

Record

August 1994

Federal Election Commission

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Commission

Commissioners McDonald and Elliott Reappointed

On July 1, the U.S. Senate confirmed the reappointment of Vice Chairman Danny L. McDonald and Commissioner Lee Ann Elliott as Commission members. Both were first named to the Commission in 1981 by President Reagan, who reappointed them in 1987. President Clinton recently appointed the two Commissioners to serve another six-year term ending April 30, 1999.

Before his original appointment, Mr. McDonald managed 10 regulatory divisions as the general administrator of the Oklahoma Corporation Commission. He had previously served as secretary of the Tulsa County Election Board and as chief clerk of the board. He was also a member of the advisory panel to the FEC's National Clearinghouse on Election Administration.

A native of Sand Springs, Oklahoma, Vice Chairman McDonald graduated from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He served as FEC Chairman in 1983 and 1989.

Mrs. Elliott was vice president of a political consulting firm, Bishop, Bryant & Associates, Inc., when she was first named to the Commission.

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Information

Flashfax — FEC Documents Available at Your Fingertips

All you need is a touch tone phone to order an FEC document and have it immediately faxed to you. The new Flashfax service makes over 130 documents and publications available for fax transmission 24 hours a day, 7 days a week. You can order FEC reporting forms, 1993 and 1994 advisory opinions, brochures, statistical releases, topical handouts and more.

Just call **202/501-3413** from a touch tone phone. The system will guide you through the simple instructions. A voice will ask you to enter the number of the desired document on your phone pad. Or, if you need to obtain the menu of documents, enter 411. (The current menu appears on page 10; keep it handy for future use.)

You will also be asked to enter your fax number and your regular phone number or extension (to identify you as the person who should receive the fax when it arrives).

From time to time new documents will be added to the menu. The system was designed to make it easy to identify and remember certain document numbers. For instance, number 106 is Part 106 of FEC regulations. Advisory opinions

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Commission

(continued from page 1)

Before that, from 1961 to 1979, she was an executive of the American Medical Political Action Committee. Commissioner Elliott was on the board of directors of the American Association of Political Consultants and on the board of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the U.S. Chamber of Commerce. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers.

A native of St. Louis, Commissioner Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical Association Management Executive Program and is a Certified Association Executive. She was FEC Chairman in 1984 and 1990. ♦

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Information

(continued from page 1)

also have easy-to-remember numbers. Menu numbers for 1994 advisory opinions, for example, all begin with 8 followed by the number of the opinion.

The best way to learn Flashfax is to try it. The Commission hopes you find it easy to use and convenient. ♦

Publications

Update Your Candidate Guide with New Supplement

A new *Supplement* to the *Campaign Guide for Congressional Candidates and Committees* updates material that has changed since the Guide was last published in April 1993.

To update your Guide, you simply replace specified pages with the updated pages in the Supplement. The new pages reflect the following changes to FEC rules adopted since April 1993:

- Multicandidate PACs and party committees are now required to notify campaigns of their multicandidate status when they make contributions.
- Candidate committees must take certain steps in order to demonstrate that they have made "best efforts" to obtain and report required information about contributors.
- A new optional form, FEC Form 6, is now available for disclosing last-minute contributions of \$1,000 or more received shortly before an election (48-hour notices).

The Supplement also contains minor revisions to the April 1993 material.

Use the form on page 11 to order the Supplement or both the Guide and the Supplement. ♦

Statistics

PAC and Party Activity at 15-Month Point in Cycle

PAC Activity

By the end of March 1994—15 months into the 1993-94 election cycle—PACs had contributed \$69.8 million to 1994 candidates. This was a drop of \$3.6 million from the \$73.4 million given to 1992 candidates the first 15 months of the 1991-92 cycle. (See graphs.)

Comparing 15-month totals, PACs raised \$226.5 million in the current cycle, just a little over the \$225.9 million raised in the previous cycle. Spending, however, dropped more than \$7 million: PACs spent \$187.9 million in the last cycle and \$181 million in this cycle.

National Party Activity

Republican national committees continued to outraise and outspend the Democratic national committees by a two-to-one margin with respect to their federal campaign finance activity. However, Republican committee activity dropped 3 percent compared with 15-month totals for the 1992 cycle, while funds raised and spent by the Democratic committees increased by more than 50 percent.

By March 31, 1994, Republican national committees had raised \$98.1 million to the Democrats' \$45 million and spent \$84.7 million to the Democrats' \$43.4 million.

In the area of nonfederal or "soft money" activity, the Democratic national committees overshadowed the Republicans, collecting \$27 million to the Republicans' \$19.3 million, and spending \$24.1 million to the Republicans' \$20.6 million. This was a reversal of the Republicans' substantial lead in nonfederal activity in March 1992.

Soft money—funds raised outside the restrictions of the federal campaign finance law—is banned

for use in federal elections and must be deposited in separate accounts. The FEC began requiring national party committees to disclose non-federal activity in January 1991, the start of the 1992 election cycle.

For More Information

FEC press releases providing extensive campaign finance data on 15-month PAC and party activity are available free of charge. To order, call 202/219-4140 or 800/424-9530 (ask for Public Records). The press release on 15-month House and Senate campaign activity is also available. ♦

Number of Candidates Receiving PAC Contributions¹ 15-Months into Cycle

(as of March 31 of election year)

Number of House Candidates

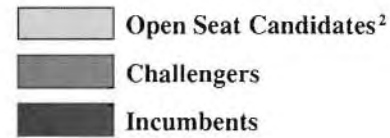
	Election Cycle			
	88	90	92	94
Open Seat	97	102	172	164
Challengers	133	101	157	186
Incumbents	412	406	368	388
Total	642	609	697	738

Number of Senate Candidates

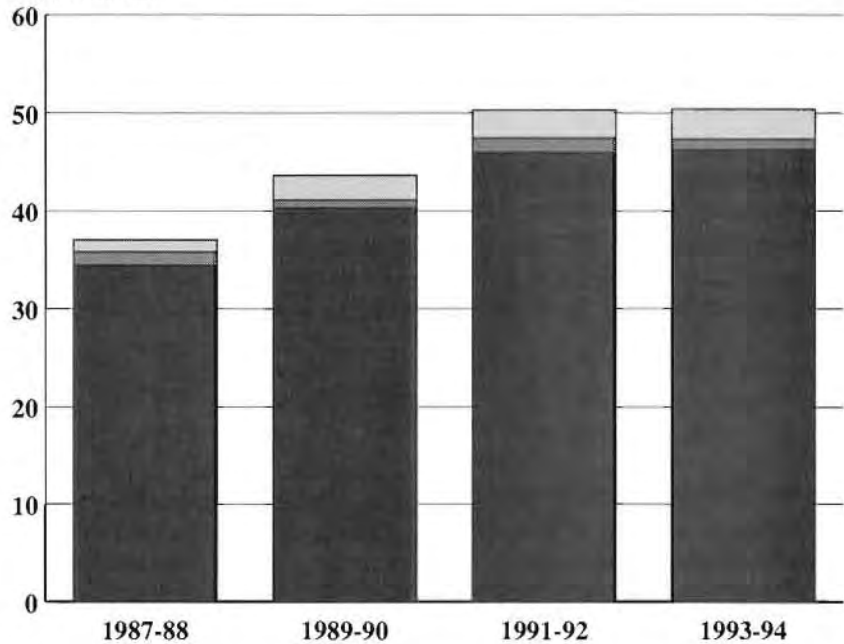
	Election Cycle			
	88	90	92	94
Open Seat	19	7	27	38
Challengers	27	30	38	43
Incumbents	27	32	30	27
Total	73	69	95	108

¹ The tables are not included in the June 15 press release on PAC activity. They reflect only those candidates who received PAC contributions while actively seeking election during the cycle. See graphs.

PAC Contributions to Candidates¹ 15 Months into Election Cycle
(through March 31 of election year)

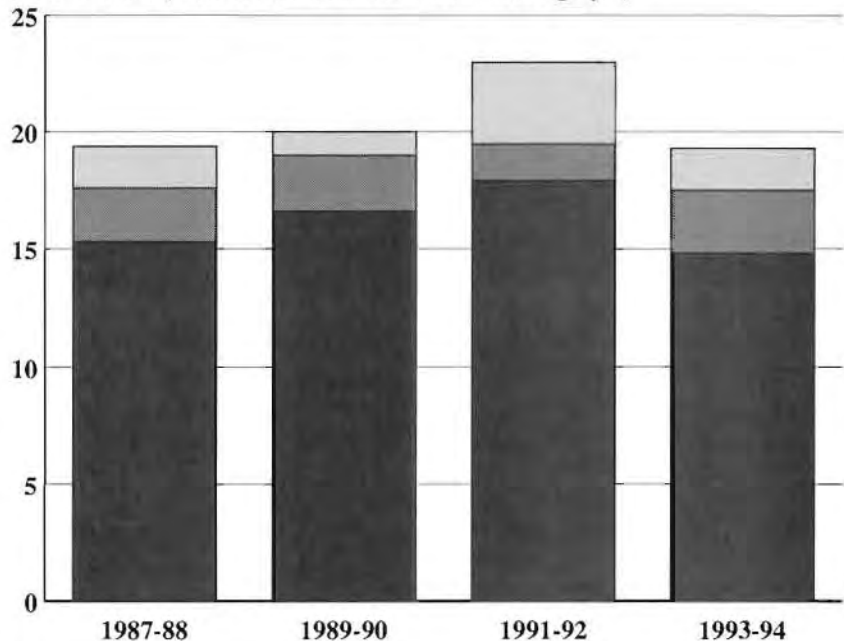


PAC Contributions to House Candidates
Millions of Dollars



PAC Contributions to Senate Candidates

Millions of Dollars (Note difference in scale from above graph.)



¹ The graphs show PAC contributions given to candidates actively seeking election in the cycle. They do not show contributions for debt retirement or future elections.

² Open seat candidates are those running in races with no incumbent opponents.

Compliance

MUR 3360 '88 Kemp Campaign to Pay \$120,000 Penalty

The 1988 Jack Kemp for President Committee and two Kemp joint fundraising committees agreed to pay a total of \$120,000 in penalties and to refund \$111,000 in excessive and prohibited contributions.

The Commission opened MUR 3360 to pursue violations uncovered in an audit of the Kemp committee,¹ which received federal matching funds. The Kemp committee and the two other committees—Victory 88 and the Kemp/Dannemeyer Committee—were cited for numerous violations of the federal campaign finance law:

- Accepting more than \$750,000 in excessive contributions and over \$13,000 in direct corporate contributions;
- Accepting excessive in-kind contributions from a staff member;
- Accepting corporate in-kind contributions by failing to pay in advance for campaign use of corporate aircraft;
- Accepting corporate in-kind contributions resulting from the reduction of a hotel bill;
- Exceeding the Iowa spending limit by almost \$104,000 and the New Hampshire spending limit by over \$66,000;
- Failing to follow the prescribed methods for calculating and billing the costs of travel services provided to the media;

¹ The interim audit report was completed August 22, 1989. After granting the campaign numerous extensions of time throughout the audit and repayment process, as well as granting an oral hearing after the final audit report had been issued, the Commission made a final repayment determination on June 11, 1992, when it ordered the campaign to repay \$103,555.

- Disclosing inaccurate information on the receipt and transfer of joint fundraising proceeds;
- Inaccurately distributing joint fundraising proceeds to participants;
- Failing to include the proper notification for joint fundraising solicitations;
- Failing to keep records on, report and itemize information on contributions; and
- Failing to retain and furnish documents requested by the FEC. ♦

MUR 3467 Bush Campaign Pays \$40,000 Penalty

The 1988 campaign committee of George Bush paid a \$40,000 civil penalty for violating contribution and expenditure limits. The violations were discovered in FEC audits of the Bush campaign. The penalty was included in a conciliation agreement signed by the committee treasurer.

Excessive Contributions

The committee accepted a total of \$188,195 in excessive contributions from individuals. Of this amount, \$163,725 were refunded too late to cure the excessive amounts. Although the regulations on the timeliness of refunds were changed during the 1988 campaign cycle, the refunds were late under both the old standard (within a reasonable time) and the current standard (within 60 days from deposit). On average it took the committee 112 days to refund excessive contributions.

The remaining \$24,470 in excessive contributions were primary contributions redesignated by contributors for the general election compliance fund. However, because the committee failed to retain any records of when it received the redesignations, they were ineffective, and the contribu-

tions remained excessive. See 11 CFR 110.1(l)(5).

Additionally, the Bush campaign made untimely refunds of \$11,000 in excessive contributions from political committees. Two of those committees paid respective penalties of \$1,000 and \$500 for exceeding the contribution limit by \$4,000 apiece. (They could only contribute up to \$1,000 to the primary election because they had not achieved multicandidate committee status.)

Excessive Expenditures

The Bush primary campaign exceeded the Iowa and New Hampshire limits by a total of \$260,460. The state expenditure limits, which are based on the state's voting age population, apply only to Presidential campaigns that accept primary matching funds. ♦

Audits

Report Released on Brown's '92 Presidential Campaign

The Brown for President committee must pay the U.S. Treasury \$142,560, based on the Commission's initial determinations included in the final audit report.¹ The report is available in the FEC's Public Records Office.

Governor Jerry Brown's Presidential campaign had received \$4.2 million in primary matching funds. The required payment to the U.S. Treasury consisted of:

- \$125,252 in matching funds received in excess of the candidate's entitlement;
- \$1,334 in stale-dated campaign checks that were never cashed; and

¹ The campaign paid the Treasury \$97,674 in August 1992 based on a preliminary calculation made early in the audit process.

- \$15,974 in apparently excessive travel reimbursements received from the press.

Additionally, the campaign was required to reimburse the press \$51,233 for travel overcharges.

The report found that the campaign may have received \$76,261 in excessive contributions in the form of staff advances. Campaign staff, using personal funds or credit cards, had spent in excess of their contribution limits for campaign expenses. Although the campaign later reimbursed the individuals, the advances nevertheless constituted excessive contributions. The report stated that the campaign failed to address the excessive nature of the advances.

Additionally, the report found that the campaign may have received prohibited and excessive contributions in the form of credit extended outside the ordinary course of business. A computer firm and a labor union waited several months after providing goods and services to the campaign before submitting their bills (\$50,000 and \$57,196). The campaign failed to document that the extensions of credit were in the ordinary course of business.

As recommended in the initial audit report, the campaign submitted missing records to show that disbursements totaling \$32,839 were qualified campaign expenses and thus not subject to repayment. Additionally, the campaign corrected reporting deficiencies in amended reports. ♦

Regulations

Rule on Use of Candidate's Name in Opposition Project Now Effective

Unauthorized political committees¹ may now use a candidate's name in the title of a special fundraising project or other communication, if the title clearly indicates opposition to the candidate (e.g., "Citizens Against Doe" or "Citizens Fed Up with Doe"). The revised rule, 11 CFR 102.14(b)(3), became effective June 30.

The rule is a narrow exception to the ban on the use of a candidate's name in any special project title of an unauthorized committee. That prohibition was imposed in 1992 and appears at 11 CFR 102.14(a). Please note that the new rule does not affect the complete ban on the use of a candidate's name in the registered name of an unauthorized committee. 11 CFR 102.14(a).

The Commission adopted the original rule in response to the growing use and abuse of candidate names in titles of fundraising projects sponsored by unauthorized committees. Acting on a rulemaking petition filed by Citizens Against David Duke (CADD), a potential special project of an unauthorized committee, the Commission decided to revise the rule to allow opposition projects to use a candidate's name. The Commission reasoned that fraud and abuse were less likely to occur in cases where the title of a project opposed a candidate, thus making it clear that the project was not authorized by the candidate.

The final rule and explanation and justification were published in the Federal Register on April 12 (59 FR 17267). ♦

¹ An unauthorized committee is any committee not authorized by a candidate, such as a PAC or party committee.

FEC Approves Final Rules Governing National Voter Registration Form

On June 23, the Commission published final rules describing the content and format of a national form for voter registration by mail. (See the Federal Register at 59 FR 32311.) The new rules at 11 CFR Part 8 will take effect July 25.

The development of the form is one of the Commission's responsibilities under the National Voter Registration Act (NVRA), which will become effective in most states at the start of 1995.

As an additional duty, the Commission must submit to Congress, every two years, a report assessing the impact of the NVRA and suggesting improvements in voter registration forms and procedures affected by the NVRA. The final regulations list the voter data that states will have to submit to the FEC in order for the agency to evaluate registration activity for the Congressional report. The first report is due June 30, 1995.

In drafting the regulations, the Commission considered responses to two rulemaking notices and information on state laws and procedures compiled by the FEC's National Clearinghouse on Election Administration.

To increase voter registration, the NVRA requires states to implement a mail-in voter registration system and to offer registration to individuals applying for driver's licenses and to those visiting designated government agencies. ♦

Final Revisions to Convention Rules Approved

The Commission adopted final regulations governing publicly financed Presidential nominating conventions. The revised rules, which will become effective after 30 legislative days, will apply to the 1996 conventions.

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Regulations

(continued from page 5)

The Commission reorganized and updated the convention regulations at 11 CFR Part 9008 to make them consistent with the other public funding rules. Major changes were made in several areas. Listed below are some of those changes.

- The regulations permit convention committees to raise contributions to defray legal and accounting compliance costs. The contributions will count against the annual \$20,000 limit (\$15,000 for multicandidate committees) on contributions to one of the national party committees established by the national party.
- The rules simplify terminology by using one term, "commercial vendor," to replace the previous terms ("local," "retail," "local retail") used to describe businesses that offer reductions, discounts or free items to a convention committee.
- The final rules recognize that host committees and convention cities may accept goods and services from commercial vendors under the same terms and conditions as convention committees.
- The regulations permit a convention city to pay for convention-related expenses from a municipal fund established to attract conventions and other events to the city. This provision is based on AOs 1983-29 and 1982-27.
- For the first time, the regulations require convention cities to file certain information with the FEC. After the convention, they must file a statement disclosing amounts spent for convention facilities and services, the total amount defrayed from general revenues and the total defrayed from a municipal convention fund.

The final rules and their explanation and justification were published in the Federal Register on June 29, 1994 (59 FR 33606). ♦

Advisory Opinions

AO 1994-10 Waiver of Bank Fees for Political Committee Borrowers

When making loans to federal candidates and their committees who have opened accounts, the Franklin National Bank may waive legal fees, deposit fees and similar service charges as long as the waivers are consistent with normal industry practice and the Bank's ordinary course of business with commercial customers. Otherwise, a prohibited corporation contribution would result.¹

Past advisory opinions have similarly concluded that corporations could give political committees discounts or free items made available to nonpolitical clients on equal terms or as part of a business relationship. AOs 1992-24, 1989-14 and 1987-24. On the other hand, if a political committee were to receive preferential treatment, a prohibited contribution would result. AOs 1991-23, 1987-22 and 1986-30.

In this case, the Bank indicated that it customarily negotiated fee waivers with borrowers establishing accounts. The Bank explained that its decisions to grant waivers are based on its business judgment of the profitability of the customer relationship and of the account itself. Date Issued: June 9, 1994; Length: 4 pages. ♦

¹ Although the prohibition on contributions from national banks applies to state and local, as well as federal, elections, this advisory opinion request was limited to waivers in connection with federal candidates.

AO 1994-12 Definition of Member Applied to Association's Governing and Membership Structure

The American Medical Association (AMA) is an incorporated membership association with approximately 290,000 physician and medical student members. All of AMA's "constituent members" pay regular dues and have the right to vote directly or indirectly for delegates to the House of Delegates, the AMA's highest governing body. Those individuals qualify as members under FEC regulations and are therefore eligible to be solicited for contributions to AMA's PAC (AMPAC) and to receive partisan electioneering messages from the AMA. 2 U.S.C. §441b(b)(2)(A) and (4)(C); 11 CFR 114.3(a)(2) and 114.3(c). The Commission was unable to reach a decision as to whether upwards of 45,000 direct members qualified as members under FEC rules. The Commission voted three-three on this issue.

To qualify as a solicitable "member" of a membership association, an individual must pay regular dues of a fixed amount and have the right to vote for at least one member of the "highest governing body" or for those who choose at least one member of that body.¹

The AMA has two governing bodies, the House of Delegates and the Board of Trustees. Because of its superior powers, the House of

¹ Individuals also qualify as members if they have the right to vote directly for all members of the highest governing body or if they have a significant financial attachment to the association, such as an investment or ownership stake (not merely the payment of dues). The definition includes two overall requirements: the individual must satisfy the membership association's own requirements for membership and must affirmatively accept an invitation to become a member. 11 CFR 114.1(e)(2).

Delegates is the AMA's highest governing body. The House has the power to make policy, appoint and, in certain instances, remove Board members. While the Board enjoys a veto right over the House in financial matters, the House can amend the bylaws and thus alter the powers of the Board.

The AMA has two classes of members who pay regular dues: constituent members and direct members.

Constituent members belong to AMA state medical associations and are entitled to vote for delegates to the state association's house of delegates. The state bodies, in turn, elect delegates to the AMA House of Delegates. (In two states, constituent members vote directly for delegates to the AMA House.) Constituent members therefore meet the definition of "member" under FEC rules.

Direct members are generally not entitled to participate in delegate elections, although they pay dues and have certain participatory rights. The Commission could not reach agreement on their membership status. Some direct members, however, also belong to AMA constituent associations. They qualify as solicitable members through that membership.

Date Issued: June 17, 1994;
Length: 9 pages. Chairman Trevor Potter submitted a three-page statement on AO 1994-12. ♦

AO 1994-15 Cable Series Moderated by House Member Seeking Reelection

Representative Leslie L. Byrne (VA-10th CD) may appear as the moderator of a monthly public affairs television series to be aired on two cable stations in her district and to be produced, directed and controlled by those outside the campaign. In her capacity as a

federal officeholder, Ms. Byrne will moderate discussion by a panel of experts on a selected monthly topic. The program will not result in a contribution or an expenditure on behalf of her reelection campaign because it will not refer to her campaign or election and will not be controlled by her campaign. This conclusion is based on the assumption that the scheduling and duration of the series and the selection of topics will not be made with reference to the timing of her nomination or election.

As a general rule, a public appearance by a candidate—including an officeholder—does not result in a contribution or an expenditure as long as there is no solicitation of campaign contributions and no express advocacy of the election or defeat of any candidate. However, the absence of solicitations and advocacy does not preclude a determination that an activity or appearance is campaign related. AO 1992-37.

Of particular relevance to Representative Byrne's situation is AO 1992-5, where the Commission drew the same conclusion based on similar facts.

Date Issued: June 24, 1994;
Length: 4 pages. Chairman Trevor Potter filed a three-page concurring opinion. ♦

Federal Register

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

1994-7
Filing Dates for the Oklahoma Special Elections (59 FR 32207, June 22, 1994)

1994-8
11 CFR Part 8: National Voter Registration Act of 1993; Final Rules (59 FR 32311, June 23, 1994)

AO 1994-16 PAC Contributions Refunded to Former Employees

The separate segregated fund of Atlantic Research Corporation (ARC PAC) retains, in a separate bookkeeping account, \$30,000 that had been contributed by former employees who worked for a subsidiary of ARC. The subsidiary was later sold to Computer Sciences Corporation (CSC). ARC PAC cannot transfer the entire \$30,000 to CSC PAC since unlimited transfers are permissible only between affiliated committees and the two PACs are not affiliated. 11 CFR 102.6(a)(1); see also AO 1989-16. (ARC PAC may, however, contribute up to \$5,000 per calendar year to CSC PAC.) Moreover, ARC PAC cannot transfer the contributions to CSC for refund to the former ARC employees since that would result in the unlawful commingling of PAC contributions with CSC corporate funds. (The collecting agent procedures at 11 CFR 102.6(b) and (c) are not applicable here.) ARC PAC itself, however, may refund the contributions to the original contributors, subject to certain conditions. Alternatively, ARC PAC may simply spend the funds as it wishes. See 11 CFR 114.5(d) (a corporation may exercise control over its separate segregated fund).

(continued on page 8)

1994-9

11 CFR Parts 107, 114 and 9008: Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Final Rules; Transmittal to Congress (59 FR 33606, June 29, 1994)

1994-10

11 CFR Part 102: Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees; Final Rule; Announcement of Effective Date (59 FR 33643, June 30, 1994)

Advisory Opinions

(continued from page 7)

Background

When ARC owned the subsidiary (ARC Professional Services Group or PSG), ARC PAC kept a record-keeping account (a "sub fund") on PSG-related activity. When PSG was sold to CSC, ARC believed that the \$30,000 in contributions in the sub fund should be used by CSC PAC to further CSC interests. While ARC may not transfer the funds to CSC PAC or transfer them to CSC for refund to the contributors, ARC PAC may refund the contributions, as described below.

Conditions for Making Refunds

Because the contributors are no longer part of ARC's restricted class, any letter accompanying the refund checks should not contain a solicitation message from ARC or ARC PAC on behalf of CSC PAC, which would be unlawful under 2 U.S.C. §441b(b)(4) and 11 CFR 114.5(i).

Furthermore, in view of ARC's knowledge that the funds may be used for contributions to CSC PAC, a refund to a donor should not exceed the amount of that donor's share of the funds on hand (the \$30,000). Otherwise, donors could be at risk of making contributions to CSC PAC from funds that were not their own, contrary to the prohibition on making contributions in the name of another at 2 U.S.C. §441f.

Finally, ARC PAC may use a last contributed/first returned method to identify the donors of contributions in the sub fund. This method, which was proposed by ARC PAC, is comparable to the last in/first transferred approach set out at 11 CFR 104.12 and applied to transfers between affiliated committees (see, e.g., AOs 1991-12 and 1982-52). Date Issued: June 24, 1994; Length: 4 pages. ♦

Advisory Opinion Requests

Advisory opinion requests (AORs) are available for review and comment in the FEC's Public Records Office.

AOR 1994-22

Campaign's lease of mobile home from partnership owned by the candidate and his father. (Patrick Combs for United States Congress; June 23, 1994; 1 page)

AOR 1994-23

Consolidation of payroll deduction operations after merger of two corporations and their SSFs. (Northrop Grumman; June 24, 1994; 6 pages)

AOR 1994-24

Severance pay and medical benefits paid by corporation to employee running in primary election. (Chattem, Inc.; July 8, 1994; 7 pages) ♦

Alternative Dispositions of Advisory Opinion Requests

AOR 1994-1

The Commission closed this AOR without issuing an opinion because necessary facts were not submitted. The request concerned a golf tournament fundraiser sponsored by the Western Pistachio Association for its PAC. See Agenda Documents #94-17 and #94-17 (revised).

AOR 1994-4

The Commission did not issue an opinion because it could not reach agreement, by the required four-vote majority, on whether the membership classes of the U.S. Chamber of Commerce qualified as "members" for purposes of receiving contribution solicitations and partisan communications from the Chamber. See Agenda Documents #94-63 and #94-63-A. ♦

Court Cases

FEC v. America's PAC

On May 23, 1994, America's PAC and its acting treasurer, Neil Barry Rincover, were held in civil contempt by the U.S. District Court for the Central District of California for failing to comply with a January 1993 default judgment ordering them to pay a \$25,000 civil penalty. (Civil Action No. CV-92-2747-LGB.) The court rejected Mr. Rincover's motion to set aside the judgment but did reduce the penalty to \$5,000.

The 1993 court found that defendants failed to forward a \$2,000 earmarked contribution from the Physicians Interindemnity/PAC to Bill Press, a U.S. Senate candidate. The acceptance of the earmarked contribution caused America's PAC to become a federal political committee with registration and reporting obligations. The court ruled that defendants, by failing to fulfill those obligations, violated 2 U.S.C. §§433(a) and 434(a)(1). The court also found that they violated §432(b)(1) by failing to forward the earmarked contribution and the required information to the candidate. Finally, because the check contained corporate funds, the court found that defendants knowingly accepted a prohibited contribution, in violation of §441b(a). They were ordered to pay a \$25,000 penalty, refund the \$2,000 contribution to the PAC and file a Statement of Organization and required reports, all within 15 days.

On April 18, 1994, responding to an FEC petition, the court ordered the defendants to show cause why they should not be held in contempt. That same day, Mr. Rincover filed a motion to set aside the January 1993 default judgment. (America's PAC never responded to the order to show cause.)

The court, however, rejected Mr. Rincover's motion, finding that his

claims did not indicate the "extraordinary circumstances" necessary for the court to set aside a judgment. The court therefore ordered Mr. Rincover and America's PAC to comply with the January 1993 order within 30 days or pay \$50 for each day of delay. Exercising its discretion, the court reduced the penalty to \$5,000 because all the violations stemmed from a single incident. ♦

Froelich v. FEC

The U.S. Court for the Eastern District of Virginia, Alexandria Division, dismissed this suit on May 27, 1994, ruling that Francis E. Froelich and two other plaintiffs, all residents of Virginia, lacked standing to bring suit. (Civil Action No. 93-1610-A.) Plaintiffs have filed an appeal in the Fourth Circuit.

In their suit, they claimed that the Federal Election Campaign Act is unconstitutional to the extent that it allows House and Senate candidates to accept out-of-state contributions. They argued that such contributions to the announced U.S. Senate candidates from Virginia (also named in the suit) allow non-Virginians to participate in the process of electing a Senator and dilute the value of the plaintiffs' participation. They further claimed that nonresident contributions create the appearance that an elected Senator is answerable to nonresident contributors. These alleged consequences of nonresident contributions, they argued, violate the 17th Amendment's guarantee that two Senators from each state shall be "elected by the people thereof."

The court, however, ruled that plaintiffs' claims were too general, lacking the factual specificity necessary to establish standing for judicial review. The court said that the "abstract question of wide significance" and "general grievances" presented by the plaintiffs were more properly addressed by Congress. The court commented that

if it were to uphold plaintiffs' claims, it would be "making legislative policy" and consequently "improperly interfering" with the legislative branch. ♦

Jordan v. FEC

The U.S. District Court for the District of Columbia granted summary judgment to the FEC on May 27, 1994, upholding the agency's dismissal of an administrative complaint filed by Absalom F. Jordan, Jr., against Handgun Control, Inc. Civil Action No. 91-2428 (NHJ).

Background

In his complaint, Mr. Jordan claimed that Handgun Control, Inc. (HCI) had violated the law by soliciting contributions from individuals who did not qualify as "members" because they lacked sufficient rights to participate in the governance of HCI.

Mr. Jordan's complaint raised the same membership issue as a succession of complaints filed against HCI by the National Rifle Association (NRA) between 1983 and 1992. The first NRA complaint resulted in a conciliation agreement requiring HCI to pay a civil penalty and to amend its bylaws to establish voting rights for its members.

Three more NRA complaints challenging HCI membership were dismissed by the FEC, which had already concluded that HCI members, under the new bylaws, had sufficient governance rights through their ability to vote for an at-large board member. The FEC's dismissal of the third and fourth complaints were affirmed by the D.C. Court of Appeals.

In dismissing the Jordan complaint, the FEC stated that his claims were "substantially similar" to those in the four NRA complaints, which had already been "conclusively resolved."

Definition of Member

Until recently, FEC regulations defined member simply as a person who satisfied the requirements for membership, but FEC advisory opinions had refined the term to mean persons who had some right to participate in the organization's governance and the obligation to pay regular dues.¹ This reading was based on the Supreme Court's decision in *FEC v. National Right to Work Committee (NRWC)*, 459 U.S. 197 (1982). The agency determined that HCI's voting rights were sufficient to satisfy this definition when the issue arose in the second NRA complaint.

Mr. Jordan challenged that interpretation, claiming that HCI's members were not solicitable because they lacked the power to remove management. He based his argument on the *NRWC* holding that members should be defined "at least in part, by analogy to stockholders of business corporations."

Dismissal of Complaint

Finding the FEC's definition of member to be reasonable, the court pointed out that, while the *NRWC* Court said that there had to be "some" attachment between the organization and its membership, that Court "certainly did not require that members be provided with the opportunity to seize total control of the organization, as plaintiff argues."

Furthermore, the court said the FEC's refusal even to consider Mr. Jordan's claims was neither arbitrary nor capricious but, instead, made "perfect sense," considering that the agency had already conclusively resolved the HCI membership issue. The court said that a "scrupulous adherence to precedent is hardly arbitrary." ♦

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¹The FEC further clarified the definition of member at revised 11 CFR 114.1(e), effective November 1993.

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New Litigation

Fulani v. FEC

Lenora B. Fulani and the other plaintiffs—her 1992 Presidential committees, their treasurers and a campaign manager—ask the court to find that a complaint filed with the FEC is invalid and that the Commission therefore acted unlawfully in opening an enforcement matter. They ask the court to stop the FEC from taking any action in the matter until the court decides the case.

According to plaintiffs, Kellie Gasink, a former Fulani supporter, filed an complaint with the Commission in January 1994. Her filing consisted of three components: a one-paragraph letter to the Commission; a copy of a five-page letter she had submitted to the Manhattan District Attorney; and a newspaper article.

The letter to the District Attorney alleged that certain persons associated with the Fulani Presidential campaign were involved in a fraudulent embezzlement scheme. The newspaper article reported on the District Attorney's investigation of the plaintiffs and their affiliated party, the New Alliance Party. The article cited Ms. Gasink and another former Fulani supporter as sources.

The FEC returned the complaint because it lacked the required statement that the contents had been sworn to in the presence of a notary. Ms. Gasink refiled the complaint in February 1994, the first page of which contained the required statement.

Claiming that the five-page letter also required a sworn statement to validate the complaint, plaintiffs seek a court order prohibiting any FEC enforcement action based on the letter. They also seek a ban on public release of materials obtained by the FEC.

U.S. District Court for the Southern District of New York, Civil Action No. 94-4461, June 17, 1994. ♦

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