

RECORD

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COMMISSIONERS

COMMISSIONERS AIKENS AND McGARRY REAPPOINTED

On October 5, 1989, the Senate confirmed the reappointment of Commissioners Joan D. Aikens and John Warren McGarry to new six-year terms on the Federal Election Commission.

Commissioner Aikens, a Republican, was one of the original members of the Commission appointed in 1975. Prior to serving on the Commission, Mrs. Aikens was Vice President of Lew Hodges Communications, a public relations firm in Valley Forge, Pennsylvania. She was also a member of the Pennsylvania Republican State Committee, president of the Pennsylvania Council of Republican Women and a member of the board of directors of the National Federation of Republican Women.

A native of Delaware County, Pennsylvania, Mrs. Aikens holds a B.A. from Ursinus College, which has also awarded her an honorary Doctor of Law degree.

Commissioner McGarry, a Democrat, was first appointed to the Commission in 1978, after serving as Special Counsel on Elections to the House Administration Committee Administration since 1973. Prior to that, he combined private law practice with service as Chief Counsel for the Special Committee to Investigate Campaign Expenditures—a special House committee established by Congress after every election until 1972. From 1959 to 1962, he was Assistant Attorney General of Massachusetts.

Mr. McGarry graduated cum laude from Holy Cross College in 1952, did graduate work at Boston University and earned a J.D. from Georgetown University Law Center in 1956.

NEW BROCHURE ON SALE & USE RESTRICTION

A new brochure explaining the "sale and use restriction" on publicly disclosed campaign finance information is now available. See page 5 for details.

REGULATIONS

ANNUAL CONTRIBUTION LIMIT FOR INDIVIDUALS AND EARMARKED CONTRIBUTIONS: SUMMARY OF FINAL RULES

The Commission recently revised sections 110.3 through 110.6 of the regulations. The new rules on affiliation, transfers and prohibited contributions (11 CFR 110.3 and 110.4) were summarized in the October Record. This article reviews the changes regarding the \$25,000 annual contribution limit for individuals and earmarked contributions.

The final rules were sent to Congress on August 14 and were published in the Federal Register on August 17, along with the Explanation and Justification (E&J). See 54 Fed. Reg. 34098. Effective dates will be announced after the rules have been before Congress for 30 legislative days.

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Annual Contribution Limit for Individuals: 11 CFR 110.5

The Commission modified section 110.5 to clarify that:

- o The \$25,000 limit applies to all contributions made by an individual—including, for example, contributions to delegates and delegate committees and to persons making independent expenditures. The E&J further clarifies that contributions to persons testing the waters and to Presidential campaign compliance funds are also subject to the annual limit.
- o The \$25,000 limit applies only to contributions made by individuals who are permitted to contribute under the election law.
- o A contribution to a candidate made with respect to a particular election, but made during a nonelection year, applies to the annual limit for the year in which the election is held. (For example, an undesignated contribution made in 1989 to a 1990 Congressional candidate counts toward the donor's 1990 limit; likewise, if the 1989 contribution were designated for 1988 debt retirement, the contribution would apply toward the donor's 1988 limit.) Also, a nonelection year contribution to an unauthorized committee counts toward the donor's limit for that nonelection year, unless (1) the committee is a single candidate committee supporting a candidate running in a different year or (2) the contribution, if earmarked for a particular candidate, is designated by the donor for a particular election. (The unauthorized committee in this case would be acting as the conduit.)

Earmarked Contributions: 11 CFR 110.6

The revised rules, like the current ones, apply only to contributions earmarked for a particular candidate or candidate's committee. Contributions forwarded through a conduit or intermediary to an unauthorized committee should follow the rules on receiving and reporting contributions at 11 CFR 102.8 and 104.3(a)(4).

Definitions: 11 CFR 110.6(b). The new rules define the phrase "conduit or intermediary" at new paragraph 110.6(b)(2). A conduit or intermediary (the two terms are synonymous) is a person who receives and forwards contributions earmarked to a candidate or authorized committee, with certain exceptions. Those who would

not be considered conduits include:

- o Agents of a campaign, such as employees, full-time volunteers, and persons occupying a significant position in the campaign organization who are expressly authorized to raise funds for the campaign;
- o Affiliated committees;
- o Fundraising representatives conducting joint fundraising with the campaign; and
- o Commercial fundraising firms retained by the campaign.

The new definition also explicitly provides that persons who are prohibited from making contributions and expenditures in connection with federal elections, such as foreign nationals, corporations, labor organizations and government contractors, are also prohibited from acting as conduits for candidates or their committees. Separate segregated funds may continue to act as conduits for contributions to candidates.

Reporting by Conduits: 11 CFR 110.6(c)(1). New language in paragraph (c)(1) specifies that an earmarked contribution should be itemized in the conduit's report covering the period in which it is received. (The current rules state simply that the contribution should be itemized in the "next due" report.) New paragraph (c)(1) also specifies that conduits not ordinarily required to file disclosure reports must inform the Commission of the conduit activity by letter within 30 days after forwarding the contribution.

New paragraph (c)(1) also clarifies that conduits must use memo entries to disclose contributions passed on by means of the contributor's check.

Finally, the new conduit reporting rules delete the previous reporting exception for occasional transfers of earmarked contributions totaling \$1,000 or less, contained in current paragraph (c)(5). The exception was created when the Commission had the authority to grant reporting waivers; that authority was repealed by Congress in 1979.

Reporting by Candidate Committees: 11 CFR 110.6(c)(2). Revised paragraph (c)(2) specifies that a recipient candidate must itemize the identification of any conduit that forwards \$200 or more in contributions during one calendar year. The candidate committee must also list information identifying contributors who, through conduits, contribute \$200 or more in aggregate con-

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tributions to that committee during one calendar year. For earmarked contributions aggregating less than \$200, the reporting requirements of 11 CFR Part 104 continue to apply.

Direction or Control: 11 CFR 110.6(d). Revised section 110.6(d)(2) states clearly that, as under the current rules, an earmarked contribution is considered to be made by the conduit and is subject to the conduit's own contribution limit if the conduit exercises any direction or control over the choice of the recipient candidate. In reporting the activity, a conduit that exercises direction or control should attribute the full amount of the earmarked contribution to both the original contributor and to itself. The recipient candidate or committee should also report the dual attribution of the contribution.

As to determining whether conduits have exercised direction or control over earmarked contributions, the Commission will continue to evaluate these situations on a case-by-case basis.

Explanation and Justification

The E&J, published August 17 in the Federal Register along with the final rules, further explains the significance of the new rules and discusses some aspects of the rules which the Commission decided not to change. For more information, call the Information Services Division at 800/424-9530.

ADVISORY OPINIONS

An advisory opinion (AO) issued by the Commission provides guidance on a specific situation described in an advisory opinion request (AOR). Any person who has requested and received an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in an activity that is materially indistinguishable from the activity described in the AO. Those seeking guidance on a particular activity, however, should consult the full text of the relevant AO and not rely only on the summaries given in the Record.

For more information on requesting an AO, call the FEC and ask for the free brochure, "Advisory Opinions." Telephone 800/424-9530 or 202/376-3120.

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions. The full text of any AOR is available for public comment from the Commission's Public Records Office.

AOR	Subject
1989-21	Artist's production and sale of campaign-related merchandise in cooperation with candidates. (Date made public: September 19, 1989; Length, including supplements: 11 pages)
1989-22	Congressional campaign's use of funds raised for 1990 election to pay debts for 1988 election. (Date made public: September 28, 1989; Length: 1 page)
1989-23	Federal contractor partnership's use of payroll checkoff to facilitate partners' contributions to nonconnected committee. (Date made public: October 3, 1989; Length: 31 pages)
1989-24	Bank's distribution of lapel pin with PAC logo to employees outside of restricted class. (Date made public: October 11, 1989; Length: 5 pages, including supplement)
1989-25	Preemption by FECA of state law placing "voluntary" limits on federal campaign spending. (Date made public: October 11, 1989; Length: 7 pages, including supplement)

ADVISORY OPINION SUMMARIES

AO 1989-19: Sale of Copies of FEC Reports Filed by Committees

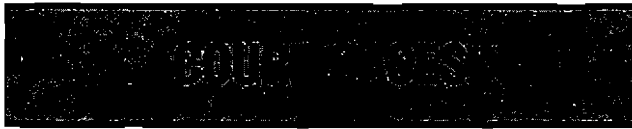
Oscar Johnson may reproduce and sell copies of certain parts of campaign finance reports filed by political committees, as long as the copied pages do not contain information about individual contributors.

Mr. Johnson proposes to sell copies of certain pages of selected reports: the Summary Page, Detailed Summary Page and portions of Schedule A (Itemized Receipts) listing contributions from "other political committees." The copies would be published and sold for purposes of "voter education and information." Portions of Schedule A that itemize contributions from individuals would not be included.

continued

The election law prohibits the sale or use of information copied from reports for the purpose of soliciting contributions or for commercial purposes. 2 U.S.C. §438(a)(4). The law does provide one exception: the names and addresses of political committees contained in reports can be used to solicit contributions from those committees.

The Commission has based its interpretation of the "sale and use restriction" on the Act's legislative history, which makes clear that section 438(a)(4) was intended to restrict the solicitation of individual contributors and to prevent the use of their names for commercial purposes. The Commission has permitted vendors and others to copy the names and addresses of political committees for use in publications and solicitations, as long as information identifying individual contributors was not included. AOs 1988-2, 1986-25, 1981-38, 1980-101 and 1980-78. (Date issued: September 29, 1989; Length: 2 pages)



STERN v. FEC

On August 31, 1989, the U.S. District Court for the District of Columbia granted the Commission's motion for judgment on the pleadings in Philip M. Stern v. FEC (Civil Action No. 89-89)). The court found that the Commission did not act contrary to law in dismissing an administrative complaint that Mr. Stern had filed. Additionally, the court dismissed the remaining portion of Mr. Stern's suit for lack of subject matter jurisdiction.

Background

Mr. Stern filed his original administrative complaint in August 1988, alleging that General Electric Company had unlawfully spent money from its separate segregated fund, GE/PAC, "for lobbying rather than for political purposes." Following the advice of the General Counsel, who noted that nothing in the Act or regulations prohibited the use of PAC funds for lobbying purposes, the Commission found no reason to believe that a violation of the law had occurred and dismissed the complaint in November 1988. The plaintiff challenged the dismissal by filing suit against the Commission in January 1989.

In asking the district court to review the Commission's action on his complaint, Mr. Stern also presented new information alleging further similar violations of the law by GE in connection with the 1987-88 elections. These allegations had not been made in the original complaint.

District Court Decision

The plaintiff argued that the provision of the Act that permits corporations to set up separate segregated funds "for political purposes" (2 U.S.C. §441b(b)(2)) precluded the use of those funds for purposes other than to influence elections. (The Act's definitions of the terms "contribution" and "expenditure" describe those activities as "having the purpose of influencing an election." 2 U.S.C. §431(8)(A)(i) and (9)(A)(i).) Mr. Stern claimed that contributions and expenditures made by GE/PAC on behalf of incumbent Congressional candidates who faced little or no opposition were not made to influence elections, but rather to influence the Congressmen's legislative activity, since, in his view, the Congressmen were assured re-election regardless of their PAC receipts.

In finding that the Commission had not acted contrary to law in dismissing the complaint, the court concluded that, even if the Act limits the expenditure of such funds to "political purposes," direct contributions to the principal campaign committees of federal candidates clearly satisfy that requirement. While the court thus found it unnecessary to decide the broader question of whether PAC funds could be expended for any "lawful purpose," as the FEC contended, the court characterized the Commission's position as a reasonable interpretation of the Act.

With regard to Mr. Stern's additional allegations that GE had committed similar violations of the law during the 1987-88 election cycle, the court found that it had no subject matter jurisdiction over those claims and dismissed them. Since the Act provides an exclusive civil enforcement procedure for violations of the election law through the administrative apparatus of the Commission, and since Mr. Stern had not yet filed the new charges against GE through that procedure, the court had no authority to rule on those claims.

Mr. Stern filed a notice of appeal on September 14, 1989.

FEC v. JOHN BRYANT CAMPAIGN COMMITTEE

On September 1, 1989, the U.S. District Court for the Northern District of Texas issued a final consent order and judgment in FEC v. John Bryant Campaign Committee (No. CA3-89-1694). The consent order decreed that the committee and its treasurer, Ken Molberg, had violated the election law by accepting a \$2,000 excessive contribution from an individual. 2 U.S.C. §441a(f). The order also decreed that the defendants had unlawfully used information contained in another committee's reports for soliciting individuals. 2 U.S.C. §438(a)(4).

The consent order included a \$500 penalty and a permanent injunction against future similar violations of the law.

FEC v. WEINBERG

On September 14, 1989, the U.S. District Court for the District of Columbia issued a final order and default judgment in FEC v. Mark R. Weinberg (Civil Action No. 89-0416(RCL)). The court found that Mr. Weinberg had violated the terms of a conciliation agreement he had entered into with the Commission in 1988.

Under the terms of that agreement, Mr. Weinberg had agreed to pay a \$17,000 civil penalty for violations of sections 441a(a)(1)(A) and (3) of the election law. When the defendant failed to pay the first installment on the penalty, the Commission filed this suit pursuant to 2 U.S.C. §437g(a)(5)(D).

The court ordered Mr. Weinberg to comply with the conciliation agreement within 10 days by paying:

- o The \$17,000 original penalty;
- o An additional \$5,000 for violating the agreement;
- o Interest of 6 percent on the penalty; and
- o The Commission's court costs.

Finally, the court permanently enjoined Mr. Weinberg from further violations of the conciliation agreement.

NEW LITIGATION**FEC v. Political Contributions Data, Inc.**

The Commission asks the court to find that Political Contributions Data, Inc., (PCD) violated the election law by reproducing and selling information on individual contributors compiled from disclosure reports filed with the FEC.

The Commission claims that in 1986 PCD, a for-profit corporation operating out of New York City, obtained FEC computer tapes containing information from disclosure reports and used them to produce and sell a variety of "reports" on filers' financial activity. The "reports" revealed the names, home cities and zip codes of individual contributors, as well as the amount they contributed and the recipients of the contributions. The election law prohibits the sale or use of information copied from reports for the purpose of soliciting contributions from individuals or for any commercial purpose. 2 U.S.C. §438(a)(4).

The Commission asks the court to assess penalties and to permanently enjoin the defendants from future violations of section 438(a)(4).

U.S. District Court for the Southern District of New York, No. 89-CIV-5238(SWK), August 2, 1989.

SALE AND USE OF CAMPAIGN INFORMATION

The Commission has published a new brochure to explain the "sale and use restriction," which the Act places on campaign finance information disclosed in FEC reports.

Under the election law, anyone may inspect disclosure reports filed by candidates and political committees. (Copies of reports are available for public inspection at the FEC, at the House Office of Records and Registration, at the Senate Office of Public Records and at state election offices.) The information contained in the reports, however, may not be sold or used for any commercial purpose or for soliciting any persons named in the reports. 2 U.S.C. §438(a)(4). This restriction applies only to the names and addresses of individual contributors; political committees named in the reports may be solicited for contributions.

Highlights of the new brochure include:

- o Examples of permissible and impermissible uses of disclosed information, drawn from several advisory opinions;
- o An explanation of "salting" and other steps a committee may take to ensure that its individual contributors are not solicited illegally; and
- o Explanations of how a committee can use its own contributor list, which falls outside of the restriction.

Copies of the new brochure are available from the Information Services Division. Call 800/424-9530 or 202/376-3120.

COMMISSION EXPANDS COMPUTER ACCESS TO CAMPAIGN FINANCE DATA

The Commission continues to broaden public access to federal campaign finance information centralized in the agency's Public Disclosure Division. The public now has direct computer access to this FEC information through the FEC-State Access Program and the Direct Access Program (DAP). These programs are described below.

FEC-State Access Program

The Commission and 15 state election offices cooperate in making campaign finance information available to the public at computer terminals located in these state offices.

continued

The state offices follow basic disclosure procedures established by the Commission. However, each state office sets its own standards concerning the amount and types of campaign finance information the office makes available.

The FEC releases the following types of data for use by the state offices:

- o Indexes providing descriptive information on all registered political committees, such as their sponsoring organization, frequency of filing reports and multicandidate committee status;
- o Indexes showing the total receipts and disbursements of committees;
- o Listings of all PAC contributions to federal candidates;
- o An index listing individuals who have contributed \$500 or more to federal candidates or committees; and
- o A summary sheet on each candidate or PAC showing total receipts and expenditures, cash on hand and debts owed over a two-year election cycle.

States currently participating in the FEC-State Access Program are: Arizona, Colorado, Connecticut, Georgia, Illinois, Iowa, Massachusetts, Michigan, New Jersey, New Mexico, Ohio, Tennessee, Vermont, Washington and Wisconsin. Other states that have tested equipment and are ready to join the system in the near future include Alaska, Louisiana, Maryland, Texas and Utah.

Addresses for the participating states' election offices are listed below. A brochure on the program is also available by calling the Information Services Division on its toll-free number, 800/424-9530.

Direct Access Program

Anyone with a personal computer may establish a direct tie with the FEC's computer base through the agency's Direct Access Program (DAP). Subscribers have access to information contained in formatted indexes as well as unformatted data. This information is available 24 hours a day, seven days a week, for a fee of \$25 per hour (payable in advance). For a new brochure on DAP, call the FEC's Press Office at 800/424-9530 or 202/376-3155.

FEC-STATE ACCESS PROGRAM PARTICIPANTS

Arizona

Office of the Secretary of State
State Capitol, West Wing, 7th Floor
1700 West Washington
Phoenix, AZ 85007
602/542-8683

Colorado

Elections Division
Office of the Secretary of State
1560 Broadway, Suite 200
Denver, CO 80202
303/894-2211

Connecticut

Office of the Secretary of State
Room 115
30 Trinity Street
Hartford, CT 06106
203/566-3059

Georgia

Elections Division
Office of the Secretary of State
State Capitol, Room 110
Atlanta, GA 30334
404/656-2871

Illinois

State Board of Elections
Suite 14-100
100 West Randolph Street
Chicago, IL 60601
312/917-6440

Iowa

Campaign Finance Disclosure Commission
507 10th Street, 7th Floor
Des Moines, IA 50309
515/281-4411

Massachusetts

Division of Public Records
Office of the Secretary of State
1719 McCormack Building
One Ashburton Place
Boston, MA 02108
617/727-2832

Michigan

Elections Division
Office of the Secretary of State
4th Floor, Mutual Building
208 N. Capitol Avenue
Lansing, MI 48918
517/373-2540

New Jersey

New Jersey Election Law
Enforcement Commission
28 West State Street, Suite 1215
Trenton, NJ 08625-0185
609/292-8700

New Mexico

Office of the Secretary of State
Room 400
Executive-Legislative Building
Santa Fe, NM 87503
505/827-3617

Ohio

Office of the Secretary of State
30 East Broad Street, 14th Floor
Columbus, OH 43266-0418
614/466-2585

Tennessee

Elections Division
Office of the Secretary of State
James K. Polk Building, Suite 500
Nashville, TN 37219-5040
615/741-7956

Vermont

Office of the Secretary of State
Redstone Building
26 Terrace Street
Montpelier, VT 05602-2198
802/828-2363

Washington

Public Disclosure Commission
403 Evergreen Plaza, MS-FJ42
Olympia, WA 98504-3342
206/753-1111

Wisconsin

State Elections Board
132 East Wilson Street, 3rd Floor
Madison, WI 53702
608/266-8005

FEDERAL REGISTER**FEDERAL REGISTER NOTICES**

Copies of notices are available from the Public Records Office.

Notice	Subject
1989-11	11 CFR Parts 100, 9004 and 9034: Loans from Lending Institutions to Candidates and Political Committees; Notice of Proposed Rule-making (54 Fed. Reg. 31286, July 27, 1989).
1989-12	Voluntary Standards for Computerized Voting Systems (54 Fed. Reg. 32479, August 8, 1989).
1989-13	11 CFR Parts 100, 102, 110, 114 and 9034: Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rules and Explanation and Justification (54 Fed. Reg. 34098, August 17, 1989).
1989-14	Filing Dates for Texas (12th District) Special Runoff Election (54 Fed. Reg. 35388, August 25, 1989).
1989-15	Filing Dates for Mississippi Special Election (54 Fed. Reg. 37020, September 6, 1989).
1989-16	Filing Dates for Texas (18th District) Special Election (54 Fed. Reg. 37503, September 11, 1989).

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FEDERAL ELECTION COMMISSION

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