



# THE FEDERAL ELECTION COMMISSION

# RECORD

1325 K Street N.W., Washington, D.C. 20463

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## SECOND QUARTER REPORT

Any candidate for Federal office (who has not qualified for a waiver) and any one of his or her authorized committees must file a quarterly report by July 10, 1977, if the candidate alone, or all the authorized committees collectively, or the candidate and the committees together received contributions and/or made expenditures totaling more than \$5,000 between April 1 and June 30, 1977. If a candidate's principal campaign committee exceeded the reporting threshold during the quarter, all the authorized committees of that candidate must file Form 3 (not 3a) with the principal campaign committee, regardless of how much they raised or spent. (See **Campaign Guide for Committees**, p. 1.16.) Noncampaign-related disbursements do not, in themselves, trigger registration requirements nor count against the reporting threshold.

All other political committees must file the quarterly report if either contributions or expenditures exceeded \$1,000 during the quarter. Quarterly reports must be filed on FEC Form 3 or, sometimes in the case of principal campaign committees, on FEC Form 6 (short form). If the candidate or committee is exempt from filing a report because campaign financial activity did not exceed the reporting threshold, the candidate or committee must nevertheless file FEC Form 3a (postcard form), or a letter with the same information, at the end of the first quarter in which the exemption applies.

Candidates who have satisfied the Act's requirements for a personal reporting waiver and who have previously requested such a waiver from the Commission, with regard to their candidacy in the 1976 election, need not file a July 10 candidate report, nor any other reports in 1977.

## SPECIAL ELECTION

A special election has been scheduled to fill the First Congressional District seat in Louisiana, left vacant by Congressman Richard Tonry. The special election dates are:

Primary - June 25, 1977  
Runoff - July 30, 1977  
General - August 27, 1977

For these and future special elections, the FEC Information Office will inform candidates, by mail and telephone, of their registration and reporting requirements and provide them with necessary forms.

## ADVISORY OPINIONS: SUMMARIES

With the official promulgation of FEC regulations on April 13, the Commission discontinued the practice of issuing "Re: AOR's." All responses to requests for advisory opinions will be issued in the form of **Advisory Opinions**. Designated as **AO's**, **Advisory Opinions** concern the application of the Act to specific factual situations. Any person requesting an advisory opinion who is good faith acts in accordance with the findings of the opinion will not be penalized under the Act. The opinion may also be relied upon by any other person involved in a specific transaction which is indistinguishable in all material aspects from the activity discussed in the advisory opinion.

### Re: AOR 1977-8: Joint Fundraising by Federal Candidates

The Sasser for Senate Committee may accept its agreed pro rata share of the net proceeds from a joint fundraising event held in conjunction with the Rowland for Congress Committee, provided reporting requirements and contribution limits are observed. This opinion is based on the fact that the committees had entered into an agreement before the event and both candidates appeared at the event. The pro rata share of each contribution, based on the gross amount of the ticket purchase price, may be accepted only to the extent the amount, when aggregated with previous contributions to candidate Sasser by the same donor, does not exceed the contribution limitations.

(Continued)

The total pro rata proceeds should be reported by the Sasser Committee as a transfer from the Rowland Committee provided all receipts are reported by the Rowland Committee. In addition, the Sasser Committee must itemize its pro rata share of all contributions from political committees and its pro rata share of any individual contribution which, when added to previous contributions to the Sasser Committee from the same donor, exceeds \$100. (Length: 5 pages)

**AO 1977-17: Definition of Membership of a Membership Organization**

Commodity representatives of the Chicago Mercantile Exchange (the Exchange), a nonprofit membership organization, are not (for purposes of the Federal Election Campaign Act, as amended) considered "members" of the Exchange since they do not have the same status within the Exchange as that enjoyed by full members. For example, commodity representatives may not trade, vote or serve as officers of the Exchange. Consequently, the Commodity Futures Political Fund, a political action committee established by the Exchange, may not solicit voluntary contributions from the commodity representatives. (Length: 2 pages)

**AO 1977-19: Taxes on Interest Earned**

Texaco may not use treasury funds to pay taxes on the interest income earned on unused contributions which were placed by Texaco's separate segregated fund (Texaco Employees Political Involvement Committee) in an interest-bearing account. The tax obligation is not considered an "administrative" cost because it was not incurred in the establishment of, the administration of, or the solicitation of contributions to the separate segregated fund. Rather, the tax was the result of the production of income to the separate segregated fund. (Length: 2 pages)

**AO 1977-20: Joint Fundraising by Federal and Non-Federal Committees**

The National Association of Realtors Political Action Committee (RPAC), established by the National Association of Realtors (a trade association) to support Federal candidates, may follow procedures it proposed to the FEC for receiving and allocating funds donated for both Federal and non-Federal elections. Under the proposed procedures, funds would be collected jointly by RPAC and State political action committees which are established by State associations of realtors which, in turn, are affiliated with the National Association of Realtors. These funds would be deposited in a special account established in a bank which would have escrow instructions directing the bank to allocate the contributions between the State political action committees and RPAC on a 60-40 percent basis. Contributors would be fully advised of the allocation ratio and,

according to the proposed plan, RPAC would report to the FEC the names of contributors and the amount of contributions (40 percent of the total contributions). Commission approval of this proposal was conditioned on RPAC's complying with the following additional requirements of the Act:

- The solicitation materials must also inform the contributor that the Federal portion of the contribution is charged against applicable contribution limitations of the Act.
- The special bank accounts must be designated on RPAC's Statement of Organization as campaign depositories.
- All joint contributions deposited into the special accounts including the portion intended for the State committees must be otherwise lawful under the Act. Contributions from national banks, corporations, labor organizations, Government contractors and foreign nationals are prohibited altogether. Joint contributions would be subject to contribution limitations only to the extent of RPAC's 40 percent share of the contribution.
- Contributions are deemed "received" by RPAC at the time they are delivered to the treasurer of RPAC or the RPAC representative functioning in each State (i.e., the bank), rather than when RPAC receives a bank transfer from a State escrow account. The State RPAC representative must supply RPAC with all information necessary to comply with its recordkeeping and reporting obligations under the Act. (Length: 5 pages)

**AO 1977-21: Transfers Between Affiliated Committees**

Realtors Political Action Committee and the California Realtors Political Action Committee/Federal are two affiliated political action committees (connected to two trade associations, the National Association of Realtors and the California Association of Realtors, respectively). Therefore, both committees are regarded as a "single political committee" for purposes of applying the Act's contribution limits to their contributions to Federal candidates and other political committees. Transfers of funds between them, however, are considered intracommittee transactions and not, therefore, subject to contribution limits. Nevertheless, the two affiliated committees must each file separate reports which reflect, among other transactions, transfers made and transfers received. (Length: 2 pages)

**AO 1977-22: Fundraising Concert**

In connection with a fundraising concert, the Democratic Congressional Campaign Committee (the Committee) may rent amphitheater facilities from Universal City Studios, Inc. (a corporation) for a fee of \$5,000 if this fee is the normal and usual rental charge for the use of equivalent facili-

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ties at the time the event is held. With regard to recordkeeping and reporting, the full amount of a ticket purchase is regarded as a contribution. Recordkeeping requirements are triggered if the total amount paid for any number of tickets purchased by the same individual exceeds \$50. The Committee must report total proceeds and must itemize any ticket purchase which exceeds \$100 (in a calendar year) when combined with other contributions from the same person. (Length: 3 pages)

## NATIONAL RIGHT TO WORK COMMITTEE v. VERNON W. THOMSON et al.

On May 17, 1977, the National Right to Work Committee (the Committee) filed in the U.S. District Court for the District of Columbia a suit for declaratory and injunctive relief against the Federal Election Commission. The Committee argues that the Commission failed to take action on two complaints which the Committee had previously filed with the FEC against the AFL-CIO and its Committee on Political Education (COPE). In these complaints, filed on December 20, 1976, and January 28, 1977, the Committee alleged that:

1. The AFL-CIO and COPE made massive in-kind contributions to the Carter Presidential campaign which were not reported, which exceeded the contribution limits of the Act and, in some cases, which violated the Act's prohibitions against expenditures by labor unions.
2. The AFL-CIO and COPE engaged in "highly partisan and hence illegal registration and get-out-the-vote drives involving the expenditure. . .of union treasury funds. . ."
3. COPE transferred to its Political Contributions Committee funds which it had received from the AFL-CIO treasury.
4. Either the AFL-CIO used "compulsory union funds" to communicate with and register to vote non-union members or the COPE Political Contributions Committee violated the Act's contribution limits.

Contending that the Commission failed to act on these complaints within 90 days after the complaints were filed, as required under the Act, the Committee asked the Court for a mandatory injunction directing the FEC to take action on the two complaints.

## RAMSEY CLARK et al. v. J.S. KIMMITT et al. (Part III)

In a brief order issued on June 6, 1977, the Supreme Court of the United States affirmed a lower court decision which dismissed a suit challenging Congress' power to exercise a single-House veto over proposed FEC regulations. The U.S. Court of Appeals had dismissed the case brought by Ramsey Clark, former Senate candidate in New York, on grounds that:

- Clark, no longer a candidate when the decision was handed down, had no "ripe injury" nor personal stake in the matter;
- Clark had failed to identify any specific action or regulation tainted by the threat of a congressional veto; and
- The case was "unripe" for adjudication since Congress had not yet disapproved a proposed regulation.

(See the March Record, pp. 5-6, for a summary of the Court of Appeals' decision; and the June Record, p. 4, for a summary of subsequent action in the case.)

## PUBLIC COMMENT REQUESTED

On May 26, 1977, the Federal Election Commission published a notice in the *Federal Register*, inviting public comment on a proposed regulation concerning how a corporation meets its obligation to make its political solicitation methods available to a labor organization. (42 FR 26990.) The notice opened a period of 30 days during which the Commission welcomed written comments "in the form of suggested language" for a proposed regulation.

Under existing FEC regulations, any corporation which raises funds for its "political action committee" by soliciting voluntary contributions from its executive and administrative personnel and stockholders must, upon request, make the same solicitation method available to a labor organization representing the corporation's employees. FEC regulations identify, as examples, several methods of political solicitation, including payroll deduction or "check-off" plans, computer mailing services and the use of corporate meeting rooms to explain voluntary giving.

The May 26 notice asked for comment on the following issues:

1. To what extent is a corporation required to make its solicitation plan available to a labor organization (representing the corporation's employees) after the corporation stops utilizing the plan, if the union's request was initially made while the plan was still in use?
2. To what extent must a corporation make its solicitation plan available to the labor organization if the union's request was initially made after the corporation stopped utilizing the plan?
3. Is a parent corporation required to make its solicitation plan available to a labor organization representing employees of one of its subsidiaries if the parent corporation solicits the executive and administrative personnel of another subsidiary corporation which does not employ any members of this labor organization?

## TWO SUITS CHARGE FEC WITH FAILURE TO ACT ON COMPLAINT (Part II)

### NATIONAL RIGHT TO WORK COMMITTEE

v. VERNON W. THOMSON et al. (Part II)

In a motion filed in U.S. District Court for the District of Columbia on May 13, 1977, the Federal Election Commission moved to dismiss a complaint brought by the National Right to Work Committee (the Committee) against the Commission. The Court complaint challenged the FEC's failure to act within 90 days on a complaint the Committee had filed with the Commission, alleging violations of the Act by the National Education Association. (For a summary of that complaint, see June Record, p. 3.) The Federal Election Commission argues that the Court lacks subject matter jurisdiction over the plaintiff's claims since "except as provided in Section 437g(a)(9), the power of the Commission to initiate civil actions . . . shall be the exclusive remedy for the enforcement of the provisions of this Act." In the Commission's view, the exception provided for in Section 437g(a)(9) (i.e., when the Commission fails to act or when it dismisses a complaint contrary to law) does not apply since the Commission has acted upon the complaint and has entered upon a conciliation attempt. On May 23, 1977, the plaintiff filed its opposition to the Commission's motion and asked the Court for a summary judgment.

PAUL E. CHAMBERLAIN et al.

v. VERNON W. THOMSON et al. (Part II)

On May 16, 1977, the FEC filed a motion in the U.S. District Court for the District of Columbia, asking the Court to dismiss the complaint brought by Paul E. Chamberlain against the FEC. The Court complaint challenged the Commission's failure to act within 90 days on a complaint filed by Chamberlain with the Commission, alleging violations of the Act by several educational associations. (For a summary of that complaint, see June Record, p. 3.) The Commission again maintains that the Court lacks subject matter jurisdiction over the plaintiffs' claims, citing the same arguments given in the FEC's motion to dismiss the complaint brought by the National Right to Work Committee against the Commission. (See above.) In papers filed on May 26, 1977, plaintiffs opposed the FEC's motion and moved for a summary judgment.

### BREAD POLITICAL ACTION COMMITTEE et al. v. FEC et al. (Part II)

On June 6, 1977, in the U.S. District Court for the Northern District of Illinois, the Federal Election Commission filed a motion to dismiss a suit brought against the Commission by Bread PAC et al. (two trade associations and three political action committees). The suit challenges certain provisions of the Act governing solicitations by trade associations for voluntary contributions to their political action committees. (See June Record, p. 4, for a summary of Bread PAC's complaint.) Asking the Court to dismiss the case, the FEC argued the Court lacked jurisdiction because:

-- The standing, as plaintiff, to initiate a suit seeking review of the constitutionality of the Act is statutorily granted only to the Commission, national political parties and voters -- but not to trade associations.

-- Plaintiffs' action, lacking any factual context, is "... not a case or a controversy." The Commission "... has invoked no authority against plaintiffs nor required of them any activity."

-- The Court should exercise restraint since "... the Act provides a comprehensive scheme of review and gives the Commission prosecutorial discretion in enforcement."

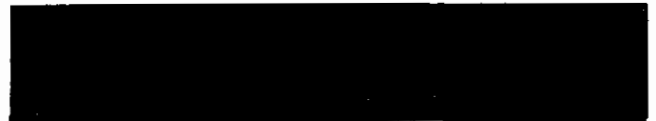
### COMMITTEE TO ELECT LYNDON LA ROUCHE et al. v. FEC (Part II)

On May 6, 1977, the Committee to Elect Lyndon La Rouche (CTEL) filed in the U.S. Court of Appeals for the District of Columbia a motion for discovery, asserting that the record, as certified by the FEC, is incomplete and does not sufficiently explain the reasons for the Commission's action. In papers filed on June 1, 1977, the FEC opposed discovery on the grounds that CTET seeks information which is not a proper subject for discovery in the Court of Appeals. In the original petition, plaintiff challenged the FEC's methods for certifying matching payments. (For a summary of the original petition, see June Record, p. 3.)



### FEC RELEASES NON-FILERS

The FEC published on May 14 the names of two candidates in Washington's 7th Congressional District who failed to file the required 10-day pre-election report of their campaign finances for the May 17 special election. The Commission sent the candidates three notices stating that the report was due before making their names public. The Commission is required by the Act to periodically publish a list of candidates whose reports are not filed as required.



### FEC REQUIRES REPAYMENT OF MATCHING FUNDS

In its meeting of May 12, 1977, the Federal Election Commission directed Governor Milton Shapp, former Presidential primary candidate, to repay to the U.S. Treasury \$299,066.21, an amount equivalent to the total amount of Federal matching funds he received. The Commission based its decision on the fact that Governor Shapp had incorrectly certified to the Commission that he had met the eligibility requirements for obtaining Federal matching funds for the primary campaign.

The Federal Election Campaign Act of 1971, as amended, states that no candidate may receive public funds for primary elections until he/she has certified that he/she has received **matchable** contributions "... which in the aggregate exceed \$5,000. . . from residents of each of at least 20

States; and [that] the aggregate of contributions certified with respect to any person...does not exceed \$250." (26 U.S.C. Section 9033(b)(3) and (4).) Contributions which are not matchable include those exceeding \$250, contributions from political committees, and those from out-of-State residents when counted for the threshold amount in a particular State. Nor are matching funds available for contributions which are prohibited under the Act (i.e., those made in excess of the limitations, those made by corporations, labor organizations, or Government contractors and contributions made in the name of another).

During the required audit and examination of Governor Shapp's campaign finance reports, the Commission found evidence that certain persons in at least five States had made contributions in the name of another. When these improper contributions were subtracted from the total amount submitted, the Commission found that Governor Shapp had not satisfied the 20-State threshold requirement to qualify for public funding.

Since Governor Shapp did not meet the statutory qualifications for matching funds, the Commission determined that the matching payments he received were in excess of the amount to which he was entitled and, therefore, had to be repaid to the U.S. Treasury.



### FEC RELEASES INDEX ON 1976 PRESIDENTIAL CAMPAIGN

On June 5, 1977, the Commission released the **Index to 1976 Presidential Campaign Receipts and Expenditures** compiled from campaign finance reports filed with the FEC from January 1, 1975, through December 31, 1976. The Index analyzes the receipts and expenditures of 23 Presidential candidates, including 15 candidates who received public funding for the primaries (2 of whom were also the major party nominees in the general election) and 8 third party or independent candidates who were on general election ballot in at least 10 States. The receipts and expenditures listed in the Index have been adjusted to eliminate refunds or rebates, refunded contributions, loan repayments and transfers among affiliated committees.

Highlights of the Index include:

- Over half (approximately 51%) of total private primary contributions received respectively by Democratic candidates, Republican candidates and non-major party candidates were made in amounts of \$100 or less.
- Of the \$39,612,365 total received by 13 Democratic candidates during the primaries, 37% was provided by the Presidential Election Campaign Fund. This figure has not been adjusted to reflect the routine repayment to the fund by Terry Sanford and the repayment, by Milton Shapp, of the entire amount he received. See "Public Financing" section, p. 4.

- Of the \$28,255,259 total received by 2 Republican candidates during the primaries, 29% was from the Presidential Fund.
- Of the \$46,118,867 total received by 10 candidates in the general election (2 major party candidates and 8 third party or independent candidates), 95% was from public funds.
- Total adjusted receipts for the 23 candidates included in the Index were \$113,986,491, of which 60% came from public funds.
- Total expenditures for the 23 candidates amounted to \$112,775,207, of which 59% was spent for primaries and 41% for the general election.



### FEC TESTIFIES ON PERSONAL FINANCIAL DISCLOSURE

In testimony presented on June 7, 1977, before the House Select Committee on Ethics, Chairman Thomas E. Harris and Vice Chairman Joan D. Aikens commented on several procedural aspects of the proposed Legislative Branch Disclosure Act of 1977. This Act, to be administered by the Clerk of the House and the Secretary of the Senate, would require Members of Congress, candidates for Congress and staff persons earning over \$25,000 per year to file personal financial disclosure statements for public inspection.

Noting the similarity between procedural questions confronted by the Commission and those raised by the proposed Act, the Commission described FEC methods for informing candidates about their disclosure obligations, reviewing reports for accuracy and compliance, and dealing with State officials who have administrative responsibilities under campaign finance laws.

The FEC also offered several recommendations to ease administrative problems through coordinating campaign and personal financial disclosure requirements. These recommendations included:

1. A provision defining "candidate" as one who has registered as a candidate under the Federal Election Campaign Act of 1971, as amended, or who has taken action to qualify for the State ballot. Personal disclosure requirements would thus be triggered by FEC registration, enabling the new program to avoid duplicating the Commission's cost of seeking out many minor campaigns that may be unaware of disclosure obligations.
2. A single centralized candidate list to facilitate coordination of FEC and congressional information and enforcement programs.
3. A provision establishing a single office in each State for receiving both personal and campaign financial disclosure documents.
4. A provision to give the Clerk of the House and the Secretary of the Senate the power to grant reporting waivers to candidates whose campaign financial activity is minimal.

[REDACTED]

FEC documents of general applicability are published regularly in the **Federal Register**. The following list identifies all FEC documents appearing in the **Federal Register** between May 7 and June 20, 1977.

Notice	Title	Federal Register Publication Date	Citation
1977-30	AOR 1977-22	5/23	42 FR 26349
1977-31	Request for Comments on Proposed Regulation	5/26	42 FR 26990
1977-32	AOR 1977-23	6/7	42 FR 29289
1977-33	AOR 1977-24	6/17	42 FR 30897
1977-34	AORs 1977-25 and 1977-26	6/20	42 FR 31303

[REDACTED]

#### FEC PUBLISHES INDEX TO REGULATIONS

A detailed subject Index to FEC Regulations, Parts 100-115, has been compiled by the Commission to facilitate rapid and easy use of the FEC Regulations. Copies of the Index were recently mailed to all candidates and political committees on the FEC mailing list. The Regulations, published as a reprint of the August 25, 1976, **Federal Register**, were sent to Federal candidates and political committees at the time they registered. Additional copies of both the Regulation and the new Index are available from the Commission's Office of Public Information, 1325 K Street, N.W., Washington, D.C. 20463.

#### FEC SURVEY AVAILABLE

Copies of "A Study of the Impact of the Federal Election Campaign Act on the 1976 Elections" are available at a cost of \$8.00 per copy from the FEC Public Records

Office. Based on a survey of attitudes of candidates in the 1976 elections and their campaign managers and treasurers, the 240-page document examines the impact of the new campaign finance law on the 1976 elections for the House of Representatives and the Senate. The study was released by the Commission on April 28, 1977, and summarized in the **June Record**, p. 1. Requests for the study should be accompanied by a money order or a check made out to the "U.S. Treasurer" and mailed to the Public Records Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

[REDACTED]

#### NEW APPOINTMENTS

During the months of May and June, the following new senior staff assignments were made at the Commission:

- Jan Baran, former legal counsel to the National Republican Congressional Committee, was appointed Executive Assistant to Vice Chairman Joan Aikens.
- Robert Costa, previously serving as Chief of Compliance Review, assumed the position of Acting Assistant Staff Director for the Audit Division.
- William Loughrey, former Executive Assistant to Commissioner Vernon Thomson, was named Deputy Staff Director. He serves as acting Staff Director in the absence of the Staff Director and has responsibilities in the areas of appointments and recruiting, planning and management and information coordination.
- Gordon Andrew McKay, former Assistant Staff Director for Audit Division, became Associate Staff Director. His responsibilities include special projects and assignments of a Commission-wide nature. He also maintains supervisory responsibilities for the Presidential audits.
- James Pehrkon, who previously served as Deputy Director of Data Services, became Acting Director of Data Services.
- John Reynolds, a Senior Management Trainee, became the new Chief of Public Communications.

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OFFICIAL BUSINESS

POSTAGE AND FEES PAID

