



THE FEDERAL ELECTION COMMISSION

RECORD

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

Volume 4, Number 5

May 1978

REGULATIONS

REQUEST FOR PUBLIC COMMENT

As part of the process of formulating new regulations, the FEC requested comments in several areas of Federal campaign law. In a notice, published in the **Federal Register** on April 7, 1978, the FEC asked specifically for comment in the following six areas:

1. Reporting communication costs defrayed by corporations and membership organizations (including labor organizations), 11 CFR 100.7(b)(5);
2. Reporting loans made by national or State banks to candidates, 11 CFR 104.8;
3. Definition of "ordinary course of business," 11 CFR 100.4(b)(13);
4. Standards for the size of printed disclaimer statements, 11 CFR 110.11;
5. Use by Federal candidates of aircraft which are owned or leased by a corporation or labor organization when that corporation or labor organization is not licensed to offer commercial services for travel, 11 CFR 114.9(e);
6. Solicitations for contributions to party committees for the purpose of making party expenditures on behalf of candidates, 11 CFR 110.7.

The Commission is seeking comments on specific questions posed in the notice concerning each of the six areas. Written comments should be submitted no later than May 5, 1978, to the Regulations Section, Office of General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Questions should be addressed to Carolyn Reed or Paul Lovejoy at 202/523-4175. Copies of the full text of the notice are available from the Office of Public Communications at the Commission - telephone 800/424-9530. Copies of comments received will be made available to the public in the Office of Public Records.

PUBLIC FINANCING

REPAYMENT HEARING

On April 3, 1978, the Federal Election Commission held a public hearing to allow 1976 Presidential candidate George C. Wallace to appeal a Commission determination that he must repay \$47,795.55 in Federal matching funds to the U.S. Treasury.

The Commission is required by the Federal Election Campaign Act to audit all candidates who receive public funds to determine whether, among other things, funds received were used for "qualified campaign expenses" as defined in the Act (26 U.S.C. §9032(9)). Public funds used to defray expenses which are not qualified campaign expenses must be repaid to the U.S. Treasury.

In the course of its audit of the Wallace Presidential campaign, the Commission determined that \$96,669.60 had been used for unqualified campaign expenses, primarily expenditures for which the Wallace campaign committee could not properly account. The \$47,795.55 represents the difference between the \$96,669.60 to be repaid and additional matching payments of \$48,874.05 owed to the Wallace campaign. These funds were held in abeyance pending completion of the audit.

Governor Wallace requested the hearing in accordance with 11 CFR 134.2(b) which provides for a hearing if a candidate disputes a Commission repayment determination. At the hearing "... the candidate may make a showing of where the Commission erred in its determination requiring repayment." Wallace, appearing with his campaign treasurer, stated that the purposes of many of the expenditures were noted on checks used by the campaign committee, and not in receipts or other documentation. Mr. Wallace asked for additional time to acquire the necessary documentation in order to prove the expenses were campaign-related.

The Commission granted an extension of time for the submission of documentation until April 18, after which time it will make a final determination in the matter.

LEGISLATION

BUDGET TESTIMONY

On February 9, 1978, the House Appropriations Subcommittee on Treasury, Postal Service and General Government heard FEC testimony on the Commission's budget request for Fiscal Year 1979. Commissioners Vernon W. Thomson and Robert O. Tiernan presented data and answered questions to support the Commission's request of \$8.624 million. This is an increase of only \$500,000, or six percent (approximately the rate of inflation), from the Commission's Fiscal Year 1978 request.

Similar testimony was also delivered to the Senate Committee on Rules and Administration on March 15, 1978, to the Senate Appropriations Subcommittee on U.S. Postal Service and General Government on March 21, 1978, and to the House Administration Committee on April 11, 1978. Congress has not yet voted on the FY 1979 authorization and appropriations.

OPINIONS

PENDING ADVISORY OPINION REQUESTS

The following chart lists pending Advisory Opinion Requests (AOR's), with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

| AOR | Subject | Date Made Public | Number of Pages |
|---------|--|------------------|-----------------|
| 1978-19 | Application of contribution limits to two Senate campaign committees for the same candidate. | 3/20/78 | 1 |
| 1978-20 | Use of aircraft owned by non-profit corporations. | 3/24/78 | 1 |

| | | | |
|---------|---|---------|---|
| 1978-21 | Status of separate segregated fund of corporation involved in merger. | 3/24/78 | 2 |
| 1978-22 | Hospitality suite maintained by Federal officeholder/candidate at State party convention. | 3/29/78 | 5 |
| 1978-23 | Payroll deduction of contributions. | 4/6/78 | 1 |

ADVISORY OPINIONS: SUMMARIES

Designated as AO's, Advisory Opinions discuss the application of the Act or Commission's regulations to specific factual situations. Any qualified person requesting an Advisory Opinion who in good faith acts in accordance with the opinion will not be subject to any sanction under the Act. The opinion may also be relied on by any other person involved in a specific transaction which is indistinguishable in all material aspects from the activity discussed in the Advisory Opinion. Anyone seeking guidance for their own activity should consult the full text of an Advisory Opinion and not rely on the summary given here.

AO 1977-2: Connected Organization

The National Association of Electric Companies (NAEC), a trade association, is the connected organization of the Constructive Congress Committee (CCC), a political committee. The connection between NAEC and CCC was determined to exist because the following circumstances indicated that NAEC "directly or indirectly establishes, administers, or financially supports" CCC:

- A continuing pattern of CCC solicitations was directed to personnel of NAEC members;
- CCC enjoyed ready access to NAEC member personnel;
- CCC invited NAEC members to make suggestions on CCC contribution recipients; and
- CCC fundraising activity coincided with NAEC meetings.

CCC must amend its Statement of Organization to reflect the fact that NAEC is its connected organization. All solicitations by CCC must be conducted in accordance with 2 U.S.C. §441b(b)(4)(D) and Part 114 of the Commission's regulations. (Length: 4 pages)

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. Tiernan; 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.

AO 1977-40: Contribution Limitations

Since the Commission is still in the process of securing facts as to whether the Maryland Medical Political Action Committee (MMPAC) and the American Medical Political Action Committee (AMPAC) are affiliated, the Commission cannot issue an advisory opinion which concludes that Congressman Newton Steers' 1976 campaign may lawfully accept contributions totaling \$11,100 from these two committees. If the Commission determines at a future date that MMPAC and AMPAC are affiliated, Congressman Steers' principal campaign committee "... will have to return the excess 1976 contributions (\$1,100) and may be determined to be in violation of the Act." The \$1,100 may be regarded by Congressman Steers as contributions to his 1978 campaign, provided the contributors give the Congressman written designations to that effect. If such designations are received, the Congressman's principal campaign committee would have to amend its past reports to disclose that the contributions are made with respect to a 1978 election. (Length: 3 pages)

AO 1977-49: Solicitations by Corporate Political Action Committee

Kerr-McGee Corporation (Kerr-McGee) or its political action committee (K-MPAC) may use a bank as custodian in connection with a twice-yearly solicitation of its employees, even though the bank holds Kerr-McGee stock as a fiduciary, provided the bank preserves the anonymity of contributors (and those not contributing) in accordance with 11 CFR 114.6(d). Such a bank may also be used as an independent mailing service for purposes of the twice-yearly solicitations.

Kerr-McGee is required to make the names of its stockholders available to a labor organization (or an independent mailing service) in accordance with 2 U.S.C. §441b and 11 CFR 114.6(a), only if it or K-MPAC solicits employees or stockholders under the twice-yearly solicitation provisions of the Act.

Kerr-McGee must bear the cost of preparing a list of stockholders or employees (and their addresses) for an independent mailing service, if it does not wish to disclose these names to a labor organization requesting them under 11 CFR 114.6(e). However, the cost of producing labels for the labor organization's mailing, or other similar expenses (such as the preparation and actual mailing of the labor organization's solicitation) must be borne by the labor organization itself.

Under the twice-yearly solicitation provisions, Kerr-McGee must make available to a labor organization the names and addresses of all stockholders and employees, "... regardless of the corporation's decision to refrain from soliciting those persons on the list who may be foreign nationals. ..."

Kerr-McGee may not use its twice-yearly solicitation materials for any purpose other than soliciting contributions. It may, however, quote pertinent excerpts from the Act and regulations or from advisory opinions issued by the Commission.

Two other questions contained in the advisory opinion request were "... not posed in a specific factual context and therefore an advisory opinion responding to them [was] not appropriate." The opinion did, however, cite several relevant sections of the Commission's regulations.

The Commission was unable to answer by the required four-vote majority one of the questions posed by Kerr-McGee concerning the solicitation, as stockholders, of employees participating in the corporation's Employee Stock Ownership Plan (ESOP). A separate statement of opinion concerning this issue was released jointly by Vice Chairman Joan D. Aikens, Commissioner Vernon W. Thomson and Commissioner William L. Springer. (Length, including the separate opinion, 19 pages)

AO 1977-54: Candidate Participation in Petition Drive

Newt Gingrich, candidate for the U.S. House of Representatives, may participate as Chairman of a petition drive in Georgia (to stop ratification of the Panama Canal Treaties) without expenses incurred in connection with this drive being considered contributions to or expenditures on behalf of his campaign for Federal office provided certain conditions are met. Expenses for newsletters, mass mailings, newspaper, radio and television advertising and public appearances where Mr. Gingrich is identified as chairman of the drive will not be contributions provided:

- Such activities do not involve the solicitation, acceptance or making of contributions to Mr. Gingrich's campaign; and
- Such activities do not involve any communication which advocates Mr. Gingrich's nomination or election to Federal office or the defeat of any other candidate for Federal office. (Length: 2 pages)

continued

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations for its representatives to address public gatherings on the subject of campaign finance laws and the Commission itself. This regular column lists scheduled Commission appearances, detailing the name of the sponsoring organization, the location of the event and the Commission's representative.

5/3 Association of the Bar of the City of New York
Committee on Corporate Law Departments
New York, New York
William C. Oldaker, General Counsel

5/26 Hope College
Washington, D.C.
(Speaker not yet determined.)

**AO 1977-70: Corporate Solicitation
of Licensees**

The McDonald's Corporation (the Corporation) or its political action committee may solicit contributions from the executive and administrative personnel of McDonald's incorporated licensees. Because of the Corporation's "... continuing control and direction over the business policies, practices and procedures of its licensees, as well as the nature and extent of the licensees' contractual obligation to the Corporation. . ." the licensees are considered to be affiliates of the Corporation. All separate segregated funds established by licensees are subject to the anti-proliferation provisions of the Act and the Commission's regulations (11 CFR 110.3) and would share contribution limits with McDonald's PAC.

Commissioner Neil Staebler filed a dissenting opinion. Chairman Thomas Harris concurred in the dissent. (Length: including the dissenting opinion, 6 pages)

**AO 1977-71: Solicitation by
Trade Association**

The American Institute for Shippers' Association, Inc. (AISA), upon receipt of solicitation permission (11 CFR 114.8(d)) by member cooperatives, may solicit the executive and administrative personnel of management corporations retained by these member cooperatives. Because the management corporations are formed for the specific purpose of fulfilling the executive and administrative functions of the member cooperatives of AISA and because they do not engage in any other activity, the executive and administrative personnel of the management corporation may be regarded as the executive and administrative personnel of the member cooperatives of AISA. (Length: 3 pages)

**AO 1978-5: Payment of Candidate's
Living Expenses**

Herbert Creech, candidate for the U.S. House of Representatives, may use campaign funds to pay for his ordinary and necessary living expenses during his campaign for Federal office. The Commission has held in several past advisory opinions that candidates and their committees "... have wide discretion under the Act in deciding which expenditures will best serve their candidacies." Expenditures for such living expenses paid out of a campaign account would, of course, be reportable under the Act. The Commission has no jurisdiction over possible tax ramifications of such expenditures. (Length: 2 pages)

**AO 1978-6: Payment of Compensation
to Candidate**

Norman G. Gaar, candidate for the U.S. Senate, may continue to receive compensation from his law firm without such compensation being considered a contribution provided:

- A bona fide employment relation exists between Mr. Gaar and the law firm;
- Compensation paid to Mr. Gaar is "exclusively in consideration of employment services performed by him"; and
- Compensation is paid to Mr. Gaar "... according to the same compensation scheme followed by [Mr. Gaar] and the firm prior to the onset of [his] candidate status."

For instance, the number of law firm hours worked is apparently a factor in fixing Mr. Gaar's compensation. A contribution by the firm will not occur unless his compensation is not decreased to reflect any decrease in the number of hours worked for the firm because of his campaign. Such a contribution would be subject to limitations and must be reported in accordance with the Act and regulations. (Length: 3 pages)

800 LINE

The Public Communications Office of the Federal Election Commission receives numerous inquiries from the public on the toll-free line (800/424-9530). The following excerpts from the **Campaign Guide for Congressional Candidates and Their Committees** is presented in response to several frequently asked questions.

**NOTICES ON ADVERTISING
OR SOLICITATIONS**

"All fundraising materials must include the following solicitation notice:

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 notice must appear on the face or front page of printed literature or advertisements, or at the beginning or end of any broadcast solicitation." (Page 9)

"When a candidate or his/her committee conducts public political advertising (e.g., billboard, direct mailing, newspaper or T.V. ad), the candidate (or his/her committee or agent) must indicate on the face or front page of written matter, or at the beginning or end of a broadcast or telecast, that the communication has been authorized. The notice is not required, however, on bumper stickers, pins, buttons or similar small items. The words 'paid for' may be used to denote authorization." (Page 11)

continued

FORMS

Forms for candidates and committees to register and report are available at any time by contacting:

Office of Public Communications
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463
Telephone: 202/523-4068
Toll-Free: 800/424-9530

Candidates and committees are urged to use the newly revised forms. They are designated in the upper left hand corner as: **FEC Form 3 REVISED, January 1978**. Candidates and committees may make and use photocopies of standard FEC forms.

When a similar public communication expressly advocating the election or defeat of a Federal candidate is made, but is **not** authorized by any candidate (or his/her committee or agents) it must state:

1. That it is **not** authorized by any candidate; and
2. The name of the person who made or financed the communication (including, if applicable, the name of the affiliated or connected organization of the political committee making the communication).

The **Guide** also contains, in Appendix D, examples of the proper wording for these required notices. For further information, see the Commission's regulations at 11 CFR 110.11.

COMPLIANCE

FEC PUBLISHES NAMES OF NONFILERS

On March 17, 1978, the Commission released the names of 11 Federal candidates who personally, or whose principal campaign committees, failed to file the required 10-day pre-election report of campaign finances for the March 21, 1978, Illinois primary election. The nonfilers included one Senate candidate and 10 candidates for the House of Representatives.

Under Commission procedures, three notices are sent to candidates and/or committees reminding them of their reporting obligations and urging compliance. If a candidate or committee does not file the required report(s) following receipt of these notices, the name of that "non-filer" is made public, as required by law. In addition to publishing the names of nonfilers, the Commission has the authority to take further enforcement action under the statute, including civil court enforcement and imposition of civil fines.

In another nonfiler action, on March 27, 1978, the Commission published the names of 203 Federal candidates, principal campaign committees or other political committees from 36 States and the District of Columbia, who had failed to file the 1977 year-end campaign finance reports, due January 31, 1978.

FEDERAL REGISTER NOTICES

FEC documents of general applicability are published in the **Federal Register**. The following list identifies all FEC documents appearing in the **Federal Register** between March 21, 1978, and April 12, 1978.

| Notice | Title | Federal Register Publication Date | Citation |
|--------|---|-----------------------------------|-------------|
| 1978-3 | Proposed Regulations: General Campaign Activities | 4/7/78 | 43 FR 14673 |

STATISTICS

UPDATE OF MULTICANDIDATE COMMITTEE INDEX

The Commission publishes each month an update to the **Multicandidate Committee Index**. For a summary of the contents of the Index, see the **Record**, February 1978, p. 4. The update is available on the last day of each month. Copies of the Index, the current update or any past updates are available through the Office of Public Records, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463 -- telephone 202/523-4181 or toll-free 800/424-9530. The purchase price is 10 cents per page, payable in advance.

PUBLICATIONS

ANNUAL REPORT 1977

On March 31, 1978, the Commission transmitted to the President and to Congress its **Annual Report 1977**. The report describes the Commission's activity in accomplishing four primary objectives:

1. To administer public financing of Presidential elections;
2. To obtain compliance with the Federal Election Campaign Act;
3. To facilitate the public disclosure of information; and
4. To serve as a clearinghouse for election administration information.

The Report also contains a summary of Commission testimony before both Houses of Congress concerning various bills on campaign financing. Numerous appendices contain additional statistical information and summaries of other information.

Finally, the Report contains legislative recommendations submitted in accordance with 2 U.S.C. §437e. This provision of the Federal Election Campaign Act requires the Commission's Annual Report to contain "... recommendations for such legislative or other action as the Commission considers appropriate." The eight recommendations dealt primarily with public financing of Presidential elections and were based on the Commission's experience with audits of Presidential candidates and committees. Issues covered included the status of Vice Presidential candidates, repayments to the U.S. Treasury, definition of the nominating process and the use of contributions matched by Federal dollars. Two recommendations were also included which would streamline the administration of the Act.

The Report is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401; telephone: 202/275-2091. The order number is 052-003-00527-1. Purchase price, payable to the Superintendent of Documents, is \$2.50.

FEDERAL ELECTION COMMISSION
1325 K STREET, NW
WASHINGTON, DC 20463

OFFICIAL BUSINESS

POSTAGE AND FEES PAID

