



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1985

MEMORANDUM

TO: FRED EILAND
PRESS OFFICER

FROM: ROBERT J. COSTA *RJC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF FINAL AUDIT REPORT -
FRIENDS OF GEORGE MCGOVERN

Attached please find a copy of the final audit report of Friends of George McGovern which was approved by the Commission on February 6, 1985.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: FEC Library
RAD
Office of General Counsel
✓ Public Record

86070163702



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

FINAL REPORT OF THE AUDIT DIVISION
ON
FRIENDS OF GEORGE MCGOVERN

I. Background

A. Overview

8 5 0 7 0 1 6 3 7 0 3

This report is based on an audit of Friends of George McGovern ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to 26 U.S.C. § 9038(a) which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037."

In addition, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission as the McGovern for President Committee on September 26, 1983. It changed its name to Friends of George McGovern on April 7, 1984. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from the Committee's inception, September 13, 1983, through June, 30, 1984, the last day covered by the most recent report filed with the Commission at the time of the audit. (In addition, certain financial activity was reviewed through July 26, 1984.) The Committee reported an opening cash balance of \$-0-, total receipts of \$1,543,744.75, total disbursements of \$1,241,482.41 and a closing cash balance of (\$526.35) on June 30, 1984.^{1/} However, it is anticipated that the Committee will continue to receive contributions and make disbursements. In addition, revised statements of Net Outstanding Campaign Obligations will be submitted with each matching fund submission as required by 11 C.F.R. § 9034.5(d). Under 11 C.F.R. § 9038.1(c)(4) additional audit work may be conducted and addenda to this report issued as necessary.

^{1/} The totals do not foot due to various reporting errors noted in Finding II.A.1.

This report is based upon documents and working papers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The Treasurers of the Committee during the period audited were:

Ms. Helene Mae Bordenick	9/13/83 - 6/14/84
Ms. Paula M. Kowalczyk	6/14/84 - 1/14/85
Ms. Mary T. Curtin	1/14/85 - present

C. Scope

The audit included such tests as verification of total reported receipts, disbursements and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances.

II. Findings and Recommendations Related to Title 2 of the United States Code

A. Misstatement of Financial Activity

1. Unreported Receipts and Disbursements

Under 2 U.S.C. §§ 434(b)(1), (2) and (4) a committee is required to report the amount of cash on hand at the beginning of each reporting period, and the total sum of all receipts and disbursements for the reporting period and calendar year.

The Audit staff's reconciliation of the activity in the Committee's bank accounts to the disclosure reports filed for the period audited revealed the misstatements shown below.

a. Receipts

The Committee's reported receipts were understated by a net amount of \$45,195.08. A major portion of the difference was the result of the Committee not reporting the receipt of a \$40,000.00 loan received in March, 1984. In addition, the Audit staff identified \$17,135.53 in itemized receipts on Schedules A-P which were not carried forward to the summary pages of the Committee's reports. The difference (\$11,940.45) could not be explained.

86070163704

b. Disbursements

The Committee's reported disbursements were understated by a net total of \$380,939.52. This amount includes \$215,931.27 in disbursements made from the Committee's headquarters' accounts and \$50,822.53 from the Committee's state accounts. The remainder of the understated amount resulted from (1) Committee errors on the summary pages of the disclosure reports^{2/}, (2) disbursement figures reported incorrectly, (3) disbursements reported twice, and (4) transfers between Committee accounts reported as disbursements.

c. Ending Cash

The reporting errors noted above resulted in a net difference of \$21,107.69 in the Committee's reported ending cash. It should be noted that the Committee made several attempts to correct its reported cash position during the period audited, thus the net difference in ending cash is significantly less than the differences noted for receipts or disbursements.

On November 19, 1984, the Committee filed a comprehensive amendment reflecting corrected totals for cash on hand, receipts and disbursements and itemizing the unreported \$40,000 loan.

Recommendation

The Audit staff recommends that no further action be taken on this matter.

B. Itemization of Receipts

Section 434(b)(3)(A) of Title 2, United States Code requires a political committee to report the identification of each person who makes a contribution to the committee aggregating in excess of \$200.00 per calendar year together with the date and amount of such contribution. Further, 2 U.S.C. § 431(13) defines identification to mean in the case of an individual, the name, mailing address, occupation, and the name of his or her employer.

Section 434(b)(3)(B) of Title 2, United States Code states that each report under this section shall disclose the identification of each political committee which makes a contribution to the reporting committee, together with the date and amount of any such contribution.

^{2/} The Committee itemized \$134,191.31 in disbursements on Schedules B-P which were not carried forward to the summary pages of the reports.

85070163705

3
5
0
7
0
1
6
5
7
0
5

The Committee's contribution records were reviewed to determine whether all contributions aggregating in excess of \$200.00 per calendar year were itemized as required on the Committee's disclosure reports. It was noted that contributions totaling \$19,501.50 were not itemized as required. This amount represents 9.5% of the total amount of contributions requiring itemization. In addition, contributions of \$10,030.00 which were itemized on the reports did not contain adequate contributor information.

Also noted during the review of the Committee's receipts were contributions from three political committees totaling \$750.00 which were not properly itemized.

The Audit staff presented Committee officials with schedules of the unitemized contributions and the contributions lacking adequate disclosure information. The Committee officials provided no explanation for the omissions noted on the disclosure reports.

In the comprehensive amendment filed on November 19, 1984 the Committee itemized the previously unitemized contributions and included the required additional contributor information.

Recomendation

The Audit staff recommends that no further action be taken on this matter.

C. Other Matter

A matter noted in the audit has been referred to the Commission's Office of General Counsel.

III. Findings and Recommendations Related to Title 26 of the United States Code

A. Apparent Non-Qualified Campaign Expenses

Section 9038(b)(2)(A) of Title 26, United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made, it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

The Commission, in a Notice of Proposed Rulemaking published in the Federal Register on June 28, 1984, set forth a pro-rata formula which would base repayments for non-qualified campaign expenses on the proportion of federal funds to total funds received by the candidate. Further, the final version and the Explanation and Justification was published in the Federal Register on August 22, 1984 and transmitted to Congress.

The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

Total Matching Funds Certified Through Date of Ineligibility
(3/15/84) 3/

Numerator + Private Contributions Received Through 3/15/84

$$\frac{\$ 209,337.38}{(\$209,337.38 + \$563,161.69)} = .270987$$

Thus, the repayment ratio for non-qualified campaign expenses is 27.0987%.

1. Convention-Related Disbursements

Section 9032(9) of Title 26, United States Code defines a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election and neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid (emphasis added).

On March 15, 1984, Senator George S. McGovern's candidacy terminated for the purpose of incurring qualified campaign expenses. In a March 15, 1984 letter to the Commission, the Senator stated that although he was no longer actively pursuing the nomination for president, he would be continuing as an inactive candidate and that his presidential committee would be maintained. In a June 4, 1984 letter to the Commission, the Committee's Deputy Director stated that the Senator planned to participate in the National Democratic Nominating Convention and this required substantial preparatory work from the staff. In addition, during the audit fieldwork, the Audit staff observed that convention-related activity was taking place. The Committee Treasurer was informed by the Audit staff that certain expenses incurred after the Candidate's date of ineligibility would have to be allocated between campaign-related activity and convention-related activity. The Treasurer provided the Audit staff with percentages for allocating each Committee staff person's salary,

3/ On March 23, 1984, the Commission determined that the date of ineligibility under 11 C.F.R. § 9033.5(a) for Senator George McGovern is March 15, 1984.

35070163707

Committee overhead and other expenses between the two(2) activities. Based on the Audit staff's observation of the Committee operations and staff functions, the percentages were found to be reasonable.

Certain disbursements made by the Committee between June 1, 1984 and July 26, 1984 were allocated between campaign-related and convention-related activity. The application of the allocation percentages developed resulted in the identification of \$5,300.00 in salary payments, and \$2,175.72 in overhead expenses related to the convention. Further, our review identified \$7,649.39 in expenses, the purpose of which was solely for convention-related activities.

Conclusion

On January 29, 1985, the Commission made an initial determination that the amount (\$15,125.11) of convention-related disbursements are non-qualified campaign expenses and the pro-rata portion \$4,098.71 ($\$15,125.11 \times .270987$) be repaid to the U.S. Treasury within 90 calendar days of receipt of this report in accordance with 11 C.F.R. § 9038.2(d).

Repayment Amount: \$4,098.71

2. Undocumented Disbursements

Section 9033.11(a) of Title 11, Code of Federal Regulations states that each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 C.F.R. § 9032.9.

In addition, the Commission's Regulations under 11 C.F.R. § 9033.11(b) contain the documentation requirements regarding qualified campaign expenses.

A review of the Committee's disbursements made through July 26, 1984 disclosed that no documentation or inadequate documentation was maintained for disbursements totaling \$26,455.85 from the Committee's national accounts and \$3,655.98 from the Committee's state accounts. Many of the undocumented disbursements from the national accounts were identified as being made to individuals for reimbursement of expenses or involved checks made payable to "cash". Also, the Candidate used his personal credit card to incur campaign related expenses. The Committee made payments for the credit card expenditures but was unable to demonstrate the connection between the payments and the campaign. Committee officials stated that they would attempt to get the required documentation for the disbursements.

85070163703

The Committee was presented with schedules of the undocumented disbursements at the exit conference.

On November 19, 1984, the Committee submitted documentation for \$2,594.15 of the previously undocumented disbursements. Disbursements totaling \$27,517.68 (\$24,227.71 from the national accounts and \$3,289.97 from the state accounts) remain undocumented.

Conclusion

On January 29, 1985, the Commission made an initial determination that the amount (\$27,517.68) of undocumented disbursements are non-qualified campaign expenses and the pro-rata portion, \$7,456.93 (\$27,517.68 x .270987), be repaid to the U.S. Treasury within 90 calendar days of receipt of this report in accordance with 11 C.F.R. § 9038.2(d).

Repayment Amount: \$7,456.93

3. Payment of Personal Compensation to the Candidate

Under 11 C.F.R. § 9032.9(a)(2) "qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made in connection with a candidate's campaign for nomination.

The Committee paid the Candidate a \$50,000 salary in three installments: 1) \$35,000 on March 9, 1984, 2) \$10,000 on May 30, 1984 and 3) \$5,000 on June 8, 1984. ^{4/} A Committee internal memo reviewed by the Audit staff indicates that the salary was intended to make up for missed income (income the Senator would have earned from speaking engagements had he not been a Candidate).

^{4/} The May 30, 1984 and June 8, 1984, payments were made after the Candidate's date of ineligibility.

8 3 7 7 0 1 6 3 7 0 2

In the interim audit report, the Audit staff recommended that the Committee provide any written arrangement or commitment with respect to the \$50,000 which shows a connection between the disbursements and the campaign effort.

On November 19, 1984, the Committee submitted a letter containing their justification that the salary payments are qualified campaign expenses. However, the Commission determined that under these circumstances, salary payments to a publicly financed candidate are not qualified campaign expenses.

Conclusion

On January 29, 1985, the Commission made an initial determination that the amount (\$50,000) of salary payments to the Candidate are non-qualified campaign expenses and the pro-rata portion \$13,549.35 ($\$50,000 \times .270987$) be repaid to the U.S. Treasury within 90 calendar days of receipt of this report in accordance with 11 C.F.R. § 9038.2(d).

Repayment Amount: \$13,549.35

4. Impact of Non-Qualified Campaign Expenses on Candidate's Entitlement

Section 9034.5(a) of Title 11, Code of Federal Regulations requires that the candidate submit a Statement of Net Outstanding Campaign Obligations ("NOCO") which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary, winding down costs within 15 days of the candidate's date of ineligibility.

Further, 11 C.F.R. § 9034.5(d) requires that a candidate submit a revised Statement of Net Outstanding Campaign Obligations with each submission for matching funds payments filed after the candidate's date of ineligibility, reflecting the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds.

85070163710

The NOCO statement is the basis for determining further matching fund entitlement. In the case of Senator McGovern's candidacy, March 15, 1984 is the date of ineligibility. Consequently, he may only receive matching payments to the extent that he has net outstanding campaign obligations as defined in 11 C.F.R. § 9034.5.

As noted in items III.A.1. 2. and 3., the Audit staff identified non-qualified campaign expenses a number of which were incurred and/or paid subsequent to the candidate's date of ineligibility. In order to insure that only the amount of post-ineligibility qualified campaign expenses is used to calculate the candidate's remaining entitlement to matching funds, the Audit staff proposes several adjustments to the NOCO statement prepared by the candidate. These adjustments are shown on the NOCO analysis on page 10 and fall into two areas, dependent upon whether the non-qualified campaign expense was paid or remained owing on the statement date.

B. Determination of Net Outstanding Campaign Obligations

At the inception of the audit fieldwork, the Committee had filed five (5) NOCO statements covering the period March 15, 1984 through June 15, 1984. To facilitate the verification of the Committee's net outstanding campaign obligations, the NOCO statement as of June 15, 1984 was audited. The Audit staff made necessary adjustments to this statement to properly reflect the candidate's cash position at June 15, 1984, and to correct misstatements of accounts payable and the Committee's estimate of winding down costs. In addition, documentation which was submitted by the Committee in response to the interim audit report has been incorporated into the NOCO statement. This NOCO statement as amended 5/, and the results of our verification of the items contained thereon, appear below.

5/ The Committee amended its original 6/15/84 NOCO on June 27, 1984.

85070163711

Friends of George McGovern
Statement of Net Outstanding Campaign Obligations
As of June 15, 1984

	<u>NOCO</u> <u>as Amended</u>	<u>Audit</u>	<u>NOCO</u> <u>As Amended</u>	<u>Audit</u>
<u>ASSETS</u>				
Cash in Bank	\$ (854.24)	(\$ 5,899.08) ^{a/}		
Accounts Receivable	60,384.00	55,172.18		
Non-Qualified Campaign Expenses 3/16 - 6/15/84				
Non-campaign related (convention)		9,607.34 ^{b/}		
Insufficiently documented		4,780.05 ^{b/}		
Salary Payments to Candidate		<u>15,000.00^{b/}</u>		
Total Assets			\$ <u>59,529.76</u>	\$ <u>78,660.49</u>
<u>LIABILITIES</u>				
Accounts Payable for Qualified Campaign Expenses	\$106,743.89	\$98,740.90 ^{c/}		
Estimated Winding Down Costs ^{d/}				
Salaries	\$ 28,160.00	\$21,776.50		
Storage	500.00	250.00		
Rent	2,946.00	1,196.81		
Supplies	890.00	890.00		
Furniture Rental	200.00	150.00		
Telephone	2,100.00	975.00		
Fundraising ^{e/}	14,456.00	20,149.05		
Legal Fees	<u>3,000.00</u>	<u>3,000.00</u>		
Total Estimated Winding Down Costs	\$ 52,252.00	\$48,387.36		
Total Liabilities			(\$<u>158,995.89</u>)	(\$<u>147,128.26</u>)
Net Outstanding Campaign Obligations (Deficit)			(\$ <u>99,466.13</u>)	(\$ <u>68,467.77</u>)

- ^{a/} Cash in bank was adjusted to accurately reflect the Candidate's cash position at June 15, 1984.
- ^{b/} This adjustment is necessary so as not to allow non-qualified campaign expenses to increase entitlement.
- ^{c/} The accounts payable balance was adjusted to exclude the value of non-qualified campaign expenses included in the Committee figure. In addition, certain expenses were incorrectly included by the Committee as a payable.
- ^{d/} The Committee estimated winding down costs through August 30, 1984, however, the Committee offices closed on July 31, 1984 and a portion of the Committee operations ceased on that date.
- ^{e/} This amount represents actual expenses paid from 6/16/84 through 7/26/84.

85070163712

As noted above, the Audit staff's verification of the items on the Committee's NOCO statement revealed various differences which resulted in a net difference (overstatement) in net outstanding campaign obligations of \$30,998.36. A portion is comprised of \$29,387.39 in non-qualified campaign expenses made by the Committee between March 16, 1984 and June 15, 1984. This inclusion is necessary so as not to allow non-qualified campaign expenses to increase the Candidate's entitlement to matching funds. Therefore, the Committee's NOCO as of June 15, 1984 should have disclosed a deficit of \$68,467.77 and not \$99,466.13 as stated by the Committee in its amended NOCO statement. In addition, our review of the Committee's deposits indicated that for the period June 16, 1984 through July 26, 1984, the Committee received \$38,588.68 in individual contributions. Further, on August 1, 1984, the Commission certified a matching fund payment of \$16,699.01.

Conclusion

Based on our review of the Committee's financial activity through 7/26/84, the Candidate's remaining entitlement was \$29,879.09 (\$68,467.77 - \$38,588.68). Further, after applying the August 1, 1984 certification of \$16,699.01, the Candidate's remaining entitlement is reduced to \$13,180.08.

Since audit fieldwork of the Committee ended on July 26, 1984, this report does not address any NOCO statements filed by the Committee subsequent to June 15, 1984. Additional fieldwork will be conducted with respect to determining the Candidate's remaining entitlement to receipt of matching funds and an addendum will be issued as appropriate.

Recap - Amounts Repayable to the U.S. Treasury

Presented below is a recap of the amounts the Commission initially determined as subject to the repayment provisions of 26 U.S.C. § 9038(b)(2) as discussed in Section III.

Item A-1 Non-qualified Campaign Expenses - Convention-Related Disbursements	\$ 4,098.71
Item A-2 Non-qualified Campaign Expenses - Undocumented Disbursements	7,456.93
Item A-3 Non-qualified Campaign Expenses - Post-Ineligibility Salary Payments to the Candidate	<u>13,549.35</u>
Total Recommended Repayment	<u>\$25,104.99</u>

FBI
DOCUMENT
100-44-1000

Transcript of Proceedings

BEFORE THE
FEDERAL ELECTION COMMISSION

ORIGINAL

-----X
:
:
:
:
In the Matter of: :
:
:
FEDERAL ELECTION COMMISSION :
SPECIAL OPEN SESSION :
ORAL PRESENTATION BY THE :
FRIENDS OF GEORGE MCGOVERN :
:
:
-----X

DATE: April 24, 1985
PLACE: Washington, D.C.
PAGES: 1-56

97070251246



S K S Group, Ltd.
1400 Eye Street N.W.
Washington, D.C. 20005
(202) 789-0818

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE FEDERAL ELECTIONS COMMISSION

----- x
:
In the Matter of: :
:
FEDERAL ELECTION COMMISSION :
SPECIAL OPEN SESSION :
ORAL PRESENTATION BY THE :
FRIENDS OF GEORGE MC GOVERN :
:
----- x

Washington, D.C.

April 24, 1985

The above-entitled matter came on for open session,
pursuant to notice, before Chairman John Warren McGarry,
at 1325 K Street, N.W., Conference Room, Washington,
D.C. 20463, at 10:00 a.m.

APPEARANCES:

On behalf of The Friends of George McGovern:

JOHN M. QUINN, Esq.
Arnold & Porter
1200 New Hampshire Avenue, N.S.
Washington, D.C. 20036

2707-25127

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN MC GARRY: This special open, public hearing will please come to order. The reason we are here today is because the Federal Election Commission has granted a request by former Senator George S. McGovern and his 1984 Presidential Campaign Committee for a public hearing to appeal a Commission order for repayment of federal matching funds to the U.S. Treasury.

Let me give a little background on this matter. The statutory authority underlying the Federal Election Commission's administration of the public funding of presidential primary campaigns is the Presidential Primary Matching Payment Account Act. That law requires the Commission, among other things, to conduct a thorough examination and audit of the qualified campaign expenses of every candidate for nomination for President, and his or her authorized committees who have received federal matching payments pursuant to Title 26 U.S.C. Section 9037.

One purpose of the Commission's mandatory audit of publicly funded presidential primary candidates is to determine whether public funds have been used to meet only qualified campaign expenses. That term, qualified campaign expense, is defined by the law as a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred by a candidate, or a candidate's

3
2
1
5
2
7
2

2

1 authorized committee, in connection with the candidate's
2 campaign for election or nomination for election to the
3 office of President.

4 After conducting a thorough examination and audit,
5 the Commission on January 29th, 1985 made an initial
6 determination that the Friends of George McGovern should
7 repay \$25,104.99 which the Commission had determined to be
8 non-qualified expenses. Of that amount, \$13,549.35
9 represents the portion of public funds used by the Committee
10 to make salary payments totalling \$50,000 to Mr. McGovern.

11 The Commission's initial repayment determination
12 reflects the position that the Committee's payments of
13 salary to Mr. McGovern were non-qualified expenses. In its
14 March 5th response to the Commission's initial determination
15 the McGovern Committee disputed the Commission's
16 determination that salary payments to the candidates were
17 non-qualified campaign expenses and that the pro rata
18 portion of \$13,549.35 must be repaid.

19 In that regard Mr. McGovern through counsel
20 requested to make an oral presentation to the Commission
21 on this specific issue. On April 3rd, 1985, the Commission
22 granted that request and we are convened today in special
23 open session to hear that oral presentation pursuant to
24 11 CFR 9038.2(c)(3), as part of the Committee's response
25 to the Commission's initial repayment determination.

2 / 0 / 2 5 1 2 . 9

3

1 The sole purpose of this meeting is to give the
2 candidate or his representative an opportunity to address
3 the Commission and to demonstrate that no repayment, or
4 a lesser repayment, is required. With respect to the
5 procedure we will follow today, I would like to state that
6 this is not an adversarial or trial-type hearing. The
7 candidate's representative, Mr. John Quinn, will have
8 30 minutes to make his remarks. At the conclusion of that
9 presentation each commissioner and ex-officio representative
10 will have an opportunity to ask any questions he or she
11 may have.

12 I will then recognize the General Counsel who may
13 ask whatever questions he has. Now, before I recognize
14 Mr. Quinn, counsel for the Friends of George McGovern and
15 designated representative of Mr. George McGovern, I will
16 ask the General Counsel if he has any comment or would care
17 to add in any way to the opening statement that I have
18 just made.

19 Mr. General Counsel, Charles Steele.

20 MR. STEELE: Thank you, Mr. Chairman. No, I think
21 that you have summarized the proceeding and the reasons
22 that we are here, and I see nothing to add to your statement.

23 CHAIRMAN MC GARRY: Thank you.

24 Mr. Quinn.

25 MR. QUINN: Thank you, Mr. Chairman, Members of

4 1 the Commission. I am Jack Quinn. I am counsel to the
2 Friends of George McGovern, Candidate for the Presidency
3 in 1984. With me is Mary Curtin who is the Treasurer of
4 Friends of George McGovern.

5 We appreciate this opportunity to appear before you
6 to appeal the Commission's ruling that the McGovern
7 Committee must repay in excess of \$13,000 to the Treasury
8 as a result of the fact that the Committee paid Senator
9 McGovern a salary during his campaign for the presidency.

10 The basic issue before you is whether the payment
11 of \$50,000 in salary to Senator McGovern was a qualified
12 campaign expense as that term is used in the Federal
13 Election Campaign Act and your regulations. We believe it
14 plainly was a qualified campaign expense and as such did
15 not result in the requirement of repayment. This result,
16 we submit, is demanded by the plain words of the statute
17 and your own regulations.

18 In fact, in ruling as you did against Senator
19 McGovern, we believe that the Commission effectively engaged
20 in retroactive rule-making, changed the rules after the game
21 was played, and thereby failed to provide reasonable notice
22 to Senator McGovern and other presidential candidates that
23 salary payments would be regarded by you as non-qualified
24 campaign expenses.

25 We believe the Commission has acted unreasonably

2 / 0 / 2 5 1 2 . 1

5 1 and in fact illegally in this respect. Let me just lay out
2 for you the factual background. Before becoming a
3 presidential candidate, Senator McGovern made his livelihood
4 earning honoraria for speeches, typically at a level of
5 about \$5,000 per appearance. When he announced for the
6 presidency his staff made informal inquiry of your staff as
7 to whether the receipt of honoraria would be regarded as
8 contributions. The staff was advised that they likely would
9 be regarded as contributions, and as a result the Senator
10 cancelled a series of speeches that he had made commitments
11 to make.

12 This put the Senator in a dilemma. He felt it
13 essential that he run for the presidency, he could not get
14 by on no income at all, and he was determined to obey the
15 law in regarding contribution limitations.

16 Your ruling pits those aspirations against each
17 other. It effectively says, you cannot run for the
18 presidency if you cannot afford to do so. In this case
19 Senator McGovern agreed with the campaign committee that in
20 view of the fact that he would have earned between
21 \$90,000 and \$100,000 in honoraria, that the campaign would
22 pay to him a salary of half that amount, \$50,000. That
23 understanding is reflected in internal campaign committee
24 memoranda which were made available to the auditors and which
25 in fact are referred to in the audit reports.

6

1 It bears emphasis that Senator McGovern and his
2 committee regarded this payment of a salary as essential.
3 In his mind, and that of the campaign committee, but for the
4 salary payments the campaign might not have been possible.

5 This, we think, goes to the heart of the central
6 legal issue, that the salary payments should be regarded as
7 qualified campaign expenses. They made the campaign
8 possible. This view enjoys the support of your General
9 Counsel, and again we think it is dictated by the plain
10 words of the statute and is more than amply supported by the
11 legislative history of the Federal Election Campaign Act.

12 As the Chairman noted in his opening statement,
13 the term "qualified campaign expense" is defined at
14 26 U.S.C. Section 9032, quite simply as a payment made in
15 connection with a campaign and which is not otherwise
16 illegal.

17 There is nothing in the statutory definition that
18 remotely authorizes the Commission to pick and choose among
19 lawful campaign expenditures and call some qualified and
20 others non-qualified. If they are made, first, in connection
21 with the campaign, and second, are legal, then they are
22 qualified campaign expenses.

23 The salary payment was certainly made in connection
24 with the campaign. But for the salary the campaign might
25 literally have terminated. In this circumstance it would

7

1 utterly defy logic to suggest that a payment necessary to
 2 allow a campaign to exist is not made in connection with the
 3 campaign. And as I pointed out in my letters to the
 4 Commission, the Commission itself recognized ten years ago
 5 the fact that a candidate benefits financially from campaign
 6 contributions or expenditures does not violate any law.

7 This was the holding in Advisory Opinion 1975-15
 8 issued in respect to Governor Wallace's receipt of royalties
 9 from his presidential campaign. Thus, the salary payment
 10 fully meets the statutory requirement for a qualified
 11 campaign expense, that it be in connection with the campaign,
 12 and that it be not otherwise unlawful.

13 The Commission's regulations essentially repeat
 14 the statutory definition of the term "qualified campaign
 15 expense." 11 C.F.R. Section 9032.9 includes within the
 16 meaning of qualified campaign expense any payment whatsoever
 17 made during the candidate's eligibility period, made in
 18 connection with the campaign, so long as those payments do
 19 not involve a violation of any law.

20 Again, nothing in the regulations even remotely
 21 suggests that the payment of a salary to a candidate is not
 22 a qualified campaign expense, nor is there anything in the
 23 audit or repayment provisions of the statute or the
 24 regulations that suggests that these payments would be
 25 regarded as non-qualified. Indeed, the illustrative list

2 / 0 7 2 5 1 2 4

8 1 of payments which the Commission warned would be regarded
2 as non-qualified in 11 C.F.R. Section 903(a) includes only
3 payments that involve a violation of law.

4 While this list is admittedly illustrative, it
5 provides no notice whatsoever to a candidate that the
6 Commission would regard a salary payment to a candidate as
7 non-qualified, or indeed any expense not within the
8 generic group identified, namely, payments involving a
9 violation of law. It is as though you have said to
10 candidates, you may not buy MacIntosh apples and you may not
11 buy Golden Delicious apples and you may not buy Granny Smith
12 apples. And Senator McGovern bought an orange, and you said,
13 well, we meant fruit.

14 That, we think, is not enough. The broad definition
15 of qualified campaign expense is consistent with the
16 legislative history noted in my letters to you, which makes
17 clear that in the words of the Senate Committee report,
18 candidates are permitted full flexibility and discretion in
19 their election efforts, and the Congress has resisted any
20 suggestion that those who accept federal campaign funds be
21 obligated to conduct their campaign in particular ways or
22 to use federal monies for specific purposes that some may
23 think are most useful to the electorate. Whether they
24 qualify for public assistance and acceptance or not, all
25 candidates are free to do their own thing and decide how

9 1 they will conduct their campaigns and employ their financial
2 resources.

3 According to the General Counsel's memorandum of
4 April 16th of this year, and the Commission's ruling against
5 Senator McGovern, and I quote, "was based on a conclusion
6 that the policy of public financing was not to provide
7 personal income for a candidate and that there was no
8 evidence that Congress intended for the statute to provide
9 for such personal support."

10 This, in our view, is an inadequate basis for you
11 ruling. There is in fact no evidence in the legislative
12 history that Congress viewed salary payments to a candidate
13 as non-qualified campaign expenses. Rather, as I have
14 pointed out, the legislative history makes clear instead
15 that candidates would be free to spend campaign money as
16 they best see fit, as long as the expenditures are made in
17 connection with the campaign and are not otherwise illegal.

18 Let me briefly address the issue of fair notice.
19 In ruling as it did against Senator McGovern, the Commission
20 effectively engaged in retroactive rulemaking. It thereby
21 failed to provide reasonable notice to Senator McGovern,
22 and other presidential candidates, that salary payments
23 would be regarded as non-qualified. We believe this action
24 to be unreasonable and again illegal, because you have
25 effectively amended the definition of qualified campaign

10 1 expense without providing candidates notice that you
2 intended to do so.

3 The Ninth Circuit Court of Appeals addressed an
4 issue quite similar to this in the case called Montgomery
5 Ward against the Federal Trade Commission. On the subject
6 of changing rules through adjudication, which is essentially
7 what we're about here, let me read to you from the Ninth
8 Circuit's opinion. "The issue is whether an adjudicatory
9 re-statement of the conduct required by a rule is an
10 interpretation or an amendment of the rule. Adjudication
11 allows an agency to apply a rule to a particular factual
12 circumstance and to provide an interpretation of the
13 required conduct in light of those circumstances. An
14 adjudicatory restatement of the rule becomes an amendment,
15 however, if the restatement so alters the requirements of
16 the rule that the regulated party had inadequate notice of
17 the required conduct. An amendment is proper only when
18 adequate notice is provided to affected parties pursuant to
19 the appropriate rulemaking procedures."

20 A similar point was made by the District Court in
21 Louisiana. I'd like to read from that to you too. This is
22 a case called State of Louisiana against the Department of
23 Energy, and in fact involved, like this case, a regulatory
24 definition, in this case the definition of the word
25 "property."

11 1 The Court said, "It is clear that the original
2 property definition was ambiguous and subject to various
3 good faith interpretations. But even when you play pin the
4 tail on the donkey, the rules require that you turn the
5 blindfolded participant in the right direction. The cases
6 are clear that a post-hoc agency interpretation of an
7 ambiguous regulation should not be enforced retroactively
8 against the regulated party who adopted and applied an
9 alternate, reasonable interpretation of the regulation
10 during the period between the initial promulgation of the
11 ambiguous regulation and later agency interpretation."

12 I think the importance --

13 COMMISSIONER MC DONALD: Excuse me, Mr. Quinn.
14 Could I have the cites in these two cases -- I apologize,
15 but would you mind giving us the --

16 MR. QUINN: Montgomery Ward is 691 F.2d 1322,
17 and State of Louisiana against Department of Energy is
18 507 F.Supp. 1365.

19 COMMISSIONER MC DONALD: Thank you.

20 MR. QUINN: Those cases involve economic
21 regulation. In this case the need for advance notice is
22 even greater, when one considers that it is a criminal
23 violation to make a nonqualified campaign expense with
24 federal monies, and the law is clear that where there are
25 criminal consequences the need for advance notice is even

12 1 greater.

2 Now, I take the position that the statute would not
3 permit the Commission to promulgate a regulation holding
4 salary payments to be outside the realm of qualified
5 campaign expenses, but even if you could, the proper way to
6 do so would be to conduct a rulemaking more precisely
7 defining this term so that candidates and potential
8 candidates would be on notice.

9 I can understand that the Commission might not
10 approve of salary payments. You might want to see the law
11 changed or you might want to attempt to change it through
12 your regulations. But here, as in the case of Governor
13 Wallace ten years ago, you should only now go so far as to
14 say, and quoting from Advisory Opinion 1975-15, "The
15 Commission would be less than frank if it failed to note
16 its disapproval in principle of any practice whereby a
17 candidate personally profits from campaign contributions.
18 Nonetheless the law is clear."

19 I submit to you that the law also is clear here,
20 that Senator McGovern's salary payments were qualified
21 campaign expenses and that you should reverse your decision
22 to require repayment.

23 Again, thank you for this opportunity to appear
24 and I would be happy to answer any questions if I can.

25 CHAIRMAN MC GARRY: Thank you, Mr. Quinn. We will

13 1 now proceed with the questioning, and the Chair will be
2 happy to recognize any Member of the Commission who may have
3 a question.

4 Commissioner Elliott.

5 COMMISSIONER ELLIOTT: Mr. Quinn, you referred to
6 a document in your files, "campaign committee memorandum."
7 Could you tell me if this was, or could ever be construed as
8 any type of a written or oral agreement between Mr. McGovern
9 and the candidate committee to pay a stipulated amount for
10 some period of time for specific services rendered to the
Committee?

11 MR. QUINN: It is not a written agreement between
12 Senator McGovern and the Committee. It is a campaign
13 memorandum from one staff member to another which reflects
14 the understanding of the Committee that it would pay a
15 salary, and indeed in this document the figure is \$91,000,
16 not \$50,000, but I am informed that by oral agreement the
17 Senator agreed to take half that amount.

18 COMMISSIONER ELLIOTT: So, there was some sort of
19 agreement, oral agreement between the Committee and the
20 candidate?

21 MR. QUINN: There was an oral agreement, yes,
22 certainly.

23 COMMISSIONER ELLIOTT: Would you say that -- was
24 there a specific duty that he was to perform under this
25 agreement? Was anything said to him, or he to the Committee,

14 1 that he would do something like write speeches or take on
2 some things as part of the Committee obligation that might
3 be compensated by some other person if they were hired to
4 do that?

5 Was there anything like that?

6 MR. QUINN: Well, certainly there was no writing
7 that outlined his duties. I can assure you that, particularly
8 at the early stages of his campaign, given the resources
9 that he had, he was effectively his own campaign manager.

10 COMMISSIONER ELLIOTT: There have been several words
11 used. One is "salary." One is "income." Another is
12 "compensation," all of which have connotations all their
13 own. So, how do you think -- what word do you think best
14 represents the amounts paid to the Senator? What did that
15 cover?

16 MR. QUINN: I think it was a salary, and the notion
17 of missed income really arose only from the fact that the
18 amount he was to be paid was determined in part by reference
19 to the income he would otherwise have earned.

20 COMMISSIONER ELLIOTT: There were \$15,000 paid
21 after the ineligibility date. I believe some of your
22 documentation indicates that the expenses were incurred
23 before the eligibility date. Is that correct?

24 MR. QUINN: Yes. We take the position that the
25 Committee's obligation to make this payment was incurred

9 / 0 / 2 5 1 2 1

15 1 during the eligibility period, as reflected by the March 3rd
2 memorandum that was provided to the auditors, and that in
3 any event the remaining \$15,000 should be regarded as winding-
4 down costs.

5 COMMISSIONER ELLIOTT: You have just now indicated
6 that the agreement was for some \$90,000 but he only got
7 paid for \$50,000.

8 MR. QUINN: I'm sorry. Let me correct that.

9 The \$90,000 figure was the estimate of his lost
10 income. The memorandum to which I referred would appear to
11 have obligated the Committee to pay him the entirety of
12 that missed income.

13 However, I am informed that by oral understanding,
14 he agreed with the Committee to take something on the order
15 of half of that amount.

16 COMMISSIONER ELLIOTT: Is it important for us to
17 know, or would it be helpful -- would it be helpful for us
18 to know whether that reduction was due to the fact that he
19 did not do everything that he had indicated he would do,
20 or the Committee couldn't afford it, to pay him the full
21 amount, or some reason why that was reduced?

22 MR. QUINN: I can only speculate but I would bet
23 it's because the Committee didn't have much money.

24 COMMISSIONER ELLIOTT: Thank you very much.

25 CHAIRMAN MC GARRY: Thank you, Commissioner Elliott.

2 / 0 / 2 5 1 2 2

16

1 Any further questions? Commissioner Reiche.

2 COMMISSIONER REICHE: First I would like to suggest,
3 and I'm sure Mr. Quinn would agree with me, that any comments
4 we might make, any questions that may be asked, should not be
5 construed as any reflection on the merits of assisting
6 challengers in presidential elections so that indeed, in a
7 financial sense, they can mount that challenge.

8 We are not talking about the merits. What we are
9 talking about, I believe, is finding a regulatory basis
10 which would permit the Commission to consider these as
11 qualified campaign expenditures. In terms of the merits,
12 that's for Congress to determine. All we're trying to do
13 is interpret the law.

14 It seems that implicit in your position, Mr. Quinn,
15 is the conclusion that a campaign has some responsibility
16 to pay maintenance for a candidate. How would you determine
17 this with any degree of consistency?

18 In the case of your candidate, you're talking
19 about missed income related to honoraria. In other cases
20 perhaps it's salary. But if you're talking of maintenance,
21 everybody in this world has a different lifestyle. I mean,
22 how would you go about trying to determine what was needed
23 by a candidate in order to personally maintain himself or
24 herself so that they could mount a campaign?

25 MR. QUINN: Well, let me say first that I don't

17 1 take the position that campaigns have a universal obligation
2 to provide maintenance. But your question really gets to
3 the reason why you should reverse yourself. . You can't
4 make that decision. Congress hasn't given you the authority
5 to make that decision. And indeed, you don't have to
6 find a regulatory basis by which to regard this as a qualified
7 campaign expense, I submit to you that the Commission has no
8 regulatory basis for regarding it as other than a qualified
9 campaign expense.

10 The law, and your own regulations, are clear, if the
11 payment is made in connection with the campaign, and if it is
12 otherwise legal, then you are obligated to regard it as a
13 qualified campaign expense. If I decide to run for the
14 presidency and think that the best way to make myself
15 popular is to get on the morning flight every Monday to
16 Puerto Rico and the Friday night flight back and shake as many
17 hands on the plane as I can, I can use contributions and I
18 can use federal matching money to do that. And Congress has
19 made clear that this Commission is not to say this is an
20 inappropriate way to spend money.

21 Look at the analogous general election financing
22 statute which doesn't speak of qualified campaign expenses
23 being in connection with the campaign. It speaks even more
24 narrowly of qualified campaign expenses being in furtherance
25 of the campaign.

18 1 Well, would I sit here and say that Vice President
2 Mondale's media advertising suggesting increased taxes
3 didn't further his campaign and he shouldn't have used money
4 to do that, that was foolish? No. Congress made clear that
5 the Commission is not to make those judgments. If candidates
6 want to spend money ill-advisedly, foolishly, they are free
7 to do that. That's for them to decide, not the Commission
8 to decide.

9 COMMISSIONER REICHE: Let me just pursue this line
10 of inquiry with one question, and then I think Commissioner
11 McDonald has a question. he wants to ask before I continue.

12 In terms of the Commission's responsibility here,
13 you indicated in your remarks that we had amended the
14 definition of qualified campaign expenses, and then you
15 proceeded to discuss what you perceived to be the
16 distinction between amending and interpreting.

17 Just how do you see that distinction? When is this
18 Commission trying to interpret that which we have been
19 handed, namely, a statute, as opposed to a situation in
20 which we, in your view, are amending or changing that
21 statute?

22 MR. QUINN: Again, you did interpret the statute
23 when you promulgated the regulations which identified a
24 generic group of expenditures which would not be regarded
25 as qualified. A common thread runs through each of the

19 1 expenses that you said would not be qualified, the common
2 thread being that they related to or involved illegality.

3 There's nothing in that list of examples that
4 suggests that a legal expenditure, or indeed a salary
5 payment, would also be regarded as non-qualified, and in
6 view of that I submit to you that the practical effect of
7 a ruling now that a salary payment last year is a
8 non-qualified campaign expense is effectively retroactive
9 rulemaking.

10 COMMISSIONER REICHE: Are you suggesting that that
11 enumeration by the Commission was intended to be an
12 exhaustive listing?

13 MR. QUINN: Not at all. I acknowledge that it was
14 illustrative. But that illustrative group of identified
15 non-qualified campaign expenses again has a common thread,
16 and if I were sitting back, advising someone, there might
17 be a circumstance where you did not identify something but
18 it did involve illegality and I would counsel against making
19 that expenditure because the Commission would regard it as
20 non-qualified.

21 I would not conclude from the illustrative list of
22 non-qualified campaign expenses that you have identified,
23 that a salary payment would be regarded by the Commission
24 as non-qualified. The Commission may not like the idea of
25 campaigns paying candidates salaries. I can understand that.

20 1 And it may be that you have the statutory authority to engage
2 in a rulemaking and include that in the list, but the proper
3 way to do that is to do it prospectively and not
4 retroactively.

5 COMMISSIONER REICHE: I think what this may ignore
6 is the responsibility of the Commission to interpret a
7 statute as best it can.

8 At this point, Commissioner McDonald, would you
9 like to ask a question on this point?

10 COMMISSIONER MC DONALD: I think you perceived the
11 question I wanted to ask.

12 MR. QUINN: Well, may I respond to that?

13 It is frankly beyond me how this is an interpreta-
14 tion of the statute. The statute is quite clear that any
15 payment whatsoever made in connection with the campaign
16 and which is otherwise legal, is to be regarded by you as a
17 qualified campaign expense.

18 It is beyond me how one can conclude from that that
19 the Commission has the authority to regard a salary payment
20 as non-qualified.

21 COMMISSIONER REICHE: Well, as a fellow lawyer,
22 I'm sure you would agree with me that reasonable men can
23 differ, and certainly reasonable men can differ as to the
24 interpretation of the phrase, "in connection with the
25 campaign." And your position, obviously, is one that

21 1 the Commission has to take into account, that indeed salary
2 payments or payments for missed honoraria, whatever you
3 choose to call them, that these were in connection with the
4 campaign, and that's a perfectly honorable position. But I do
5 not think it is a position that is so clear that the
6 Commission should sit here and not examine whether that
7 phrase as applied to these indeed would result in the same
8 conclusion to which you come.

9 MR. QUINN: Unfortunately, again, the logical
10 result of the position you have just articulated is that
11 we will limit campaigns to those who can afford them, to
12 those who don't need income during the course of their
13 campaigns. That, I think, would be an unfortunate result,
14 and one not contemplated by the statute.

15 COMMISSIONER REICHE: Mr. Quinn, in a personal
16 sense I might join you in saying that that might be an
17 unfortunate result on the merits, but the Commission has to
18 do its level best to interpret the law as it is given to
19 it by the Congress, and the question is, taking that into
20 account, what should the Commission consider as qualified
21 campaign expenses.

22 But let's move to another point you made. You
23 referred to support in the legislative history for your
24 position. Where do you perceive that support originating?

25 MR. QUINN: In my letter to you provides a citation.

22 1 to the Senate Committee Report --

2 CHAIRMAN MC GARRY: Is that your letter of
3 March 5th, 1985?

4 MR. QUINN: Yes, indeed.

5 CHAIRMAN MC GARRY: And that would be a document
6 that we have identified as 85-55-B.

7 MR. QUINN: In my remarks I quoted to you from
8 Senate Report No. 689.

9 COMMISSIONER REICHE: But the argument that is
10 contained there, basically it seems to me, and please if
11 you disagree, please say so, but it seems to me to be saying
12 that, yes, candidates should be afforded considerable
13 flexibility in spending campaign funds as they see best.
14 That still does not, in my view, get to the question of
15 whether a salary payment or a payment for missed honoraria
16 falls under the heading of a qualified campaign expense.

17 I mean, to give them considerable flexibility, fine.
18 Probably we would all agree that that is a laudable
19 objective. You don't want to hamstring them, particularly
20 where you're talking about the use of public funds as we
21 are here.

22 MR. QUINN: Let me try this just once more. If you
23 will accept the proposition that a campaign could not be run,
24 a candidate could not run for the presidency, without
25 financial support from the campaign, if that is the case

23

1 it is simply illogical to say that that is not an
2 expenditure in connection with the campaign. There is no
3 logic to that conclusion, on the very face of it.

4 Indeed, there could be no expenditure more in
5 connection with the campaign than one which makes it
6 possible, than one which enables the candidate to run.

7 COMMISSIONER REICHE: Let me put it this way, and
8 I say this without trying to indicate where I will come out
9 .. this because I don't know where I will come out on it,
10 but this is a fact of political life, that is well known
11 to Congress. It was well known to them at the time the
12 statute and the various amendments were drafted and indeed
13 enacted, and it has become traditional -- you can say poor
14 tradition, I won't argue with you--- but it has become
15 traditional that challengers indeed, at least as a matter of
16 law, have to have the wherewithal to sustain themselves over
17 the period when they are challenging.

18 Again, no discussion on the merits of that. It seems
19 that if we are to find, as you would have us find -- what
20 we have to do is to determine in the statute, in the
21 legislative history, some indication of congressional
22 intent that in connection with an election, would include
23 the kinds of payment that you're talking about here.

24 MR. QUINN: I disagree. I think it's not for us
25 to point to a statutory provision, or legislative history,

24 1 that says salary payments were contemplated by Congress as
2 being qualified campaign expenses, any more than it is for
3 us to point to a provision that says, flying to Puerto Rico
4 for a fundraiser is a qualified campaign expense.

5 It is for you to find a reason in the statute, or
6 in your own regulations, why this kind of payment or any
7 other kind of payment is not a qualified campaign expense.

8 COMMISSIONER REICHE: Let me ask you this question.
9 Upon whom, do you believe, the burden of proof falls in
10 making the determination that these payments were a qualified
11 campaign expense?

12 MR. QUINN: Well, as you know when the Committee
13 agreed to accept federal matching money it agreed that
14 among other things it would bear the burden of the demonstrating
15 the relationship between a payment and the campaign..

16 We believe that the Committee has demonstrated to
17 you that in view of the fact that the salary payments were
18 essential to the life of the campaign, that it is clear
19 that they were made in connection with the campaign. It is
20 also clear that they were not otherwise unlawful.

21 COMMISSIONER REICHE: And you believe that this is
22 an affirmative indication of the type that Congress intended
23 to be reflective of whether you have a qualified campaign
24 expense or not?

25 MR. QUINN: I'm not sure I understand the question.

25 1 COMMISSIONER REICHE: Well, what I am suggesting
2 is this, is this purely a negative inference drawn by you,
3 or do you believe that you have affirmatively shown that
4 these are qualified campaign expenses?

5 MR. QUINN: I believe we have affirmatively shown
6 these are qualified campaign expenses.

7 COMMISSIONER REICHE: Let's go just briefly to the
8 fact of the \$50,000. What period was intended to be covered
9 by that \$50,000 payment?

10 MR. QUINN: The document to which I'm referring
11 reflects a period of about six months from . . .

12 COMMISSIONER REICHE: September?

13 MR. QUINN: I think September through March.

14 COMMISSIONER REICHE: September 13th to March 13 - 15th,
15 whenever it was, the date of ineligibility. Had Senator
16 McGovern continued as a candidate, would this have been
17 revised or was it intended that the \$50,000 would cover the
18 entire campaign?

19 MR. QUINN: I assume it would have been revised,
20 but I don't know the answer to that.

21 COMMISSIONER REICHE: And of course, as Commissioner
22 Elliott previously pointed out, \$15,000 of that was paid
23 after the date of ineligibility.

24 You gave us a description in part, of how the
25 figure was determined. Did you take a look at the honoraria

26 1 that the Senator had received, let's say, in 1983, or before?

2 MR. QUINN: Do you know the answer to that?

3 MS. CURTIN: What do you mean, did we take a look?

4 COMMISSIONER REICHE: Well, did you examine the
5 extent of the honoraria which he received the previous year
6 in order to set what you thought was a proper figure?

7 MS. CURTIN: Okay, I wasn't the treasurer at the
8 time, but that was looked at and I think that the memo
9 reflects that and there were in fact engagements that were
10 contracted for that were broken, of the figure of \$5,000
11 per lecture, so the amount was determined on the basis of
12 income that he had received the previous year.

13 COMMISSIONER REICHE: Right, and presumably that
14 honoraria figure would have been included on the ethics
15 statement that had to be filed by the Senator when he
16 became the presidential candidate, is that correct?

17 MS. CURTIN: I assume so, but I don't --

18 COMMISSIONER REICHE: I have examined it. I see
19 no indication of any attribution for honoraria. Whether
20 this is just something that was omitted simply because the
21 concern was more with the value of assets as opposed to
22 income, I don't know the answer to that. But if it is to
23 serve as a valid basis, then obviously that information
24 should have been included as indeed it is required by law
25 to be included in the statement to be filed with the

1 Commission.

2 Did Senator McGovern continue to receive honoraria
3 during this period at all, or did he cut them off completely?

4 MR. QUINN: He cut them off completely.

5 COMMISSIONER REIGHE: Do you recognize any
6 distinction between what I will call the use of campaign
7 funds in a personal way as opposed to a political way? What
8 I am driving at here is a situation such as this Commission
9 had in connection with Mr. LaRouche as opposed to a situation
10 where the funds are admittedly being used for political
11 campaign purposes. I mean, do you perceive that there is a
12 valid distinction to be made by the Commission between those
13 two uses?

14 MR. QUINN: I certainly believe that the Commission
15 has within its power the determination whether expenditures
16 are genuinely in connection with a campaign, and I think the
17 LaRouche situation is on its face distinguishable in that
18 there appeared to be absolutely no argument that those
19 payments of rent were necessary to further the campaign.

20 The situation at hand, by contrast, is one in which
21 the expenditures were essentially to the furtherance of the
22 campaign.

23 COMMISSIONER REICHE: But doesn't a candidate have
24 to maintain, hopefully, a roof, that can be tilting on
25 occasion, but doesn't a candidate have to maintain a roof

27 1 over his or her head and have sufficient to eat, in order
2 to be able to campaign vigorously? I mean, there you're
3 talking just about personal living expenses, and of course
4 the Commission has had at least one advisory opinion with
5 respect to this, 1980-49.

6 MR. QUINN: Well, if Mr. LaRouche needed a salary
7 from the campaign in order to conduct the campaign, the
8 campaign should have paid him a salary and in that case you
9 would have been required to rule, I submit, that it was
10 a qualified campaign expense.

11 COMMISSIONER REICHE: Thank you very much,
12 Mr. Quinn.

13 Thank you, Mr. Chairman.

14 CHAIRMAN MC GARRY: Thank you, Commissioner Reiche.
15 Mr. Josefiak.

16 MR. JOSEFIK: Thank you, Mr. Chairman.

17 Mr. Quinn, I totally agree with you that a campaign
18 has to have a flexibility and discretion as to how it's
19 going to spend its money in connection with the election,
20 in relationship to that particular campaign involved.

21 The difficulty I'm having is to demonstrate that
22 the monies expended in this regard are in connection with
23 the campaign, and the reason I'm having that difficulty is,
24 we have these terms floating back and forth it's compensation
25 for lost income, what he would have earned if he had been

28 1 able to make these lectures versus a salary.

2 Can you give any other evidence
3 that this was salary in connection with that election,
4 as opposed to something that would have been earned whether
5 or not he had been a candidate?

6 MR. QUINN: Well, again, I submit to you that the
7 reference to lost income was merely the gauge by which the
8 appropriate salary was determined.

9 MR. JOSEFIK: But "salary" is a term you are using.
10 Can you demonstrate why you were giving the money, no matter
11 what the amount was, as to why you were giving him that money?

12 MR. QUINN: Well, the candidate and the Committee
13 perceived a need to pay him a salary in order that he could
14 be a candidate.

15 MR. JOSEFIK: Well, for example, at one point you
16 mentioned that early on Mr. McGovern was his own campaign
17 manager, so obviously if you had hired a campaign manager
18 you would have paid the campaign manager a salary and it
19 would have been indicated how much he was making to do certain
20 activities within the campaign.

21 After the date of ineligibility there are winding-
22 down costs and you have to have some people around to handle
23 those things. Was that Mr. McGovern at that stage, who was
24 closing down the books, who was selling the assets, or was
25 it somebody else?

29 1 How can you relate spending the money to the
2 campaign and how he was dealing with the campaign, or were
3 you just giving the money to him because he was the
4 candidate? I think there is a distinction here.

5 MR. QUINN: He was being given the money because
6 in his mind and that of the Committee, were he not, the
7 campaign might not have been possible.

8 MR. JOSEFIAK: It had nothing . . . , really nothing
9 to do with what he was or was not doing within the campaign,
10 it's the fact that he would not be a candidate without
11 receiving those funds?

12 MR. QUINN: Yes, and I think that's as far as the
13 Commission should go. I don't think the Commission should
14 be going into campaigns and making a determination whether
15 an advance person was doing a good enough job in connection
16 with the campaign and should be regarded as a qualified
17 campaign expense.

18 MR. JOSEFIAK: I agree with that point. The question
19 I think, the focus, is, however, is this an expenditure
20 in connection with that campaign? And that's what the
21 Commission has to grapple with. We're not going to decide
22 whether it was good, bad or indifferent, the fact that you
23 made a certain decision, and I totally agree with you
24 on that point. But I think there's a distinction here to
25 be made with regard to, you know, what is a qualified

30

1 campaign expense and there is a definition, and somehow
2 we've got to distinguish that between other kinds of
3 campaigns.

4 MR. QUINN: I appreciate that, but I submit to you
5 that if a candidate and a committee tell the Commission that
6 without the payment of a salary to the candidate the campaign
7 might not occur, that the Commission simply must regard that
8 payment as one made in connection with the campaign.

9 MR. JOSEFIK: I guess I'm going back to the point,
10 if you make that comment you make that concept, are you
11 classifying this properly? Is it salary?

12 MR. QUINN: Well, it might be that you think
13 \$50,000 is okay but half a million dollars wouldn't be okay.

14 MR. JOSEFIK: I'm trying to get a definition of
15 what this is. Is this salary, is this compensation for lost --
16 disregarding where we come out, . . . but as far as
17 what we're classifying this as,
18 I think the Commission has to determine what it is before
19 it can decide whether it is or is not a qualified campaign
20 expense.

21 MR. QUINN: Well, the Committee regarded it as
22 salary, but again, if the Commission wants to draw some
23 different lines than presently exist within its regulations,
24 then I suggest to you that you conduct a rulemaking. Take
25 comments, and amend the regulatory definition of qualified

31 1 campaign expense. But under the statute and the regulations
2 as you have them today, it would be inappropriate to rule
3 retroactively that a payment which, from any reasonable
4 reading of the regulations, should be regarded as qualified,
5 is now not qualified.

6 It is a problem of process. The proper way to do
7 what you seem to want to do is to conduct a rulemaking.
8 It's not to adjudicate retroactively that in addition to
9 A, B, C, D and E which are non-qualified campaign expenses,
10 we are going to regard X as a non-qualified campaign expense.

11 There is no hint in the regulations that a payment
12 of this sort would be regarded as non-qualified.

13 MR. JOSEFIAK: Thank you. The only other comment
14 I would make, before I could even reach the conclusion
15 whether I agree or disagree with your concept, what I was
16 trying to get at is, in reporting that expenditure you have
17 to report the purpose of the expenditure. And my line of
18 questioning really was, what was this or how are we
19 classifying this expenditure.

20 Before I can go to your position I've got to
21 decide what we're talking about first.

22 MR. QUINN: Well, we think we're talking about a
23 salary, and I just don't know what else to say to you about
24 that.

25 MR. JOSEFIAK: Well, my concept of salary, I guess,

9 / 9 / 2 5 1 2 9

32

1 and yours are a little different because I have a concept
2 in being involved with campaigns, as to when you pay a salary
3 there's a specific purpose as to why you're paying a salary
4 and what it's for, and there's some relationship to something,
5 how much you're paying, is it per month, is it a lump sum, for
6 what purpose you're doing this thing, some sort of a contract,
7 oral or written, something that indicates that this is salary
8 versus something else.

9 I'm not saying, just because it's not a salary
10 classification that it's not a qualified campaign expense,
11 but before I can make that decision I've got to find out
12 what we're talking about.

13 MR. QUINN: Again, I suggest that it would be
14 inappropriate for the Commission to head down the road of
15 making determinations whether campaign salaries -- and I've
16 seen many campaign salaries paid which, believe me, were
17 not in furtherance of the campaign, and whether they should
18 be regarded as appropriate or not, I don't think that's
19 the Commission's role.

20 MR. JOSEFIK: I'm not talking about whether the
21 salary's appropriate or not. I'm just trying to decide
22 whether this is in fact a salary, or is this compensation
23 for income that was lost because Mr. McGovern was not able
24 to make his lectures during a year he was a candidate, or
25 whether it's paying for living expenses or whether -- what

33 1 we're talking about before we can make a decision, whether
2 something is a qualified campaign expense.

3 Thank you, Mr. Chairman.

4 CHAIRMAN MC GARRY: Thank you, Mr. Josefiak.

5 The Chair recognizes Commissioner Harris.

6 COMMISSIONER HARRIS: One thing that may not have
7 been made sufficiently clear here is that all we're talking
8 about is whether Senator McGovern could pay himself a salary
9 out of public funds while running for nomination for
10 President. If it were paid out of private contributions I
11 think there is no problem.

12 What we're saying is that it does have to be so
13 paid. I have a little trouble following your line of
14 argument, Mr. Quinn. As you know, Section 9007 requires
15 that after each election the Commission conduct a thorough
16 examination and audit of the campaign. One of the specified
17 purposes of this audit, which is detailed, expensive and
18 lengthy, is to ascertain whether the disbursements were
19 entirely for qualified campaign expenses.

20 It seems to me rather odd to suggest that the campaign
21 has such total discretion in its use of money as to make
22 the audit in effect meaningless.

23 MR. QUINN: I'm not suggesting that at all, but
24 clearly, there are non-qualified campaign expenses--

25 COMMISSIONER HARRIS: The only non-qualified

34 1 campaign expense you have suggested is one where the
2 incurring or payment constitutes a violation of law. That,
3 of course, is only a small part of the definition of
4 qualified campaign expense, but it is the only part that you
5 seem to give effect to, like parking fines.

6 The Commission has allowed candidates wide
7 discretion. About all that I can recall we disallowed was
8 Lyndon LaRouche's personal living expenses.

9 Now, you have also suggested that the Commission
10 ought to have conducted a rulemaking proceeding. I suggest
11 to you that it is impossible for the Commission to foresee
12 every type of disbursement that a candidate might make.
13 We've had these matching payments in effect in '76, '80 and
14 '84 and no other candidate has -- it has not occurred to any
15 other candidate to pay himself a salary, so we have had lots of
16 candidates of all kinds, many of them surely more
17 impecunious than Senator McGovern.

18 Would you care to comment on that?

19 MR. QUINN: I would. The Commission has to live by
20 the rules it writes, and the Commission --

21 COMMISSIONER HARRIS: Well, I am suggesting to you
22 that we cannot possibly foresee every type of disbursement
23 that a campaign may see fit to make. If it's a suggestion
24 that we list all of the things that they can do, it's quite
25 unrealistic.

35 1 MR. QUINN: Well, it's also quite unfair to set out
2 rules and tell all the potential candidates out there that
3 you don't feel free to live by them you don't feel obligated
4 to live by them and you'll change them if an expenditure is
5 made that you find personally offensive.

6 COMMISSIONER HARRIS: Are you aware that there's a
7 provision in the Act for advisory opinions, and that if made
8 during the course of a campaign the Commission is required
9 to give an answer in 20 days?

10 MR. QUINN: I'm aware of that.

11 COMMISSIONER HARRIS: And Senator McGovern could
12 have gotten an answer within 20 days as to whether this was
13 a qualified campaign expense?

14 MR. QUINN: I'm aware of that, but I believe they
15 concluded at the time that the law was clear -- I don't think
16 there was an ambiguity here. I don't think there was
17 uncertainty.

18 The Commission --

19 COMMISSIONER HARRIS: When you say "they," who are
20 we talking about?

21 MR. QUINN: The Committee. The Commission, again,
22 has written rules defining qualified campaign expense --

23 COMMISSIONER HARRIS: You don't need to repeat
24 yourself endlessly. You've said that repeatedly. It's
25 just -- on this question of doubt you state in your letter

2 / 0 / 2 5 1 2 3

36 1 on page 2 that Senator McGovern was advised informally by
2 the FEC staff to cancel speeches for which he would have been
3 paid substantial honoraria.

4 Who was this conversation between, Senator
5 McGovern himself?

6 MR. QUINN: No, George Cunningham, who was working
7 for him, made a call to someone in the General Counsel's
8 office.

9 COMMISSIONER HARRIS: Who was he talking to?

10 MR. QUINN: I can't tell you that. I don't know
11 the answer to that.

12 COMMISSIONER HARRIS: A gentleman in the General
13 Counsel's office that he was talking to says he didn't tell
14 him any such thing, that he told him about the possibility
15 of asking for an advisory opinion.

16 MR. QUINN: Well, I can only tell you what I was
17 told, sir.

18 COMMISSIONER HARRIS: Well, the statement here is
19 that he was told that the honoraria might be regarded as
20 contributions. Are you aware of the provision in Section
21 431(8)(b)(14)? That's the provision that says that
22 honoraria are not contributions.

23 MR. QUINN: Well, Commissioner Harris, I can only
24 tell you what the Senator was advised and what he told me
25 he was advised.

37 1 COMMISSIONER HARRIS: This Mr. Cunningham, you
2 mean?

3 MR. QUINN: Well, I was told this by the Senator.

4 COMMISSIONER HARRIS: That this is what
5 Mr. Cunningham was told?

6 MR. QUINN: Yes.

7 COMMISSIONER HARRIS: Well, it seems highly
8 improbable. You also say that the Senator may thus be
9 unique in having had to forego his usual source of income.
10 Well, as you probably know we have had problems of
11 attorneys running for office and the question has come up as
12 to whether their firms may continue to pay them. These
13 attorneys have quite often asked for advisory opinions on the
14 subject, and in some circumstances their firms have been told that
15 any payment to them could be regarded as a contribution and
16 subject to the ceiling.

17 So, it would not be true that the Senator was in a
18 unique position, even if he were told what is here asserted,
19 which I do not for one minute believe.

20 Now, on the question of his personal financial
21 situation, Commissioner Reiche asked you, do you think that
22 we are supposed to inquire into the personal financial
23 situation of each candidate who undertakes to pay himself
24 a salary? Are we going to ask them to file detailed financial
25 data with us, are we going to rely on the ethics reports,

38 1 or what, and if you regard his personal financial situation
2 as relevant to the propriety of his paying himself a salary,
3 surely you must intend that we look into his personal
4 financial situation.

5 MR. QUINN: Not at all. I don't think that's the
6 proper role of the Commission at all.

7 COMMISSIONER HARRIS: Well, do you think we look
8 at his ethics reports, then, or what?

9 MR. QUINN: Yes, that is another matter. The issue
10 here is whether this expenditure was a qualified campaign
11 expense.

12 COMMISSIONER HARRIS: Well, you have suggested that
13 it's qualified because he wouldn't otherwise be able to run,
14 so that certainly becomes a part of the definition of
15 whether it is a qualified campaign expense, the way you
16 presented it.

17 Now, when did the -- when did Senator McGovern
18 register as a candidate, do you know?

19 MR. QUINN: I don't. I was --

20 COMMISSIONER HARRIS: It was September the 26th,
21 1983. The first payment that he received, of \$35,000, was
22 on March the 9th. He was through as a candidate on March 15,
23 six days later.

24 So, when you say it was impossible for him to
25 become a candidate without these payments, he had been a

39 1 candidate for months without these payments. He got the
2 first one only just before he withdrew. . Is that not so?

3 MR. QUINN: That's what the record shows.

4 COMMISSIONER HARRIS: I have no other questions.

5 CHAIRMAN MC GARRY: Thank you, Commissioner Harris.
6 Commissioner McDonald.

7 COMMISSIONER MC DONALD: Thank you, Mr. Chairman.

8 Well, I will be brief.. I clearly understand the
9 distinctions that you made on numerous occasions this
10 morning about what you think is at issue here. I don't
11 wholeheartedly support, nor do I wholeheartedly dismiss
12 what you have said, but there are a few things of great interest
13 to me about your logic.

14 You have spent a great deal of time lecturing us
15 about our logic, so I thought possibly we would just put them
16 side by side and see what we've got.

17 You've indicated that you think it would be a bad
18 move, in fact you said, I think initially in your opening
19 statement that we would be amending the law in this area.
20 You made several cites which were not furnished to us,
21 but I certainly have no problem with accepting them, at
22 least for the time being.

23 The question I have is that, are you not asking us
24 to do the very thing you are accusing us of? You are saying
25 that in essence, if we didn't provide a salary to Senator

40

1 McGovern or other candidates, we would in fact, if I follow
 2 your logic correctly, be saying that that is bad for the
 3 process, therefore, it shouldn't be construed the way the
 4 Commission has.

5 I would agree with you, going back to a statement
 6 you made earlier, that the Commission -- and I would assume
 7 this would apply to yourself as well -- may think certain
 8 things about any area, whether it is this area or any other, but
 9 that in fact what we're faced with is interpreting the law
 10 as we see it.

11 Are you not maybe asking us the same thing, to
 12 amend the law because it would be bad, because individuals
 13 should not or could not run if they did not have these
 14 salaries? Without questioning the merit of it, and that
 15 may be the most meritorious thing in the world, I'm not sure
 16 that that's not right. I'm not sure that I don't agree with
 17 it, but that's a problem.

18 But where I'm having a problem, without going
 19 into the Wallace example which I see virtually,
 20 absolutely no corollary at all between that and this
 21 question here, even though it's cited at some length, I have
 22 a problem understanding the logic that you're coming to.
 23 There's not been a candidate in the history of the Act,
 24 that I'm aware of, that has perceived the law in the method
 25 that you do. And now you're saying that it is obvious that

2707025128

41 1 the Commission is clearly trying to amend the law because
2 it did not foresee this particular circumstance, which I
3 think there are many we don't foresee.

4 I would say to you, since you saw fit earlier on
5 to give us some advice, your advice is probably accurate. But
6 each time we set out numerous details, the complaints we get,
7 of course, are... the problem is that we don't allow
8 more discretion. So then you allow more discretion and the
9 complaint is that the problem with the Commission is, they
10 don't cite enough examples.

11 So, I'm sure you, as a lawyer, can appreciate the
12 kind of problem that we get into when we're trying to
13 grapple with those matters. But I would only -- I'm having
14 trouble with your logic. I think what you're suggesting
15 here is the very thing -- we take the posture that you put
16 forth, we may be in a position, of course, of amending the
17 law the other way, which you fail to bring up when you are
18 giving us advice on what we should do. You haven't
19 indicated that that's a problem as well, and it is a
20 problem.

21 I might say to you in the strongest terms
22 possible -- I can't speak for my colleagues -- I take deep
23 exception to anyone saying that the Commission's attitude
24 is to amend the law because we don't like it. You may
25 perceive it that way but that's certainly not my posture

42 1 and I don't think it's any of my colleagues' posture.

2 You and I may have an honest difference of opinion
3 about the law, but I want to say to you in the very plainest
4 terms that I know how, that that is simply not the case,
5 in my opinion, of either myself or any of my colleagues.
6 We took the posture, right or wrong, that we felt like we
7 were trying to be fair about the matter.

8 When you come before this Commission and indicate
9 that we've decided to rewrite the law because we don't
10 agree with it, it is not really accurate. I think it does
11 a little bit of disservice to the process. If you and I
12 disagree about the law, that's one thing. If you tell me,
13 on the other hand, that you think in spite of the fact that there
14 an advisory opinion process that was not sought, by the
15 fact that you say it's clear on its face, even though this
16 has never been done previously, to my knowledge, it's the
17 history of the Act that it is plain and simple and it's a
18 shame we don't understand it, I think may not be entirely
19 correct.

20 I think one of the problems I'm having with your
21 logic, quite frankly, is I think maybe you want us to amend
22 the law the other way based on what you personally think the
23 law ought to be. And you may be right, I don't know. It
24 may be that all people should be entitled to some sort of
25 salary, compensation, or -- these terms have been used

43 1 interchangeably. today. I don't know. I mean, that may be true.
2 I just simply have not seen in the history of the Act where
3 that's the case.

4 Are you asking us to amend the law in your favor?

5 MR. QUINN: I certainly think not. I think I've
6 made clear that I think the statute is clear, and I think
7 that the Commission set up rules for people to live by.
8 If you've amended the law, if you're right and I want to
9 amend the law that way, nobody's hurt.

10 The problem is that you have an obligation to give
11 people notice and if I'm right and you're amending the law,
12 then you've done so retroactively. There is a difference
13 there.

14 COMMISSIONER MC DONALD: Are you suggesting that
15 we can give notice on every conceivable question that might
16 come before the Commission or that might later come before
17 the Commission?

18 MR. QUINN: You have to give reasonable notice as
19 to what's permitted and what's not permitted.

20 COMMISSIONER MC DONALD: I don't think there's a
21 dispute about reasonable notice. You and I certainly
22 don't differ on that score. That's not what I asked you.

23 I said, are you of the opinion that we can give
24 notice on every conceivable, possible thing that might come
25 before this Commission. Can you do that with a client?

2 / 0 / 2 5 1 3 0 1

44 1 Can you foresee -- can you tell the client every conceivable
2 fallout that they may have on a given position that they
3 take? If you can, I want to hire you, because I don't think
4 that's being realistic about the process.

5 None of us would differ around the table. I wouldn't
6 differ with you at all about trying to give reasonable notice.
7 I think that is exactly right. I don't have a problem with that.

8 MR. QUINN: What I submit to you is that if you
9 list four things which are not permissible, and they have a
10 common thread, that you cannot later hold someone to have
11 violated your law for doing a fifth thing which has nothing
12 in common with the four about which you warned. That is
13 improper agency action.

14 COMMISSIONER MC DONALD: We have just the same
15 dispute again. I won't inquire further.

16 CHAIRMAN MC GARRY: The Chair recognizes Commissioner
17 Aikens.

18 COMMISSIONER AIKENS: Thank you, Mr. Chairman.

19 Mr. Quinn, when we first were sworn in ten years
20 ago, Commissioner Harris and Bob Costa and a few others in
21 the room will recall that we attempted to define qualified
22 campaign expense.

23 We found the list so exhaustive, and yet not
24 exhaustive, that we finally gave up. We realized we could
25 not ever list everything that would be qualified.

45 1 MR. QUINN: Or not qualified.

2 COMMISSIONER AIKENS: Or not qualified. So, we
3 set the general rules. I don't think it was ever contemplated
4 by the Congress in drafting this law, or by the Commission
5 in the ten years we've interpreted it, or tried to interpret
6 it, that a candidate would make money from public financing.

7 And that's where I have the problem. Legally or
8 not, I don't think it was ever contemplated, and I don't
9 think the public would like very much to have their money
10 used that way. I think that's the basis of the whole thing,
11 it's the public financing.

12 MR. QUINN: May I respond?

13 COMMISSIONER AIKENS: As Commissioner Harris said,
14 if it was private funds that would be a different matter.

15 MR. QUINN: Maybe it would, but this is the
16 similarity with the Wallace case. Maybe the law never
17 contemplated that.

18 The problem facing all of us is that the law never
19 prohibited it, and you never prohibited it. You may want
20 to prohibit it in the future, but it is not proper for an
21 agency to prohibit it retroactively after the law spoke
22 nothing about it.

23 COMMISSIONER AIKENS: Senator McGovern aside,
24 can you envision what would happen to public financing
25 if every candidate who wanted to run, and qualified, could

46 1 be paid a salary out of public funds?

2 MR. QUINN: Commissioner Aikens, I may agree with
3 you and just as the Commission said in 1975, George Wallace
4 receiving royalties may be offensive, we may not like that,
5 but the statute didn't prohibit it and your regulations
6 didn't prohibit it. And if you want to change the rules of
7 the game, change them, but you're not permitted to change
8 them retroactively.

9 COMMISSIONER AIKENS: I don't think we are changing
10 them.

11 Thank you, Mr. Chairman.

12 CHAIRMAN MC GARRY: Commissioner McDonald.

13 COMMISSIONER MC DONALD: The only other point I made
14 about the Wallace matter that you cited, and I understand
15 your logic, but I must say to you of course that the
16 difference there was fairly substantial. It was not a
17 question of the candidate receiving public monies, which is
18 what Commissioner Aikens has alluded to and Commissioner
19 Harris mentioned earlier. It was a question of him
20 deriving benefits, which I might say, I certainly wasn't
21 here, it would have been offensive to me. I'm afraid I'd
22 come out the same place as the Commission.

23 But there were certainly a different set of
24 circumstances. It wasn't a question of him deriving public
25 monies. What happened was exactly the opposite, and I think

47 1 when I said earlier -- I didn't, if I did I didn't mean to,
2 I didn't mean to offend you, but I was having a great deal
3 of trouble understanding the logic because they are
4 certainly two very different phenomena involved here, and I
5 think we would probably agree on that.

6 We may not agree what the end result overall of it
7 may be, but there were certainly two different aspects as
8 opposed to a candidate receiving public money for a salary,
9 and someone benefiting from royalties.

10 MR. QUINN: I understand that difference. The
11 point is very simply that, that advisory opinion was
12 right in saying, you may not like it but if it's not
13 illegal we can't make it illegal.

14 COMMISSIONER MC DONALD: That's right, which I
15 don't agree with. You and I wouldn't have a difference
16 of opinion there.

17 CHAIRMAN MC GARRY: Mr. Patton.

18 MR. PATTON: To welcome Mr. Quinn here today, having
19 some knowledge of his background, he's not only a lawyer
20 but he's been in political campaigns for many years so he
21 knows something of -- should know something of what we
22 commonly call the blood, sweat and tears.

23 I think, Mr. Quinn, you're probably aware of, there
24 are many public financing bills and have been many public
25 financing bills in the hopper both in the House and Senate.

48

1 The House side under 439a -- we're getting into the
2 question of intent here -- in the 1979 Amendment said that
3 Members elected prior to January 8th, 1980 could convert
4 excess campaign funds to personal use. But for those
5 Members elected after that time, they could not do that.

6 And I guess my question is, how would you think
7 the Members of the House of Representatives or their candidates,
8 in light of that quasi-intent -- here again, it was private
9 monies as opposed to, what we have here is public monies,
10 how they would respond to the Commission's interpretation
11 if Senator McGovern could indeed get a salary, and obviously
12 I'm sure he has paid taxes on it. Prior to filing, he may
13 have to amend that for this particular matter. How do you
14 think they would respond?

15 How do you respond, on what they specifically did
16 in 1979, as to intent?

17 MR. QUINN: Well, I can't divine how Members of Congress
18 would respond to this situation.

19 MR. PATTON: I bet you have a gut feeling, though?

20 MR. QUINN: No, I genuinely don't. We do -- you're
21 quite right, Congress on at least that occasion said that
22 candidates for public office cannot personally profit from
23 contributions. Again, we are not in the public financing
24 context. But I would hope that Members of Congress would
25 agree with me that we can't render illegal in the past

2 / 0 / 0 2 5 1 3 0 6

49 1 what we didn't say was going to be illegal, and that if, if
2 this situation is one that deserves the attention of
3 Congress or the attention of this Commission, Congress
4 should act or this Commission should act, and it should do so
5 so prospectively.

6 CHAIRMAN MC GARRY: Anything further, Mr. Patton?
7 The Chair recognizes Commissioner Reiche.

8 COMMISSIONER REICHE: Very briefly, Mr. Quinn,
9 you have emphasized throughout your presentation that we
10 must be wary, primarily, of situations in which such
11 payments would be illegal for one reason or another.

12 You also, in your colloquy with Commissioner McDonald
13 with others, myself included, have referred to the fact that
14 you think we are amending either the statute or the
15 regulations.

16 As I examine Reg. 9032.9(a)(2), please note that
17 that makes reference in the definition of qualified campaign
18 expense to "expenses made in connection with his or her
19 campaign for nomination." And this is stated in the
20 conjunctive, so you've got to be able to satisfy that.

21 I mention this just by way of pointing out that
22 there's more to this discussion than trying to apply some
23 standard of law, be it federal, state, local, and saying
24 that, well, perhaps it's illegal. This, I submit to you,
25 is a matter for interpretation by the Commission.

1 That is not to suggest that our interpretations
2 will always be perfect in your eyes or anyone else's, but
3 that's what we have to grapple with, and by way of
4 supporting the statement made by Commissioner McDonald, I
5 firmly do not believe that there is a soul sitting at this
6 table who is seeking to amend either the statute or the
7 regulations.

8 To the contrary, we're trying to give an
9 interpretation based on intent as we know it, based on
10 common sense, and the law as it is given to us.

11 CHAIRMAN MC GARRY: Thank you, Mr. Reiche.

12 Commissioner Elliott.

13 COMMISSIONER ELLIORRR: Mr. Quinn, please believe
14 me, my remark is facetious and I'm not trying to make your
15 argument for you, but it just dawned on me, there were
16 quite a number of candidates who were receiving public funds
17 for salaries during the campaign. They are called Senators
18 and Presidents and any number of other things, so my remark
19 was just facetious, but there are people who are paying their
20 bills with public funds.

21 COMMISSIONER MC DONALD: Commissioners. (Inaudible.)

22 CHAIRMAN MC GARRY: Yes. Anything further?

23 MR. PATTON: Just a comment. It doesn't deserve
24 an answer but I think Mr. Quinn should be aware of it.
25 I think the Commission is sensitive to the

270 / 0251308

51 1 argument that it likes to give very broad discretion to
2 candidates, and it doesn't -- I frankly feel as though probably
3 if they had their druthers, would not like to be in this
4 position today on interpretation of what is qualified
5 campaign expenditure. But, without asking for an answer to
6 that, he should be aware of the sensitivity.

7 MR. QUINN: Well, did you guess?

8 CHAIRMAN MC GARRY: Anything further?

9 I think just about everything has been said,
10 Mr. Quinn. You have made your position rather clear.
11 I'm struck by the impression that there's just no limit to
12 what you would allow, and no cutoff, as long as it was legal
13 and I really think it's not realistic to think that the
14 regulatory process could possibly cover every possible
15 contingency.

16 Do you have any comment?

17 MR. QUINN: Yes, I appreciate that. I think
18 Commissioner Aikens really made my case when she said that
19 ten years ago the Commission considered and tried and threw
20 up its hands and gave up, and as a result it tailored
21 a very narrow definition of non-qualified campaign expense
22 and one that does not include payments of the kind at
23 issue here.

24 COMMISSIONER AIKENS: I did not say narrow, by the
25 way. I said a broad definition. We tried to encompass

270/0251309

52

1 what we thought would fit into that.

2 MR. QUINN: I mean a narrow definition of
3 non-qualified campaign expenses, and you're right, quite a
4 broad definition of qualified expenses.

5 CHAIRMAN MC GARRY: I don't want to extend it any
6 further because I think we all understand one another and
7 I don't want to break the house up in laughter, but it is a
8 serious matter but there could be a lot of contingencies that,
9 as a result of the no-limit proposition that you advanced,
10 that would really be quite ludicrous, and you really, in
11 effect -- on the basis of the argument that you advance,
12 and certainly I'm not foreclosing or prejudging, I will
13 examine everything rather carefully.

14 You did make some rather cogent points. There's
15 no question about it. It's a very difficult issue. But I
16 think the bottom line is that you really would render the
17 entire mandatory audit of candidates and their committees
18 that receive public funding a nullity, it really would be
19 meaningless and I don't think it was meant to be at all.

20 I really want to thank you for taking your time,
21 you and Ms. Curtin, and the patience. I can assure you that
22 it's something that we don't do frivolously or
23 contemptuously or without a high regard for everyone and
24 everything in the process.

25 We have given it a great deal of thought and

53 1 deliberation, and I personally think it's been very helpful
2 to hear from you. There may be many points that I can't
3 agree with you on. There are some that I think were rather
4 meaningful and cogent, but I think the exchange was fruitful.

5 So, the way we will close this matter out,
6 Mr. Quinn, is to -- the Chair wants to allow you a
7 reasonable period within which to submit any additional
8 written information you care, that you feel is relevant,
9 and I think you and I discussed immediately prior to the
10 opening of this hearing, a date of the close of business,
11 May 10th, 1985.

12 Do you still feel that would be a reasonable time?

13 MR. QUINN: Yes, that's fine.

14 CHAIRMAN MC GARRY: So, if there's no objection from
15 my colleagues, the Chair would like to allow until the close
16 of business May 10th, 1985, a period within which former
17 Senator McGovern or the Committee, or you of course, would
18 have within which to submit any additional materials you
19 feel are relevant, and after that the Commission will take
20 any and all documentation in this case.

21 We will have the benefit of this transcript of this
22 oral presentation, and on the basis of everything that has
23 transpired, including what took place here this morning,
24 we will have further deliberations and considerations and
25 at the conclusion of that we will either affirm or modify

54 1 our determination, our final repayment determination which
2 has been made.

3 So, if there's nothing further, that would seem
4 to conclude our business for today. Once again, thank you
5 very much.

6 (Whereupon, the hearing in the above-entitled
7 matter was adjourned at 11:25 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

270 / 0251312



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

CERTIFICATION

I, Mary W. Dove, Administrative Assistant to the Federal Election Commission, do hereby certify that the preceding 56-page transcript discloses the identity of each speaker and is adequate to record fully the Commission's proceedings with respect to the Oral Presentation by the Friends of George McGovern on April 24, 1985.

Attest:

5-9-85

Date

Mary W. Dove

Mary W. Dove
Administrative Assistant

2 / 0 / 0 2 5 1 3 1 3

C E R T I F I C A T E

This is to certify that the attached proceedings
before the Federal Election Commission
(Name of Agency)

in the matter of: Federal Election Commission Special Open
Session, Oral Presentation

Place: Washington, D.C.

Date: April 24, 1985

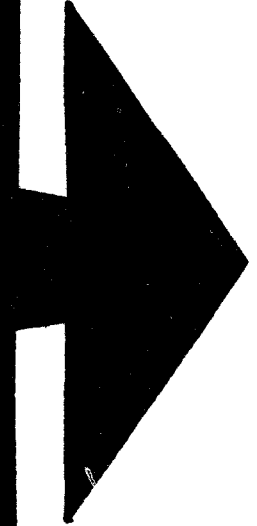
were held as herein appears, and this is the original transcript
thereof for the file of the Department or Commission.

Andrew B. Hait

S K S GROUP, LTD.
Official Reporter

270 / 251314

2 / 0 / 0 2 5 1 3 1 5





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 3, 1986

MEMORANDUM

TO: FRED EILAND
PRESS OFFICER

FROM: ROBERT J. COSTA *RJC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF ADDENDUM TO THE FINAL
AUDIT REPORT - FRIENDS OF GEORGE MCGOVERN

Attached please find the Addendum to the Final Audit Report on Friends of George McGovern which was approved by the Commission on February 19, 1986.

Informational copies of the report have been received by all parties involved and the Addendum may be released to the public.

Attachment as stated

CC: FEC Library
RAD
Public Record
Office of General Counsel

3 3 1 7 0 1 3 4 0



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

ADDENDUM TO THE
FINAL REPORT OF THE AUDIT DIVISION
ON
FRIENDS OF GEORGE MCGOVERN

I. Background

A. Overview

On February 11, 1985, the Federal Election Commission ("the Commission") released the final audit report on Friends of George McGovern ("the Committee"). That report was based on an audit of the Committee conducted pursuant to 26 U.S.C. § 9038(a) and included the Commission's initial determination regarding repayment to the U.S. Treasury. The audit covered the period September 13, 1983 through July 26, 1984.

The final audit report, Finding III.A. addressed the Commission's initial determination that the Committee made disbursements totaling \$92,642.79 for non-qualified campaign expenses: \$15,125.11 for disbursements related to the National Democratic Nominating Convention; \$27,517.68 for undocumented disbursements; and \$50,000 for salary payments to the Candidate. The Commission determined that the pro-rata portion, \$25,104.99 is repayable to the U.S. Treasury.

On June 13, 1985, the Commission made a final determination reaffirming its initial determination. A Statement of Reasons in support of the Commission's final determination was issued as required by 11 C.F.R. § 9038.2(c)(4). On July 10, 1985, a check in the amount of \$25,104.99 was received from the Committee.

This addendum is based on the follow-up fieldwork of the Committee conducted pursuant to 11 C.F.R. § 9038.1(b)(3) which states that the Commission staff may conduct additional fieldwork after completion of the fieldwork conducted pursuant to paragraph (b)(1) and (2) of this section.

In addition, 11 C.F.R. § 9038.1(e)(4) states, in part, that addenda to the audit report may be issued from time to time as circumstances warrant and additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under paragraph (b)(3) of this section.

8 9 0 7 0 1 5 8 4 1

The follow-up fieldwork covered the period July 27, 1984 through April 30, 1985, the last day covered by the most recent report filed with the Commission at the time of the follow-up fieldwork.

This addendum is based upon documents and working papers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the addendum and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The Treasurers of the Committee during the period reviewed were:

Ms. Paula M. Kowalczyk 7/27/84 - 1/14/85

Ms. Mary T. Curtin 1/14/85 - 4/30/85

C. Scope

The fieldwork included an examination of required supporting documentation for receipts and disbursements, analysis of Committee debts and obligations (including winding down costs) and such other procedures as deemed necessary under the circumstances to determine whether the Committee received any matching fund payments in excess of the amount to which it was entitled and whether any amount of any payment made from the matching payment account was used for any purpose other than to defray the qualified campaign expenses of the Committee.

II. Findings and Recommendations

A. Determination of Net Outstanding Campaign Obligations (NOCO)

Section 9034.5(a) of Title 11, Code of Federal Regulations requires that the candidate submit a Statement of Net Outstanding Campaign Obligations ("NOCO") which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

Further, 11 C.F.R. § 9034.5(d) requires that a candidate submit a revised Statement of Net Outstanding Campaign Obligations with each submission for matching funds payments filed after the candidate's date of ineligibility, reflecting the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds.

3307015842

Section 9038(b)(1) of Title 26, United States Code states that if the Commission determines that any portion of payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

Finding III.B. of the final audit report addressed the Committee's financial position with respect to the Candidate's entitlement to the receipt of matching funds. The Audit staff verified the Committee's June 15, 1984 NOCO and determined that the Committee had net outstanding campaign obligations of \$68,467.77 on that date.

An addendum to the final audit report (forwarded to the Committee on September 25, 1985) contained the results of the Audit staff's review of the Committee's financial activity through April 30, 1985, and contained an update of the Committee's June 15, 1984, NOCO statement using actual expenses paid in lieu of the estimated winding down costs presented in the final audit report.

In response to that Addendum, the Committee submitted additional documentation which resulted in changes to the amounts contained in the NOCO statement and the Apparent Non-Qualified Campaign Expenses presented at Finding II.B. Specifically, the Committee submitted documentation for additional winding down costs beyond April 30, 1985 as well as adequate support for a disbursement which was previously undocumented.

In addition, disclosure reports were reviewed through October 31, 1985 to determine whether the Committee reported any disbursements which could be includable as additional winding down costs.

An amended NOCO statement reflecting the changes noted above appears below.

3307015845

Friends of George McGovern
Statement of Net Outstanding Campaign Obligations
as of June 15, 1984
(Prepared by Audit staff)

Assets

Cash in Bank	(\$ 5,899.08)	
Accounts Receivable	64,610.65 <u>a/</u>	
Non-qualified campaign expenses 3/16-6/15/84	<u>29,387.39</u> <u>b/</u>	
Total Assets		\$ 88,098.96

Liabilities

Accounts Payable for Qualified Campaign Expenses	\$85,250.24 <u>c/</u>	
Winding Down Costs 6/16/84-10/31/85 (Salaries, Overhead, Supplies, Legal Fees, etc.)	55,911.18 <u>d/</u>	
Fundraising Expenses through 9/11/84	<u>33,815.97</u> <u>e/</u>	
Total Liabilities		<u>(174,977.39)</u>
Net Outstanding Campaign Obligations-Deficit		(86,878.43)

a/ This amount is comprised of a \$48,269.00 matching fund certification of 7/6/84, offsets to operating expenditures totaling \$16,187.34 and interest of \$154.31.

b/ This amount is included to ensure that only the amount of post-ineligibility qualified campaign expenses is used to calculate the candidate's remaining entitlement to matching funds.

c/ This amount does not include \$18,020.35 in non-qualified campaign expenses paid by the Committee from 6/16 - 9/11/84. A pro-rata repayment is requested for the amount paid from 7/27 - 9/11/84. (see Finding II.B.) The Commission's Statement of Reasons requested repayment for the amount paid from 6/16 - 7/26/84.

d/ This amount does not contain any estimate for post 10/31/85 winding down costs. Any estimate provided by the Committee will be considered in the calculation of the Candidate's remaining entitlement.

e/ The Committee made fundraising disbursements totaling \$23,979.69 after 9/11/84. However, these were not included as winding down costs because the incurrence of these costs was not necessary to satisfy debts for qualified campaign expenses.

1307013844

Our review of the Committee's deposits indicated that for the period June 16 through August 7, 1984 the Committee received \$50,044.23 in contributions from individuals and interest income. After applying the 8/7/84 matching fund payment of \$16,699.01, and the individual contributions and interest noted above, the Committee had a remaining entitlement of \$20,135.19. In addition, for the period August 8, through September 11, 1984 (the date of receipt of the matching fund payment certified on September 6, 1984) the Committee received \$17,917.97 in contributions from individuals and interest income. Therefore, it appears that the Candidate had entitlement to matching funds of only \$2,217.22 of the \$24,960.08 payment received on September 11, 1984 and had no entitlement to matching fund payments received subsequent to September 11, 1985.

The amount of matching fund payments in excess of the amounts to which the Committee was entitled are:

<u>Date Paid</u>	<u>Amount in Excess Entitlement</u>
September 11, 1984	\$22,742.86 ^{1/}
October 9, 1984	8,665.00
November 2, 1984	3,722.99
December 11, 1984	<u>5,310.00</u>
Total	<u>\$40,440.85</u>

Based on our review of the Committee's financial activity through October 31, 1985, it is the opinion of the Audit staff that the Committee received \$40,440.85 in matching fund payments in excess of the amount to which it was entitled.

Conclusion

On February 19, 1986, the Commission made an initial determination that \$40,440.85 be repaid to the U.S. Treasury within 90 calendar days of receipt of this addendum in accordance with 11 C.F.R. § 9038.2(d)(1).

B. Apparent Non-Qualified Campaign Expenses

Section 9038(b)(2)(A) of Title 26, United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made, it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

^{1/} This is the amount received (\$24,960.08) minus the amount to which the Committee was entitled (\$2,217.22).

The Commission, in a Notice of Proposed Rulemaking published in the Federal Register on June 28, 1984, set forth a pro-rata formula which would base repayments for non-qualified campaign expenses on the proportion of federal funds to total funds received by the candidate. The text of the regulation and the Explanation and Justification were published in the Federal Register on August 22, 1984 and transmitted to Congress. On March 5, 1985 revised regulations were resubmitted for publication. The proposed regulations were before the Congress for 30 legislative days as of May 20, 1985, and approved by the Commission for publication in final form on June 11, 1985.

The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

$$\frac{\text{Total Matching Funds Certified Through Date of Ineligibility (3/15/84)}^{2/}}{\text{Numerator + Private Contributions Received Through 3/15/84}}$$

$$\frac{\$ \quad 209,337.38}{(\$209,337.38 + \$563,161.69)} = .270987$$

Thus, the repayment ratio for non-qualified campaign expenses is 27.0987%.

Section 9032(9) of Title 26, United States Code defines a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election and neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid (emphasis added).

Section 9033.11(a) of Title 11, Code of Federal Regulations states that each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 C.F.R. § 9032.9.

In addition, the Commission's Regulations under 11 C.F.R. § 9033.11(b) contain the documentation requirements regarding qualified campaign expenses.

^{2/} On March 23, 1984, the Commission determined that the date of ineligibility under 11 C.F.R. § 9033.5(a) for Senator George McGovern was March 15, 1984.

9 3 0 7 0 1 3 8 4 2

A review of the Committee's disbursements made from July 27, 1984 through September 11, 1984 disclosed that the Committee made \$6,934.61 in additional disbursements for convention-related expenses. In addition, adequate supporting documentation was not present in the Committee's records for \$2,612.54 in disbursements made during the period.

As noted above, the Committee's response to the September 25, 1985 Addendum included documentation to support one disbursement for \$1,500.00 which was previously undocumented. No documentation was presented concerning the convention-related expenses or to support the remaining undocumented disbursement of \$1,112.54. 3/

Conclusion

On February 19, 1986, the Commission made an initial determination that the amount, \$6,934.61 of convention-related disbursements and \$1,112.54 of undocumented disbursements, be viewed as non-qualified campaign expenses and the pro-rata portion, \$2,180.67 ($\$6,934.61 + \$1,112.54 \times .270987$) be repaid to the U.S. Treasury within 90 calendar days of receipt of this addendum in accordance with 11 C.F.R. § 9038.2(d)(1).

3/ The Committee maintained only a cancelled check. No additional information was made available to document the disbursement, and thus establish whether the disbursement was made "in connection with" the Candidate's campaign for nomination.

3 3 7 0 1 3 8 4 7

The image shows a black document separator with two white vertical bars. On the left bar, there is a white arrow pointing left with a small hole at its tip. On the right bar, there is a white arrow pointing right. In the center, a white rectangular label contains the text "FEC DOCUMENT SEPARATOR".

FEC
DOCUMENT
SEPARATOR