FEDERAL ELECTION COMMISSION

RECORD

May 1990 999 E Street NW Washington DC 20463 Volume 16, Number 5

COMMISSION RECOMMENDS CHANGES IN ELECTION LAW

On March 21, 1990, the FEC submitted to Congress and the President 35 recommendations for amending the Federal Election Campaign Act and the Presidential public funding statutes. The Commission believes that the proposed amendments, if enacted, will greatly improve the administration and enforcement of the campaign finance laws.

The package of recommendations, submitted pursuant to 2 U.S.C. §438(a)(9), includes several suggestions addressing the projected shortfall in the Presidential Election Campaign Fund, which has financed Presidential elections since 1976. According to recent FEC projections, the Fund may be insufficient to meet entitlements for the 1992 elections. The remedies that the Commission suggested include:

- Periodically adjusting the amount designated on income tax returns to correspond to increases in payments from the Fund. Under the current system, entitlements paid from the Fund each Presidential election year are adjusted for inflation; the individual tax checkoff amount, however, has remained at $1.00 since 1973.
- Changing the system to an entitlement program whereby payments would be determined solely by the statutory eligibility criteria.
- Changing the public funding system to a traditional appropriated account or, should the checkoff method be retained, permitting special appropriations to compensate for shortfalls.

The Commission proposed other amendments for the first time this year, including:

- Amending the law to ensure that candidates who have previously violated laws related to the public funding process will not receive matching funds.
- Granting the Commission statutory authority to represent itself in all court proceedings.
- Authorizing the Commission to accept funds and services from private sources to provide guidance and conduct research on election administration and campaign finance issues.

The Commission also modified last year's recommendation regarding the Act's limit on honoraria to reflect the recent amendments to ethics legislation. The Ethics Reform Act of 1989 banned the

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receipt of honoraria by Members of the House of Representatives and by officers and employees of the federal government.

The 1990 legislative recommendations included 26 other proposed amendments that were included in last year's package of recommendations and in the agency's 1988 Annual Report. The full text of the 1990 recommendations will be included in the FEC's 1989 Annual Report (to be issued in June 1990); in the meantime, a copy can be obtained from the FEC's Public Records Office.

FEC PRESENTS FY 1991 BUDGET REQUEST

Appearing before the Senate and House appropriations committees in February and March, FEC Vice Chairman John Warren McGarry testified in support of the agency's request for a FY 1991 budget of $17,150,000 and 266 FTE (full time equivalents of staff years).

Addressing the Senate Subcommittee on Treasury, Postal Service and General Government, Commissioner McGarry asked for adequate funding to meet the costs of a heavier workload, resulting in part from increases in federal campaign activity. Specifically, the Commission is seeking increased funding to:

- Bring the number of full time staff in the Audit Division to 28;
- Hire additional enforcement staff;
- Continue computerized data entry of contributions of $200 or more; and
- Launch a public education program on the Presidential Election Campaign Fund.

Also included in the agency's budget proposal was a request that $5,000 be earmarked as discretionary representational funds enabling the Commission to respond to the growing number of requests for information and hospitality from foreign and state governments. Commissioner McGarry drew attention to the educational role that the FEC, as the only federal election agency, has filled for foreign countries that are undergoing political reform. "As more countries adopt laws governing political campaigns, their interest has expanded from election administration to campaign finance regulation also. Literally dozens of foreign delegations visit the FEC each year."

CLARIFICATION: ETHICS LAW

With regard to the filing deadlines for personal financial disclosure reports by Congressional candidates under the Ethics in Government Act, the article on page 1 of the April Record should have stated that, under current law, reports are due within 30 days of becoming a candidate during an election year, or by May 15, whichever is later, but in no event later than seven days prior to an election. 2 U.S.C. §701(d).

FEDERAL ELECTION COMMISSION
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REGULATIONS

COMMENTS SOUGHT ON PROPOSED COMPUTER FORMAT RULES FOR PRESIDENTIAL AUDITS

In preparation for the 1992 Presidential elections, the Commission recently published a notice in the Federal Register proposing new regulations governing computerized magnetic tapes and diskettes submitted for use in mandatory audits of Presidential campaigns receiving public funds. See 55 Fed. Reg. 12499, April 4, 1990.

The proposed rules clarify that if a Presidential campaign maintains certain records in computerized format, the FEC will request those records during the audit. The proposals require that computerized materials be submitted in a format compatible with the FEC's computer processing capability, and they list the types of computerized information that may be requested from committees, along with a timetable for obtaining that information. Finally, the proposed rules clarify that the costs of providing computer records under these standards will be borne by the campaign committees and may be treated as exempt compliance costs.

In connection with the Federal Register notice, the FEC also issued a document proposing technical specifications for submitting computerized records to the agency, "Proposed Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding."

FEC ASSISTANCE AVAILABLE TO PRESIDENTIAL CANDIDATES

Anyone anticipating participation in the 1992 Presidential public funding program should note that the FEC's Audit Division is available to answer questions on the recordkeep- ing and reporting requirements under Title 26. For information on public funding, call the Audit Division at 800/424-9530 or 202/376-5320.

The Commission seeks comments on these proposals from candidates, committees, commercial vendors of computer software and other sources. Written comments should be received by **May 21, 1990,** and addressed to Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463.

A copy of the Federal Register notice and the proposed "Computerized Magnetic Media Requirements," referred to in the notice, can be obtained from the FEC's Public Records Office.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of any AOR is available for public inspection and comment from the FEC's Public Records Office.

AOR 1990-4
Credit card contributions to PAC. (Date made public: March 15, 1990; Length: 5 pages, including supplements)

AOR 1990-5
Candidate's publication of monthly newsletter on public affairs. (Date made public: March 28, 1990; Length: 2 pages plus several sample newsletters)

AOR 1990-6
Preemption by Act of state law prohibiting matching of PAC contributions with corporate charitable donations. (Date made public: April 4, 1990; Length: 6 pages)

ADVISORY OPINION SUMMARY

AO 1990-3: PAC's Sale of Advertising Space in Newsletter

City Political Action Committee (CityPAC), a nonconnected committee, may sell advertising space in the newsletter it distributes to its contributors. Payments resulting from the sales will be considered contributions for the purposes of

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the prohibitions, limits and reporting requirements of the Act.

The sale of assets or items by a political committee in a business venture is generally viewed as fundraising for political purposes. Payments for ads in newsletters and journals published by political organizations, furthermore, are contributions if the activity being funded by the sales is conducted for the purpose of influencing a federal election. See AOs 1985-39, 1981-33, 1981-3 and 1978-46.

The payments received by CityPAC will be deposited in its account and will be available for use by the committee to make contributions and expenditures in connection with federal elections. They are reportable as contributions to CityPAC in their full amount.

As contributions, payments for advertising space may be received from individuals and partnerships (subject to the limits of 2 U.S.C. §441a(a)(1)(A)), but not from prohibited sources, such as corporations and labor organizations. 2 U.S.C. §441b. An individual may pay for an advertisement on behalf of a corporation, however, provided that payment is made with the individual's own funds from his or her noncorporate account, and provided that the individual is not paid by the corporation for making the contribution by means of a bonus, expense account or other form of direct or indirect compensation. 11 CFR 114.5(b)(1); AO 1985-39. (Date issued: March 13, 1990; Length: 4 pages)

PUBLIC APPEARANCES

May 11	American Bar Association Charleston, SC Chairman Lee Ann Elliott
May 11	Citizens for Private Enterprise Reno, NV Craig Engle, Executive Assistant to Chairman Elliott
May 18	Minnesota Institute of Legal Education Bloomington, MN N. Bradley Litchfield, Associate General Counsel for Policy

COMPLIANCE

NO EXPEDITED COMPLIANCE PROCEDURES DURING 1990 ELECTIONS

On March 6 the Commission adopted a recommendation of the General Counsel that the expedited enforcement procedures implemented during the 1988 primary elections not be reinstated for the 1990 elections.

The 1988 expedited procedures were implemented when a complaint was filed against a Congressional candidate within 30 days before a primary election or against another person acting in connection with the primary. The General Counsel, in recommending that the Commission not use the procedures in 1990, observed that the expedited procedures "were rarely utilized and had no practical effect."

The General Counsel noted that the Act already provides for an expedited conciliation period in the case of a finding of probable cause against a respondent in the 45-day period preceding a primary election. See 2 U.S.C. §437g(a)(4)(A)(ii).

MURS RELEASED TO PUBLIC

Publicly released MUR summary files, as announced in FEC press releases on March 19 and April 12, 1990, are listed below. Civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

The summary file for each MUR is available from the FEC's Public Records Office.

MUR 2647
Respondent: (a) Hatch Election Committee and treasurer (UT); (b) E. Drinko (OH)
Complainant: FEC initiated
Subject: Excessive contributions
Disposition: (a) $2,500 civil penalty; (b) $150 civil penalty

MUR 2753
Respondent: (a) J. Mills (FL); (b) Jon Mills for Congress and treasurer (FL)
Complainant: J. Gaylord, Executive Director, National Republican Congressional Committee (DC)
Subject: Failure to disclose political committee contributions and individual contributor identification; failure to separately report PAC and individual contributions; failure to disclose aggregate contribution amounts
Disposition: (a) No reason to believe; (b) $500 civil penalty

MUR 2867
Respondent: Society of Real Estate Appraisers PAC (APPAC) and treasurer (IL)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: $250 civil penalty

MUR 2928
Respondent: West Virginia State Democratic Executive Committee and treasurer
Complainant: FEC initiated
Subject: Failure to disclose change of treasurer in timely manner
Disposition: $250 civil penalty

MUR 2943
Respondent: American Sugarbeet Growers Association PAC and treasurer (DC)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: $400 civil penalty

MUR 3009
Respondent: Rhode Island Democratic State Committee and treasurer
Complainant: FEC initiated
Subject: Excessive coordinated party expenditures
Disposition: $1,200 civil penalty

MUR 3035
Respondent: America First Resource Management, Inc., PAC and treasurer (NE)
Complainant: FEC initiated
Subject: Excessive contributions
Disposition: Reason to believe but took no further action

SUPREME COURT UPHOLDS BAN ON CORPORATE EXPENDITURES IN AUSTIN v. MICHIGAN CHAMBER OF COMMERCE

On March 27, 1990, the Supreme Court ruled that a Michigan state law prohibiting independent expenditures by corporations was constitutional. Reversing a Sixth Circuit U.S. Court of Appeals decision in Austin v. Michigan State Chamber of Commerce, the Court said that the state could prohibit corporations from using their treasury funds to make independent expenditures in connection with state elections.

Background

The suit originated in a 1985 district court complaint filed by the Michigan State Chamber of Commerce. The Chamber is a nonstock, nonprofit incorporated membership organization funded by dues. Three quarters of its members are for-profit corporations.

The Chamber sought to make an independent expenditure for a newspaper advertisement supporting a candidate for the state legislature. Although the Chamber had established a separate segregated fund for political purposes (which could lawfully have been used to make the expenditure), the organization wanted to purchase the ad with its general treasury funds. Finding that section 54(1) of the Michigan Campaign Finance Act appeared to prohibit independent expenditures made with corporate treasury funds, the Chamber filed suit against Richard Austin, Michigan's Secretary of State, challenging the constitutionality of the state law.

The law was upheld by the district court; the appeals court overturned the lower court's decision, finding the prohibition unconstitutional as applied to the Chamber.

Supreme Court Decision

First Amendment Issue. The Court held that the Michigan law, which permitted corporations to set

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up segregated political funds, was narrowly tailored to serve the compelling state interest of preventing the distortions in the political process that might result from allowing corporations to spend their general treasury funds to express their political views. "This potential for distortion," the Court said, "justifies §54(1)'s general applicability to all corporations"--regardless of their size or earnings--because all corporations "receive from the state the special benefits conferred by the corporate structure." Thus, the burden imposed on free speech by section 54(1) was permissible.

The Court further held that the Chamber did not qualify for the constitutional exemption to the ban on corporate spending set forth in FEC v. Massachusetts Citizens for Life, Inc. (MCFL).[1] In that decision, the Court addressed the federal election law's prohibition against corporate independent expenditures and found that the law was unconstitutional as applied to MCFL, a small, nonprofit corporation. The Court found that three characteristics of MCFL qualified the organization for an exception (based on the First Amendment) from the federal law's general ban on corporate spending because they negated the government's interest in preventing the threat or appearance of corruption.

The three features of MCFL that exempted it from the ban on corporate spending were that MCFL:

(1) Was a nonprofit corporation established to promote political ideas and not to engage in business activities;
(2) Had no shareholders or other persons with a claim on its assets or earnings; and
(3) Was not set up by a corporation and had an established policy not to accept donations from corporations.

With regard to the first characteristic, the Court observed that, unlike MCFL, the Chamber's activities were not limited to political and public educational purposes. The Chamber's bylaws set forth several purposes beyond politics, including, for example, the promotion of ethical business practices, the provision of group insurance for members and litigation on behalf of the Michigan business community.

The Chamber also failed to meet the second of the MCFL criteria. The Court concluded, "[W]e are persuaded that the Chamber's members are more similar to the shareholders of a business corporation than to the members of MCFL." Because the Chamber provided its members with several nonpolitical benefits and services, members had an economic disincentive to withdraw support from the organization even if they disagreed with its political views. In the MCFL case, the Court had stressed that the MCFL's lack of shareholders or other financially affiliated persons meant that members had no disincentive to disassociate from the group.

With respect to the third MCFL feature, the Court noted that here "the Chamber differs most greatly from the Massachusetts organization." While "MCFL was not established by, and had a policy of not accepting contributions from, business corporations," three-fourths of the Chamber's members were business corporations, and the organization's treasury contained corporate funds in the form of membership dues. "Because the Chamber accepts money from for-profit corporations, it could, absent application of §54(1), serve as a conduit for corporate political spending," the Court concluded.

Finally, the Court rejected the Chamber's claim that, because the Michigan law did not include a similar ban on political expenditures by labor organizations, it was underinclusive. The Court noted that although unincorporated labor organizations had power to accumulate wealth, they did not have the special legal privileges enjoyed by incorporated organizations, such as limited liability and perpetual life. The Court further distinguished unions from corporations

1. FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986). See the February 1987 Record.

like the Chamber by pointing out that the Constitution precludes unions from having the power to compel members to support their political activities. "[T]he funds available for a union's political activities more accurately reflect members' support for the organization's views than does a corporation's general treasury," the Court said.

Fourteenth Amendment Issue. The Chamber claimed that section 54(1) violated the Equal Protection Clause of the Fourteenth Amendment because it did not apply the restrictions to unincorporated associations having the ability to raise large amounts of money or to corporations in the news media.

Having clarified that a compelling state interest in preventing corruption justified the restrictions on political activity by corporations, the Court rejected the Chamber's arguments with respect to the application of the prohibition to unincorporated entities. Corporate status, the Court said, was a state-granted privilege that facilitated the amassing of wealth, the source of the threat of corruption.

The Court also affirmed that the limited "media exception" in the state law for news stories and editorials disseminated by corporations operating in any of the news media did not constitute a breach of equal protection because of the unique public informational and educational role that such organizations play. "The media exception ensures that the Act does not hinder or prevent the institutional press from reporting on and publishing editorials about newsworthy events."

NEW LITIGATION

Dolan v. FEC

Robert E. Dolan asks the district court to declare that 2 U.S.C. §438(a)(4), usually known as the "sale and use" restriction, is unconstitutional as applied to his efforts to solicit individuals identified as contributors to political committees in FEC reports.

Mr. Dolan is the treasurer of a political committee, American Citizens for Political Action (ACPA), and is the sole director, officer and stockholder of The International Funding Institute, Inc. (IFI), a consulting firm. Mr. Dolan, ACPA and IFI are currently respondents in an FEC enforcement action resulting from their use of a mailing list produced and marketed by IFI to solicit contributions; the list was compiled from disclosure reports filed with the Commission.

Section 438(a)(4) prohibits the sale or use of information about individuals disclosed in FEC reports "for soliciting contributions or for any commercial purpose." Prior to the filing of this suit (pursuant to section 437h), the General Counsel had notified the respondents that he was prepared to recommend that the Commission find probable cause to believe that they had knowingly and willfully violated section 438(a)(4).

Claiming that the "sale and use" restriction unlawfully abridges his freedom of speech and political association under the First Amendment, Mr. Dolan asks the district court to immediately certify to the U.S. Court of Appeals the question of the constitutionality of section 438(a)(4).

U.S. District Court for the District of Columbia, Civil Action No. 90-0542, March 9, 1990.

FEC v. NRWC (90-0571)

The Commission asks the district court to declare that the National Right to Work Committee, Inc. (NRWC) violated 2 U.S.C. §441b(a) by making expenditures in connection with the 1984 Presidential elections.

The Commission claims that the defendants, in an effort to monitor campaign-related spending by labor unions, hired private investigators to pose as union volunteers for Walter Mondale's Presidential campaign and for other political committees. NRWC's investigators were allegedly instructed to gather information on possible violations of the election law by labor organizations; NRWC planned to use that information in filing

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administrative complaints with the FEC.

In working under cover for the Democratic Presidential nominee, however, NRWC's investigators performed several services for the Mondale committee in several states, as well as for other political committees and labor organizations, while carrying out NRWC's instructions to gather information on labor political activity. NRWC paid the agents about $100,000 for their total services.

The Act defines a "contribution," in part, as "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. §431(8)(A)(ii). NRWC's alleged payments to the investigators, thus, would constitute prohibited in-kind contributions (or expenditures) by a corporation in connection with a federal election. 2 U.S.C. §441b(a).

The Commission asks the court to assess civil penalties, award the agency its costs and permanently enjoin the defendants from further violations of section 441b(a).

U.S. District Court for the District of Columbia, Civil Action No. 90-0571, March 13, 1990.

FEDERAL REGISTER NOTICES

1990-1
Voluntary Standards for Computerized Voting Systems: Notice of Final Standards (55 Fed. Reg. 3764, February 5, 1990)

1990-2
Filing Dates for New York Special Elections (55 Fed. Reg. 7027, February 28, 1990)

1990-3
11 CFR Parts 106, 9003, 9007, 9033, 9035 and 9038: Presidential Primary and General Election Candidates: Technical Requirements for Computerized Magnetic Media (55 Fed. Reg. 12499, April 4, 1990)

1990-4
11 CFR Part 110: Contributions and Expenditures: Prohibited Contributions [Foreign Nationals] (55 Fed. Reg. 13507, April 11, 1990)

800 LINE

DISCLAIMER NOTICES ON POLITICAL ADVERTISEMENTS AND SOLICITATIONS

The Federal Election Campaign Act and FEC regulations require that notices be placed on certain federal campaign communications distributed to the general public to indicate who authorized and paid for them. Some frequently asked questions about different kinds of disclaimers are answered below.

When does a campaign communication require a disclaimer? Disclaimer notices are required on campaign ads and solicitations distributed through "public political advertising" that:

- Expressly advocate the election or defeat of a clearly identified candidate; or
- Solicit contributions on behalf of a political committee or a candidate. 11 CFR 110.11 (a)(1).

What does "public political advertising" mean? "Public political advertising" includes the following advertising media, which are usually aimed at the general public: TV or radio broadcasting, print ads, posters, billboards (or other outdoor advertising facilities), yard signs and direct mail.

Must everyone include disclaimers in campaign ads and solicitations? Yes. The disclaimer requirements apply to anyone sponsoring a campaign communication, whether the sponsor is a candidate, a committee, a political party or an individual.

How should the notice be worded? If a solicitation or an advertisement advocating the election or defeat of a candidate is authorized and paid for by that candidate's own authorized committee, the notice must simply say who paid for the ad. For example, "Paid for by the Sam Jones for Congress Committee" is sufficient if the committee is Sam Jones' own authorized committee.

If the advertisement is authorized by the campaign but financed by someone else (such as another political committee), the notice must say: "Paid for by Citizens Organized for Better Government and authorized by the Sam Jones for Congress Committee."

What if the candidate's committee does not authorize the advertisement? If someone outside the campaign places an ad for Sam Jones, and if the campaign has not authorized the ad, then the notice should be worded like this: "Paid for by Citizens for Good Government and not authorized by any candidate or candidate's committee." 11 CFR 110.11(a)(1)(iii).

Is that the type of disclaimer that should be used for an independent expenditure? Yes. Since an independent expenditure, by definition, is never authorized by a candidate, the disclaimer should be similar to the example in the previous answer. 11 CFR 109.3.

Where should the disclaimer be placed in an advertisement? Whatever the medium, the notice should be clearly and conspicuously displayed. If the ad is printed, for example, the notice should be placed on the same page as the ad.

In a mailing that includes several pieces, where should we place the disclaimer? In a solicitation letter that contains several enclosures, the disclaimer must be placed on at least one of the items. For example, with a mailing that includes an invitation to a fundraising dinner, the disclaimer could be placed on the invitation itself or on the reply card. See AO 1980-145.

Are some campaign materials excluded from the disclaimer requirements? Yes. Disclaimer requirements do not apply to bumper stickers, pins, buttons, pens, concert tickets and similar small items on which a notice cannot be placed conveniently. Likewise, the requirements also do not apply to skywriting, watertowers and other advertising media where a notice would be impracticable. 11 CFR 110.11(a)(2); AO 1980-42.

Note, however, that conventional public political advertisements (such as newspaper advertisements) are not exempt from the disclaimer requirements, regardless of their size. AO 1978-33.

Does a nonconnected PAC need to use a disclaimer when soliciting contributions for itself? Yes, if the solicitation is made through general public political advertising (see first question). A solicitation made by a nonconnected committee must identify who paid for the advertisement or mailing, e.g., "Paid for by Acme Corp. PAC and not authorized by any candidate or candidate's committee."

Does a solicitation for a corporate or labor separate segregated fund have to include a disclaimer? No, because corporate and labor PAC solicitations are sent only to a restricted class of solicitees--not to the general public. 11 CFR 110.11(a)(1)(iv)(B).

If the PAC solicits contributions from the general public on behalf of a candidate, however, then the solicitation must carry a notice stating who paid for it and whether it was authorized by the candidate.

Can the notice stating who sponsored an advertisement or solicitation use an abbreviated form of the sponsor's name? No. The disclaimer notice must use the full, official name of the individual or committee who paid for and authorized the communication.

Does an ad for a federal candidate have to comply with state laws on disclaimers? No. The Act preempts state disclaimer requirements to the extent that they apply to federal candidates and committees. 2 U.S.C. §453; AOs 1986-11, 1981-27, 1980-36 and 1978-24.

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Are there other federal rules that apply to political advertisements? There are laws that govern the broadcasting of political advertisements, but they are administered by the Federal Communications Commission (FCC), not the FEC. For information, write to the FCC's Political Programming Branch, 2025 M Street, N.W., Washington, D.C. 20554, or call 202/632-7586.

EXEMPT PARTY ACTIVITIES

State and local party committees or organizations may make disbursements for certain activities that benefit the party's candidates, but are excluded from the Act's definitions of "contribution" and "expenditure." Thus, these "exempt party activities" are not subject to contribution or coordinated expenditure limits--when the activity is conducted according to the guidelines described below.

Note that these exemptions only apply to state and local party committees, and not to national party committees or other unauthorized committees.

General Rules

What exempt activities may party committees engage in? State and local party committees and organizations may conduct the following exempt activities:

- Distribution of slate cards or other listings of candidates;
- Distribution of campaign materials by party volunteers in the general election; and
- Voter drives on behalf of a party's Presidential ticket.

May exempt activities benefit both federal and nonfederal candidates? Yes. If, however, exempt activities benefit both federal and nonfederal candidates, the portion of the disbursement allocable to the federal candidates must be paid for with funds raised under federal law. 11 CFR 100.7(b)(9), (15)(ii) and (17)(ii) and 100.8(b)(10), (16)(ii) and (18)(ii).

How do we determine what is an appropriate allocation?[1] Expenses may be allocated between federal and nonfederal accounts on any reasonable basis. For example, a state or local committee may allocate payments based on the time or space devoted to federal candidates compared with that devoted to nonfederal candidates. See AO 1978-102.

May unregistered local party organizations conduct exempt activities? Yes. However, even though such organizations are not registered as political committees under the Act, they must nevertheless use funds that are permissible under federal law to finance the portions of the exempt activities that are allocable to federal candidates. 2 U.S.C. §§431(8)(B)(x)(2) and (9)(B)(viii)(2).

If an unregistered local party organization undertakes exempt activities, will it have to register as a federal political committee? It might. Such an organization must register as a federal political committee when it spends more than $5,000 in a calendar year on exempt activities. 2 U.S.C. §431(4)(C); 11 CFR 100.5(c).

Slate Cards and Sample Ballots

Under what circumstances may a slate card be considered an exempt activity? Payments to finance a slate card (or other printed list of candidates, i.e., sample ballot or palm card) are considered an exempt activity when:

- The list names at least three candidates for any public office (federal, state or local);
- The list is not distributed through public political advertising (although direct mail may be used);
- The content is limited to the identification of the candidate, including office sought, any positions held and party affiliation; and
- The portion allocable to federal

1. The Commission is currently in the process of revising the allocation rules.

candidates is paid with permissible funds.
2 U.S.C. §§431(8)(B)(v) and (9)(B)(iv); 11 CFR 100.7(b)(9) and 100.8(b)(10).

Does the exemption apply if the list contains additional information about the candidates? No. To be exempt, the content of the list must exclude additional biographical information about the candidates, statements of their positions and statements on party philosophy. Inclusion of such information disqualifies the activity for the exemption. AO 1978-89.

May any voter information be printed on the list? Yes. Certain information for voters, such as time, place and instructions on voting a straight party ticket, may be included without jeopardizing the exemption. AOs 1978-89 and 1978-9.

Campaign Materials

What guidelines must be followed to ensure that campaign materials qualify as an exempt activity? Payments made by state and local party committees or organizations for campaign materials, such as pins, bumper stickers, brochures, handbills, yard signs and posters, are exempt activities when:

- The materials are distributed on behalf of the party's nominees for the general election;
- The materials are distributed by volunteers and not through public political advertising (such as broadcasting, newspapers, magazines, or billboards), commercial operations or direct mail;
- The payments for the portions allocable to federal candidates come from funds that are permissible under federal law;
- The payments for the materials are not made from funds expressly designated by the donor for specific federal candidates;
- The payments are not made from funds transferred from the national party committee specifically to pay for the activity; and
- The national committee does not pay for or provide the materials.

2 U.S.C. §§431(8)(B)(x) and (9)(B)(viii); 11 CFR 100.7(b)(15) and 100.8(b)(16).

May we offer lunches or a token payment to volunteers who are distributing the materials? Yes. Party payments for travel or subsistence would not alter their status as volunteers. 11 CFR 100.7(b)(15)(iv) and 100.8(b)(16)(iv).

Reporting

Are disbursements for exempt activities reportable? Yes. Although they do not count against contribution or coordinated expenditure limits, disbursements for exempt activities must be reported as operating expenditures by state and local committees that have registered as political committees under the federal law. For reporting purposes, however, the disbursements need not be allocated to specific candidates. Note, however, when conducting exempt voter drive activity, if the mention of a House or Senate candidate is more than merely incidental, the cost attributable to the Congressional candidate is a reportable contribution or coordinated expenditure. See 11 CFR 100.7(b)(17)(iv) and 100.8(b)(18)(iv).

The first number in each citation refers to the "number" (month) of the 1990 Record issue in which the article appeared; the second number, following the colon, indicates the page number in that issue.

FEDERAL ELECTION COMMISSION
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