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Conferences

FEC to Hold PAC Conference in Washington, DC December 13 and 14

On December 13 and 14, a Monday and Tuesday, the FEC will hold a 1½ day conference in Washington, DC, for corporations, trade associations, labor organizations and their PACs. FEC Commissioners and staff will conduct workshops for each type of organization.

The \$125 registration fee covers conference materials and three meals (two continental breakfasts and one lunch).

The conference will be held at the Washington Hilton and Towers Conference Center, 1919 Connecticut Avenue, NW, Washington, DC 20009 (202/483-3000). To receive the group rate of \$120 per night for a single room, make your reservation by November 21 and notify the hotel that you will be attending the FEC conference.

For more information, or to place your name on the mailing list for registration materials, call the FEC: 800/424-9530 or 202/219-3420. ♦

Regulations

Proposed Rules on Personal Use of Campaign Funds

Under a proposed rule defining the personal use of a candidate's campaign funds, a campaign committee would be prohibited from paying a salary to the candidate, paying his or her ordinary household expenses, or paying any expense that would exist regardless of the campaign.

The proposed rules were published in the Federal Register on August 30, 1993 (58 FR 45463); comments were due September 29.

The prohibition on the personal use of excess campaign funds was contained in the 1979 amendments to the Federal Election Campaign Act. In making determinations on personal use, the Commission has had to balance the desire of Congress to prohibit personal use of campaign contributions against the need to give candidates and campaigns the discretion to conduct their campaigns as they see fit.

In the past, however, most of the advisory opinions and enforcement cases on the use of campaign funds involved candidates who were Members of Congress on January 8, 1980, and thus exempt from the personal use prohibition under the "grandfather clause" of 2 U.S.C.

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Statistics

1994 Senate Campaigns

An August 17 press release lists the campaign finance activity of the 50 candidates running for the 34 Senate seats up for election in 1994. The figures are taken from the midyear reports filed by the campaigns. Where available, the release also shows the candidate's financial activity in previous cycles.

During the first six months of the 1993-94 cycle, the campaigns reported raising almost \$25 million and spending \$7 million. These figures are lower than amounts raised and spent by Senate campaigns during the first six-months of the previous two election cycles, but such comparisons are difficult because different

states hold Senate elections during different election cycles.

From January through June 1993, Senate campaigns collected a total of \$17 million in contributions from individuals, which accounted for more than 69 percent of the total raised by the campaigns. The \$6 million contributed by PACs represented 24.5 percent of total receipts.

To order the press release, which also lists the activity of the two Senate candidates who ran in the 1993 Texas special election, call the Public Records Office at 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

Clearinghouse

Advisory Panel Charter Renewed

On August 6, 1993, the Commission renewed the Clearinghouse Advisory Panel charter through July 1995. The Panel, a 20-member board of state and local election officials, advises the Clearinghouse on ways to improve the federal administration of elections. The Panel also suggests possible research topics for Clearinghouse studies and makes suggestions for other means of assisting election administrators. The Panel meets once a year.

The renewal of the charter was coordinated with the Office of Management and Budget and the General Services Administration, which review and approve advisory committees pursuant to the Federal Advisory Committee Act and Executive Order 123838 (restricting the proliferation of such committees). ♦

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Publications

Updated Index to PAC Abbreviations

The Commission recently published a new edition of *Pacronyms*, an alphabetical list of acronyms, abbreviations and common names of political action committees (PACs).

For each PAC, the index provides the full name of the PAC, its city, state, FEC identification number and, if not readily identifiable from the full name, its connected, sponsoring or affiliated organization.

The index is helpful in identifying PACs that are not fully identified in their reports and statements on file with the FEC.¹ The idea for *Pacronyms* came from the Washington State Public Disclosure Commission.

To order a free copy of *Pacronyms*, call 800/424-9530 and ask for the Public Records Office, or dial the office directly at 202/219-4140.

Other PAC indexes, described below, may be also ordered from Public Records. The cost is shown in parentheses.

- An alphabetical list of all registered PACs shows each PAC's identification number, address, treasurer and connected organization (\$13.25).
- A list of registered PACs arranged by state provides the same information as above (\$13.25).
- An alphabetical list of organizations sponsoring PACs shows the PAC's name and identification number (\$7.50). ♦

¹ Under FEC regulations, the name of a corporate or labor PAC must include the full, official name of the connected organization. A PAC may use an abbreviated name on checks and letterhead if it is a clearly recognized abbreviation or acronym by which the connected organization is commonly known. However, both the full, official PAC name and the abbreviated name must be disclosed in all reports, statements and disclaimers. 11 CFR 102.14(c).

Court Cases

FEC v. Californians for a Strong America

On August 13, 1993, the U.S. Court for the Central District of California held defendants in contempt of court for failing to pay \$30,000 in court-imposed civil penalties that have been outstanding over three years. The court ordered defendants Californians for a Strong America, a nonconnected committee, and Albert J. Cook, as treasurer, to pay the penalties, plus accrued back interest, by August 31. Thereafter, they must pay an additional \$100 per day until they complete payment. Furthermore, if they fail to make full payment by September 30, the court will issue a warrant for the arrest of Mr. Cook.

The penalties were imposed in two separate suits. In a November 1988 judgment, the court ordered defendants to pay a \$15,000 civil penalty for failing to file three 1986 reports (No. 88-1554). In the second suit, the court issued a June 1989 order imposing another \$15,000 penalty against the defendants for failing to file a 1987 report, failing to report independent expenditures properly and failing to include a disclaimer notice in solicitation letters (No. 88-6449).

In both cases, defendants never responded to the FEC's suits, and the judgments were by default. Defendants also failed to file responses or appear before the court in the contempt proceedings. ♦

Compliance

Resignations and Reattributions of Excessive Contributions

Committees may correct an excessive contribution by requesting and receiving a written, signed (and dated) redesignation or reattribution of the excessive amount from the contributor (or contributors, in the case of a reattribution).¹ This process, however, is subject to several rules, and a committee's failure to comply with them may result in an FEC enforcement action. In particular, committees have been cited for violating the two requirements listed below.

- *Informing Donor of Refund Option.* When seeking redesignations or reattributions, the committee must inform donors that they may ask for a refund of the excessive amount as an alternative to providing a written, signed redesignation or reattribution.² Failure to offer the option is a violation of the law.

¹ A candidate committee may ask a contributor to redesignate the excessive portion of the contribution so that it counts against the donor's limit for a different election. 11 CFR 110.1(b)(5) and 110.2(b)(5). In the case of a reattribution, a committee (candidate or noncandidate) may request that the excessive portion of a joint-account contribution signed by only one donor be reattributed to the second donor, if the contribution was intended to be a joint one. Or, if both contributors signed the check, the committee may ask that they adjust the amount attributable to each in order to correct an excessive contribution by one of them. 11 CFR 110.1(k)(3). (However, joint contributions must represent the personal funds of each donor because contributions made in the name of another are prohibited. 11 CFR 110.4(b).)

² A request for a reattribution must include additional information. See 11 CFR 110.1(k)(3)(ii)(A).

- *Making Refund Within 60 Days.* If the contributor asks for a refund instead of submitting a redesignation or reattribution—or if the donor never responds—the committee must refund the excessive portion within 60 days of receiving the contribution. If the committee waits until the 60-day period has expired before sending the refund, the committee will be in violation of the law.

For more information, consult the appropriate *Campaign Guide* or the *Record Supplement on Contributions* (March 1988). To order free copies of these publications, call 800/424-9530 or 202/219-3420. ♦

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 releases of September 7 and 15, 1993. Files on closed MURs are available for review in the Public Records Office.

MUR 2889

Respondents: (a) Wyoming Rural Electric Association; (b) Craig Thomas for Congress, John Wold, treasurer (WY); (c) National Citizens Action Network (CA); (d) Wyoming Votes with Pride; (e) Good Government Group (WY)

Complainant: Sarah Gorin (WY)
Subject: Campaign flyer; corporate expenditures; disclaimer; failure to register and report

Disposition: (a) \$600 civil penalty; (b) no probable cause; (c) probable cause to believe but took no further action (but matter was reported to the IRS); (d) no reason to believe; (e) probable cause to believe but took no further action

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Regulations

(continued from page 1)

§439a. With the repeal of the "grandfather clause" under the Ethics Reform Act of 1989, which prohibits the personal use of campaign funds by Members serving in the current (103d) Congress or later Congresses, the agency expects to encounter more situations involving the personal use prohibition. To address the increased need for a clear definition of personal use, the agency drafted the proposed rules for public comment.

The proposed rules, summarized below, define personal use and address situations where personal use comes into play: the payment of a salary to the spouse or family member of the candidate; payments to the candidate for the rental of candidate-owned property; and the sale of campaign assets to the candidate. (Please note that the proposed rules do not govern the definition of personal use found in the Internal Revenue Service regulations at 26 CFR 1.527-5(a)(1).)

The rulemaking notice also contains a proposed rule on expenses incurred in connection with the duties of a federal officeholder, which may be paid with excess campaign funds.

Definition of Personal Use

Under new paragraph 11 CFR 113.1(g), personal use would be defined as the use of campaign funds to pay for expenses that would exist irrespective of the candidate's campaign or responsibilities as a federal officeholder. The personal use provision would apply to the campaign funds of both current and former candidates.

The rules would include several examples of personal use, including the use of campaign funds to pay for:

- Mortgage, rent or utility bills on property not owned or leased by the campaign committee;
- The purchase of clothing or household food;
- Tuition for a child;

- Dues, fees or gratuities paid to a country club, tennis club, health and fitness club or other social organizations, unless the payment is for a fundraising event held on club premises; and
- Salary paid to the candidate.

Salary Paid to Spouse or Family Member. The definition of personal use would also include salary payments to the candidate's spouse or another family member of the candidate unless the individual was hired to provide services that he or she had previously performed in a professional capacity outside the campaign. Under an alternative proposal, the salary would not be considered personal use if the spouse or family member were hired to provide bona fide services at fair market value. The agency sought comment on which approach would be preferable.

Payment for Use of Candidate-Owned Property. The rulemaking also sought comment on alternative proposals concerning campaign rental of an office, residence or other property owned or leased by the candidate. One alternative would depart from the current policy by treating all such payments as the conversion of campaign funds to personal use. The second alternative, representing current policy, would allow bona fide payments at the fair market value.

Entertainment; Official Travel; Legal Fees. The Commission sought comments on certain problematic situations that may involve the conversion of campaign funds to personal use, such as payments for meals and entertainment (e.g., sporting events, concerts) when the activity does not appear to benefit the campaign. As another example, payments for fact-finding trips or speaking engagements undertaken as legitimate official duties of a Member of Congress may be transformed into personal use of campaign funds if the stay is extended beyond the obliga-

tion, particularly in the case of resort or overseas locations.

When the primary effect of these activities is the entertainment of the people who attend, rather than the advancement of the campaign, the campaign's payment does raise personal use issues. The Commission asked whether it should address these situations in its regulations and, if so, how it might distinguish between campaign- and noncampaign-related activities.

The agency also asked how legal expenses should be treated in the regulations. In past advisory opinions, payments for legal services not involving compliance or audit matters under the Federal Election Campaign Act were not considered campaign expenditures, thus raising the question whether such payments would constitute personal use. Similarly, Members of Congress have used campaign funds to make donations to other Members' legal defense funds, again raising the question of personal use.

Personal-Use Payments by Third Parties and Candidate's Spouse

Under the proposed rules, payments that would be conversions to personal use if made by the campaign, such as payment of the candidate's rent or living expenses, would generally be considered contributions if made by a third party.

This provision would not apply to payments by the candidate or the candidate's spouse if the payments came from the candidate's or spouse's personal funds.

Use of Campaign Equipment for Noncampaign Purposes

Under the proposed rules, the use of campaign vehicles or other equipment for noncampaign purposes is not considered personal use as long as the campaign is reimbursed at the usual and normal rental charge within 30 days.

Sale of Committee Assets to Candidate

The proposed regulation on a candidate's purchase of a campaign

asset would address the issue of depreciation. If the depreciation falls disproportionately upon the campaign committee, the effect would be the conversion of campaign funds to the candidate's personal use. Under the proposed rule, any depreciation that occurred before the sale would have to be allocated between the committee and the candidate. So, too, would any amount spent by the campaign to enhance the asset's value if that amount was not reflected in the fair market value.

The allocation would be based on the useful life of the asset, with the committee absorbing only those portions of the depreciation and enhancement costs attributable to the time when it used the asset. This approach is consistent with AO 1992-12 (candidate's assumption of van lease).

Federal Officeholder Expenses

With respect to the use of excess campaign funds for expenses in connection with officeholder duties, the proposed regulations would specifically permit payment of travel costs (both for the officeholder and his or her spouse) for functions connected to bona fide official responsibilities. The rules would also permit payments for winding down the office of a former federal officeholder for a period not exceeding 60 days after he or she left office.

The rulemaking notice reminded federal officeholders that House and Senate rules also apply to the use of campaign funds; the proposed rules should therefore be read in conjunction with those rules. ♦

Final Regulations on Definition of "Member"

The Commission recently sent to Congress final regulations specifying the voting rights and financial attachments necessary for persons to qualify as "members" of incorporated membership groups.

Only qualified "members" are eligible to receive PAC solicitations and partisan communications from the incorporated membership group. See 2 U.S.C. §441b(b)(2)(A) and (4)(C).

The revised rules were published in the Federal Register on August 30, 1993 (58 FR 45770). The Commission will announce their effective date after the 30-legislative day review period. (See 2 U.S.C. §438(d).)

The final rules differ in two ways from the proposed rules published in the Federal Register on October 8, 1992 (57 FR 46348). First, the voting rights required for membership have been somewhat relaxed. Second, a new rule has been added that pertains to certain types of cooperatives. A summary of the final rules appears below. Citations are to the revised rules.

It should be noted that the membership rules apply to both individual and corporate members. Although a membership group may not solicit contributions from its corporate members, it may direct partisan communications to individual representatives of corporate members, and a trade association may seek PAC solicitation approval from its corporate members. 11 CFR 114.8(d) and (h).

Definition of Membership Association

A membership association is defined as a labor organization¹ or as

an incorporated membership organization, trade association, cooperative or corporation without capital stock that expressly:

- Provides for members in its articles and by-laws;
- Seeks new members; and
- Acknowledges the acceptance of membership, such as by sending membership cards to new members or including them on a mailing list. 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1).

Definition of Member

In addition to satisfying the association's requirements for membership, a member must affirmatively accept the membership invitation and meet one of the following three conditions:

1. *Regular Dues/Limited Voting Rights.* The member is required to pay dues of a specific amount on a regular basis (e.g., annually or monthly) and is entitled to vote directly for: (a) at least one member who has full participatory and voting rights on the highest governing body of the association, or (b) those who select at least one member of those on the highest governing body.²
2. *Significant Financial Attachment.* The member has some significant financial attachment to the membership association, such as a significant investment or ownership stake, but not merely the payment of dues.
3. *Full Voting Rights.* The member is entitled to vote directly for all of those on the highest governing body of the membership association. 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2).

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¹ As in the former rules, members of a local labor union are considered to be members of any affiliated national or international union and members of any federation affiliated with the local, national or international union. 11 CFR 100.8(b)(4)(iv)(D) and 114.1(e)(4).

² The proposed rules had required the right to vote directly for the majority of the members of the association's highest governing body, or the right to vote for those who select a majority of such members.

Regulations

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The Commission may consider, on a case by case basis, whether other membership arrangements would satisfy the definition of member. For example, student members who pay lower dues while in school, or long-term members who qualify for lifetime memberships with no further dues obligations, may be considered members if they retain some voting rights in the association. 11 CFR 100.8(b)(4)(iv)(C) and 114.1(e)(3).

An association should seek an advisory opinion for further guidance on alternative membership arrangements.

Multi-tiered Associations; Farm and Rural Electric Cooperatives

The voting rights and financial attachment criteria set forth in the definition of member govern whether three-tiered or multi-tiered associations can solicit members across all tiers. For example, in a three-tiered membership association, if members at the local level have the requisite ties to both the state and national tiers, solicitation is permissible across all three tiers. See, for example, AOs 1992-9, 1991-24 and 1981-23.

Although members of federated farm and federated rural electric cooperatives do not have the precise financial and organizational ties required under the rules, they nevertheless have significant ties throughout all levels. The structure and organization of these cooperatives are comparable to those of federations of trade associations. Like federations of trade associations under section 114.8(g), federated farm and rural electric cooperatives are authorized to solicit and to direct partisan communications to members of their regional, state and local affiliates provided that political committees established by the affiliates are considered affiliated committees, subject to shared contribution limits. 11 CFR 114.7(k). ♦

Special Elections

Michigan Special Elections

Michigan will hold a special primary election on November 2 and a special general election on December 7 to fill the 3rd Congressional District seat of the late Congressman Paul Henry, who died July 31. This article explains the reporting requirements for these special elections and provides information on contribution and coordinated party expenditure limits.

If you have any questions, please call the FEC: 800/424-9530 or 202/219-3420.

Reporting by Candidate Committees

Pre- and Post-Election Reports. Principal campaign committees of candidates on the ballot in a special

election must file the appropriate report or reports as shown in the table. Candidates who lose the primary election do not have to file the pre- and post-general election reports.

Note that reporting is required only if the individual has become a "candidate" under the Federal Election Campaign Act. Candidate status is triggered when campaign activity exceeds \$5,000 in either contributions or expenditures. 2 U.S.C. §431(2). At that point, the candidate and the principal campaign committee become subject to the Act's registration and reporting requirements. For more information, see the *Campaign Guide for Congressional Candidates and Committees*.

48-Hour Notices. Principal campaign committees must file 48-hour notices on contributions of \$1,000 or more received after the 20th day, but more than 48 hours before, the date of any election in which the candidate participates. The notice

Reporting Dates for Michigan Special Elections: November 2 Primary and December 7 General

	Close of Books ¹	Reg./Cert. Mailing Date ²	Filing Date ³
Pre-Primary	October 13	October 18	October 21
Pre-General	November 17	November 22	November 26
Post-General/Year-End⁴	December 31	January 10	January 10
Year-End⁵	December 31	January 31	January 31

¹The close of books is the end of the reporting period. The period begins with the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

²Reports sent by registered or certified mail are considered to be filed on time if they are postmarked by this date.

³Unless sent by registered or certified mail (see note 2), reports must be received by the federal and state filing offices by this date.

⁴This line shows the reporting dates for a consolidated post-general/year-end report. Alternatively, a committee may file two separate reports: (1) a post-general report covering activity through December 27 and due January 6; and (2) a year-end report covering activity from December 28 through December 31 (four days) and due January 31.

⁵Committees not required to file a post-general election report must file a regular year-end report.

must be received by the federal and state filing offices within 48 hours after the campaign's receipt of the contribution. 2 U.S.C. §434(a)(6)(A); 11 CFR 104.5(f).

This requirement applies to all contributions of \$1,000 or more, including:

- Monetary and in-kind contributions;
- Loans (other than bank loans);
- Guarantees and endorsements of bank loans; and
- Contributions, personal loans and endorsements of bank loans made by the candidate. 2 U.S.C. §431(8)(A); 11 CFR 100.7(a).

With respect to the Michigan special elections, contributions of \$1,000 or more received during the following periods are subject to 48-hour reporting:

- Primary: October 14 through October 30
- General: November 18 through December 4.

The notice must be received by the federal and state filing offices within 48 hours after the campaign's receipt of the contribution. 2 U.S.C. §434(a)(6)(A); 11 CFR 104.5(f).

For information on the content of the notice, see 11 CFR 104.5(f) and the *Campaign Guide*.

Reporting by Party Committees and PACs

Semiannual Filers. Party committees and PACs filing on a semiannual (rather than monthly) basis are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Michigan primary or general election by the close-of-books date shown in the reporting table. 11 CFR 104.5(c)(1)(ii) and (h).

For example, if a PAC made a contribution on October 14 to a candidate running in the Michigan primary, the committee would not have to file a pre-primary report because the contribution was made after October 13, the close of books for that report. If the committee made

a general election contribution to the same candidate on November 5—before the close of books for the pre-general election report—the committee would have to file that report, disclosing both the primary and general election contributions.

Monthly Filers. PACs filing on a monthly basis are not required to file pre- and post-special election reports but may have to file 24-hour reports, as explained below. See 2 U.S.C. §434(a)(9); 11 CFR 104.5(h)(2).

24-Hour Reports on Independent Expenditures

PACs (including monthly filers) and other persons making independent expenditures in connection with a special election may have to file 24-hour reports. This report is required if the committee or person makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours before, the day of the election. With respect to the Michigan special elections, the relevant periods are:

- Primary: October 14 through October 31
- General: November 18 through December 5.

The report must be filed within 24 hours after the expenditure is made. For more information, see 11 CFR 104.4(b) and (c) and 104.5(g). See also "Where to File" for special filing requirements.

Where to File Michigan Special Election Reports

Filing with the Federal Office. Principal campaign committees file reports and 48-hour notices with the Clerk of the House of Representatives. Other committees file reports with the FEC (except that those supporting only House candidates file with the Clerk of the House). 11 CFR 105.1 and 105.4.

Twenty-four-hour reports on independent expenditures are filed with the Clerk of the House. 11 CFR 104.4(c)(3).

Addresses and further filing information are provided in the Form 3 and Form 3X instructions.

Filing with Michigan State Office. Copies of all reports and notices, including 48-hour notices and 24-hour reports, must simultaneously be filed with: Elections Bureau, Office of the Secretary of State, P.O. Box 20126, Lansing, MI 48901-0726. 2 U.S.C. §439(a)(1) and (a)(2)(B); 11 CFR 108.5.

Party committees and PACs need file only that portion of the report applicable to the candidate seeking election in that state (e.g., the Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B).

Contribution Limits

There is a separate contribution limit for the each election in which a candidate participates (primary, general). 11 CFR 110.1(j)(1) and 110.2(i)(1).

Coordinated Party Expenditure Limits

The national committee of a political party and the party's state committee in Michigan may each spend up to \$28,460 in coordinated party expenditures made in connection with the general election campaign of the party's candidate. (The state committee's spending limit is separate from the national committee's limit.) 11 CFR 110.7(b)(1).

Prohibition on Transfers from Nonfederal Campaigns

Campaigns of candidates participating in the Michigan special elections should note that transfers from a candidate's nonfederal campaign to his or her federal campaign are prohibited. 11 CFR 110.3(d). ♦

Advisory Opinions

AO 1993-9

Preemption of State Law Prohibiting Corporate Donations to Party Building Fund

The Michigan Republican State Committee may accept corporate donations to its building fund for a party headquarters despite a Michigan State law that would prohibit the use of corporate funds for an office used even occasionally for campaign purposes. The state law is superseded by federal law, which clearly permits such donations.

Building Fund Exemption

Under the Federal Election Campaign Act and FEC regulations, donations specifically designated to pay for the construction or purchase of a national or state party office facility are exempt from the prohibitions and limits on contributions provided the facility is not acquired for the purpose of influencing any particular federal election. 2 U.S.C. §431(8)(B)(viii); 11 CFR 100.7(b)(12), 100.8(b)(13) and 114.1(a)(2)(ix).

Committee's Proposals

The Committee plans to solicit corporate donations designated for its building fund and to deposit them in a separate account.¹ The funds will not be used to influence any particular federal election; nor will they be used to pay property taxes and assessments on the headquarters, in accordance with AOs 1991-5 and 1983-8.

¹ The Committee said it would rely on AO 1991-5 for reporting guidance. That opinion said that building fund donations were not subject to federal reporting if they were deposited in a separate account that was not a "political committee" under federal law. However, the Act would not preempt any state requirement to report building fund activity.

Specifically, the Committee plans to undertake one or all of the following activities:

- Establish a building fund to pay off the balance of the land contract on its present headquarters;
- Establish a building fund to purchase or construct a new headquarters;
- Sell its interest in the land contract and deposit the proceeds in the building fund established for a new headquarters.

All three of the Committee's proposals comply with the building fund exemption. The proposal to raise funds to pay off the land contract is permissible since the funds will be used to complete the purchase of the existing headquarters. The proposal to sell the Committee's interest in the contract is essentially the same as raising funds for a new headquarters. See also AOs 1991-5 and 1986-40.

Preemption of State Law

The Act and FEC regulations "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453; 11 CFR 108.7(a). The provisions on building fund donations address areas explicitly under the authority of federal law. Congress took the affirmative step of exempting such donations from the Act's proscriptions. Furthermore, unlike certain exempt party activities,² there is no indication that Congress intended to limit the building fund exemption to the federal portion of the cost. AO 1991-5. For these reasons, federal law supersedes the Michigan prohibition on corporate donations to party building funds.

Date Issued: August 6, 1993;
Length: 5 pages, plus 1-page joint dissent filed by Vice Chairman Potter and Commissioner Elliott. ♦

² Commission regulations reflect the Congressional intent to allocate these activities. See 11 CFR 100.7(b)(9), (15)(ii) and (17)(ii), and 100.8(b)(10), (16)(ii) and (18)(ii).

AO 1993-11

Transfer from Nonfederal Campaign to 1988 Presidential Compliance Fund

The general election legal and accounting compliance fund (GELAC fund) established by the 1988 Dukakis-Bentsen Presidential Committee¹ may retain funds transferred from the Dukakis Gubernatorial Committee (the state committee) in June 1993. Although federal candidate committees were required to rid their accounts of nonfederal campaign transfers by July 31, 1993, in order to comply with a new regulation prohibiting such transfers, the regulation was meant to prevent the use of transferred funds in connection with elections held after July 1, the effective date of the rule. In this case, the funds will be used to pay legal

¹ The Presidential campaign of a publicly funded major party nominee may establish a GELAC fund, which is used to pay the legal and accounting costs of complying with the campaign finance law. It is funded through private contributions subject to the federal limits and prohibitions.

Federal Register

Copies of Federal Register notices are available from the Public Records Office.

1993-19

11 CFR Parts 100 and 113: Expenditures; Personal Use of Campaign Funds; Notice of Proposed Rule-making (58 FR 45463, August 30, 1993)

1993-20

11 CFR Parts 100 and 114: Definition of "Member" of Membership Association; Final Rule; Transmittal to Congress (58 FR 45770, August 30, 1993)

1993-21

Filing Dates for Michigan Special Elections (58 FR 46642, September 2, 1993)

expenses arising from the 1988 Presidential election, and they may therefore be retained.

The state committee originally transferred \$380,000 to launch the Dukakis 1988 Presidential primary campaign. The Presidential committee, winding down its activities in 1989, transferred that same amount from the GELAC fund to the state committee, believing the funds to be surplus. But in June 1993, the state committee re-transferred \$50,000 to the GELAC fund to cover unexpected legal expenses stemming from FEC enforcement actions.

By that time, the Commission had announced the July 1 effective date of the new rule prohibiting the transfer of funds from a candidate's nonfederal campaign to his or her federal campaign committee or account (11 CFR 110.3(d)). The notice explained that committees would have until July 31 to remove previously transferred nonfederal funds, but the agency excepted from this requirement any nonfederal funds transferred for use in special elections held before July 1. 58 FR 17967 (April 7, 1993). (Several special elections were held between the April announcement and the July 1 effective date.) This exemption, however, was meant to apply to funds transferred before July 1 for use in any type of election held before that date, including regularly scheduled elections. The GELAC fund is therefore permitted to retain the nonfederal funds, assuming that they comply with federal limits and prohibitions and are used only in connection with the 1988 Presidential elections.

Date Issued: August 6, 1993;
Length: 4 pages. ♦

AO 1993-13 Excess Campaign Funds Donated for Scholarships

The Fowler for Senate Campaign Committee, the 1992 campaign committee of former Senator Wyche Fowler, may donate its remaining funds to establish a scholarship program for minority students at Oglethorpe University. The committee's circumstances, with no remaining debts, indicate that the funds to be donated are excess campaign funds. The law specifically permits donations of excess campaign funds to organizations which, like the University, have qualified as section 170(c) organizations under the Internal Revenue Code. 2 U.S.C. §439a; 11 CFR 113.2(b). The donation should be reported under the category "other disbursements."

Date Issued: August 6, 1993;
Length: 3 pages. ♦

AO 1993-14 Preemption of State Law's Registration, Reporting and Contribution Requirements

The Federal Election Campaign Act, which has sole authority over the regulation of federal elections, supersedes a state law that would impose registration, reporting and contribution requirements on the federal account of the Rhode Island Democratic State Committee and on federal political committees making contributions to the federal account.¹ 2 U.S.C. §453.

¹ The Commission noted that questions regarding the activities of third parties do not qualify as advisory opinion requests under 11 CFR 112.1(b). However, the agency did not consider the party committee's question concerning the application of state law to other committees as a third party request because of the impact on future contributions to the federal account, which would likely be curtailed if donor committees had to comply with state requirements.

The party committee's federal account is a federally registered committee used solely for federal election activity. (The party also has a nonfederal account registered with the state.) The Rhode Island Board of Elections recently concluded that the federal account was subject to state law and would therefore have to: register and file reports with the state; contribute to at least five Rhode Island candidates; and accept no more than \$1,000 per year in contributions from an individual or committee.

The Board also said that a federally registered PAC would be subject to the same state requirements if it made a contribution to the party's federal account.

FEC regulations, which reflect Congressional intent concerning federal preemption of state law, provide that federal law supersedes state law in the areas of registration, reporting, contributions received and expenditures made by political committees supporting federal candidates. 11 CFR 108.7(b).

Federal law therefore preempts Rhode Island law with respect to limits on contributions to the party's federal account. In the absence of nonfederal activity by the federal account, the imposition of the state's registration, reporting and compulsory contributions requirements on the federal account would encroach upon the Act's authority in those areas.² The state requirements, therefore, do not apply to the federal account. Nor would they apply to a political committee solely because of its contribution to the federal account.

Date Issued: August 13, 1993;
Length: 5 pages. ♦

(Opinions continued on page 10)

² However, were the federal account to engage in nonfederal activity, the party committee might be subject to state restrictions. See AO 1986-27.

Advisory Opinions

(continued from page 9)

AO 1993-15

Funds Raised for Legal Expenses Related to DOJ Investigation of Campaign Consultant

The Tsongas Committee, Inc., the 1992 Presidential campaign committee of former Senator Paul E. Tsongas, has retained a law firm to advise the campaign and its personnel during the course of a Department of Justice investigation of the campaign's principal fundraising consultant, who has been indicted on 47 counts of illegal activity.¹ Because the activities being investigated fall within the purview of the Federal Election Campaign Act and directly implicate its provisions, funds raised to defray the legal expenses are considered contributions, subject to the Act's limits, prohibitions and disclosure requirements.² However, payments for the legal services do not count against the Presidential primary expenditure limits. 11 CFR 100.8(b)(5).

This conclusion is consistent with past advisory opinions in which the Commission determined that the costs of legal representation for post-election FEC audit and enforcement matters were clearly within the scope of the Act. Even though the costs occurred after the election, funds raised and spent to defray them were considered to be contributions and expenditures. AOs 1990-17 and 1981-16.

Although the Tsongas campaign's situation pertains to a Justice Department investigation, that agency has criminal enforcement authority with respect to the Act, and many of the indictment counts explicitly refer to

violations of the Act (e.g., excessive loans). Moreover, the Justice Department has other bases within Title 18 (the criminal code) for proceeding against activities within the purview of the Act. For example, the indictment's description of mail fraud charges refers to violations of the Act and FEC regulations that resulted from mail fraud activities.

Post-election contributions raised to defray the legal expenses must be donor-designated for the 1992 primary and must be aggregated with previous contributions from the donors to ensure compliance with the contribution limits. AOs 1990-17 and 1991-16.

Vice Chairman Potter filed a concurring opinion; Commissioner Elliott filed a dissenting opinion. Date Issued: August 26, 1993; Length: 4 pages plus 2-page concurrence and 2-page dissent. ♦

Advisory Opinion Requests

The advisory opinions requests (AORs) listed below are available for review and comment in the FEC's Public Records Office.

AOR 1993-17

Application of federal law to party committee's allocation of federal and nonfederal expenses when state law mandates specific allocation formula. (Massachusetts Democratic Party; August 31, 1993; 9 pages)

AOR 1993-18

Corporation's program to encourage employees and retirees to volunteer as campaign workers. (Southwestern Bell Corporation; September 9, 1993; 4 pages)

AOR 1993-19

Retiring 8-year-old debt of Presidential committee through contributions in excess of the limits from the candidate and other donors. (Friends of John Glenn; September 22, 1993; 8 pages plus 5-page enclosure) ♦

Compliance

(continued from page 3)

MUR 3110

Respondents (all in CO): (a) M.D.C. Holdings, Inc., and its subsidiaries, Larry Mizel, president; (b) Larry Mizel; (c) Hank Brown for U.S. Senate, Melvin D. Flowers, treasurer; (d) 18 individuals

Complainant: Representative Patricia Schroeder (CO)

Subject: Corporate contributions; contributions in the names of others

Disposition: (a)-(c) reason to believe but took no further action; (d) reason to believe but took no further action (16 individuals); no reason to believe (2 individuals)

MUR 3216

Respondents: Jim Rappaport for Senate, Vincent Santoro, treasurer (MA)

Complainant: William Elsbree, treasurer, Kerry for Senate in '90 Committee (MA)

Subject: Failure to file 48-hour notices disclosing candidate loans

Disposition: \$12,000 civil penalty

MUR 3383

Respondents: Re-Elect Senator Pell Committee, Emilie Benoit, treasurer (RI)

Complainant: FEC initiated

Subject: Excessive contributions

Disposition: \$5,500 civil penalty

MUR 3690

Respondents: (a) National Republican Congressional Committee, Donna Singleton, treasurer (DC); (b) Gilbert for Congress, Richard Buxton, treasurer (ID)

Complainant: Martin Peterson, campaign manager, LaRocco for Congress (ID)

Subject: Disclaimer on postcard

Disposition: (a) Reason to believe but took no further action; (b) no reason to believe

MUR 3700

Respondents: (a) Hoosiers for Dick Mourdock, J. William Dunn, treasurer

¹The indictment indicates that the consultant may have misappropriated a large amount of campaign contributions.

²This conclusion does not apply to legal expenses incurred in connection with investigated activities that do not pertain to the campaign or its funding.

(IN); (b) National Republican Congressional Committee, Donna Singleton, treasurer (DC)

Complainant: Melinda Plaisier, campaign manager, McCloskey for Congress Committee (IN)

Subject: Mailing of postcard; disclaimer

Disposition: (a) and (b) No reason to believe

MUR 3769

Respondents: Anthony for Congress, Orlin Trego, treasurer (OK)

Complainant: FEC initiated

Subject: Failure to file 48-hour notices on contributions

Disposition: \$2,000 civil penalty

MUR 3805

Respondents: (a) Worley for Congress 1990, Gregg Brasher, treasurer (GA); (b) Bernadette Drankowski (GA)

Complainant: FEC initiated

Subject: Excessive contributions; loans; misstatement of financial activity; debt

Disposition: (a) and (b) Reason to believe but took no further action

MUR 3808

Respondents: (a) Lenawee County Republican Committee, Mary Leffingwell, treasurer (MI); (b) Harry Newlin (MI)

Complainant: FEC initiated

Subject: Excessive contributions

Disposition: (a) and (b) Reason to believe but took no further action other than admonishment letter ♦

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Change of Address

Political Committees

Treasurers of registered political committees automatically receive the Record. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate, the Clerk of the House or the FEC (as appropriate) and with the appropriate state office.

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Record subscribers who are not registered political committees should include the following information when requesting a change of address:

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