FEDERAL ELECTION COMMISSION

RECORD

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INFORMATION

INDIVIDUALS WILL HAVE DIRECT COMPUTER ACCESS TO FEC DATA

On September 2, 1985, the Commission will inaugurate a service that provides individuals with direct computer access to the FEC's campaign finance data base.* The service will be offered as an extension of the agency's Freedom of Information Act (FOIA) process, with costs based on amount of usage. Parties interested in the service should contact the agency's Freedom of Information Office by calling 202/523-4065, or 800/424-9530.

FEC campaign finance information pertaining to the 1983-84 and 1985-86 election cycles will be available to users of the service in two formats: computer indexes and raw data.

Computer Indexes

Users will be able to obtain, through their personal computers, a series of FEC computer indexes on: political committees registered with the FEC; records relating to an individual candidate (e.g., total receipts and disbursements); each political committee, including its total receipts and disbursements; political committee support, including, among other things, total contributions made by each committee to a candidate and funds the committee spent independently for or against the candidate; and individuals who made contributions of $500 or more. Using their printers, individuals will be able to receive paper printouts of these indexes.

Raw Data

Users with a personal computer and modem can have direct, on-line access to FEC campaign finance information, which they can store on a floppy diskette or hard disk for later use. This data will not include the headings and formats used for standard FEC indexes. (See above.) Raw data will be available on: 1) federal candidates and committees and 2) funds spent by political committees for and against federal candidates. The Commission will make available additional categories of information, as they are developed.

During 1984, the FEC began a program that currently provides eight state elections offices with direct computer access to FEC campaign finance data. Later in 1985, five more state offices are expected to join the network.

OPINIONS

AO 1985-18: Nonfederal PAC's Conversion to Federal PAC

The Automobile Club of Michigan Political Action Committee (ACPAC) has operated as a state political fund (supporting only state and local candidates) since its establishment in 1981 by the Automobile Club of Michigan (the Club), a membership organization. ACPAC may now convert to a federal committee (i.e., a separate segregated fund) with a combined federal/state account and use donations received before its conversion for federal election activities, provided it complies with the requirements below.

Registration and Reporting

No later than 10 days after it decides to become a federal committee, ACPAC's treasurer

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must file a Statement of Organization (FEC Form 1) with the FEC. 2 U.S.C. §§432 and 433; 11 CFR 102.1(c) and 102.2. As a newly registered separate segregated fund, ACPAC must also file periodic reports of its receipts and disbursements, as required by the Act and FEC Regulations. See 2 U.S.C. §434 and 11 CFR 104.5.

Operating as a Federal Committee

As a separate segregated fund with a combined federal/state account, ACPAC must:

- o Accept only those contributions permissible under the election law; and
- o Solicit funds in compliance with FEC Regulations (including those rules restricting solicitations by a membership organization to its solicitable class). See 2 U.S.C. §§441a and 441b; 11 CFR 102.5(a) and (a)(2) and Part 114.

Using Donations Received Before Becoming a Federal Committee

As a newly registered separate segregated fund, ACPAC may use its cash on hand (i.e., those funds most recently donated to ACPAC before its conversion) if the funds comply with the Act's requirements. The donations were originally made for political purposes in amounts not exceeding $260 per year. Solicitations had been made only to the members of the Automobile Club of Michigan, the parent organization. ACPAC must report the cash on hand.

Notice to Members

ACPAC must also notify donors (i.e., members of the Club) that their donations will be used to support federal candidates and offer them the opportunity to request refunds of their unspent donations for state election activity. Moreover, since ACPAC plans to solicit additional contributions to its new, combined federal/state account, the notice must inform members that all contributions are voluntary and that the amount of a contribution will not affect the donor's membership or employment status. See 11 CFR 102.5(a)(2) and 114.5(a). Commissioner Thomas E. Harris filed a dissenting opinion. Commissioner Frank P. Reiche filed a concurring opinion. (Date issued: July 16, 1985; Length: 7 pages, including dissent and concurrence)

ADVISORY OPINION REQUESTS

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

AOR	Subject
1985-23	PAC established by corporation wholly owned by partnership with government contract. (Date made public: July 12, 1985; Length: 3 pages)
1985-24	PAC established by unincorporated sports league. (Date made public: August 5, 1985; Length: 4 pages)

FEC CLEARINGHOUSE PANELS MEET IN WASHINGTON

On August 5 and 6, 1985, two panels of the FEC's National Clearinghouse on Election Administration met in Washington: the Clearinghouse's Advisory Panel and its Advisory Committee on Voting Systems Standards. (Composed of state and local election officials, the panels have some of the same members.)

In joint sessions held during the two-day meeting, the panels' members discussed several topics:

- o The Clearinghouse's current and projected activities.
- o The FEC's computer access program, which currently provides eight states with direct computer access to FEC campaign finance information. (For more information on the program, see page 6 of the April 1985 Record.)
- o FEC campaign finance workshops.
- o The Voting Systems Standards Project mandated by Congress. Reports were presented on an on-going, three-part study to develop mandatory standards for voting equipment.
- o The Voter Accessibility for the Elderly and Handicapped Act (Pub. L. 98-435). Discussion focused on implementing the Act, which stipulates that registration and polling places for federal elections must be accessible to handicapped and elderly individuals.
- o Use of postal change-of-address forms for voter registration.

The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: John Warren McGarry, Chairman; Joan D. Aikens, Vice Chairman; Lee Ann Elliott; Danny Lee McDonald; Thomas E. Harris; Thomas J. Josefiak; Jo-Anne L. Coe, Secretary of the Senate, Ex Officio; Benjamin J. Guthrie, Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

COURT CASES

SIERRA CLUB v. FEC

On December 21, 1984, the Sierra Club (the Club) and its separate segregated fund, the Sierra Club Committee on Political Education (SCCOPE), filed a second appeal with the U.S. Court of Appeals for the District of Columbia Circuit, which sought review of the district court's second ruling on plaintiffs' suit, Sierra Club v. FEC (Civil Action No. 84-2354).

The U.S. District Court for the District of Columbia had originally ruled on the suit in August 1984. Plaintiffs had appealed this first ruling with the appeals court, which had remanded the suit to the district court for further consideration. The court issued its second opinion in the suit on November 5, 1984.

Background

On July 31, 1984, the Club and SCCOPE had filed suit with the district court. Plaintiffs had challenged the FEC's construction and application of 2 U.S.C. §441b in an advisory opinion the agency had issued to the Sierra Club on July 13, 1984. In the opinion, AO 1984-24, the Commission rejected the two financing methods proposed by the Club for selling its goods and services to SCCOPE as part of SCCOPE's in-kind contribution program for federal candidates. (See the September 1984 issue of the Record, page 7.)

The Sierra Club had asked the court to declare that:

- The election law permits the Club to provide goods and services to SCCOPE for use in SCCOPE's in-kind contribution program, provided: a) SCCOPE makes payments in advance to an escrow account or reimburses the Club within a commercially reasonable time, and b) the goods and services are purchased at fair market value.
- Section 441b, both on its face and as applied to plaintiff's activities, violates the First Amendment by abridging plaintiff's freedom of association and by being unconstitutionally vague.
- Advisory Opinion 1984-24 is contrary to law and to the First and Fifth Amendments.

Plaintiff had also asked the court to enjoin the FEC from commencing or continuing any enforcement proceedings designed to prevent SCCOPE from using Sierra Club goods and services for its in-kind contribution program.

District Court's Initial Ruling

On August 11, 1984, the district court issued an order dismissing the suit. The court ruled that the case was not ripe for consideration and that the Club had not exhausted the administrative remedies available to it before filing suit.

Appeals Court Remand to District Court

The Sierra Club appealed the ruling. The appeals court treated the Club's motion to expedite the appeal as a motion for summary reversal. In its order of September 7, 1984, the appeals court granted this motion, reversing the district court's dismissal, and remanded the case to the district court for further consideration.

District Court's Second Ruling

On October 31, 1984, the district court granted the FEC's motion to dismiss the suit. In the opinion that followed on November 5, 1984, the court upheld AO 1984-24 as a reasonable interpretation of the law's prohibition on corporate contributions, noting that "the Federal Election Commission is the type of agency to which considerable weight and deference should presumptively be accorded...." The court also rejected the Club's claim that the opinion violated its First Amendment rights, which, the court stated, were "overborne by the interests Congress has sought to protect in enacting Section 441b."

Since the court upheld the Commission's interpretation of Section 441b in the advisory opinion and since the Commission has the statutory authority to investigate possible violations of the election law, the district court denied the Sierra Club's request for an injunction barring any pending or future investigation of the Club's activities.

The Sierra Club then filed its second appeal with the appeals court.

ALWIN E. HOPFMANN v. FEC

On July 19, 1985, the U.S. Court of Appeals for the District of Columbia Circuit denied appellant Alwin E. Hopfmann's petition for a rehearing of his suit, Hopfmann v. FEC (Civil Action No. 84-5207). On May 13, 1985, the court had affirmed a district court ruling dismissing the case. For a summary of the appeals court's decision, see page 7 of the July 1985 Record.

NEW LITIGATION

Antosh v. FEC (Fourth Suit)*

Mr. James Edward Antosh, President of Shawnee Garment Manufacturing, Inc., seeks the court's expedited review of an FEC determination dismissing an administrative complaint he filed on April 16, 1984. In the complaint, Mr. Antosh had alleged that:

continued

**The three other suits Mr. Antosh has pending against the FEC in the D.C. District Court are: Civil Action Nos. 84-3048, 85-1410 and 84-2737.*

- The Engineers Political Education Committee/ International Union of Operating Engineers (EPEC/IUOE) violated 2 U.S.C. §441a(a)(2)(A) by making excessive contributions (amounting to $7,250) to Senator Dennis DeConcini's 1984 reelection campaign;
- The reelection campaign violated section 441a (f) by accepting the contributions; and
- Senator DeConcini and his reelection campaign violated the law by failing to accurately report some of the contributions. See 11 CFR 104.14 (d).

Mr. Antosh asks the court to:

- Declare that the FEC's dismissal of his complaint was contrary to law (see 2 U.S.C. §437g (a)(10)); and
- Issue an order requiring the FEC to take action on the administrative complaint within 30 days. See 2 U.S.C. §437g.

U.S. District Court for the District of Columbia, Docket No. 85-2035, June 21, 1985.

FEC v. Re-Elect Hollenbeck to Congress Committee

The FEC asks the district court to declare that Congressman Harold C. Hollenbeck's 1982 reelection campaign, Re-elect Hollenbeck to Congress Committee (the Committee), and its treasurer, David I. Korsh, violated the election law by accepting an excessive contribution from the New Jersey Republican State Committee and by failing to refund the excessive portion of the contribution (i.e., $4,000) to the state party committee. See 2 U.S.C. §441a(f); 11 CFR 103.3(b)(1) and (2). At the time the state party committee made the $5,000 contribution, it had not achieved multicandidate committee status and was, therefore, only eligible to make a $1,000 contribution to the Committee.*

The FEC further asks the court to:

- Assess a $5,000 civil penalty against the Committee or an amount equal to 100 percent of the amounts involved in the violation; and
- Order the Committee and its treasurer to refund the excessive portion of the contribution to the state party committee.

**Multicandidate committees may contribute up to $5,000 per election to a candidate's authorized committee(s) or any other political committee. To achieve multicandidate committee status, a committee must have more than 50 contributors, have been registered for at least six months and, with the exception of state party committees, have made contributions to five or more candidates for federal office. 2 U.S.C. 441a(a)(4); 11 CFR 100.5 (e)(3).*

SUMMARY OF MURs

The Act gives the FEC exclusive jurisdiction for its civil enforcement. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MURs). All MUR investigations are kept confidential by the Commission, as required by the Act. (For a summary of compliance procedures, see 2 U.S.C. §§437g and 437(d)(a) and 11 CFR Part 111.)

This article does not summarize every stage in the compliance process. Rather, the summaries provide only enough background to make clear the Commission's final determination. Note that the Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis. The full text of these MURs is available for review and purchase in the Commission's Public Records Office.

MUR 1723: Payments for Media Campaign by Nonpartisan Membership Corporation

On August 15, 1984, the Commission found no reason to believe that a nonprofit, nonpartisan membership corporation violated the election law (2 U.S.C. §441b) by conducting a media campaign to influence the 1984 Presidential and Congressional campaigns.

Complaint

On June 16, 1984, a nonconnected political action committee (PAC) filed a complaint against a nonpartisan membership corporation claiming that its financing of a media campaign, aired during the Presidential primary season, constituted prohibited corporate expenditures. The corporation had planned to spend $600,000 on media advertisements that focused on the need for campaign finance reform and criticized the influence of PAC contributions on incumbent Members of Congress. The complainant PAC contended that the media campaign's purpose was to influence the financing of federal elections "with the probable result being a reduction in the financing of elections of incumbent members of Congress." The respondent's payments for the commercials would therefore be made "in connection with" federal elections, the complainant argued, and would result in prohibited corporate expenditures.

General Counsel's Report

The Federal Election Campaign Act (the Act) prohibits a corporation from making contributions or expenditures "in connection with" federal elections and defines an expenditure to include payments made "for the purpose of influencing

federal elections." 2 U.S.C. §§441b(a) and 431(9)(A)(i). Neither the Act nor Commission Regulations define "in connection with" or "for the purpose of influencing" an election. However, in numerous enforcement cases and advisory opinions that have required application of this language, the Commission has considered certain factors based on judicial interpretations of the statute: 1) whether the communication solicits contributions for a candidate; 2) whether it expressly advocates the election of a candidate; and 3) whether its overall purpose is to advocate a candidate's election rather than an issue or policy.

The respondent corporation's proposed communication did not solicit contributions to candidates and, in fact, contained no references to specific candidates. Its content was limited to the discussion of an issue — the present role of political action committees in the political process. Although the communication was timed to coincide with the Presidential primaries, the respondent explained that this timing provided a national forum in which to focus attention on the financing of federal elections and that the drive for election reform would continue afterward.

Counsel concluded that, because the media campaign did not meet the criteria listed above, the respondent's financing of the ads would not constitute prohibited corporate expenditures. The General Counsel therefore recommended that the Commission dismiss the matter.

Commission Determination

The Commission accepted the General Counsel's recommendation. On August 15, 1984, the Commission found no reason to believe that the respondent had violated 2 U.S.C. §441b.

MUR 1808: Candidate Committee's Failure to Report In-kind Contributions from a Nonconnected PAC

On April 2, 1985, the Commission decided to take no further action against a 1984 Congressional campaign that had failed to report several in-kind contributions made on the campaign's behalf by a nonconnected political action committee.*

Complaint

On October 4, 1984, a state party committee filed a complaint with the FEC alleging that a House candidate's principal campaign committee (the Committee) and the Committee's treasurer had violated the reporting provisions of the election law by failing to report in-kind contributions* (amounting to $1,089.84). A nonconnected PAC (the PAC) had made the in-kind contributions on behalf of the Committee between August 1983 and August 1984. Disclosed by the nonconnected PAC on its FEC reports, the in-kind contributions included, for example, the value of postage and delivery services and of time given to the Committee by the PAC's director.

Based on information in the complaint and in campaign reports placed on the public record, the General Counsel recommended that the Commission find reason to believe that the Committee and its treasurer had violated 2 U.S.C. §434 and 11 CFR 104.13(a)(1) and (2). On October 31, 1984, the Commission adopted the General Counsel's recommendation and opened an investigation into the complaint.

General Counsel's Report

In letters responding to the party committee's allegations, the Committee's treasurer generally admitted that the Committee had failed to report the in-kind contributions and requested that it be allowed to enter into a pre-probable cause conciliation agreement with the FEC. The Committee attributed its failure to report the in-kind contributions to: 1) the PAC's failure to inform the Committee of any in-kind contributions made on the Committee's behalf during the campaign (despite the Committee's request that it be informed); and 2) the failure of communications among Committee staff.

On February 21, 1985, however, the candidate sent the Commission a letter in which he stated that his treasurer's account of the reporting problem had been inaccurate. The candidate claimed that the Committee's failure to report the in-kind contributions had been "primarily the fault" of the PAC rather than the Committee. The candidate asserted that the Committee had made reasonable efforts to obtain information from the PAC on the amount and purpose of the in-kind contributions. Nevertheless, the PAC had failed to provide the information to the Committee on numerous occasions, despite the PAC's policy of notifying candidates of all contributions made on their behalf. The candidate noted that the PAC and the Committee had worked together on some matters, but that the PAC had also made in-kind contributions on its own, without working with the Committee. (The candidate suggested that, in some instances, his Committee may not have been aware of the PAC's in-kind contributions on his behalf.) The candidate also noted that of the $1,089.84 in in-kind contributions alleged to be undisclosed, $232.23 had, in fact, been disclosed on the Committee's 1983 year-end report. Finally, the candi-

continued

**A political committee which supports or opposes candidates for federal office but which is not established or administered by any candidate, political party, corporation or labor organization.*

**Contributions in the form of services, goods or property offered free or at less than the usual charge to a political committee.*

date stated that, once the FEC had notified the Committee of its reporting omissions, the Committee immediately filed amended reports disclosing the in-kind contributions.

In a letter of March 8, 1985, the PAC confirmed the information provided by the candidate.

The General Counsel recommended that the Commission take no further action against the Committee, based on:

- o The mitigating circumstances revealed by the Committee (and confirmed by the PAC); and
- o The FEC's reason to believe finding, which had put the Committee on notice with regard to the violation.

Commission Determination

On April 2, 1985, the Commission voted to adopt the General Counsel's recommendation.

PUBLICATIONS

The FEC offers the following free publications. To order, return the completed form below.

Federal Election Campaign Laws

Complete compilation of Federal election campaign laws prepared by FEC.

FEC Regulations (11 CFR)

FEC regulations; subject indexes prepared by FEC.

FEC Record

Monthly newsletter covering reporting, advisory opinions, litigation, legislation, statistics, regulations, compliance, Federal Register notices, FEC procedures and staff, and publications.

Campaign Guides

Clear explanation and illustration of election law requirements. Separate Guide for:

Congressional Candidates and Committees
Party Committees
Corporations and Labor Organizations
Nonconnected Political Committees

House and Senate Bookkeeping Manual

Recommended method of bookkeeping and reporting for Federal candidates and their committees.

FEC and Federal Election Law

Brief overview of major provisions of the Federal Election Campaign Act and the Commission's role in administering it.

Brochures

Advisory Opinions
Candidate Registration
Contributions
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Corporate/Labor Facilities
Independent Expenditures
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Public Funding of President Elections
State Computer Access to FEC Data
State Elections & Federal Campaign Law
Trade Associations
Using FEC Campaign Finance Information
Volunteer Activity

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General

	Federal Election Campaign Laws		Bookkeeping Manual for Candidates
	FEC Regulations		Annual Report
	FEC Record (subscription)		10-Year Report

Campaign Guides

	Congressional Candidates		Corporations and Labor Organizations
	Party Committees		Nonconnected Committees

Brochures

	Advisory Opinions		Political Ads and Solicitations
	Candidate Registration		Public Funding of Presidential Elections
	Contributions		State Computer Access to FEC Data
	Corporate/Labor Communications		State Elections & Federal Campaign Law
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	Local Party Activity		

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CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the Record. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate, or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the Record is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

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