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PRESIDENTIAL ELECTIONS

FEC CERTIFIES GENERAL ELECTION FUNDS TO PRESIDENTIAL TICKETS

During July and August, the Commission approved payment of public funds for the general election campaign of each major party's Presidential ticket. On July 26, the Commission certified a \$46.1 million grant to Democratic Presidential nominee Governor Michael S. Dukakis and his Vice Presidential running mate Senator Lloyd M. Bentsen.* On August 22, the agency approved payment of the \$46.1 million grant to Republican Presidential nominee Vice President George Bush and his running mate Senator Dan Quayle.

The Democratic and Republican nominees had requested public funding for their general election Presidential campaigns in letters submitted to the Commission prior to the agency's certification decisions. In their respective letters, the nominees agreed to abide by the overall spending limit, to use only public funds for their respective campaigns and to comply with other legal requirements. 26 U.S.C. §9003.

By law, the Presidential nominee of each major party in 1988 may qualify for full public financing of the general election campaign (i.e., \$46.1 million in 1988). Major party nominees accepting public financing for their general election campaigns are limited to \$46.1 million in campaign expenditures. In addition, the use of the nominee's personal funds is limited to \$50,000. Private funds, subject to contribution limits, may be raised and spent solely for legal and accounting costs incurred to ensure compliance with the Act.

*The Commission certified public funds to the Democratic Presidential ticket after dismissing a petition to deny the grant to the ticket. See story in column 2 and *Boulter and National Republican Senatorial Committee v. FEC* on page 7.

PETITION TO DENY PUBLIC FUNDING TO DEMOCRATIC TICKET DISAPPROVED

On July 26, the Commission voted unanimously to dismiss a petition to deny public funding for the general election campaign of Democratic Presidential nominee Michael S. Dukakis and his Vice Presidential running mate Lloyd M. Bentsen. The Commission then unanimously approved payment of a \$46.1 million grant to the Democratic Presidential ticket. (See story above.)

On July 27, petitioners Congressman Beau Boulter, the Republican candidate for the Senate in Texas, and Jann L. Olsten, Executive Director of the National Republican Senatorial Committee, asked the Commission to either: (1) stay its decision to certify public funds to the Democratic Presidential ticket or (2) delay transmittal of the certification to the U.S. Treasury until petitioners could obtain a stay of the FEC's certification determination from the U.S. Court of Appeals for the District of Columbia Circuit.

The FEC denied their request for a stay of the agency's certification determination and the U. S. Treasury disbursed the public funds to the Democratic ticket later the same day. The petitioners then filed suit with the appeals court. In

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an August 3 ruling, the appeals court affirmed the FEC's certification decision. (For a summary of the court's ruling, see Boulter and National Republican Senatorial Committee v. FEC on page 7 of this issue of the Record.)

Petition Filed with the FEC to Deny Public Funds to Democratic Ticket

In the petition filed with the Commission on July 22, the petitioners asserted that Senator Bentsen's use of private contributions in his Texas Senate campaign would inevitably result in a prohibited use of private contributions in his Vice Presidential bid. Petitioners cited statements in an election news service that alleged that several of Senator Bentsen's Senatorial campaign aides would divide their time between his Senatorial campaign and his Vice Presidential campaign. Petitioners asked the FEC to investigate these allegations before determining the Dukakis/Bentsen campaign eligible to receive public funds.

In its Statement of Reasons for denying the petition, the Commission noted initially that "nothing in the campaign finance statutes or regulations requires Senator Bentsen to withdraw from the Senate race or prohibits him from using private contributions to further his Senatorial campaign." In fact, the Commission noted that its regulations have established rules governing dual candidacies, including those involving publicly financed Presidential campaigns. See 11 CFR 110.8(d)(3).

With regard to the Presidential campaign's alleged use of private funds from the Bentsen Senatorial campaign, the Commission stated that the allegations were "speculative and hardly present such a clear case that would justify withholding general election financing to the Dukakis/Bentsen campaign." The Commission's Statement of Reasons thus noted that the allegations raised in the petition did not meet the standards set by the appeals court in its ruling on In re Carter-Mondale Reelection Committee, Inc. (642 F.2d 538 (D.C. Cir. 1980)). In that opinion, the court held that a grant could only be withheld "if it reasonably appears that a patent fraud or other major violation of the law is being committed." 642 F.2d at 544. The court stressed that impor-

tant public interests weigh against the withholding of funds from a candidate who had met the "objective criteria for eligibility." Id. at 544. Under the standards stated by the court in Carter-Mondale, the Commission concluded that the petitioners' allegations were insufficient to establish fraud warranting the denial of general election funds to the Dukakis/Bentsen campaign.

INVOLVEMENT IN THE PRESIDENTIAL GENERAL ELECTION

Introduction

The Presidential general election will be held November 8, 1988. Between now and then, many people will become actively involved in this election. The chart on page 3 lists the various activities that may be conducted by different election participants on behalf of publicly financed nominees. For a full description of each activity, see your Campaign Guide and FEC regulations.

All Campaign Contributions Prohibited

A publicly funded nominee of a major political party may not accept any contributions to further his/her general election campaign. This restriction applies to contributions of money, in-kind contributions, loans or anything of value given to influence the Presidential election. 11 CFR 9003.2(a)(2).

Contributions to Compliance Fund

The Presidential nominee may, however, accept contributions to his/her compliance fund. A compliance fund is a special account maintained by a publicly funded nominee solely for paying legal and accounting expenses incurred in complying with the campaign finance law. Contributions to a compliance fund are subject to the usual limitations and prohibitions of the election law. 11 CFR 9003.3(a)(1)(i)(B).

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Thomas J. Josefiak, Chairman; Danny L. McDonald, Vice Chairman; Joan Aikens; Lee Ann Elliott; John Warren McGarry; Scott E. Thomas; Walter J. Stewart, Secretary of the Senate, Ex Officio; Donald K. Anderson, Clerk of the House of Representatives, Ex Officio. For more information, call 202/376-3120 or toll-free 800/424-9530. (TDD For Hearing Impaired 202/376-3136)

REPORTS

OCTOBER REPORTING SCHEDULE

The following chart and paragraphs explain the reporting schedule for the various categories of filers.

Type of Filer	Report		
	Quarterly October 15	Pre-General ¹ October 27	Monthly October 20
1988 Congressional Committees ²	x	x ³	
1988 Presidential Committees/ ⁴ \$100,000+		x	or x
1988 Presidential Committees/ Under \$100,000	x	x ³	
1984 Presidential Committees ⁵	x	or	x
Parties and PACs/Monthly ⁶		x	x
Parties and PACs/Quarterly ⁶	x	x ⁷	
National Party Convention Committees ⁸	x		
Connected Organizations/ Communications ⁹	x	x	

¹Filers of pre-general election reports will also be required to file a post-general election report. This does not apply to connected organizations filing communications reports.

²Congressional committees active only in other election years have only two reports covering 1988 activity: the semiannual report, due on July 31, 1988, and the 1988 year-end report, due on January 31, 1989.

³Report not required if Presidential or Congressional candidate does not run in the general election.

⁴Presidential candidates not running in the general election have a choice of filing either monthly reports in October and November or pre- and post-general election reports. See AO 1980-83.

⁵Presidential committees that are not active in 1988 elections may file on either a monthly or quarterly reporting schedule. See 11 CFR 104.5(b)(2).

⁶All party committees and PACs (i.e., nonconnected committees and separate segregated funds) are required to file on either a monthly or quarterly basis in 1988.

⁷Required only if the unauthorized committee makes contributions or expenditures on behalf of candidates in the general election, which have not been previously disclosed.

⁸In the case of national party convention committees, the quarterly report is due October 10. 11 CFR 9008.12(b)(2).

⁹Report required if aggregate costs for partisan, internal communications for 1988 elections have exceeded \$2,000.

Quarterly Filers

Due by October 15, the report should cover all activity from July 1 (or from the closing date of the last report filed in 1988 or from the date of registration,* whichever is later) through September 30.

Pre-General Election Filers

The pre-general election report is due October 27 and must cover activity through October 19. If sent by registered or certified mail, the report must be postmarked no later than October 24.

Last-Minute Contribution Notices

A principal campaign committee must file special notices on contributions of \$1,000 or more received after the 20th day, but more than 48 hours, before an election in which the candidate is running. Within 48 hours of receiving such a contribution, the committee must deliver the following information in writing to the Clerk of the House or the Secretary of the Senate, as appropriate:

- o The candidate's name and the office he or she is seeking;
- o The identification of the contributor; and
- o The amount and date of receipt of the contribution.

A last-minute contribution must also be itemized on the committee's next scheduled report. See 11 CFR 104.5(f) and AO 1988-32.

Last-minute Independent Expenditure Notices

Any independent expenditures aggregating \$1,000 or more and made after the 20th day, but more than 24 hours, before an election must be reported within 24 hours after the expenditure is made. (This reporting requirement applies to a written contract of over \$1,000 that the committee has not yet paid.) The report must include all the information required on Schedule E and must be filed with the FEC, the Secretary of the Senate or the Clerk of the House, as appropriate. 11 CFR 104.5(g). A committee must disclose a last-minute expenditure a second time on Schedule E filed with the next scheduled report. At that time, the committee may, if it wishes, note on Schedule E that the expenditure was previously reported.

**In the case of an authorized candidate committee, from the date candidate status is established. The Committee must report all campaign finance activity incurred by the candidate before he/she authorized the committee. 11 CFR 101.3-(a) and 104.3(a) and (b). However, activity which occurred before 1988 must be reported separately.*

Monthly Filers

The monthly report must be filed by October 20. It should cover all activity from September 1 (or from the closing date of the last report filed in 1988 or from the date of registration,* whichever is later) through September 30.

LOOKING AHEAD: CHANGE IN FILING FREQUENCY

PACs and party committees that plan to change their reporting schedule in 1989 (e.g., from monthly to semiannually) must notify the Commission by submitting a letter. A committee may not change its filing frequency more than once a year. 11 CFR 104.5(c).

WHERE REPORTS ARE FILED

Committees must file all reports and statements simultaneously with the appropriate federal and state officials. 11 CFR 108.5.

Filing with the Federal Government

1. The principal campaign committees of House candidates and committees supporting or opposing only House candidates file with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, D.C. 20515. 11 CFR 104.4(c)(3) and 105.1.
2. The principal campaign committees of Senate candidates and committees supporting or opposing only Senate candidates file with the Secretary of the Senate, Senate Public Records, Hart Senate Office Building, Room 232, Washington, D.C. 20510. 11 CFR 104.4(c)(2) and 105.2.
3. All other committees, including the principal campaign committees of Presidential candidates, file with the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. 11 CFR 105.3 and 105.4.

Filing with State Governments

1. The principal campaign committees of Congressional candidates must file a copy of every report and statement with the Secretary of State or the appropriate elections official of the state in which the candidate seeks federal office. 11 CFR 108.3.
2. The principal campaign committees of Presidential candidates must file copies of reports and statements with the Secretary of State or the appropriate elections official of the state in which the committee makes campaign expenditures. These reports must contain all financial transactions which apply to that state during the reporting period covered. 11 CFR 108.2.

continued

3. PACs and party committees making contributions or expenditures in connection with House and Senate races file in the state in which the candidate seeks election. The law requires a copy only of that portion of the report applicable to the candidate(s) being supported. Committees supporting Presidential candidates must file in the state(s) in which the Presidential committee and donor committee have their respective headquarters.

HOW TO OBTAIN MORE INFORMATION

During 1988, reporting forms and additional information will be sent to registered committees. Questions and requests for additional forms should be addressed to Information Services, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463; or call 202/376-3120 or toll free 800/424-9530.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject
1988-34	Solicitability of membership organization's individual members. (Date made public: August 5, 1988; Length: 7 pages, plus 8-page supplement)
1988-35	Corporation's newspaper communication presenting major party Presidential candidates' views on housing issues. (Date made public: August 9, 1988; Length: 8 pages, plus 3-page supplement)
1988-36	Status of employees as stockholders for purposes of PAC solicitations. (Date made public: August 12, 1988; Length: 2 pages, plus 71-page supplement)

AO 1988-27: Corporate Expenditures for PAC Fundraiser and Honorarium; PAC Contribution

Medivision, Inc. (Medivision), a corporation, may finance a fundraising event for its PAC and pay an honorarium to an incumbent candidate who will address the fundraiser. In an unrelated action,

the PAC itself may make a contribution to the candidate's campaign.

Medivision plans, within four months before the general election, to sponsor a dinner and reception for its stockholders that (1) informs them about Medivision's separate segregated fund, Medivision PAC, and (2) solicits contributions from the stockholders to the PAC. Medivision will pay an honorarium to an incumbent up for reelection, who will be the featured speaker at the dinner. In addition, Medivision PAC is considering making a contribution to the candidate; the contribution would not be in consideration for the speech.

Invitations to the fundraising event will clearly state the political purpose of Medivision PAC and the name of the featured speaker. The invitations will also indicate that the event will raise funds for Medivision PAC and that the full ticket price will constitute a contribution to the PAC. Finally, the invitation will state that those invited may refuse to purchase a ticket without reprisal.

PAC Fundraiser

Since the corporation plans to invite only members of its restricted class to the dinner and reception, Medivision may solicit PAC contributions from them, and it may pay any costs associated with the fundraiser. 11 CFR 114.1(b).

Honorarium to Candidate

The election law and FEC regulations exempt from the definition of contribution any honorarium paid to an elected officeholder for an appearance, speech or article. 2 U.S.C. §§431(9)-(B)(xiv) and 441(a); 11 CFR 110.112. In AO 1978-32, the Commission noted, however, that a payment made to an incumbent candidate's campaign committee for the purpose of influencing his or her election would be considered a contribution — even if the payment were made in conjunction with a speech by the candidate.

The Commission has also concluded, however, that events in which federal officeholders participate in the performance of their duties as officeholders are not campaign related simply because the officeholders may be candidates for federal office. Thus, payments made to officeholders for participating in such events are not considered contributions to their campaigns. See AOs 1980-89 and 1980-2. In several advisory opinions, the Commission has stated that an officeholder/candidate's appearance would not be campaign related if it: (1) did not solicit contributions to the officeholder/candidate and (2) did not involve the express advocacy of the officeholder/candidate's reelection. The absence of these factors would not, however, preclude a determination that an officeholder's appearance was campaign related. See AOs 1988-22, 1986-37, 1984-13, 1982-50 and 1982-16.

In this case, Medivision's payment to the featured speaker for addressing its PAC fundraiser would be an honorarium payment because the speaker will be appearing in his or her capacity as an officeholder, as evidenced by the facts that:

- o Medivision will select a speaker based on his/her familiarity with Medivision's legislative interests at the federal level;
- o Medivision will pay the honorarium directly to the speaker or the speaker's designated charity — not to the speaker's reelection campaign;
- o Neither Medivision nor Medivision PAC will solicit, direct or control contributions from its stockholders to the speaker's reelection campaign — either at the fundraiser or through invitations to the fundraiser; and
- o Any contributions that Medivision PAC may make to the speaker's reelection campaign will not be in consideration for the speaker's participation in the PAC fundraiser.

(Date issued: July 15, 1988; Length: 4 pages)

AO 1988-32: Candidate Committee's Reporting of Last-Minute Contributions

The Frank Shurden for Congress Committee (the Committee) must report each contribution of \$1,000 or more received after the 20th day, but more than two days, before the Oklahoma primary (August 23) by submitting a written notice disclosing:

- o The name of the candidate and the office he seeks;
- o The identification of the contributor;
- o The amount of the contribution; and
- o The date the Committee received the contribution.

Unlike FEC reports, the notice about last-minute contributions does not have to be signed by the Committee's treasurer and does not have to be submitted on any reporting form. The notice must be in writing, however, and must contain all the information described above.

The Committee's notice of last-minute contributions of \$1,000 or more must reach the appropriate election offices (i.e., the Clerk of the U.S. House of Representatives and the Oklahoma election office) within 48 hours after the Committee receives the contribution(s). The Committee may use any one of several types of mail delivery services, including registered mail, certified mail, first-class mail, telegram, mailgram, express mail service, overnight delivery service or facsimile machine. The Committee, however, is responsible for ensuring that the notice reaches the appropriate offices within the 48-hour period.

Information contained in the last-minute notice must also be reported on the Committee's post-election report. 11 CFR 104.5(f). (Date issued: July 29, 1988; Length: 3 pages)

COURT CASES

BOULTER AND NATIONAL REPUBLICAN SENATORIAL COMMITTEE v. FEC

On August 3, 1988, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the FEC's July 26 decision to certify public funds for the general election campaign of Democratic Presidential nominee Michael S. Dukakis and his Vice Presidential running mate Lloyd M. Bentsen.

The petitioners, Congressman Beau Boulter, the Republican Senatorial candidate from Texas, and the National Republican Senatorial Committee, a national committee of the Republican party, had submitted their petition to the appeals court after the FEC had dismissed their request to deny public funding to the Democratic Presidential ticket. (See story on p. 1 of this issue of the Record.)

In its expedited review of the petition, the court decided to dismiss as moot the petitioners' emergency motion for a stay of the certification because, on July 27, the U.S. Treasury had disbursed the public funds to the Democratic Presidential and Vice Presidential nominees. Nor did the court grant petitioners' request for an emergency injunction barring the Democratic ticket from expending the grant. The court held that "petitioners have failed to carry the 'burden of showing that exercise of the court's extraordinary injunctive powers is warranted.'"*

In affirming the agency's certification of Democratic funds, the appeals court noted that its standard for reviewing the FEC's decision was whether the FEC's action was "arbitrary, capricious or contrary to law."** Based on this standard, the court concluded that "petitioners' allegations are insufficient on their face to warrant a revocation of the certification."

FEC v. TED HALEY CONGRESSIONAL COMMITTEE

On July 22, 1988, the U.S. Court of Appeals for the Ninth Circuit issued a decision in FEC v. Ted Haley Congressional Committee, et al. (Civil Action Nos. 87-3867; 87-4248), which reversed an opinion by the U.S. District Court for the Western District of Washington at Tacoma. In its opinion, the district court had ruled that contributions (in the form of loan guarantees) made by six individuals to help Mr. Haley retire his campaign debts did not constitute contributions to the campaign.

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*Cuomo v. Nuclear Regulatory Commission, 722 F.2d 972, 974 (D.C. Cir. 1985).

**See In re Carter-Mondale, 642 F.2d at 542.

Although the appeals court reversed this decision, it upheld the district court's refusal to require defendants to pay a civil penalty for their violation of the contribution limits (2 U.S.C. §§41a(a)(1)(A) and 41a(f)).

Background

The Ted Haley Congressional Committee was the principal campaign committee for Mr. Haley's bid for a House seat in Washington's 1982 Congressional election. After the election, Mr. Haley obtained a \$50,000 personal loan from a local bank to retire debts outstanding from his campaign. To secure the loan, Mr. Haley obtained guarantees from several friends, that is, the six other defendants in the suit. (Four of the defendants provided guarantees of \$10,000 each; two provided guarantees of \$5,000 each.) The loan and the guarantees were reported by Mr. Haley's campaign in its 1983 mid-year report. By the end of 1983, Mr. Haley had fully repaid the loan.

Under the election law and FEC regulations, an endorsement or guarantee of a loan, like a regular loan, counts as a contribution from the endorser or guarantor to the extent of his/her portion of the outstanding balance of the loan. 11 CFR 100.7(a)(1)(i)(C). On October 30, 1984, the Commission therefore found reason to believe that each guarantor of the loan had exceeded his/her \$1,000 limit for Mr. Haley's primary campaign.

On November 7, 1985, after attempting to resolve this enforcement matter through informal methods of conciliation, the Commission filed a suit against defendants in the U.S. District Court for the Western District of Washington.

District Court's Ruling

The court found that "post-election loan guarantees, such as those made here, are presumptively for the purpose of influencing an election under the statute and regulations. This presumption, however, is not conclusive, but rebuttable. It simply allows the FEC to shift the burden of proof to defendants after a minimal showing."

The court held that the defendants had successfully rebutted this presumption by showing that the "facts [of the case] are not in issue, and that those facts lead to the legal conclusion that the guarantees...were not for the purpose of influencing any election."

Appeals Court Ruling

In reviewing the case on appeal, the appeals court held that, since Congress had not precisely addressed the issue of whether donations made to a campaign committee after the election constituted contributions for the purpose of influencing a federal election, the court could "not simply impose its own construction on the statute...." Rather, the court had to decide whether the FEC

had based its interpretation of the statute on a "permissible construction...."

The court found that the FEC's interpretation of the relevant statutory provisions through its regulations and advisory opinions was a "permissible" interpretation of the election law. When, for example, in 1976, the FEC promulgated a regulation stating that post-election contributions were subject to limits, Congress did not disapprove it. In the court's view "Congress' acquiescence is made more concrete in view of several advisory opinions the FEC has issued on the subject."

The appeals court therefore held that "the district court erred when it substituted its interpretation of the statute and regulations rather than giving deference to the FEC's interpretation of its enabling statute and its own promulgated regulations and advisory opinions...The appellees [the Haley Congressional Committee, et al.] cannot choose to ignore that interpretation of the regulatory scheme and urge this court to substitute its own construction for that of the FEC."

The appeals court found that the district court had not abused its discretion in finding that a civil penalty for the defendants' violations of the election law was "unwarranted." Consequently, the appeals court decided not to "disturb that finding and conclusion."

Finally, the appeals court vacated the district court's award of attorneys' fees to the defendants. Since the defendants were no longer the "prevailing party" in the case, the appeals court held that all parties to the suit had to bear their own litigation costs.

NEW LITIGATION

FEC v. Thornton Township Regular Democratic Organization

In its complaint, the FEC alleges that the Thornton Township Regular Democratic Organization (TTRDO) and its treasurer Tina Sekula violated the election law when they sponsored a direct mail solicitation to approximately 18,000 registered Democratic voters at a cost of approximately \$4,371.

The FEC specifically asks the court to find that TTRDO violated the election law by:

- o Failing to register and report with the FEC as a political committee when its costs for the direct mail solicitation exceeded \$1,000 (2 U.S.C. §§433(a) and 434); and
- o Failing to include on the solicitation a disclaimer notice stating that TTRDO had sponsored the solicitation and that the solicitation was not authorized by any candidate's campaign committee. (2 U.S.C. §41d(a)(3)).

The FEC further asks the court to:

- o Order TTRDO to register as a political committee and file reports on its financial activity with the FEC;
- o Assess an appropriate civil penalty against defendants; and
- o Permanently enjoin defendants from any further violations of the election law.

U.S. District Court for the Northern District of Illinois, Civil Action No. 88C6034, July 14, 1988.

COMPLIANCE

FEC PUBLISHES NONFILERS

During July and August, the Commission published the names of several campaigns that had failed to file disclosure reports required by the election law. See the chart below.

The election law requires the agency to publish the names of nonfiling candidates. Compliance actions against nonfilers are decided on a case-by-case basis. The law gives the Commission broad authority to initiate enforcement actions resulting from infractions of the law, including civil court enforcement and imposition of civil penalties.

Nonfilers

Candidate	Office Sought	State	Report Not Filed
Fernandez, B.	President		Monthly
Martin-Trigona, A.*	President		Monthly
Carberry, G.T.**	House	CT	Pre-Conv.
Gottfried, L.A.	House	NY	Quarterly
Griffin, J.L.**	House	CT	Pre-Conv.
Hussain, R.B.	House	NY	Quarterly
Morgan, S.C.**	House	NY	Quarterly
Wood, J.	House	CO	Pre-Prim.

MUR SUMMARIES

MUR 1690: Corporate Executives' Activity on Behalf of Presidential Campaign

The Commission determined, during the first quarter of 1987, that three corporations had violated the law's prohibition on corporate contributions in connection with the 1984 Presidential election.* Conciliation agreements were concluded between the Commission and the corporations.

Complaint

Commission review of a 1984 Presidential committee's threshold submission for matching funds disclosed that groups of contributors had the same employers and had made their contributions on the same dates. This led to an internally generated enforcement matter.

General Counsel's Report

Corporation A. After finding "reason to believe" that the Act had been violated, the Commission conducted an investigation which disclosed that the Chief Executive Officer (CEO) sent a series of memoranda to executives and professional employees, through the firm's internal mail, soliciting contributions in connection with a Presidential candidate's fundraiser to be held at the firm. As a result, the CEO collected \$26,025 in contributions to the Presidential candidate, which he delivered to a campaign representative at the fundraiser. The corporation absorbed all costs for the activity, and no reimbursement was sought or received from the candidate's campaign.

Federal election law prohibits corporations from making a contribution or expenditure, defined to include "anything of value," in connection with federal elections. 2 U.S.C. §441b(a). In this case, Corporation A asserted that the CEO engaged in individual volunteer activities, and that his use of corporate facilities was occasional, isolated or incidental. Commission regulations provide that, as an exemption to the general prohibition on corporate contributions, employees and shareholders may make occasional, isolated or incidental use of corporate facilities for "individual volunteer activity" and reimburse the corporation only for increased overhead or operating costs. 11 CFR 114.9. But the manner in which the CEO sent memoranda to corporate employees, the General Counsel recommended, could not be characterized as individual volunteer activity on the part of the CEO. In response to the Commission's "reason to believe" finding, the corporation

continued

*Filed a termination report on June 30, 1988.

**Subsequently filed report.

*The original compliance matter named 16 respondents, including corporations, individuals and several corporate PACs.

had argued alternatively that, if the CEO conducted the activities in his corporate capacity, the activities fell within the communications exceptions to the general prohibition on corporate contributions and expenditures described at 11 CFR 114.3.

The corporation asserted that the CEO may make partisan communications to the corporation's stockholders and executive and administrative personnel pursuant to 11 CFR 114.3. It maintained that, under these regulations, it could sponsor a partisan candidate appearance before its restricted class, and that the fundraiser was such an appearance. The regulations then in effect provided in part that a corporation's partisan communications with its restricted class could include a partisan candidate appearance "at a meeting, convention, or other regularly scheduled function of the corporation which is primarily held for other purposes." However, because the fundraiser was neither a regularly scheduled meeting, nor held primarily for nonpolitical purposes, the General Counsel concluded that, under the regulations in effect at the time,* the event fell outside the regulation's exception, and constituted a violation by the corporation of 2 U.S.C. §441b.

By regulation, the Commission has interpreted the exemption for partisan communications [2 U.S.C. §441b(b)(2)(B)] to permit the distribution of certain partisan printed materials, and the holding of a meeting at which the candidate may ask for contributions to his or her campaign. The General Counsel concluded that the solicitation and collection of contributions by the corporation constituted more than a communication to the restricted class. The General Counsel stated that the corporation had "facilitate[d] the making" of contributions to the candidate's campaign, in violation of section 441b, because the corporation effectively raised funds on behalf of the candidate and, as a result, had provided something of value to the candidate's campaign.

Corporation B. After finding "reason to believe" that the Act had been violated, the Commission conducted an investigation which indicated that the Chairman of the Board (COB) of Corporation B solicited contributions to two different fundraisers, one of which was held at the corporation, by using corporate staff and facilities to contact various vendors, business contacts and executives of the firm. From those endeavors, the COB collected \$60,000, which was for-

warded to the candidate's campaign by letters on corporate stationery. The COB also provided transportation on the corporation's airplane and the use of a company car and driver. The campaign did not reimburse the corporation for these services.

Under federal election law, if a corporation absorbs the cost of transporting a federal candidate, it has provided something "of value" to that candidate, and thus has made an expenditure in violation of 2 U.S.C. §441b(a). Accordingly, the Commission's regulations provide that a candidate who uses a corporate plane must, in advance, pay the corporation the amount the flight would cost by first-class airfare. 11 CFR 114.9. For other means of transportation, reimbursement at the usual and normal charge must be made within a commercially reasonable time after such use. In this case, since the corporation paid for the transportation and was not properly compensated, the corporation violated section 441b(a) by making an in-kind contribution to the candidate's campaign.

With regard to the contributions collected by the COB, again the General Counsel concluded that, because the COB directed corporate employees and used lists of the firm's vendors, the activities could not be characterized as "individual volunteer activity" within the regulations' exception. In fact, the General Counsel asserted that Corporation B had provided something "of value" to the campaign in the form of the usual and normal charge of the facilities used, the cost of the employees' time, the value of the corporate mailing lists compiled and the value of the solicitation of corporate employees and business vendors by the firm's chairman on corporate stationery. In so doing, the General Counsel concluded, Corporation B had violated section 441b by "facilitat[ing] the making" of contributions.

Corporation C. After finding "reason to believe" that the Act had been violated, the Commission conducted an investigation which indicated that the Chief Executive Officer (CEO) of Corporation C had engaged in numerous fundraising activities on behalf of the candidate's campaign. He had enlisted the president of one of the corporation's divisions to collect contributions. Various other corporate employees, including the firm's Washington lobbyist, were involved in the forwarding of contributions and in relaying information about fundraising activity. At a later time lists of the corporation's vendors were prepared and the vendors were solicited on corporate stationery. These activities resulted in contributions of more than \$13,000 to the candidate's campaign.

Using the same legal analysis, the General Counsel determined that the corporation had

*These regulations were subsequently modified; the General Counsel concluded, however, that, even under the new regulations, the activity did not fall within the partisan communications exemption.

facilitated the making of contributions to the candidate's campaign, outside the exemptions at 11 CFR 114.9 and 114.3. The General Counsel concluded that the corporation had thus contributed something of value to the candidate's campaign in violation of 2 U.S.C. §441b(a).

Commission Determination

The Commission voted 6-0 to find probable cause to believe that Corporation B violated section 441b by providing transportation. The Commission voted 4-2 to find probable cause to believe that Corporations A, B and C had violated the law by facilitating the making of contributions, thus providing something of value to the candidate's campaign. In the conciliation agreements concluded between the respondents and the Commission, the respondents agreed to pay civil penalties of \$9,500, \$7,000 and \$2,000, respectively.

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INFORMATION

REVISED GUIDE FOR CANDIDATES

The Commission has published a completely revised Campaign Guide for Congressional Candidates and Their Committees. More comprehensive than the previous edition, the revised Guide reflects recent advisory opinions and changes to FEC regulations. While essential in helping campaign treasurers, bookkeepers and fundraisers comply with the election law and FEC regulations, the Guide is also a useful information aide for anyone with questions concerning campaigns for federal office.

The Commission has mailed the Guide to all registered candidate committees. Additional copies of the revised Guide are available to anyone free of charge. Call the Information Services Division: 800/424-9530 or 202/376-3120.

Revised Campaign Guide

Topics covered in depth in the revised Guide include:

- o The effect of designated and undesignated contributions on contributors' per-election contribution limits;
- o The use of redesignations and reattributions to correct excessive contributions;
- o The use of candidates' personal funds in their campaigns;
- o Permissible activities that may be sponsored by corporations and labor organizations;
- o The rules on transfers, including transfers from a candidate's nonfederal campaign; and
- o Winding down activity: the sale of campaign assets, debt retirement and the use of excess funds.

Additionally, the revised Guide explains reporting procedures in detail and includes sample forms that illustrate these procedures.

Finally, several appendices have been added.

- o Testing the Waters
- o Contributions from Partnerships
- o Joint Fundraising
- o Honoraria
- o Compliance with Other Laws

FEC PRODUCES VIDEOTAPE FOR STATE PARTY COMMITTEES

During August, the Commission sent a twelve-minute videotape entitled "Help" to all registered state party committees. Designed to help political party officials and volunteers understand the election law and avoid problems, the tape discusses basic requirements of the law and FEC regulations for state party committees supporting federal candidates, such as:

- o Prohibited sources of funding;
- o Contribution limits;
- o Coordinated party expenditures;
- o Party activities exempted from the contribution and expenditure limits;
- o Voter drives and voter education activities;
- o Activities a state party committee may engage in to promote the party's Presidential ticket; and
- o The need to keep separate accounts for federal and nonfederal (i.e., state and local) election activities.

Additional copies of the videotape are available upon request from the FEC's Information Services Office by calling: 202/376-3120 or, toll free, 800/424-9530. Produced by the FEC, the tape may be duplicated without restriction.

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