



THE FEDERAL ELECTION COMMISSION

RECORD

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

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OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists 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	No. of Pages
1979-10	Appearance of union bug (mark) on candidate brochures and stationery.	3/19/79	3
1979-11	Use of proceeds from 1968 fundraiser to defray Federal officeholder's non-reimbursable office expenses.	3/29/79	3
1979-12	Allocation of proceeds from ticket sales for political rally and fundraiser.	3/29/79	1

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 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. 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 1979-5: Committee Termination

The Brathwaite for Congress Committee (the Committee) may file a termination report if the Committee extinguishes its outstanding debts in the manner which the Committee proposed to the Commission.

Two persons owe refunds to the Committee for campaign services promised but not rendered; the Committee owes the candidate a balance on an outstanding loan which exceeds the sum of the refunds owed to the Committee (refund claims). In order to extinguish its debts, the Committee has proposed the following transfer:

1. The Committee will assign its two refund claims to the candidate.
2. The candidate will give the Committee credit for a loan repayment equal to the sum of the two claims. Since the loan exceeds that sum, the candidate will forgive the remaining balance on the loan.

The Commission concluded that the proposed assignment of Committee claims to the candidate would effectively transfer those obligations owed to the Committee to the candidate. If the candidate then forgave the balance remaining after the transfer, that action would extinguish the Committee debt.

If the Committee has no other outstanding debts or obligations, and satisfies all other requirements of 11 CFR 102.4(a) and (b), the Committee may file a termination report and end its reporting obligations.

The Commission noted that when the Committee assigns its refund claims to the candidate in full payment of its debt to him, that debt is extinguished whether or not he ever receives the refund payments. (Length: 2 pages)

ADVISORY OPINION REQUESTS WITHDRAWN

Since March 1979, the following Advisory Opinion Requests were withdrawn by their requesters:

- AO 1978-84
- AO 1978-101



FEC v. CFR

On March 1, 1979, the U.S. District Court for the District of Columbia granted summary judgment to Citizens for the Republic (CFR), defendants in a suit filed by the FEC. In granting judgment to the defendant, the Court found that there was no genuine issue as to any material fact.

On August 11, 1977, the Commission found reasonable cause to believe that Citizens for the Republic (formerly Citizens for Reagan, principal campaign committee for former Presidential candidate Ronald Reagan) had violated the Act by failing to report or make best efforts to report the occupations and principal places of business of 35% of those persons who had contributed an aggregate of \$100 or more to the candidate, as required by 2 U.S.C. §434(b)(2). On June 23, 1978, the Commission filed suit after unsuccessfully trying, for almost a year, to resolve the matter through conciliation, as required by 2 U.S.C. §437(g)(a)(5)(A).

The defendant maintained that:

- Section 434(b) does not impose an affirmative duty on the candidate to obtain information which may not exist. Rather, the burden of proof is on the Commission, which must identify persons who contributed more than \$100 and establish that, at the time of the contribution, they had an occupation and a principal place of business which they were required to report.
- One cannot be in violation of the law for failure to make best efforts; one can only be in violation for failure to report the required information. In the event that the required information does exist and is not reported, the defendant may be relieved of guilt if he is able to demonstrate that he attempted to obtain the required information and was unable to do so.
- The Commission gave insufficient guidance as to how the Committee might obtain the required information. In the absence of any regulation or guidelines, the Committee efforts were best efforts.

The Commission argued that:

- The Act clearly imposes the burden of obtaining the required information on the candidate.
- If the CFR had been able to demonstrate that they had made an attempt to obtain the required information and had not been successful, their effort would have been

sufficient. The Committee's initial mailing to potential contributors did not request the required information, or state that the contributor was required to provide it. The only Committee mailing which pointedly requested the missing information was sent in December 1977 (the relevant reporting period was 1975-76), after the Committee had received 14 requests for additional information from the Commission, and after the Committee was aware that the Commission had found reasonable cause to believe it was in violation of the Act.

- Lack of guidance did not hinder other Presidential committees from making satisfactory efforts to obtain the required information. Furthermore, the Commission did provide guidance to the Committee, pointing out its reporting deficiencies, suggesting ways those deficiencies might be corrected, and discussing how other Presidential committees were gathering the required information.

In finding for the defendant, the Court concluded that the Commission "had a duty to give more . . . detailed guidance by regulation." In the absence of such guidance, the efforts made by the Reagan Committee were best efforts.



FEC PUBLISHES NAMES OF NONFILERS

On March 31, 1979, the Federal Election Commission published the name of one Federal candidate in California's eleventh Congressional district who failed to file the required 10 day pre-election report of campaign finances for the April 3 special general election.

In another action, on April 6, 1979, the Commission published the names of 313 nonfilers who failed to file the required 1978 year-end campaign finance report, due January 31, 1979. The year-end nonfilers included Federal candidates, their principal campaign committees, and other political committees from 44 States, the District of Columbia and the Virgin Islands.

Under Commission procedures, three notices are sent to candidates and committees reminding them of their reporting obligations and urging compliance. If a candidate or committee does not file the required report(s) following the receipt of these notices, the name of that "nonfiler" 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.

The RECORD is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Joan D. Aikens, Chairman; Robert O. Tiernan, Vice Chairman; Max L. Friedersdorf; Thomas E. Harris; John W. McGarry; Vernon W. Thomson; 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 202/523-4068 or toll-free 800/424-9530.

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act requires the Commission to periodically make 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 between March 3, 1979, and April 2, 1979.

Audits	Date Made Public
1. McLain Campaign Committee, AL/5	3/7/79
2. Corman Campaign Committee/Corman Dinner Committee/Corman Congressional Keyman, Keywoman, CA/21	3/7/79

3. John R. Rarick Congressional Campaign Committee, IN/1	3/7/79
4. Guffey in the First Committee, SD/1	3/7/79
5. Rudasill for Congress Committee, NC/2	3/29/79
6. West Virginia State Democratic Telethon Committee	3/29/79
7. The Committee for Jimmy Carter (Primary Election)	4/2/79

PROGRESS OF AUDITS

With this issue, the Record will begin publication of an audit summary chart. The chart provides cumulative information on the progress of FEC audits from 1976 through the present. The chart includes data on the types of committees being audited, the status of those audits and the number of audits completed and available to the public. (For a full discussion of FEC audit policy, see the Record, January 1979, p. 5.)

Type of Committee Audited	Audits Required by Audit Policy	Field Work in Progress	Field Work Completed	Internal Review of Audit in Progress	Audits Completed and Released to Public	Audits to be Scheduled
Presidential Candidate Public Financing (1976)	19		19	5	14	0
Presidential Candidate No Public Financing (1976)	23		13	10	3	10
Congressional Candidate Random (1976)	106		106	14	92	0
State Party	70	2	68	48	20	0
Congressional Party	9		9	1	8	0
National Party	19	2	4	4	0	13
Non-Party, Non-Candidate	51		17	10	7	34
Referral Audits*		1	6	6	1	2

*Referral Audits include candidates and committees referred to the Audit Division by the Reports Analysis Division or the Office of General Counsel.

ANNUAL REPORT

On March 31, 1979, the Commission submitted its **Annual Report 1978** to the President and the Congress. This year's Report details the accomplishments of the FEC during 1978, the first election period which afforded the Commission an opportunity to monitor the financing of Federal election campaigns on a comprehensive basis. By 1978, the Commission had prescribed a complete set of Regulations implementing the Act; issued many Advisory Opinions which provided guidance to candidates and committees on the application of the Act and Regulations to specific situations, and overhauled a number of Commission procedures and programs. Commission accomplishments during 1978, detailed in the Report, are highlighted below:

1. Expanded **information** outreach programs facilitated voluntary compliance with the Act by helping candidates and committees register and fulfill reporting obligations of the Act.
2. The refinement of computer capabilities and the establishment of a separate Reports Analysis Division helped to facilitate more timely, accurate **disclosure** of the information contained in reports filed by candidates and committees. During 1978, the Commission developed a series of comparative statistical studies on the campaign finance activities of Federal candidates and committees. These *Reports on Financial Activity* provided to the public, for the first time, campaign financing information before election day.
3. Improved internal procedures expedited Commission handling of **compliance** matters.

In addition to detailing the procedures and programs the Commission developed during 1978, this year's Report also describes the planning process currently underway to administer the 1980 Presidential election cycle.

Finally, in accordance with 2 U.S.C. §437e, which requires that the Commission's Annual Report contain "... recommendations for such legislative or other action as the Commission considers appropriate," the Report includes the Commission's legislative proposals. The proposed revisions to the Act address apparent statutory omissions and specific problems the Commission has encountered in

administration of the law. Categorized into seven major areas, the proposals include simplification and clarifications of the Act with respect to: reporting requirements; Presidential elections; contribution and expenditure limitations and the role of the political party; the duties, powers and authority of the Commission; corporate and union activities relating to Federal elections; several existing regulations and several miscellaneous recommendations.

The **Annual Report 1978** is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; telephone 202/275-2091. The order number is 052-003-00651-1. Purchase price, payable to the Superintendent of Documents, is \$3.00.

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations 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 name of the Commission's speaker. For additional information on any scheduled appearance, please contact the **sponsoring organization**.

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|------|---|
| 5/22 | National Association of Business PACs
National Association of Manufacturers
Cleveland, Ohio
Jan Baran, Executive Assistant to
Chairman Aikens |
| 5/22 | International Institute of Municipal Clerks
Bal Harbour, Florida
Gary Greenhalgh, Clearinghouse Director |
| 5/24 | League of Women Voters
Seattle, Washington
Chairman Joan Aikens |

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; or by calling, 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.



With the approach of the 1980 Presidential primary and general elections, the Public Communications Office has received an increasing number of questions on public financing. In the March issue, the Record initiated a series of brief articles summarizing those sections of the Act and Regulations governing public financing. The article below, third in the planned series, explains what is a matchable campaign contribution, that is, a contribution eligible for public matching funds. (NOTE: Candidates and committees are cautioned not to rely on these summaries, but to consult the Act and Regulations for complete details.)

MATCHABLE CAMPAIGN CONTRIBUTIONS

A candidate who has successfully satisfied eligibility and certification agreements is entitled to receive public funds equal to the amount of each matchable campaign contribution he or she receives. To be eligible for matching, the contribution must:

1. **Be a gift of money.**
Individuals may contribute up to \$1,000 to a candidate; however, only the first \$250 of an individual's contribution(s) is eligible for matching funds.
2. **Be made by an individual.**
3. **Be made by a written instrument.**
"Written instrument" means a check, a money order or any other negotiable instrument payable on demand. The written instrument must be made out to, or specifically endorsed without qualification to the candidate, or the candidate's authorized committee, and must identify the candidate by name.
4. **Identify the contributor by full name and mailing address.**
The written instrument must include the full name, mailing address and signature of the contributor, and the amount and date of the contribution. In cases of money orders which do not include the signature of the contributor, an accompanying written document must contain the signature. If a check is drawn on a joint checking account, the person who signs the check is considered the contributor. For a contribution to be attributed equally to other tenants of the joint account, the other individual(s) must also sign the written instrument or an accompanying written document.
5. **Be made for the purpose of influencing a primary election.**
6. **Be received after January 1, 1979.**
The contribution must be dated, physically received and deposited on or after January 1, 1979 (the first day of the calendar year immediately preceding the year of the Presidential election), but no later than December 31, 1980 (the last day of the election year). In order to be matched, all contributions must be submitted to the Commission by January 21, 1981.

7. **Be deposited in the designated campaign depository.**
The contribution must be actually received by the candidate or a committee authorized by the candidate within the specified time frame, and deposited in a designated campaign depository maintained by the principal campaign committee.



The following list identifies all FEC documents which appeared in the Federal Register between November 13, 1978 and April 10, 1979.

Notice	Title	Federal Register Publication Date	Citation
1979-1	Presidential Election Campaign Fund and Primary Matching Funds (Revised Regulations on Presidential Matching Funds)	4/4/79	44 FR 20336
1979-2	Presidential Election Campaign Fund and Primary Matching Funds; Correction	4/13/79	44 FR 22407

CORRECTION

The limit for coordinated party expenditures in the special elections in Wisconsin and California was incorrect as it appeared in the April Record. The figure published in April was \$13,320; the correct figure is \$13,230.

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