



THE FEDERAL ELECTION COMMISSION

RECORD

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FIRST ADVISORY OPINIONS ISSUED -- REQUESTS POUR IN

The Federal Election Commission is moving at a rapid pace now to eliminate a backlog of nearly 100 questions put to the Commission in the form of Advisory Opinion Requests. In the period from early July through August, 1975, the Commission has handed down 14 Advisory Opinions from a wide variety of applicants, dealing with questions from contributions by unions and corporations to Congressional office accounts to the maximum expenditure limitation allowed a primary candidate.

The Commission administers, interprets, and enforces Federal election campaign financing laws, and is responsible for upholding the reporting and financial disclosure requirements of all persons seeking Federal office, as well as individuals and groups supporting them.

FEC'S CONSTITUTIONALITY UPHELD, CASE HEADS FOR SUPREME COURT

The United States Court of Appeals has upheld the basic provisions of the new Federal Election Law and has ruled that Congress has the power to limit campaign contributions and expenditures and to provide for public financing of Presidential campaigns.

Created to administer and enforce the 1974 Amendments to the *Federal Election Campaign Act of 1971*, the Commission is a legislative agency and, as such, has the power—reinforced by the Court decision—to render opinions to certain persons as to whether planned activities or transactions will violate certain Federal statutes governing the electoral process.

The suit—filed by Sen. James L. Buckley, former Senator Eugene McCarthy and others—challenged the law as being unconstitutional because it limited the amount individuals could contribute to campaigns and the amount candidates could spend in their effort to be elected.

Upholding the Commission's constitutionality, the judicial panel in its summary stated, "The Court finds that the power of Congress to regulate Federal elections embraces the power to adopt per candidate an overall limitation on the amount that an individual or political committee may contribute in the context of Federal elections and primaries.

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The law provides that upon request of (1) any individual holding Federal office, (2) any candidate for Federal office, or (3) any political committee, the Commission shall render an Advisory Opinion as to whether any specific transaction or activity by that individual or committee would constitute a violation of the Federal Election Campaign Act, as amended, and certain provisions of Title 18, United States Code. (See Insert.)

The Commission is guided in its duties by six Commissioners and two ex-officio, non-voting members. The Commissioners are Chairman Thomas B. Curtis, Vice-Chairman Neil Staebler, Joan D. Aikens, Thomas E. Harris, Vernon W. Thomson and Robert O. Tiernan. The ex-officio members are Francis R. Valeo, Secretary of the Senate, and W. Pat Jennings, Clerk of the House of Representatives.

The Commission generally meets twice a week, but may be called into session at other times at the request of any member. The Commission meets in open session except when discussing personnel or investigatory matters.

The Commissioners have set for the Commission a primary goal of full voluntary compliance with the Federal election campaign financing laws. In pursuit of this goal, the Commission hopes to encourage greater understanding and participation in the electoral process.

Any person may direct an inquiry to the Commission. Those having general questions concerning the Federal Election Commission, or the Federal election campaign financing laws should contact the Office of Public Communication either at (202) 382-4733 or at The Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

Highlights of the Advisory Opinions issued to date follow. These brief synopses of "AOs" will be a regular feature of *The FEC Record*.

AO 1975-1 — NATIONAL PARTY CONVENTIONS

The Democratic and Republican National Committees both asked the Commission: Would goods and in-kind services which are offered to national parties by cities and private corporations constitute illegal contributions; if not, would such services be credited against expenditure limits allowed to a party with respect to a Presidential nominating convention?

(Continued, P. 2)

FEC PROCEDURES DESCRIBED

FEC Procedures Regarding Rulemaking:

- All notices of FEC intent to make rules will be published in the *Federal Register* and *Congressional Record*, and the period for public comment will be stated. Comments concerning the interpretation and implementation of specific provisions should be made in writing to the FEC, Office of General Counsel, Rulemaking Section.
- After considering comments received from the public, the Commission will formally propose rules concerning the interpretation and implementation of specific provisions of the law. The proposed rules will be forwarded to Congress for review and, if not disapproved by Congress within 30 legislative days, will be formally promulgated by the Commission.

FEC Procedures Regarding Advisory Opinions:

- A request for an Advisory Opinion must be submitted in writing to the Commission.
- All valid requests for Advisory Opinions will be made public and published in the *Federal Register* and *Congressional Record* in edited original, paraphrased, or, in the case of multiple similar requests, consolidated form.
- Interested parties will have a period of 10 days from the date of publication to submit written comments. (Reasonable requests for an extension of the comment period will normally be granted.) Comments should refer to the specific Advisory Opinion number and should be directed to the FEC Office of General Counsel, Advisory Opinion Section.
- After consideration of the request and the public comments received, the FEC will issue a formal Advisory Opinion.

- An individual or committee requesting an opinion on a matter which the Commission deems to have already been answered by an earlier Advisory Opinion will be referred in a formal and published fashion to the previous Advisory Opinion. The Commission publishes Advisory Opinions for general guidance. A recipient of such an opinion who in good faith relies on its contents will be presumed to be in compliance with the Act. Others who feel that their question bears similar circumstances and should fall under the provisions of the opinion, should still request an opinion of the Commission.

"Opinion of Counsel" and General Information Letters:

In the case of general requests for guidance and specific inquiries that do not meet the statutory requirements for a formal Advisory Opinion, the FEC Office of General Counsel or Office of Information will endeavor to provide information, answers or guidance. While these "Opinion of Counsel" or general information letters will not extend the same statutory presumption of compliance as the formal Advisory Opinion, the Commission recognizes the need and desirability to assist individuals, candidates and committees in their efforts to understand and comply with the law.

Final rules approved by the Commission and Congress, formal Advisory Opinions, and Interim Guidelines will be published in the *Federal Register* and other outlets of wide public distribution.

The *Federal Election Commission Record* will be published on a regular basis. With Volume I, Number 1, we have explored and experimented with contents and their presentation. We hope the looseleaf binder system will be a practical means by which you can be kept up to date on Commission activity. We welcome any suggestions you may have on the format for future issues.

FEC CARRIES MESSAGE

The Federal Election Commission has accepted invitations to be represented at these Sept. events:

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| Sept. 12 | National Federation of Republican Women Biennial Convention, Dallas, Texas |
| <i>Attending</i> | Commissioner Joan D. Aikens |
| Sept. 18 | Conference on State and Federal Campaign Laws, Pace University, Westchester Campus, Pleasantville, New York (afternoon panel) |
| <i>Attending</i> | Susan King, Drew McKay |
| Sept. 18-21 | Democratic National Committee Campaign Training Institutes, Louisville, Kentucky |
| <i>Attending</i> | Vice-Chairman Staebler |
| Sept. 24 | National Press Club V.I.P. Luncheon |
| <i>Attending</i> | Chairman Curtis
Vice-Chairman Staebler |
| Sept. 24 | 93rd Congressional Democrats, Washington, D.C. |
| <i>Attending</i> | Chairman Thomas B. Curtis
Vice-Chairman Neil Staebler |

Advisory Opinions, AO 1975-1

(cont'd from P. 1)

The Commission determined that local or State government agencies would not be prohibited from providing facilities or services, provided that facilities are not leased from corporations, national banks and labor organizations for less than fair market value, and that the municipal corporations are not mere conduits for corporate contributions unable to be made directly. As to private corporations, rate reductions and "free" facilities like those offered in the ordinary course of business to non-political conventions are not to be considered political contributions. Local retail businesses may contribute funds to a non-profit civic association, business league or Chamber of Commerce, if in the course of giving to encourage the arrival of equally large non-political conventions. The Commission classified these transactions as "gratuities" which are not attributable to the parties' \$2 million expenditure limitation.

AO 1975-2 — MICHIGAN COMMITTEES

This opinion defines (until promulgation of regulations) the relationship between the Michigan Democratic Party's State Central Committee and local committees for purposes of filing reports and application of

(Continued, P. 3)

CHAIRMAN URGES VOLUNTARY COMPLIANCE



FEC Chairman
Thomas B. Curtis

The elections process, to be truly meaningful, requires the active participation of as many people as possible. This involvement is an honorable and praiseworthy endeavor and is indeed one of the most important responsibilities of every citizen.

Many people today are understandably turned off by politics. For example, the Census Bureau estimates that during the 1974 Federal General Election, only 62% of those eligible to vote bothered to register and of those registered to vote, only 72% bothered to show up at the polls to cast a ballot. (These rates compare very badly with other western democracies where 80 to 90% of those eligible cast ballots.) A much lower percentage, perhaps as low as 1%, participate in the "nuts and bolts" of this process in the United States by being candidates or active political workers.

The reasons for this ever-decreasing level of political participation are many and complex. But there is no question that increasing numbers of people are making conscious decisions not to participate in the elections process. Large numbers of people have decided that the benefits they derive from the political system are not worth the costs of casting a ballot or otherwise participating in the political process. Equally certain is that public faith in the elections process and public participation in that process have been affected by campaign financing procedures.

Constitutionality, (cont'd from P. 1)

"The Court holds that Congress acted within its power when it determined that providing public financing for the Presidential selection process would advance the general welfare of the Nation by reducing the reliance of Presidential candidates on large contributors, thus reducing their influence on the outcome of elections and on the operation of government."

The plaintiffs argued that the law favors incumbents by limiting the amount that can be spent by a challenger, and restricts the First Amendment rights of free expression by putting limits on the size of contributions.

They said the FEC was illegal because it is responsible to Congress which created it, rather than the Executive branch as is the case with other Federal Agencies.

The Court said some rulings of the FEC may be subject to later challenges "since the Commission has

Advisory Opinions, (cont'd from P. 2)

expenditure and contribution limitations. Any committee which, under the bylaws of the Democratic Party or State statutes, is a part of the State party structure is included within the State party expenditure limitation. The State central committee will be responsible for insuring that the expenditures of the entire party are within legal restrictions, and any expenditure by a local committee may be reported to the State central committee or to the Federal Election Commission under an alternate "allocation" plan. If the local committees are

The picture, however, is not entirely bleak. The people of this great country have addressed the problem. Their representatives in Congress have responded by passing legislation substantially changing the way Federal Elections are financed. Many provisions have existed in the past but have often been ignored. However, stricter enforcement can be expected. Most of the requirements have their genesis in the initial reform measures which went into effect on April 7, 1972, and were strengthened by the 1974 Amendments to the Federal Election Campaign Act. These amendments for the first time in our history created a governmental body to enforce and oversee Federal campaign activity—the Federal Election Commission.

In this Commission the American people now have, if you will, an "umpire." All of us understand sports and what it means to play by "the rules of the game." We all want these rules to apply uniformly to all "players." We all expect each participant to comply voluntarily with the rules that have been issued rather than have the "whistle" blown on them.

We in the Commission are determined to do what we can to restore public faith in elections by monitoring the process by which campaigns are financed and to apply the new rules fairly. We believe the American people's response to our efforts will be positive and that more and more citizens of this country will participate in the elections process and do their part to keep this Nation vital and free. We're here to help them in any way we can!

not yet exercised most of the challenged powers."

In a statement on behalf of the Commission, Chairman Thomas B. Curtis remarked, "I am pleased with the results of the Court case. The decision implores an understanding and sense of discipline on the part of the Commission in having a concern about First Amendment Rights.

"I welcome the admonition from the Courts."

Vice-Chairman Neil Staebler also commented: "The Federal Election Commission has been working all summer to fully implement the election law and the Commission's responsibilities, and thus we are gratified by the U.S. Court of Appeal's decision upholding the constitutionality of this important campaign finance law.

"The FEC will continue to develop regulations, and provide even-handed and fair enforcement of the campaign finance disclosure and the contribution and expenditure limitations of the law."

in fact truly independent of the State central committee, however, they are considered separate organizations for purposes of contribution limitations and may make contributions up to the legal ceilings established for committees. Each local committee will then file reports of contributions with the Federal Election Commission.

In addition, the Commission determined that a Michigan Democratic Party newsletter is not creditable

against expenditure limits if distributed only to dues-paying members of the party and if the party is not organized primarily to influence the nomination or election of any person to Federal office.

AO 1975-3 — REPUBLICAN CONGRESSIONAL COMMITTEE

The National Republican Congressional Committee provides various services for Republican members of the House of Representatives. These include: printing newsletters, excerpts from the *Federal Register*, and surveys to be mailed under the member's frank; paying for tabulation of responses to questionnaires sent to constituents under the frank; reimbursing for cost of newsletter stationery. The Committee inquired as to whether these services constitute campaign contributions.

The Commission stated that the cost of preparing materials to be mailed under the frank will not be charged against contribution or expenditure limitations. But the practice of paying cost of tabulating responses to surveys is attributable to these limits.

AO 1975-4 — DEMOCRATIC PARTY TELETHON

The Democratic National Committee, in reference to its National Telethon, inquired: Is the endorsement or guarantee by an individual of a bank loan considered a contribution, although the loan will be repaid from proceeds of the telethon?

The Commission determined that loan guarantees constitute contributions on the part of guarantors, since the purpose of any transfer of money or thing of value to a political party, even if not earmarked for a particular candidate, is the election of the party's designated candidate. To the extent that such a loan is not repaid, the endorsements will be considered statutory contributions in an amount equal to the remaining balance.

AO 1975-5 — PRE-1973 DEBTS

Current contributions made solely for repayment of debts stemming from Federal election campaigns, which were incurred prior to January 1, 1973, are not subject to contribution and expenditure limitations. The Commission requires, to assure compliance, that: (1) a candidate or former candidate who wishes to retire a debt inform the Commission of the amount by filing before August 25, 1975, (2) solicitations for contributions to retire debts include clear notice of that purpose, (3) contributions exceeding \$100 to be earmarked for that purpose, (4) contributions be received before December 31, 1975, (5) such contributions be reported separately from funds raised for future elections until the debt is erased.

AO 1975-6 — 1973-1974 CAMPAIGN DEBTS

The Commission was asked to decide three questions relating to campaign debts incurred from January 1, 1973, through December 31, 1974: (1) Is a former candidate limited in expenditures from personal and

family funds to erase a past debt? (2) Are contributions raised solely to liquidate past debts subject to limits? (3) Can a candidate cancel debts owed to him by his committee?

The Commission determined that candidates are subject to personal limitations in repaying the 1973-1974 debts. Political committees and individuals are not bound by the present contribution limitations if their contributions are to be used solely for eradication of 1973-1974 debts. The guidelines established in AO 1975-5 are to be followed by both candidates and contributors. Finally, a former candidate can cancel any debt owed to him by his campaign committees.

AO 1975-8 — HONORARIUMS

A Federal officeholder or employee is considered to have accepted an honorarium subject to limitations if (1) he receives it for personal use, (2) he directs that the honorarium be given to a charity which he names, (3) he suggests that the honorarium be donated to a charity of the sponsor's own choosing, or (4) a charitable donation is made in his name, assuming that the officeholder made an appearance or speech or had written an article for the sponsor.

Members of Congress who have already received the total limit of \$15,000 per year in honorariums "may continue to accept speaking engagements for which they receive only their own personal actual transportation, accommodation, and meal expenses." Once an individual becomes a candidate, he cannot receive expense money for speeches before substantive numbers of people comprising a part of his electorate from organizations prohibited by law to make campaign contributions, since such appearances presumably enhance his candidacy.

AO 1975-9 — UNOPPOSED PRIMARY CANDIDATE

A candidate unopposed in a primary election is entitled to receive contributions and make expenditures in equal amounts to any candidate in a primary fight. Expenditures made solely to defray costs incurred in the primary election will not be chargeable to the unopposed candidate's expenditure limits in the general election. The Commission stated: "The Federal Election Campaign Act makes no distinction between opposed and unopposed candidates for purposes of either contributions or expenditure limits."

AO 1975-10 — INTERNAL TRANSFER OF CAMPAIGN FUNDS

The Commission ruled that campaign funds may be transferred from a designated campaign depository to a savings account in the same bank or in another financial institution if full disclosure is made and the campaign committee retains complete control of the transferred funds at all times. To assure compliance, the Commission requires: (1) that all funds transferred be reflected clearly on reporting forms, (2) that all funds be eventually transferred back into the campaign depository checking account, and this be clearly reflected in reporting, (3) that no expenditures be made from any account other than the checking account at the designated campaign depository, (4) that any

interest earned from transferred funds be timely reflected in reporting.

Surplus funds remaining from an election campaign for local or State office are contributions subject to reporting requirements and limitations if transferred to a Federal election campaign committee by a pre-existing committee with consent of the original donors to "earmark" their monies to a particular Federal candidate. As both the committee and the individual donor assert control over earmarking, the transfer will be considered a contribution applicable to the limitations of both parties. Such contributions must be reported by the political committee to the Commission and to the intended recipient. Future regulations will provide specific guidelines for reporting of these transfers. Such funds may not include contributions from national banks, corporations, labor unions, Government contractors, or agents of foreign principals.

AO 1975-13 — CHAMBER OF COMMERCE MONIES

The Commission was asked to determine whether acceptance of travel expenses for a speaking engagement at a Chamber of Commerce is prohibited if the chamber's treasury contains corporate contributions.

Once an individual has become a Presidential candidate, all speeches before substantial numbers of people are made presumably to enhance his candidacy. Accordingly, use of corporate money for payment of expenses would constitute an illegal campaign contribution. The Commission noted, however, that organizations such as a Chamber of Commerce could legitimately pay such expenses from separate, segregated accounts containing no corporate contributions.

AO 1975-14 — CONTRIBUTIONS TO DEFRAY CONSTITUENT SERVICE EXPENSES

The Commission ruled that contributions to and expenditures from an office account of a Member of Congress are to be treated as political contributions and expenditures, subject to applicable limitations and prohibitions. Upon the theory that Congressional appropriations for legislative activities reflect a Congressional determination of the amount necessary for continued performance of public duties, additional monies contributed to an office account are political in nature, and expenditures from such an account are intended for purposes of influencing a Federal election.

Therefore, money from the "educational fund" of a labor union, derived from dues and not from voluntary donations of members, may not legally be contributed to an office account of an incumbent Senator or Representative. Similarly, contributions by incorporated

State banks or bank-holding corporations to an agricultural conference organized by a Member of Congress would be prohibited, as the conference would otherwise be financed from an office account if not directly by Congressional appropriations. In direct analogy, free use of a corporate computer to analyze the results of a Congressman's survey is an illegal contribution, since the exemption for material prepared to be mailed under the frank does not extend to analysis of returns.

AO 1975-16 — INCORPORATED ASSOCIATIONS

An incorporated association is prohibited by Federal law from making Federal campaign contributions. Prohibitions in the Federal campaign law apply "... with limited exemption, to contributions or expenditures by non-profit corporations, just as they apply to contributions or expenditures made by profit-making corporations."

Excepted from the FEC ruling would be "a non-profit organization created expressly and exclusively to engage in political activities, (which) has incorporated for liability purposes only. That type of corporation is essentially a political committee and may contribute its assets to Federal candidates the same as unincorporated political committees."

Included in the Opinion was a reminder that a corporation subject to such prohibitions may establish a segregated fund of voluntary individual contributions and may make contributions and/or expenditures in connection with Federal elections from that fund. In turn, a candidate or political committee may accept a contribution from such a fund.

AO 1975-17 — PARTNERSHIP CONTRIBUTIONS

Federal election campaign law restricts the amount which a partnership can contribute to a candidate for Federal office to \$1,000 in each election. Such a contribution counts against each individual partner's limitation in direct proportion to his share in the profits. The Commission cited the following example: "... In the case of a four-member partnership (each partner having an equal share) which makes \$1,000 contribution to a Federal candidate, one-fourth of the \$1,000, or \$250, is counted toward each individual partner's limit. Therefore, each partner may contribute no more than an additional \$750 to the same Federal candidate with respect to the same election."

When a contribution is made in the partnership name without accompanying information as to each partner's proportionate share thereof, the committee recipient must obtain a written statement providing this information within 30 days after receiving the contribution. If the information is not received in time, the contribution must be returned or the candidate or committee will be held to have illegally accepted a contribution in the name of another (i.e., the partnership).

NEW HAMPSHIRE & TENNESSEE HOLD SPECIAL ELECTIONS

Two Federal elections this fall, in New Hampshire and Tennessee, are the first held under the provisions of the 1974 Amendments to the *Federal Election Campaign Act of 1971*.

The New Hampshire race was a Sept. 16 rerun of last November's general election. Republican Louis Wyman, Democrat John Durkin, and American Party Candidate Carmen C. Chimento opposed one another. Each candidate had been notified by the Commission of the interim guidelines issued Aug. 20, under which their race was conducted, and each candidate, as well as his supporting committees, was informed that any campaign-related activities are subject to the provisions of the new Amendments. The Commission, as an added effort to aid the candidates in this highly unusual election under the new provisions, dispatched a staff team of accountants and lawyers to New Hampshire to advise and discuss the guideline provisions and answer questions the candidates may have had.

Eleven candidates have filed for Tennessee's 5th Congressional seat vacated by Richard Fulton, Mayor-elect of the City of Nashville. They will compete in party primaries on October 9, with winners meeting in the November 25th general election. As in the New Hampshire case, all candidates will be notified that new laws are in effect and that the Commission will soon be establishing guidelines concerning the financial aspects of the election.

FEC INITIATES AUDIT OF PRESIDENTIAL CAMPAIGNS

Members of the Federal Election Commission's Audit and Investigation Division are currently "in the field" to audit the records of the principal campaign committees of Presidential candidates who "have either announced that they have met threshold requirements which would make them eligible to receive public funds, or, on the basis of reports and statements filed with the Commission, appear to have raised substantial amounts of funds."

In teams of three, the auditors will visit in alphabetical order by name of the support committee—*Bentsen in '76*, and the *Committee for Jimmy Carter*, and so on down the line.

Peter Roman, Chief of the Audit and Investigation Division, states that this will be the first of several visits in an on-going review of the committees' financial records between now and the 1976 election.

REPORTING REQUIREMENTS

A candidate or political committee as defined by the Federal Election Campaign Act which has received contributions in excess of \$1,000, or made expenditures in excess of \$1,000, during the calendar quarter July 1, 1975, through Sept. 30, 1975, is required to file a report of receipts and expenditures on or by Oct. 10, 1975.

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Staff Director - Orlando B. Potter; General Counsel - John G. Murphy, Jr.; Asst. Staff Director for Administration - Robert Baker; Asst. Staff Director for Disclosure and Compliance - Drew McKay; Asst. Staff Director for Information Services, and Editor - Herb Koster.

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WASHINGTON, DC 20463

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