THE FEDERAL ELECTION COMMISSION

RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 5, Number 1 January 1979

ADVISORY OPINION REQUESTS

The following chart lists Advisory Opinion Requests (AOR's), with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1978-89	Slate card exemption for publications.	11/14/78	10
1978-90	Reporting requirements for recount.	11/16/78	1
1978-91	Reporting of transfers between State party and affiliates.	11/16/78	2
1978-92	Limitations and reporting requirements for recounts.	11/16/78	1
1978-93	Disposition of excess campaign funds.	11/20/78	1
1978-94	Disposition of excess campaign funds.	11/22/78	1
1978-95	Use of excess campaign funds to retire State election debt.	11/22/78	1
1978-96	Acceptance of honoraria.	11/27/78	3
1978-97	Solicitation by separate segregated fund.	11/24/78	3
1978-98	Contributions collected by payroll deduction and transmitted to separate segregated fund.	11/29/78	3
1978-99	Allocation of debt between primary and general elections.	12/11/78	1

ADVISORY OPINIONS: SUMMARIES

Designated as AO's, Advisory Opinions discuss the application of the Act or Commission regulations to specific factual situations. Any qualified person requesting an Advisory Opinion who in good faith acts in accordance with the opinion will not be subject to any sanctions under the Act. The opinion may also be relied on by any other person involved in a specific transaction which is indistinguishable in all material aspects from the activity discussed in the Advisory Opinion. Those seeking guidance for their own activity should consult the full text of an Advisory Opinion and not rely only on the summary given here.

AO 1978-35: Use of Trust Funds to Retire Campaign Debts

Senate candidate Bill Waller may use funds in a trust set up for him in 1971 to pay primary debts incurred in his 1978 Senate campaign. Because he had access and beneficial enjoyment to the funds before March 1978, when he became a candidate, the trust is considered "personal funds" and, thus, is not subject to contribution limitations. Any interest accruing on the trust is also considered personal funds. (Length: 3 pages)

continued

REMINDER

The year-end report is due January 31, 1979. All candidates and political committees should consult the December 1978 **Record** for details.

AO 1978-39: Affiliation of Separate Segregated Funds

INN/PAC, the political committee sponsored by the International Association of Holiday Inns, Inc. (the Association), and HI/PAC, the political committee sponsored by Holiday Inns, Inc. (Holiday), are affiliated within the meaning of the Act and regulations. The bylaws and charter of the Association and Holiday's policy statement indicate that Holiday has the authority to direct and influence in several specific ways, the Association and its membership who are franchisees of Holiday. Accordingly, both INN/PAC and HI/PAC are required to share a single contribution limit with regard to contributions they make to candidates and committees. Contributions made to INN/PAC and HI/PAC would be considered contributions to a single political committee. Transfers between the two committees would be unlimited. Both committees must amend their Statements of Organization to identify each other as affiliated political committees. See 11 CFR 102.2(b)(1). (Length: 4 pages)

AO 1978-56: Dual Role for Presidential Candidate

Congressman Philip Crane may continue to serve as National Chairman of the American Conservative Union (ACU) while he is a candidate for President of the United States. ACU is a nonprofit, unincorporated organization. Payments made to defer expenses incurred in the performance of Mr. Crane's duties as ACU chairman would not be considered as in-kind contributions to his campaign or corresponding expenditures by the campaign committee. This conclusion was based on the following specific facts: ACU has not and will not promote, recognize or otherwise identify Mr. Crane as a candidate for President of the United States. Mr. Crane will not use his ACU office to further his candidacy. Moreover, ACU will not seek to participate in primary elections or delegate selection and will not transfer any funds to Mr. Crane or his committee. The Commission also assumed that ACU will not in any way involve itself with contributions to Mr. Crane or make any communications that expressly advocate his election or the defeat of any other Presidential candidate. Under these circumstances, any publicity resulting from Mr. Crane's activity as Chairman of ACU will not be considered a contribution under the Act. (Length: 3 pages)

AO 1978-85: Use of Excess Campaign Funds

The Whitehurst for Congress Committee may use excess campaign funds to defray expenses of a buffet luncheon to be given in honor of Mr. Whitehurst's 10th year as Congressman from Virginia. A candidate or individual holding Federal office may use excess campaign funds to defray any ordinary and necessary expenses incurred in connection with duties as a Federal officeholder. Since this event relates to Mr. Whitehurst's service as a Member of Congress, the use of excess campaign funds for this purpose is permissible under the Act. The Committee must report the disbursements. (Length: 2 pages)

AO 1978-87: Use of Excess Campaign Funds

Senator James B. Pearson may transfer $100,000 in excess campaign funds to the University of Kansas Center for Research, Inc., for the purpose of establishing a fellowship program. The Act provides that it is lawful for excess campaign funds to be contributed to recognized charitable organizations. (Length: 2 pages)

AO 1978-88: Public Service Announcements by Former Candidate

State Senator Ronald R. Hein, a former candidate for the U.S. House of Representatives, may make public service announcements to raise money for diabetes research while his congressional campaign committee remains active in its effort to retire campaign debts. Any publicity resulting from these announcements will not constitute either a contribution or an expenditure on behalf of Mr. Hein's campaign since the announcements will make no reference to his candidacy for Congress and no appeal for campaign funds. (Length: 2 pages)

AO 1978-92: Limitations and Reporting Requirements for Recount

Funds collected and disbursements made by the Miller for Senate Committee (the Miller Committee) for the purpose of defraying expenses of a Federal election recount are not contributions or expenditures under the regulations. 11 CFR 100.4(b)(15). No gifts or payments may be given by or accepted from a national bank, corporation or labor organization. A separate segregated fund of such an organization may, however, make a donation or disbursement for a recount.

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Joan D. Aikens, Chairman; Robert O. Tiernan, Vice Chairman; Thomas E. Harris; John W. McGarry; William L. Springer; Vernon W. Thomson; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 523-4068 or toll free 800/424-9530.*

On the other hand, if a separate organization were established by the current officers or staff of the Miller committee solely for the purpose of funding the recount effort, it would not become a "political committee" since its receipts and disbursements would not be contributions or expenditures under the Act. Thus, neither a Statement of Organization nor any reports would be required.

If the Miller for Senate Committee set up a bank account for recount purposes, the Committee would have to amend its Statement of Organization and report the receipts and disbursements, relating to the recount.

In either case, a political committee making a donation for the recount would be required to itemize the donation as a transfer. In addition, the committee should attach an explanation that the donation was exempt from the limitation because it was made for recount purposes only.

With regard to funds received for recount purposes, any surplus could not be used in a manner that would constitute a contribution or expenditure under the Act or regulations. Surplus funds could, however, be spent for other lawful purposes unrelated to Federal elections. (Length: 4 pages)

ALTERNATIVE DISPOSITION OF ADVISORY OPINION REQUESTS

Since November 1978, the Commission has responded to the following Advisory Opinion Requests in a manner other than the issuance of an Advisory Opinion.

- AOR 1978-70 was withdrawn by its requester.
- AOR 1978-90 was answered by AO 1978-92. See Advisory Opinion Summaries.

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations for its representatives to address public gatherings on the subject of campaign finance laws and the Commission itself. This regular column lists scheduled Commission appearances, detailing the name of the sponsoring organization, the location of the event and the Commission's representative.

1/13 National Association of Manufacturers Public Affairs Conference
Innisbrook, Florida
Chairman Joan Aikens
Jan Baran, Executive Assistant to Chairman Joan Aikens

The Public Communications Office receives numerous inquiries from the public on the toll-free line (800) 424-9530. The following explanation of how candidates may use excess campaign funds is offered in response to questions frequently asked.

EXCESS CAMPAIGN FUNDS

Excess campaign funds are contributions received by a candidate (or his/her authorized committee or agent) which, in the candidate's view, exceed the amount of funds needed to defray campaign expenditures. Excess campaign funds may be used for the following purposes:

1. Future elections. See 11 CFR 110.3(a)(2).
2. Defraying office expenses of Federal officeholders.
3. Donations to recognized charitable organizations.
4. Contributions to political committees, political parties and other candidates.
5. Any other purpose lawful under Federal and State statutes.

See also 11 CFR 113.2.

Some of these uses may be subject to Federal and State income tax laws and, in the case of Federal officeholders, to the rules of the U.S. Senate or House of Representatives.

THE LAW IN THE COURTS

FEC v. NATIONAL EDUCATION ASSOCIATION, et al.

On November 2, 1978, the U.S. District Court for the District of Columbia ordered the National Education Association (NEA) to obtain written affirmation from participants in the reverse checkoff programs of their intent to make a political contribution to its separate segregated fund NEA-PAC. The Court set April 1, 1979, as the deadline for obtaining each member's written consent to the contributions they had made through the reverse checkoff procedure. NEA was further required to return funds to individuals who do not submit the affirmation. Under the court order, refund checks must be sent to each person entitled to a refund by May 15, 1979. By July 1, 1979, NEA must submit to the Court and the FEC a final accounting of all refunds.

The order followed a previous decision made by the Court on July 20, 1978, to grant the FEC a summary judgment in its suit filed against NEA and 17 of its State affiliates. In that decision, the Court also enjoined NEA and its affiliates from collecting political contributions by means of "a reverse checkoff" system. (See the Record, September

1978, p. 4.) Under this procedure, a political contribution was automatically deducted from a member's salary along with his/her dues payment. The contribution was subsequently refundable upon written request by the member.

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the Court involved, the Docket Number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the Court where the suit is filed or the Commission.

FEC v. Gene A. Williamson, U.S. District Court for the Eastern District of Michigan, Docket No. 872728, October 24, 1978.

The Commission alleges defendant violated the Act by making contributions in the name of another.

Neil Staebler, et al. v. Jimmy Carter, et al., U.S. District Court for the District of Columbia, Docket No. 78-2028, October 26, 1978.

Suit challenges the President's Constitutional authority to make a "recess appointment" of John McGarry as Commissioner of Federal Election Commission.

Henry L. Walther v. FEC, U.S. District Court for the District of Columbia, Docket No. 78-2097, November 3, 1978.

Suit seeks declaratory and injunctive relief against the Commission for dismissing 21 complaints.

FEC v. American Federation of State, County and Municipal Employees, U.S. District Court for the District of Columbia, Docket No. 78-2114, November 7, 1978.

The Commission alleges defendant violated the Act by failing to report costs of communications expressly advocating the defeat of a candidate.

Common Cause et al. v. FEC, Chairman Joan Aikens and American Medical Association, U.S. District Court for the District of Columbia, Docket No. 78-2135, November 9, 1978.

Plaintiff alleges the Commission failed to take action against the American Medical Association as required by the Act.

Henry L. Walther v. FEC, U.S. District Court for the District of Columbia, Docket No. 78-2193, November 21, 1978.

Suit seeks declaratory and injunctive relief against the Commission for dismissing 24 complaints.

FEC PUBLISHES NAMES OF NONFILERS

The Commission is required by the Federal Election Campaign Act to publish the names of candidates and political committees who fail to file required reports of receipts and expenditures. Before publishing the name of a candidate or committee who has failed to file, the Commission sends them at least two notices. If, following receipt of these notices, a candidate or committee continues not to file the required report, the name of that "nonfiler" is made public.

The Commission recently published the names of candidates and political committees who failed to file a required report. The following list summarizes Commission action:

Publication Date	Report Not Filed	Number of Nonfilers
12/7/78	Alabama (Post-General)	3

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act requires the Commission "... to make from time to time audits and field investigations with respect to reports and statements filed under the Act." The Commission is also required to conduct audits of all campaigns of Presidential candidates who receive public funds. Once an audit is completed and an audit report is approved by the Commission, the report is made public and is available in the Office of Public Records and the Press Office. The following is a chronological listing of audits released as of November 28, 1978.

Audits	Date Made Public
1. New Hampshire Democratic State Committee/Democratic State Committee — Get-Out-the-Vote	11/14/78
2. New Hampshire Republican State Committee/New Hampshire Republican Committee/Federal Accourft	11/14/78
3. Dollars for Democrats, Missouri	11/14/78

continued

4. Anderson-Shackelford Campaign Committee — 11/21/78

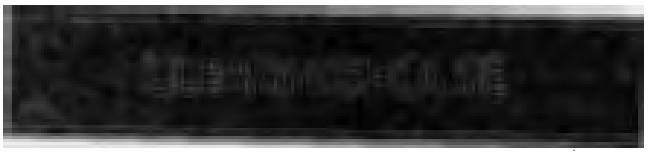
5. Hamp Baker for Congress Committee, OK/3 — 11/21/78

6. Citizens for Senator Brock/Concerned Tennesseans — 11/21/78

7. Democratic Congressional Dinner Committee — 11/21/78

8. Democratic Congressional Finance Committee — 11/21/78

9. Owens for Congress, FL/7 — 11/28/78



NEW STUDIES RELEASED

The Clearinghouse recently completed and released three major reports: *Statewide Registration Systems*, *Ballot Access* and *Contested Elections and Recounts*.

Statewide Registration Systems is a two-volume report developed by Arthur Young and Co. and Weems and Associates. The report discusses automated voter registration systems, giving particular attention to those that are centralized at the State level. Volume I offers a nontechnical, pragmatic discussion of mail registration systems, their history and their benefits. Also discussed are the obstacles to implementing and operating mail registration systems and suggested solutions. Volume II is a more detailed report which outlines the design and operating characteristics of a statewide system.

Report	Cost	Order Number
Statewide Registration Systems, Vol. I	$4.50	FEC-CH-78-008
Statewide Registration Systems, Vol. II	$5.25	FEC-CH-78-009

The *Ballot Access* report, composed of four volumes, was prepared by Texas A&M University's Department of Political Science. It examines the complexities of how candidates for Federal office get listed on the ballot. Volume I gives the history of ballot access procedures and makes specific recommendations for improvement. Volume II describes in detail the ballot access procedures for congressional and Presidential candidates in each State. Volume III contains a history of ballot access laws for both congressional and Presidential candidates, identifies major legal problems and issues and summarizes State election codes with respect to ballot access for Federal office. Volume IV summarizes ballot access procedures in each State.

Report	Cost	Order Number
Ballot Access Set	$25.00	PB 288-445
Ballot Access, Vol. I	$6.00	PB 288-446/AS
Ballot Access, Vol. II	$9.00	PB 288-447/AS
Ballot Access, Vol. III	$9.50	PB 288-448/AS
Ballot Access, Vol. IV	$6.00	PB 288-449/AS

The *Contested Elections and Recounts* report, in three volumes, was prepared by Indiana University's School of Public and Environmental Affairs. Volume I (Federal perspective) and Volume II (State perspective) describe contested election and recount laws and procedures throughout the United States. They include recommendations for laws and procedures that will minimize contested elections and facilitate the just resolution of those that occur. Volume III consists of a series of legal memoranda summarizing relevant State laws.

Report	Cost	Order Number
Contested Elections and Recounts Set	$34.00	P8 288-450-SET
Contested Elections and Recounts, Vol. I	$9.00	PB 288-451
Contested Elections and Recounts, Vol. II	$13.25	PB 288-452
Contested Elections and Recounts, Vol. III	$15.50	PB 288-453

To purchase any of these Clearinghouse reports, send payment (check or money order), together with the report number, to the address below or call 703-557-4650.

National Technical Information Service
Sales Desk
Department of Commerce
5285 Port Royal Road
Springfield, VA 22161

FORMS

Forms for candidates and committees are available from:

Office of Public Communications
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463
Telephone: 202/523-4068
Toll-Free: 800/424-9530

Candidates and committees should use the revised form for reporting receipts and expenditures. It is designated in the upper left hand corner as: **FEC Form 3 REVISED, January 1978.**

FEDERAL ELECTION COMMISSION
1325 K STREET, NW
WASHINGTON, DC 20463

OFFICIAL BUSINESS