



THE FEDERAL ELECTION COMMISSION

RECORD

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INFORMATION

Under this heading, the **Record** periodically summarizes new developments of general interest to candidates for Federal office and committees which support such candidates.

TREATMENT OF PROHIBITED CONTRIBUTIONS

The Commission recently approved a Notice to all candidates and committees regarding its policy on the making and acceptance of corporate and labor organization contributions. In the course of carrying out its supervisory responsibilities, the Commission has noted many instances of candidates and/or committees accepting these contributions. Under the Act, corporations and labor organizations are prohibited from making contributions (or expenditures) in connection with Federal elections. Candidates and committees are prohibited from accepting or receiving such contributions.

In the past, the Commission has usually regarded the refunding of a prohibited contribution within a reasonable time as voluntary compliance with the Act. In such instances, no enforcement action, such as a civil penalty, was taken against the contributor or the recipient. During this election year and in the future, however, the Commission will not only require that the illegal corporate or labor organization contribution be refunded but, in appropriate circumstances, will also assess a civil penalty against the contributor and/or the recipient.

Candidates and committees are urged to be especially careful in accepting contributions from possible illegal sources. The regulations set out a procedure for handling such contributions (11 CFR 103.3(b)). (For a discussion of this

procedure, see the **Record**, April 1978, p. 5.) Candidates and committees should review this procedure and exercise "close scrutiny and careful investigation of any suspect contribution."

To assist candidates and committees in complying with this provision of the Act, the Notice clarifies the difference between three types of corporate accounts used by employees:

1. **Repayable Drawing Accounts.** Contributions from an account on which an employee may draw, but must later repay, are considered corporate contributions for the period that the draw is outstanding. Therefore, such contributions are prohibited.
2. **Nonrepayable Drawing Accounts.** Contributions from a nonrepayable drawing account, established to permit an employee to draw against his/her salary, profits or commissions, are considered personal contributions of the employee. Such contributions are lawful and are subject to the individual contribution limitations.
3. **Expense Accounts.** Contributions from expense accounts funded by a corporation are prohibited.

EXTENDED OFFICE HOURS

Between September 5, 1978, and the General Election, November 7, 1978, the Commission's Office of Public Communications will maintain extended office hours to accommodate calls from candidates and committees in Western time zones. Information Specialists will be available between 9:00 a.m. and 7:30 p.m., Eastern time. During these hours, candidates and committees may call toll-free, 800/424-9530, for information about the Act and regulations. Copies of reporting forms and publications may also be ordered.

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
1978-44	Summer intern program sponsored by Senator.	7/19/78	3
1978-45	Rate of payment for billboard.	7/19/78	2
1978-46	Corporate advertising in connection with State party activity.	7/25/78	1
1978-47	Limitations on contributions by trade association.	7/25/78	1
1978-48	Use of electric car.	7/25/78	3
1978-49	Reporting of in-kind contribution.	7/28/78	2
1978-50	State party activity on behalf of Federal and non-Federal candidates.	7/31/78	19
1978-51	Contribution from American Indian tribe.	8/3/78	2
1978-52	Candidate participation in corporate program.	8/10/78	4
1978-53 A - E	Acceptance of contributions from National Education Association's separate segregated fund.	8/10/78	13
1978-54	Preemption of Alabama law concerning campaign financing.	8/10/78	17

AOR	Subject	Date Made Public	Number of Pages
1978-55	Withdrawn.		
1978-56	Simultaneous status as candidate and president of unincorporated association.	8/10/78	11
1978-57	Multicandidate committee status for party committee.	8/10/78	2
1978-58	Establishment of national party committee.	8/14/78	1
1978-59	Definition of honorarium.	8/14/78	2
1978-60	Use of network television tape in campaign.	8/14/78	1
1978-61	Solicitation of corporate franchisees.	8/15/78	21

ADVISORY OPINIONS: SUMMARIES

Designated as AO's, Advisory Opinions discuss the application of the Act or Commission 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 sanctions 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. Those seeking guidance for their own activity should consult the full text of an Advisory Opinion and not rely only on the summary given here.

AO 1978-9: Activities of Party Organization

For purposes of the contribution limitations, the Republican State Central Committee of Iowa (State Committee) is a separate political committee from the various county central committees (County Committees) in the State which qualify as "political committees" under the Act and regulations. The conclusion is based on the facts submitted by the State Committee that:

-- Contributions by the County Committees to candidates for Federal office are "not made in cooperation, consultation, or concert with, or at the request or suggestion of, the State Committee. . .";

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- The County Committees receive no funds (other than proceeds of joint fundraising) from the State Committee;
- The County Committees are created by statute and not established, financed, maintained or controlled by the State Committee; and
- Each County Committee elects its own officers and adopts its own constitution and bylaws.

Therefore, because they are separate political committees, contributions to or by the State Committee and the County Committees are not aggregated under one contribution limitation.

The party's auxiliary bodies (e.g., Federation of Republican Women, Young Republicans, College Republicans), which are "political committees" as defined by the Act, are not, however, considered separate committees for purposes of the contribution limitations. Provisions in the State statutes and State Committee's bylaws provide for the establishment of these auxiliary bodies. They also coordinate their activities and finances with the State Committee. Therefore, contributions by the auxiliary bodies are subject to the limitations which govern State Committee activity.

County committees or auxiliary bodies which are not "political committees" as defined in the Act, may make contributions up to \$1,000 in a calendar year to candidates for Federal office without incurring any obligation to register or report. Any such contributions must be lawful under the Act. In this case, however, because the party units are not "political committees," contributions to or by the party units do not count against the limitations of or need be reported by the State Committee. The State Committee's limitations would apply and a reporting obligation would occur only if:

- The party unit becomes a "political committee" which is established, financed, maintained or controlled by the State Committee; or
- The unit is a fundraising agent for the State Committee.

The Act's provision for a special party expenditure limitation (2 U.S.C. §441a(d)) gives only one shared limitation to the entire State party organization. Thus, individual party units (such as county committees or auxiliary bodies) do not each have a limit separate from the State Committee. The regulations set out alternative methods for the administration of this single State party limitation and the requirements for reporting this activity.

The special \$1,000 coordinated spending limitation for party committees (11 CFR 110.7(b)(5)) is available for use only in connection with the general election for Presidential candidates. Therefore, it may not be used in connection with the 1978 general election.

Under certain conditions, the Act exempts from the definition of contribution and expenditure the costs of a slate card, sample ballot or "other printed listing" prepared by a party committee. The slate cards may include information identifying candidates by name, office or position currently held, office sought and party affiliation. They may also include certain other voting information. Pictures of the candidates may be used for identification purposes.

However, additional biographical information or material on the candidates' or party's philosophy or positions on issues is not permissible. Materials which qualify under this provision may be distributed in direct mass mailings.

Vice Chairman Robert O. Tiernan filed an opinion dissenting from the majority's opinion on separate contribution limitations for the State Committee and the County Committees. Commissioner Thomas E. Harris concurred in the dissent. (Length, including dissenting opinion, 21 pages)

AO 1978-21: Separate Segregated Fund of Foreign-Owned Corporation

The Budd Company (the Company) may continue to administer its separate segregated fund (the Committee) after becoming a wholly-owned subsidiary of Thyssen, A.G., a West German corporation. Because the Company will retain its autonomous corporate form (as a Pennsylvania corporation) and its principal place of business will remain in the United States, the Company will not be considered a "foreign national" which, under the Act, is prohibited from making contributions in connection with Federal elections (2 U.S.C. §441e; 11 CFR 110.4(a)).

The conclusion was based on several assumptions:

- Contributions to the Committee are not solicited or accepted from foreign nationals;
- Solicitations for the Committee and contributions or expenditures made by the Committee are in accordance with the Act and regulations;
- Individuals exercising decision-making authority in the Committee are citizens of the United States (or, lawfully admitted for permanent residence);
- Decisions made by those individuals are not "dictated or directed by personnel of Thyssen, A.G. or any other foreign corporation, who are foreign nationals."

Commissioners Thomas E. Harris and Neil Staebler jointly filed a dissenting opinion. (Length, including dissenting opinion, 5 pages)

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 should use the revised form for reporting receipts and expenditures, which is 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.

PROCEDURES

REQUESTS FOR COPIES OF REPORTS

The Office of Public Records anticipates a large volume of requests for copies of candidate and committee reports of receipts and expenditures during the four-week period immediately preceding the general election. Although the Office will be using additional staff and working extra hours in an attempt to maintain its normal turn-around time for filling orders (two to ten days), this cannot be guaranteed. The Office suggests, therefore, that individuals who wish to obtain copies of reports filed prior to this pre-election period, should do so immediately. Orders can be filled more quickly during September.

Residents in the Washington, D.C. area are urged to come in person to the Office of Public Records, located on the street level at 1325 K Street, N.W. The Office is open weekdays, 9 a.m. to 5 p.m., with extended hours during reporting periods. For those living outside the Washington metropolitan area, copies of documents are available by mail. The Commission charges 10 cents per page. Since full payment in advance is required, it is recommended that, prior to requesting a specific document by mail, the public should phone the Office for information as to cost and availability: 202/523-4181 or toll-free 800/424-9530.

PUBLICATIONS

NEW CAMPAIGN GUIDE FOR POLITICAL COMMITTEES

The Commission recently published a new **Campaign Guide for Political Committees**. The Guide focuses on the requirements, under the Federal Election Campaign Act, of political committees which have not been authorized by any candidate for Federal office. Note, however, this Guide

does not discuss the special rules governing solicitations and communications by separate segregated funds, the activities of their connected organizations (e.g., corporations and labor organizations), or the special rules governing expenditure activity and reporting of party committees.

The Guide contains a discussion of the basic differences between contributions and expenditures, and details record-keeping, registration and reporting requirements. In addition, the Guide describes the various ways a committee may support candidates and other committee activities such as fundraising and advertising.

Copies of the Guide will automatically be sent to all registered political committees (except those authorized by a candidate) and individuals on the Record mailing list. Additional copies of the Guide are available from the Commission's Office of Public Communications.

Congressional candidates and their authorized committees should continue to use the previously published **Campaign Guide for Congressional Candidates and Their Committees**. It contains much of the same material as the new committee Guide, but with an emphasis on the special requirements for candidates.

UPDATE OF MATERIALS AVAILABLE

In addition to the new Campaign Guide (see above), the Office of Public Communications will provide, upon request, free copies of the following publications:

- Federal Election Campaign Laws
- FEC Regulations
- Bookkeeping and Reporting Manual for Candidates and Committees
- Campaign Guide for Congressional Candidates and Their Committees
- Campaign Guide for State and Subordinate Party Committees

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**AO 1978-34: Use of Business Phones
by Candidate**

The Citizens for Downey '78 Committee (the Committee) may use corporate or noncorporate business telephones for its campaign activity instead of establishing the Committee's own phone bank. However, the Committee must reimburse the businesses, within a reasonable time, for the normal and usual rental charge of such facilities. If not reimbursed, the businesses are considered to have made an in-kind contribution.

Normal and usual rental charge is considered the cost of renting the phones in the normal market, "... including the costs for the use of office space, utilities and furniture to conduct the telephoning." Therefore, the Committee may not use the per-call cost charged by the New York Telephone Company as the only basis for reimbursement. The difference between this charge and the normal and usual rental charge would constitute a contribution in-kind by the businesses to the Committee. In the case of a corporate business, this contribution is prohibited. An unincorporated business may make a contribution in-kind subject to the \$1,000 per election limitation of the Act. (Length: 3 pages)

**AO 1978-36: Activities of Separate
Segregated Fund**

The National Nutritional Foods Political Action Committee (NNFPAC), the separate segregated fund of a trade association, is not prohibited by the Act from spending funds to influence legislative action on particular issues. NNFPAC may also use its voluntary contributions to communicate with the general public on legislative issues provided the communications do not solicit contributions to NNFPAC. Such expenses paid by NNFPAC must be reported as disbursements by the political committee.

The Commission noted it could not address any possible application of the Federal lobbying statutes or the Internal Revenue Code to such activities. The Commission has no jurisdiction in these areas. (Length: 2 pages)

AO 1978-41: Contribution Limitations

Gerald B. Solomon, a candidate for the U.S. House of Representatives, may accept contributions from an individual totaling \$1,000 with respect to the primary election and \$1,000 with respect to the general election. These limitations apply even though Mr. Solomon will be unopposed in the New York State primary election on September 12. The Commission noted that, if Mr. Solomon's name appeared on the primary election ballot, he would have to file the pre- and post-election reports for that election, even though "there is no other candidate listed on the ballot in opposition to [him]." (Length: 2 pages)

**AO 1978-43: Use of Surplus
Campaign Funds**

Upon her retirement from Congress, Congresswoman Barbara Jordan may use surplus funds from previous campaigns "to employ staff and pay the incidental expenses... in the performance of duties which are imposed by virtue of having been a member of Congress." (2 U.S.C. §439a; 11 CFR 113.2.) The opinion noted

that any possible application of the Rules of the House of Representatives or the Internal Revenue Code to the activity described is not within the Commission's jurisdiction. (Length: 2 pages)

THE LAW IN THE COURTS

**FEC v. NATIONAL EDUCATION
ASSOCIATION, et al.**

On July 20, 1978, the U.S. District Court of the District of Columbia granted the Commission's motion for summary judgment in this case. The FEC had filed suit against the National Education Association (NEA), its separate segregated fund (NEA-PAC) and eighteen of its State affiliates seeking to enjoin them from collecting political contributions by means of a "reverse check-off" procedure. Under this procedure, a political contribution is automatically deducted from a member's salary along with his/her dues payment. The contribution is subsequently refundable upon written request by the member.

In addition to granting summary judgment, the Court issued the following orders:

- Defendants are permanently enjoined from using the reverse check-off procedure to collect political contributions to NEA-PAC.
- Defendants, in consultation with the Commission, must prepare a plan by which its members will be informed of the suit and the decision of the Court. In addition, the plan must provide a method by which the members are afforded an opportunity to obtain, at no expense to them and with minimal effort, a refund of any monies deducted from their paychecks through the reverse check-off. The plan must be presented to the Court by August 25, 1978.
- Defendants' counterclaim against the Commission was dismissed.

FEDERAL REGISTER NOTICES

The following list identifies all FEC documents appearing in the Federal Register between June 8, 1978, and August 16, 1978.

Notice	Title	Federal Register Publication Date	Citation
1978-6	Rules of Procedures	7/21/78	43 FR 31433
1978-7	Proposed Notice of New Systems of Records	7/26/78	43 FR 32328

REGULATIONS

FREEDOM OF INFORMATION ACT REGULATIONS

On July 13, 1978, the Commission approved its Freedom of Information Act regulations. The regulations emphasize the Commission's policy of regularly making as much information available to the public as possible, thereby not requiring individuals to formally submit requests for information under this Act. The regulations state:

The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secrets and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

The regulations list the scope and availability of records and nine specific categories of exemptions. Procedures for requesting records under the Freedom of Information Act are described, as are the procedures for appealing a denied request.

COMPLIANCE

FEC PUBLISHES NAMES OF NONFILERS

The Commission is required by the Federal Election Campaign Act to publish the names of candidates and political committees who fail to file required reports of receipts and expenditures.

Before publishing the name of a candidate or committee who has failed to file, the Commission sends them at least two notices. If, following receipt of these notices, a candidate or committee continues not to file the required reports, the name of that "nonfiler" is made public. (In the case of primary election reports, the "nonfilers list" is published two to three days prior to the election.) The following is a list of recent nonfiler actions taken by the Commission:

Publication Date	Report Not Filed	Number of Nonfilers
7/21/78	May 20 (Monthly)	1
7/29/78	Kansas (Pre-Primary)	2

Publication Date	Report Not Filed	Number of Nonfilers
7/31/78	Indiana (Post-Primary)	4
7/31/78	North Carolina (Post-Primary)	2
8/1/78	Tennessee (Pre-Primary)	8
8/4/78	Texas (Post-Primary)	4
8/5/78	Georgia (Pre-Primary)	6
8/5/78	Michigan (Pre-Primary)	3
8/5/78	Missouri (Pre-Primary)	8
8/7/78	Nebraska (Post-Primary)	2
8/14/78	Pennsylvania (Post-Primary)	9

AUDITS

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act requires the Commission "... to make from time to time audits and field investigations with respect to reports and statements filed under the Act." The Commission is also required to conduct audits of all campaigns of Presidential candidates who receive public funds. Once an audit is completed and an audit report is approved by the Commission, the report is made public and is available in the Office of Public Records and the Press Office. The following is a chronological listing of audits released as of August 18, 1978.

Audit	Date Made Public
1. Nevada State Democratic Central Committee Get-Out-the-Vote	7/25/78
2. Hearnes for Senator Committee	8/2/78
3. Danforth for Senator Committee	8/2/78
4. Gun Owners of America Campaign Committee '76/Gun Owners of California Campaign Committee/ Gun Owners of America Legislative Action Fund	8/10/78