FEDERAL ELECTION COMMISSION

RECORD

November 1988 999 E Street NW Washington DC 20463 Volume 14, Number 11

REGULATIONS

FEC HOLDS PUBLIC HEARING ON MCFL RULEMAKING

On November 16, 1988, the Commission will hold a public hearing on issues outlined in an Advance Notice of Proposed Rulemaking concerning possible changes to Parts 109 and 114 of its regulations. See 53 Fed. Reg. 416. These issues focus on what regulatory changes might be appropriate in light of the Supreme Court's opinion in FEC v. Massachusetts Citizens for Life (MCFL), 107 S.Ct. 616(1986).[1]

Persons or organizations wishing to testify at the hearing should submit such requests in writing to Ms. Susan E. Propper, Assistant General Counsel, by November 2. All witnesses who have not previously submitted written comments on the proposed rules must also do so by November 2. Ms. Propper may be contacted at: FEC, 999 E Street, N.W., Washington, D.C. 20463 or by calling 376-5690 or, toll free, 800/424-9530.

Issues Raised by MCFL Rulemaking

The hearing will focus on several issues:

- o How should the Commission determine when a nonprofit organization is an MCFL-type entity?[2]
- o What are the appropriate reporting and disclosure requirements for an MCFL-type organization?
- o When does an MCFL-type organization become a political committee?
- o Should the Commission adopt an "express advocacy" standard for determining when a prohibited corporate or union expenditure is made under section 441b of the election law?

The Commission received over 17,000 comments in response to its Advance Notice of Proposed Rulemaking. Of these, almost all exclusively addressed the express advocacy issue which had been raised by the National Right to Work Committee (NRWC) in a petition for rulemaking. The agency decided to hold a public hearing because: (1) the issues raised by the notice are difficult and complex, warranting thorough consideration before the agency drafts proposed rules and (2) the agency would like to receive more comments on the issues concerning MCFL-type entities.

continued on p. 2

[1] *For a summary of the Court's decision, see p.4 of the February 1987 Record.*

[2] *In its MCFL decision, the Court said that, under a narrow exception to the ban on corporate expenditures, an incorporated membership organization could make independent expenditures if, among other things, the organization: (1) was formed for the express purpose of promoting political ideas and did not engage in business activities, (2) had no shareholders and (3) was not established by a corporation or labor organization and had a policy of not accepting corporate or union donations.*

TABLE OF CONTENTS

REGULATIONS

continued from p. 1

FEC DENIES HALEY COMMITTEE'S RULEMAKING PETITION

On September 8, 1988, the Commission denied a petition for rulemaking submitted by the Ted Haley Congressional Committee in November 1987. See 53 Fed. Reg. 35829. The Commission made its decision on the disposition of the petition after:

- The agency had reviewed and considered public comments solicited on the petition;[1] and
- The U.S. Court of Appeals for the Ninth Circuit had upheld the Commission's long-standing policy that donations made to a candidate to retire the candidate's debts from a previous election are contributions for that election and, as such, are subject to the election law's limits and prohibitions on contributions.[2] See 11 CFR 110.1.

The Haley Committee's Rulemaking Petition

In its rulemaking petition, the Haley Committee suggested that the FEC add a subsection to 11 CFR 110.1, which governs limits on contributions to federal candidates and committees. Under the Committee's proposal, a new subsection would create a rebuttable presumption that post-election contributions are made for the purpose of influencing a federal election. Under this proposal, a contributor could demonstrate that a post-election contribution to a candidate was not for the purpose of influencing that election and, thus, should not be subject to the $1,000 per election limit.

As a basis for the rulemaking petition, the Haley Committee cited the U.S. District Court's February 1987 decision in FEC v. Ted Haley,[3] which the U.S. Court of Appeals for the Ninth Circuit subsequently reversed.

FEC Action on the Petition

In January 1988, the FEC published a Notice of Availability in the Federal Register which sought comments in support of, or in opposition to, the rulemaking petition. See 53 Fed. Reg. 2500. The agency received three comments on the petition.

In a memorandum to the Commission recommending that it deny the Haley Committee's rulemaking petition, the General Counsel noted that "neither the petitioner nor any of the commentators in this proceeding have presented evidence sufficient to persuade the Commission to alter its policy [that the election law's contribution limits apply fully to post-election contributions]."[4] In the Federal Register statement explaining its reasons for denying the petition, the Commission said that, if post-election contributions were not subject to the law's limits, candidates and contributors could easily circumvent the law's limits and restrictions. A candidate's campaign could overspend up to the date of the election and, after the election, collect donations (not subject to the law) to retire those debts.

In its Federal Register statement, the Commission noted that the appeals court had affirmed the agency's consistent interpretation of its policy on post-election contributions in FEC advisory opinions and regulations. In its July 1988 decision in FEC v. Ted Haley, the appeals court concluded that the policy was "entitled to due deference and [was] to be accepted by the court..." as a reasonable interpretation of the election law's contribution limits.

---

[1] *The FEC published a notice in the Federal Register announcing the availability of the petition in January 1988. 53 Fed. Reg. 2500.*

[2] *The appeals court's decision was summarized on p. 7 of the September 1988 Record.*

[3] *The district court's decision was summarized on p. 6 of the May 1987 Record.*

[4] *The Commission noted that one of the commentors had offered an alternate proposal concerning post-election contributions to an inactive Presidential candidate who did not plan to campaign for the Presidency in the next election cycle. The agency concluded that this proposal did not present any more compelling rationale for changing the FEC's policy than did the Haley Committee proposal.*

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)

ALLOCATION REGULATIONS: HEARING DATE CHANGED

The Commission has changed the date of hearings on allocation of committee expenses from December 14 to December 15, 1988. Written comments and requests to appear at the hearing must be submitted by November 30, 1988. The hearing will focus on proposed revisions to FEC rules on the allocation of spending between a political committee's federal and nonfederal accounts.[1]

Written comments on the proposed revisions should be submitted to Ms. Susan E. Propper, Assistant General Counsel. For more information, Ms. Propper may be contacted by writing the FEC, 999 E Street, N.W., Washington, D.C. 20463 or by calling 202/376-5690 or toll-free 800/424-9530.

Copies of the Federal Register notice concerning proposed revisions to these regulations are available from the FEC's Public Records Office. To obtain copies, call 202/376-3140 or toll-free 800/424-9530. (See 53 Fed. Reg. 38012.)

ADVISORY OPINIONS

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

AOR 1988-30: Company's Publication of PAC Information Article in Employee Newsletter

In a letter of August 12, 1988, the General Counsel notified the requester that the Commissioners failed to approve an advisory opinion by the required four-vote majority.

AOR 1988-34: Solicitability of Membership Organization's Individual Members

The requester withdrew the request in a letter of September 21, 1988.

AOR 1988-35: Presidential Candidates' Views Presented in Corporation's Newsletter

The requester withdrew the request in a letter of September 14, 1988.

[1]*The FEC's proposed revisions to Part 106 of its regulations were summarized in the October 1988 Record, p.1.*

ADVISORY OPINION REQUESTS

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

AOR	Subject
1988-43	Affiliation between PACs established by state "components" of national membership organization with no PAC. (Date made public: September 15, 1988; Length: 4 pages)
1988-44	Termination of 1982 candidate committee with unpaid debts; application of state statute of limitations governing creditors' claims. (Date made public: September 16, 1988; Length: 2 pages, plus 7-page supplement)
1988-45	Status of political committee as party's national committee. (Date made public: October 3, 1988; Length: 2 pages, plus 67-page supplement)

ADVISORY OPINIONS: SUMMARIES

AO 1988-22: Political Activities Sponsored by Incorporated Political Organization

The San Joaquin Valley Republican Associates (Republican Associates) is a nonprofit, nonmember corporation organized "to help elect more Republicans to office by enhancing significantly the visibility of the Republican Party, Republican ideas, Republican thought and Republican personalities within the San Joaquin Valley of California." Republican Associates is a tax-exempt incorporated political organization under the Internal Revenue Code (§527). While the organization engages in tax-exempt political activities, its charter does not permit Republican Associates to expressly endorse or solicit contributions to candidates.

If Republican Associates sponsored the three types of political activities described below (i.e., a periodicial newsletter, luncheons featuring candidates and candidate debates), the organization would be making expenditures to influence federal elections. Consequently, Republican Associates would have to register and report as a political committee when it spent more than a total of $1,000 for these activities, or any other federal political activities, during the year. 2 U.S.C. §431(4)(a); 11 CFR 100.5(a). However, Republican Associates' spending for a fourth type of activity, a campaign library, would not count toward its registration threshold because this spending would constitute general administrative expenses.

continued on p. 4

In reaching this conclusion, the Commission noted that, although the Supreme Court's ruling in FEC v. Massachusetts Citizens for Life (MCFL)[1] drew a narrow exception which permits certain types of nonprofit incorporated organizations to make independent expenditures on behalf of or in opposition to federal candidates, Republican Associates' proposed spending program would not meet these requirements because: (1) some of Republican Associates' proposed activities would be considered in-kind contributions to federal candidates rather than independent expenditures on their behalf and (2) the MCFL exception applies to political organizations "that only occassionally engage in independent spending on behalf of candidates"—not to organizations, like Republican Associates, whose major purpose is political spending.

Republican Associates' Newsletter

Republican Associates plans to publish and distribute a periodical newsletter that discusses political events and activities, including federal candidates and campaigns. The newsletter may occasionally endorse federal candidates. Republican Associates will distribute the newsletter, free of charge, to contributors who have attended its events and who may be active with the organization in the future.

Expenses for the newsletter would not fall under the "press exemption"[2] for two reasons. The newsletter is not a regular periodical financed by subscription or advertising. Further, the statute excludes from the exemption publications of political committees. This would apply should the activities of Republican Associates trigger political committee status.

Candidate- or election-related payments should be considered either independent expenditures, in-kind contributions or operating expenditures related to federal elections depending on: (1) whether Republican Associates coordinates communications with the candidates' campaigns and (2) whether the communications expressly advocate the election or defeat of candidates or solicit contributions to their campaigns.

Such payments must be allocated to a federal account. In some cases (discussed below) the payments must also be allocated to specific candidates, as contributions or expenditures. Allocation should be based on column inches pertaining to federal candidates or elections or on some other reasonable basis that reflects the benefit the candidates receive.

Independent Expenditures. If Republican Associates publishes communications in its newsletter that expressly advocate the election or defeat of clearly identified federal candidates or solicit contributions to their campaigns, the communications will be considered "independent expenditures," provided they are not coordinated with the candidate's campaign. See 2 U.S.C. §431(17); 11 CFR 109.1. Such expenditures would count against the $1,000 registration threshold. See 11 CFR 105.4 and 109.2. Although Republican Associates may make unlimited independent expenditures, it must allocate the expenditures among the candidates supported and report the expenditures according to the procedures spelled out in FEC rules for persons or for political committees (if the organization achieves political committee status).

In-kind Contributions. Republican Associates' expenditures for newsletter communications that discuss or mention a clearly identified candidate in an election-related context and that are coordinated with candidates or their campaigns will constitute reportable in-kind contributions to the candidates. (Even if the communications do not contain "express advocacy" statements or solicit contributions, they will be considered in-kind contributions.) The payments would count against the $1,000 threshold for registration and reporting. If such communications are made for more than one candidate, Republican Associates must allocate the expenses among the candidates.

Expenditures that Generally Influence Federal Elections. Expenditures for newsletter communications that refer to clearly identified federal candidates will be considered operating expenditures allocated to a federal account if:

- The communications neither contain "express advocacy" statements nor solicit contributions to candidates; and
- The communications are not coordinated with any candidate or campaign.

Although not allocable to specific candidates, these expenditures would nevertheless be made to influence federal elections. Thus, the spending would count toward Republican Associates' threshold for political committee status.

---

[1] *The Court said that, to qualify for this narrow exception, an incorporated political organization: (1) must be formed for the express purpose of promoting political ideas and not engaged in business activities, (2) may not have shareholders and (3) may not be established by or accept donations from corporations or labor organizations. For a summary of the Court's decision, see p. 4 of the February 1987 Record.*

[2] *Under this exception, spending for news stories, commentaries or editorials distributed through broadcast media, newspapers or magazines are not considered expenditures to influence federal elections provided the media is not owned or controlled by a political committee, party or candidate. 2 U.S.C. section 431(9)(B)(i).*

Federal Funds. In all three cases, funds used to pay for communications related to federal candidates or elections must be made from funds that are permissible under the election law. 11 CFR 102.5(a). Such payments count against the $1,000 threshold for registration and reporting. If Republican Associates crosses this treshold, thus qualifying as a political committee, payments for these communications must be made from an account that contains only permissible funds. 11 CFR 102.5(a)(1). If Republican Associates does not qualify as a political committee and does not maintain a federal account, it must be able to demonstrate through a reasonable accounting method that it had sufficient permissible funds to pay for these communications. 11 CFR 102.5(b)(1)(ii).

Luncheons

Republican Associates plans to sponsor monthly luncheons for persons who receive its newsletter. Some of the featured speakers at the luncheon will be federal candidates. Under rules set up by Republican Associates, these candidates will make their literature available, but campaign posters and other political paraphernalia will not be displayed. Candidates will not solicit contributions, but they may request campaign volunteers.

In previous advisory opinions, the Commission stated that a federal officeholder's appearance at an event would be considered campaign related and, thus, payments for the event would constitute contributions to the candidate's campaign if: (1) the candidate was expressly endorsed or (2) contributions were solicited to his or her campaign. However, the absence of express advocacy or solicitations at an event would not preclude an FEC determination that a candidate's appearance was campaign related. See AOs 1981-37, 1981-26, 1980-89 and 1978-4.

Since Republican Associates' main purpose is to promote Republican candidates and ideology, the Commission concluded that it was unlikely that Republican Associates could rebut a presumption that its luncheons promoted the election of those candidates it invited. Because Republican Associates' payments for the luncheons will be coordinated with the candidates, they would constitute contributions to the candidates invited to appear at the luncheons. See AOs 1986-37, 1984-13, 1982-76 and 1982-50. Again, these payments would count against the registration threshold and would have to be made from federal funds (see above).

Candidate Debates

Republican Associates proposes to sponsor debates between candidates for federal office. The organization will not allow candidates to solicit contributions at the debate, but it will permit candidates to make requests for campaign volunteers.

Under FEC regulations, payments made by a qualified nonprofit corporation to finance a nonpartisan candidate debate are exempted from the law's definitions of "contribution" and "expenditure." 11 CFR 100.7(b)(21) and 100.8(b)(23), 110.13 and 114.4(e).

However, since Republican Associates does not currently qualify as a nonpartisan, nonprofit (section 501(c)(3) or 501(c)(4)) corporation, its payments for the debates would be treated the same way as its payments for candidate appearances, that is, as in-kind contributions to the candidates.

Campaign Library

Republican Associates plans to maintain a library consisting of material on campaign management and politics. The library will also make available listings of campaign contributors and registered voters. Although registered Republicans may use the library's resources free of charge, users must pay for any requested copies. Moreover, Republican Associates will not use the library's resources to do research for candidates.

Under these circumstances, Republican Associates' funding of the library would constitute general administrative expenses, rather than "contributions" or "expenditures" made to influence federal elections. 11 CFR 106.1(c). If Republican Associates qualified for political committee status, it would have to allocate these expenditures between federal and nonfederal election activities. See 11 CFR 106.1(e). Payments for activities allocated to the federal account would have to be made from permissible funds and would be reportable.

Finally, if Republican Associates provided additional library services to a federal candidate who requested them, any additional expenses for these services would constitute in-kind contributions from Republican Associates to the candidate. As such, they would count against the organization's registration threshold. 11 CFR 106.1(a) and (c). (Date issued: July 5, 1988; Length: 11 pages)

AO 1988-24: Joint Fundraising Committee Established by Federal/ Nonfederal Candidates

Two federal campaigns (the Jesse Jackson for President '88 Committee and the Committee for Congressman Ronald V. Dellums) and two nonfederal campaigns (the Tom Bates Campaign [for a state assembly seat] and the Committee to Reelect John George to the Alameda County Board of Supervisors) established a joint fundraising committee, the June '88 Campaign, to:

- o Raise funds for the four campaigns' 1988 primary efforts in California; and

continued

- Produce and distribute joint campaign literature.

The establishment and operation of the June '88 Campaign, as described to the FEC, met the basic requirements of the FEC's joint fundraising regulations for candidate committees.[1] See 11 CFR 102.17. In addition to complying with these rules, the joint fundraising committee had to address two unique situations requiring application of other FEC rules:

- The joint fundraiser included a publicly funded Presidential primary campaign; and
- The joint fundraiser included federal and nonfederal candidates.

FEC Regulations Governing Joint Fundraisers

FEC regulations provide guidelines for such joint fundraising projects. See 11 CFR 102.17 and 9034.8. The June '88 Campaign appeared to satisfy the guidelines, as discussed below.

- Joint fundraising participants must enter into a written agreement that identifies a fundraising representative and includes a formula for the allocation of fundraising proceeds. This formula must be used to: (1) allocate fundraising expenses and (2) determine the amount of funds to be advanced for joint fundraisers by each participant. 11 CFR 102.17(c)(1) and 9034.8(c)(1) and (c)(2). In this instance, the four committees drafted an agreement that established a formula for allocating each candidate's share of receipts and project expenses, based on the prominence and space given to each candidate in the campaign literature produced by the joint fundraising committee.
- The participants or a fundraising representative must establish a separate bank account for the deposit and disbursement of the joint fundraising receipts. Moreover, all contributions deposited in this account must be permissible under the election law. 11 CFR 100.5, 102.17(c)(3)(1) and 9034.8(c)(4)(i). (These requirements apply even if some of the joint fundraising participants do not qualify as political committees under the regulations.) The June '88 Campaign satisfied this requirement.
- The participants in a joint fundraising project may either establish a separate committee or select a participating committee to act as a fundraising representative for all the participants. The representative must be a reporting political committee and must be designated as an affiliated committee by each of the participating federal committees. 11 CFR 102.17(a)(1)(i) and (b)(2); 9034.8(b). In this case, Ron Dellums' principal campaign committee acted as the fundraising committee's representative. As the representative, the Dellums committee maintained a separate bank account for the joint fundraising committee's receipts, reimbursements and expenditures.

Other FEC Regulations

To be fully in compliance with the rules, the committee also had to: (1) take steps to ensure that no impermissible funds (e.g., corporate or labor contributions) were placed in its account; (2) be aware that prohibited contributions to the joint fundraiser could affect the application of the allocation formula (11 CFR 102.17(c)(6)(iii) and (c)(7)(i)(A)); (3) be careful to include on joint solicitation notices and literature the disclaimer notices required under federal law (11 CFR 102.17(c)(2)-(4) and 9034.8(c)(4)-(5)); and (4) refrain from distributing or reallocating funds in order to maximize the matchability of contributions to Jesse Jackson's Presidential primary campaign (11 CFR 9034.8). (Date issued: June 10, 1988; Length: 5 pages)

AO 1988-36: PAC's Solicitation of Company's Employee Stockholders

The Detroit Edison Political Action Committee (EdPAC), the separate segregated fund of the Detroit Edison Company (Detroit Edison), may solicit contributions from Detroit Edison employees who qualify as stockholders in the company by virtue of their participation in the company's savings plan, the Detroit Edison's Employees' Savings Plan ("ESP"). Under FEC regulations, these employees qualify as solicitable stockholders once they earn the right to withdraw their shares. See 11 CFR 114.1(h).

EdPAC's or Detroit Edison's solicitations of the stockholder employees must comply with the solicitation requirements of the election law and FEC regulations. 2 U.S.C. §441b(b)(3)(A)-(C); 11 CFR 114.5(a).

Detroit Edison's Employee Stockholder Plan

Detroit Edison employees who have been with the company for at least six months are eligible to participate in the company's employee savings program by contributing from one to six percent of their salary to a savings plan. The company matches every $1 salary deduction that an employee designates for the savings plan with a 50 cent contribution to the employee for purchase of Detroit Edison common stock.

An employee may withdraw shares from the plan once the employee's investment has "matured." An employee's investment in the plan matures on the date the employee contributes to it. By contrast, Detroit Edison's matching

[1] *These rules govern joint fundraisers by party committees, nonconnected committees and candidate committees. A separate set of rules governs joint fundraising by the separate segregated funds of labor organizations and corporations. See 11 CFR 102.6(b) and (c).*

contribution to the employee's plan matures at the beginning of the fourth year after the company has made the matching contribution for the employee.

Once interest on the employee's plan has matured, the employee may withdraw this accrued interest once a year without penalty. More frequent withdrawals during the same year result in a three- to six-month suspension of the company's contributions to the employee's plan, depending on the type of withdrawal.

Under the plan, employee stockholders have the right to vote on their stock. This right is exercised through trustees to whom the employees have given written instructions on how to vote their stock.

The election law and FEC regulations permit a corporation or its separate segregated fund to solicit the corporation's individual stockholders. 2 U.S.C. §441b(b)(2)(A). FEC regulations define solicitable stockholders as persons who:

- o Have a vested beneficial interest in the corporation's stock;
- o Have the power to direct how their stock is voted; and
- o Have the right to receive dividends. 11 CFR 114.1(h).

Detroit Edison's employee savings plan meets the requirements of this definition. With regard to the first requirement, all the participants in the savings plan have a vested interest in the company's stock once their shares have matured.

With regard to the second requirement, through their trustees, employees have the right to vote on stock they have purchased as well as on stock donated to them by the company under the matching plan.

With regard to the third requirement, participants in the plan have the right to receive dividends because they may withdraw matured stock once a year without penalty. Moreover, participants are not limited in their withdrawal rights to a once-a-year or a one-time basis. (Date issued: September 26, 1988; Length: 5 pages)

AO 1988-40: Post Card Distributed Under "Coattail" Exception

The Doug Walgren for Congress Committee (the Committee), the principal campaign committee for Congressman Walgren's reelection campaign, plans to independently prepare a post card that will: (1) feature a photograph of the Congressman with Governor Michael Dukakis, the Democratic Presidential nominee, and (2) include on the reverse side "information on or references to" Governor Dukakis. The post cards will be distributed by volunteers to individuals selected by the Walgren campaign. The Committee's disbursements for the post card will qualify for the election law's "coattail exception," rather than as an in-kind contribution to the Dukakis campaign. Accordingly, the Committee must report these disbursements as operating expenditures. 11 CFR 104.3(b)(2) and (b)(4)(i).

Since the post cards will be mailed out by volunteers using lists developed by the Committee, the Committee will not have to include on the post cards the disclaimer notice required for direct mail pieces. See 2 U.S.C. §441d; 11 CFR 110.11.

Under the "coattail" exception in the election law and FEC regulations, a federal candidate may be mentioned in campaign materials produced by another federal candidate's campaign. 2 U.S.C. §431(8)(B)(xi); 11 CFR 100.7(b)(16) and 100.8(b)(17). Payments for these materials are not contributions to the referenced candidate provided that the materials are used in connection with volunteer activity and not distributed through direct mail (e.g., a mailing by a commercial vendor or by a campaign using commercial lists) or other forms of general public political advertising.

In this case, the Committee plans to develop a mailing list by obtaining an official listing of eligible voters from the county department of elections. The Committee will edit the list to obtain a "desirable group" of post card recipients in the Congressman's Congressional district. Using this edited list, volunteers will hand address the post cards and mail them out. Under these circumstances, the Committee's plan to prepare and distribute the post cards meets the requirements of the "coattail" exception. (Date issued: September 30, 1988; Length: 4 pages)

800 LINE

ELECTION INFORMATION AVAILABLE FROM OTHER AGENCIES

Sometimes callers ask election-related questions over which the FEC has little or no jurisdiction. This article refers callers to the agencies that deal with these commonly asked questions. A referral table on page 9 lists the appropriate offices to contact for more information.

State Election Activity

How can an individual get on the ballot for an election? Ballot access is handled by each state's election office (in most states, under the Secretary of State). Consult Table II on page 10 for your state election official.

May our political committee contribute to a state candidate? Are there state requirements? Federal law does not prohibit political committees that are registered with the FEC from making contributions to state campaigns, but most states have laws governing the committees' contribution limits and reporting requirements. For information on a particular state's laws, consult the new Clearinghouse publication Campaign Finance Law '88[1] or contact your state elections office. (For a listing of state election offices, see Table II on page 10.)

Voting Rights

On our state's primary election day, I was harassed as I went into the polling place to cast my vote. With whom should I file a complaint? The Department of Justice administers investigations of alleged voting fraud and violations of voting rights. If you suspect abuse, contact the local U.S. Attorney for your jurisdiction. For general information, contact the Department of Justice at the address and phone number listed on Table I.

IRS and Tax-related Issues

Can we use our FEC ID number as the taxpayer ID number when we open the bank account for our committee? No. You will need to contact the Internal Revenue Service (IRS) and apply for a taxpayer ID number. See Table I below for the address and phone number of the IRS.

Are contributions to my candidate's campaign or to a PAC tax deductible? No. Contact the IRS for more details.

Does my political committee have tax-exempt status? The IRS has jurisdiction over tax-exempt organizations. Contact the IRS at the number listed on the table.

Do we have to use a disclaimer on our solicitations saying that contributions are not tax deductible? Yes. The Internal Revenue Code requires all tax-exempt groups (including political committees) that exceed $100,000 in gross receipts to carry such a disclaimer on certain communications. This requirement does not apply to charitable organizations. Contact the IRS for more details.

Communications

The TV station I own receives requests from candidates to air TV advertisements. Exactly how much air time must I give to each candidate? The FEC has no jurisdiction in this area. Rather, the Federal Communications Commission (FCC) is the agency responsible for administering the laws regarding broadcasting. Its address and phone number are contained on Table I.

I manage a radio station. Do I have to air political ads of candidates and parties that the owner opposes? The FCC administers all election laws dealing with the obligations of broadcasters in presenting such advertisements. For more information, contact that agency.

Hatch Act

As a federal employee, may I participate in political campaigns? The Hatch Act prohibits federal employees from engaging in certain kinds of political activity. For more details and answers to specific questions, contact the Office of Special Counsel of the U.S. Merit Systems Protection Board at the address listed on Table I.

Personal Financial Disclosure

Where can I review the personal financial disclosure reports of candidates? Presidential candidates file these statements with the FEC, and you can review them in our Public Records Office. For more information, call 202/376-3140 or 800/424-9530. House and Senate candidates file with the Clerk of the House and the Secretary of the Senate, respectively. House reports are available from the House Records and Registration Office. Call 202/225-1300. Senate reports are available for review at the Senate Office of Public Records. Contact that office at 202/224-0322.

Where can I get more information about what is required on candidates' personal financial disclosure statements? Several different offices administer the law on personal financial disclosure. Regarding Presidential candidates, contact the Office of Government Ethics. For more information on disclosures made by Senate candidates, contact the Senate Select Committee on Ethics. If interested in House candidates, the appropriate office to contact is the House Committee on Standards of Official Conduct. Addresses and phone numbers for these offices are listed on Table I.

---

[1] *Campaign Finance Law ($19 per copy) may be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Checks should be made payable to the Superintendent of Documents. The order should refer to the publication's title and order number (#052-006-00041-41).*

TABLE I
REFERRAL OFFICES FOR ELECTION QUESTIONS

Subject	Contact for More Information
State Election Activity	
Popular Vote; State Disclosure	See **Table II** on page 10.
Voter Fraud; Voting Rights **Suspected Abuse**	Local U.S. Attorney U.S. Department of Justice
General Information	Voting Section Civil Rights Division U. S. Department of Justice P.O. Box 66128 Washington, D.C. 20035 202/724-3266
Tax-related Questions	Internal Revenue Service* Organization Products Branch 1111 Constitution Avenue, N.W. Washington, D. C. 20224 202/566-4332 or 202/566-4050
Broadcasting and Communications	Federal Communications Commission Political Programming Branch 2025 M Street, N.W., Room 8202 Washington, D.C. 20554 202/632-7586
Hatch Act (Federal employee political involvement)	Office of Special Counsel U.S. Merit Systems Protection Board 1120 Vermont Avenue, N.W. Washington, D.C. 20005 202/653-7143 or 800/872-9855
Personal Financial Disclosure** (Information on what must be reported)	
Presidential	Office of Government Ethics P.O. Box 14108 Washington, D.C. 20044 202/632-7642
Senate	Senate Select Committee on Ethics 220 Hart Senate Office Building Washington, D.C. 20510 202/224-2981
House	House Committee on Standards of Official Conduct Capitol Building, Room HT-2 Washington, D.C. 20515 202/225-7103

**Each state IRS office has a toll-free number. Consult your telephone directory.*
***To review and copy reports, consult offices listed in the article above under "Personal Financial Disclosure."*

TABLE II
STATE ELECTION OFFICES

Alabama
Mr. Jerry Henderson
Administrator of Elections
205/261-7210

Alaska
Ms. Sandra J. Stout
Director of Elections Division
907/465-4611

American Samoa
Moega Lutu
Administrator of Elections
684/633-4163

Arizona
Ms. Margaret Stears
State Election Officer
602/267-8683

Arkansas
Ms. Janet Reddin
Supervisor of Elections
501/682-5070

California
Ms. Deborah Seiler
Chief of Elections and Political Reform
916/445-0820

Colorado
Ms. Donetta Davidson
Elections Officer
303/894-2211

Connecticut
Mr. Albert Lenge
Attorney of Elections
203/566-3106
Mr. Jeffrey B. Garfield
State Campaign Finance
203/566-7106

Delaware
Mr. John Davis, Jr.
State Election Commissioner
302/736-4277

District of Columbia
Mr. Emmett H. Fremaux, Jr.
Executive Director
Board of Elections and Ethics
202/727-2525

Florida
Ms. Dorothy W. Joyce
Director, Division of Elections
904/488-7690
Dr. Anne Kelley
State Campaign Finance
904/488-7690

Georgia
Mrs. Frances S. Duncan
Director
Elections Division
404/656-2871

Hawaii
Mr. Morris Takushi
Director of Elections
808/548-2544
Jack M.K. Gonzales
State Campaign Finance
808/548-5411

Idaho
Mr. Ben Ysursa
Chief Deputy Secretary of State for Elections
208/334-2852

Illinois
Mr. Kel Hudson
Director of Election Information
217/782-4141
Dan White
State Campaign Finance
312/917-6440

Indiana
Mr. John DeLap
Deputy for Lobbyists and Elections
317/232-6531
Laurie Potter Christie
State Campaign Finance
317/232-3939

Iowa
Ms. Sandy Steinbach
Director of Elections
515/281-5865
Kay Williams
State Campaign Finance
515/281-4411

Kansas
Mr. Ron E. Thornburgh
Deputy Assistant for Elections and Legislative Matters
913/296-2236
Carol E. Williams
State Campaign Finance
913/296-4219

Kentucky
Ms. Charlotte Mullins
Executive Director
State Board of Elections
502/564-7100
Raymond E. Wallace
State Campaign Finance
502/564-2226

Louisiana
Mr. Darrell L. Cobb
Administrator of Elections
504/342-4970
Mr. Gray Sexton
State Campaign Finance
504/765-2308

Maine
Mr. Peter W. Danton
Director of Elections
207/289-4189
Ms. Marilyn Canavan
State Campaign Finance
207/289-4178

Maryland
Ms. Rebecca Babinec
Director, Division of Candidacy and Campaign Finance
301/974-3711

Massachusetts
Mr. John Cloonan
Director of Elections
617/727-2828
Mr. Dennis J. Duffin
State Campaign Finance
617/727-8352

Michigan
Mr. Christopher M. Thomas
Director of Elections
517/373-2540

Minnesota
Mr. Joseph Mansky
Acting Director
Elections Division
612/296-2805
Ms. Mary Ann McCoy
State Campaign Finance
612/296-5148

Mississippi
Mr. Phil Carter
Director of Elections
601/359-1350

Missouri
Mr. Paul D. Bloch
Deputy Secretary of State
for Election Services
314/751-3295
Gayla Thomas
Steve Byers
State Campaign Finance
314/751-3077

Montana
Mrs. Marian Campbell
Chief of Elections and
Legislative Service Bureau
406/444-4732
Dolores Colburg
State Campaign Finance
406/444-2942

Nebraska
Mr. Ralph Englert
Director of Elections
402/471-2554

Nevada
Ms. Susan Merriwether
Elections Coordinator
702/885-3176

New Hampshire
Mr. Robert Ambrose
Deputy Secretary of State
603/271-3242

New Jersey
Ms. Christine St. John
Director of Elections
609/292-3760
Frederick M. Herrmann
State Campaign Finance
609/292-8700

New Mexico
Mr. Hoyt Clifton
Director of Elections
505/827-3621

New York
Mr. Thomas R. Wilkey
Director of Election
Operations
518/473-5086

North Carolina
Mr. Alex K. Brock
Executive Secretary/Director
State Board of Elections
919/733-7218 or 733-7173
Yvonne L. Southerland
State Campaign Finance
919/733-2186

North Dakota
Mr. Ben Meier
Secretary of State
701/224-2900

Ohio
Ms. Dorothy Woldorf
Elections Administrator
614/466-2585
Donald J. McTigue
State Campaign Finance
614/466-2585

Oklahoma
Mr. Lance D. Ward
Secretary
State Election Board
405/521-2391
Ms. Marilyn Hughes
State Campaign Finance
405/521-3451

Oregon
Mr. William E. Flynn
Director of Elections
503/378-4144

Pennsylvania
Mr. William P. Boehm
Commissioner of Elections
717/787-5280

Puerto Rico
Marcos Rodriquez Estrada
President of State
Elections Commission
809/724-2085
809/723-9946

Rhode Island
Ms. Marjorie P. Mazika
Director of Elections
401/277-2340
Mr. Joseph DiStefano
State Campaign Finance
401/277-2345

South Carolina
Mr. James Ellisor
Executive Director
State Election Commission
803/734-9060
Mr. Gary R. Baker
State Campaign Finance
803/734-1227

South Dakota
Ms. Darlene Gage
Supervisor of Elections
605/773-3537

Tennessee
Mr. David Haines, Jr.
Coordinator of Elections
615/741-7956

Texas
Ms. Donnette Smith
Director
Elections Administration
512/463-5650
Ms. Patricia Hayes
State Campaign Finance
512/463-5704

Utah
Mr. W. Val Oveson
Lieutenant Governor
Chief Elections Officer
801/538-1040

Vermont
Ms. Catherine Simpson
Director of Elections
802/828-2304

Virgin Islands
Ms. Henrita Todman
Supervisor of Elections
809/774-2575
809/774-3107

Virginia
Ms. Susan Fitz-Hugh
Secretary
State Board of Elections
804/786-6551

Washington
Mr. Donald F. Whiting
Deputy Secretary of State
206/753-2336
Mr. Graham E. Johnson
State Campaign Finance
206/753-1111

continued

West Virginia
Ms. Mary P. Ratliff
Deputy Secretary of State
304/345-4000

Wisconsin
Mr. Kevin Kennedy
Executive Director
State Elections Board
608/266-8005

Wyoming
Ms. Margy White
Deputy Secretary of State
307/777-7378

COURT CASES

COMMON CAUSE v. FEC (Suit Seven)

On September 27, 1988, the U.S. District Court for the District of Columbia issued a joint stipulation of dismissal in which Common Cause and the FEC agreed to the dismissal, with prejudice, of a suit that Common Cause had filed against the FEC in December 1986. (Civil Action No. 86-3465)

In the suit, Common Cause had challenged the FEC's decision to dismiss an administrative complaint that the organization had filed against President Reagan's 1984 reelection campaign.

The parties agreed to the dismissal of the suit after three FEC Commissioners submitted to Common Cause and the the court statements that explained their reasons for dismissing the administrative complaint.[1] In agreeing to the dismissal of its suit, Common Cause did not abandon its position that the FEC's action on the administrative complaint was contrary to law. Nor did the FEC abandon its position that its dismissal of the complaint was reasonable.

[1]*The fourth Commissioner who voted to dismiss the complaint subsequently retired from the Commission. The statements of reason submitted by the three Commissioners who voted to dismiss the complaint are summarized on p. 7 of the October 1988 Record.*

NEW LITIGATION

FEC v. Bob Richards for President

The FEC asks the district court to declare that the Bob Richards for President Committee, Washington, D.C. (the Committee), a nonconnected committee, and the Committee's treasurer Blayne F. Hutzel violated the election law by:

- Including a candidate's name in the Committee's name (2 U.S.C. §432(e)(4));
- Failing to amend the Committee's Statement of Organization to accurately reflect: (1) the name of the Committee's treasurer and (2) the affiliation of the Committee with the Bob Richards for President Committee, Waco, Texas (2 U.S.C. §433(c));
- Knowingly accepting an excessive contribution in the form of a loan from the Populist Party (2 U.S.C. §441a(f));
- Making expenditures to finance a direct mail communication that expressly advocated the election of a clearly identified candidate and solicited contributions to the candidate, but failing to identify who paid for and authorized the communication (2 U.S.C. §441d(a)); and
- Transferring $5,000 to an affiliated committee from funds that included proceeds of an excessive contribution knowingly received by defendants (2 U.S.C. §441a(a)(1)(C)).

The FEC further asks the court to:

- Assess appropriate civil penalties against defendants; and
- Permanently enjoin defendants from similar future violations of the election law.

U.S. District Court for the District of Columbia, Civil Action No. 88-2832, October 3, 1988.

FEC v. Ron Bookman & Associates, Inc.

The FEC asks the district court to declare that Ron Bookman & Associates, Inc. (Bookman), a corporation based in Atlanta, Georgia, and the corporation's president Ronald Gary Bookman violated section 441b of the election law by making a $150 corporate contribution to a Georgia House candidate's campaign (i.e., the Swindall for Congress Committee). Specifically, defendants allegedly authorized a lawyer to issue a contribution check from a trust account consisting of a $10,000 payment Bookman had received from the Transportation Group, Inc.

The FEC further asks the court to:

- Assess an appropriate civil penalty against both Mr. Bookman and his company; and
- Enjoin each defendant from future, similar violations of the election law.

U.S. District Court for the Northern District of Georgia, CV-No. 1:88-CV-1807-JTC, August 19, 1988.

FEC v. Friends of Isaiah Fletcher

The FEC asks the district court to declare that the Friends of Isaiah Fletcher, the principal campaign committee for Mr. Fletcher's 1986 Congressional campaign, and Mr. Fletcher, acting as his campaign's treasurer, violated the reporting requirements of the election law by failing to file an October quarterly report in 1984.

The agency further asks the court to:

- o Assess an appropriate civil penalty against defendants; and
- o Permanently enjoin each defendant from similar, future violations of the election law.

U.S. District Court for the District of Maryland, Civil Action No. PN88-2323, August 9, 1988.

FEC v. Taylor Congressional Committee

The FEC asks the district court to declare that the Taylor Congressional Committee (the Committee), the principal campaign committee for Clarence Taylor's 1984 South Carolina House campaign, and the Committee's treasurer Richard L. Smith violated the election law's reporting requirements by:

- o Failing to file 1986 and 1987 mid-year reports (2 U.S.C. §434(a)(2)(B)(i)); and
- o Failing to file 1985 and 1986 year-end reports (2 U.S.C. §434(a)(2)(B)(ii)).

The FEC further asks the court to declare that defendants violated 2 U.S.C. §434(b)(8) by failing to:

- o Continuously report the Committee's outstanding debts until they were extinguished; and
- o Failing to file a statement of debt settlement concerning a debt forgiven by a creditor.

Finally, the FEC asks the court to:

- o Assess an appropriate civil penalty against defendants; and
- o Permanently enjoin defendants from future violations of the election law.

U.S. District Court for the District of South Carolina, Anderson Division, Civil Action No. 8:88-1950-3, July 27, 1988.

COMPLIANCE

MUR 1689: Bank Loans to 1984 Presidential Candidate

This MUR, resolved through a civil suit, involved $2 million in loans from banks to a publicly funded Presidential candidate's campaign.

Complaint

The MUR was internally generated by the Commission (under the procedures of Directive 6[1]) based upon evidence that a $2 million loan to a 1984 Presidential campaign was not within the "ordinary course of business" exception of 2 U.S.C. §431(8)(B)(vii). (This exception permits banks to make loans in the ordinary course of business to candidates and political committees.)

General Counsel's Report

The Commission found "reason to believe" that four banks, a Presidential candidate and his committee had violated 2 U.S.C. §441b by making and accepting prohibited contributions. Subsequently, the Commission conducted an investigation which indicated that a variety of factors other than sound banking judgment had prompted the banks to approve a loan to the Presidential committee.

The Federal Election Campaign Act expressly prohibits national banks from making any contribution or expenditure in connection with any election to any political office. 2 U.S.C. §441b-(a). The term contribution includes a loan. However, a loan is not a contribution if it is made by a federally chartered depository institution in accordance with applicable law and in the ordinary course of business. 2 U.S.C. §431(8)(B)(vii). A loan is considered made "in the ordinary course of business" if it is made on a basis which assures repayment, is evidenced by a written instrument, is subject to a due date and bears the usual and customary interest rate of the lending institution. 2 U.S.C. §431(8)(B)(vii)(II) and (III); 11 CFR 100.7 (b)(11).

The General Counsel focused the investigation on whether the loans were made on a basis which assured repayment. In his view, evidence indicated that they were not.

First, the General Counsel observed that "the committee's financial condition at the time the loan was granted made the committee a bad risk." The General Counsel pointed out that, had the

continued

[1] *FEC Directive 6 outlines the Commission's procedures for handling enforcement matters that are generated internally pursuant to 2 U.S.C. section 437g(a)(2).*

banks looked at the committee's reports, they would have realized that, at the time of the loan request, "the committee's financial condition was becoming increasingly precarious."

Second, the General Counsel noted that the committee did not submit, nor did any of the banks require, relevant cash flow projections despite testimony from bank officials that cash flow projections were necessary in evaluating loan proposals.

Third, the General Counsel observed that the repayment sources listed in the committee's loan proposal had little or no value. Sources of repayment included accounts receivable, deposits, liquidations of fixed assets, future contributions and matching funds. Bank officials testified, however, that the fixed assets were not sufficient to pay the interest on the loan. The Commission concluded that the expectation of future contributions and matching payments could have constituted a basis of assuring repayment if the loan had provided a sufficient alternate source of repayment. But it did not. The Commission rejected the Committee's assertion that "comfort letters" provided an alternative—or secondary—source of payment. These letters--pledges by wealthy supporters to help raise funds to retire the loan—were not binding on the authors and failed to provide a sufficient basis for repayment.

Fourth, the General Counsel said that "political pressures may have been applied to those individuals reviewing the loan request." In several instances, the loan was not processed through normal channels but was handled instead by individuals with political or executive responsibilities. Further, the banks granted this loan even though the lead bank had previously rejected a request from the same committee for a less "speculative" loan.

Fifth, the General Counsel argued, repayment was not expected until a time when the campaign's funds might be entirely dissipated, thus making the loan completely speculative.

The respondents argued that only banks, not the Commission, had to be satisfied that a loan was made on a basis that assured repayment and that the Commission used hindsight in second-guessing the banks. Further, the General Counsel's description of how the loan was arranged, the respondents contended, unfairly suggested that the loan was politically inspired.

The General Counsel responded that, within the Commission's authority to enforce the Act, is the power to explore whether a loan has been "made in the ordinary course of business." 2 U.S.C. §§431(8)(B)(vii) and 437g. In determining whether a loan has been made in the ordinary course of business, the Commission must be satisfied that the loan has been made on a basis which assures repayment. 2 U.S.C. §§431(8)(B)(vii)(II) and (III). Finally, the General Counsel stated that the statute clearly envisions that the Commission investigate and make its own separate determination as to whether a loan has been made on a basis which assures repayment, and the Commission has, on other occasions, investigated this issue.

The General Counsel also argued that the arrangements surrounding the granting of the loan, including the involvement of lobbyists and top bank officials outside the normal review process, were relevant considerations in evaluating the loan's legality under the Act.

In sum, the General Counsel recommended that the Commission find probable cause to believe that the banks and Presidential campaign violated the Act because the banks' loans "appeared not to have been made on a basis which assured repayment." The General Counsel stated that the investigation indicated the loan application may have been treated differently because the borrower was a well known local figure running for President, and that the credit decision may have been affected by the banks' and some of the bank officers' support for the candidate's campaign.

Commission Determination

The Commission voted 5-1 to accept the recommendations of the Office of General Counsel to find "probable cause to believe" the banks and the Presidential campaign had violated 2 U.S.C. §441b. Because the Commission was unable to conclude a conciliation agreement with the respondents, the Commission filed a civil suit against them. See the 1987 July Record for a summary of the suit and the consent order issued by the court.

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.

INDEX

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.

FEDERAL REGISTER

FEDERAL REGISTER NOTICES

Copies of notices are available in the Public Records Office.

Notice	Title
1988-9	Ted Haley Congressional Committee Rulemaking Petition; Notice of Disposition (53 Fed. Reg. 35829, September 15, 1988)
1988-10	Contributions and Expenditures; Communications, Advertising; Trade Associations; Notice of Proposed Rulemaking (53 Fed. Reg. 35827, September 15, 1988)
1988-11	11 CFR Part 106: Methods of Allocation Between Federal and Nonfederal Accounts; Payments; Reporting; Notice of Proposed Rulemaking (53 Fed. Reg. 38012, September 29, 1988)
1988-12	11 CFR Parts 109 and 114: Corporate and Labor Expenditures; Announcement of Public Hearing and Comment Period Extension (53 Fed. Reg. 40070; October 13, 1988)
1988-13	11 CFR Part 106: Methods of Allocation Between Federal and Nonfederal Accounts; Payments; Reporting; Change of Public Hearing Date (53 Fed. Reg. 40070, October 13, 1988)

PUBLIC FUNDING

FEC APPROVES MATCHING FUNDS

By mid-October 1988 the Commission had certified a total of $64,283,232 in federal matching funds to the U.S. Treasury for 15 eligible Presidential primary candidates. (See cumulative chart below.)

During 1988 an eligible Presidential candidate may periodically submit requests for primary matching funds. 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 9036.2(a).)

Candidate	Total Amount Certified Through 10/13/88
Babbitt (D)	$1,078,939
Bush (R)	8,393,099
Dole (R)	7,618,116
Dukakis (D)	9,040,028
DuPont (R)	2,550,954
Fulani (NA)	863,617
Gephardt (D)	2,831,732
Gore (D)	3,801,427
Haig (R)	538,539
Hart (D)	1,122,282
Jackson (D)	7,037,546
Kemp (R)	5,764,616
LaRouche (D)	825,577
Robertson (R)	9,346,112
Simon (D)	3,470,648

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

Official Business

Bulk Rate Mail
Postage and Fees Paid
Federal Election Commission
Permit Number G-31