



THE FEDERAL ELECTION COMMISSION

RECORD

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COMMISSION PUBLISHES PROPOSED REGULATIONS COMMENTS INVITED—HEARINGS SET

THE FEDERAL ELECTION COMMISSION IS WORKING STEADILY ON SEVERAL SETS OF REGULATIONS INTERPRETING PROVISIONS OF THE FEDERAL ELECTION CAMPAIGN ACT. FOLLOWING ARE BRIEF SUMMARIES OF SOME OF THE REGULATIONS AND A STATUS CHART.

ALLOCATION

The Federal Election Commission has published preliminary proposed regulations on allocation of campaign contributions and expenditures. "Allocation" is the method used when an expenditure or a contribution must be divided for purposes of attributing the proper amount of money to the correct election, candidate, or State, or in the costs of travel expenses when activities include both campaign and non-campaign business. *Federal Register* publication was Nov. 5, p. 51610.

The regulations consist of five sections, including allocation of:

1. Expenditures between primary and general elections
2. Contributions between primary and general elections
3. Expenditures between two or more candidates
4. Expenditures among or between States by Presidential primary candidates
5. Campaign and non-campaign related travel.

Subject to certain specific exceptions, the regulations set up the general rule that attribution is to be made to reflect the benefit received. Each part of a contribution or expenditure is counted only once for attribution purposes. What constitutes benefit received is to be determined in the first instance by the candidate in a reasonable, consistent manner. The regulations set forth no rigid formula and require no advance justification by a candidate of attribution methods used.

The Commission invites public review and comment on the proposed regulations by Dec. 5. Public hearings were conducted on Nov. 19 and 21 at the FEC. The Commission will revise the regulation to reflect the comments received and then forward the regulation to Congress for the 30-legislative-day approval period.

PRESIDENTIAL PRIMARY MATCHING FUNDS

Public hearings on the *Presidential primary matching fund regulations* were held by the FEC on Nov. 4 and 5 at Commission headquarters. The proposed regulations were published in the *Federal Register* on Oct. 9, pp. 47688-47690.

The proposed regulations set forth the procedures under which Presidential candidates qualify for and receive public funding for their campaigns, based on a matching formula.

The regulation contains three alternative proposals on the question of whether costs of fundraising events must be deducted from the total contributions eligible for primary matching funds. These proposals follow:

1. No costs of fundraising events deducted. Proceeds from the sale of items of intrinsic or enduring value would not be matchable. (This provision was put into effect on Oct. 9, as an interim Guideline, pending promulgation of formal regulations.)
2. Subtract costs involved in fundraising concerts
3. Subtract costs involved in any fundraising "event, sale or other occurrence which confers a private benefit upon the contributor."

After the close of the public comment period, the regulations will be revised to reflect suggested changes. Upon approval by the Commission, the regulation will be sent to the Congress as required by law, and will become effective if neither House disapproves within 30 legislative days.

CONVENTION FINANCING

On Nov. 4, the FEC published in the *Federal Register* the proposed regulations on public financing

(Continued, p. 2)

of the Presidential nominating conventions. An insert to correct an omission was published on Nov. 14, p. 53159. Public comments must be received by Dec. 4. The Commission will schedule hearings during the comment period for those wishing to present formal testimony.

The 1974 Amendments to the Federal Election Campaign Act provide public funds to finance the conventions of both major and minor parties. Both major national party committees have already submitted requests for initial payments of their entitlements of \$2 million each.

A national committee may spend up to \$2 million for its convention, even if the committee does not accept the public funds. The proposed regulations apply the \$2 million ceiling to "qualified convention expenses," defined as those related to the convention, but not including candidate or delegate expenses. Thus, party committees are allowed to accept private contributions to pay for candidate or delegate expenses. If a national committee chooses to do this, it is required under the proposed regulations to set up separate bank accounts to prevent commingling of private and public funds.

REGULATIONS	Disclosure	Allocation	Convention Financing	Matching Funds	Point of Entry	Subpoenas	439a	AO Regs
<i>Federal Register</i> Publication	9/29/75	11/5/75	11/4/75	10/9/75		10/9/75		
Close of Public Comment	10/29/75	12/5/75	12/4/75	11/8/75		11/8/75		
Hearings	11/21, 11/22, 11/24	11/19, 11/21		11/4, 11/5				
Commission Meeting For Discussion and/ or Approval	Discussion: 11/18 Approval: 11/25				Discussion: 11/20		Discussion: 11/20 Approval: 11/20	

SYNOPSIS OF RECENT ADVISORY OPINIONS

These Advisory Opinion synopses are offered for informative purposes only. Any interested party is advised to read the complete text of the opinion published in the *Federal Register*, or to write to the Commission for a copy.

AO 1975-21. The Republican Central Committee of San Diego County asked the Commission whether corporate contributions, permitted under California State law, could be used to pay administrative expenses and costs of a Republican registration drive. The Committee contributes to and makes expenditures on behalf of Federal, State and local candidates.

The opinion permits the use of such corporate funds for administrative expenses and registration drives directed at State and local candidates, but sets forth an allocation formula to be used in determining the portion of the expenses that must be paid from non-corporate (unrestricted) sources and the portion that could be paid from corporate (restricted) funds. The allocable "Federal portion" is determined by the ratio of (1) the total amount which the Committee directly contributes to and expends on behalf of Federal candidates to (2) the total of all direct contributions to and expenditures on behalf of all candidates — Federal, State and local. The allocation is made on the annual report filed with the Commission.

AO 1975-26. This opinion permits the transfer of leftover, earmarked funds from the 1972 Senatorial campaign to the National Republican Senatorial Committee (NRSC) with the stipulation that the funds be held by NRSC for the use of the 1976 Republican Senatorial candidate from Delaware. In addition, AO 1975-26 also states that the NRSC may contribute additional sums to the 1976 Republican Senatorial candidate from Delaware subject to applicable limitations in 18 U.S.C. §608(b).

AO 1975-27. This concludes that attorney and accountant fees must be charged against the expenditure limitations. The Commission recognized, however, that fees for accounting or legal services rendered in connection with preparing for or responding to formal compliance proceedings instituted against the candidate or committee, would not be counted against the applicable spending limit.

In a dissenting opinion, two of the Commissioners expressed the view that "expenditures for accounting and attorney fees which are made to assure adherence to the mandates of this complex new law at every stage of a campaign for Federal office have an equal claim for an exemption from the expenditure limits of the Act, and should not merely be limited to the later point of defending against formal complaints."

In statements from the Republican and Democratic Senatorial Campaign Committees, the point was made that "the difficulties of compliance are particularly acute for non-incumbent challengers. . . ."

AO 1975-28. This Advisory Opinion permits a political committee to cease to exist once all debts and obligations are extinguished. Further, a committee established to support a Presidential candidate may, by amending their registration statement, support that candidate for another office.

AO 1975-29. The Commission was asked to define the maximum amount a county central committee of a political party (an official subordinate organ of a State political party organization) may contribute to a candidate for the U.S. House of Representatives in the primary and general elections. A county central committee may contribute \$1,000 or \$5,000 (if it qualifies under §608(b)(2)) to a candidate for Federal office in each election (primary and general). The Commission pointed out, however, that if the State political party organization exercises any direction or control over any contribution by the county central committee, then that contribution will count as a contribution by the State committee.

Contributions by a State or county central committee are, of course, separate from any expenditures allowed under the party provisions.

AO 1975-30. Congressman David R. Bowen asked for an Advisory Opinion as to whether a principal campaign committee may purchase newspaper subscriptions and reimburse a Congressman for travel expenses in connection with his political appearances.

The opinion states that the Act in no way limits the right of a candidate to make his own determination as to what expenditures should be made by his campaign, and any expenditure which a candidate or his principal campaign committee report as made for purposes of influencing a Federal election will be treated accordingly and counted toward the appropriate limitations. Thus, expenditures may be made by a candidate or his principal campaign committee to purchase newspaper subscriptions, to reimburse a Congressman, and for

any other purpose intended to influence a Federal election.

AO 1975-45. The Commission decided that, while a national multi-candidate committee could establish subsidiary State committees which have the same treasurer and members and which are dependent on it for funds, all such subsidiary committees together could make only one \$5,000 contribution to any candidate.

AO 1975-57. This opinion states that contributions to repay loans made before Jan. 1, 1975, do not have to state in writing that they are to be used for that purpose if they were made before the Commission issued its Interim Guideline on Aug. 5, 1975.

AO 1975-59. This opinion allows the Rhode Island Republican Central Committee to accept corporate contributions, permitted under State law, in connection with a fundraising event and deposit such contributions in a separate bank account to be used only for State candidates.

AO 1975-62. This opinion concludes that the portion of a donation which covers the actual costs of a fundraising dinner must be reported as a contribution and charged against the contribution limits.

AO 1975-64. This opinion permitted a candidate to hold a single fundraiser to retire both a 1972 campaign deficit and a 1973-74 office account deficit, provided the solicitation for the fundraiser clearly indicates the purpose, and contributions and expenditures to retire the deficit are made prior to Jan. 1, 1975, conform to the Commission's Interim Guideline issued Aug. 5, 1975 (40 FR 32950).

AO 1975-66. The Commission ruled that a transfer from a State campaign committee to a Federal campaign committee was permissible so long as the funds transferred were not from prohibited sources under 18 U.S.C. §§608, 610, 611, and 613. Any prohibited funds that were transferred must be returned to the

(Continued p. 4)

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Thank you for your cooperation.

CURRENT ADVISORY OPINIONS LISTED

This chart represents a listing and brief description of Advisory Opinions issued by the Commission from mid-October through mid-November. Advisory Opinion Requests are designated a number as they are received by the Commission. Advisory Opinions are not necessarily approved in sequential order. Reference following each description is the publication date and page number in the Federal Register. (For descriptions of previously issued Advisory Opinions commencing with AO 1975-1, see The FEC Record, Vol. 1, No. 2.)

AO 1975-21—Sets forth an allocation formula to be used in determining the portion of expenses that may be paid from non-corporate sources and expenses that may be paid from corporate funds in States where such contributions are permitted. (11/12/75-)

AO 1975-26—Application of contribution limitations to earmarked campaign funds deposited with Senatorial campaign committees. (11/4/75-51351)

AO 1975-27—Attorney and accountant fees must be charged against expenditure limits. Contains dissenting opinion of two Commissioners. (11/4/75-51351)

AO 1975-28—Clarifies the status of political committees supporting a former candidate for the Presidency. (11/4/75-51352)

AO 1975-29—Applicability of contribution limitations to county committees. (11/4/75-51352)

AO 1975-30—A principal campaign committee may make expenditures to purchase newspaper subscriptions and to reimburse the candidate for travel expenses. (11/4/75-51353)

AO 1975-45—Application of contribution limitations to multi-candidate committees.

AO 1975-47—Expenditures of corporate funds by host committee to attract a national party convention. Supplements AO 1975-1 and deals with the purposes for which national conventions host committees may make expenditures and the application of convention spending limitations to such expenditures. (10/24/75-49883)

AO 1975-51—Use of excess campaign funds to purchase Congressional office equipment. Use of computer terminal to aid in handling of Congressman's constituent mail. (11/5/75-51611)

AO 1975-52—Extent to which a State committee may assist a successful Federal candidate in retiring a 1974 election campaign debt. (11/12/75-)

AO 1975-57—Contributions to repay loans made before Jan. 1, 1975 which were received prior to issuance of the Commission's Interim Guidelines on retiring past debts. (11/5/75-51611)

AO 1975-62—The portion of a donation which covers the actual costs of a fundraising dinner must be counted as a contribution. (11/12/75-)

AO 1975-64—A single fundraising function may be held to retire a 1972 campaign debt and a 1973-74 office account deficit. (11/12/75-)

AO 1975-67—Use of name of campaign committee chairman and treasurer is not required on billboard signs. (11/12/75-)

AO 1975-74—A contribution made to a multi-candidate committee in a non-election year is not counted against the contributor's \$25,000 aggregate limit for the election year. (11/4/75-51353)

AO 1975-77—Royalties from publication of a book are not an honorarium. (11/4/75-51611)

AO 1975-78—The 20% fundraising exemption applies broadly to fundraising costs, not just to the actual solicitation of contributions. (11/19/75-53722)

(Continued from p. 3)

State campaign committee. The reporting requirements of 2 U.S.C. §434(b) require the disclosure of both the transfer and any refund.

AO 1975-74. Responding to a request seeking an interpretation of the second sentence of 18 U.S.C. §608(b)(3), the Commission concluded that an unearmarked contribution made by a donor to the Republican National Committee (or any other multi-candidate political committee, as defined in §608(b)(3)) in a year other than an election year did not carry over or carry back to the election year and therefore did not have to be counted against the contributor's \$25,000 aggregate spending limit for the election year. The Commission also concluded that a pre-election year contribution by an individual donor to the primary of a

candidate must be counted against the donor's \$25,000 aggregate spending limitation in the election year, whether the candidate wins or loses the primary.

AO 1975-77. The question was raised as to whether royalties from the publication of a book would be limited as an honorarium under the provisions of 18 U.S.C. §616.

The opinion states that the word "article" in 18 U.S.C. §616 should be read narrowly, and not be interpreted as meaning "any publication" because of the principles of statutory construction and the express legislative intent of Congress in enacting this section. Thus, the Commission concluded that royalties from the publication of a book by a Congressman would not be affected by this provision.

FEC NOTES

Questions coming into the Commission from the public often are of general interest, and will be highlighted in this section of The Record in future issues. These particular Advisory Opinion Requests are noteworthy:

AOR 1975-85—Senator Hubert Humphrey has asked the FEC about the application of honorarium limitations to the acceptance of an award.

AOR 1975-86—The Republican National Committee asked the Commission to clarify the extent of Commission power to regulate "activities of local political parties."

AOR 1975-90—The chairman of the Fund for a Representative Congress asked for an opinion regarding the various administrative expenses and activities of multi-candidate committees.

AOR 1975-97—The Udall '76 Committee asked whether the value of the volunteered services of a well-known entertainer must be treated as an in-kind contribution and whether the entertainer's travel and subsistence expenses are attributable contributions.

Answers to Most Frequently Asked Questions

- The 1974 Amendments to the Federal Election Campaign Act of 1971 no longer require the signature of a notary on any Statement of Organization or Report of Receipts and Expenditures required to be filed under the Act. The statements, however, must be signed by the treasurer in the case of a committee document and by the candidate for a candidate report.
- Only one pre-election report (10-day) is now required instead of two as before. There is, however, now a post-election report due 30 days after the election.
- A candidate may serve as either chairman or treasurer of his own political committee.

Henshaw New Clerk

Pursuant to the provisions of the Legislative Reorganization Act of 1946, as amended by PL 83-197, the Speaker of the House appointed Edmund L. Henshaw, Jr. to act as and to exercise temporarily the duties of the Clerk of the House of Representatives, effective at the close of business on Nov. 15, 1975. Mr. Henshaw was previously Executive Director of the Democratic National Congressional Committee.

AID

The Audit and Investigation Division (AID) was established to assist the Commission in fulfilling its statutory obligations under the Federal Election Campaign Act of 1971, as amended in 1974.

In order to encourage voluntary compliance with the Act, the AID staff conducts routine audits of the campaign financial activity of candidates for Federal

office. AID is presently conducting preliminary audits of 12 Presidential candidates to determine whether they meet the threshold requirements of eligibility for matching funds.

AID also assists candidates and committees in establishing record-keeping procedures in conformity with the Act. Members of the AID staff are, for example, currently preparing a bookkeeping manual for Federal candidates and political committees.

In addition, AID is responsible for investigating complaints filed with the Commission, and for achieving voluntary compliance whenever possible.

The 25 members of AID are experienced professional auditors and investigators. Many of them previously worked on the staffs of the prior Supervisory Officers who were responsible for implementation and administration of the 1971 Act; others were formerly auditors or investigators for other government departments or private firms.

Buckley v. Valeo

On Nov. 10, the U.S. Supreme Court heard oral arguments in the case of James L. Buckley et al., Appellants v. Francis R. Valeo, et al., Appellees. Arguing on behalf of the FEC was Ralph Spritzer, with accompanying arguments from Daniel Friedman, Deputy Solicitor General; Archibald Cox, representing Senators Hugh Scott and Edward Kennedy; and Lloyd N. Cutler, representing Common Cause, John M. Gardner, the League of Women Voters, and the Center for Public Financing.

The suit—filed in appeal of the U.S. Court of Appeals decision of Aug. 15—challenges the basic provisions of the Federal Election Campaign Act as being unconstitutional. In its decision, the Appeals Court concluded that there is a "compelling government interest, both as to need and public perception of need, that justifies any incidental impact on First Amendment freedoms" that results from the statutory limitations.

The Supreme Court decision is anticipated before the end of the year.

Special Deputy Named

Francis R. Valeo, who as Secretary of the Senate is an Ex-Officio Member of the Commission, has designated Harriet Robnett as Special Deputy to the Secretary of the Senate for the FEC. Ms. Robnett had previously served as Executive Assistant to the Secretary. She will now represent him in a non-voting capacity at all Commission meetings.

Code of Ethics

The FEC recently adopted a Code of Ethics for its Commissioners and employees to ensure "strict and absolute fairness and impartiality in the administration of the law." The document, which was based on Codes of various other government agencies as well as suggestions from the Commission and employees, is available for public examination.

New Task Force

The Commission has created a Task Force on Data Processing and Computer Application to

survey and identify Commission data processing needs and computer support requirements. The Task Force will design systems for making Commission information available in more usable form as well as to help the Commission to fulfill its statutory responsibilities under the Act.

Public Communications

The Commission recently sent to its candidate

and committee mailing list a calendar of 1976 pre-election and post-election filing deadlines for Presidential, Senatorial, and Congressional primary elections and the 1976 general election. The deadlines are listed by State and in chronological order.

The Commission notes that a few State legislatures are considering changing the dates of their primary elections. A final list of reporting dates will be published in early '76.

MATERIALS AVAILABLE

- *Federal Register* Reprints
- *The FEC Record*, Nos. 1 and 2
- General Information Folder
- Index of Reports and Statements
- Chart of Reporting Dates by State and Election (See FEC Notes, Public Communications)
- *Cost of Election Administration*
- *Survey of Absentee Registration and Voting*

The FEC mailing list is currently being updated and revised to include the large number of names of persons who have requested information and materials, and to incorporate mailing lists "of the prior supervisory officers." (See coupon on Page 3 for address corrections, changes, or reader comment.)

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