Action Committee	C00003251

Full Name, Mailing Address & ZIP Code of Each Payee	Purpose of Expenditure	Date (month, day, year)	Amount	Name of Federal Candidate supported or opposed by the expenditure & office sought
National Education Assn.* 1201 16th Street, N.W. Washington, D.C. 20036	Carter/Mondale buttons	5/31/80	$12,080.53	☐ Support ☐ Oppose
*Due to an internal breakdown in communications, the manufacturer of the buttons was paid by NEA rather than NEA-PAC. The error was discovered shortly after payments had been made and NEA-PAC promptly reimbursed NEA.				☒ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose

(a) SUBTOTAL of Itemized Independent Expenditures $12,080.53

(b) SUBTOTAL of Unitemized Independent Expenditures .... $ ______

(c) TOTAL Independent Expenditures .... $ 12,080.53

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, concert with, or at the request or suggestion of any candidate or any authorized committee or agent of such candidate or authorized committee. Furthermore, these expenditures did not involve the financing of dissemination, distribution, or republication in whole or in part of any campaign materials prepared by the candidate, his campaign committee, or their agent.

Terry E Herndon — Signature

12/10/80 — Date

Subscribed and sworn to before me this 10th day of December 1980

My Commission expires Aug. 31, 1983

Sheryl D. Fitzpatrick
NOTARY PUBLIC

Attachment 1, p. 13

nea

LEGAL SERVICES
OFFICE OF GENERAL COUNSEL

NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 833-4451

WILLARD H. McGUIRE, President
BERNIE FREITAG, Vice President
MARY HATWOOD FUTRELL, Secretary-Treasurer

TERRY HERNDON, Executive Director

December 10, 1980

Ms. Penny Harms
Report Analyst
Reports Analysis Division
Federal Elections Commission
Washington, D.C. 20463

Re: August Monthly (7/1/80-7/31/80)
I.D. No. C00003251

Dear Ms. Harms:

This letter is in response to your November 28, 1980 letter to Terry Herndon regarding the above matter. Your letter states that Schedule A of the August Report of Receipts and Disbursements (August Monthly) filed by the National Education Association Political Action Committee (NEA-PAC) "discloses apparent contributions from labor organizations" and notes that such contributions are "prohibited by 2 U.S.C. §441b ...." I have been authorized to represent NEA-PAC in connection with this matter.

Schedule A of the August Monthly indicates that on July 29, 1980, NEA-PAC received from the National Education Association (NEA) (1) $17,375.00 as reimbursement for cross pens and (2) $901.95 as reimbursement for ten Panasonic television sets. NEA-PAC paid for these items on June 5, 1980, and reported these payments as disbursements in Schedule B of its July Report of Receipts and Disbursements (July Monthly). A copy of the relevant section of the July Monthly is attached for your convenience. Schedule B of the FEC Report Form 3X requires a statement of the purpose of political committee disbursements and Schedule B of the July Monthly indicates the purpose of the NEA-PAC June 5 disbursements was "to be used for Fundraiser." Schedule A of this form, however, does not require a statement of purpose for receipts, and, accordingly, Schedule A of the August Monthly does not indicate the purpose of the July 29 reimbursement. It is this omission in Schedule A which accounts for the present misunderstanding. As indicated below, the July 29 reimbursement from NEA was made to reimburse NEA-PAC for costs that NEA initially could have paid.

Attachment 1, p. 14

15

Section 441(b)(2)(C) of the Federal Election Campaign Act (Act) permits a labor organization to use treasury funds to pay for the costs of soliciting contributions to its political action committee. Commission regulations further provide that labor organizations can utilize fundraising devices in soliciting contributions, See 11 C.F.R. §114.5(b). See also A.O. 1978-17, and A.O. 1979-72, in which the Commission ruled that because "[a] membership organization may pay for the solicitation costs pertaining to a fundraiser ... so such an organization may reimburse its political action committee for such amounts mistakenly paid for by the PAC." A copy of this opinion is attached for your convenience. This is precisely what happened here: under the Act, NEA could have paid for both the cross pens and the Panasonic television sets used in the NEA-PAC fundraiser, and the payments were "mistakenly" made by NEA-PAC on June 5 since, as of that date, NEA had not decided whether or not to use treasury funds. NEA subsequently decided to do so, and on July 29, NEA-PAC was reimbursed.

In your letter of November 28, 1980 regarding the August Monthly, you state that "[i]f you find that sources of the contributions are permissible and were disclosed incorrectly or incompletely on your report, please amend your original report with the clarifying information." As we have indicated, in the instant situation there were in fact no "contributions," nor was the "source" of the payments disclosed "incorrectly or incompletely." What was omitted was the fact that the purpose of the July 29 payments from NEA was to reimburse NEA-PAC for fundraising costs previously disclosed in Schedule B of the July Monthly. Enclosed is an amended Schedule A of the August Monthly which provides this information.

I trust this letter adequately responds to the questions raised in your November 28 letter regarding NEA-PAC's August Monthly. Please contact me if you desire any additional information.

Sincerely,

Joy Koletsky

Joy Koletsky
Staff Counsel

JK:dr

8 2 0 4 0 3 5 4 4 3 5

Attachment 1, p.15

SCHEDULE B

JULY MONTHLY (6/1/80-6/30/80)

ITEMIZED DISBURSEMENTS

Page 1 of 1 for LINE NUMBER 19
(Use separate schedule(s) for each category of the Detailed Summary Page)

80 DEC 12

HAND DELIVERED

(16)

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)

National Education Association Political Action Committee

Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
A. Balfour Supply 11722 Parklawn Drive Rockville, Maryland 20892	5,000 Cross Pens to be used for Fundraiser Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	6/5/80	$ 17,375.0
B. Panasonic 11 Azar Court Baltimore, Maryland 21227	10 Black & White TV's to be used for Fundraiser Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	6/5/80	901.9
C. Hay Rubber Stamp Company 830 - 13th Street Washington, D. C. 20005	Hand stamp Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	6/18/80	14.1
D.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
E.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
F.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
G.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
H.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
I.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		

SUBTOTAL of Disbursements This Page (optional) . . . .

TOTAL This Period (last page this line number only) . . . . $ 18,291.

Attachment 1, p 16.

8204035137

(17)

A trade association's solicitations for its separate segregated fund are restricted to the boundaries of the exemption; therefore, communications about the financial activities of its separate segregated fund should be viewed very narrowly. The limited opportunity for Commission interpretation of such communications is exemplified in the legislative history of §441b by Senator James Allen:

> "When they announce setting up the fund, obviously, that is a solicitation right there."

In the present specific factual situation, the description of the results of management's involvement in its PAC's activities is likewise a "solicitation", and therefore limited to the trade association's membership.

Dated: January 29, 1980

[¶5456] AO 1979-72: Reimbursement of Costs of Solicitation

[A membership organization may pay for the solicitation costs pertaining to a fundraiser, and as such an organization may reimburse its political action committee for such amounts mistakenly paid for by the PAC. Answer to Herbert B. Colton of Colton and Boykin, 1133 Fifteenth Street, N.W., Washington, D.C. 20005.]

This responds to your letter of November 27, 1979, on behalf of the Build Political Action Committee ("Build-PAC") requesting an advisory opinion on the applicability of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Build-PAC's acceptance of reimbursement for solicitation costs.

Build-PAC is the separate segregated fund established by the National Association of Home Builders ("NAHB"), a nonprofit corporation. Your letter states that during the NAHB Convention-Exposition, held in January of 1979, a "Build-PAC Star Spectacular" was produced which featured various entertainers and which included a door prize, in the form of an automobile, awarded by drawing ticket stubs from a drum. Tickets for this event ranged in price from $25 to $100 and were sold exclusively to individuals who were builder and associate members1/ of NAHB. You state that gross revenues from the Star Spectacular were $296,147 and that total costs (including the actual costs of solicitation of $13,324.79) amounted to $136,443.46. On August 15, 1979, Build-PAC made a payment of $45,109.54 to NAHB pursuant to Commission regulations at 11 CFR 114.5(b)(2).2/

The computations made by Build-PAC in determining the total costs of the Star Spectacular, and hence the amount of the August 15 payment to NAHB, included solicitation costs. If solecitation costs are not included in the total cost of the Star Spectacular, Build-PAC's payment to NAHB, using the §114.5(b)(2) formula, would be $26,203. (See footnote 2.) You point out that if such solicitation costs are not included, your August 15 payment to NAHB exceeds the amount Build-PAC would otherwise have owed to NAHB by $18,906.54. In light of these circumstances, you ask whether the solicitation costs associated with the Star Spectacular may be excluded from the total costs of the event for purposes of determining Build-PAC's payment obligation under 11 CFR 114.5(b)(2). If the solicitation costs may be excluded, you ask whether NAHB may remit $18,906.54 to Build-PAC. This amount is the difference between Build-PAC's August 15 payment ($45,109.54) and the $26,203 it otherwise would owe NAHB.

Under the Act, a membership corporation, or a separate segregated fund established by a membership corporation, may solicit contributions to such a fund from members of the organization. 2 U.S.C. §441b(b)(4)(C). Commission regulations further explain that a membership corporation may use general treasury monies to pay the costs of establishing, administering, and soliciting contributions to its separate segregated fund. 11 CFR 114.5(b). Because NAHB may pay the solicitation costs for Build-PAC, the Commission concludes that Build-PAC need not have included the solicitation costs associated with the Star Spectacular in determining the total costs of that event.

Attachment 1, p. 17

(18)

The second question you have raised is whether NAHB may remit to Build-PAC the $18,906.54 overpayment made by Build-PAC as a result of Build-PAC's mistaken inclusion of solicitation costs in computing its August 15 payment.

While a corporation is permitted to pay for the establishment, administration, and solicitation of contributions to its separate segregated fund, the corporation is not permitted to use that process as a means of exchanging treasury monies for voluntary contributions. 11 CFR 114.5(b). As the Commission concluded above, however, NAHB could have paid for the solicitation costs of the Star Spectacular directly; and Build-PAC's inclusion of solicitation costs in computing the total costs of that event for purposes of payment under 11 CFR 114.5(b)(2) was not required. The fact that Build-PAC, under a mistaken belief, included such solicitation costs in computing its payment to NAHB does not change the character of those costs, and payment of those costs by NAHB would not constitute an exchange of treasury monies for voluntary contributions.

The Commission has previously held in similar situations involving an error that a union could reimburse its separate segregated fund in the exact amount of an administrative cost inadvertently paid by the fund which could have been paid initially by the union. See Advisory Opinion 1979-33 [¶5414] and Re: AOR 1976-111 [¶6073], copies enclosed. In the situation presented here, Build-PAC's mistaken inclusion of solicitation costs in determining the total costs of the Star Spectacular resulted in an overpayment to NAHB. Thus the Commission concludes that since NAHB could have paid the solicitation costs of the Star Spectacular directly, Build-PAC need not have included that amount as part of Build-PAC's total costs in computing its original payment to NAHB. Accordingly, NAHB may remit to Build-PAC the $18,906.54 overpayment which resulted from this error.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Dated: February 1, 1980.

1/ Your request does not present the question of, nor do you seek guidance as to, the class of individuals that may be solicited for contributions to Build-PAC. Therefore, the Commission does not reach or express any opinion whether the solicitation and sale of tickets to these classes of NAHB members was permissible under the Act. See 11 CFR 114.1(e) and Advisory Opinion 1977-17 [¶5249].

2/ 11 CFR 114.5(b)(2) provides that a corporation may utilize a raffle or other fundraising device which involves a prize, so long as state law permits and the prize is not disproportionately valuable. This regulation further provides that when raffles or entertainment is used for political fundraising: "a reasonable practice to follow is for the separate segregated fund to reimburse the corporation or labor organization for costs which exceed one third of the money contributed."

ADVISORY OPINION 1979-72

CONCURRING OPINION—COMMISSIONER FRANK P. REICHE

The Federal Election Commission approved Advisory Opinion 1979-72 on January 17, 1980. By so doing, the Commission held that the Build Political Action Committee ("Build-PAC"), a separate segregated fund, could exclude, in its computation of the amount to be reimbursed to National Association of Home Builders ("NAHB"), its sponsoring organization, the solicitation costs paid by NAHB in connection with a "Build-PAC Star Spectacular" fundraising event featuring various entertainers.

Attachment 1, p. 18

(19)

While concurring in such opinion, I am concerned that it may be misconstrued to permit the exclusion of solicitation costs from such computations without regard to the facts of each situation and the relative importance of the solicitation expenses in the fundraising efforts of political candidates and committees. Likewise, I am concerned lest this Advisory Opinion be deemed to relieve Build-PAC, or any separate segregated fund similarly situated, from the burden of proving that the payment of such solicitation costs by the sponsoring organization was incidental to the organization's support for the fund, and hence, that these solicitation costs should be excluded from any computation of the amount to be reimbursed by the separate segregated fund to the sponsoring organization.

Furthermore, as the opinion states, a corporation is not permitted to underwrite the solicitation costs for its separate segregated fund as a means of exchanging treasury monies for voluntary contributions. Thus, if the payment of these solicitation costs by NAHB had represented an attempt by NAHB to support Build-PAC by the transfer of treasury monies, then such payment would not have been permissible.

My concurrence in this opinion is based upon my belief that NAHB has shouldered the burden of proving that these solicitation costs were subordinate to the primary purpose of NAHB in supporting Build-PAC's fundraising activity. The entertainment and other costs involved in this case far exceed these relatively minor solicitation costs. I, therefore, conclude that such solicitation costs may be excluded from the computation of monies to be reimbursed by Build-PAC to NAHB pursuant to 11 CRF 114.5(b), but wish to emphasize that my conclusion is limited to the facts of this case.

Dated: February 1, 1980.

DISSENTING OPINION

OF

COMMISSIONER THOMAS E. HARRIS

TO ADVISORY OPINION 1979-72

I dissent from Advisory Opinion 1979-72 because I believe that the costs of soliciting participation in raffles or attendance at entertainments should be included in the total costs of such events for purposes of applying the formula suggested in 11 CFR 114.5(b)(2).

Dated: January 18, 1980.

[¶5457] AO 1980-4: Donation of Legal Services

[A law firm may permit its attorneys to defend a political committee in a civil action while being paid by the firm without a contribution resulting since this does not involve political activities. Answer to Robert S. Strauss, Chairman, Carter/Mondale Presidential Committee, Inc., 1413 K Street, N. W., Washington, D. C. 20005.]

This responds to your letter of January 14, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to legal services provided to the Carter/Mondale Presidential Committee (the "Committee") for preparation of a defense to a civil action in which the Committee is one of the named defendants.

Your request states that a complaint was filed in United States District Court for the District of Columbia with the caption Winpisinger v. Watson, Civ. No. 79-3471 (D.D.C., filed December 28, 1979), in which various Cabinet members and White House staff members as well as the Committee have been named as defendants. The complaint alleges violations of 31 U.S.C. §628 (Appropriations

Attachment 1, p.19

(20)

REPORT OF RECEIPTS AND DISBURSEMENTS
For a Political Committee Other Than an Authorized Committee

(Summary Page)

1. Name of Committee (in Full)
National Education Association
Political Action Committee

Address (Number and Street)
1201 Sixteenth Street, N.W.

City, State and ZIP Code
Washington, D.C. 20036

☐ Check if address is different than previously reported.

2. FEC Identification Number
C00003251

3. ☐ This committee qualified as a multicandidate committee during this Reporting Period on ________ (date)

4. TYPE OF REPORT (check appropriate boxes)

(a) ☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year End Report
☐ July 31 Mid Year Report (Non-election Year Only)
☒ Monthly Report for July, 1980
☐ Twelfth day report preceding ________ (Type of Election) election on ________ in the State of ________
☐ Thirtieth day report following the General Election on ________ in the State of ________
☐ Termination Report

(b) Is this Report an Amendment? ☒ YES ☐ NO

SUMMARY	Column A This Period	Column B Calendar Year-to-Date
5. Covering Period ________ Through ________		
6. (a) Cash on Hand January 1, 19__		$
(b) Cash on Hand at Beginning of Reporting Period	$	
(c) Total Receipts (from Line 18)	$	$
(d) Subtotal (add lines 6(b) and 6(c) for Column A and lines 6(a) and 6(c) for Column B)	$	$
7. Total Disbursements (from Line 28)	$	$
8. Cash on Hand at Close of Reporting Period (subtract line 7 from 6(d))	$	$
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C or Schedule D)	$	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C or Schedule D)	$	

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Terry Herndon
Type or Print Name of Treasurer

Terry E Herndon
SIGNATURE OF TREASURER

12/10/80
Date

For further information, contact:

Federal Election Commission
Toll Free 800-424-9530
Local 202-523-4068

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

Attachment 1, p. 20

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used.

FEC FORM 3X (3/80)

category of the Detailed Summary Page

Any information copied from such Reports or Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)
National Education Association Political Action Committee

21

Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
A. National Education Association 1201 Sixteenth Street, N.W. Washington, D.C. 20036 Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Reimb. for Cross Pens paid by NEA-PAC to Balfour Co. 6/5/80* Occupation: Aggregate Year-to-Date—$ 17,375.00	7/29/80	$17,375.00
B. National Education Association 1201 Sixteenth Street, N.W. Washington, D.C. 20036 Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Reimb. for 10 Panasonic TV's paid by NEA-PAC to Panasonic on 6/5/80* Occupation: Aggregate Year-to-Date—$ $ 901.95	7/29/80	$ 901.95
C. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
D. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
E. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
F. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
G. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		

SUBTOTAL of Receipts This Page (optional) $18,276.95

TOTAL This Period (last page this line number only) $18,276.95

*These reimbursements were for fundraising costs previously reported in Schedule B of the July report of Receipts & Disbursements filed by this Committee

Attachment 1, p. 21

HAND DELIVERED

REPORT OF RECEIPTS AND DISBURSEMENTS
For a Political Committee Other Than an Authorized Committee

(Summary Page)

80 AUG 20 P12:25

(22)

1. Name of Committee (in Full)
National Education Association
Political Action Committee

Address (Number and Street)

1201 Sixteenth Street, N. W.

City, State and ZIP Code

Washington, D. C. 20036

☐ Check if address is different than previously reported.

2. FEC Identification Number
C00003251

3. ☐ This committee qualified as a multicandidate committee during this Reporting Period on ________ (date)

4. TYPE OF REPORT (check appropriate boxes)

(a) ☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year End Report
☐ July 31 Mid Year Report (Non-election Year Only)
☒ Monthly Report for July, 1980 /7/15
☐ Twelfth day report preceding ________ (Type of Election) election on ________ in the State of ________
☐ Thirtieth day report following the General Election on ________ in the State of ________
☐ Termination Report

(b) Is this Report an Amendment? ☐ YES ☒ NO

SUMMARY	Column A This Period	Column B Calendar Year-to-Date
5. Covering Period 7/1/80 Through 7/31/80		
6. (a) Cash on Hand January 1, 1980		$ 99,029.47
(b) Cash on Hand at Beginning of Reporting Period	$ 106,469.31	
(c) Total Receipts (from Line 18)	$ 65,186.01	$ 215,686.12
(d) Subtotal (add lines 6(b) and 6(c) for Column A and lines 6(a) and 6(c) for Column B)	$ 171,655.32	$ 314,715.59
7. Total Disbursements (from Line 28)	$ 58,618.34	$ 201,678.61
8. Cash on Hand at Close of Reporting Period (subtract line 7 from 6(d))	$ 113,036.98	$ 113,036.98
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C or Schedule D)	$	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C or Schedule D)	$ —	

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Terry E. Herndon
Type or Print Name of Treasurer

Terry E Herndon
SIGNATURE OF TREASURER

8/19/80
Date

For further information, contact:

Federal Election Commission
Toll Free 800-424-9530
Local 202-523-4068

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used.

FEC FORM 3X (3/80)

	ldd 8/21	PFD 8/29	1/17	lla 9-22	TP 9-29		

Attachment 2, p.1

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DETAILED SUMMARY PAGE of Receipts and Disbursements (Page 2, FEC FORM 3X)

Name of Committee (in Full) National Education Association Political Action Committee

Report Covering the Period: From: 7/1/80 ~~XX~~ thru 7/31/80

	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
I. RECEIPTS		
11. CONTRIBUTIONS (other than loans) FROM:		
(a) Individuals/Persons Other Than Political Committees	46,895.35	197,390.07
(Memo Entry Unitemized $ 46,895.35)		
(b) Political Party Committees	0	0
(c) Other Political Committees	0	0
(d) TOTAL CONTRIBUTIONS (other than loans) (add 11a, 11b and 11c)	46,895.35	197,390.07
12. TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES	0	0
13. ALL LOANS RECEIVED	0	0
14. LOAN REPAYMENTS RECEIVED	0	0
15. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)	18,276.95	18,276.95
16. REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES	13.71	13.71
17. OTHER RECEIPTS (Dividends, Interest, etc.)	0	5.39
18. TOTAL RECEIPTS (Add 11d, 12, 13, 14, 15, 16 and 17)	65,186.01	215,686.12
II. DISBURSEMENTS		
19. OPERATING EXPENDITURES	37,764.07	66,325.89
20. TRANSFERS TO AFFILIATED/OTHER PARTY COMMITTEES	0	0
21. CONTRIBUTIONS TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES	13,505.81	102,422.42
22. INDEPENDENT EXPENDITURES (Use Schedule E)	0	15,375.96
23. COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES (2 U.S.C. §441a(d)) (Use Schedule F)	0	0
24. LOAN REPAYMENTS MADE	0	0
25. LOANS MADE	0	0
26. REFUNDS OF CONTRIBUTIONS TO:		
(a) Individuals/Persons Other Than Political Committees	7,348.46	17,554.34
(b) Political Party Committees	0	0
(c) Other Political Committees	0	0
(d) TOTAL CONTRIBUTION REFUNDS (add 26a, 26b and 26c)	7,348.46	17,554.34
27. OTHER DISBURSEMENTS	0	0
28. TOTAL DISBURSEMENTS (Add Lines 19, 20, 21, 22, 23, 24, 25, 26d and 27)	58,618.34	201,678.61
III. NET CONTRIBUTIONS AND NET OPERATING EXPENDITURES		
29. TOTAL CONTRIBUTIONS (other than loans) from Line 11d	46,895.35	197,390.07
30. TOTAL CONTRIBUTION REFUNDS from Line 26d	7,348.46	17,554.34
31. NET CONTRIBUTIONS (other than loans) (subtract Line 30 from Line 29)	39,546.89	179,835.73
32. TOTAL OPERATING EXPENDITURES from Line 19	37,764.07	66,325.89
33. OFFSETS TO OPERATING EXPENDITURES from Line 15	18,276.95	18,276.95
34. NET OPERATING EXPENDITURES (subtract Line 33 from Line 32)	19,487.12	48,048.94

Attachment 2, p. 2

(24)

SCHEDULE A **ITEMIZED RECEIPTS**

Any information copied from such Reports or Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)
National Education Association Political Action Committee

Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
A. National Education Association 1201 Sixteenth Street, N. W. Washington, D. C. 20036 Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Reimb. for Cross Pens paid by NEA-PAC to Balfour Company 6/5/80 Occupation: Aggregate Year-to-Date—$ 17,375.00	7/29/80	$ 17,375.00
B. National Education Association 1201 Sixteenth Street, N. W. Washington, D. C. 20036 Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Reimb. for 10 Panasonic TV's paid by NEA-PAC to Pansonic on 6/5/80 Occupation: Aggregate Year-to-Date—$ 901.95	7/29/80	901.95
C. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
D. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
E. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
F. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
G. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		

SUBTOTAL of Receipts This Page (optional) 18,276.95

TOTAL This Period (last page this line number only) 18,276.95

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17J

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8 2 1 4 0 3 5 4 4 4 5

Attachment 2, p. 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joy Koletsky
Staff Counsel
National Education Association
1201 - 16th Street, N.W.
Washington, D.C. 20036

Re: MUR 1411

Dear Ms. Koletsky:

This is to advise you that the Federal Election Commission ("Commission") has considered whether or not the National Education Association ("NEA") and the National Education Association Political Action Committee ("NEA-PAC") violated 2 U.S.C. § 441b in connection with payments for certain fundraising costs of NEA-PAC in 1980. Specifically at issue were reimbursements by NEA to NEA-PAC for $18,276.95 spent on pens and TV sets for fundraising, as well as an initial payment by NEA for "Carter-Mondale-NEA" buttons used in connection with NEA-PAC solicitations. These transactions were described by you in some detail in two letters dated December 10, 1980, in response to requests for additional information from the Reports Analysis Division dated November 28, 1980.

On , 1982, the Commission found reason to believe NEA and NEA-PAC violated 2 U.S.C. § 441b in connection with NEA's reimbursement of NEA-PAC for $18,276.95 worth of pens and TV sets. However, considering the circumstances of this matter, the Commission determined to take no further action. For your information, the Commission also voted to find no reason to believe NEA and NEA-PAC violated 2 U.S.C. § 441b in connection with NEA's

Attachment 3, p 1

26

initial payment for the "Carter-Mondale-NEA" buttons. The General Counsel's Factual and Legal Analysis which formed a basis for the Commission's findings is attached.

In view of the foregoing, the file in this matter has been closed. It will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to Anne Cauman, the attorney handling this matter, at (202) 523-4000.

Sincerely,

Attachment
General Counsel's Factual and Legal Analysis

Attachment 3, p2

27

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR 1411
STAFF MEMBER(S) & TEL. NO.
Cauman/Thomas

RESPONDENT National Education Association
National Education Association Political Action Committee

SOURCE OF MUR: I N T E R N A L L Y   G E N E R A T E D

SUMMARY OF POSSIBLE VIOLATIONS

This matter was referred by the Reports Analysis Division ("RAD"). The National Education Association ("NEA") and the National Education Association Political Action Committee ("NEA-PAC") may have violated 2 U.S.C. § 441b(a) because a check to a button manufacturer for "Carter-Mondale-NEA" buttons used for NEA-PAC fundraising was drawn on an NEA account even though NEA-PAC quickly gave NEA money to cover the entire payment. NEA and NEA-PAC also may have violated 2 U.S.C. § 441b(a) because NEA reimbursed NEA-PAC for approximately $18,000 of fundraising costs.

FACTUAL AND LEGAL ANALYSIS

A. Facts concerning payment for Carter-Mondale-NEA buttons

In its monthly report filed in June of 1980, NEA-PAC reported an independent expenditure of $12,080.53 to the Weingeroff Laramie President Corporation for Carter-Mondale

Attachment 3, p 3

buttons. It was noted on the report that the check to the manufacturer was drawn on an NEA account for "administrative reasons" but that NEA-PAC funds were used to pay for the buttons. NEA Staff Counsel explained this transaction in a letter dated December 10, 1980, in response to a request for further information from RAD. According to the clarification, NEA-PAC proposed to raise PAC funds by selling members buttons inscribed "Carter-Mondale-NEA." The NEA General Counsel's Office was asked to approve the purchase of the buttons and did so. Initially, the position of counsel was that the buttons could be purchased with NEA treasury funds as they were to be used for fundraising/solicitation. However, counsel asked for additional time in which to consider the matter, and concluded that it would be safer for NEA-PAC to pay for the buttons to avoid dispute over whether NEA had made a prohibited treasury fund expenditure. Meanwhile, when the manufacturer's invoice was received the payment was charged to an NEA account by staff persons apparently unaware of the counsel's decision. When the staff learned shortly thereafter that NEA-PAC funds should have been used, an NEA-PAC check was promptly issued to NEA to reimburse NEA for the payment to the manufacturer.

B. Facts concerning reimbursement by NEA for other alleged NEA-PAC fundraising costs

In its monthly report filed in August of 1980, NEA-PAC reported receiving reimbursements from NEA totalling

Attachment 3, p 4

approximately $18,000 for payments made by NEA-PAC on June 5, 1980, for Cross pens and 10 Panasonic TV sets. In a second letter dated December 10, 1980, NEA Staff Counsel explained that the pens and TV's were to be used for a fundraiser. NEA-PAC paid for these items on June 5, 1980, because at that time NEA had not decided whether or not to use treasury funds for these items. Later, NEA decided to do so, and reimbursed NEA-PAC on July 29, 1980.

C. Relevant law and its application to the facts concerning the Carter-Mondale-NEA buttons

Pursuant to 2 U.S.C. § 441b(a) it is unlawful for any labor organization to make a contribution or expenditure in connection with any Federal election or for any political committee to knowingly accept or receive any such contribution. See also 11 C.F.R. §§ 114.1(a)(1) and 114.2(b) and (c). A labor organization may, however, expend funds from its general treasury for the purpose of bearing the costs of soliciting contributions to its separated segregated fund. See 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.1(b), and 114.5(b). A labor organization may also expend treasury funds on communications on any subject, including partisan communications, to its members and their families. See 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i) and 114.3.

Because NEA as a labor organization may use its general treasury funds for NEA-PAC solicitation costs, the issue here is

Attachment 3, p. 5

whether the inscription "Carter-Mondale-NEA" on the buttons removed payment for the buttons from being a legitimate fundraising expense.

Neither 2 U.S.C. § 441b(b)(2)(C) nor the regulations specifically address the issue of whether partisan campaign buttons may be utilized in connection with PAC solicitations.1/ It should be noted, however, that allowable partisan communications by a labor organization to its members include express advocacy, and such communications may be made in a manner which includes but is not limited to the distribution of printed materials. See 11 C.F.R. § 114.3(b) and (c).

The letter from NEA counsel indicates that the buttons were going to be sold to members as part of solicitation/fundraising for PAC funds and that they were purchased from the manufacturer, not the Carter-Mondale campaign. See 11 C.F.R. § 114.3(c)(1)(i) and (ii). In the absence of any indication that, in the course of the solicitation, NEA-PAC instructed members to distribute the buttons outside of NEA membership, the General Counsel recommends that the Commission find no reason to believe that either NEA or

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1/ The Commission has previously considered the payment by a local of the Teamsters union for jackets bearing the insignia "D.R.I.V.E." (the PAC insignia) a legitimate fundraising expense. See AO 1981-7 at 3-4.

Attachment 3, p. 6

(31)

NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's initial payment for the buttons. 2/

D. Application of the law to facts concerning reimbursement by NEA of other NEA-PAC fundraising costs

The term "contribution or expenditure" as used in 2 U.S.C. § 441b(a) is defined to include any direct or indirect payment, loan, advance, or gift of money or anything of value to any candidate, campaign committee, or political party or organization in connection with a federal election. 2 U.S.C. § 441b(b)(2). A labor organization may, however, pay for the establishment, administration, and solicitation of contributions to a separate segregated political fund of its members and their families as such payments are excluded from the definition of § 441b contributions and expenditures. See 2 U.S.C. § 441b(b)(2)(C). Commission regulations specifically allow a labor organization to pay for fundraising plans that involve a raffle or prize as long as the prize is not disproportionately valuable. 11 C.F.R. § 114.5(b)(2).

2/ Although we construe this transaction to be a payment for solicitation costs, it is also arguable that it amounted to a communication expressly advocating the election of a clearly identified candidate which, under 2 U.S.C. § 431(9)(B)(iii) and 11 C.F.R. § 100.8(b)(4), must be reported by NEA on FEC Form 7. However, because the transaction was reported by NEA-PAC and was ultimately paid by NEA-PAC, we do not recommend making any further finding.

Attachment 3, p 7

Assuming that NEA could have incurred the $18,276.95 cost of the pens and TV sets here involved, there remains the question of whether NEA's payment to NEA-PAC, rather than to the vendors involved, violated 2 U.S.C. § 441b. The statute prohibits "any payment ... of money ... to any ... political ... organization, in connection with any [federal] election." Though NEA may pay for NEA-PAC solicitation costs, NEA-PAC must remain a "separate segregated" fund.

The meaning of the phrase "separate segregated political fund" has been explored to some extent by the courts. In Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1972), the Supreme Court examined the legislative history of § 705 of the Federal Election Campaign Act of 1971, amending then 18 U.S.C. § 610. That addition, known as the Hansen amendment, both codified existing case law interpreting § 610, and introduced the exception to the general prohibition against union political activity, which permits separate segregated funds. The Court in *Pipefitters* concluded that the terms "separate" and "segregated", as used in § 205, were intended to be synonomous -- i.e., that neither term was meant to require any greater degree of separation of funds than would the other term, standing alone. 407 U.S. at 426. The Court construed the statute to permit a union to control its political fund, and stated that "a

Attachment 3, p 8

fund must be separate from the sponsoring union only in the sense that there must be a strict segregation of its monies from union dues and assessments." 407 U.S. at 414.

Referring to that holding, the Court of Appeals, in FEC v. American Federation of Labor Congress of Industrial Organizations, 628 F.2d 97 (D.C. Cir. 1979), cert. denied, 449 U.S. 982 (1980), stated that the Supreme Court had limited the scope of its Pipefitters decision by the latter-cited language. The appeals court said the question before it was not considered in Pipefitters (whether loans by a political fund to a treasury fund, and their repayment, were permissible), and that the Supreme Court's ruling did not provide specific notice that such inter-fund transfers are prohibited by the Act. 628 F.2d at 101. The court said the Pipefitters holding would not rule out a view that, "if carefully accounted for, loans by the [union's] political fund to the regular fund financed by dues were not inconsistent with the funds being 'separate' and therefore not in conflict with the requirement of 'segregation'." Id. at 102. The AFL-CIO court therefore appeared to suggest that the Act may not prohibit all commingling of treasury and voluntary funds. It nonetheless upheld the finding of a violation and noted that the law's purpose is to protect union members by preventing union treasury funds from being transferred to a political fund.

(34)

Certainly, there is a strong policy reason for preventing labor organizations (or corporations) from paying their separate segregated funds for solicitation costs, rather than directly paying the vendors involved. The potential for using such transfers to get excess treasury funds into the political fund is significant. If permitted without restriction, such transactions easily could become a mechanism for hiding payments to the political fund of more than the actual costs of the solicitation efforts. By requiring that the labor organization (or corporation) pay the vendors directly for solicitation costs, the possibility of placing treasury funds at the disposal of the political fund is removed. 3/

The Commission on some occasions has permitted a connected organization to reimburse its separate segregated fund, on a one time basis, for expenses initially paid for by the fund but which could have been paid for by the connected organization.

3/ In certain limited situations the Commission has allowed unions and corporations to collect both PAC funds and non-PAC funds in a combined payment and to then transfer the PAC funds to the separate segregated fund. For example, in Advisory Opinion 1978-98, the Commission permitted a union to transfer to its separate segregated fund that portion of the payments from members' employers that represented voluntary PAC contributions automatically deducted from members' paychecks. In Advisory Opinions 1978-42, 1979-19, and 1981-4, the Commission allowed incorporated entities to transfer to their separate segregated fund that portion of combined billing receipts that was for their PAC.
(cont'd. next page)

Attachment 3, p 10

In Advisory Opinions 1979-72 and 1979-33 and in Re. AOR 1976-111, the Commission allowed the connected organization involved to reimburse its separate segregated fund for costs paid by the fund inadvertently or by mistake. Each of those situations is distinguishable from the present set of facts. Here, NEA's reimbursement of NEA-PAC appears to have stemmed simply from a reversal of position made after the initial decision to have NEA-PAC pay for the expenses. Accordingly, the above-cited advisory opinions do not serve to shield respondents' actions from the restrictions of § 441b. See Advisory Opinion 1982-42.

3/ (cont'd.)
It could be argued that these situations also raise the potential for the transfer of extra treasury funds to the separate segregated fund and that such payments for contributions collected also should be flatly prohibited. However, unlike a payment for solicitation costs, a payment for contributions collected is subject to certain safeguards under the statute. For example, the treasurer of a political committee is required to keep an account of all "contributions" received by the committee. See 2 U.S.C. § 432(c); 11 C.F.R. § 102.9(a). No such express requirement exists with regard to general receipts, such as payments for solicitation costs incurred. In addition, the payment for "contributions" collected must be done within at least 30 days of receipt, see 2 U.S.C. § 432(b)(2); 11 C.F.R. § 102.8(b), whereas no such time requirement exists for the payment of a committee's solicitation costs. These safeguards with respect to the transfer of contributions collected, i.e. accurate records and timely payment, assure that such transactions can be easily monitored. Absent such safeguards for payments of solicitation costs, the potential for improper transfers is greater and a more restrictive approach is warranted.

(34)

Recently, in connection with RAD referral 82L-5 the Commission declined to open a MUR even though there was no indication that the reimbursement resulted from a mistake. See Agenda Document #X82-055, dated April 30, 1982. However, the General Counsel's Office analyzed the transaction as a § 441b violation and recommended not opening a MUR because of the minor nature of the violation and the fact that the committee involved gave assurance that the problem would not recur.

Because NEA's reimbursement does not appear to have been an effort to correct an earlier mistake, and because this transaction falls within the scope of the prohibitions of the statute, the Office of General Counsel recommends that the Commission find reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) in connection with the $18,276.95 payment, but that no further action be taken.

RECOMMENDATIONS

1. Find no reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's initial payment for Carter-Mondale-NEA buttons used for NEA-PAC fundraising.

2. Find reason to believe that NEA and NEA-PAC violated 2 U.S.C. § 441b(a) by NEA's reimbursement of $18,276.95 of NEA-PAC's fundraising costs, but take no further action.

3. Close the file in this matter.

Attachment 3, p. 12

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO THE FILE ON MUR 1411

FROM: MARJORIE W. EMMONS *MWE*

DATE: JUNE 15, 1982

SUBJECT: COMMISSION ACTION IN EXECUTIVE SESSION OF THIS DATE

The Commission agreed without objection on June 15, 1982 to defer action on MUR 1411 until resolution of a pending Advisory Opinion Request from the National Treasury Employees Union, since the issues involved were similar.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY RANSOM mWE JR
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: JUNE 7, 1982

SUBJECT: ADDITIONAL OBJECTION - MUR 1411 - First General Counsel's Report dated 6-2-82; Received in OCS, 6-2-82, 3:52

You were notified previously of an objection by Commissioner Elliott.

Commissicner Aikens submitted an additional objection at 12:00, June 7, 1982.

This matter will be discussed in executive session on Tuesday, June 15, 1982.

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY RANSOM

DATE: JUNE 7, 1982

SUBJECT: OBJECTION - MUR 1411 First General Counsel's Report dated 6-2-82; Received in OCS, 6-2-82, 3:52

The above-named document was circulated to the Commission on June 3, 1982 at 11:00.

Commissioner Elliott submitted an objection at 10:03, June 7, 1982.

This matter will be placed on the agenda for the Executive Session of Tuesday, June 15, 1982.

June 2, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1411

Please have the attached First General Counsel's Report distributed to the Commission on a 48 hour tally basis. Thank you.

Attachment

cc: Cauman

MUR 1411

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) D-842
National Education Association PAC)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session of December 15, 1981, do hereby certify that the Commission decided by votes of 4-2 to open a MUR in the above-captioned matter.

Commissioners Aikens, Harris, Reiche, and Thomson voted affirmatively for the decision; Commissioners McGarry and Tiernan dissented.

Attest:

12/23/81
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

D 842
RAD 81L-2

REFER TO INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING

REPORTS ANALYSIS REFERRAL SHEET

MUR 1411

DATE JANUARY 14, 1981

ANALYST [illegible] Pk

TO: Office of General Counsel

TEAM CHIEF [illegible] RBH

THROUGH: STAFF DIRECTOR RC

COMPLIANCE REVIEW WM/83

FROM: ASSISTANT STAFF DIRECTOR FOR REPORTS ANALYSIS JH

CANDIDATE/COMMITTEE: NEA-PAC
TREASURER: Mr. Jerry Herndon
ADDRESS: 1201 - 16th Street, N.W., Washington, D.C. 20036

AFFILIATE(S): Not pertinent to the allegation

ALLEGATION(S):	CITE:	ATTACHMENT(S)
Sponsoring labor organization made expenditure in connection with federal elections	2 USC 441b(a)	#2

DATE INITIATED: November 28, 1980

MANNER IN WHICH REVIEW WAS INITIATED:

XXX Normal Review ☐ Other: ATTACHMENT
☐ Special Project:

REPORTS: All reports within the dates listed below have received initial basic review. For all reports reviewed, see Attachment 1.

PERIOD COVERED FROM January 1, 1979 TO August 31, 1980

TOTAL RECEIPTS $ 513,068 TOTAL EXPENDITURES $ 818,026

CASH ON HAND $ 27,981 DEBTS $ -0-

HISTORY:

RESULTS OF REVIEW: *ATTACHMENT*

RFAI sent Nov. 28 on June Monthly report #3

Adequate response received Dec. 12 #4

COMMUNICATIONS WITH CANDIDATE/COMMITTEE: *ATTACHMENT*

None

REASON(S) FOR REFERRAL: *ATTACHMENT*

NEA was reimbursed in full, but amount involved ($12,080) exceeds $2,500 per calendar year threshold set forth in review and audit policy for review by the General Counsel

OTHER PENDING ACTIONS INITIATED BY RAD: *ATTACHMENT*

None

OTHER RELEVANT INFORMATION: *ATTACHMENT*

None

PREVIOUS OGC/AUDIT REFERRALS FROM RAD:

MURs 015, 288, 291 & 293 were merged under MUR 293 which was closed on 1-17-79. MURs 283 & 350 were merged under MUR 350 which was closed on 1-4-78. MUR 913 was closed on 3-29-79.

MURs 1302 & 1313 are still open.

An Interim Audit Report was sent to OGC on 9-5-80.

ATTACHMENT 1

NATIONAL EDUCATION ASSOCIATION POLITICAL ACTION COMMITTEE
CONNECTED ORGANIZATION: EDUCATION ASS'N/ NAT'L

ID C00003251

COMMITTEE	DOCUMENT	RECEIPTS	EXPENDITURES	COVERAGE DATES		# OF PAGES	MICROFILM LOCATION
1979	*MISCELLANEOUS REPORT			2APR79	TO FEC	2	79FEC/123/3227
	*STATEMENT OF ORGANIZATION - AMENDMENT			10OCT79		2	79FEC/140/0395
	*FEBRUARY MONTHLY	17,486	0	1JAN79	31JAN79	5	79FEC/120/4244
	*MARCH MONTHLY	22,833	0	1FEB79	28FEB79	4	79FEC/121/5042
	*APRIL MONTHLY	14,517	6,001	1MAR79	31MAR79	7	79FEC/125/4906
	*MAY MONTHLY	12,280	0	1APR79	30APR79	4	79FEC/127/4039
	*JUNE MONTHLY	27,725	20,400	1MAY79	31MAY79	6	79FEC/129/1573
	*JULY MONTHLY	28,373	500	1JUN79	30JUN79	5	79FEC/133/1[illegible]
	*AUGUST MONTHLY	39,576	642,201	1JUL79	31JUL79	6	79FEC/135/06[illegible]
	*SEPTEMBER MONTHLY	19,215	193,194	1AUG79	31AUG79	4	79FEC/136/3157
	*OCTOBER MONTHLY	7,455	17,543	1SEP79	30SEP79	6	79FEC/140/0513
	*NOVEMBER MONTHLY	23,432	57,437	1OCT79	31OCT79	7	79FEC/141/2609
	*DECEMBER MONTHLY	23,139	1,476	1NOV79	30NOV79	3	79FEC/143/0154
	*DECEMBER MONTHLY AMENDMENT			1NOV79	30NOV79	2	80FEC/143/4855
	*YEAR-END	22,611	163	1DEC79	31DEC79	5	80FEC/145/5192
1980	*STATEMENT OF ORGANIZATION - AMENDMENT			2JAN80		5	80FEC/143/3106
	*MISCELLANEOUS REPORT			7JAN80	TO FEC	2	80FEC/143/4691
	*STATEMENT OF ORGANIZATION - AMENDMENT			20MAY80		2	80FEC/157/1666
	*STATEMENT OF ORGANIZATION - AMENDMENT			17JUN80		2	80FEC/158/0481
	*STATEMENT OF ORGANIZATION - AMENDMENT			17SEP80		3	80FEC/165/3764
	*FEBRUARY MONTHLY	26,719	11,525	1JAN80	31JAN80	6	80FEC/149/1160
	*MARCH MONTHLY	27,280	4,423	1FEB80	29FEB80	5	80FEC/150/2253
	*APRIL MONTHLY	17,068	70,621	1MAR80	31MAR80	6	80FEC/153/2822
	*MAY MONTHLY	21,511	23,510	1APR80	30APR80	6	80FEC/156/1992
	*JUNE MONTHLY	26,602	52,120	1MAY80	31MAY80	9	80FEC/158/0582
	REQUEST FOR ADDITIONAL INFORMATION			1MAY80	31MAY80	2	80FEC/181/3443
	*JULY MONTHLY	31,387	31,452	1JUN80	30JUN80	9	80FEC/160/0524
	*AUGUST MONTHLY	35,186	58,518	1JUL80	31JUL80	7	80FEC/163/5165
	REQUEST FOR ADDITIONAL INFORMATION			1JUL80	31JUL80	3	80FEC/181/34[illegible]
	*SEPTEMBER MONTHLY	33,569	40,224	1AUG80	31AUG80	11	80FEC/165/37[illegible]
	OCTOBER MONTHLY	32,444	56,848	1SEP80	30SEP80	16	80FEC/169/5408
	PRE GENERAL	12,145	23,750	1OCT80	15OCT80	6	80FEC/172/3362
	POST GENERAL	18,045	55,619	16OCT80	24NOV80	18	80FEC/182/2702
	TOTAL	606,242 0	956,263 0			187	TOTAL PAGES

* Reports reviewed

ATTACHMENT 2

June Monthly

SCHEDULE E

ITEMIZED INDEPENDENT EXPENDITURES

(See Reverse Side for Instructions)

Name of Committee (in Full)				I.D. No.
National Education Association Political Action Committee				C00003251
Full Name, Mailing Address & ZIP Code of Each Payee	**Purpose of Expenditure**	**Date (month, day, year)**	**Amount**	**Name of Federal Candidate supported or opposed by the expenditure & office sought**
Weingeroff Laramie President Corporation 725 Branch Avenue Providence, Rhode Island 02904	[redacted]/Mondale buttons	5/31/80	$12,080.53	☒ Support ☐ Oppose
Although the actual check to the manufacturer was drawn on the NEA account, this was for administrative reasons. NEA-PAC Funds were used for the payment of the buttons.				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose

(a) SUBTOTAL of Itemized Independent Expenditures	$ 12,080.53	
(b) SUBTOTAL of Unitemized Independent Expenditures	$	
(c) TOTAL Independent Expenditures		$ 12,080.53

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate or authorized committee. [illegible]

Subscribed and sworn to before me this 18th day of June 1980

My Commission expires February 14, 1984

Susan A. Alexander

NOTARY PUBLIC

Signature Date

Terry Herndon

ATTACHMENT 3

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 28, 1980

Terry Herndon, Treasurer
National Education Association
Political Action Committee
1201 16th Street, N.W.
Washington, DC 20036

Identification No: C00003251

Reference: JUNE MONTHLY (5/1/80-5/31/80)

Dear Mr. Herndon:

This letter is prompted by the Commission's preliminary review of your June Monthly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Schedule E of your report discloses a check "drawn on the N.E.A. account. . . for administrative reasons" written in payment for an independent expenditure. Please be advised that a contribution from a labor organization is prohibited by 2 U.S.C. 441b. The definition of contribution includes "any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any service, or anything of value to any. . . political organization".

Disbursements of funds made from a union treasury account for such an expenditure would constitute a prohibited expenditure under 2 U.S.C. 441b. If your Schedule E reflects your committee's reimbursement of the union treasury account for this disbursement, your report should be amended to reflect the N.E.A. treasury account as the ultimate payee.

You are advised that this sort of activity is subject to possible legal action by the Commission. Please clarify the nature of the "administrative reasons" this check was drawn on the N.E.A. account instead of your committee account.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Penny Harms

Penny Harms
Reports Analyst
Reports Analysis Division

7 1 4 4 : 1 1 1 : 1 1 1 2 1 1

ATTACHMENT 4

HAND DELIVERED

80 DEC 12 P 3: 34

LEGAL SERVICES
OFFICE OF GENERAL COUNSEL

nea

NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 833-4451

WILLARD H. McGUIRE, President
BERNIE FREITAG, Vice President
MARY HATWOOD FUTRELL, Secretary-Treasurer

TERRY HERNDON, Executive Director

December 10, 1980

Ms. Penny Harms
Report Analyst
Reports Analysis Division
Federal Elections Commission
Washington, D.C. 20463

Re: June Monthly (5/1/80-5/31/80)
I.D. No. C00003251

Dear Ms. Harms:

This letter is in response to your November 28, 1980 letter to Terry Herndon regarding the above matter, in which I have been authorized to represent the National Education Association Political Action Committee (NEA-PAC). Your letter states that Schedule E of the June Report of Receipts and Disbursements (June Monthly) filed by NEA-PAC "discloses a check 'drawn on the NEA account ... for administrative reasons' written in payment for an independent expenditure." After advising that 2 U.S.C. §441b prohibits contributions from labor organizations, you ask that NEA-PAC "clarify the nature of the 'administrative reasons' this check was drawn on the NEA account instead of [the NEA-PAC] account." The requested clarification is provided below.

In April, 1980, the NEA Office of General Counsel (OGC) was asked to approve the purchase by NEA of certain buttons inscribed with the words "Carter-Mondale-NEA," which NEA-PAC proposed to sell to members in order to raise political activity funds. We approved the concept of the button sale and since the buttons were to be used for purposes of solicitation/fundraising, we concluded that NEA treasury funds could be used to purchase them. (See A.O. 1978-17.) However, we asked for additional time to consider the matter and, upon further consideration, advised that NEA-PAC, rather than NEA, should bear the expense. This position was taken to avoid any dispute over whether the payment for the buttons by NEA might be deemed to constitute an independent expenditure. The staff persons administering the project for NEA-PAC apparently were unaware of the decision, however, and when the manufacturer's invoices for the buttons were received, payment was charged to an NEA account. Shortly thereafter, the staff persons learned that NEA-PAC funds should have been used, and NEA-PAC promptly issued a check to NEA reimbursing it for the earlier payment.

, NEA-PAC funds were used to [illegible]

Since NEA-PAC funds in fact were used to purchase the buttons, NEA-PAC reported its payment for the buttons as an independent expenditure and listed the manufacturer of the buttons, Weingeroff Larami President Corp. as "Payee" on Schedule E. In the interest of completeness, however, NEA-PAC included the explanatory note indicating that for "administrative reasons" the actual check was drawn on the NEA account. This note may have been too cryptic and, consistent with the recommendation in your letter of November 28, we have attached an amended Schedule E, which shows NEA as the payee of the NEA-PAC check, along with a brief explanation of the events described above.

I trust that this clarification adequately responds to the questions raised in your letter. Please contact me if you have any further questions.

Sincerely,

Joy Koletsky

Joy Koletsky
Staff Counsel

JK:dr

Attachment

HAND DELIVERED RECEIVED

80 DEC 12 P3:34

REPORT OF RECEIPTS AND DISBURSEMENTS
For a Political Committee Other Than an Authorized Committee
(Summary Page)

1. Name of Committee (in Full)
National Education Association Political Action Committee

Address (Number and Street)
1201 Sixteenth Street, N.W.

City, State and ZIP Code
Washington, D. C. 20036

☐ Check if address is different than previously reported.

2. FEC Identification Number
C00003251

3. ☐ This committee qualified as a multicandidate committee during this Reporting Period on ________ (date)

4. TYPE OF REPORT (check appropriate boxes)

(a) ☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year End Report
☐ July 31 Mid Year Report (Non-election Year Only)
☒ Monthly Report for May 1980
☐ Twelfth day report preceding ________ (Type of Election) election on ________ in the State of ________
☐ Thirtieth day report following the General Election on ________ in the State of ________
☐ Termination Report

(b) Is this Report an Amendment? ☒ YES ☐ NO

SUMMARY	Column A This Period	Column B Calendar Year-to-Date
5. Covering Period ________ Through ________		
6. (a) Cash on Hand January 1, 19__		$
(b) Cash on Hand at Beginning of Reporting Period	$	
(c) Total Receipts (from Line 18)	$	$
(d) Subtotal (add lines 6(b) and 6(c) for Column A and lines 6(a) and 6(c) for Column B)	$	$
7. Total Disbursements (from Line 28)	$	$
8. Cash on Hand at Close of Reporting Period (subtract line 7 from 6(d))	$	$
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C or Schedule D)	$	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C or Schedule D)	$	

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Terry Herndon
Type or Print Name of Treasurer

Terry Herndon
SIGNATURE OF TREASURER

12/10/80
Date

For further information, contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-523-4068

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used.

FEC FORM 3X (3/80)

SCHEDULE E

ITEMIZED INDEPENDENT EXPENDITURES

(See Reverse Side for Instructions)

Name of Committee (in Full): National Education Association Political Action Committee

I.D. No: C00003251

Full Name, Mailing Address & ZIP Code of Each Payee	Purpose of Expenditure	Date (month, day, year)	Amount	Name of Federal Candidate supported or opposed by the expenditure & office sought
National Education Assn.* 1201 16th Street, N.W. Washington, D.C. 20036	Carter/Mondale buttons	5/31/80	$12,080.53	☐ Support ☐ Oppose
*Due to an internal breakdown in communications, the manufacturer of the buttons was paid by NEA rather than NEA-PAC. The error was discovered shortly after payments had been made and NEA-PAC promptly reimbursed NEA.				X Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose
				☐ Support ☐ Oppose

(a) SUBTOTAL of Itemized Independent Expenditures $12,080.53

(b) SUBTOTAL of Unitemized Independent Expenditures $

(c) TOTAL Independent Expenditures $ 12,080.53

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, concert with, or at the request or suggestion of any candidate or any authorized committee or agent of such candidate or authorized committee. Furthermore, these expenditures did not involve the financing of dissemination, distribution or republication in whole or in part of any campaign materials prepared by the candidate, his campaign committee, or their agent.

Terry E. Herndon — Signature

12/10/80 — Date

Subscribed and sworn to before me this 10th day of December 1980

My Commission expires Aug. 31, 1983

Sheryl D. Fitzpatrick
NOTARY PUBLIC

HAND DELIVERED

LEGAL SERVICES

OFFICE OF GENERAL COUNSEL

NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 833-4451

December 10, 1980

Ms. Penny Harms
Report Analyst
Reports Analysis Division
Federal Elections Commission
Washington, D.C. 20463

Re: August Monthly (7/1/80-7/31/80)
I.D. No. C00003251

Dear Ms. Harms:

This letter is in response to your November 28, 1980 letter to Terry Herndon regarding the above matter. Your letter states that Schedule A of the August Report of Receipts and Disbursements (August Monthly) filed by the National Education Association Political Action Committee (NEA-PAC) "discloses apparent contributions from labor organizations" and notes that such contributions are "prohibited by 2 U.S.C. §441b ...." I have been authorized to represent NEA-PAC in connection with this matter.

Schedule A of the August Monthly indicates that on July 29, 1980, NEA-PAC received from the National Education Association (NEA) (1) $17,375.00 as reimbursement for cross pens and (2) $901.95 as reimbursement for ten Panasonic television sets. NEA-PAC paid for these items on June 5, 1980, and reported these payments as disbursements in Schedule B of its July Report of Receipts and Disbursements (July Monthly). A copy of the relevant section of the July Monthly is attached for your convenience. Schedule B of the FEC Report Form 3X requires a statement of the purpose of political committee disbursements and Schedule B of the July Monthly indicates the purpose of the NEA-PAC June 5 disbursements was "to be used for Fundraiser." Schedule A of this form, however, does not require a statement of purpose for receipts, and, accordingly, Schedule A of the August Monthly does not indicate the purpose of the July 29 reimbursement. It is this omission in Schedule A which accounts for the present misunderstanding. As indicated below, the July 29 reimbursement from NEA was made to reimburse NEA-PAC for costs that NEA initially could have paid.

Section 441(b)(2)(C) of the Federal Election Campaign Act (Act) permits a labor organization to use treasury funds to pay for the costs of soliciting contributions to its political action committee. Commission regulations further provide that labor organizations can utilize fundraising devices in soliciting contributions, See 11 C.F.R. §114.5(b). See also A.O. 1978-17, and A.O. 1979-72, in which the Commission ruled that because "[a] membership organization may pay for the solicitation costs pertaining to a fundraiser ... so such an organization may reimburse its political action committee for such amounts mistakenly paid for by the PAC." A copy of this opinion is attached for your convenience. This is precisely what happened here: under the Act, NEA could have paid for both the cross pens and the Panasonic television sets used in the NEA-PAC fundraiser, and the payments were "mistakenly" made by NEA-PAC on June 5 since, as of that date, NEA had not decided whether or not to use treasury funds. NEA subsequently decided to do so, and on July 29, NEA-PAC was reimbursed.

In your letter of November 28, 1980 regarding the August Monthly, you state that "[i]f you find that sources of the contributions are permissible and were disclosed incorrectly or incompletely on your report, please amend your original report with the clarifying information." As we have indicated, in the instant situation there were in fact no "contributions," nor was the "source" of the payments disclosed "incorrectly or incompletely." What was omitted was the fact that the purpose of the July 29 payments from NEA was to reimburse NEA-PAC for fundraising costs previously disclosed in Schedule B of the July Monthly. Enclosed is an amended Schedule A of the August Monthly which provides this information.

I trust this letter adequately responds to the questions raised in your November 28 letter regarding NEA-PAC's August Monthly. Please contact me if you desire any additional information.

Sincerely,

Joy Koletsky

Joy Koletsky
Staff Counsel

JK:dr

SCHEDULE B

JULY MONTHLY (6/1/80-6/30/80)

ITEMIZED DISBURSEMENTS

Page 1 of 1 for LINE NUMBER 19
(Use separate schedule(s) for each category of the Detailed Summary Page)

80 DEC 12 3:50

HAND DELIVERED

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)

National Education Association Political Action Committee

Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
A. Balfour Supply 11722 Parklawn Drive Rockville, Maryland 20892	5,000 Cross Pens to be used for Fundraiser Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	6/5/80	$ 17,375.00
B. Panasonic 11 Azar Court Baltimore, Maryland 21227	10 Black & White TV's to be used for Fundraiser Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	6/5/80	901.95
C. Hay Rubber Stamp Company 830 - 13th Street Washington, D. C. 20005	Hand stamp Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	6/18/80	14.18
D.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
E.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
F.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
G.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
H.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		
I.	Disbursement for: ☐ Primary ☐ General ☐ Other (specify):		

SUBTOTAL of Disbursements This Page (optional) . . . .

TOTAL This Period (last page this line number only) . . . . $ 18,291.1

8 2 0 4 0 3 5 0 4 7 7

A trade association's solicitations for its separate segregated fund are restricted to the boundaries of the exemption; therefore, communications about the financial activities of its separate segregated fund should be viewed very narrowly. The limited opportunity for Commission interpretation of such communications is exemplified in the legislative history of §441b by Senator James Allen:

> "When they announce setting up the fund, obviously, that is a solicitation right there."

In the present specific factual situation, the description of the results of management's involvement in its PAC's activities is likewise a "solicitation", and therefore limited to the trade association's membership.

Dated: January 29, 1980

[¶5456] AO 1979-72: Reimbursement of Costs of Solicitation

[A membership organization may pay for the solicitation costs pertaining to a fundraiser, and so such an organization may reimburse its political action committee for such amounts mistakenly paid for by the PAC. Answer to Herbert S. Colton of Colton and Boykin, 1133 Fifteenth Street, N.W., Washington, D.C. 20005.]

This responds to your letter of November 27, 1979, on behalf of the Build Political Action Committee ("Build-PAC") requesting an advisory opinion on the applicability of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Build-PAC's acceptance of reimbursement for solicitation costs.

Build-PAC is the separate segregated fund established by the National Association of Home Builders ("NAHB"), a nonprofit corporation. Your letter states that during the NAHB Convention-Exposition, held in January of 1979, a "Build-PAC Star Spectacular" was produced which featured various entertainers and which included a door prize, in the form of an automobile, awarded by drawing ticket stubs from a drum. Tickets for this event ranged in price from $25 to $100 and were sold exclusively to individuals who were builder and associate members1/ of NAHB. You state that gross revenues from the Star Spectacular were $246,147 and that total costs (including the actual costs of solicitation of $13,524.79) amounted to $138,443.46. On August 15, 1979, Build-PAC made a payment of $45,109.54 to NAHB pursuant to Commission regulations at 11 CFR 114.5(b)(2).2/

The computations made by Build-PAC in determining the total costs of the Star Spectacular, and hence the amount of the August 15 payment to NAHB, included solicitation costs. If solicitation costs are not included in the total cost of the Star Spectacular, Build-PAC's payment to NAHB, using the §114.5(b)(2) formula, would be $26,203. (See footnote 2.) You point out that if such solicitation costs are not included, your August 15 payment to NAHB exceeds the amount Build-PAC would otherwise have owed to NAHB by $18,906.54. In light of these circumstances, you ask whether the solicitation costs associated with the Star Spectacular may be excluded from the total costs of the event for purposes of determining Build-PAC's payment obligation under 11 CFR 114.5(b)(2). If the solicitation costs may be excluded, you ask whether NAHB may remit $18,906.54 to Build-PAC. This amount is the difference between Build-PAC's August 15 payment ($45,109.54) and the $26,203 it otherwise would owe NAHB.

Under the Act, a membership corporation, or a separate segregated fund established by a membership corporation, may solicit contributions to such a fund from members of the organization. 2 U.S.C. §441b(b)(4)(C). Commission regulations further explain that a membership corporation may use general treasury monies to pay the costs of establishing, administering, and soliciting contributions to its separate segregated fund. 11 CFR 114.5(b). Because NAHB may pay the solicitation costs for Build-PAC, the Commission concludes that Build-PAC need not have included the solicitation costs associated with the Star Spectacular in determining the total costs of that event.

The second question you have raised is whether NAHB may remit to Build-PAC the $18,906.54 overpayment made by Build-PAC as a result of Build-PAC's mistaken inclusion of solicitation costs in computing its August 15 payment.

While a corporation is permitted to pay for the establishment, administration, and solocitation of contributions to its separate segregated fund, the corporation is not permitted to use that process as a means of exchanging treasury monies for voluntary contributions. 11 CFR 114.5(b). As the Commission concluded above, however, NAHB could have paid for the solicitation costs of the Star Spectacular directly; and Build-PAC's inclusion of solicitation costs in computing the total costs of that event for purposes of payment under 11 CFR 114.5(b)(2) was not required. The fact that Build-PAC, under a mistaken belief, included such solicitation costs in computing its payment to NAHB does not change the character of those costs, and payment of those costs by NAHB would not constitute an exchange of treasury monies for voluntary contributions.

The Commission has previously held in similar situations involving an error that a union could reimburse its separate segregated fund in the exact amount of an administrative cost inadvertently paid by the fund which could have been paid initially by the union. See Advisory Opinion 1979-33 [¶5414] and Re: AOR 1976-111 [¶6073], copies enclosed. In the situation presented here, Build-PAC's mistaken inclusion of solicitation costs in determining the total costs of the Star Spectacular resulted in an overpayment to NAHB. Thus the Commission concludes that since NAHB could have paid the solicitation costs of the Star Spectacular directly, Build-PAC need not have included that amount as part of Build-PAC's total costs in computing its original payment to NAHB. Accordingly, NAHB may remit to Build-PAC the $18,906.54 overpayment which resulted from this error.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Dated: February 1, 1980.

1/ Your request does not present the question of, nor do you seek guidance as to, the class of individuals that may be solicited for contributions to Build-PAC. Therefore, the Commission does not reach or express any opinion whether the solicitation and sale of tickets to these classes of NAHB members was permissible under the Act. See 11 CFR 114.1(e) and Advisory Opinion 1977-17 [¶5249].

2/ 11 CFR 114.5(b)(2) provides that a corporation may utilize a raffle or other fundraising device which involves a prize, so long as state law permits and the prize is not disproportionately valuable. This regulation further provides that when raffles or entertainment is used for political fundraising: "a reasonable practice to follow is for the separate segregated fund to reimburse the corporation or labor organization for costs which exceed one third of the money contributed."

ADVISORY OPINION 1979-72

CONCURRING OPINION—COMMISSIONER FRANK P. REICHE

The Federal Election Commission approved Advisory Opinion 1979-72 on January 17, 1980. By so doing, the Commission held that the Build Political Action Committee ("Build-PAC"), a separate segregated fund, could exclude, in its computation of the amount to be reimbursed to National Association of Home Builders ("NAHB"), its sponsoring organization, the solicitation costs paid by NAHB in connection with a "Build-PAC Star Spectacular" fundraising event featuring various entertainers.

While concurring in such opinion, I am concerned that it may be misconstrued to permit the exclusion of solicitation costs from such computations without regard to the facts of each situation and the relative importance of the solicitation expenses in the fundraising efforts of political candidates and committees. Likewise, I am concerned lest this Advisory Opinion be deemed to relieve Build-PAC, or any separate segregated fund similarly situated, from the burden of proving that the payment of such solicitation costs by the sponsoring organization was incidental to the organization's support for the fund, and hence, that these solicitation costs should be excluded from any computation of the amount to be reimbursed by the separate segregated fund to the sponsoring organization.

Furthermore, as the opinion states, a corporation is not permitted to underwrite the solicitation costs for its separate segregated fund as a means of exchanging treasury monies for voluntary contributions. Thus, if the payment of these solicitation costs by NAHB had represented an attempt by NAHB to support Build-PAC by the transfer of treasury monies, then such payment would not have been permissible.

My concurrence in this opinion is based upon my belief that NAHB has shouldered the burden of proving that these solicitation costs were subordinate to the primary purpose of NAHB in supporting Build-PAC's fundraising activity. The entertainment and other costs involved in this case far exceed these relatively minor solicitation costs. I, therefore, conclude that such solicitation costs may be excluded from the computation of monies to be reimbursed by Build-PAC to NAHB pursuant to 11 CRF 114.5(b), but wish to emphasize that my conclusion is limited to the facts of this case.

Dated: February 1, 1980.

DISSENTING OPINION

OF

COMMISSIONER THOMAS E. HARRIS

TO ADVISORY OPINION 1979-72

I dissent from Advisory Opinion 1979-72 because I believe that the costs of soliciting participation in raffles or attendance at entertainments should be included in the total costs of such events for purposes of applying the formula suggested in 11 CFR 114.5(b)(2).

Dated: January 18, 1980.

[¶5457] AO 1980-4: Donation of Legal Services

[A law firm may permit its attorneys to defend a political committee in a civil action while being paid by the firm without a contribution resulting since this does not involve political activities. Answer to Robert S. Strauss, Chairman, Carter/Mondale Presidential Committee, Inc., 1413 K Street, N. W., Washington, D. C. 20005.]

This responds to your letter of January 14, 1980, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act"), to legal services provided to the Carter/Mondale Presidential Committee (the "Committee") for preparation of a defense to a civil action in which the Committee is one of the named defendants.

Your request states that a complaint was filed in United States District Court for the District of Columbia with the caption Winpisinger v. Watson, Civ. No. 79-3471 (D.D.C., filed December 28, 1979), in which various Cabinet members and White House staff members as well as the Committee have been named as defendants. The complaint alleges violations of 31 U.S.C. §628 (Appropriations

REPORT OF RECEIPTS AND DISBURSEMENTS
For a Political Committee Other Than an Authorized Committee

(Summary Page)

1. Name of Committee (in Full)
National Education Association
Political Action Committee

Address (Number and Street)
1201 Sixteenth Street, N.W.

City, State and ZIP Code
Washington, D.C. 20036

☐ Check if address is different than previously reported.

2. FEC Identification Number
C00003251

3. ☐ This committee qualified as a multicandidate committee during this Reporting Period on ________ (date)

4. TYPE OF REPORT (check appropriate boxes)

(a) ☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year End Report
☐ July 31 Mid Year Report (Non-election Year Only)
☒ Monthly Report for July, 1980
☐ Twelfth day report preceding ________ (Type of Election) election on ________ in the State of ________
☐ Thirtieth day report following the General Election on ________ in the State of ________
☐ Termination Report

(b) Is this Report an Amendment?
☒ YES ☐ NO

SUMMARY	Column A This Period	Column B Calendar Year-to-Date
5. Covering Period ________ Through ________		
6. (a) Cash on Hand January 1, 19__		$
(b) Cash on Hand at Beginning of Reporting Period	$	
(c) Total Receipts (from Line 18)	$	$
(d) Subtotal (add lines 6(b) and 6(c) for Column A and lines 6(a) and 6(c) for Column B)	$	$
7. Total Disbursements (from Line 28)	$	$
8. Cash on Hand at Close of Reporting Period (subtract line 7 from 6(d))	$	$
9. Debts and Obligations Owed TO the Committee (itemize all on Schedule C or Schedule D)	$	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C or Schedule D)	$	

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Terry Herndon
Type or Print Name of Treasurer

Terry E Herndon
SIGNATURE OF TREASURER

12/10/80
Date

For further information, contact:

Federal Election Commission
Toll Free 800-424-9530
Local 202-523-4068

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used.

FEC FORM 3X (3/80)

SCHEDULE A

ITEMIZED RECEIPTS

LINE NUMBER ____
(Use separate schedule(s) for each category of the Detailed Summary Page)

Any information copied from such Reports or Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full): National Education Association Political Action Committee

Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
A. National Education Association, 1201 Sixteenth Street, N.W., Washington, D.C. 20036 Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Reimb. for Cross Pens paid by NEA-PAC to Balfour Co. 6/5/80* Occupation: Aggregate Year-to-Date—$ 17,375.00	7/29/80	$17,375.00
B. National Education Association, 1201 Sixteenth Street, N.W., Washington, D.C. 20036 Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Reimb. for 10 Panasonic TV's paid by NEA-PAC to Panasonic on 6/5/80* Occupation: Aggregate Year-to-Date—$ $ 901.95	7/29/80	$ 901.95
C. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
D. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
E. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
F. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		
G. Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer: Occupation: Aggregate Year-to-Date—$		

SUBTOTAL of Receipts This Page (optional) $18,276.95

TOTAL This Period (last page this line number only) $18,276.95

*These reimbursements were for fundraising costs previously reported in Schedule B of the July report of Receipts & Disbursements filed by this Committee

FEDERAL ELECTION COMMISSION

1325 K STREET N.W
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1471

Date Filmed 10/25/82 Camera No. 2

Cameraman J.A.Q.

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