



THE FEDERAL ELECTION COMMISSION

RECORD

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

Volume 8, Number 1

January 1982

REPORTS

YEAR-END REPORT DUE

All political committees currently registered with the Commission must file a year-end report by January 31, 1982, regardless of their level of financial activity or whether they supported candidates in the 1981 special elections. (This requirement applies, for example, to all registered committees with outstanding debts from former campaigns.)

The year-end report must include all reportable transactions occurring since the last full report filed or (if the committee is new) from the date of registration through December 31, 1981. Complete reports must also include appropriate schedules (e.g., Schedule A for itemized receipts, Schedule B for itemized disbursements, Schedule C for outstanding loans and Schedule D for outstanding debts and obligations).

Note: Monthly filers must file a year-end report covering activity from the last monthly report through December 31, 1981. For example, if a committee filed a November monthly report, the year-end report would cover all activity from December 1 through December 31, 1981.

Committees that do not intend to receive contributions or make expenditures, and that have no outstanding debts, may be eligible to terminate. For details on termination, see the "800 Line," p. 3 of the May 1981 Record, or contact the Office of Public Communications (see below).

Forms and additional information will be sent to all registered committees. Questions and requests for forms should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4068 or toll free 800/424-9530.

SPENDING LIMITS FOR PARTY COMMITTEES IN CONNECTICUT SPECIAL ELECTION

National and state party committees may make limited, coordinated expenditures on behalf of their Congressional candidates in the Connecticut special general election, which will be held on January 12. 2 U.S.C. §441a(d). The national committee of a party may make expenditures of up to \$18,320 in support of its candidate. In addition, the candidate's state party committee, together with any subordinate party committees (e.g., county, district and local), may make combined coordinated party expenditures that are subject to a **single** limit of \$18,320.

The limit on party spending for candidates for the U.S. House of Representatives is equal to \$10,000, plus the 1981 increase in the Consumer Price Index (CPI). 2 U.S.C. §§441a(c) and (d)(3)(B). Since the annual CPI figures for 1981 will not be available before the Connecticut special general election, the Commission has calculated an \$18,320 limit based on the CPI for the first ten months of 1981. The Commission will issue an additional notice when it receives the annual CPI increase certified by the Secretary of Labor.

Special coordinated party expenditures count neither as contributions to a candidate nor as

continued

expenditures by the candidate or the candidate's authorized committees. The expenditures must, however, be reported; the party committee discloses them on Schedule F, FEC Form 3X. The FEC has sent informational notices to party committees in Connecticut. For further information, contact the Commission at 202/523-4068 or toll-free 800/424-9530.

OPINIONS

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1981-34: Funds Transferred from Membership Organization's Legislative Fund to its Separate Segregated Fund

The National Association of Retired Federal Employees (NARFE), an incorporated membership organization, may transfer funds from a special legislative fund established to oppose the merger of the social security and federal retirement systems (the Anti-Merger Fund) to its separate segregated fund, provided NARFE remedies the deficient notice it used when it originally solicited donations to

the Anti-Merger Fund. The transfer is possible because the Anti-Merger Fund has been maintained in a separate bank account, distinct from NARFE's general treasury, and because those solicited for the Anti-Merger Fund were members of NARFE, eligible to be solicited for contributions to a separate segregated fund.

Under the Act, when an incorporated membership organization solicits contributions to its separate segregated fund, it must notify its solicited members of the fund's political purposes and of their right to refuse to contribute without reprisal. 2 U.S.C. §§441b(b)(3)(B) and (C); 11 CFR 114.5(a). The solicitation NARFE made to the Anti-Merger Fund only partially complied with the Act's requirements. The solicitation letter stated that donations were entirely voluntary. However, the NARFE solicitation letter failed to provide explicit notice that the funds were being solicited for "political purposes" (as defined by the Act), i.e., to support federal candidates.

In order to transfer donations from the Anti-Merger Fund to the separate segregated fund, therefore, NARFE must remedy this solicitation deficiency by mailing a letter to those members who contributed to the Anti-Merger Fund. The letter must include a return envelope with prepaid postage and a form on which the donor may easily disapprove, in writing, the transfer of the unspent portion of his/her donation to NARFE's separate segregated fund. Transfers may be made only:

1. After a reasonable time has passed (e.g., a period of time equal to the time allotted for receipt of the donations to the Anti-Merger Fund and at least 90 days from the date of the mailing); and
2. If the balance remaining in the Anti-Merger Fund is equal to the total amount of unspent donations that were disapproved for transfer. Donations transferred are subject to the Act's re-

The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: John Warren McGarry, Chairman; Frank P. Reiche, Vice Chairman; Joan D. Aikens; Thomas E. Harris; Vernon W. Thomson; Robert O. Tiernan; William F. Hildenbrand, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

porting requirements and its limits and restrictions on contributions. (Date issued: December 9, 1981; Length: 7 pages)

AO 1981-36: PAC Established by Trade Association with Foreign National Members

The Japan Business Association of Southern California (JBA) is an incorporated trade association whose membership includes foreign nationals and domestic corporations wholly or partially owned by Japanese business corporations. Because it is not a foreign national, JBA may contribute its general corporate funds to its proposed political fund, the Japan Business Association Political Action Committee (JBAPAC). JBAPAC will support only state and local candidates.

Although JBA's membership includes foreign nationals, JBA is not a foreign national because it is a domestic corporation with its principal place of business in California. 2 U.S.C. §441e; 22 U.S.C. §661(b). To ensure, however, that JBAPAC does not **indirectly** make contributions on behalf of any foreign national, no foreign nationals may direct or dictate JBAPAC decisions. This means, for example, that no foreign national may serve in a decision-making role for JBAPAC.

The Commission expressed no opinion on relevant state laws or regulations of the Fair Political Practices Commission. Commissioner Thomas E. Harris filed a dissenting opinion with which Commissioner Robert O. Tiernan concurred. (Date issued: December 9, 1981; Length: 5 pages, including dissenting opinion)

AO 1981-41: Trade Association's Methods for Obtaining PAC Solicitation Approvals from Member Corporations

The International Association of Amusement Parks and Attractions (IAAPA), a trade association, may undertake three activities designed to obtain approvals from member corporations for solicitations to IAAPA's separate segregated fund (the PAC). Under the Act and Commission Regulations, a trade association must obtain written approval from each member corporation **before** soliciting that corporation's solicitable personnel.

2 U.S.C. §441b(b)(4)(D) and 11 CFR 114.8(d). In order to obtain the written approvals, IAAPA may conduct the following activities in conjunction with its annual convention, **as long as the activities do not involve soliciting contributions to IAAPA's PAC:**

1. Prior to the convention, IAAPA may publish an article in its news magazine inviting member corporations to approve solicitations by IAAPA, provided the article contains only general information about the PAC and does not encourage contributions to support the PAC or tell readers to contribute to it. The article may mention that a booth will be set up at the convention expressly for the purpose of obtaining corporate member approvals for solicitation of their solicitable personnel. The article may also include a clip-out form to be used by corporate members for approving solicitations, as long as the form contains the explicit information required by Section 114.8 of FEC Regulations.
2. IAAPA may set up a booth at the convention to obtain corporate solicitation approvals, provided the IAAPA representative does not solicit PAC contributions from nonsolicitable individuals. This means that the representative may hand out to anyone a pamphlet that meets the same standards established for the newsletter article (discussed above); under these conditions, the pamphlet would not be considered a solicitation for contributions to the PAC. If, however, the pamphlet does not meet these qualifications, and thus is a solicitation, the representative may distribute it only to individuals who may be solicited by IAAPA and its PAC.
3. An IAAPA representative may make a five-minute presentation on the PAC at a convention meeting, provided the representative does not encourage support of the PAC or tell listeners how to contribute to the PAC. The representative may not invite listeners to pick up a brochure at the booth if the brochure solicits contributions to the PAC. The representative may, however, invite officers of IAAPA's corporate members to visit the booth to give their approval to solicitations by the PAC.

Commissioner Thomas E. Harris filed a dissenting opinion. (Date issued: November 17, 1981; Length: 7 pages, including dissenting opinion)

AO 1981-46: Exchange of Mailing Lists Between Candidate Committee and Other Political Committees and Organizations

The Committee for Congressman Ronald V. Dellums (the Committee) may exchange contributor lists of corresponding value with other political committees, individuals, organizations and corporations. The advisory opinion request indicated that, in the fundraising industry, a list of names an organization provides in exchange for names it acquires is considered an acceptable form of payment (i.e., a "usual and normal" service charge) as long as the names exchanged are of equal value. 11 CFR 100.7(a)(1)(iii)(B). In this case, therefore, the exchange of names of equal value between the Committee and another political committee (including a state or local party organization), a nonprofit organization, a corporation or an individual would not result in a contribution to the Committee. Accordingly, the value of names provided to the Committee would not be subject to the Act's limits and prohibitions on contributions. Nor would the exchange have to be reported. Similarly, costs incurred by the owner of the list to produce the names for the Committee would not result in a contribution to the Committee because, in the fundraising industry, such costs are customarily included in the fee for a list.

Committee acceptance of contributor names in exchange for a future use of the Committee's mailing list is also permissible, provided the names are of equal value and the future use of names actually occurs.

The Commission did not express an opinion on the application of state or local laws to the exchange of mailing lists between the Committee and unregistered state or local committees. (Date issued: November 16, 1981; Length: 5 pages)

AO 1981-48: Recordkeeping Requirements for Party's Bingo Fundraisers

If the Muskegon County Republican Party of Muskegon, Michigan (the Party) uses proceeds of its bingo fundraisers for federal election activity, the Party must follow the Act's recordkeeping procedures for contributions of less than \$50 if the Party qualifies as a political committee under the Act. (See 2 U.S.C. §431(4)(C).)

As a registered committee, the Party would be required to keep records of the proceeds from the bingo games. The Commission recommends one of the following accounting methods for keeping records of a large number of small contributions (i.e., less than \$50).

1. The Party may keep the same records for contributions under \$50 that it must keep for contributions of \$50 or more, i.e., the name and address of each contributor and the date and amount of the contribution. If the Party uses this method, or otherwise retains information on the names of contributors, it should also track the amount donated by each contributor on a calendar-year basis in order to comply with the requirements for recording aggregated contributions. 11 CFR 102.9(a)(2).
2. Alternatively, the Party may record the name of the fundraising event, the dates the contributions were received for the event, and the total amount of contributions received on each day for the event. (Date issued: December 7, 1981; Length: 3 pages)

ADVISORY OPINION REQUESTS

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

AOR	Subject	Date Made Public	Pages
1981-52	Trade association solicitation of unincorporated trust members.	11/18/81	3
1981-53	Campaign committee's sale of its computer mailing lists.	11/18/81	4
1981-54	PAC established by partnership of subsidiaries of two corporations.	12/2/81	2

AOR	Subject	Date Made Public	Pages
1981-55	Members of membership organization solicited by PAC of affiliated membership organization.	12/9/81	8

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST

- AOR 1981-47 (union payroll deduction plan facilitating earmarked contributions) was withdrawn by its requester on November 17, 1981.

LEGISLATION

FEC TESTIFIES ON AMENDMENTS TO FECA

On November 20, 1981, FEC Chairman John Warren McGarry testified before the Senate's Committee on Rules and Administration on proposals to amend the Federal Election Campaign Act. He was accompanied by Commissioner Joan D. Aikens. In his testimony, Chairman McGarry stated that the Commission welcomed the Committee's examination of its operations. Noting the need for a strong independent regulatory agency to administer the election law, Chairman McGarry said that "...disclosure and other campaign finance requirements would be of little value if not meaningfully enforced. Absence of effective enforcement was one reason why prior disclosure laws were largely ignored." Mr. McGarry added that "the FEC's monitoring procedures, technical assistance and enforcement actions have all worked to ensure that candidates and committees file timely and complete reports and comply with statutory campaign finance requirements." As a result, "the details of political campaigns have been disclosed to the public to a greater extent than ever before."

The Chairman noted that a number of the legislative changes recommended by Senator Arlen Specter (R-PA) in his bill (S. 1899) and by Senator Charles Mathias (R-MD), Committee Chairman, in his bill (S. 1851) had been suggested by the Commission in previous annual reports to the Congress. The FEC took note of proposed amendments that would:

- Relieve burdensome reporting requirements;
- Modify current limits on contributions and expenditures, e.g., increase dollar limits on contributions;
- Ensure that the Act covers contributions and expenditures made by draft committees;
- Provide a single point of entry for filing all reports required under the Act;
- Revise the Commission's duties and powers, e.g., bring into conformity the judicial review provisions of Titles 2 and 26;
- Shorten the period for Congressional review of the FEC's proposed regulations from 30 to 15 days;
- Clarify which entities must register and report as political committees under the Act; and
- Revise the Presidential public funding program, e.g., remove the state-by-state spending limits for Presidential primary matching fund recipients, yet preserve the overall spending limit.

Chairman McGarry pointed out, however, that, while the Commission has and will continue to recommend changes in the law, it is "bound to enforce the law as it is written" until legislative changes are made.

PUBLIC APPEARANCES

Date	Sponsoring Organization
1/22	The League of Women Voters of Texas Election Laws and Practices Conference Austin, Texas Chairman John Warren McGarry

THE LAW IN THE COURTS

SUPREME COURT REVERSES APPEALS COURT IN FEC v. DSCC

On November 10, 1981, the Supreme Court issued an opinion reversing a decision by the U.S. Court of Appeals for the District of Columbia Circuit in the consolidated cases of FEC v. Democratic Senatorial Campaign Committee (DSCC) and National Republican Senatorial Committee (NRSC) v. DSCC (Civil Action Nos. 80-939 and 80-1129). The Court's opinion upheld the FEC's dismissal of a complaint that the DSCC had filed against the NRSC in May 1980. In reversing the appeals court's decision, the Court affirmed an earlier decision by the U.S. District Court for the District of Columbia, which held that the Commission's dismissal of DSCC's complaint had not been contrary to law.

In its complaint, DSCC had alleged that NRSC, acting as an agent for certain state Republican Party committees, had made special "coordinated" expenditures on behalf of Senate candidates, in violation of the Act. 2 U.S.C. §441a(d)(3). In dismissing the complaint, the Commission had relied on its consistent construction of 2 U.S.C. §441a(d)(3), i.e., that Congress had not intended to prohibit the type of intraparty arrangements used by the Republican Party committees.

The Supreme Court's opinion affirmed the Commission's construction of §441a(d)(3) as a "sufficiently reasonable" one. The Court found that the district court had been "correct" in according deference to the Commission's interpretation.* The Court held that "Section 441a(d)(3) does not expressly or by necessary implication foreclose the use of agency arrangements, such as are at issue here, and the FEC thus acted within the authority invested in it by Congress when it determined to permit such agreements...."

While §441a(d)(3) does not authorize the NRSC to make expenditures in its own right,

* Moreover, the Court did not take issue with the fact that the FEC's dismissal of the complaint was based solely on the General Counsel's Report.

it does not follow that it may not act as agent of a Committee that is expressly authorized to make expenditures." The Court further held that "the FEC's view that the agency agreements were logically consistent with §441a(4) -- which authorizes the transfer of funds among national, state, and local committees of the same party -- is acceptable." (For a detailed summary of the suits, see page 2 of the August 1981 Record.)

ARCHIE E. BROWN v. FEC

On November 20, 1981, the U. S. Court of Appeals for the District of Columbia Circuit issued a judgment affirming an earlier decision by the district court in Archie E. Brown v. FEC (Civil Action No. 80-2108). The district court's decision had upheld the FEC's dismissal of the complaint plaintiff had filed against the International Brotherhood of Teamsters, Chauffeurs, and Warehousemen and Helpers of America (the Teamsters). In his complaint, plaintiff alleged that Local 745 of the Teamsters had violated 2 U.S.C. §441b(b)(3)(A) by attempting to coerce him to contribute to DRIVE (the Democratic Republican Independent Voter Education), the separate segregated fund of the Teamsters. Plaintiff alleged that he was subsequently denied membership in Local 745 because he had refused to contribute to, or join, DRIVE. Plaintiff claimed that the FEC's dismissal of his complaint was contrary to law.

In upholding the FEC's determination, the district court said that the General Counsel's Report to the Commission indicated that "...plaintiff's membership in Local 745 was denied because his union dues were unpaid, not because he refused to contribute to DRIVE." Moreover, the district court held that the General Counsel's Report, by itself, was a sufficient record for the court's review of the Commission's determination in the complaint. In appealing the district court's decision, plaintiff contended, however, that the General Counsel's Report alone, without a separate statement of the Commission's reasons for dismissing the complaint, afforded "...an inadequate basis for informed judicial review."

In its Memorandum affirming the district court's decision, the appeals court found no merit in plaintiff's assertion. The appeals court cited the Supreme Court's decision in FEC v. Democratic Senatorial Campaign Commission (see above), which held that the

General Counsel's Report constituted sufficient grounds to dismiss an administrative complaint -- even if the Report were not expressly adopted by the Commission. The appeals court concluded that the General Counsel's Report to the Commission recommending dismissal of Brown's complaint was sufficiently reasonable, "...particularly when considered in the context of the large discretion the Commission has to determine whether or not a civil violation of the Act has occurred."

NATIONAL RIGHT TO WORK COMMITTEE v. FEC

On November 13, 1981, the U.S. Court of Appeals for the District of Columbia Circuit, sitting *en banc*, denied the FEC's suggestion for a rehearing of National Right to Work Committee, Inc. (NRWC) v. FEC (Civil Action No. 80-1487). Five of the ten judges on the appeals court panel had voted to grant the Commission's petition. The Commission's petition sought review of a September 4 ruling by a three-judge panel of the appeals court, which had reversed an earlier ruling of the U.S. District Court for the District of Columbia. In its ruling, the original appeals court panel had found that the term "member," as used in Section 441b(b)(4)(C) of the election law embraced "...at least those individuals whom NRWC [a nonprofit corporation without capital stock] describe[d] as its active and supporting members...."i.e., "...those individuals solicited by NRWC for contributions to its separate segregated fund."

On December 15, the Commission voted to petition the Supreme Court for a writ of certiorari. For a detailed summary of the suit, see page 3 of the November 1981 Record.

COMPLIANCE

FEC PUBLISHES NAMES OF PRESIDENTIAL NONFILERS

On November 2, 1981, as required by law, the Commission published the names of four authorized Presidential committees that had failed to file their third quarterly report by October 15, 1981. One of the committees,

authorized by a 1976 Presidential candidate, had failed to report activity for its 1976 Presidential campaign. The other three had failed to file reports relating to the 1980 elections. (Under the election law, a candidate's authorized campaign committee may terminate only when its debts and obligations have been extinguished and when the debts of its affiliated authorized committees have also been extinguished. 11 CFR 102.3.)

During the 1981 nonelection year, authorized committees of Presidential candidates have the option of reporting on a monthly or quarterly basis. The four committees cited by the Commission chose the quarterly reporting option, but then failed to file the third quarterly report on time.

AUDITS

AUDITS RELEASED TO THE PUBLIC

The following is a chronological listing of audits released by the Commission between November 10 and December 11, 1981. Final audit reports are available to the general public through the Office of Public Records.

Audit	Date Made Public
1. The Citizens Party	11/10/81
2. Maine Democratic State Committee	11/16/81
3. League of Conservation Voters Campaign Fund	11/25/81
4. California Republican Victory Fund	12/4/81
5. The Reagan Bush Committee, the Reagan Bush Compliance Fund and the Democrats for Reagan (Final Audit Report of the General Election Campaign)	12/11/81

FEDERAL REGISTER NOTICES

The item below identifies an FEC document that appeared in the Federal Register on December 9, 1981. Copies of this notice are not available from the FEC.

Notice	Title	Date	Citation
1981-12	Rulemaking Petition: Notice of Availability (re: revising FEC Regulations on independent expenditures)	12/9/81	46 Fed. <u>Reg.</u> 60273

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