FEDERAL ELECTION COMMISSION

RECORD

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COMPLIANCE

COMMISSION ADOPTS NEW PROCEDURES TO SPEED UP ENFORCEMENT

On May 12, 1988, the Commission approved a recommendation by the General Counsel's Office to expedite FEC enforcement matters involving violations of the election law's reporting requirements. During a six-month trial period, respondents who have filed their reports late or who have failed to file their reports will be offered an opportunity to enter into a conciliation agreement with the FEC at the time the agency finds "reason to believe" they have violated the law's reporting requirements. At the end of the trial period, the Office of General Counsel will report to the Commission on these expedited procedures and make further recommendations.

Under the trial program, late filer and nonfiler respondents will be sent a standardized conciliation agreement at the time they are notified of the FEC's "reason to believe" finding. The proposed agreement will contain an admission of their reporting violations and a civil penalty consistent with the severity of their reporting failures. If a respondent chooses not to sign the agreement:

- o He or she may present arguments to demonstrate why no further action should be taken or why his/her civil penalty for a reporting violation should be mitigated; or
- o Alternatively, the matter will proceed to the next stage of the enforcement process.

Under existing enforcement procedures, the respondent first receives notification of the FEC's "reason to believe" finding. He or she may subsequently request that the Commission approve a conciliation agreement before the agency finds "probable cause to believe" a violation of the election law has occurred. The Commission noted that this procedure has caused needless delay and expense. Since late/nonfiler respondents generally request and are granted a conciliation opportunity prior to the Commission's finding of probable cause, the new procedures will permit a more efficient and timely treatment of routine filing violations.

FEC PUBLISHES NONFILERS

During May and June, the Commission published the names of House and Presidential campaigns that had failed to file disclosure reports required by the election law. See chart below.

The election law requires the agency to publish the names of nonfiling candidates. Compliance actions against nonfilers are decided on a case-by-case basis. The law gives the Commission broad authority to initiate enforcement actions resulting from infractions of the law, including civil court enforcement and imposition of civil penalties.

Nonfilers

Candidate	Office Sought	State	Report Not Filed
Fernandez, B.	President		Monthly
Martin-Trigona A.	President		Monthly
Hopkins, L. J.*	House	KY	Pre-Prim.
Payne, D. M.*	House	NJ	Pre-Prim.
Rossello, P. J.	House	PR	Pre-Prim.
Snelgrove, R. H.*	House	UT	Pre-Conv.

**Subsequently filed report.*

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PUBLIC FUNDING

FEC APPROVES MATCHING FUNDS FOR PRESIDENTIAL CANDIDATES

On June 15, the Commission certified $1,287,442.96 in federal matching funds to four eligible Presidential candidates campaigning in the 1988 primaries. These certifications raised to $1,287,442.96 the total amount of payments the agency had certified to the Treasury for 15 eligible candidates by June 15, 1988.

The summary chart below provides cumulative information on certifications of primary matching funds made to fifteen eligible Presidential candidates between January 1 and June 15, 1988. The chart also indicates the most recent certifications made to eligible candidates.

During 1988, an eligible Presidential candidate may submit requests for primary matching funds on the second and fourth Mondays of each month. The federal government will match up to $250 of an individual's total contributions to an eligible candidate. Contributions from political committees are not matchable. (See 26 U.S.C. §§9034 and 9036 and 11 CFR 9034 and 9036.1(b) and 2(a).)

Primary Matching Fund Certification Activity

Candidate	Amount Certified June 15	Total Amount Certified Through June 15
Babbitt (D)		1,008,550
Bush (R)	$ 4,211	8,313,988
Dole (R)		7,358,287
Dukakis (D)	606,909	8,360,150
DuPont (R)		2,550,954
Fulani (NA)	51,208	539,857
Gephardt (D)		2,710,319
Gore (D)		3,286,990
Haig (R)		525,414
Hart (D)		1,122,282
Jackson (D)	625,115	4,842,611
Kemp (R)		5,292,093
LaRouche (D)		662,668
Robertson (R)		8,774,727
Simon (D)		2,998,593

ADVISORY OPINIONS

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
1988-22	Communications and events sponsored by nonprofit corporation with political organization status under the federal tax code. (Date made public: May 6, 1988; Length: 5 pages, plus 82-page supplement)
1988-23	Individual's sale of air travel coupons to campaign. (Date made public: May 16, 1988; Length: 1 page)
1988-24	Joint campaign committee established by federal/nonfederal candidates running in California primary. (Date made public: May 25, 1988; Length: 1 page, plus 1-page supplement)
1988-25	Automobiles provided by car manufacturer to major parties' national Presidential nominating conventions. (Date made public: May 31, 1988; Length: 8 pages, plus 1-page supplement)
1988-26	Solicitability of hourly wage earners with teaching responsibilities. (Date made public: June 7, 1988; Length: 1 page, plus 10-page supplement)
1988-27	Corporate honorarium paid to federal officeholder/candidate for PAC fundraising appearance. (Date made public: June 7, 1988; Length: 2 pages, plus 5-page supplement)

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ADVISORY OPINIONS: SUMMARIES

AO 1988-3: Solicitations by Trade Association with Corporate/Noncorporate Members

The American Pilots' Association (APA), a trade association representing licensed marine pilots who are members of 59 separate state and local pilot associations, may solicit contributions to its separate segregated fund, APA PAC, from:

- o Individual pilots who own stock or equity interests in two incorporated membership associations that belong to APA, the Crescent River Port Pilot's Association (The Crescent Pilots Association) and the San Francisco Bar Pilots Benevolent and Protective Association (the San Francisco Pilots Association); and
- o An unincorporated membership association that belongs to APA, the Pilots' Association of the Bar River Delaware (Delaware River Pilots Association). However, APA may not solicit the individual members of the Delaware River Pilots Association; nor does it have to attribute any portion of the Delaware River Pilots Association's contribution(s) to its members.

Solicitation of Incorporated Members' Stockholders

Under the Act and FEC regulations, a trade association, or its PAC, may solicit the stockholders of the association's incorporated members provided: 1) the association obtains a written approval from each corporate member before conducting the solicitation, 2) the corporate member has not authorized solicitations by any other trade association for the same calendar year and 3) the association complies with the election law's other relevant solicitation requirements and limits on contributions. 2 U.S.C. §§441a(a) and 441b(b)(4)(D); 11 CFR 114.5 and 114.8(c). Further, in AO 1982-12, the Commission concluded that a trade association could also solicit individuals who have an equity interest in the association's corporate member. Thus, assuming APA PAC complies with the appropriate solicitation requirements, it may solicit both pilots who are stockholder/members of the Crescent Pilots Association and pilots who are members of, and have equity interest in, the San Francisco Pilots Association.

Solicitation of Unincorporated Member Association

APA may not solicit individual members of its unincorporated member, the Delaware River Pilots Association, because these individuals are not APA members. Under the Act and FEC regulations, APA may, however, solicit the Delaware River Pilots Association itself at any time and without obtaining the association's prior approval. 2 U.S.C. §441b(b)(4)(C); 11 CFR 114.7(c). Since the Delaware River Pilots Association acts primarily as an administrative entity for its individual members, contributions solicited by APA are attributable only to the Association—not to its members.

The Commission noted that, since many of APA's 59 member associations differed in organization and structure, it would have been impractical for the FEC to determine the solicitability of each association's individual members. Thus, the FEC chose a sample consisting of APA's three largest member associations, representing, respectively, the Gulf, Pacific and North Atlantic states. The Commisson said that APA could rely on this opinion in determining the solicitability of the individual members of APA's other member associations—provided the factual situations represented by these other associations were indistinguishable from the situations addressed in the FEC's opinion. See 2 U.S.C. §437f(c)(1)(B). Chairman Thomas J. Josefiak filed a concurring opinion. (Date issued: April 29, 1988; Length: 6 pages, including concurrence)

AO 1988-12: Joint Promotion of Credit Card Program by Local Party Committee and Bank

The Empire of America Federal Savings Bank (Empire), a federally chartered savings bank, and the Erie County (New York) Democratic Committee (the Committee), a local party committee, may not enter into a proposed agreement whereby the Committee would provide mail lists and marketing support to Empire for its credit card program in return for a portion of the credit card membership fees. Even though Empire's payments would be deposited in a special account, the payments would still be considered prohibited contributions from Empire to the Committee because:

- o The payments would constitute something of value to the Committee, rather than the "usual and normal" fee charged by the Committee for such services; and
- o The payments would not qualify for the building fund exemption available to a national or state party committee.

Proposed Agreement for Promoting Credit Card Program

Under the proposed agreement between Empire and the Committee, the Committee would provide Empire with membership lists consisting of the names and addresses of registered Democrats who had voted in the last four general elections. The Committee would also help Empire market its credit card program to persons on the Commitee's membership lists by:

- o Allowing Empire to use the Committee's name and goodwill in making such solicitations; and

continued

- o Providing other forms of market support, such as placing containers of credit card applications at Committee headquarters.

Empire would compensate the Committee for these services by depositing into a special Committee account an unspecified portion of the annual membership fee paid by each credit card holder. Payments deposited in the special account would only be used to maintain the Committee's current office space (e.g., to pay for rent, maintenance, equipment and utilities).

Empire's Reimbursements Prohibited

The election law prohibits corporations chartered under federal statutes, such as Empire, from making contributions or expenditures in connection with any election for federal, state or local office. For purposes of this prohibition, an illegal contribution would include the making of a direct or indirect payment, or anything of value, to a political party for use in connection with federal elections. 2 U.S.C. §§441b(a) and (b)(2); 11 CFR 114.1(a)(1) and 114.2(a).

Further, in past advisory opinions, the Commission has generally viewed the sale of a political committee's assets to a corporation as a prohibited contribution to the committee from the corporation. See, for example, AOs 1983-2, 1981-7, 1980-70, 1980-34 and 1980-19. However, in several advisory opinions, as a narrow exception to this general prohibition, the Commission has allowed political committees to sell (or exchange) contributor or mailing lists for the usual or normal fee, without considering the funds received (or the value of the item) as a contribution. The lists sold by these committees were unique in that they were developed primarily for the commitees' own use, rather than as fundraising items. See AOs 1982-41, 1981-53, 1981-46 and 1979-18 and 11 CFR 100.7(a)(iii).

In deciding that Empire's reimbursements to the Committee for its mailing lists and marketing services would constitute prohibited contributions, the Commission distinguished this opinion from previous opinions that had permitted the sale of a committee's mailing lists. First, Empire's payments to the Committee would be unlimited and not reflective of the current value of the lists since the payments would be based on a portion of each card holder's annual membership fee. By contrast, past opinions permitting the sale of lists involved specific, predetermined payments from mail list brokers. Further, since the Committee's membership lists are available from other public sources, they are not sufficiently unique to qualify for the mailing list exception. Finally, the additional marketing services given by the committee to Empire materially distinguished the circumstances of this opinion from opinions that only permitted the ordinary sale or lease of lists.

Building Fund Exemption Does Not Apply

Although corporations like Empire may not make contributions in connection with federal or nonfederal elections, under limited and well defined circumstances, they may donate funds to political party committees, provided the funds are: 1) maintained in a separate account and 2) are used only for exempted purposes. For example, a national or state party committee may use corporate donations to defray the costs of building or purchasing an office facility, provided the committee has not acquired the facility to influence the election of a federal candidate. 2 U.S.C. §431(8)(B)(viii); 11 CFR 100.7(b)(12), 100.8(b)(13) and 114.1(a)(2)(ix). However, since the Erie Committee is a local party committee (rather than a state or national party committee), it is not eligible for this building fund exemption. Moreover, the exemption does not cover payments for operating and administrative costs, as proposed here. (Date issued: May 27, 1988; Length: 6 pages)

AO 1988-13: Campaign Funds Used to Pay Candidate's Apartment Rent

Congressman Richard Ray plans to use an apartment he owns in Columbus, Georgia, in part, for his personal use and, in part, as a "permanent satellite campaign office" for his 1988 reelection effort. Congressman Ray's principal campaign committee may pay him for its share of leased space in the apartment, provided these payments:

- o Represent the usual and normal (prorated) charge for such rental space; and
- o Are properly reported by the committee. 2 U.S.C. §434(b); 11 CFR 104.3(b). See also AOs 1978-80, 1983-1 and 1985-42.

Under the Act and FEC regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, provided the candidate does not convert any excess campaign funds to personal use. 2 U.S.C. §§431(a) and 439a. Thus the Commission cautioned that, if the Ray reelection committee's payments for the campaign space exceeded the usual and normal charge, the excessive amount would be considered a prohibited conversion of excess campaign funds to the candidate's personal use. Conversely, if the payments were less than the usual and normal charge, the difference would be considered an in-kind contribution by the candidate to his campaign. Although not limited by the Act, this type of contribution would be reportable. Chairman Thomas J. Josefiak and Commissioners Joan D. Aikens and Lee Ann Elliott filed a joint concurring opinion. (Date issued: April 21, 1988; Length: 4 pages, including concurrence)

AO 1988-18: Liability of Union for Federal Election Contributions Made from Its Donations to Nonfederal Entities

Under Missouri law, Local 36, a local union of Sheet Metal Workers International Association, AFL-CIO, may make contributions from its treasury funds to state and local candidates and to local party organizations. If a recipient of such contributions (e.g., a local party organization) were to donate these funds to a federal candidate or committee, without Local 36's prior knowledge, Local 36 could avoid its own prohibited contribution by continuing its policy of clearly designating, in writing, that its donations to nonfederal candidates and committees (consisting of its treasury funds) are to be used exclusively for state and local elections. For example, Local 36 could: 1) write the name of a specific state or local candidate or election on its check (or other written instrument) or 2) attach a signed statement to its check with this information. (Date issued: May 20, 1988; Length: 3 pages)

AO 1988-19: Solicitability of Employees in Company Shareholder Plan

Employees of Ashland Oil, Inc. who have participated in the company's Leveraged Employee Stock Ownership Plan (LESOP) for at least one year may qualify as solicitable stockholders under FEC regulations. (Under the employee shareholder plan, a LESOP member must be employed by Ashland for a least one year and may not be an hourly wage earner or a union member.)

Accordingly, even though some of the LESOP members may not be executive or administrative personnel, as Ashland shareholders, they may be solicited by the company's separate segregated fund, provided the fund's solicitations meet the requirements of FEC rules. See 11 CFR 114.5(a).

For purposes of PAC solicitations, Commission regulations define a stockholder as a person who has:

1. A vested beneficial interest in the company's stock;
2. The power to direct how stock will be voted; and
3. The right to receive dividends. 11 CFR 114.4(h).

Ashland employees who have participated in LESOP for at least one year satisfy these requirements for stockholder status. First, they receive a 10 percent vested interest in the Ashland common stock that is allocated to them after each year of employment. Second, before each stockholder meeting, the employees direct the Trustee on how to vote their shares. Finally, the employees directly receive dividends earned on their vested shares. (Date issued: May 26, 1988; Length: 3 pages)

AO 1988-21: Act's Preemption of California Ordinance Governing Campaign Contributions

Harriet Wieder, a candidate for Congress and a member of the Orange County (California) Board of Supervisors, may accept a contribution of up to $1,000 from a "County Influence Broker" (i.e., lobbyist) for her Congressional campaign, even though a county ordinance would prohibit this contribution. See 2 U.S.C. §441a(a)(1)(A).

Under the Orange County ordinance, a County Influence Broker may not contribute more than a total of $868 per year to all members of and candidates for the Orange County Board of Supervisors. The Federal Election Campaign Act (FECA), however, preempts the local ordinance. The FECA "supersedes and preempts" state and local provisions with respect to the sources and amounts of federal election contributions. Consequently, the broker's contribution to Mrs. Wieder's campaign is not subject to the county ordinance limitation. 2 U.S.C. §453; 11 CFR 108.7(c). (Date issued: May 16, 1988; Length: 5 pages)

CHANGE OF ADDRESS

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.

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.

USDC v. FEC

On April 12, 1988, the U.S. District Court for the Northern District of New York entered an order granting summary judgment to the FEC in United States Defense Committee v. FEC (Civil Action No. 84-CV-450).

Background

In filing suit on March 28, 1984, the United States Defense Committee (USDC) asked the U.S. District Court to take action with respect to the Commission's Advisory Opinion (AO) 1983-43.

In that opinion, issued to USDC on January 26, 1984, the Commission expressed the view that corporate treasury expenditures for certain voter guides which USDC proposed to compile and distribute to the general public were not exempted under Part 114 of FEC regulations. Consequently, the voter guides were prohibited by 2 U.S.C. §441b because, as drafted, the language of the guides suggested an election-influencing purpose. (Taken together, these legal provisions prohibit corporations, labor organizations and incorporated membership organizations from distributing to the general public voter guides that favor one candidate or political party over another.)

In response to AO 1983-43, USDC asked the court to declare that USDC's proposed expenditures were not proscribed by FEC regulations. Alternatively, USDC asked the district court to certify to an en banc court of appeals three constitutional questions concerning its distribution of the voter guides. For example, USDC asked the court to consider whether section 441b abridged its First and Fifth Amendment rights by discriminating between incorporated organizations like USDC and the institutional press.* (Costs incurred by news media corporations for bona fide coverage of political events are exempt from the election law's broad prohibition on corporate expenditures, provided the news corporation is not owned or controlled by any political party, political committee or candidate.)

District Court's Ruling

In a statement read into the public record, the district court judge presiding in this case held that the court had jurisdiction to review USDC's complaint. While the court acknowledged that the election law did not specifically provide for judicial review of FEC advisory opinions, the court found that its authority to review the complaint had not been "explicitly restricted by statute or by Congress...."

In ruling on the merits of the case, the court rejected USDC's claim that the election law discriminates against USDC by permitting the institutional press to disseminate information on political candidates to the general public while prohibiting USDC from disseminating information in the form of voter guides. The court held that the press exemption had a "valid basis" in that it recognizes the need for informing the public on federal election-related issues. Further, the press is not covered by this exemption when it exceeds its legitimate press function.

The court also rejected USDC's argument that the guides were not covered by the section 441b prohibition because they did not include an explicit request for the recipients to vote one way or another.

Finally, the court held that the Supreme Court's decision in FEC v. Massachusetts Citizens for Life (Civil Action No. 85-701) did not exempt USDC from section 441b's prohibition against corporate expenditures in connection with federal elections. To be eligible for the MCFL exception, among other things, a nonprofit corporation must have a policy of not accepting contributions from business corporations or labor organizations. Since USDC had accepted money from its corporate members, the court found that the organization was not eligible for the MCFL exception.

USDC subsequently filed an appeal of the district court's decision with the U.S. Court of Appeals for the Second Circuit.

FEC v. WORKING NAMES, INC.

On May 19, 1988, the U.S. District Court for the District of Columbia granted the FEC's motion for a default judgment against Working Names, Inc., a corporation that provides mailing list services, and the corporation's president, Meyer T. Cohen.

The FEC had filed a motion for the default judgment in April 1988, after defendants had violated the terms of a conciliation agreement entered into with the FEC in September 1986. Under the terms of the conciliation agreement, defendants had agreed to pay a $2,000 civil penalty for violating §438(a)(4) of the election law and section 104.15 of FEC Regulations. Specifically, defendants had rented to two organizations a mail list containing a name obtained from a listing of contributors disclosed on an FEC report. Under the election laws, names of contributors (other than political committees) that are disclosed on FEC reports may not be copied and used for commerical or solicitation purposes.

The court ordered defendants to comply with the terms of the conciliation agreement within 15 days of the court's judgment. The court further

**For a detailed summary of USDC's constitutional questions, see page 11 of the June 1984 Record.*

decreed that defendants pay $2,000 for violating the terms of the conciliation agreement and awarded the Commission its costs for the litigation. The court also permanently enjoined defendants from future violations of the election law.

NEW LITIGATION

FEC v. The Holmes Committee

The FEC asks the district court to declare that The Holmes Committee, the principal campaign committee for Lee Holmes' 1986 bid for a Kentucky House seat, and the Committee's treasurer, Yvonne M. Unseld, violated the election law by failing to file the following statement and reports during 1986: a Statement of Organization, July and October quarterly reports, pre- and post-general election reports and a year-end report.

The FEC further asks the court to:

- o Order defendants to file these and all other overdue reports within 15 days;
- o Assess an appropriate civil penalty against defendants for these violations; and
- o Permanently enjoin defendants from future, similar violations of the election law.

U.S. District Court for the Western District of Kentucky, Civil Action No. C88-0274L(B), April 19, 1988.

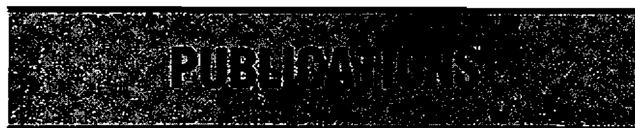
FEC v. Roger Lee

The FEC asks the district court to declare that Roger Lee, President and Director of the Bekins Company, violated 2 U.S.C. §441b(a) by using corporate funds to reimburse at least 13 Bekins employees for contributions they made to federal candidates.

The FEC further asks the court to:

- o Assess a $5,000 civil penalty against Mr. Lee for this violation of the election law; and
- o Permanently enjoin him from further similar violations of the election law.

U.S. District Court for the Central District of California, Civil Action No. 88-02640, May 10, 1988.



FEC SENDS 1987 ANNUAL REPORT TO PRESIDENT AND CONGRESS

The Federal Election Commission has issued its thirteenth Annual Report, which details the agency's role in preparing for the 1988 Presidential election year. Copies of the publication have been presented to the President, the President of the U.S. Senate and the Speaker of the U.S. House of Representatives.

The report, which examines the Commission's administration of federal election laws, also includes information on the FEC's ongoing internal operations. Enhancement of computer services is discussed, as well as regulatory changes and Commission efforts to assist political committees and the general public in understanding and complying with the law. Also included is a discussion of the major legal issues that stemmed from advisory opinions, litigation and compliance actions. Finally, the report contains agency suggestions for changes in election laws, which the Commission presented to Congress earlier this year. A number of appendices appear in the report, covering a variety of data related to FEC activities.

For a copy of the 1987 report, contact the Information Services Division, 800/424-9530 or 202/376-3120.

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.

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