

# Record

July 1993

Federal Election Commission

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## Regulations

### Comments Sought on Changes to Enforcement Regulations

The Commission is seeking public comment on proposed changes to its enforcement regulations, 11 CFR Part 111. (Enforcement cases are called Matters Under Review or MURs.) The draft rules would revise or clarify almost every aspect of the enforcement process, from the initial filing of a complaint to the payment of penalties. The rulemaking also asks readers to comment on proposed new procedures, such as agency hearings at which respondents or their counsel could testify.

Comments must be in writing and are due September 24. Those submitting comments may also request to appear at a public hearing scheduled for October 20. Written comments and requests to testify should be addressed to Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

The Notice of Proposed Rulemaking published in the Federal Register is available for review at the FEC's Public Records Office. Copies may be ordered at a cost of 5¢ per page. Call 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

## Motor Voter

### FEC Chairman's Letter to Governors Promises Help with Motor Voter Law

In a May 21 letter, FEC Chairman Scott E. Thomas assured state governors that the Commission would work with state officials to help them implement the National Voter Registration Act of 1993, which was signed by President Clinton on May 20.

Chairman Thomas announced the formation of an ad hoc discussion group to clarify issues and identify options for implementing the law. The group is composed of state and local election officials and representatives from interest groups and agencies affected by the new legislation. It held its first meeting on June 25-26.

In 1995, when the motor voter law becomes effective, states will have to:

- Permit individuals to register to vote at the same time they obtain or renew their drivers license;
- Designate public assistance agencies and certain other offices as voter registration agencies;
- Permit voter registration by mail (national mail-in form to be designed by the FEC); and
- Limit purges of voter lists.

(continued on page 2)

## Motor Voter

(continued from page 1)

In closing, the Chairman reassured the governors "that the Commission recognizes the legislative, financial and technical constraints under which your State must implement the provisions of the Act, and that we take seriously our responsibility to provide your State officials with the [necessary] information and assistance...."

The June meeting of the ad hoc group was organized by the FEC's National Clearinghouse on Election Administration. The Clearinghouse plans to publish a detailed summary of the law and a practical guide for implementing it. Later this year, the office plans to hold conferences with state officials. ♦

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## Compliance

### MUR 3528 Amending Reports to Disclose Previously Missing Contributor Information

In MUR 3528, the Commission clearly stated that if a committee receives missing contributor information for a previously reported contribution, it must disclose the new information in an amended report.

To comply with the law, committees must use "best efforts" to "obtain, maintain, and submit" all required reporting information [emphasis added]. 2 U.S.C. §432(i); 11 CFR 104.7(a).

With respect to contributions from individuals, committees are required to report the name, address, occupation and employer of each donor whose aggregate contributions exceed \$200 in a calendar year. 2 U.S.C. §§431(13)(A) and 434(b)(3)(A). To satisfy the "best efforts" standard for obtaining this information, committees must make at least one clear request, per solicitation. The request must state that the reporting of the information is required by law. 11 CFR 104.7(b).<sup>1</sup>

In MUR 3528, a campaign committee used best efforts to "obtain and maintain" required information, but failed to "submit" it in amended reports.

The committee filed two consecutive reports lacking occupation and employee information for several contributors. Subsequently, the committee was successful in obtaining the missing information from 38 contributors whose contributions

totaled \$28,475, but it did not amend the reports until after the Commission found reason to believe that the committee had violated the reporting provisions. The committee mistakenly believed it had satisfied the "best efforts" requirement by obtaining and maintaining the information. The Commission said that the statute required the information to be "submitted" as well.

The committee agreed to pay a \$2,000 civil penalty. ♦

### MURs Released to the Public

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. The list is based on the FEC press release of May 24, 1993. Files on closed MURs are available for review in the Public Records Office.

#### MUR 3234

**Respondents:** New York State Conservative Party, Michael R. Long, chairman

**Complainant:** Moynihan for Senate Committee

**Subject:** Acceptance and use of prohibited funds; failure to register and report on time; disclaimer

**Disposition:** \$30,000 civil penalty

#### MUR 3618

**Respondents:** TGI Friday's Incorporated Employees Political Action Committee, Daniel Thompson Cronk, treasurer (TX)

**Complainant:** FEC initiated  
**Subject:** Failure to file reports on time

**Disposition:** \$4,225 civil penalty ♦

<sup>1</sup> The Commission has proposed revisions to its "best efforts" regulations at 11 CFR 104.7(b). See 57 FR 44137, September 24, 1992. See also the following Record issues: November 1992 (page 1); May 1993 (page 1); and June 1993 (page 3).



## Conferences

### FEC to Hold Conferences in San Francisco and Washington, DC

FEC conferences offer basic and advanced workshops on the federal campaign finance law and provide the opportunity to discuss problems and questions with FEC Commissioners and staff. The agency will hold two conferences this year:<sup>1</sup>

- A San Francisco regional conference, September 30 – October 1, for candidate committees, party committees, and corporate and labor PACs and their connected organizations. (More information given below.)
- A November conference in Washington, DC, for corporations, trade associations, labor organizations and their PACs. (Date not yet available; details to appear in future issue.)

To place your name on a mailing list to receive registration materials for either conference, call 800/424-9530 or 202/219-3420. (Registration materials will not be sent until later this year.)

#### San Francisco Regional Conference: September 30 – October 1

The San Francisco regional conference will offer FEC workshops for the committees and organizations listed above. Additionally, representatives of the Internal Revenue Service and the California Political Fair Practices Commission will be on hand to answer questions.

The \$135 fee for the conference (1 and 1/2 days) covers three meals (two continental breakfasts and a lunch) and a reception. The conference will be held at the Hotel Nikko San Francisco (415/394-1111). To receive the group rate of \$120 per night, notify the hotel that you will be attending the FEC conference. ♦

## Publications

### FEC's 1992 Annual Report Now Available

The FEC recently released its annual report for 1992, a year of intense activity for the agency. The report features several items of special interest:

- A recap of the unique aspects of the 1992 election year: Ross Perot's candidacy; the swelled number of Congressional candidates; the huge volume of campaign finance activity; and the record workload generated by these factors.
- A summary of the Presidential elections and the public funding program, complete with graphs.
- More campaign finance graphs on the activity of PACs, party and Congressional candidates.
- A discussion of the Commission's efforts to speed up the Presidential audit process.
- An overview of legal developments in advisory opinions, litigation and regulations.
- A complete set of the most far-reaching recommendations for legislative change ever adopted by the Commission.

The report was sent to the President and Congress on June 1, 1993; it is available to the public free of charge. Use the order form on page 7. ♦

## Clearinghouse

### Updated Edition of Election Case Law Released

*Election Case Law*, an overview of election-related law as applied by federal and state appellate courts, was recently updated by the FEC's National Clearinghouse on Election Administration. *Election Case Law 93* covers cases reported in the West Publishing Company system through the end of 1992.

Each chapter surveys the judicial treatment of an election issue. Among the topics covered are reapportionment, ballot access, voter registration and the Voting Rights Act.<sup>1</sup> The chapters open with a comprehensive summary of the current state of the law in the subject area, followed by summaries of the leading appellate court cases. Each chapter also contains synopses of other selected cases and a bibliography of selected literature.

To order the publication, send a \$15 check payable to the Superintendent of Documents along with the title and stock number (*Election Case Law 93*, 052-006-00053-8) and your name and address to: Superintendent of Documents, Government Printing Office, Washington, DC 20402. ♦

<sup>1</sup> The FEC will also hold three conferences in 1994: a Washington, DC, conference for candidate committees (February); a New Orleans regional conference (March); and a Pittsburgh regional conference (April). It is too early to call the FEC for dates or registration information. Look for announcements in future Record issues.

<sup>1</sup> Campaign finance matters are generally beyond the scope of the publication, although four cases are included because they bear on election regulation in general. Summaries of cases specifically related to the Federal Election Campaign Act are found in Selected Court Case Abstracts. To order a free copy, call 800/424-9530 or 202/219-3420.



## Statistics

### PAC Contributions Increase 19 Percent

In the 1991-92 election cycle, PAC contributions to federal candidates totaled \$188.7 million, up 19 percent from the \$159 million PACs gave to candidates in each of the two previous election cycles. Most of the money—\$179.2 million—went to House and Senate candidates seeking election in 1992; less than \$800,000 was given to 1992 Presidential contenders.

For the first time since 1977, PACs spent more than they raised. Drawing

on surplus funds from previous cycles, they spent \$394 million, \$9 million more than they raised in the 1992 cycle. PAC spending rose more than 10 percent over the previous cycle, while fundraising increased only 4 percent.

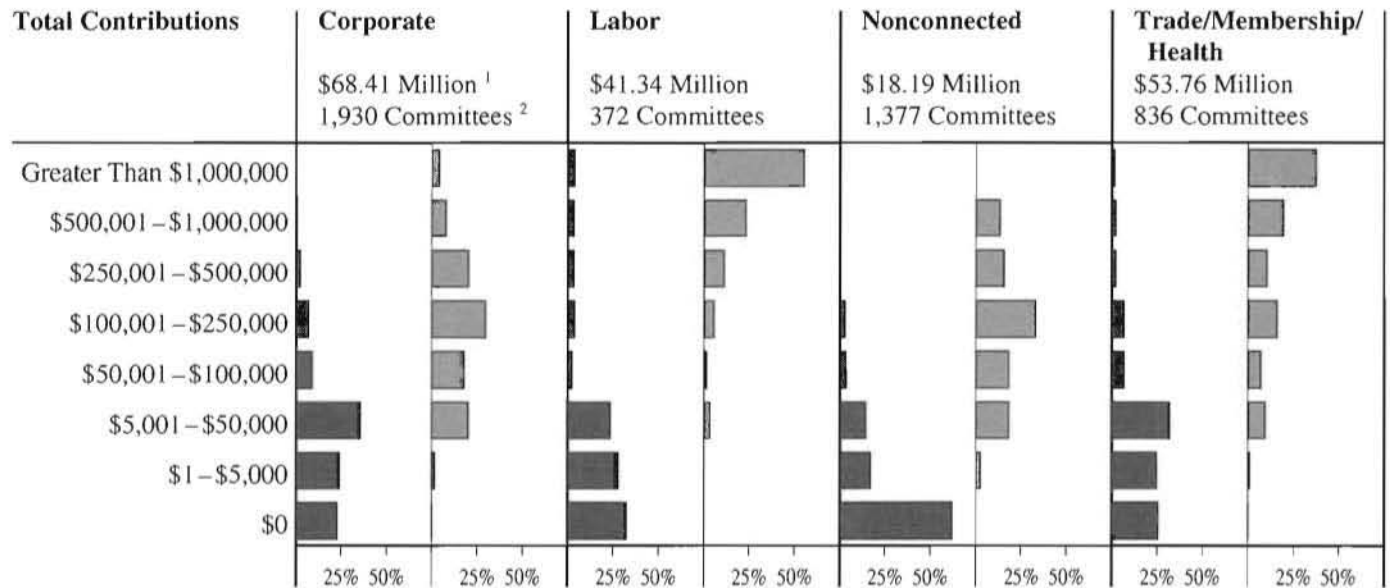
The jump in the overall campaign finance activity of PACs and other committees may be due to an unusual set of factors at work in the 1992 cycle: Congressional redistricting; a large number of House retirements; three Senate special elections, including one in California, and another open-seat Senate race in California.

The accompanying graphs are based on an April 29 FEC press release, which provides comprehensive PAC data for the 1991-92 cycle and summary statistics for six previous cycles. The release also ranks the "top 50" PACs in terms of receipts, contributions to candidates, disbursements and ending cash on hand.

For a copy of the release, call 800/424-9530 (ask for Public Records) or 202/219-4140. A complete ranking of all PACs making contributions to candidates in the 1991-92 cycle is also available from the Public Records Office. ♦

### Distribution of PAC Contributions to Candidates 1991-92 Election Cycle

Percentage of Total PACs within Category  
 Percentage of Total PAC Contributions to Candidates, within Category



#### Explanation

For each type of PAC, the first set of bars (dark) shows the percentage of committees whose total contributions to candidates fell within a given dollar range. For example, in the corporate category, the longest bar shows that about 35 percent of corporate PACs gave between \$5,001 and \$50,000 in contributions to candidates. Less than one percent of corporate PACs (too small to register on the graph) made total candidate contributions greater than \$500,000 or \$1 million.

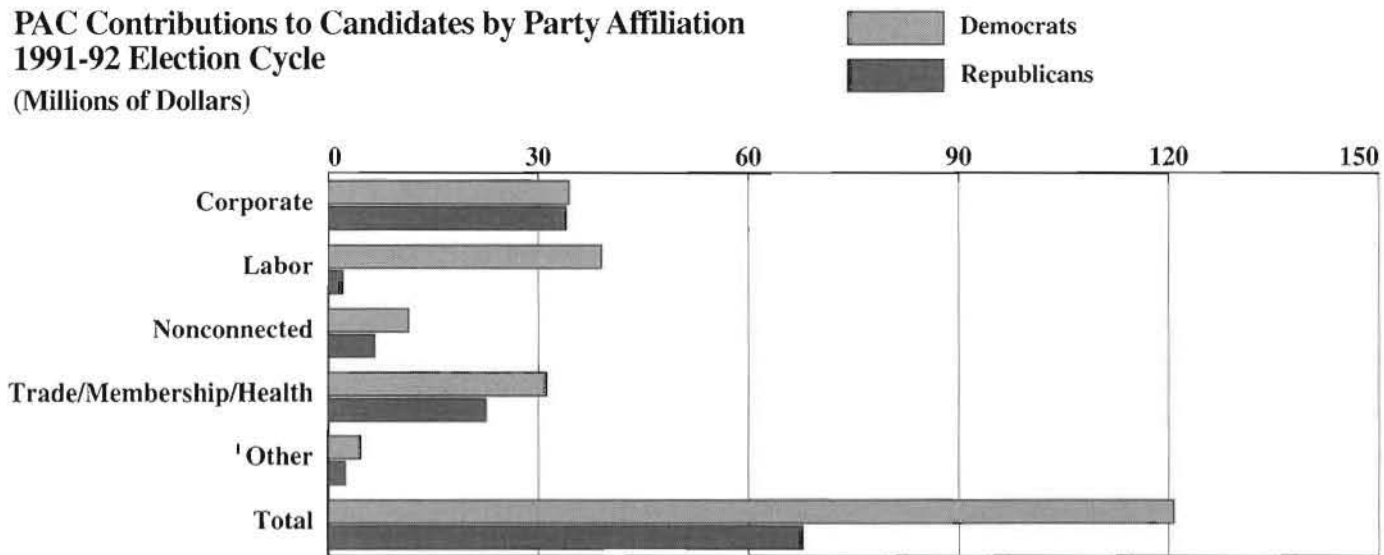
The second set of bars in each category shows what percentage of total contributions to candidates were made by PACs whose candidate contributions fell within a given dollar range. In the corporate category, the longest bar shows that PACs whose contributions to candidates totaled between \$100,001 and \$250,000 accounted for about 30 percent of the \$68.41 million contributed by all corporate PACs.

<sup>1</sup> For each category, this figure represents the total contributions to candidates made by all PACs in the category.

<sup>2</sup> For each category, this figure represents the total number of registered PACs in the category.

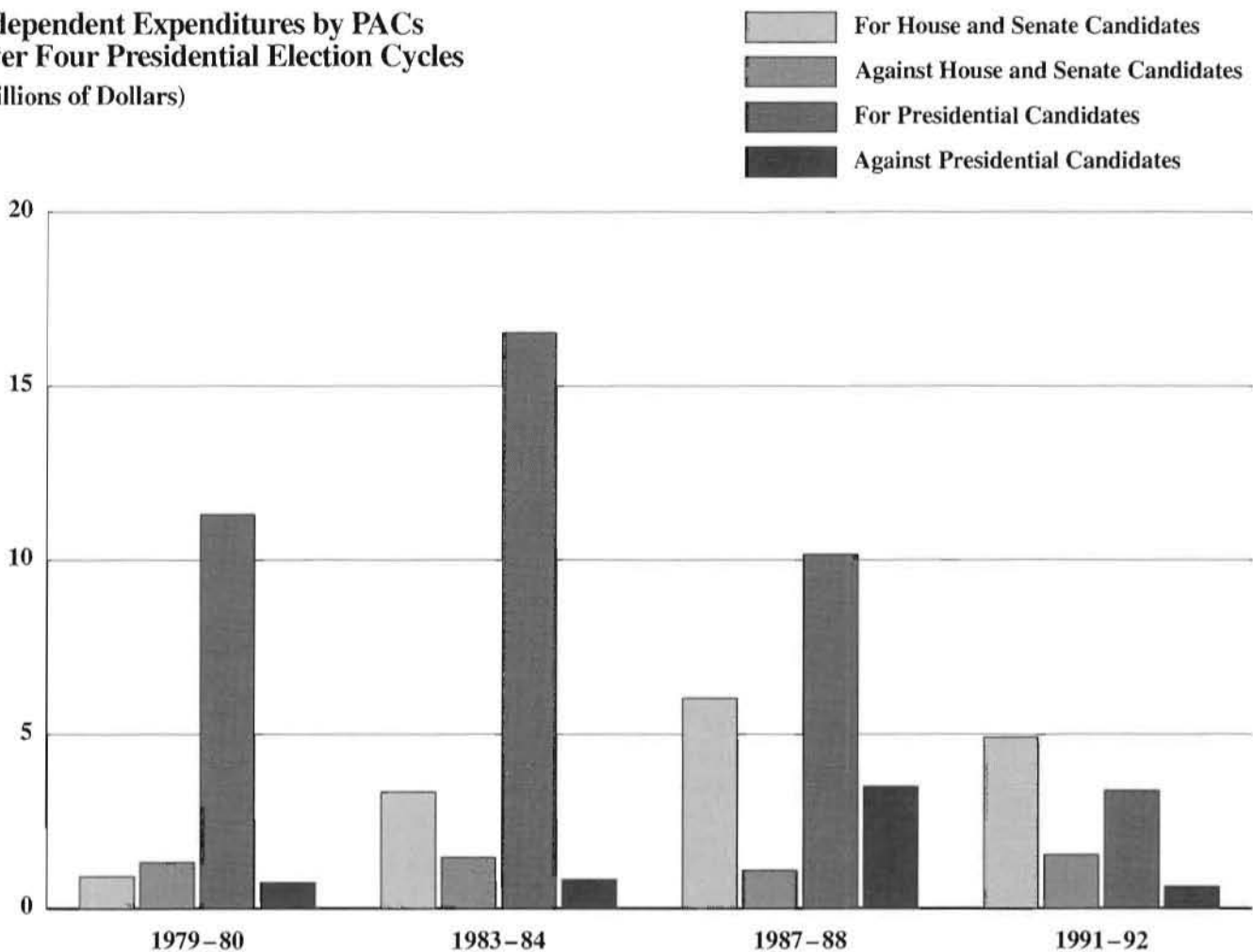
**PAC Contributions to Candidates by Party Affiliation**  
**1991-92 Election Cycle**

(Millions of Dollars)



**Independent Expenditures by PACs**  
**Over Four Presidential Election Cycles**

(Millions of Dollars)



<sup>1</sup> "Other" consists of PACs formed by cooperatives and corporations without capital stock.



## Advisory Opinions

### AO 1993-6 Use of Excess Funds by Former House Member

Although Citizens for Congressman Panetta, the campaign committee of former House Member Leon E. Panetta, may not use excess campaign funds for Mr. Panetta's personal use, it may use them to pay hotel expenses related to closing down his Congressional office; to pay his travel expenses for certain party-related appearances; and to make charitable donations. However, the committee may not cover travel expenses for days spent on personal activity or fees for his membership in tax-exempt organizations, as these would constitute a prohibited personal use of excess funds. In addition to making permissible disbursements from excess funds, the committee may use campaign funds for operating expenditures to wind down its activities.

Although formerly eligible to convert excess campaign funds to personal use because he was a Member of Congress on January 8, 1980 (i.e., a "grandfathered" Member), Mr. Panetta lost that status when he was sworn in as a Member of the 103d Congress on January 5, 1993. (The Ethics Reform Act of 1989 amended 2 U.S.C. §439a by prohibiting Members of the 103d or later Congresses from converting any excess campaign funds to personal use.)

Mr. Panetta resigned his Congressional seat on January 21 and was sworn in to his new position, Director of the Office of Management and Budget (OMB), on January 22.

#### Hotel Expenses

During the two-week period ending January 29, Mr. Panetta and his family stayed at a Washington, DC, hotel. He used part of the space as an office to wind down his Con-

gressional duties (assisted by his wife) and to conduct OMB business.

Because the law permits the use of excess campaign funds to defray expenses in connection with the individual's duties as a federal officeholder,<sup>1</sup> the committee may pay that portion of hotel expenses related to Mr. Panetta's Congressional duties. 2 U.S.C. §439a. See also AO 1978-23 (retired Congresswoman permitted to use excess campaign funds to employ staff and pay "incidental expenses" for duties imposed by her status as a former Member of Congress).

Because the term "federal office" applies only to elected federal offices, however, the committee may not pay hotel expenses related to Mr. Panetta's duties as OMB Director, an appointed position.<sup>2</sup> Payment of those expenses would constitute personal use of excess campaign funds.

So too would the committee's payment of the Panetta family's personal living expenses, based on AO 1980-138 (Senator-elect not permitted to use excess campaign funds to pay personal living expenses incurred during the transition period, before he assumed office, because they would have existed regardless of the outcome of the election).

The committee may therefore pay a percentage of the hotel expenses based on the time and hotel space devoted to winding down the Congressional office compared with that

<sup>1</sup> Campaign contributions to maintain an "unofficial office account" or to defray "official" expenses are generally barred. 2 U.S.C. §59e(d). See also House Rules 43 and 45 and Senate Rule 38.

<sup>2</sup> Under 2 U.S.C. §431(3), the term "federal office" is limited to the Presidency, the Vice Presidency and seats in the U.S. Congress. In this regard, the Commission concluded that AO 1980-113 is superseded to the extent it held that §439a permits a former federal candidate to spend campaign funds for expenses related to the individual's position as a holder of state office or any office not defined as a federal office.

devoted to OMB duties and personal activities.

#### Travel Expenses for Party Appearances

The committee may pay Mr. Panetta's round-trip travel costs to appear as the invited honoree or featured speaker at Democratic party events held in his former California district. This would be a permissible use of excess campaign funds under §439a, which allows excess campaign funds to be transferred in unlimited amounts to party committees. The travel payments would qualify as transfers in kind to the party committee, since the committee would receive the same benefit from the payments as from an actual transfer of the funds.

If a trip combined both party-related and personal activities, the committee could pay no more than transportation to and from the party committee event and related lodging and per diem costs (generally no more than one night per event). Payment of Mr. Panetta's expenses for days spent in personal activity would be a prohibited use of excess campaign funds.<sup>3</sup>

#### Payments to Tax-Exempt Organizations

Section 439a states that excess campaign funds "may be contributed to any organization described in §170(c) of title 26," which includes the kind of charitable nonprofit organizations (26 U.S.C. §501(c)(3)) to which the Panetta committee would like to make payments.

However, the charitable donations referred to in §439a do not include payment of dues or other membership fees on behalf of Mr. Panetta, who is

<sup>3</sup> The campaign travel regulations at 11 CFR 106.3, which govern travel by or on behalf of a federal candidate, do not apply here, since Mr. Panetta is a former candidate and the proposed travel, it appears, would not be on behalf of any current federal candidate.



neither a federal candidate nor a federal officeholder. Such payments would benefit him financially and thus constitute a prohibited personal use of campaign funds.<sup>4</sup>

### Winding-Down Expenses

The Panetta committee's funds may be used to hire individuals to complete the committee's 1993 midyear report, to pay storage costs for campaign records and to pay other costs of winding down campaign activity. However, the committee may not continue to use campaign funds indefinitely; it may need to seek another advisory opinion if it intends to make campaign expenditures after July 31, the midyear report filing date.

### Reporting the Payments

While the above campaign-related expenses would be reportable as operating expenditures, the other payments (hotel expenses, party travel and charitable donations) would be reportable as "other disbursements." The purpose of the party travel payments should be described as "travel expenses/transfer (in kind) to party committee of excess funds." 11 CFR 104.3(b)(4)(i)(A).

### Tax Ramifications

The Commission expressed no opinion on the federal or state tax ramifications of the proposed payments since those issues are not within its jurisdiction. The opinion cited IRS Reg. 1.527-5(c)(1) and an IRS training manual, *Exempt Organizations*, 1992, at 469, 470 (principal campaign committee of former candidate not allowed to remain in existence for longer time period than reasonably necessary to wind up affairs of past campaign).

<sup>4</sup> The Commission has been undecided in the past as to whether payment of membership fees on behalf of a current federal candidate or federal officeholder constitutes personal use of campaign funds. See, e.g., concurring opinions regarding AOs 1992-4 and 1992-1.

Vice Chairman Trevor Potter filed a dissenting opinion. Date Issued: May 14, 1993; Length: 10 pages (plus 3-page dissent) ♦

### Advisory Opinion Requests

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for review and comment in the FEC's Public Records Office.

#### AOR 1993-7

Name change of connected organization and its PAC. (Pacific Power & Light Company; June 8, 1993; 4 pages)

#### AOR 1993-8

State law prohibiting federal and nonfederal contributions by federal committee incorporated for liability purposes only. (Congressman John J. Duncan, Jr.; June 8, 1993; 3 pages plus 5-page attachment)

#### AOR 1993-9

Use of party building fund to pay off land contract for existing party headquarters; use of proceeds from sale of party's interest in contract to

purchase new headquarters; preemption of state law prohibiting corporate donations to building funds. (Michigan Republican State Committee; June 22, 1993; 6 pages) ♦

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**Reminder: Midyear Report Due July 31**

PACs and party committees (except monthly filers) and authorized committees of House and Senate candidates must file a midyear report by July 31. (Because this is a nonelection year, most committees file on a semi-annual, rather than quarterly, basis.) For more information, see the January or June issues. You can also order a 1993 reporting schedule from the Commission (800/424-9530 or 202/219-3420).

Please call the Commission with your reporting questions.

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