

# Record

November 1997

Federal Election Commission

Volume 23, Number 11

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## Court Cases

### FEC v. Fund for a Conservative Majority

On September 23, parties to this suit agreed to a final order and judgment by the U.S. District Court for the Eastern District of Virginia, Alexandria Division. Under that order, the defendants, Fund for a Conservative Majority (FCM) and its treasurer, Robert C. Heckman, agreed to pay a civil penalty of \$2,500 for having violated the Federal Election Campaign Act (the Act).

Mr. Heckman failed to file the FCM's 1994 year-end report on time, a violation of 2 U.S.C. §434(a)(4)(A)(i). This section of the Act requires political committees other than authorized candidate committees to file quarterly reports during a year in which a general election is held. The report for the final quarter that ends on December 31 must be completed and returned to the FEC no later than January 31 of the following year.

The FCM's 1994 year-end report should have been submitted to the FEC by January 31, 1995. Mr. Heckman hand delivered a copy of the FCM's year-end report on September 7, 1995—nearly nine months late. He also delivered another copy of the report to staff of

*(continued on page 2)*

## Compliance

### MUR 4235

### Alaska Corporations Make Corporate Contributions and Contributions in the Names of Others

Two Alaska oil field construction companies, their owner and several others have paid a \$40,000 civil penalty to the FEC for making impermissible corporate contributions and contributions in the names of others during the 1992 federal election cycle. This compliance matter was initiated after the FEC received a complaint from a candidate in July of 1995, following an investigation by the Alaska Public Offices Commission of numerous state contributions.

In late 1991, Alaska Interstate Construction, Inc. (AIC), made a \$1,000 contribution to the Murkowski '92 Committee, the campaign committee for Senator Frank Murkowski—who in 1992 was a candidate for that seat. Two months later, in February 1992, the committee returned the check to AIC as it constituted an impermissible contribution from a corporation. 2 U.S.C. §441b(a).

Beginning in April 1992, AIC's owner, John Ellsworth, and office manager, Cindy Scott, directed four employees from the company and

*(continued on page 2)*

## Court Cases

(continued from page 1)

the Commission's Office of General Counsel on June 27, 1996—close to a year and a half after it was due.

See page 5 of the [January 1997 Record](#).

Neither Mr. Heckman nor the FCM contested the Commission's allegations in this case. In addition to the civil penalty, the defendants were permanently enjoined from making similar violations of the Act.

U.S. District Court for the Eastern District of Virginia, Alexandria Division, 96-1567-A. ♦

## On Appeal?

### FEC v. Williams

On October 3, the U.S. Solicitor General filed a petition with the U.S. Supreme Court asking it to review this case. The U.S. Court of Appeals for the Ninth Circuit had reversed a district court decision and had ruled in favor of the defendant,

Larry Williams. A request for an en banc panel of the Ninth Circuit to rehear this case was unsuccessful. See the [February](#) and [July 1997 Record](#) issues.

### Maine Right to Life Committee v. FEC

On October 6, the Supreme Court denied the Solicitor General's request for it to hear this case. Nearly a year before, the U.S. Court of Appeals for the First Circuit upheld a lower court ruling that part of the FEC's regulation defining express advocacy (11 CFR 100.22(b)) was invalid. The district court held that the FEC's regulation expanded the definition beyond the Supreme Court's interpretation in *Buckley v. Valeo*. See the [April](#) and [December 1996 Record](#) issues. ♦

## Compliance

(continued from page 1)

from Unicol, Inc., another company Mr. Ellsworth owns, to make \$1,000 contributions to three federal political committees—Murkowski '92 Committee, Alaskans for Don Young and the Bush/Quayle Committee. Additionally, Mr. Ellsworth, Ms. Scott and Mr. Ellsworth's wife made contributions to those committees. In all, these contributions totaled \$19,000.

The money for the contributions came directly from AIC's or Unicol's petty cash funds, from "bonuses" received by the respective employees or from "draws" from the companies. These transactions were, again, violations of the Federal Election Campaign Act's (the Act's) ban on corporate contributions, and they also violated the ban on contributions made in the name of another. 2 U.S.C. §§441b(a) and 441f. The contributions all were made by certified checks, with many of the checks displaying the same date and

consecutive serial numbers. Although these checks were issued using AIC's or Unicol's petty cash funds, the individual's name appeared on each check as the purchaser.

The Commission found probable cause to believe that Mr. Ellsworth, Ms. Scott and the two corporations knowingly and willfully violated the Act at §§441b(a) and 441f when they made the \$19,000 in corporate contributions and tried to mask them by contributing them in the names of others.

The Commission also found probable cause to believe that AIC, Mr. Ellsworth and Ms. Scott violated §441b(a) with respect to the \$1,000 direct corporate contribution in 1991 to the Murkowski Committee, and that Mrs. Ellsworth and the four employees violated 2 U.S.C. §441f by permitting a corporation to use their names to make prohibited contributions.

The Commission entered into a conciliation agreement with the parties to conclude the matter. In addition, the Commission notified the recipient committees of the illegal contributions and instructed them to disgorge the amounts to the U.S. Treasury. ♦

## Change of Address for California Filers

The California Secretary of State's Office has changed the address where political committees supporting federal candidates must file copies of their FEC reports. Reports should now be mailed to the following address:

Political Reform Division  
Office of the Secretary of State  
1500 11th St., Room 495  
Sacramento, CA 95814

Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

800/424-9530  
202/219-3420  
202/501-3413 (FEC Faxline)  
202/219-3336 (TDD for the  
hearing impaired)  
800/877-8339 (FIRS)

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# Statistics

## National Party Committees Increase Soft Money

Democratic and Republican national committees collected a combined total of more than \$35 million in soft money donations during the first half of 1997 according to mid-year disclosure reports filed with the FEC.

The three national Republican committees—the Republican National Committee, National Republican Senatorial Committee and National Republican Congressional Committee—raised \$21.7 million in soft money between January 1 and June 30. The three national Democratic committees—the Democratic National Committee, Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee—took in \$13.7 million in soft money during the same period. These totals represented increases of approximately 31 percent and 27 percent in soft money raised by the Republicans and Democrats, respectively, over the soft money raised in the first six months of 1995.

Soft money donations are nonfederal funds raised outside the limitations and prohibitions of the Federal Election Campaign Act. Such donations are to be used for party building and get-out-the-vote activities but not to directly influence a federal election.

Republicans continued their preeminence over the Democrats in raising “hard dollars” for the federal accounts during this reporting period. The Republican committees raised more than \$59 million while the Democratic committees took in \$35.1 million. Republican receipts, however, represent a 17 percent decrease in federal receipts from the same reporting period in 1995. The Democrats’ tally was a 25 percent

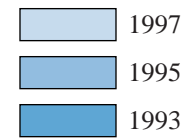
increase in receipts over the same reporting period in 1995. However, when compared with the 1993-1994 election cycle—the last nonpresidential election cycle—Republicans registered an 18 percent increase in receipts and the Democrats recorded a 29 percent increase in receipts.

The majority of the contributions to the national committees’ federal accounts came from individuals. Republicans reported 87 percent of contributions from individuals, while the Democrats showed 66 percent of contributions from individuals. Other contributions came from other political committees and through transfers from national and state committees.

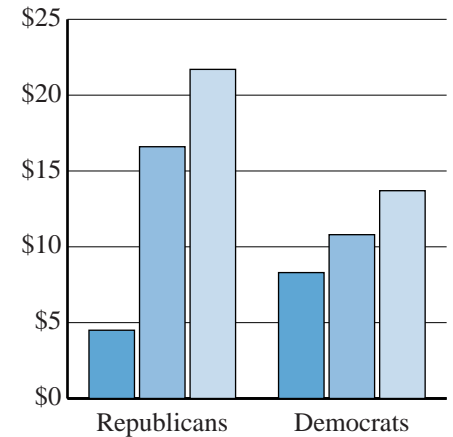
The mid-year reports also show both the Democrats and Republicans carrying multi-million dollar debts. In this category, the Democrats led the tally with a reported \$22.6 million in unpaid obligations. Republican committees reported \$10.7 million in debts. The Republicans had \$11.4 million in cash on hand when it filed its mid-year report; the Democrats had \$5.6 million in cash on hand for the same period.

For more information, including summary data for the financial activities of the national committees, read the FEC’s September 22 news release. It is available at the FEC’s web site (<http://www.fec.gov>), from the Public Records Office (1/800-424-9530, press 3) and on FEC Faxline (202/501-3413, request document 609). ♦

## Soft Money Raised During First Quarter of Two-Year Election Cycle



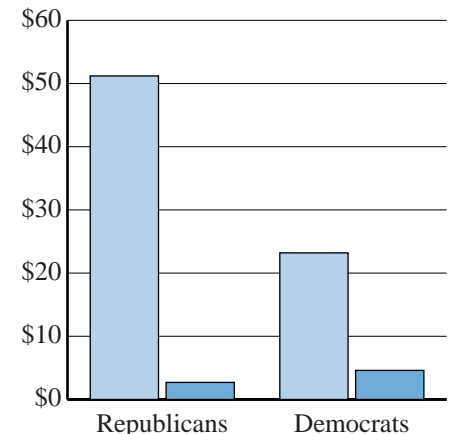
Millions



## Sources of Contributions to National Party Committees - First Quarter 1997



Millions



## Advisory Opinions

### AO 1997-15 Establishment of Nonconnected PAC by CEO of Incorporated Membership Organization

Kenneth Nickalo, the president and CEO of Better Government Bureau, Inc. (BGB), an incorporated membership organization, may establish the Americans for Better Government PAC (ABG PAC) as a nonconnected PAC, separate from BGB, provided he follows the guidelines in this advisory opinion.

BGB attempts to resolve member complaints regarding government services and is made up of individuals and corporations. Mr. Nickalo and his wife are BGB's only employees, but BGB also has a Board of Trustees that is responsible for approving major policy decisions. ABG PAC would be established independently of BGB, with Mr. Nickalo as the only BGB officer serving on the PAC's board.

#### Establishment of Nonconnected PAC

The Act states that a corporation that directly or indirectly establishes, administers or supports a political committee is the connected organization of that committee. 2 U.S.C. §431(7). Both the committee and the connected organization are subject to the Act's restrictions on who may be solicited for contributions to the committee. 2 U.S.C. §§441b(b)(4)(A) and (C). However, a political committee without a connected organization may solicit any individual or person who may lawfully contribute to federal elections. All payments to the committee for administrative costs are contributions subject to the Act's limits unless some exception applies. The Commission does not prescribe qualifications for those

who establish a nonconnected PAC. Individuals who have some association with a corporation, for example, are not necessarily prohibited from starting such a PAC. AO 1984-12. In permitting the formation of such committees, the Commission seeks to ensure that certain conditions are met with respect to the relationship between the PAC and the corporation.

The committee must not be financially supported by the corporation. The Commission has concluded in the past that financial support occurs when the corporation provides goods or services at less than the usual and normal charge and/or beyond a commercially reasonable time. 11 CFR 100.7(a)(1)(iii), and 114.9(c) and (d). See Advisory Opinions 1995-38, 1991-37 and 1984-12. BGB differs from the corporations discussed in these advisory opinions in that it is not a commercial entity and does not, within the ordinary course of business, provide services or facilities to customers.

Commission regulations allow a corporation, in its capacity as a commercial vendor, to extend credit to a political committee in the ordinary course of business and at the usual and normal charge. 11 CFR 116.3(b) and 100.7(a)(4). Any extension of credit outside the corporation's ordinary course of business would be considered a contribution. Since BGB does not appear to be in the business of providing goods or services to other entities for the purpose of administration or fundraising assistance, it does not qualify as a commercial vendor that could extend credit to the PAC for those purposes. Thus, although ABG PAC is allowed a commercially reasonable period of time to pay for certain kinds of support, it must pay for other kinds of support in advance.

- The use of BGB's office facilities (meeting rooms, telephones, word processors, copying machines)

must be paid for in a commercially reasonable time period and at the usual and normal charge. 11 CFR 114.9(c) and (d).

- PAC services performed by BGB employees while they are working on BGB time must be paid by the PAC in advance of the services being rendered. 11 CFR 100.7(a)(4), and 116.3(b) and (c).
- PAC use of BGB's mailing list must be paid for in advance. The PAC must pay the fair market value for the rental or purchase of the list. 11 CFR 114.2(f)(2)(i)(C).
- The PAC must also make advance payment for other services, such as catering, that BGB provides to it. 11 CFR 114.2(f)(1) and (2)(E).
- ABG PAC must pay BGB in advance for any purchases it makes for the PAC from a third party. Alternatively, the PAC may pay the vendor directly. The PAC must ensure that any charges it pays to a third party vendor conform to the ordinary course of business standard. This means that any vendors to BGB must not reference the PAC's business relationships with BGB when extending credit to or determining charges to the PAC.

If these guidelines are not followed, BGB would be financially supporting the PAC. That support either would compromise the PAC's status as a nonconnected PAC or, if the PAC retains its nonconnected status, would constitute an impermissible corporate contribution from BGB. 2 U.S.C. §§441b(a) and 441b(b)(2).

#### Legal and Accounting Compliance Services

BGB may provide legal and accounting services to ABG PAC without charge as long as the services are rendered by a regular BGB employee and are provided solely to ensure compliance with the Act. Such services are exempt from the definition of contribution. 2 U.S.C. §431(8)(B)(ix). BGB

proposes paying the law firm it uses to provide legal counsel to the PAC. Such a payment does not fall within the exemption. The PAC should therefore either pay the firm for the costs or pay BGB immediately upon billing by the law firm.<sup>1</sup>

### **PAC Role of Persons Associated with BGB**

The Commission also considered the role of the persons involved in a committee's activities in order to determine its status as a nonconnected PAC. While ABG PAC's board will include contributors to the PAC and BGB members might contribute to the PAC, Mr. Nickalo will be the only person on the PAC board who is connected with BGB. The participation of non-BGB persons, coupled with the fact that no BGB personnel other than Mr. Nickalo will play a dominant role in the PAC, is consistent with the PAC's nonconnected status. See AOs 1995-38 and 1991-37.

The organizational separation is also reflected by the fact that the PAC will not use BGB's name or letterhead in soliciting contributions and that the PAC will not hold fundraisers in conjunction with a BGB event.

A change in any of these factors would require a reexamination of ABG PAC's status as a nonconnected committee.

### **Solicitations by Nonconnected PAC from Individual Members of BGB**

As a nonconnected PAC, ABG PAC may solicit the general public for contributions except for those prohibited by the Act from contributing to federal elections.

Date: September 19, 1997;  
Length: 8 pages. ♦

<sup>1</sup> The law firm used by BGB may, independent of BGB, provide the PAC with free legal and accounting services solely for compliance with the Act, using its regular employees, in accordance the 11 CFR 100.7(b)(14).

## **AO 1997-16 Transmitting Endorsements to Restricted Class Via Internet, Telephone and Voice Mail**

Oregon Natural Resources Council Action (ONRC Action) may not put its endorsements of federal candidates on its web site; nor is a telephone caller's self-identification as a member sufficient evidence to mail that person a printed list of ONRC Action's endorsements. The group also may not record its endorsements to a voice mail box system. All of these actions hold the potential for nonmembers—people who are not in the restricted class—to receive this communication, which would be prohibited by the Federal Election Campaign Act (the Act) and Commission regulations. 2 U.S.C. §441b(b)(2)(A) and 11 CFR 114.1(j) and 114.3(a).

ONRC Action, a 501(c)(4) tax-exempt corporation organized under Oregon law, defends natural resources from environmental destruction. Its membership consists of approximately 5,000 individuals who are required to pay annual dues. ONRC Action has a board of directors that oversees the general management of the organization and from which all officers of the organization are selected. The group is considered a membership organization under Commission regulations, and its members would be considered members for purposes of the Act and Commission regulations.

Currently, ONRC Action relays its endorsements of federal candidates by mail to its restricted class—or membership body—and by fax to its usual media contacts. Release of the information usually generates more requests for information from members and from the general public.

ONRC Action proposes three additional methods for making its endorsements available:

### **Federal Register**

Federal Register notices are available from the FEC's Public Records Office.

#### **Notice 1997-14**

Recordkeeping and Reporting: Notice of Proposed Rulemaking (62 FR 50708, September 26, 1997)

- Putting the communication on its web site, which is fully available to the public;
- Providing a copy of the communication to any caller who requests the information and states that he or she is a member of ONRC Action—without verifying the statement; and
- Recording the communication on the corporation's voice mail box system.

The Act contains a broad ban that prohibits corporations from making any contribution or expenditure in connection with a federal election. 2 U.S.C. §441b. But there is an exception that allows a corporation, including an incorporated membership corporation such as ONRC Action, to communicate with its restricted class on any subject, including the express advocacy of the election or defeat of federal candidates. Distribution of such communications must follow these guidelines: the material must be produced at the expense of the corporation, and it must constitute the view of the corporation and not be a mere reproduction of campaign materials prepared by a candidate or his or her campaign. A corporation may, however, use brief quotations from speeches or other candidate materials in order to demonstrate a candidate's positions on issues.

Commission regulations provide that no more than a *de minimis* number of copies of any communication that contains express advocacy may be circulated beyond the

(continued on page 6)

## Advisory Opinions

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restricted class. 11 CFR 114.4(c)(6).<sup>1</sup> A corporation may issue a press release or hold a press conference to announce its endorsements, or communicate the endorsement through its publications or at a candidate appearance, but disbursements for such actions must also be *de minimis*. 11 CFR 114.4(c)(6)(i).

Because access to the Internet is widely available to the public, any communication on its web site would be considered a communication to the general public. See AOs 1996-16 and 1995-35. In this case, because of this public access and the fact that the communication would contain express advocacy, communicating an endorsement through the Internet would be prohibited. If, however, ONRC Action uses a method to limit Internet access to its endorsements only to its members, then its proposed action would be permissible.<sup>2</sup>

The same analysis holds true for the telephone requests and voice mail box plan. When communicating over the telephone with non-

<sup>1</sup> In *Advisory Opinion 1984-23*, cited in the *Explanation and Justification*, the Commission concluded that a list of endorsements could be published in a newsletter because the number of nonmembers who received the newsletter was *de minimis*, or less than 1 percent. However, the use of a trade journal as an organ to publish endorsements of federal candidates was prohibited because the circulation beyond the membership was more than 10 percent and, therefore, was not *de minimis*.

<sup>2</sup> Among the methods for limiting access are providing each member with an identification number or password to enter the portion of the web site that contains the endorsements. ONRC Action may also send a list of its endorsements via e-mail only to its members. The organization's application for membership includes a request for members' e-mail addresses.

members, a communication that contains express advocacy, even though it does not include a solicitation, is prohibited. On the other hand, if ONRC Action were to verify that the name the caller gave was indeed on its membership list, then it could go forward with its plan to mail its endorsements to those callers. Similarly, without screening out nonmembers for the voice mail box system, ONRC Action cannot make its endorsement lists available on that system. Without the proper safeguards, any of the three proposals could result in prohibited corporate expenditures or prohibited in-kind corporate contributions.

The Commission notes that ONRC Action's separate segregated fund (SSF), Oregon Natural Resources Council Action Federal PAC, could lawfully make expenditures for the organization's three proposals subject to the Act's limits and disclosure requirements. An SSF may, using voluntary contributions, make communications to the general public that include express advocacy. The communication, however, may not solicit funds for the SSF. 11 CFR 114.5(i).

Date: September 19, 1997;  
Length: 8 pages. ♦

### AO 1997-17 Contributions from Missouri Limited Liability Company

The Nixon Campaign Fund, the principal campaign committee of Jay Nixon, may accept contributions from limited liability companies (LLCs) in Missouri subject to the contribution limits for "person" set out in the Federal Election Campaign Act (the Act) at section 441a(a)(1)(A).

Mr. Nixon is seeking to become the Democratic nominee for the 1998 senatorial contest in Missouri and anticipates receiving a contribution from an LLC in the state.

The Act uses the term person to describe an "individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons." 2 U.S.C. §431(11). The Act contains a broad prohibition against corporate and labor contributions. Contributions given by other persons are subject to the limits of the Act. Additionally, contributions by partnerships are permitted so long as the contribution is attributed to both the firm's and each contributing partner's contribution limits. 11 CFR 110.1(e).

The Act does not address LLCs, but, in advisory opinions, the Commission has concluded that LLCs in three different jurisdictions are distinct from corporations and partnerships, and thus fall within the Act's language of "any other organization or group of persons." See the [summary of AO 1997-4 on page 12 of the June 1997 Record](#). See also AOs 1996-13 and 1995-11. In determining that LLCs in Virginia, Pennsylvania and the District of Columbia were eligible to make contributions in connection with federal elections, the Commission noted:

- The state's recognition of the LLC as a distinct form of business, separate from a corporation or partnership, with its own statutory framework;
- The state's requirements for naming the LLC;
- The corporate attribute of limitation of liability for all members; and
- The lack of the general corporate attributes of free transferability of interests and continuity of life.

The Missouri law pertaining to LLCs is similar to the statutes in the other locations where the Commission has determined that LLCs may make contributions to federal campaigns within the limits of the Act and without dual attribution to the LLC and its members (as is

required in the case of partnerships). The Commission's approval of these contributions was conditioned upon the assumption that none of the members was in a category prohibited by sections 441b, 441c or 441e of the Act. Thus, contributions from an LLC in Missouri are permissible so long as none of its members is a corporation, federal contractor or foreign national. To ensure that this is the case, upon receipt of a contribution from a Missouri LLC, the Nixon committee treasurer should ask the LLC, orally or in writing, whether any of its members fall within the prohibited categories. If the committee does not receive written or oral (memorialized in writing) confirmation that the members do not, the committee must return the contribution, in compliance with 11 CFR 103.3(b).

Date: September 19, 1997;  
Length: 4 pages. ♦

### **AO 1997-19 Corporate and Foundation Donations to Promote City as Presidential Convention Site**

CoreStates Financial Corp. and CoreStates Foundation may make a \$25,000 donation to Philadelphia 2000, a host committee working to promote the city as the site for a political party nominating convention in 2000. Such a donation would not violate the Federal Election Campaign Act's (the Act's) prohibitions on certain sources of contributions to federal campaigns.

CoreStates is a holding company for two national banks, but it also controls and derives profits—far in excess of \$25,000—from nonbanking organizations. The corporation's charitable foundation, a nonprofit Pennsylvania corporation, has been designated a 501(c)(3) organization by the Internal Revenue Service. Both CoreStates and the foundation are located in the Philadelphia metropolitan area.

The proposed donation would be used to defray some of the Committee's costs associated with promoting Philadelphia as a convention site, including promotions, lobbying and assistance with financing convention-related facilities and services. None of the donations would be used in connection with a federal election.

The Act prohibits national banks and federally chartered corporations from making contributions in connection with elections to any political office—federal, state or local—and prohibits other types of corporations from making contributions or expenditures in connection with any federal election. 2 U.S.C. §441b(a). However, an exception to this prohibition at 11 CFR 9008.52(c)(1)(i) allows local businesses, local organizations and local individuals to make donations of funds or in-kind services to host committees for limited purposes involving the promotion of the city as a convention site.<sup>1</sup> The regulations also allow donations for general promotion of the city once it has been selected as a convention site and donations for other convention-related facilities and services. Banks, however, are excluded from these exceptions. However, in Advisory Opinions 1995-32 and 1995-31, the Commission permitted a host committee to accept donations from a holding company made up, in part, of federally chartered banks.

CoreStates is a local business, and CoreStates Foundation is a local organization. Consequently, they may make the \$25,000 donation to

*(continued on page 8)*

<sup>1</sup> A local business is considered to be one located within the metropolitan area of the intended convention city, or one that has a branch office located in the metropolitan area. See the March 30, 1990, Federal Register notice, 55 FR 12154, for more information about what constitutes a metropolitan area.

### **FEC Conference Schedule**

The FEC will hold several more conferences during 1997 and 1998. To register for any of the scheduled conferences, call Sylvester Management at 1/800-246-7277 or send an e-mail message to:  
TSYLVESTER@WORLDNETATTNET.

#### **Washington, DC**

For corporate and labor organizations  
Date: November 6-7, 1997  
Location: Madison Hotel  
Registration: \$180.50  
Hotel rate: \$124

#### **Washington, DC**

For trade associations and membership organizations  
Date: December 11-12, 1997  
Location: Hyatt Regency Capitol Hill  
Registration: \$180  
Hotel rate: \$145

#### **Washington, DC**

For candidate committees  
Date: February 23, 1998  
Location: Madison Hotel  
Registration: \$175  
Hotel rate: \$124

#### **Denver**

For candidates, political parties and corporate and labor organizations  
Date: March 25-27, 1998  
Location: Westin Tabor Center  
Registration: \$180  
Hotel rate: \$136

Read future issues of the *Record* to get scheduling information for the following conference slated for 1998:

#### **Washington, DC**

For nonconnected committees  
April 1998

## Advisory Opinions

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the host committee. In the case of CoreStates, this opinion is contingent on the corporation's ability to demonstrate that only nonbank funds are used for the donation and that it is a distinct legal entity, separate from its associated national banks. In the foundation's case, the Commission notes that, in order to maintain its tax-exempt status, the foundation may not participate in any political campaign on behalf of any candidate for public office. 26 U.S.C. §501(c)(3).

Date Issued: September 19, 1997; Length: 3 pages. ♦

### AO 1997-21 Repayment to Candidate of Advances to Campaign Committee

The Firebaugh for Congress Committee may use an unexpected refund from a vendor to repay its candidate, Emily Firebaugh, for a loan she made to the Committee during the 1996 election cycle. The Committee may not, however, use the refund to repay Ms. Firebaugh for another donation she made to the Committee that was not initially disclosed as a loan.

Ms. Firebaugh was vying to represent the 8th congressional district of Missouri during the 1996 election cycle. In June 1996, the Committee secured a bank loan of \$100,000, with Ms. Firebaugh as the personal guarantor. When the loan came due five months later, the candidate advanced the Committee \$125,000 to repay the loan and several other obligations. Because the committee did not expect any additional funds, it reported Ms. Firebaugh's donation as an in-kind contribution.

In January 1997, Ms. Firebaugh loaned the Committee \$7,723 from her personal funds to help close the books and allow the Committee to

terminate. The funds were reported as a loan from the candidate.

In March, the Committee received an unexpected refund check for \$46,131 from a media outlet for a prepaid advertisement that had not been run. The Committee wanted to refund that amount plus any remaining balance in its accounts to Ms. Firebaugh, in repayment of her total advance of \$132,723 to her committee.

The Federal Election Campaign Act (the Act) and Commission regulations give a candidate wide discretion in making committee expenditures to influence his or her election, but a candidate or authorized committee may not convert excess campaign funds to personal use. 2 U.S.C. §439a. FEC guidelines define personal use as "any use of funds in a campaign account...that would exist irrespective of the candidate's campaign or duties as a federal officeholder." 11 CFR 113.1(g). Commission regulations also state that excess campaign funds may be used to repay to a candidate any loan that was used in connection with his or her campaign. 11 CFR 113.2(d). Thus, the Committee may use the media refund to repay Ms. Firebaugh for the \$7,723 loan she made to the Committee.

In evaluating the other advance that Ms. Firebaugh made to her committee—the \$125,000 advance—the Commission, among other information, reviewed three advisory opinions. See AOs 1991-9, 1980-114 and 1977-58. Based on these opinions, the Committee may not use the media refund to repay Ms. Firebaugh for any donations to the campaign that were not initially reported as loans from her personal funds and as outstanding debts of the Committee. Converting a previous candidate contribution to a candidate loan would be contrary to reporting requirements found at 2 U.S.C. §434(b) and 11 CFR 104.3(a) and (d) and 104.11. Addi-

tionally, any use of the refund to repay the candidate's contributions would represent a prohibited conversion of excess funds to personal use.

Date Issued: October 2, 1997; Length 3 pages. ♦

## Advisory Opinion Requests

Advisory opinion requests are available for review and comment in the Public Records Office.

### AOR 1997-22

Forwarding membership corporation's endorsements of federal candidates to members who forward same to their restricted classes. (Business Council of Alabama, September 25, 1997; 5 pages plus 3-page attachment)

### AOR 1997-23

Selling airline ticket purchased by campaign volunteer with airline employee discount to candidate for discounted price. (Edwin J. Williams III, October 14, 1997; 1 page plus 8-page attachment) ♦

## Back Issues of the *Record* Available on the Internet

This issue of the *Record* and all other issues of the *Record* from 1996 and 1997 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at <http://www.fec.gov> and click on "What's New" for this issue. Click "Help for Candidates, Parties and PACs" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.



## Information

### FEC Faxline Menu

FEC Faxline documents may be ordered 24 hours a day, 7 days a week, by calling **202/501-3413** on a touch tone phone. You will be asked for the numbers of the documents you want, your fax number and your telephone number. The documents will be faxed shortly thereafter.

### Federal Election Commission

- 411. Complete Menu of All Material Available
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### 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 or the FEC (as appropriate) and with the appropriate state office.

### Other Subscribers

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

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber's name;
- Old address; and
- New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

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