FEDERAL ELECTION COMMISSION

RECORD

August 1986 999 E Street NW Washington DC 20463 Volume 12, Number 8

REPORTS

HAWAII SPECIAL ELECTION

On September 20, 1986, Hawaii will hold a special election in its first Congressional District to fill the seat vacated by Representative Cecil L. Heftel.

Political committees authorized by candidates who are participating in the special election must file pre- and post-election reports for the special election. Note that last-minute contributions of $1,000 or more received by candidate committees between two and 20 days before the election must be reported within 48 hours of their receipt.

All other political committees which support candidates in the special election (and which do not report on a monthly basis) must also follow the reporting schedule for the special election detailed below. Note that last-minute independent expenditures aggregating $1,000 or more and made between one and 20 days before an election must be reported within 24 hours after the expenditures are made.

Report	Period Covered	Mailing Date	Filing Date
Pre-election	7/1-8/31	9/5/86	9/8/86
Post-election	9/1-10/10	10/20/86	10/20/86
October Quarterly	Report is waived for committees required to file a post-election report.		

The FEC will send notices on reporting requirements and filing dates to individuals known to be actively pursuing election to this House seat. All other committees supporting candidates in the special election should contact the Commission for forms and more information on required reports. Call 202/376-3120 or, toll free, 800/424-9530.

REPORTING BY UNOPPOSED CANDIDATES

The principal campaign committees of candidates who are unopposed in an election must file pre-election reports, regardless of whether their names appear on the ballot. See AO 1986-21, which is summarized on page 6. (Issued on June 27, 1986, this advisory opinion supersedes AOs 1978-41 and 1978-65.)

The FEC will be sending reporting forms and notices on reporting requirements to individuals known to be actively pursuing election to House and Senate seats during 1986, including those who are unopposed in primary elections.

For more information on required reports, call 202/376-3120 or, toll free, 800/424-9530.

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GUAM CONGRESSIONAL ELECTION: CORRECTION

The January 1986 Record erroneously reported that the primary election for Guam's Delegate to the U.S. House of Representatives would be held on September 2, 1986. In fact, the election will be held on September 6. The correct schedule for filing the pre-election report is:

Closing Date of Books	Mailing Date	Filing Date
August 17	August 22	August 25

REGULATIONS

CONTRIBUTION LIMITS AND PROHIBITIONS: NOTICE OF PROPOSED RULEMAKING PUBLISHED

On July 17, 1986, the Commission approved a notice of proposed rulemaking for publication in the Federal Register concerning possible revisions to its regulations governing limits and prohibitions on contributions made to federal candidates and political committees. (11 CFR 110.3 through 110.6) The agency also announced that, on September 17, 1986, it will hold a hearing on the proposed rules.

Comments on the notice of proposed rulemaking should be submitted in writing to Ms. Susan E. Propper, Assistant General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Those who are interested in testifying at the public hearing should so indicate on their written comments.

The proposed revisions to these regulations are intended to clarify the rules and address issues which have arisen since the current rules were promulgated in 1977. Please note, however, that these suggested revisions do not represent a final decision by the Commission.

Most of the issues raised for comment concern section 110.3, which governs contributions and transfers by affiliated committees and party committees and section 110.6, which governs earmarked contributions. Although the Commission has not proposed major changes to sections 110.4 and 110.5, comments are sought on possible revisions to these rules. The major areas of proposed changes to the rules are highlighted below.

Contribution Limits for Affiliated Committees (110.3(a))

Under section 110.3, political committees are considered "affiliated" if they are established, financed, maintained or controlled by the same corporation, labor organization, or any other person or group of persons, including any parent, subsidiary, branch, division, department or local unit. These affiliated committees are subject to a single contribution limit on both contributions they make and contributions they receive. Several revisions have been proposed to section 110.3(a) to make it clear which committees are considered "affiliated" and, therefore, subject to a single contribution limit. For example, the proposed rules would clarify that, in appropriate instances, the term "local unit" may include a franchisee, licensee, or state or regional association. Minor amendments have also been proposed to the list of committees viewed as per se affiliated (i.e., automatically affiliated) because they have been established, financed, maintained, or controlled by the organizations listed.

Indicia of Affiliation. The proposed revisions make clear that, to determine whether committees are affiliated, the Commission may examine a variety of relationships, including those: between their sponsoring organizations; between the committees themselves; or between one sponsoring organization and a committee established by another organization.

The agency seeks comments on adding factors to the indicia that may be used to determine whether affiliation exists between committees which are not considered per se affiliated. Specifically the new factors would permit consideration of:

- Whether the committees (or their parent organizations) share common memberships, officers, employees or funding; and
- Whether a committee (or the committee's parent organization) had a significant role in forming another political committee.

The Commission also seeks comments on whether the indicia of affiliation should be applied to determine whether a political committee sponsored by a candidate is affiliated with the candidate's authorized committee(s).

Contribution Limits for Political Party Committees (110.3(b))

The current rules provide that a political party's national committee (and its committees) and the same party's state committee have separate contribution limits.

National Party Committee Limits. Proposed revisions would make clear that a party's Senate campaign committee and its national committee share a $17,500 election cycle limit on contributions to Senatorial candidates, but that the two committees have separate limits for contributions to other candidates and committees.

State Party Committee vs. Subordinate Party Committee Limits. Since a state party committee and its subordinate party committees are presumed to be affiliated, they share a single contribution limit, unless a subordinate committee can prove it is independent of the state committee. The proposed rules provide criteria that a state committee or its subordinate committee would have to use to demonstrate independence.

The Commission requests comments on these proposed criteria and suggestions for other factors that could be considered in determining whether a subordinate committee and the state committee are separate political committees for purposes of the contribution limits.

Transfers (110.3(c))

The final area in which the Commission is proposing revisions to section 110.3 concerns the provisions on transfers of funds. The proposed rules would cross reference the Commission's regulations governing transfers and collecting agents at 11 CFR 102.6 and the rules on joint fundraising at 11 CFR 102.17. The proposed regulations would retain the provisions regarding transfers involving candidate committees, which are currently found in sections 110.3(a)(2)(iii) through (a)(2)(v) of the rules. However, the Commission is considering amending these rules to address the three situations described below.

Transfers From State to Federal Campaigns. The Commission is considering whether to address transfers from a candidate's state campaign to his or her federal campaign. In several advisory opinions, the Commission has permitted candidates to transfer funds from previous state campaign committees to their current federal campaign committees, provided certain requirements were met. (See AOs 1982-52, 1983-34, 1984-46 and 1985-2.)

The Commission seeks comments on whether section 110.3 should be revised to include these requirements for transfers from a state campaign to a federal campaign.

Transfers Between the Campaigns of a Candidate Running for More than One Office. With regard to transfers between the principal campaign committee of a candidate who simultaneously seeks election to more than one federal office, the agency is considering changes to clarify:

- o When a candidate is actually seeking nomination or election to more than one federal office; and
- o When a candidate is "not actively seeking" nomination or election to more than one federal office.

Transfers From Inactive to Active Campaign of Same Individual. The Commission also seeks comments on whether section 110.3 should be amended to clarify issues which arise when a candidate abandons one campaign for federal office (e.g., a Senate campaign) and reactivates a previous campaign for another federal office (e.g., a House campaign). See AO 1984-38.

Earmarked Contributions (110.6)

Under the current rules, a contribution earmarked to a candidate through a conduit is considered to have been made by the original contributor, thus counting against his/her contribution limit for that candidate.

To clarify who is subject to these rules, the Commission seeks comments on the following issues:

1. Should the regulations include a list of factors for determining whether a person (individual, group or committee) is a conduit?
2. Should separate segregated funds act as conduits for earmarked contributions? In several opinions, the Commission has stated that separate segregated funds could act as conduits for earmarked contributions, provided certain conditions were met. (See AOs 1986-4, 1981-21 and re: AOR 1976-92.)
3. Should the rules apply to contributions earmarked to political committees which are not authorized by candidates?

Reporting of Earmarked Contributions. Both conduits and recipients must report earmarked contributions. The proposed rules would consolidate and clarify several reporting provisions. For example, under the proposed rules, conduits who usually are not required to report (e.g., individuals) would file a letter by a specific date.

The Commission also seeks comments on proposals which involve:

- o Reporting certain earmarked contributions as memo entries;
- o Deleting the exception for reporting earmarked contributions totaling less than $1,000 per year; and
- o Clarifying what information the recipient candidate must report.

Direction and Control Over Earmarked Contributions. Under the current rules, if a conduit

continued

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Joan D. Aikens, Chairman; John Warren McGarry, 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 202/376-3120 or toll-free 800/424-9530.

exercises direction or control over an earmarked contribution, the contribution is considered to be from both the original contributor and the conduit and counts against the contribution limits of both. The contribution must be reported by both parties as such. The Commission is considering revising this provision to state that a conduit would be considered a co-contributor if the conduit exercised "direct or indirect control" over making the contribution. The rulemaking notice also suggests criteria for determining whether a conduit has exercised "direction and control" over an earmarked contribution. (See AO 1986-4, AOR 1976-92 and MUR 1028.) Finally, the suggested revisions clarify the reporting requirements for contributions over which the conduit exercises control.

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

AOR 1986-10: Affiliated Status of Two Nonconnected PACs Using Same Consulting Firm

In a letter of June 27, 1986, the General Counsel stated that, since the requester had not responded to the FEC's request for additional information, the advisory opinion request would be treated as withdrawn. The request may, however, be resubmitted at a later date.

AOR 1986-15: Media Expenditures by Nonconnected PAC in Response to Senate Candidate's Charges

The FEC confirmed the requester's withdrawal of the advisory opinion request in a letter of June 18, 1986.

AOR 1986-16: Excessive Contribution Used to Liquidate Primary Debts of Unsuccessful Candidate

The requester withdrew the advisory opinion request in a letter of June 17, 1986.

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
1986-22	Rebate offered by t.v. station to candidate who increases spending on campaign ads. (Date made public: June 24, 1986; Length: 2 pages, plus 3-page supplement)
1986-23	Trade association's discount to Congressional offices for game simulating Congressman's term and reelection campaign. (Date made public: June 25, 1986; Length: 4 pages)
1986-24	PAC's deposit of estate gift in escrow account. (Date made public: June 30, 1986; Length: 4 pages, plus 13-page supplement)
1986-25	Corporation's use of FEC contributor names in its publications. (Date made public: July 1, 1986; Length: 5 pages, plus 19-page supplement)
1986-26	Presidential candidates' appearances at convention sponsored by nonprofit corporation. (Date made public: July 3, 1986; Length: 3 pages, plus 41-page supplement)
1986-27	Consolidated reporting of state and federal PACs' activities with state filing office. (Date made public: July 14, 1986; Length: 2 pages)

ADVISORY OPINIONS: SUMMARIES

AO 1986-17: State Party Convention Not Election; General Election Contributions Received and Spent Before Primary

Mark Green sought his party's designation as a U.S. Senate candidate at the New York State Democratic Committee's convention in June. He qualified at that time to be a candidate in the September 9th primary. To promote his Senate candidacy in New York, Mr. Green established a principal campaign committee, Friends of Mark Green (the Green Committee). In response to Mr. Green's request for an advisory opinion, the Commission addressed two separate issues concerning his candidacy:

1. State Party Convention Not an Election

The New York State Democratic Committee's designation of a U.S. Senate candidate at its

convention is only one means by which an individual may obtain ballot access for the Democratic Senate primary in New York. Accordingly, since the convention does not have "the authority to nominate a candidate" for the Senate seat, it does not qualify as an "election." Thus, there is no separate contribution limit for Mr. Green's convention activity. Rather, it is considered part of the primary election process. See 2 U.S.C. §431(1) and 11 CFR 100.2.

2. General Election Contributions Received and Spent Before the Primary

Under certain limited circumstances, the Green Committee may receive and spend, before the primary, contributions that are designated for the general election. Any such expenditures must be for the general election only. Specifically, the Green Committee may make advance payments to vendors for services and goods that will be provided to the Committee once Mr. Green becomes a general election candidate. However, the Green Committee may not use general election contributions to make expenditures for an activity designed to promote: 1) Mr. Green's nomination as his party's Senate candidate or 2) both his nomination and general election efforts. 2 U.S.C. §441a(f); AO 1980-122.

If Mr. Green does not become a candidate for the general election, the Green Committee must, within a reasonable time, refund any contributions designated for the general election because a separate contribution limit will no longer be available to these contributors. Even if the Green Committee has already spent these contributions, they must be refunded.

The Commission noted that this opinion supersedes AO 1982-49, to the extent that AO 1982-49 may be interpreted as precluding the spending of general election contributions for those limited purposes described in this opinion. (See above.) Commissioner Thomas E. Harris filed a dissent. (Date issued: June 27, 1986; Length: 9 pages, including dissent)

AO 1986-18: Maintaining Campaign Funds in Cash Management Account Established by Brokerage Firm

Friends of Tom Bevill (the Committee), Mr. Bevill's principal campaign committee, may transfer campaign funds currently invested in certificates of deposit to a Merrill Lynch Cash Management Account, an investment program which provides: 1) a cash deposit account with debit card privileges and 2) a revolving investment fund composed of U.S. government obligations. Since the Act and FEC Regulations require campaigns to make campaign disbursements (except petty cash payments) with checks drawn on the campaign's designated depository, the proposed transfer would be permissible provided that the Committee:

- o Transfers funds to the Cash Management Account solely for investment purposes (and not for the purpose of making campaign disbursements); and
- o Returns the transferred funds (and any interest or dividends earned on the funds) to the checking account of the Committee's campaign depository* before using them for campaign disbursements. 2 U.S.C. §432(h)(1) and 11 CFR 103.3(a).

Since campaign disbursements must be made from the checking account of the committee's designated depository, the Committee may not use the debit card provided by the Cash Management Account for the purpose of spending campaign funds.

The Committee must disclose dividends or interest earned on the Cash Management Account. Moreover, the Committee must itemize this interest income if it exceeds $200 per year. See 2 U.S.C. §434(b)(3)(G) and 11 CFR 104.3(a)(4)(iv). Commissioner Thomas J. Josefiak filed a concurring opinion. (Date issued: June 19, 1986; Length: 5 pages, including concurrence)

AO 1986-20: Promotion Item Prepared and Distributed by Campaign

The "People for Mark Andrews" Committee (the Committee), the principal campaign committee for North Dakota Senator Andrews' 1986 reelection effort, may pay for the purchase, packaging and distribution of a campaign promotion item--a small plastic bag of bran with a recipe for bran muffins attached to one side. The Committee will pay the fair market value for milling and packaging the bran. Both the package label and the recipe on each bag will bear the disclaimer: "Paid for by the 'People For Mark Andrews.' " Campaign staff will give the bags away at county and state fairs from July through September 1986.

The Commission has stated in numerous advisory opinions that a candidate has broad discretion in the use of campaign funds, including expenditures for campaign promotion items. See especially AOs 1980-14 and 1980-93.

The Committee must report costs incurred for this promotion item as "operating expenditures" on line 17 of FEC Form 3. Any payments totaling more than $200 per year to the same payee must also be itemized on Schedule B. (Date issued: June 27, 1986; Length: 2 pages)

**The law's definition of "campaign depository" is limited to banks and other banking institutions and does not include a brokerage firm. See 2 U.S.C. Section 432(h)(1).*

AO 1986-21: Pre-Election Reporting Requirement for Unopposed Primary Candidate

Wayne Owens was unopposed in his campaign to seek the Democratic party's nomination for a House seat from Utah's Second Congressional District. Since the party's June 28th State convention had the authority to nominate the Democratic candidate for this House seat, the convention's nomination of Mr. Owens constituted an "election" under the Act, even though he was unopposed in the convention. 2 U.S.C. §431(1)(b); 11 CFR 100.2(e). Accordingly, Mr. Owens' principal campaign committee, the Wayne Owens for Congress Committee, should file a pre-election report for that nominating convention. 11 CFR 104.5(a)(1)(i).

The Commission noted that this opinion supersedes its ruling in two previous opinions--AOs 1978-41 and 1978-65--to the extent that those opinions suggest that candidate committees are not required to file pre-election reports when the candidate is unopposed in a primary election or when the candidate's name does not appear on the ballot. The Commission said that it issued those opinions at a time--prior to the 1980 amendments--when the Commission had more discretion to waive reporting requirements. (Date issued: June 27, 1986; Length: 3 pages)

COURT CASES

COMMON CAUSE v. FEC (Suit Three)

On June 25, 1986, the U.S. District Court for the District of Columbia issued an opinion in Common Cause v. FEC, a suit in which Common Cause challenged the FEC's dismissal of an administrative complaint, which the organization had filed with the Commission in September 1984. (Civil Action No. 85-0968) In remanding the suit to the FEC, the court ordered the agency to provide: 1) an explanation of the legal standard that the agency had used in making its decision to dismiss the complaint and 2) a statement of reasons demonstrating how the FEC had applied this legal standard to the facts before it. The court noted that, on remand, the FEC could reach a different conclusion with regard to the merits of Common Cause's administrative complaint.

Background

On August 24, 1984, two days after he received the Republican Party's Presidential nomination, President Reagan addressed a convention of the Veterans of Foreign Wars (the VFW) in Chicago. During his speech, Mr. Reagan did not expressly mention his candidacy; nor did he solicit contributions to his campaign. Since the Reagan administration viewed the Chicago trip as official business, the administration allowed the government to absorb the travel costs and did not report them to the FEC.

On September 20, 1984, Common Cause filed an administrative complaint with the FEC against the Reagan-Bush '84 General Election Committee (the Reagan campaign), President Reagan's principal campaign committee for his 1984 general election campaign. In the complaint, Common Cause alleged that the travel costs related to President Reagan's Chicago speech constituted "qualifed campaign expenses"* incurred for Mr. Reagan's publicly funded general election campaign. Consequently, Common Cause claimed that the Reagan campaign had to: 1) pay for and report the costs of the Chicago trip as "qualified campaign expenses" and 2) reimburse the government for using a government airplane to make the trip.

On December 24, 1984, the FEC's General Counsel recommended that the Commission find "reason to believe" that the Reagan campaign and its treasurer had violated provisions of the election law and public funding statutes by failing to report these expenses. On January 15, 1985, however, the Commission decided, by a four to two vote, to find "no reason to believe" the Reagan campaign and its treasurer had violated federal election laws. Consistent with past practice, the Commission did not issue a formal statement of reasons for its decision to dismiss Common Cause's administrative complaint.

On March 22, 1985, Common Cause challenged the FEC's dismissal decision by filing suit against the Commission with the district court. In its suit, Common Cause asked the court to: 1) declare that the FEC's dismissal of its administrative complaint was contrary to law and 2) order the agency to act on the allegations in its complaint.

In arguing that the FEC's dismissal was contrary to law, Common Cause said that, in determining whether President Reagan's Chicago trip was campaign related, the Commission should have considered the "totality of circumstances" surrounding his Chicago speech rather than using a narrower review standard, which focused solely on: 1) whether President Reagan's speech expressly advocated his reelection and 2) whether he solicited contributions in conjunction with his speech.

The Court's Ruling

Although accepting the legal standard which the parties agreed had been applied by the FEC in

**FEC Regulations define "qualified campaign expenses" as those expenditures made during the reporting period to further the general election campaign of a publicly funded Presidential candidate. See 11 CFR 9002.11.*

its dismissal of Common Cause's complaint, the court observed that it still had to "determine whether the agency has presented a rational basis for its decision." In this regard, the court noted that "the record before us prevents that threshold determination." The court therefore remanded the case to the FEC "both for an explanation of the legal standard actually applied and...a statement of reasons demonstrating how the Commission applied such legal standards to the facts before it."

FEC v. RE-ELECT HOLLENBECK TO CONGRESS COMMITTEE

On June 16, 1986, the U.S. District Court for the District of Columbia denied the Commission's motion for summary judgment and entered a judgment for the defendants in FEC v. Re-Elect Hollenbeck to Congress Committee (Civil Action No. 85-2239). The court held that the Re-Elect Hollenbeck to Congress Committee (the Hollenbeck Committee), Representative Hollenbeck's principal campaign committee for his 1982 reelection effort, and the Hollenbeck Committee's treasurer, David I. Korsh, had not knowingly violated the election law by accepting an excessive contribution from the New Jersey Republican State Committee.

Background

In 1982, when the New Jersey Republican State Committee (the State Committee) made a $5,000 contribution to the Hollenbeck Committee, the State Committee had not achieved multicandidate committee status* because it had not yet satisfied the six-month registration requirement. Consequently, the State Committee was only eligible to make a contribution of up to $1,000 per election to each candidate, and the Hollenbeck Committee could legally receive only $1,000 for the primary election.

On learning of the State Committee's excessive contributions, the FEC initiated enforcement proceedings against the State Committee, the campaign committee of each New Jersey Republican incumbent and their respective treasurers. When the Commission failed to reach a settlement with the Hollenbeck Committee, the agency filed a suit against the Committee in which it asked the district court to: 1) assess a $5,000 civil penalty against the defendants for violating §441a(f) of the Act in accepting the State Committee's excessive contribution and 2) order the Hollenbeck Committee and its treasurer to refund the excessive portion of the contribution (i.e., $4,000) to the State Committee.

Acknowledging receipt of the $5,000 contribution, the Hollenbeck Committee denied "knowingly accepting" an illegal contribution. The Committee argued that it had "erroneously assumed that the State Committee had qualified for the status of a multicandidate political committee."

The Court's Ruling

The court noted that, under FEC Regulations, a campaign committee's "treasurer shall make his or her best efforts to determine the legality of any contribution"* made to the campaign. The court observed that this regulation was "not unduly burdensome. It does not place an affirmative obligation upon the treasurers to verify the legality of every contribution. Rather, it requires verification of contributions that 'appear to be illegal,' including those exceeding $1,000 that do not appear to come from a multicandidate committee."

In ruling that the Hollenbeck Committee should not be held liable for the State Committee's excessive contribution, the court held that the State Committee's contribution to the Hollenbeck Committee "would appear to be legal to any reasonable treasurer...."

FEC v. NEW REPUBLICAN VICTORY FUND

On June 23, 1986, the U.S. District Court for the Eastern Division of Virginia, Alexandria Division, approved a consent order between the Commission and defendants, the New Republican Victory Fund (the Fund), a nonconnected political committee, and the Fund's treasurer, Charles R. Black, Jr. The consent order provides that defendants violated section 434(a)(4)(A) of the election law during the 1984 election cycle by:

- Failing to file the Fund's October quarterly, year-end and post-general election reports; and
- Filing its July quarterly report approximately 64 days late.

Within 30 days of filing the consent order, the defendants agreed to:

- File these reports; and
- Pay a $2,350 civil penalty to the U.S. Treasurer.

The consent order concluded a suit filed by the FEC on April 18, 1986 (CA No. 86-402-A).

continued

**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 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. Section 441a(a)(4); 11 CFR 100.5(e)(3).*

**See 11 CFR 103.3(b)(1).*

NEW LITIGATION

John Glenn Presidential Committee, Inc. v. FEC

The John Glenn Presidential Committee, Inc. (the Committee), the principal campaign committee for Senator Glenn's publicly funded 1984 Presidential primary campaign, asks the appeals court to review a final repaymant determination the FEC made with regard to the Committee. In its May 15, 1986, decision, the agency found that the Committee had made nonqualified campaign expenses (amounting to $248,004.62) as a result of exceeding its spending limits for the Iowa and New Hampshire primaries.* Accordingly, within 20 days of its decision, the FEC required the Committee to repay $74,955.62 to the U.S. Treasury for these nonqualified expenses.**

U.S. Court of Appeals for the District of Columbia Circuit, CA No. 86-1348.

Common Cause v. FEC (Suit Four)

On April 29, 1986, the FEC denied Common Cause's petition for rulemaking on issues related to the use of "soft money"*** in federal elections. (See 51 Fed. Reg. 15915.)

Common Cause and four of its members ask the district court to:

- o Declare that the Commission's denial of Common Cause's rulemaking petition was contrary to law; and
- o Issue an order directing the Commission to reconsider Common Cause's rulemaking petition in conformity with the court's opinion.

U.S. District Court for the District of Columbia, Civil Action No. 86-1838, June 30, 1986.

The public funding statutes require Presidential primary candidates to repay the U.S. Treasury for nonqualified campaign expenses. 26 U.S.C. Section 9038(b)(2). Under the statutes, spending in excess of the state-by-state spending limits is considered one type of nonqualified campaign expense.

***When a campaign incurs nonqualified expenses, the campaign must make a repayment based on the ratio of federal funds to total funds received by the candidate (both private and federal funds). 11 CFR 9038.*

****In its complaint, Common Cause defines the term "soft money" as "funds from sources prohibited under the FECA that are given to political committees and party organizations ostensibly for use at the state or local level, but which are actually used in connection with and to influence federal elections in violation of the FECA."*

COMPLIANCE

MUR 1964: Accepting Excessive Contributions; Attribution to Spouse

This MUR, resolved through conciliation, involved a Senate candidate committee which accepted excessive contributions and inaccurately reported these contributions.

Complaint

The MUR was internally generated by the Commission in the normal course of carrying out its administrative responsibilities. A review of the report filed by the candidate indicated receipt of contributions that exceeded the election law's dollar limits. Moreover, the candidate committee did not follow the procedures contained in Commission Regulations for handling contributions which appear to be illegal. 11 CFR 103.3(b).

General Counsel's Report

The Commission's investigation indicated that the candidate committee received excessive contributions from 42 individuals and from two political committees which had not qualified for multicandidate status. 2 U.S.C. §441a(a)(1)(A). These contributions (totaling $44,301) were not refunded or redesignated within a reasonable length of time. Under the election law, contributions must be screened within 10 days of receipt and timely accounted for to avoid any violations. The Committee had employed a system which screened contributions only at the end of the reporting period. This procedure did not permit the committee to follow the guidelines for handling contributions which appear to be illegal.

According to the candidate committee, the contributions from the two political committees had been designated for different elections, i.e., for the general election and the primary. The committee, however, had failed to report the contributions accurately. 11 CFR 104.14(d).

In the case of the contributions from individuals, the investigation indicated that the candidate committee had not provided the necessary written documentation in support of 16 reattributions between spouses. 11 CFR 100.7(c) and 104.8(d). The Regulations require that a contribution from a married individual may not be attributed to a spouse unless specified in writing by the contributor or the person to whom the contribution is attributed. The Commission concluded that the 16 contributions allegedly reattributed to the spouses of the contributors were excessive contributions.

The General Counsel recommended that the Commission enter into conciliation with the committee prior to finding probable cause to believe the committee had violated the Act.

Commission Determination

The Commission found reason to believe that the candidate committee violated the Act by knowingly accepting excessive contributions and inaccurately reporting contributions. In the conciliation agreement, the candidate committee refunded the excess portion of contributions received; amended its reports to accurately disclose all contributions; and agreed to pay a $5,000 fine.

INFORMATION

FEC STAFF WILL CONTINUE ENTRY OF PAC DATA

In July, the Commission announced that it would continue to computerize information on political action committee (PAC) contributions to federal candidates. In January, the Commission had considered discontinuing this program in response to budget cuts mandated by the Gramm-Rudman-Hollings Deficit Reduction Act. The agency deferred that decision, however, for nearly five months, to determine if FEC staff--rather than an outside contractor--could handle efficient entry of the PAC information.

While the entry of itemized PAC information has been somewhat less timely than in the past, the Commission considers this staff effort very successful. Recognizing that the volume of data will increase in this election year, the FEC will hire several additional data entry clerks on a temporary basis to maintain the efficiency of these operations.

Despite the mandated budget cuts, the agency has continued to offer computerized information on the 1984 and 1986 election cycles. This information includes total receipt and disbursement figures from the reports of candidate committees, party committees and PACs. Data from the second summary page of candidate reports is also available through the FEC's computer system, along with detailed contribution information from PACs and party committees. (For the years prior to 1983, this information is on microfilm.)

Under its new computer contract, the agency plans to restore financial information from the 1978, 1980 and 1982 election cycles. Eventually, the agency hopes that the public will have access to all such data through the computer. (For more information on the enhanced computer capabilities resulting from the contract, see page 1 of the July 1986 Record.)

CLEARINGHOUSE

FEC NAMES NEW MEMBERS TO CLEARINGHOUSE ADVISORY PANEL

On July 3, 1986, the Commission announced that the agency had appointed four individuals to the 16-member Advisory Panel of the FEC's National Clearinghouse on Election Administration. They are: Emmett H. Fremaux, Jr., Executive Director of the District of Columbia Board of Elections and Ethics; Dr. Ronald D. Michaelson, Executive Director of the Illinois State Board of Elections; Richard H. Austin, Michigan Secretary of State; and Natalie Meyer, Colorado Secretary of State.

The new members will participate in a two-day meeting of the Advisory Panel scheduled for September 21-23 in Washington, D.C.

The Advisory Panel was created in 1975 to advise the FEC's Clearinghouse on Election Administration on how to best use its resources to improve the administration of elections throughout the nation. The FEC is the only agency specifically charged by Congress to conduct research on the administation of federal elections. Current research projects include studies on: voting system standards, the Voting Accessibility Act and computerizing election administration.

PUBLIC APPEARANCES

9/4	University of Utah Department of Continuing Education Washington, D.C. Chairman Joan Aikens
9/11	Texas Medical Educational Research Foundation Austin, Texas Commissioner Lee Ann Elliott
9/12	Pennsylvania Election Officials Conference Harrisburg, Pennsylvania Chairman Joan Aikens

PUBLICATIONS

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INDEX

This cumulative index lists advisory opinions, court cases and 800 Line articles published in the Record during 1986. The first number in the citation refers to the "number" (month) of the Record issue; the second number, following the colon, indicates the page number in that issue.

REGULATIONS

BANK LOANS; PUBLIC FINANCING OF PRIMARY AND GENERAL ELECTION PRESIDENTIAL CANDIDATES: NOTICE OF PROPOSED RULEMAKING PUBLISHED

On July 24, 1986, the Commission decided to publish a notice of proposed rulemaking in the Federal Register concerning possible revisions to its regulations governing: 1) bank loans secured by federal candidates (both Congressional candidates and publicly funded Presidential candidates) and other political committees and 2) administration of the public financing program for Presidential primary and general election candidates.

Regulatory review will include the broad areas listed below. However, other proposed changes are reflected in the draft regulations. (Note that the issues presented by bank loans are governed by Title 2 of the election law and that the other issues [2-9] are governed by Title 26 of the public funding statutes.)

The public is invited to comment in writing on the issues presented in the notice. For more information, contact: Ms. Susan E. Propper, Assistant General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463 or call 376-5690 or toll free 800/424-9530. A copy of the notice may be obtained by calling 376-3120, or toll-free, 800/424-9530.

Major Issues Published for Public Comment

1. **Bank Loans.** The Commission seeks comments on what constitutes a bank loan made "in the ordinary course of business" by a publicly funded Presidential candidate, a Congressional candidate or a political committee. In particular, questions have been raised on how to determine whether a bank loan has been "made on a basis that assures repayment." The Commission therefore seeks comments on three possible interpretations of this phrase, as well as other suggested interpretations. (11 CFR 100.7(b)(11) and 100.8(b)(12))
2. **Debt Settlement and Extensions of Credit.** (Proposed 11 CFR 9035.1(a)(2) and 9035.2(a)(2))
3. **Administration of the Matching Fund Program.** (Proposed 11 CFR 9033.1(b)(5), 9033.4(b), 9036.1(b), 9036.2(a), 9036.2(b)(2), 9036.5(b) and 9036.6)
4. **Statement of Net Outstanding Campaign Obligations.** (Proposed 11 CFR 9034.5)
5. **Administrative Costs for Seeking Media Reimbursement.** (Proposed 11 CFR 9004.6(d) and 9034.6(d))
6. **Definition of a Qualified Campaign Expense.** (Proposed 11 CFR 9034.4(a) and (b))
7. **Petitions for Rehearing; Stays of Repayment Determinations and Other Repayment Issues.** (Proposed 11 CFR 9007.5 and 9038.5; 9003.2(c)(7), 9035.1(a)(2) and 9038.2(b)(2)(iii))
8. **Filing Dates.** (e.g., 11 CFR 9007.2(c)-(d), 9033.3(b), 9003.4(b))
9. **Other issues which could be addressed in the proposed rules** (e.g., the distinction for repayment purposes between expenses incurred and expenses paid).

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