

Chapter Legislative Recommendations

1978

The Commission is required by the statute (2 U.S.C. §437e) to send to Congress each year "... recommendations for such legislative or other action as the Commission considers appropriate. ..." In its annual report for 1976, the Commission recommended a number of far reaching legislative changes for simplifying and streamlining the Federal Election Campaign Act. During 1977, Congress began consideration of these recommendations and other proposals for modifications of the Act. The Commission reiterates its support for its 1976 recommendations and the proposals contained in its testimony to the congressional committees during the past year. In its 1977 annual report, the Commission offers additional recommendations based mostly on its experience with the audits of Presidential candidates and committees. Two recommendations are also included which would streamline the administration of the Act.

Repayments to the Treasury

The Presidential Election Campaign Fund Act and Presidential Primary Matching Payment Account Act stipulate the conditions under which repayments of funds are to be made and the formulas for computing such repayments by Presidential candidates to the Federal Treasury. The Commission is given authority to make these determinations. In its regulations implementing these provisions, the Commission has attempted to give candidates and committees ample leeway to challenge Commission determinations with respect to the repayment of funds to the Federal Treasury and sufficient time to gather funds to make repayments. These regulations have generally operated fairly and equitably. However, there

have been a few instances where this time period has been used to accrue interest on the amounts which the Commission has determined must be repaid to the Treasury. In order to simplify the repayment procedure and ensure the fiscal integrity of the Presidential public financing process, the Commission recommends that all surplus funds, regardless of amount, be repaid to the Treasury at the end of a campaign. (Any such repayment requirement should, of course, exclude payments made for tax purposes.)

In the alternative, the statute should be amended to require that any and all interest earned on public monies from savings accounts, government bonds, and other sources be returned to the U.S. Treasury. This latter requirement would insure that Presidential committees do not gain private advantage from funds which the Commission has determined must be repaid to the Federal Treasury.

Use of Contributions Matched by Federal Dollars

An ambiguity exists in the Presidential Primary Matching Payment Account Act in that the Commission is given specific authority to require repayment only of Federal monies to the public Treasury. At least one Presidential campaign has argued that the Commission cannot require the repayment of contributions which are submitted for matching purposes and that these contributions can be used for other than qualified campaign expenses. For example, under this theory, private contributions could be submitted to the Commission to obtain matching funds. Once

matched, these private contributions could then be used for the personal expenses of the candidate, the ordinary and necessary expenses of an officeholder, and any other nonqualified campaign expense. The Commission, according to proponents of this argument, has no authority to require repayments of funds used in this manner or to prevent these private contributions from being matched with Federal monies. The Commission takes the view that, since these contributions are used to obtain Federal funds on a dollar for dollar basis, they should not be used for non-campaign purposes. The statute should specifically prohibit the use of private contributions which are submitted for matching public grants for other than qualified campaign expenses.

Compliance Funds

The Federal Election Campaign Act Amendments of 1976 specifically exclude from the definition of "contribution" the payment of legal and accounting services by a regular employer to insure compliance with the Federal Election Campaign Act and Chapters 95 and 96 of Title 26 of the Internal Revenue Code. The Commission's regulations specifically permit a Presidential campaign to set up a separate account containing private monies to be used for compliance purposes. Outside of these exempted donations for legal and accounting services, a major party Presidential candidate receiving full public financing in the general election may not receive private contributions. In order to insure the integrity of the Presidential general election public financing provisions and to eliminate the need for all private contributions in the general election, the Presidential Election Campaign Fund Act should be amended to provide a block grant of a specified amount for legal and accounting services for each candidate and committee receiving public funds.

Definition of Nominating Process

The statute does not delineate what constitutes a bona fide nominating process for purposes of obtaining Presidential primary matching funds. There are no specific criteria set forth for determining whether a political party actually has a nominating process. Under the current law, a political party could have a pro forma nominating process, and the party's candidate could receive public primary matching funds which may then be used for the general election. Criteria need to be

established which will answer a number of questions. For example, can a candidate or political party unilaterally declare that a nomination process has occurred and claim public funding? When does a nominating process begin and when does it end? Can a minor party candidate be nominated within a few days or weeks of a Presidential general election, thus being allowed to collect matching funds up through the date of nomination, in which case a substantial portion of these funds might be used to influence the general election? The Presidential Primary Matching Payment Account Act should be amended to provide guidelines for answering these questions.

Qualified Campaign Expense

Chapters 95 and 96 of Title 26 of the Internal Revenue Code contain different definitions of "qualified campaign expense." Chapter 95 defines a "qualified campaign expense" to mean an expense incurred *to further the election* of a Presidential candidate to Federal office. Chapter 96 defines "qualified campaign expense" to mean an expense incurred *in connection with a campaign* for nomination to the Office of President. The Commission recommends that the broader definition contained in Chapter 96 be incorporated into Chapter 95.

Vice Presidential Candidates

The Act does not provide a coherent statutory framework for the treatment of Vice Presidential candidates. For example, the campaign depository of the Vice Presidential candidate is considered to be the campaign depository of the Presidential candidate. Yet, the definitions of "candidate" and "Federal office" differentiate the Presidential candidate from the Vice Presidential candidate. Thus, the Vice Presidential candidate is required to file disclosure reports separately from the Presidential candidate. In the Presidential general election, expenditures made on behalf of the Vice Presidential candidate are considered to be made on behalf of the Presidential candidate of the same political party and are thus subject to an expenditure limitation. A framework should be set forth for Vice Presidential candidates clearly and consistently delineating their requirements under both the Federal Election Campaign Act and the Presidential Election Campaign Fund Act.

Principal Campaign Committees

Under the current law, the name of most principal campaign committees identifies the candidate supported. However, in a relatively few cases, it is difficult to determine which candidate a principal campaign committee supports because the committee's name does not contain the candidate's name as, for example, "Good Government Committee" or "Spirit of '76." In order to avoid confusion, the name of the principal campaign committee should be required to contain the name of the candidate supported.

Federal Reports Act

The Federal Election Campaign Act does not exempt the Commission from the requirements of the Federal Reports Act. The Commission is required to submit all forms and other similar materials requesting information from candidates and committees to the General Accounting Office for approval, thus delaying Commission efforts to improve its information retrieval systems. A major goal of the Federal Reports Act is, of course, to prevent duplicative Federal paperwork. Since, however, the Commission is granted exclusive primary jurisdiction over the Federal Election Campaign Act and no other Federal agencies have responsibility for collecting data in this area, the Commission should be exempt from the requirements of this law. Such an exemption would facilitate Commission efforts to streamline the reporting process and expedite the simplification and development of forms and other similar materials.