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ADVISORY OPINIONS

An advisory opinion (AO) issued by the Commission provides guidance on a specific situation described in an advisory opinion request (AOR). Any person who has requested and received an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in an activity that is materially indistinguishable from the activity described in the AO. Those seeking guidance on a particular activity, however, should consult the full text of the relevant AO and not rely only on the summaries given in the Record.

For more information on requesting an AO, call the FEC and ask for the free brochure, "Advisory Opinions." Telephone 800/424-9530 or 202/376-3120.

FEC TO HOST CONFERENCE FOR PACS

On January 17, 1990, the Commission will host a conference on political activity by corporations, labor organizations and trade associations. The conference will offer workshops on how these organizations can enhance their participation in the federal political process while complying with the requirements of the election law and FEC regulations.

The workshops will provide opportunities to learn how to set up a separate segregated fund (PAC) and how to comply with the rules on registration, reporting and fundraising. Special programs for more advanced committee personnel will cover new developments in the rules and recent issues that have arisen through advisory opinions.

The day-long conference will be held at the Sheraton Washington Hotel in Washington, D.C. The registration fee is \$112. For a registration form and more information, call the FEC at 800/424-9530 or 202/376-3120.

ADVISORY OPINION REQUESTS

The following charts lists recent requests for advisory opinions (AORs). The full text of any AOR is available for public comment from the Commission's Public Records Office.

AOR	Subject
1989-26	Automatic withdrawals from individuals' bank accounts for contributions to Congressional campaign. (Date made public: October 24, 1989; Length: 8 pages, including supplements)
1989-27	Preemption of state statute prohibiting solicitation and receipt of contributions by state employee who is a federal candidate. (Date made public: October 24, 1989; Length: one page)
1989-28	Incorporated membership organization's distribution of voter guides to members and nonmembers. (Date made public: October 31, 1989; Length: 84 pages, including supplements)

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ADVISORY OPINION SUMMARIES**AO 1989-16: Transfer Between Unaffiliated Corporate PACs**

MBank Political Action Committee may not transfer funds to the Deposit Insurance Bridge Bank Political Action Committee, an unaffiliated committee, in excess of the contribution limits prescribed by the election law. In addition, as unaffiliated committees, the two multibank holding company PACs do not share contribution limits and solicitable personnel, and the connected organizations may not pay each other's PAC administration costs.

Background

MBank PAC is the separate segregated fund of MCorp, an incorporated bank holding company. As of March 28, 1989, the U.S. Office of the Comptroller of the Currency declared 20 of MCorp's 25 subsidiary MBanks insolvent, and the Federal Deposit Insurance Corporation (FDIC) was appointed to serve as receiver for the 20 closed banks. At the same time, the FDIC announced the transfer of deposits and certain assets and liabilities of the closed banks to the Deposit Insurance Bridge Bank, N.A. (DIBB), a newly chartered institution organized and wholly owned by the FDIC. The FDIC also announced the transfer to DIBB of the closed banks' management and other personnel. All remaining assets and liabilities of the 20 banks were retained by the FDIC for the purpose of winding down their business and liquidating them. MCorp retained the other five MBanks.

When the closed banks were seized, MBank PAC held approximately \$200,000 in contributions. MBank estimated that about half that amount was made up of contributions from individuals who had become DIBB employees.

MCorp and DIBB entered into an agreement in May concerning the future of MBank PAC. The agreement provided for the removal of DIBB personnel from the management of MBank PAC and the appointment of MCorp personnel in their places. DIBB also agreed to terminate pledges from DIBB employees to MBank PAC; all payroll deductions (based on prior pledges) by DIBB personnel to MBank PAC made after May 15 were to be deposited in a DIBB PAC account. The two

companies agreed to allocate contributions currently held by MBank PAC and DIBB PAC between the two committees. As a result of this allocation, MBank PAC planned to transfer as much as \$100,000 to DIBB PAC. In addition, DIBB agreed to absorb the costs of the transfer of funds, MBank PAC's operations and the implementation of the transactions described above.

Affiliation

FEC rules permit unlimited transfers between committees meeting certain standards of affiliation. 11 CFR 110.3(a)(1)(iii).¹ MBank PAC and DIBB PAC, however, do not qualify as affiliated committees under these rules, which specify that separate segregated funds are considered affiliated if they are established by the same organization or are commonly financed, maintained or controlled. As a result of the FDIC takeover and the subsequent May agreement, the two companies have no such connections; furthermore, they do not have common employees, officers, directors or members. While the two committees briefly shared a treasurer prior to the May agreement, the PACs now have no common personnel.

A transfer between MBank PAC and DIBB PAC would, therefore, constitute a contribution from one political committee to another, subject to the \$5,000 limit set forth at 11 CFR 110.1(d).

Contribution Limits

Since the two committees have not been and are not affiliated, they do not share contribution limits. They may each contribute to candidates and other committees up to their own separate contribution limits.

Payroll Deductions

The DIBB employees are no longer members of MCorp's solicitable class. Consequently, the continuation by DIBB of the payroll deduction plan for contributions to MBank PAC by former MCorp employees (past the date of their departure from MCorp subsidiaries) would result in a corporate contribution prohibited by section 441b of the Act. Furthermore, DIBB must obtain

¹The Commission recently revised the affiliation and transfer rules. See the October Record for more information.

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separate authorization for DIBB PAC payroll deductions from each solicitable DIBB employee, including former MCorp employees. 11 CFR 114.5(a)(1)-(5).

Administrative Costs

DIBB may not absorb the administrative costs of operating MBank PAC, as the two committees had agreed in May. The expenses of administering a separate segregated fund under 2 U.S.C. §441b(b)(2)(c) may only be paid by the connected organization.

DIBB's Name Change

DIBB has reached an agreement with Banc One Corporation, an Ohio bank holding company, for the acquisition of DIBB. On July 12, 1989, DIBB's name was changed to Bank One, Texas, N.A. Since the election law requires the name of a separate segregated fund to include the full name of the connected organization, DIBB PAC must change its name to include the full name of Bank One, Texas, N.A., and must amend its Statement of Organization to reflect the change. 11 CFR 102.14(c).

Vice Chairman Elliott issued a concurring opinion. (Date issued: October 6, 1989; Length, including concurrence: 7 pages)

AO 1989-17: Bank Holding Company's Solicitable Class

Ford Bank Group, Inc. (FBG), a Texas multibank holding company, may solicit the restricted class of employees of four affiliate banks for a newly established separate segregated fund, FBG PAC. The solicitations may occur both before and after three of the affiliates become fully-owned subsidiaries of FBG. The solicitable class of these banks includes their stockholders, executive and administrative personnel and their families.

FBG is run by a "control group" led by Gerald J. Ford, who is chairman of the board of directors and owner or controller of 57.62 percent of the common stock. Seventeen other individuals are also members of the control group; all are parties to the Shareholder Agreements by which Mr. Ford exercises his voting power. In addition to controlling several banks that are wholly owned subsidiaries of FBG, Mr. Ford and the other parties control four other affiliate banks in Texas.

On December 31, 1989, three of the affiliate banks will merge with FBG and will operate as subsidiaries wholly owned and controlled by FBG. The fourth bank will not merge with FBG but will remain as an FBG affiliate.

FBG may solicit the executive and administrative personnel (and their families) of all these banks, both before and after the December 31 merger. FEC regulations state that a corporation's solicitable class extends to the stockholders and executive and administrative personnel of its

subsidiaries and affiliates, and to the families of those persons. 11 CFR 114.5(g)(1). While the rules do not provide a definition of "affiliate," the Commission has considered whether the separate segregated funds of the entities in question (if they had such funds) would be affiliated. A variety of relationships may serve as a basis of affiliation. Such relationships can involve ownership of a controlling interest in voting shares or securities of a corporation; provisions in governing documents that give one entity authority, power or ability to direct another entity; and one entity's authority or ability to appoint, remove or otherwise influence the decisions of the officers or members of another entity.¹ 11 CFR 100.5(g)(2) (ii) and 110.3(a)(1)(iii).

The three affiliate banks that plan to merge with FBG qualify as "affiliates" of FBG for the purpose of solicitation because FBG, through Mr. Ford and the others in its control group, exercises substantial majority control over them. In the case of the fourth affiliate, United Bank of Dallas (UNB Dallas), which is not a subsidiary of FBG and will not become one after December 31, Mr. Ford is the bank's largest shareholder and holds almost twice as many shares as the next largest shareholder. Together, Mr. Ford and other members of the FBG control group hold 27.14 percent of the shares in UNB Dallas. Mr. Ford serves as chairman of the bank's 16-member board of directors, and four other members of the control group also serve on the board. Mr. Ford and those members, therefore, have the authority or ability to direct or influence the decisions of UNB Dallas' officers. Thus, FBG PAC may solicit the restricted class of all four banks both before and after the merger.

The regulations do not require FBG PAC to list affiliates or subsidiaries of the connected organization on its Statement of Organization. FBG PAC must list only Ford Bank Group, Inc., as the connected organization. If, in the future, any of FBG's subsidiaries form their own separate segregated funds, those committees would have to be listed on FBG PAC's Statement of Organization as affiliated committees. (Date issued: October 23, 1989; Length: 4 pages)

¹The Commission recently revised these rules. See the October Record for more information.

NEW BROCHURE FOR CANDIDATES

A new FEC brochure answering the 10 questions most often asked by candidates is now available. See page 9 for more information.

AO 1989-18: Trade Association PAC's Use of Raffle for Fundraising

The Association of Independent Colleges and Schools (AICS), an incorporated trade association, may use a raffle to raise money for its separate segregated fund, AICSPAC, as long as the raffle is conducted in accordance with the Act and regulations.

AICSPAC plans to offer raffle tickets to the executive and administrative personnel of AICS members—all of which are incorporated secondary schools and colleges—who contribute at least \$90. Proposed raffle prizes include:

- o Free stays at vacation homes, provided by AICS members and others;
- o Slots in an AICS-run Management Institute, provided by the organization; and
- o Wide-screen television sets and other items purchased by AICSPAC.

Organizations using raffles for PAC fundraising may cover the cost of setting up the program with general treasury funds. 11 CFR 114.5 and 114.8; 2 U.S.C. §441b(b)(2). The prizes purchased by the organization for the raffle, however, must not be so numerous or valuable that the program results in trading general treasury money for PAC contributions. The committee should reimburse the organization for any administrative and solicitation costs that exceed one-third of the funds raised. This provision, known as the "one-third" rule, is considered a reasonable practice to follow; other methods of reimbursement are possible. Since several sources will donate prizes, however, the one-third reimbursement to the different donors should be based on the total value of all the prizes donated by AICS and its members, and not on any one prize or group of prizes. 11 CFR 114.5(b)(2).

Donation of Prizes by AICS

AICSPAC may accept the sponsoring organization's donation of attendance slots at the Institute. The committee should reimburse AICS for part of the costs if the dollar value of all prizes donated exceeds one-third of the total contributions collected for the raffle.

Donation of Prizes by Members

Members of trade associations may donate funds and goods over and above their membership dues to defray the solicitation costs of the raffle, and these donations may include prizes. Members making such donations may not be foreign nationals. AICSPAC may accept prizes donated by two types of corporate AICS members, "members" and "associate members." "Members" include incorporated educational institutions and divisions of incorporated institutions accredited by AICS; "associate members" include educational institutions that are accredited by other organizations. Both categories qualify as members under FEC rules because they have a significant financial and

organizational attachment to AICS, as demonstrated by their payment of dues and their right under AICS bylaws to participate in AICS' affairs. However, the PAC must reimburse the donors for part of the cost of their gifts if the total value of all prizes donated exceeds one-third of the amount raised. See AOs 1986-13, 1984-33, 1983-24, 1982-36 and 1980-59.

Donation of Prizes by Executives

AICSPAC may also accept prizes, in the form of the use of vacation homes, from individual executives of member institutions. These donations, however, will be considered in-kind contributions by the individuals. The individuals contributing the use of their homes may not be foreign nationals, and the value of the in-kind contribution may not exceed the limits set forth at 2 U.S.C. §441a. The contributions are reportable, and the solicitation of the contributions must be made in accordance with the regulations at 11 CFR 114.5 and 114.8.

Donations by Nonmember Corporations Prohibited

Finally, corporations that own member-institutions of AICS, but are not qualified to be members themselves, may not donate prizes. 2 U.S.C. §441b(a).

Publicizing the Raffle

The PAC plans to send letters publicizing the raffle. Since the letters will constitute solicitations for contributions, they can be sent only to persons in AICSPAC's solicitable class, which includes member institutions' stockholders, executive and administrative personnel, and their families. Solicitation of such persons must be separately and specifically approved by the member corporations whose stockholders and personnel will be solicited, and those members may not have approved a solicitation by another trade association for the same calendar year. 2 U.S.C. §441b(b)(4)(D); 11 CFR 114.8(e).

Since the parent companies that own member institutions are not members of AICS, their shareholders and executive and administrative personnel are not solicitable for the raffle.

Distribution of Tickets

AICSPAC plans to distribute a raffle ticket to anyone who contributes at least \$90. While it is permissible for the PAC to reward minimum contributions in this way, the solicitation must explain that the \$90 minimum contribution is only a suggestion and that a greater or lesser amount may be contributed to the PAC. AICS and its members may not require contributors to give a minimum amount. 11 CFR 114.5(a)(2). (Date issued: October 6, 1989; Length: 7 pages)

AO 1989-20: Contributions by Committee Funded by Foreign-Owned and Foreign-Financed Corporation

Kuilima Development Company, Inc., a corporation wholly owned and almost totally financed by an American company that, in turn, is wholly owned and mostly financed by a Japanese parent company, may not make contributions to a political action committee supporting candidates in state and local elections. A committee that is almost solely funded by those contributions may not contribute to state and local candidates.

Kuilima is a wholly owned subsidiary of Asahi Jyuken (U.S.A.), Inc., which, in turn, is a wholly owned subsidiary of Asahi Juken Company, Ltd., of Japan. Kuilima and Asahi (U.S.A.) are incorporated under the laws of Hawaii, while Asahi (Japan) is incorporated under Japanese law. All of the directors and officers of both Kuilima and Asahi (U.S.A.) are Japanese nationals, though the two companies operate principally in Hawaii and most of their employees and consultants are U.S. citizens. Kuilima obtains almost all of its funding from Asahi (U.S.A.), which is mostly funded by Asahi (Japan). Kuilima proposes to set up a political committee that will be run "independently" of Kuilima by three U.S. citizens.

The election law prohibits a foreign national from making contributions or expenditures in connection with any U.S. election. 2 U.S.C. §441e(a). This prohibition applies to all elections, including state and local elections.¹ Under federal law, the definition of "foreign national" includes "a corporation...organized under the laws of or having its principal place of business in a foreign country." 22 U.S.C. §611(b). Under the election law, then, Asahi (Japan) is a foreign national. Because Asahi (Japan) is the predominant source of funds for Kuilima, the committee's acceptance of funds from Kuilima would result in contributions from a foreign national to state and local candidates through Kuilima. A committee entirely or almost entirely funded by contributions from such a source may not support state or local candidates.

Even if the source of Kuilima's funds were not foreign, Kuilima could not contribute funds to a committee active in state and local elections. Since all of the directors and officers of Kuilima are Japanese, it appears that foreign nationals would participate in the corporation's decisions to make contributions. See AOs 1985-3 and 1981-36. (Date issued: October 27, 1989; Length: 4 pages)

¹Hawaiian state election laws permit corporate contributions to state and local candidates of up to \$2,000 per election. HRS sections 11-191(17) and 11-204(a). Hawaiian state election laws, however, can not allow a corporation to engage in activity prohibited by section 441e.

AO 1989-22: Congressional Campaign's Use of Funds Raised for 1990 Election to Retire 1988 Debt

Congressman Dave Nagle may use funds raised for his 1990 reelection campaign to pay outstanding debts from his 1988 campaign.

Mr. Nagle's 1988 campaign committee, the Nagle '88 Committee, has outstanding debts exceeding \$22,000 from the 1988 elections. Mr. Nagle has filed a Statement of Candidacy for 1990, designating a new committee, the Nagle Campaign Committee, as his principal campaign committee. The 1990 committee has raised over \$35,000 toward Mr. Nagle's reelection effort. The same committee has also assumed the debts of the 1988 campaign and has raised funds expressly designated for retiring those debts.

Funds raised for the current election cycle may also be used at this time to retire 1988 debts. Contributions used for this purpose will not count against donors' limits with respect to the 1988 elections, assuming:

- o The funds were not solicited for retirement of 1988 debts;
- o The contributors did not expect that their contributions would be used only to pay the 1988 campaign's debts; and
- o The 1990 campaign was not a sham—that is, the current committee was not organized for the exclusive purpose of raising money for 1988 debts.

None of these circumstances seems to apply to Mr. Nagle's 1990 reelection campaign; therefore, the committee may use the funds it has raised for the 1990 elections to retire the 1988 committee's debts. See AOs 1988-5, 1987-4, 1986-12, et al. (Date issued October 27, 1989; Length: 4 pages)

REPORTS

JANUARY REPORTING SCHEDULE

All registered political committees must file a year-end report, due January 31, 1990. The chart below indicates the coverage and filing dates for the different types of committees.

For more information on reporting requirements, call the FEC at 800/424-9530 or 202/376-3120.

Type of Filer	Coverage Period	Filing Date
Authorized Congressional Candidate Committees	July 1* through December 31	January 31
Unauthorized (PAC & Party) Committees	July 1* through December 31	January 31
Unauthorized (PAC & Party) Committees/ Monthly**	December 1 through December 31	January 31
Authorized Presidential Committees/ Quarterly	October 1 through December 31	January 31
Authorized Presidential Committees/ Monthly**	December 1 through December 31	January 31
Newly Registered Committees***	Beginning of Federal Election Activity through December 31	January 31

*Or from the closing date of the last report filed.

**All other reports are filed on the 20th of each month and cover all financial activity of the previous month.

***This category applies to any committee which is filing its first report.

CHANGE IN FILING SCHEDULE

PACs and party committees may wish to file monthly during 1990 in order to avoid filing pre- and post-election reports, which are required from committees filing quarterly during an election year. A committee that wants to change its filing schedule must notify the Commission in writing when filing a report under its current schedule. A committee may not change its filing frequency more than once a year. 11 CFR 104.5(c). The FEC requests that Presidential committees also inform the Commission in writing if they decide to change their reporting schedules.

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

- o 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.
- o 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.
- o 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

- o The principal campaign committees of Congressional candidates seeking nomination 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.
- o 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 pertaining to that state during the reporting period covered. 11 CFR 108.2.

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

SPECIAL ELECTIONS

TEXAS SPECIAL ELECTION: UPDATE

A special runoff election has been scheduled on **December 9, 1989**, to fill the 18th Congressional District seat left vacant after the death of Congressman Mickey Leland. Candidates eligible for the runoff were selected in a November 7 special election. All committees participating in the December 9 election should follow the reporting schedule below.

Candidates, PACs and party committees involved in the special runoff should refer to the October Record for details on reporting requirements.

TEXAS 18th DISTRICT SPECIAL ELECTION REPORTING DATES

Report	Period Covered*	Reg./ Cert. Mailing** Date	Filing Date
Pre-Runoff	10/19-11/19	11/24	11/27
Post-Runoff & Year-End***	11/20-12/31	1/8	1/8

*The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

**Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

***The Commission recommends that committees file a consolidated Post-Runoff and Year-End report by the filing date of the Post-Runoff Report. Otherwise, in lieu of a consolidated report, committees must file two separate reports: a Post-Runoff report, due 1/8/90, covering activity from 11/20/89 through 12/29/89; and a Year-End report, due 1/31/90, covering activity from 12/30/89 through 12/31/89.

COMPLIANCE

MUR 2588: Coordinated Party Expenditures Paid by Nonfederal Account

This MUR, resolved through conciliation, involved payments by a nonfederal account for coordinated party expenditures on behalf of federal candidates.

Background

The matter was internally generated by a referral from the FEC's Reports Analysis Division.

An amendment to a state party committee's year-end report showed a debt owed by the party's federal account to the nonfederal account. The debt had resulted from an expense covered by the nonfederal account for coordinated party expenditures on behalf of federal candidates. (The Act permits party committees to incur campaign expenses that benefit their candidates. Such "coordinated party expenditures" have limits that are separate from the contribution limits. 2 U.S.C. §441a(d).)

General Counsel's Report

The Commission found reason to believe that the state party and its treasurer had violated 11 CFR 102.5(a)(1)(i), which stipulates that, when a committee maintains separate accounts for federal and nonfederal activity, expenses connected with federal elections must be made from the federal account.

The committee's 1986 reports disclosed \$100,749 in coordinated expenditures for direct mailings, consulting and advertising on behalf of six federal candidates. The committee had paid two vendors in full and owed \$82,723 to a third vendor. On subsequent amended reports, the committee disclosed that the federal account had paid the vendors \$19,909 of this debt and that the nonfederal account had paid the balance, \$62,823. That balance was reported as a debt to the nonfederal account.

Responding to FEC inquiries, the state party explained that there was not enough money in the federal account in the weeks just before the November 1986 elections to cover an advance payment to the vendor, so it paid the advance with its nonfederal funds. The committee reimbursed the nonfederal account with several transfers made during 1987. While admitting the violations had occurred, the respondents pointed out that, because state law prohibited corporate and labor contributions, the nonfederal account did not contain funds impermissible under the Federal Election Campaign Act. The General Counsel disagreed, noting that, though state law

prohibited corporate and labor contributions, individual contributions were not limited, as they were under the Federal Election Campaign Act.

In addition, the committee claimed that the misuse of funds was due to "widespread confusion," and that the misuse was mitigated by the party's voluntary disclosure of the transaction in its FEC reports. The General Counsel disputed that claim, pointing out that the respondents had encountered similar problems with the Commission during the previous election cycle--problems that had resulted in an FEC audit and enforcement action.

After failing to reach a pre-probable cause conciliation agreement, the General Counsel recommended that the Commission find probable cause to believe that the party committee and its treasurer had violated section 102.5(a)(1)(i) of the regulations by spending nonfederal funds to support federal candidates.

Commission Determination

The Commission adopted the General Counsel's recommendation and found probable cause to believe the committee had violated the law. In a subsequent conciliation agreement, the respondents agreed to pay a \$9,500 civil penalty.

MUR 2073: Excessive Expenditures and Acceptance of Excessive Contributions by Presidential Candidate's Committee

This MUR, resolved through conciliation, concerned a Presidential candidate and his committee's violation of Presidential primary expenditure limits, acceptance by the committee of excessive contributions, the committee's failure to itemize certain contributions, and excessive expenditures made by the candidate using his personal funds. The enforcement matter resulted from an audit of the committee's campaign finances.

General Counsel's Report

Misallocated and Excessive Expenditures. Presidential primary candidates accepting public funds must agree to adhere to expenditure limits, which are set on a state-by-state basis during each Presidential election cycle. The law specifies that, in each state, a Presidential candidate may spend an amount equal to either 16 cents times the voting age population of the state or \$200,000, whichever is greater. 2 U.S.C. §441a-(b)(1)(a) and 26 U.S.C. §9035. The per-state limit is further adjusted by the Consumer Price Index each Presidential election year.

The audit revealed that the committee had failed to properly allocate to the Iowa limit over \$200,000 in expenses incurred in connection with the 1984 Iowa caucuses. These expenses included:

- o Salaries, payroll taxes and employer FICA taxes incurred by the campaign for certain staff

- members who had worked in Iowa for five or more days (11 CFR 106.2(2)(ii));
- o Travel and subsistence expenses incurred by some staff members who had worked in Iowa for five or more days (11 CFR 106.2(b)(2)(iii));
- o Advertising and polling expenses (11 CFR 106.2(b)(2)(i));
- o Overhead and miscellaneous expenses incurred for offices in Iowa; and
- o Compliance costs and fundraising costs (11 CFR 106.2(c)(5)).

The Commission found reason to believe, therefore, that the committee and its treasurer had violated 26 U.S.C. §9035 and 2 U.S.C. §§434-(a), 441a(b)(1)(A) and (c) and 11 CFR 106.2 by underallocating expenditures in Iowa and exceeding the expenditure limits by over \$100,000.

Excessive Contributions. The Commission found reason to believe that the committee and its treasurer had violated section 441a(f) by accepting excessive contributions. First, the committee had accepted 77 excessive contributions amounting to \$37,920 from individuals and one political committee. The Presidential committee submitted documentation to show that most of the contributions had been refunded or reattributed. The refunds, however, took an average of 263 days, and though the committee provided reattribution forms for several contributors, the committee failed to date them, as required under 11 CFR 104.8(d),¹ making it impossible to determine how much time the Presidential committee took to reattribute the remaining excessive contributions. With regard to the excessive contribution from the political committee, the audit revealed that the excessive amount was refunded to the PAC after 21 months.

The committee received six other excessive contributions, amounting to \$104,600, in the form of letters of credit from individuals. The Commission found reason to believe that five of these persons had violated the law by making excessive contributions. An additional prohibited corporate contribution was received--also in the form of a letter of credit--in violation of section 441b(a).

A final excessive contribution resulted from an aborted investment plan undertaken on the committee's behalf by an individual working in the commodities market. The individual took a \$9,000 check, drawn on committee funds, to invest in the commodities market. The committee later accepted two checks, for \$15,000 and \$30,000 respectively, and asserted to the Commission that they were profits from the investment. The audit revealed, however, that the \$45,000 came from the investor's personal funds, and that the \$9,000 committee check was never cashed. Committee records showed that it took the committee 140 days to reimburse him for the \$15,000, and 245 days to reimburse him for the \$30,000.

Itemized Contributions. The Commission found reason to believe that the committee had violated section 2 U.S.C. §434(b) by failing to itemize 60 contributions from political committees and by failing to disclose the receipt of the letters of credit. Under the election law, all political committee contributions must be itemized by disclosing the name of the contributing committee, address, amount and date of each contribution. 2 U.S.C. §434(b)(3)(B).

Candidate's Personal Expenditures. The Commission found probable cause to believe that the candidate had violated the law by spending over \$67,000 of his own funds in excess of the \$50,000 limit set on Presidential candidates who accept public funds. In this case, the expenses took the form of credit card charges, loans to the committee, direct contributions to the committee and telephone charges paid by the candidate. The committee took up to 217 days to reimburse the candidate for his payments.

Commission Determination

The Commission and the respondents entered into a conciliation agreement in which the respondents agreed to pay a \$50,000 civil penalty for the offenses mentioned above. Separate agreements resulted in a \$17,000 penalty assessed against the commodities investor and a \$900 penalty against the corporation that had written the letter of credit.

- o Failing to itemize all operating expenses exceeding \$200 in 1983 and 1984 (2 U.S.C. §434(b)(5));
- o Failing to itemize disbursements connected to independent expenditures during 1983 and 1984 (2 U.S.C. §434(b)(6));
- o Failing to properly and continuously report outstanding debts in 1983 and 1984 (2 U.S.C. §434(b)(8) and 11 CFR 104.11); and
- o Failing to identify contributors in the PAC's 1987 mid-year report (2 U.S.C. §434(b)(3)(A)-(B)).

For each violation alleged (a total of 11 counts), the Commission asks the court to assess a civil penalty equal to the greater of \$5,000 or the amount involved in the violation.

The Commission further asks that the court declare that Life PAC knowingly and willfully committed the following additional violations:

- o Failing to maintain and preserve adequate records in 1985 and 1986 (2 U.S.C. §432(c)(1)-(3) and (d));
- o Failing to maintain the committee's 1985 and 1986 bank records for three years and failing to make them available for an audit by the Commission (11 CFR 104.14(b)); and
- o Failing to file April, May, June and July 1988 monthly reports on time (2 U.S.C. §434(a)(4)(B)).

For each "knowing and willful" violation (a total of seven counts), the Commission asks for civil penalties equaling the greater of \$10,000 or 200 percent of the amount involved in the violation. (U.S. District Court for the Western District of Washington, No. C89-1429, September 26, 1989.)

COURT CASES

NEW LITIGATION

FEC v. Life Amendment PAC (C89-1429)

The FEC asks the district court to declare that Life Amendment Political Action Committee and Rick Woodrow, as treasurer, violated the election law by:

- o Failing to maintain adequate records of contributions received from individuals in 1983 and 1984 (2 U.S.C. §432(c)(1)-(3)) and failing to preserve the records for three years (2 U.S.C. §432(d));
- o Failing to maintain adequate records for 129 disbursements totaling over \$72,000 in 1983 (2 U.S.C. §432(c)(5));
- o Failing to maintain Life PAC's bank records from 1983 and 1984 for 3 years and failing to make those records available for a Commission audit (11 CFR 104.14(b));
- o Misreporting Life PAC's total receipts and disbursements during 1984 (2 U.S.C. §434(b)(2) and (4));

PUBLICATIONS

10 QUESTIONS FROM CANDIDATES: NEW FEC BROCHURE

The FEC has issued a new brochure answering the 10 questions most frequently asked about the election law and regulations by candidates and candidate committees.

"10 Questions from Candidates" answers questions concerning:

- o Candidate registration;
- o Reporting deadlines;
- o Treasurers' responsibilities;
- o Itemized contributions;
- o 48-hour contribution reporting notices;
- o Disclaimers;
- o Partnership contributions;
- o Joint contributions;
- o Contributions from foreign nationals; and
- o Bounced checks.

10 Questions from Candidates is one of a series of short brochures that the FEC distributes to help candidates, political committees and the general public comply with federal election laws and get the most out of the agency's services. Each brochure encapsulates a different aspect of campaign finance law or FEC resources:

- o **Using FEC Campaign Finance Information** explains how to gather information about the financial activity of candidates and political committees. It describes the FEC's computer indexes and suggests ways to utilize them.
- o **Sale and Use of Campaign Information**, a new FEC publication, explains the "sale and use" restriction that the Act places on information taken from reports filed by candidates and political committees.
- o **Public Funding of Presidential Elections** gives a brief history of the Presidential public funding program--including the \$1 tax checkoff for the Presidential Election Campaign Fund--and an explanation of how the process works. It also explains the ways individuals may support publicly financed candidates.
- o **Committee Treasurers** details the special responsibilities assigned to treasurers of political committees by federal campaign finance law. These responsibilities include authorizing expenditures, monitoring contributions, and filing all required reports and statements.
- o **Filing a Complaint** explains the steps that can be taken if an individual wants to register a formal complaint concerning a possible violation of the election law.

Topics of other FEC brochures include:

- o **Advisory Opinions**
- o **Candidate Registration**
- o **Contributions**
- o **Corporate/Labor Communications**
- o **Corporate/Labor Facilities**
- o **FEC and Federal Election Law**
- o **Free FEC Publications**
- o **Independent Expenditures**
- o **Local Party Activity**
- o **Political Ads and Solicitations**
- o **State Access to FEC Data**
- o **State Elections and Federal Campaign Law**
- o **Trade Associations**
- o **Volunteer Activity**

Any of these free brochures may be ordered from the FEC by calling 800/424-9530 or 202/376-3120, or by writing to the Commission at 999 E St., NW, Washington, DC 20463. Multiple copies of all brochures are available.

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