FEDERAL ELECTION COMMISSION

RECORD

February 1988 999 E Street NW Washington DC 20463 Volume 14, Number 2

PUBLIC FUNDING

FEC APPROVES MATCHING FUNDS FOR PRESIDENTIAL CANDIDATES

On January 13, 1988, the Commission certified $4,368,387.37 in matching fund payments for the primary campaigns of eleven eligible Presidential candidates. These certifications raise to $33,344,072.12 the total amount of payments the agency has certified thus far for the campaigns of thirteen eligible candidates.

By the end of December 1987, the Commission had forwarded certifications for twelve eligible 1988 candidates to the U.S. Treasury, which began issuing payments to the candidates on January 4, 1988. Prior to certifying the funds, the Commission had made separate determinations during 1987 with regard to each candidate's eligibility for primary matching funds.* Under the Presidential Election Campaign Fund Act, however, the Treasury could not begin making actual payments to eligible candidates before January 1, 1988. (For a complete explanation of the eligibility requirements, consult 26 U.S.C. §9033 and Commission Regulations at 11 CFR 9033 and 9036.1.)

On January 5, 1988, a thirteenth candidate, the Reverend Jesse Jackson, was determined eligible for matching funds. On the same day, the FEC certified his first payment to the U.S. Treasury.

The chart in column two lists the thirteen eligible candidates to whom the Commission has certified payments, as well as the total amount certified to each candidate, as of January 13, 1988.

During 1988, an eligible Presidential candidate may submit requests for primary matching funds on the second and fourth Mondays of each month. The Commission will certify a percentage of the amount requested within one week of receiving a request. (See 26 U.S.C. §§9034 and 9036 and 11 CFR 9034 and 9036.1(b) and 2(a).)

On December 28, 1987, the Commission determined that Senator Gary Hart was eligible for primary matching funds and certified his first payment to the U.S. Treasury. The agency's other 1987 eligibility determinations were summarized in the June, July, August, October and November issues of the 1987 FEC Record.

Candidate	Amount Certified
Bruce Babbitt (D)	$ 742,065.12
George Bush (R)	6,158,123.78
Robert J. Dole (R)	5,271,713.64
Michael S. Dukakis (D)	3,493,418.61
Pete du Pont (R)	2,041,972.87
Richard Gephardt (D)	1,910,832.05
Albert Gore, Jr. (D)	1,775,857.37
Alexander Haig (R)	292,933.99
Gary Hart (D)*	937,325.14
Jesse Jackson (D)	227,423.70
Jack Kemp (R)	3,464,721.39
M. G. "Pat" Robertson (R)	5,526,582.62
Paul Simon (D)	1,501,101.84

TABLE OF CONTENTS

REPORTS

LOUISIANA SPECIAL ELECTION

On March 8, 1988, Louisiana will hold a special primary election in its fourth Congressional District to fill the seat to be vacated by the election of Representative Buddy Roemer as the state's governor. If no candidate obtains a majority of the votes, a special general election will be held on April 16, 1988.

Political committees authorized by candidates (candidate committees) who are participating in these special elections must file the appropriate pre- and post-election reports. The reporting schedule will depend on whether one or two elections are held. (See below.)

All other political committees which support candidates in the special election(s) (and which do not report on a monthly basis) must also follow the reporting schedule for the special election(s).

CHART I
Only One Special Election

Report	Period Covered	Registered/Certified Mail Date*	Filing Date
Pre-primary	1/1-2/17	2/22	2/25
Post-election	2/18-3/28	4/7	4/7
April quarterly		Report is waived.	

CHART II
Two Elections: Candidate Runs Only in First

Report	Period Covered	Registered/Certified Mail Date*	Filing Date
Pre-special	1/1-2/17	2/22	2/25
April quarterly	2 -3/31	4/15	4/15

CHART III
Two Elections: Candidate Runs in Both

Report	Period Covered	Registered/Certified Mail Date*	Filing Date
Pre-special	1/1-2/17	2/22	2/25
Pre-general	2/18-3/27	4/1	4/4
April quarterly	3/28-3/31	4/15	4/15
Post-general	4/1-5/6	5/16	5/16

Reports sent by registered or certified mail must be postmarked by the filing date (except in the case of the pre-election report). Reports mailed first class or hand delivered must be received by the filing date.

MASSACHUSETTS PRIMARY RESCHEDULED

Massachusetts will hold its Congressional primary election on September 15 instead of September 20, 1988. The new schedule for filing the 12-day pre-election report by committees supporting Congressional candidates in the primary is as follows:

Closing Date of Books	Mailing Date of Report if Sent by Registered or Certified Mail	Filing Date
8/26	8/31	9/3

Election and filing dates for all states were published in the January 1988 Record, on pages 4 and 5.

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Thomas J. Josefiak, Chairman; Danny L. McDonald, Vice Chairman; Joan Aikens; Lee Ann Elliott; John Warren McGarry; Scott E. Thomas; Walter J. Stewart, Secretary of the Senate, Ex Officio; Donnald K. Anderson, Clerk of the House of Representatives, Ex Officio. For more information, call 202/376-3120 or toll-free 800/424-9530. (TDD For Hearing Impaired 202/376-3136)

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

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

AOR	Subject
1987-31	Eligibility of membership organization's eight membership classes for PAC solicitations. (Date made public: December 4, 1987; Length: 14 pages, plus 58-page supplement)
1987-32	Senate campaign's receipt and deposit of a contribution made in silver dollars. (Date made public: December 8, 1987; Length: 2 pages, plus 3-page supplement)
1987-33	Status of individual partner and his law firm as government contractors for purposes of PAC contributions. (Date made public: December 14, 1987; Length: 2 pages)
1987-34	Solicitation of restricted class of joint venture partnership by subsidiary of joint venture. (Date made public: December 17, 1987; Length: 4 pages, plus 41-page supplement)
1987-35	Agreements between corporation and political committees to transmit committees' political messages on "900" telephone lines. (Date made public: December 23, 1987; Length: 6 pages, plus 5-page supplement)
1987-36	Candidate's use of aircraft leased by bank. (Date made public: January 1, 1988; Length: 3 pages)

AO 1987-30: Assets of Candidate's Wife Used to Pay Off Bank Loan to Candidate

Mrs. Martha Ripley may not contribute more than $1,000 in assets to satisfy an outstanding loan obligation incurred by her husband, Robert K. Ripley, for his 1984 Senate primary campaign in Montana. She may contribute up to $1,000 of her personal assets only if she has made no other contributions to her husband's primary campaign either before or after the 1984 Senate primary in Montana.

Background

Beginning in May 1983, the Ripleys obtained a series of loans for Mr. Ripley's primary campaign effort from a local Montana bank. When the bank consolidated these loans, Mrs. Ripley had to co-sign the consolidated loan (and a renegotiated consolidated loan) because the Ripleys jointly owned the real estate used as collateral. After the bank failed, the Federal Deposit Insurance Corporation (FDIC) assumed the current, consolidated loan. Since Mr. Ripley does not have sufficient personal assets to repay the loan, the FDIC is demanding that Mrs. Ripley's assets be combined with those of her husband to pay off the outstanding loan obligation.

Commission's Conclusion

Initially, the Commission noted that its opinion addressed only those issues related to the consolidated campaign loan assumed by the FDIC. The opinion did not address any issues raised by the Ripleys' earlier campaign loan transactions because those issues concerned past, rather than ongoing or future, federal election activities.*

With regard to Mrs. Ripley's use of personal assets to help liquidate the FDIC loan obligation, the Commission noted that, under the election law, any valuable assets which an individual donates to a candidate's campaign constitute contributions to the campaign, which are subject to the law's $1,000 per election limit. 2 U.S.C. §§441a-(a)(1)(A) and 431(8)(A); 11 CFR 100.7(a)(1)(i)(D). Under FEC Regulations, a loan guarantee, endorsement or other form of loan security would also qualify as a campaign contribution at the time it is made, regardless of whether the loan is repaid. 11 CFR 100.7(b)(11) and 110.1(b)(1).

The $1,000 per election, contribution limit applies to a donation made to retire a candidate's campaign debts, regardless of whether the contributor is a member of the candidate's family. 11 CFR 110.1(g); AOs 1981-15 and 1984-60. Accordingly, any personal assets Mrs. Ripley donates to help liquidate her husband's outstanding primary

continued

**FEC advisory opinions address only future activities or activities which are under way and may continue into the future. 11 CFR 112.1(b)*

campaign obligation would constitute a contribution, which may not exceed $1,000 when added to any other contributions she has made to his primary campaign.

The opinion did not address the application of state laws to the loan obligation because such laws are not within the Commission's jurisdiction. Further, the Commission expressed no opinion as to whether Mrs. Ripley would be making a contribution to her husband's campaign if a court order required her to help pay off the loan. (Date issued: December 3, 1987; Length: 4 pages)

COURT CASES

NEW LITIGATION

FEC. v. New York State Conservative Party State Committee/ 1984 Victory Fund, et al.

In its complaint, the FEC alleged that the New York State Conservative Party State Committee (the Committee) and the Committee's treasurer, Vincent G. Downing, violated the election law by making excessive in-kind contributions to the campaign of Florence Sullivan, a candidate seeking the Republican nomination in New York's 1982 Senate primary.

Specifically, it is alleged tht defendants permitted the Sullivan campaign to use the Committee's nonprofit postage permit for campaign mailings. The FEC claimed that the difference between costs resulting from normal postage rates for such mailings and the mailing costs incurred by the Sullivan campaign in using the Committee's nonprofit postage rates resulted in excessive in-kind contributions from the Committee to the campaign.

The FEC therefore asked the court to declare that the defendants violated the election law by:

- o Exceeding the $5,000 limit on total contributions to the Sullivan primary campaign (2 U.S.C. §441a(a)(2)(A)); and
- o Failing to report the contributions of postage (2 U.S.C. §434(b)).

The FEC further asked the court to asses an appropriate civil penalty against defendants.

U.S. District Court for the Southern District of New York, Civil Action No. 87 Civ. 3309 (RO), May 13, 1987.

800 LINE

LAST-MINUTE CONTRIBUTIONS AND INDEPENDENT EXPENDITURES

This article answers several frequently asked questions about contributions and independent expenditures which are made shortly before an election.

Last-Minute Contributions

What is a last-minute contribution? A last-minute contribution is a contribution of $1,000 or more which the candidate committee receives after the 20th day, but more than 48 hours, before an election. 2 U.S.C. §434(a)(6); 11 CFR 104.5(f).

Are last-minute contributions subject to special reporting rules? Yes.

How should a candidate committee report last-minute contributions? A candidate committee receiving a last-minute contribution must disclose the contribution within 48 hours of its receipt. In addition to filing this report, sometimes called a 48-hour notice, the committee must itemize the contribution a second time on its next scheduled report. 2 U.S.C. §434(a)(6); 11 CFR 104.5(f).

Must a candidate committee also include contributions of less than $1,000 in the 48-hour notice? No, but these contributions must be reported on the next scheduled report. 2 U.S.C. §434(b)(2); 11 CFR 104.3(a)(3).

What information must the candidate committee disclose in a 48-hour notice?

- o The name of the candidate;
- o The office sought;
- o The identification* of the contributor; and
- o The date and amount of the last-minute contribution. 11 CFR 104.5(f).

How can the committee be sure that the notice will be filed on time? To ensure that a 48-hour notice arrives on time, many committees send mailgrams or use an overnight mail service. First class mail is also acceptable, provided the notice is received by close of business on the filing date. 11 CFR 104.5(e),

*"Identification" means, in the case of an individual, his or her full name, mailing address, occupation, and the name of his or her employer; and, in the case of any other type of contributor, the person's full name and address. 11 CFR 100.12.

Does the contributing committee (for example, a PAC or party committee) also have to file a 48-hour notice? No. The contributing committee must, of course, itemize the contribution on its next report.

Last-Minute Independent Expenditures

What constitutes last-minute independent expenditures? Last-minute independent expenditures are independent expenditures aggregating $1,000 or more which are made after the 20th day, but more than 24 hours, before an election. 11 CFR 104.5(g), 109.2(b).

Who must report these last-minute independent expenditures? The individual, group or political committee that makes them.

How should such expenditures be reported? Last-minute independent expenditures must be reported within 24 hours to the FEC, the Clerk of the House or the Secretary of the Senate, as appropriate. State filing is also required; see 11 CFR 104.4(c). These reports are referred to as 24-hour notices. 2 U.S.C. §434(c)(2); 11 CFR 104.5(g) and 109.2(b).

A political committee making a last-minute independent expenditure must report the expenditure a second time, using Schedule E, on its next regularly scheduled report.

What information must be disclosed in a 24-hour notice?

- o The name and identification number of the reporting political committee or, in the case of an individual or group, the reporting person's name, address, occupation and employer. See 11 CFR 109.2(a)(1)(i);
- o The name and mailing address of the payee;
- o The date, amount and purpose of the expenditure (e.g., radio, television or newspaper);
- o The name of the candidate and office sought;
- o A statement as to whether the expenditure was in support of or in opposition to the candidate;
- o The identification* of each person who contributed over $200 for the purpose of making the independent expenditure; and
- o A notarized certification, under penalty of perjury, as to whether the expenditure was made with the cooperation or consent of any candidate or his or her authorized committee. 11 CFR 109.2(a)(1).

What form is used for 24-hour notices? Schedule E (political committees) or FEC Form 5 (individuals and groups other than political committees) or a statement to the same effect. The form or statement must be signed by the committee treasurer or, in the case of individuals and groups, by the individual who is reporting the information. 11 CFR 104.14(a).

Must a 24-hour notice be filed if independent expenditures made shortly before an election aggregate less than $1,000? No. However, a political committee must report such expenditures on a Schedule E when it files its next report after the election. 2 U.S.C. §434(b)(6)(B)(iii); 11 CFR 104.3(b)(3)(vii). In the case of an individual or a group of individuals, such expenditures must be disclosed on Form 5 (or in a letter to the same effect) filed at the end of the next reporting period, but only if their independent expenditures aggregate more than $250 during a calendar year. 11 CFR 109.2(a).

Public Access to Last-Minute Transactions

How can I check up on last-minute contributions and last-minute independent expenditures? The Public Records Office makes available a large computer printout which lists all last-minute contributions for the calendar year. The printout is indexed by the candidate's name. Another index shows last-minute independent expenditures listed by the individual or group making expenditures, as well as by the candidate's name. There is also a chronological notebook of recent independent expenditure telegrams.

Because the volume of reports on last-minute transactions is high (over 600 48-hour notices arrived in the week before the 1986 general election), the FEC's Public Records Office extends its hours in the weeks before the general election.

Can I purchase copies of these materials? Yes. Should you wish to obtain copies of the 48-hour and 24-hour notices relating to a certain committee or a copy of an FEC index, call the FEC's Public Records Office, 202/376-3140. All interested reporters and media personnel should contact the FEC Press Office, 202/376-3155. If you have further questions, telephone the FEC's Information Services Division, 202/376-3120.

All three offices can be reached on the toll-free line, 800/424-9530.

COMPLIANCE

MUR 2271: Use of Corporate Facilities by Partner of Incorporated Law Firm

On April 22, 1987, the Commission found no reason to believe that an incorporated partnership and its owner had violated the election law (2 U.S.C. §441b(a)) by employing a company secretary and using *firm* stationery to assist a principal campaign committee.

Complaint

On October 10, 1986, a party political committee filed a complaint against a principal campaign committee claiming that its fundraising package had included a letter produced on corporate letterhead. The complainant contended that the letter, signed by a senior member of the (incorporated) law firm, had invited the recipient to attend a fundraising event and to make a contribution directly to the candidate. The complainant stated that the letter failed to contain a disclaimer, in violation of 2 U.S.C. §441d. Further, the complaint alleged, the letter represented a corporate contribution made "in connection" with federal elections, and resulted in a prohibited contribution from the law firm, in violation of 2 U.S.C. §441b.

General Counsel's Report

Corporate Contributions. The Federal Election Campaign Act prohibits a corporation from making a contribution or expenditure in connection with any election. 2 U.S.C. §441b(a). But, pursuant to 11 CFR 114.9(a), stockholders and employees of a corporation may make "occasional, isolated, or incidental use" of the facilities of a corporation for individual volunteer activity in connection with a federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. "Incidental use" of facilities is defined as one hour per week or four hours per month.

In this case, the respondent, a partner and an owner of the law firm, reimbursed the firm $25 to cover the cost of preparing invitations on company stationery and mailing them to nine associates. However, the General Counsel asserted that 11 CFR 114.9 does not permit an individual to direct other employees to assist in conducting campaign activity. By using a secretary, the General Counsel said, the respondent had converted permissible volunteer activity into a contribution by the incorporated partnership.

Being an owner and partner of the firm, the respondent had the authority to act on behalf of the corporation, so the respondent's activity became the firm's activity. In his report, the General Counsel said that the law firm's letter was something of value because it solicited contributions for the candidate. However, pursuant to 2 U.S.C. §441b(a), a corporation may not contribute to a candidate's political committee. Therefore, the General Counsel concluded that it appeared that the partnership had violated 2 U.S.C. §441b(a). And since the respondent was an owner and partner of the corporation, the respondent also had violated §441b(a). But, given the small apparent value of the contribution, the Office of General Counsel recommended that the Commission take no further action with regard to these §441b(a) violations.

Since the owner and partner of the firm was also a member of the principal campaign committee, and because he had requested and received ten to fifteen copies of the committee's solicitation materials, the General Counsel held that the committee had had an indication that the surplus materials would be used for fundraising purposes. Based on these facts, the General Counsel concluded that the partner had solicited funds with the knowledge, authorization and cooperation of the principal campaign committee staff; and, accordingly, that his payment for the solicitation expenses constituted an in-kind contribution to the committee. For these reasons, the General Counsel said that the committee had violated 2 U.S.C. §441b(a) by knowingly accepting a corporate in-kind contribution. But, again, given the small size of the contribution, the Office of General Counsel recommended that the Commission take no further action.

Although the corporation, respondent and committee had violated 2 U.S.C. §441b(a), the General Counsel found no evidence to suggest that the candidate had been involved. Therefore, the Counsel's office concluded that there was no reason to believe that the candidate had violated §441b(a).

Disclaimer. Pursuant to 2 U.S.C. §441d, whenever any person solicits a contribution through direct mail, the communication must bear one of the disclaimers set forth in the statute. In this case, the General Counsel concluded that the mailing was not a direct mailing, for purposes of the Act. Accordingly, the General Counsel recommended that the Commission find no reason to believe the respondent had violated §441d.

Commission Determination

The Commission voted 6-0 to reject the recommendations of the General Counsel's office. The U.S. Court of Appeals had previously ruled*

*See Common Cause v. FEC (85-0968), summarized on p. 6 of the August 1988 Record.

that in cases where the Commission rejects the General Counsel's recommendation, it must provide a statement of reasons to demonstrate why its decision is legally correct.

Commission's Statement of Reasons

In this instance, the Commission noted that the respondent had reimbursed the corporation for the use of stationery, postage and secretarial assistance, and that the reimbursements made by the respondent were properly reported as an in-kind contribution. Since the contribution by the respondent was permissible under Commission regulations, the Commission found no reason to believe the incorporated partnership had made a prohibited in-kind contribution to the candidate's campaign committee, and found no reason to believe the candidate or committee had accepted a prohibited in-kind contribution from the partnership.

This cumulative index lists advisory opinions, court cases and 800 Line articles published in the Record during 1988. 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.

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.

CONFERENCE SERIES ON ELECTION LAWS

In upcoming months, the Federal Election Commission will cosponsor a series of three conferences with state election offices. The conferences will present workshops on candidate campaigns, party and PAC activity, contributions and reporting. The conference schedule is detailed below. For more information on the series, contact the FEC's Information Services Division at: 202/376-3120 or toll-free 800/424-9530.

Conference Schedule

February 19	Louisville, Kentucky FEC and Kentucky Registry of Election
March 25	Columbus, Ohio FEC and Ohio Secretary of State
May 12-13	Seattle, Washington FEC and Public Disclosure Commission

FEDERAL ELECTION COMMISSION
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