



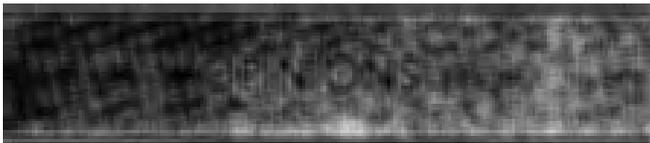
# THE FEDERAL ELECTION COMMISSION

# RECORD

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

Volume 3, Number 9

September 1977



## ADVISORY OPINIONS: SUMMARIES

Designated as AO's, **Advisory Opinions** concern the application of the Act to specific factual situations. Any qualified person requesting an advisory opinion who in 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.

### AO 1977-16: Search Committee

The Iowa 1980 U.S. Senate Committee (the Committee) may operate initially as a political committee formed to select a Republican candidate for the 1980 Senate election in Iowa by raising money, conducting surveys and identifying campaign workers and volunteers. During this time, the Committee may also voluntarily observe the limitations applicable to contributions made to a principal campaign committee, even though no candidate has yet been selected. If these limitations are observed, the candidate eventually selected by the Committee may designate it retroactively as his or her principal campaign committee. The Committee's accumulated contributions, available for the candidate's use in the campaign, would not be regarded as a contribution from the Committee to the candidate selected.

The Commission based its opinion on the following additional conditions:

- Once the Committee selects a candidate (and provided the candidate authorizes the Committee as his or her principal campaign committee), any previous contributions received by the Committee will be regarded as having been accepted by the principal campaign committee of the candidate.
- All contributions previously made to the Committee and all contributions made directly to or for the candidate before his or her selection must be aggregated by donor and reviewed to ensure that no contributors have exceeded their limitation. Refunds must be made to those

contributors who are determined to have contributed in excess of their limits.

- The Committee's Statement of Organization must be amended at the time of the candidate's selection and the candidate must authorize the Committee as his or her principal campaign committee.

Chairman Thomas Harris and Commissioner Neil Staebler dissented from the majority opinion's conclusion. (Length: 4 pages)

### AO 1977-25: Notices for Radio Advertising

The Lowenstein '76 Committee must include the notice specified in 2 U.S.C. §435(b) in a series of radio advertisements to publicize a fundraising concert. An appropriate wording would be: "Paid for by the Lowenstein '76 Committee. A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C." The broadcasts are considered solicitations because the advertisements would urge contributors to attend and make ticket purchases which would be contributions. The opinion also referred the Lowenstein '76 Committee to the Federal Communications Commission for information on sponsorship identification requirements which may be prescribed for broadcast stations by that agency. (Length: 2 pages)

*continued*

## HEARINGS SET

The Commission has set September 12, 1977, as the date for hearings on the sponsorship and financing of public debates between candidates for Federal office. For a summary of the FEC notice of the request for public comment, see the **Record**, August 1977, p. 2. The hearing will be held at the offices of the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. In addition to the hearings, written comments will be accepted by the Office of General Counsel through September 30, 1977.

### AO 1977-26: Voter Registration Activity

Any compensation or reimbursement by the State Democratic Party of Pennsylvania/Voters Registration Drive Committee ("VRC") to William J. Green for voter registration promotional activities, conducted during the 1976 election campaign, would be a contribution to Mr. Green and would be subject to limitations of the Federal Election Campaign Act of 1971, as amended. This opinion is based on the fact that Mr. Green was actively campaigning for the Pennsylvania U.S. Senate seat in 1976 at the same time he performed voter registration activities for the VRC throughout the Commonwealth of Pennsylvania. The opinion concludes that, while FEC Regulations allow a political party to reimburse a candidate for "party-building activity," it would be impossible to distinguish Mr. Green's party-building activity from activities directly related to his campaign. In addition, the constituency to be reached by the voter registration activity was identical to Mr. Green's constituency for election to the Senate. (Length: 2 pages)

### AO 1977-30: Acceptance of Honoraria

Senator Robert Dole will be considered to have accepted an honorarium if he directs or states a preference that an organization (before which he makes an appearance or speech) make a donation to one or more charities on a list provided by the Senator. FEC Regulations state an honorarium will not be considered to have been accepted if the organization itself selects the charity (§110.12(b)(5)). (Length: 2 pages)

### AO 1977-31: In-Kind Contributions

Public service messages recorded by Mr. Leo Berman, a candidate for Federal office, and paid for by his employer, Western Company of North America, would constitute a contribution in-kind by the corporation to Mr. Berman. The opinion concludes that "recitation of [Mr. Berman's] name twice in the body of these public service radio messages would provide value to [Mr. Berman] as a candidate." Therefore, the payment by Western Company of North America for the production and airing of the messages would constitute a prohibited corporate contribution in-kind. (Length: 2 pages)



### NATIONAL RIGHT TO WORK COMMITTEE v. VERNON W. THOMSON, et al. (Part II)

On July 19, 1977, the FEC filed a motion in U.S. District Court for the District of Columbia, asking that a complaint filed by the National Right to Work Committee (the Committee) be dismissed. In its original complaint, the Committee alleged that the FEC had failed to act within 90 days on two complaints previously filed with the FEC by the Committee. (For a summary, see the *Record*, July 1977, p. 3.) The Commission maintains that the Court lacks jurisdiction over the subject matter of the complaint. The Federal Election Campaign Act of 1971, as amended, (2 U.S.C. §437d(e)) provides that "... the power of the Commission to initiate civil actions ... shall be the exclusive remedy for the enforcement of the provisions of this Act." The exception in 2 U.S.C. §437g(a)(9) allows "any party aggrieved" by the FEC's failure to act on a complaint within 90 days to file with the U.S. District Court for the District of Columbia. The Commission argues this exception does not apply since the FEC has acted, but, because of complex legal and factual situations alleged in the original complaint, Commission action has not yet been completed. The specifics of the action were not discussed, however, because the Act prohibits the FEC from making public statements regarding complaints not yet resolved. On July 26, 1977, the plaintiff filed an opposition to the FEC's motion to dismiss and moved for summary judgment.

### LE ROY B. JONES, et al. v. FEC, et al. (Part II)

On June 24, 1977, Le Roy B. Jones, et al. asked the U.S. District Court for the District of Columbia for a temporary restraining order to prevent the FEC or its agents from continuing to contact contributors to the United States Labor Party (USLP) and to the Committee to Elect LaRouche (CTEL). The motion was denied on June 28, 1977. The plaintiffs' original complaint seeks a declaratory judgment, a permanent injunction and monetary relief as a result of alleged illegal and unconstitutional actions by the FEC and its agents (See summary, the *Record*, June 1977, p. 3).

*The RECORD is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Thomas E. Harris, Chairman; Joan D. Aikens, Vice-Chairman; William L. Springer; Neil Staebler; Vernon W. Thomson; Robert O. Tieman; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 523-4068 or toll free 800-424-9530.*

The FEC filed a motion to dismiss the original complaint on July 18, 1977. In its motion the Commission argues that:

- The Court has no jurisdiction over the subject of the complaint;
- The complaint does not support any claims for damages;
- The individual defendants are "... absolutely immune from liability ..." for actions alleged by the plaintiffs.

In the alternative, the Commission asked for summary judgment on the grounds there "... is no genuine issue as to any material fact."

## COMPLIANCE MATTERS

### SUMMARY OF COMPLIANCE ACTIONS

The FEC is required by the Federal Election Campaign Act of 1971, as amended (2 U.S.C. §437g), to make public the results of compliance actions which originate from a complaint filed with the Commission or from information received in the course of carrying out its supervisory responsibilities. While pending compliance matters must remain confidential, in 1976, 245 compliance files were released after the Commission had completed action on them. Since January 1, 1977, the FEC has made available in its Public Records Office 95 new cases which fall into the following categories:

1. 67 cases closed. The Commission found "no reason to believe" or "no reasonable cause to believe" the Act had been violated.
2. 4 cases involving conciliation agreements. (Several conciliation agreements may result from a single compliance case.)
3. 24 cases where the Commission has completed its investigation with a finding of "probable cause to believe" the Act had been violated, and no conciliation agreement has been entered into.

Of the cases made public in category three above, one case was referred to the Justice Department for action, and 18 cases resulted in civil suits filed in District Courts. The Commission has taken no further action on the five remaining cases. All suits filed in District Courts as a result of compliance actions before August 15, 1977, have been against candidates who failed to comply in some significant manner with the reporting requirements of the Act. (See the *Record*, February 1977, p. 4, April 1977, p. 4, May 1977, p. 3, and August 1977, p. 2.)

### FEC FILES SUIT AGAINST THREE CANDIDATES

The Federal Election Commission has filed three more civil suits against candidates who failed to comply with the Federal Election Campaign Act. On July 13, 1977, the FEC revealed it had filed suit in the U.S. District Court for the District of New Jersey asking that Tony Grandison, Republican candidate for the U.S. House of Representatives in the 10th District of New Jersey, be ordered by the Court to file a post-general election report. In addition, the Commission asked the Court to assess a penalty of not more than \$5,000 against the candidate for "failing and refusing to comply with the Act."

On August 2, 1977, the FEC revealed it had filed suit in District Courts (Indiana and Ohio) against John Tipton, Democratic candidate for the U.S. House of Representatives in the 7th District of Indiana, and Anthony Curry, Independent candidate for the U.S. House of Representatives in the 21st District of Ohio. The Courts were asked to order both candidates to file a post-general election report and, in the case of Mr. Tipton, to designate the officers of his principal campaign committee. The FEC also asked that the Courts assess a penalty of not more than \$5,000 against each candidate.

Prior to filing the suits, the FEC has sent at least two notices to each candidate concerning their filing and reporting obligations.

As of August 10, 1977, the FEC had filed a total of 33 civil suits in District Courts against candidates who failed to file reports for the 1976 Federal election.

## STAFF

### BUDGET ALLOCATION

The Planning and Management Unit of the FEC recently presented to the Commission a report on the allocation of Commission staff and resources among major objectives and program categories for the period May 1 through September 30, 1977.

As a basis for determining how resources were being allocated, the unit identified four Commission-wide objectives. Utilizing budgetary information provided by division heads, the Planning Unit categorized Commission programs according to these basic objectives as follows:

### 1. Objective One: Obtain Compliance

Grouped under this objective are the following program categories: legal interpretation and policy formation, information provided to candidates and committees, routine monitoring and verification of reports and statements, and enforcement.

### 2. Objective Two: Provide Public Funding of Presidential Candidates

Certification of public funds, verification of expenditures, and submission of reports to Congress make up the principal program categories of this objective.

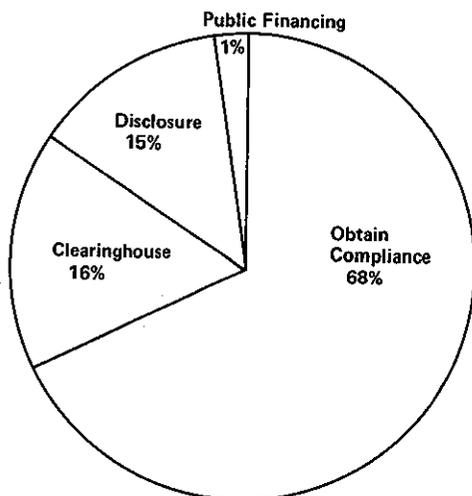
### 3. Objective Three: Public Disclosure of Information

The major program categories of this objective are to provide the public with campaign finance information required by the statute (indexes, public files), and other information deemed appropriate by the FEC.

### 4. Objective Four: Serve as a Clearinghouse for Election Administration

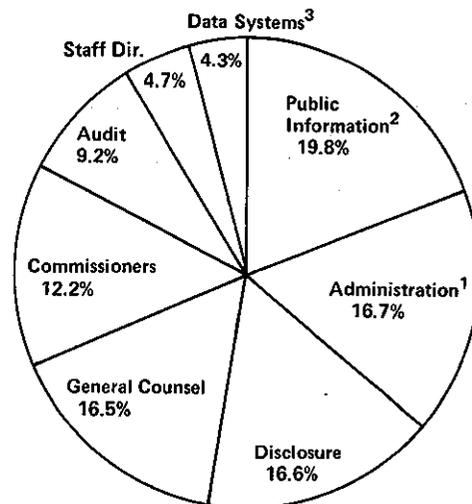
This objective is achieved through contract studies and the dissemination of election administration information.

**Figure 1:  
Commission Objectives**



The Planning and Management Unit used this information as a basis for showing the allocation of all Commission resources to each of the four basic Commission objectives (See Figure 1). Figure 1 indicates that more than two-thirds of the Commission resources are used to fulfill Objective One: Obtain Compliance (described above). The information also provided a description of how resources are divided among the various divisions of the FEC (See Figure 2).

**Figure 2:  
Divisions of FEC**



<sup>1</sup> Administration resources not allocated include rent, supplies, reproduction services, etc. Administration Division staff resources represent 5% of total Commission resources.

<sup>2</sup> Public Information resources include Clearinghouse contractual costs. When these costs are not included, Information's resources are 11% of total Commission resources.

<sup>3</sup> Data Systems resources presented include only developmental programs. All other computer costs (i.e., operating time, contract service, etc.) have been allocated to other organizational units.

While the information provided to Planning and Management represented only estimates of activity during a portion of 1977, the system will be useful in applying the zero-based budgeting concept to FEC operations in the future.



### ADVISORY PANEL MEETING

The Clearinghouse Advisory Panel met July 25 and 26, 1977, in Washington, D.C. It was the fourth meeting of the Panel since it was created in 1976 to advise the Commission on the allocation of Clearinghouse resources for research projects to improve the administration of elections around the country. The Panel consists of 20 members from different States, including State and local election officials and State legislators. The Panel discussed current and future Clearinghouse research projects and the functions of Federal agencies involved in elections administration.



## **SURPLUS CAMPAIGN FUNDS RECEIVED AFTER THE GENERAL ELECTION**

Surplus funds received **after** the general election may be accrued under three different sets of circumstances, each of which limits their use in a different way.

The Public Communications Office of the Federal Election Commission receives numerous calls from the public on the toll-free telephone line (800/424-9530). The following is an excerpt from the **Campaign Guide for Nonelection Year** to help answer one of the most frequently asked questions.

### **USING SURPLUS CAMPAIGN FUNDS**

Surplus campaign funds are those contributed to a candidate (or his/her authorized committees) which, in the candidate's view, exceed the amounts needed to defray campaign expenses. Different rules apply to the use of surplus funds depending on whether they were received **before** the general election or received **after** the general election. The principal difference is that the excess funds consisting of contributions received **before** the general election may be used for a variety of purposes without obtaining written authorization from the donor, whereas surplus funds acquired **after** the general election in most instances cannot be used for any other purpose unless authorized in writing by the donor. **In either case the disbursement of surplus funds must be reported.**

### **EXCESS CAMPAIGN FUNDS RECEIVED BEFORE THE GENERAL ELECTION**

Excess funds received **before** the general election may be transferred to another campaign on behalf of the same candidate or used for a variety of other lawful purposes **without the donor's authorization.**

#### **Transfers of Funds to Future Campaign**

The candidate may automatically transfer excess campaign funds from a previous campaign to his or her next campaign for Federal office as long as the funds transferred do not include contributions which are illegal under the Act. (For example, Candidate Jones may transfer all surplus funds from his 1976 House campaign to the principal campaign committee authorized for his 1978 Senate bid.)

#### **Use of Funds for Other Purposes**

Candidates may also use excess campaign funds for the following purposes, some of which may be subject to Federal income tax laws and, in the case of Federal officeholders, to the rules of the House or Senate:

1. Defrayment of office expenses if the candidate is also a Federal officeholder.
2. Donations to charity.
3. Contributions to a political party, political committee or another candidate, as long as the contributions comply with the Act's limits.
4. Any other purpose lawful under Federal and State laws.

#### **Paying Off All Campaign Debts**

After the general election, a candidate may receive contributions designated to retire the debts of one or more specific 1976 elections (primary, run-off or general) which were **made before** but **received after** the candidate has sufficient funds on hand to retire the designated election's debts. In this case, the candidate may use the surplus funds to retire the remaining campaign debts of the other 1976 election(s) without obtaining donors' written authorizations to do so.

#### **Receiving Funds Donated Before But Received After There are Enough Funds to Retire All Debts**

A candidate may also receive, after the general election, contributions which were **made before** but **received after** the candidate has sufficient funds on hand to retire all 1976 campaign debts. In this case, the candidate may regard the funds as "excess campaign funds" and use them for any of the purposes described in the paragraph above ("Use of Funds for Other Purposes"). Alternatively, the funds may be transferred to the candidate's future campaign for Federal office. In this case, however, they will count against the contribution limits for the future election (either the primary or general). Therefore, the candidate must:

1. Identify the donors of the transferred contributions, beginning with the last received and working back, until the amount transferred is reached; and
2. Obtain written authorization from the contributors regarding the use of their contribution in a future campaign.

#### **Receiving Additional Funds After There are Enough Funds to Retire All Debts**

Finally, a candidate may receive contributions which are **made and received after** sufficient funds are on hand to retire all 1976 campaign debts. These surplus funds **must** be considered either as contributions to a future election or as donations to an office account. In this case, **written authorization must be obtained from the donors for either use.** If designated as a donation to a future election, the donation will count against the donor's contribution limits for that election. If designated as a donation to an office account, the funds may be subject to House or Senate Rules and to Federal income tax laws.



### AUDIT POLICY IMPLEMENTATION

The Federal Election Campaign Act of 1971, as amended, requires the Commission "to make from time to time audit and field investigations with respect to reports and statements" filed by candidates and committees. The statute places a priority on audits of candidates who receive public funding. In order to implement this requirement, the FEC adopted an audit policy in November (See the Record, June 1977, p. 6) and, following the general election, audited all major Presidential candidates.

In addition, the Commission announced recently it is beginning audits of 1976 candidates for the House and Senate in 48 randomly-selected elections. This selection represents 10 percent of the Senate and House elections in 1976 and will total approximately 100 candidates. For each of these 48 elections, the Commission will audit:

- All major party general election candidates;
- All other general election candidates who received 5 percent or more of the vote; and
- All candidates who raised or spent more than \$10,000.

If the winning candidate received more than 75 percent of the vote in the general election, but less than 75 percent in a primary election victory, the Commission will also audit all primary candidates of the same party who received more than 5 percent of the vote, or who received or spent more than \$10,000.

The Commission's policy also calls for audits of 1976 Presidential candidates on the ballot in 10 or more States, multicandidate committees receiving or spending more than \$100,000, a random selection of other multicandidate

committees, major party committees (National, Congressional and State), and other candidates and committees as determined by routine disclosure report review. The names of candidates and committees being audited are withheld until the report is completed. At that time, the report is made public and is available from the Office of Public Records. The Record will from time to time list those audit reports which have been released to the public.



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 July 14, 1977 and August 22, 1977.

Notice	Title	Federal Register Publication Date	Citation
1977-39	AOR 1977-32	7/21/77	42 FR 37439
1977-40	Clearinghouse Advisory Panel Meeting	7/21/77	42 FR 37439
1977-41	AOR 1977-33	7/26/77	42 FR 38549
1977-42	AOR's 1977-34, 1977-35 and 1977-36	8/8/77	42 FR 40102
1977-43	AOR 1977-37	8/8/77	42 FR 40102
1977-44	AOR's 1977-38 and 1977-39	8/17/77	42 FR 41473

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