# THE FEDERAL ELECTION COMMISSION

# RECORD

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

Volume 5, Number 6 June 1979


## REGULATIONS

### NEW PRIMARY MATCHING FUND REGULATIONS

On May 7, 1979, the Commission formally prescribed new Regulations governing the administration of the Presidential Primary Matching Payments Account. These Regulations define the process whereby 1980 Presidential candidates may receive Federal matching funds for their primary campaigns. The new Regulations codify and delineate Commission policies and procedures by:

1. Defining the candidate's responsibility for proving that public funds are expended in accordance with the law;
2. Clarifying recordkeeping procedures; and
3. Standardizing the procedures for handling disputes between the Commission and the candidate.

(For a more detailed summary of the new Regulations, see the *Record*, April 1979, p. 2.)

The Commission submitted the proposed Regulations to Congress on February 16, 1979. The law stipulates that proposed Regulations become effective thirty legislative days after their submission, unless the House or the Senate disapproves them before that time has elasped. This 30-day legislative period expired on May 1, 1979, without disapproval by either the House or the Senate.

The new Regulations were published, in their entirety, in the *Federal Register* on April 4, 1979. Corrections were published in the *Federal Register* on April 13, 1979, and April 30, 1979.

### IRS REVISES REGULATIONS

The Internal Revenue Service recently adopted several amendments to the Income Tax Regulations which affect Federal candidates and their campaigns, and individuals who contribute to Federal candidates. The amendments are published and explained in the *Federal Register*, March 27, 1979, Vol. 44, No. 60, pp. 18221-18223.

## COMPLIANCE

### SUMMARY OF MUR's

Beginning with this issue, the *Record* will summarize the files of selected compliance cases which have been closed and put on the public record. Compliance matters stem from possible violations of the Act, which come to the Commission's attention either through formal complaints originating outside the Commission or by the FEC's own monitoring procedures. The Federal Election Campaign Act of 1971, as amended (the Act) gives the FEC the exclusive primary jurisdiction for the civil enforcement of the Act. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MUR's). All MUR investigations are kept confidential by the Commission, as required by the Act.

MUR's may be closed at any one of several points during the enforcement process, including when the Commission:

- Determines that no violation of the Act has occurred;
- Determines that there is no reason to believe, no reasonable cause to believe or no probable cause to believe a violation of the Act has occurred;
- Enters into a conciliation agreement with the respondent;
- Finds probable cause to believe a violation has occurred and decides to sue; or
- Decides at any point during the enforcement process to take no further action.

After the MUR is closed and released by the Office of General Counsel, the Commission makes the MUR file available to the public. This file contains the complaint, the findings of the General Counsel's Office and the Commission's actions with regard to the case, including the full text of any conciliation agreement. The Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis.

Selection of MUR's for summary will be made only from MUR's closed after January 1, 1979. The *Record* article will not summarize every stage in the compliance process. Rather, the summary will provide only enough background to make clear the Commission's final determination. The

full text of these MUR's and those which were closed between 1976 and 1978 are available for review and purchase in the Commission's Public Records Office.

**MUR 884: Receipt of Prohibited Contributions**

On January 5, 1979, the Commission found no reason to believe that a Federal candidate had violated 2 U.S.C. §441b.

*Complaint:* On November 23, 1978, an individual filed a complaint with the Commission alleging that a candidate for Federal office had violated §441b by accepting prohibited contributions from a labor organization. The complaint was based on a recent court decision which held that the labor organization had unlawfully commingled union treasury funds with voluntary contributions. The labor PAC had also made contributions from those funds to several candidates for Federal office. The complaint named one of the candidates who had received a contribution from the PAC, contending that he also was in violation of §441b.

*General Counsel Reports:* When the Commission filed the suit upon which this complaint was based, it was aware that several candidates had accepted and retained contributions from the PAC in question. At that time, the Commission made a decision not to pursue recipient candidates. The Commission established in AO 1978-53 that a candidate's receipt of tainted funds, in and of itself, does not place the candidate in violation of the Act if the candidate has no knowledge that the contribution was improper. Consistent with AO 1978-53, the General Counsel recommended that no action be taken against the candidate since there was no evidence that he had knowledge that the contributions consisted of voluntary money commingled with union treasury money in violation of §441b.

*Commission Determination:* On January 5, 1979, the Commission found no reason to believe that the Federal candidate had violated 2 U.S.C. §441b.

**MUR 538: In-Kind Contributions**

On January 25, 1979, the Commission found no reasonable cause to believe that a political action committee had violated 2 U.S.C. §§434, 441a and 441b and that a corporation had violated 2 U.S.C. §441b.

*Complaint:* In 1977, a political action committee (PAC) created a computer corporation and then contracted with the corporation to perform "caging" operations (processing of contributions received through direct mail) for the PAC. At the time of the corporation's creation, the PAC sold all its office equipment and computer capability and then transferred almost its entire staff to the new corporation. A complaint filed by an individual on February 15, 1978, contained the following allegations:

1. The PAC received services from the corporation at prices below the "usual and normal charge," thereby accepting a prohibited in-kind contribution from the corporation in violation of §441b.
2. The PAC failed to report in-kind contributions from its landlord for reduced rent, cost of office furniture and subsidized rent. Failure to report such contributions was a violation of §434; if such contributions exceeded $5,000 annually, a violation of §441a might have occurred.
3. Services performed on behalf of political candidates by a political consultant employed by the PAC constituted an expenditure and should have been reported. Failure to report constituted a violation of §434.

*General Counsel Reports:* The General Counsel pointed out that where a PAC creates a corporation which, in turn, provides services to the PAC, close scrutiny is warranted to assure that the status of the corporation does not unlawfully benefit the PAC. For example, the appearance of disproportionate prices being charged the PAC and a State committee raised the possibility that the corporation may have acted as a conduit for other corporation contributions to the PAC. The General Counsel suggested that the State committee may have used its funds, which contained corporate contributions, to absorb those PAC costs exceeding amounts actually billed by the corporation. Such an arrangement would have permitted the corporation to charge the PAC a lower rate for the same services. The ensuing Commission investigation revealed that:

1. Both committees (the State committee and the Federal PAC) were charged at the "usual and normal charge." The difference in cost charged the two committees was attributable to the difference in the volume of mailings of both committees and their relative success in raising money.
2. The PAC's rent was under contract, was uniformly paid, and was increased when the building changed hands and a new contract was negotiated.
3. The PAC maintains that consultant services were provided only for State candidates. The original complaint neither specified the political candidates for whom consultant services were allegedly provided nor indicated whether or not the candidates were Federal candidates.

*Commission Determination:* On January 25, 1979, the Commission determined that there was no reasonable cause to believe that the PAC had violated 2 U.S.C. §§434, 441a and 441b and that the corporation had violated 2 U.S.C. §441b.

## PUBLIC FINANCING

### DATA PROCEDURES FOR 1980 PRESIDENTIAL ELECTIONS

On May 3, 1979, the Commission approved data entry procedures for the 1980 Presidential election. (Commission Memorandum No. 394)

*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; Max L. Friedersdorf; Thomas E. Harris; John W. McGarry; 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 202/523-4068 or toll-free 800/424-9530.*

# OPINIONS

## 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 |
|---|---|---|---|
| 1979-13 | Article about separate segregated fund carried in corporation's publication. | 4/13/79 | 2 |
| 1979-14 | Registration and reporting requirements of political party and its State committees. | 4/13/79 | 2 |
| 1979-15 | Solicitations for separate segregated fund made through article in trade association's magazine. | 4/18/79 | 3 |
| 1979-16 | Fundraising by two separate segregated funds established temporarily within a single trust prior to their contemplated merger into a single multicandidate committee. | 4/27/79 | 3 |
| 1979-17 | Republican National Committee participation in bank credit card program with income to RNC based on acceptance or use of cards. | 4/25/79 | 5 |
| 1979-18 | Purchase of committee contributor list. | 4/25/79 | 2 |
| 1979-19 | Tickets for separate segregated fund's reception purchased through association. | 5/1/79 | 2 |
| 1979-20 | Establishment of separate segregated fund by general partnership composed of two corporations. | 5/8/79 | 2 |
| 1979-21 | Reimbursement of corporation for assistance in establishing payroll deduction plan for union's separate segregated fund. | 5/9/79 | 2 |
| 1979-22 | Reporting obligations of candidate committee for part-time services of attorney and use of law firm facilities and personnel. | 5/10/79 | 2 |
| 1979-23 | Reporting extinguished "debts" and "obligations" on Schedules B and C. | 5/11/79 | 2 |

## 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 upon 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 1978-91: Transfers from District Committees To State Party

The Commission approved three methods proposed by the North Dakota Democratic-NPL Party (the State Party) for reporting funds transferred to the State Party from local legislative district committees (the District Committees).

The State Party is organized so that each District Committee shares in the financial responsibility by raising a quota of funds from individual contributions and district fundraising events. In its request, the State party outlined the methods it had been using to receive and report contributions from the District Committees. It also proposed several methods (described below) whereby it would not be necessary, in most cases, for the District Committees to register and report.

1. *Contributions Received Directly by the State Party*
   Individual, itemizible contributions received directly by the State Party will continue to be itemized on State Party reports to the Commission. Any person at the district level who receives a contribution for the party which exceeds $50 must provide a detailed account of the contribution to the State Party treasurer. The State Party treasurer, upon receipt of the contribution, must deposit it in a designated campaign depository within ten days.
2. *Transfers of Proceeds from District Fundraisers*
   The State Committee must itemize each transfer of proceeds from district fundraising events as separate "transfers in from affiliated committees." In addition, the State Party must clearly identify the District Committee (by number or in some other fashion) as the source of the transfer.
3. *Transfers Exceeding $1,000*
   If the State Party establishes a separate Federal campaign committee with a segregated Federal account, the amount over $1,000 transferred by a District Committee to the State Party within a calendar year could be placed in another account whose funds are not used to influence Federal elections (i.e., a State and/or local account). Under this procedure, District Committees which did not wish to be considered "political committees" as defined in the Act could retain that status. In this case, however, it would be the responsibility of the State Party to request assurance from the transferring District Committee that the contributions orignated from sources which are permissible under the Act.

   If however, the State Party maintains a single account for Federal and non-Federal candidates, any District Committee which transfers more than $1,000 to the State Party during the calendar year must register and report to the Commission. (Length: 4 pages)

### AO 1978-102: Union Get-Out-the-Vote Drive

The Coal Miners Political Action Committee (the Committee) must reimburse the general treasury of the United Mine Workers (UMW) for union funds which were used to conduct a get-out-the-vote drive.

Prior to the 1978 general election, the UMW used general treasury funds to finance radio and television ads encouraging UMW members to vote. Some of the ads, which were broadcast in several States, endorsed specific candidates for State office. Others, described as "nonpartisan" by the Committee, were more general, urging UMW members to vote for candidates friendly to labor but not identifying or endorsing specific candidates or political parties. No candidates for Federal office were specifically identified or endorsed in any ads.

The Commission noted that the announcements supporting specific State candidates were outside the scope of the Act. However, with regard to the nonpartisan ads, the Commission determined that they were not permissible under the Act because:

1. The Act prohibits expenditures by labor unions in connection with Federal elections; although 2 U.S.C. §441(b)(2)(B) permits the use of general treasury funds to conduct get-out-the-vote drives, it restricts those drives to union members and their families.
2. Furthermore, Commission Regulations require that any get-out-the-vote drive which extends beyond union members and their families must be jointly sponsored by the union and a nonprofit or civic organization which does not endorse candidates or political parties (11 CFR 114.4(d)).

Since the UMW get-out-the-vote drive reached the general public and was sponsored solely by the UMW, it was not conducted in compliance with the Act or Commission Regulations. To be in compliance, the Committee must allocate a reasonable portion of expenses for the nonpartisan activity between Federal and non-Federal elections. In this case, a reasonable allocation would be as follows: The amount allocated to Federal candidates should have the same ratio to total expenses for nonpartisan announcements as the number of Federal candidates has to the total number of candidates (local, State and Federal) supported by the union and its PAC. That amount should then be transferred from the Committee to the UMW treasury. (Length: 4 pages)

### AO 1979-2: Refunds to Committee

**NOTE: The Commission emphasized that the following opinion should be narrowly read. Persons wishing guidance in this area should submit separate requests even though their factual situations may appear to be "indistinguishable in all . . . material aspects" from the situation discussed in this opinion.**

Congressman Badham is coproducer, with the U.S. Departments of Commerce and Defense, of a Federal Procurement Conference (the Conference). The Badham Congressional Committee (the Committee) may not accept refunds from the Conference for amounts which the Committee advanced to cover Conference costs because of the source of Conference funds. Nor may the Committee accept refunds directly from vendors to whom the Committee paid deposits after those vendors have been paid by the Conference.

Conference income, derived from attendee registration fees, will consist of funds from corporations, many of which are Federal government contractors. In view of that fact, repayment of the advances to the Committee by the Conference or by vendors would result in the Committee's acceptance of indirect prohibited contributions from corporations and Government contractors.

The Commission noted, however, that if the Committee followed the procedures below, no enforceable violation of the Act would occur:

1. Before the Conference date, Representative Badham uses his personal funds to pay the vendors the same amounts the Committee has previously paid those vendors.
2. The vendors immediately refund to the Committee the deposits the Committee has advanced.
3. The Committee reports those refunds on its next required report. Subsequently, the vendors may refund to Congressman Badham the payments advanced by him from personal funds on behalf of the Conference. These refunds would be outside the purview of the Act and Commission Regulations since the financing of the Conference does not appear to involve "contributions" or "expenditures" made for the purpose of influencing Congressman Badham's nomination or election to Federal office.

## FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations 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 name of the Commission's speaker. For additional information on any scheduled appearance, please contact the **sponsoring organization.**

6/12 National Association of Business PAC's
National Association of Manufacturers
New York, New York
Jan Baran, Executive Assistant
to Commissioner Aikens

6/26 International Association of Clerks,
Recorders and Election Officials
and Treasurers
Las Vegas, Nevada
Gary Greenhalgh, Clearinghouse Director

The Commission expressed no opinion regarding application of House Rules or the possible tax ramifications of this situation since those issues are not within its jurisdiction. (Length: 3 pages)

**AO 1979-7: Delegate Selection**

Reporting obligations governing Presidential nominating conventions do not apply to activities which the New Jersey State Democratic Committee (the State Committee) undertakes to implement an Affirmative Action Program for selection of delegates to the 1980 Democratic National Convention. Those obligations relate specifically to the convention and do not extend to the delegate selection process which precedes the convention. Funds received and payments made for activitites would not constitute "contributions" or "expenditures" within the meaning of the Act since they are not made for the purpose of influencing the election of **any person** to Federal office or of influencing the **results of a primary**. Therefore, they are not subject to the Act's limitations and need not be paid from the State Committee's Federal account. However, other aspects of the Affirmative Action Program may be subject to the provisions of the Act and Commission Regulations, as follows:

1. The State Committee's expenses for such activities are in connection with the Federal election process. Therefore, these expenses may not be paid from prohibited contributions; that is, from foreign nationals or from the treasuries of labor unions, corporations and national banks.
2. It is not necessary that a separate account subject to the limits of the Act be established to finance the program activities. However, if the State Committee's regular non-Federal account contains contributions from prohibited sources or foreign nationals, it would be necessary to establish a special account to pay costs associated with the delegate activities.
3. Funds received and disbursed need not be reported unless they are paid from the Federal account of a registered Federal campaign committee; if that is the case, usual reporting procedures would be followed. (Length: 6 pages)

**AO 1979-8: Administration of Trade Association PAC**

Executive and administrative personnel of member corporations which have given prior solicitation approval to the China Clay Producers Group, a trade association, may participate in the operation, administration and solicitation activities of the China Clay Producers Political Action Committee (the PAC) by performing occasional (4 hours per month) services which are incidental to their regular employment.

Since, under the Act, a trade association may use dues monies from its corporate members for the establishment, administration and solicitation activities of the PAC, it may also have the benefit of incidental services of the members' executive and administrative personnel to conduct those same activities. (Length: 4 pages)

**AO 1979-9: Subordinate State Party Committee Retires Candidate's Debts**

The Texas Democratic Voter Participation Project (the Committee), an authorized subordinate committee of the Texas Democratic Party, may help five Federal candidates retire their 1978 campaign debts provided the Committee observes certain conditions outlined by the Commission. Three of the candidates were candidates in the general election; the other two were candidates only in the primary.

In retiring debts, the Committee may make direct payments to the candidates' creditors. In the case of **primary candidates**, a direct payment to a candidate's creditors would constitute a contribution. Any such payment, when combined with a preprimary contribution to the same candidate by the Committee, must not exceed the $5,000 per candidate limit applicable to primary election contributions.

With regard to **general election candidates**, direct payments to a candidate's creditors would constitute coordinated party expenditures for purposes of 2 U.S.C. §441a(d)(3). All other expenditures the Committee has made for the same candidate during the general election campaign must be combined with the contemplated payments to creditors, and the sum may not exceed the §441a(d)(3) expenditure limits. The Committee may make additional payments to the creditors to the extent it has not yet exhausted its candidate contribution limits prior to the general election.

In soliciting funds to retire the 1978 campaign debts, the Committee is not required to issue a notice stating that contributions will be used to retire debts of specific candidates. However, those notices specified by 11 CFR 102.6 are required.

Individual contributions to the Committee are subject to the $5,000 limit on a calendar year basis. Any contributions made by an individual to the Committee during the 1979 calendar year will be attributed to the $25,000 limit for 1979, despite the fact that they will be used for debts incurred during 1978 elections. 11 CFR 110.5 (Length: 5 pages)

**AO 1979-10: "Union Bug" on Printed Materials**

Payments for all candidate printed campaign materials are expenditures which must be reported, regardless of whether a "union bug" appears on them. (A union bug indicates that the printing was done in a unionized print shop.)

The Act and Commission Regulations do not cover questions related to the appearance of the union bug on printed materials mailable under the franking privilege. (Length: 3 pages)

**AO 1979-12: Joint Fundraising Effort by State and Federal Committees**

Congressman Bill Burlison may proceed with an arrangement he has made with the Butler County Democrats and

*continued*

the Truman Day Committee to sell tickets for their annual fundraiser and retain 50 percent of the proceeds he collects for the Burlison Committee (the Committee). The Committee would be required to assume a pro rata share of expenses for ticket production (and perhaps other fundraising expenses) to avoid accepting in-kind contributions from the Butler County Democrats and the Truman Day Committee. Similarly, the Committee must regard its share of ticket proceeds as contributions subject to all the limits and reporting requirements of the Act.

With regard to reporting requirements, the Commission noted that neither the Butler County Democrats nor the Truman Day Committee is a registered political committee. Consequently, they have no reporting requirements, assuming that they do not engage in activities which would require them to be registered and file reports. The Committee, on the other hand, is subject to reporting requirements. It needs to report only its 50 percent share of the gross price of each ticket sold as itemized or unitemized contributions.

To avoid treating all funds collected by check as contributions to the Committee, checks made payable to the Butler County Democrats or the Truman Day Committee must be deposited within 10 days of receipt in a transmittal or clearing account; 50 percent of the proceeds would then be forwarded to the Committee by a check drawn on that account. The transmittal account, as well as the Committee's regular account, must be designated as a campaign depository on the candidate's and Committee's Statements of Organization (Form 1). Neither the Committee nor the transmittal account may accept any funds which are prohibited under the Act (e.g., cash contributions exceeding $100, treasury funds from corporations and labor organizations). The Commission also emphasized the importance of the notice to contributors required by 11 CFR 102.6(b). (Length: 5 pages)


## 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. People's Democratic Action Organization, et al.**, U.S. District Court for the District of Maryland, Docket No. H-79-431, March 5, 1979.

The Commission alleges that the defendants violated the Act by failing to file the required Statement of Organization (FEC Form 1) and failing to report a contribution.

**FEC v. Eastside Democratic Committee, et al.**, U.S. District Court for the District of Maryland, Docket No. T-79-430, March 5, 1979 (amended April 17, 1979).

The Commission alleges that the defendant violated the Act by failing to report a contribution.

**FEC v. Rudasill for Congress Committee, et al.**, U.S. District Court for the Eastern District of North Carolina, Docket No. 79-172-CIV-5, March 30, 1979.

The Commission alleges that the defendant violated the Act by making excessive cash expenditures, failing to maintain records to support reported receipts, failing to document reported expenditures and failing to provide particulars on expenditures.

## FEC v. COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY – McCARTHY '76

On March 7, 1979, the U.S. District Court for the District of Columbia granted summary judgment to the Committee for a Constitutional Presidency – McCarthy '76, defendants in a suit filed by the FEC on August 22, 1977.

The FEC alleged that the defendants had improperly classified a series of payments (speaking fees from universities) as "other receipts" rather than as "contributions," and requested a mandatory injunction from the Court requiring the defendant to amend its reports accordingly.

The Court agreed with both parties that there were no material issues in dispute. The Court also agreed with the FEC that the payments in question were, in fact, "contributions" rather than "other receipts." However, while the Court concluded that the defendant may have committed a technical error, it declined to enter the requested order for the following reasons:

1. The defendant had acted in good faith and had fully reported all payments on appropriate FEC forms.
2. In 1976, Congress amended the reporting provisions of §434(b), which now provide that when candidates and committees "show that best efforts have been used to obtain and submit the information required by this subsection, they shall be deemed in compliance with this subsection." Since the events of this case occurred before Congress adopted the amendment, the amendment does not control the case. However, it does provide support for the Court's view that a candidate could act in good faith and yet technically violate a provision of the Act; it also corroborates the Court's conclusion that sanctions should not be imposed on a public figure who acts in good faith.
3. The public interest would not be served by the requested court order. The public interest in disclosure is already satisfied by the detailed information supplied by the defendant. Furthermore, a court-imposed remedy would not ensure better compliance in the future since a candidate who acted in the same manner today would probably not be considered in violation of the Act due to the "best efforts" amendment.

## HENRY WALTHER v. FEC

On April 17, 1979, the U.S. District Court for the District of Columbia denied the FEC's motion to dismiss the claim of Henry L. Walther in a suit filed against the FEC on November 21, 1978, in accordance with 2 U.S.C. §437g(a)(9).

The suit contends that the Commission acted contrary to law in dismissing 45 complaints filed with the Commission by Walther and the National Right to Work Committee pursuant to 2 U.S.C. §437g(a)(1). Each complaint asserted that both a candidate for Federal office and the candidate's committee had accepted illegal contributions in excess of the $5,000 contribution limitation established by 2 U.S.C. §441a(a)(2)(A). The alleged violations occured when contributions were accepted from both the AFL-CIO political committee (COPE) and from political committees set up by member unions of the AFL-CIO (union committees).

The plaintiff claims that COPE and some union committees are subject to the same control and, therefore, share one contribution limitation under §441a(a)(5). The §441a (a)(5) antiproliferation provision provides that contributions from separate PAC's which are "established or financed or maintained or controlled" by the same person or group of persons shall be considered to have been made by a single political committee.

The FEC contends, on the other hand, that, as a matter of law, §441a(a)(5) was not intended by Congress to apply to the relationship between the AFL-CIO Federation and its membership (union locals). The FEC also maintains that since the agency had publicly construed the antiproliferation provision to exclude cooperation between COPE and union PAC's, no candidate could knowingly violate the statute by accepting contributions from both. (In 1977 the FEC had dismissed a complaint filed by the National Right to Work Committee against the AFL-CIO alleging that the AFL-CIO and member unions were affiliated. That determination was never appealed to the Court by the National Right to Work Committee.) Therefore, the FEC filed a motion to dismiss the complaint.

The Court identified the central question presented by the Commission's motion to dismiss as one of statutory construction: What is the correct application of §441a(a)(5) to the relationship between COPE and union committees? After examining the language of the statute and the policy underlying the Act, the Court refused to accept the FEC's interpretation of the statute for the following reasons:

1. The Court found nothing in the antiproliferation language of §441a(a)(5) to support the proposition that certain PAC's were intended to be excluded from its scope. On the contrary, the statute enunciates an inclusionary rule wherein the PAC's of a labor organization and its locals are automatically treated as one PAC. The statute does not identify any relationships excepted from the §441a(a)(5) rule.
2. The Court accepted neither the FEC's reliance on the legislative history of the statute nor its interpretation of that history to support the FEC position that COPE and union PAC's were intended to be exempt from the antiproliferation provision.
3. FEC Regulations, cited by the Commission in support of its position, declare the circumstances under which two PAC's will always be treated as one. The Court determined that cited Regulations do not address the issue at hand: when two PAC's are never treated as one.

Accordingly, the Court concluded that §441a(a)(5) applies to all political committees controlled by the same person or group of persons except for certain exemptions not relevant to this case. Therefore, the relationship alleged by the plaintiff may constitute a violation. Furthermore, the Court rejected the FEC's contention that the agency's interpretation of the statute precluded commission of civil or criminal violations of the Act by candidates. The Court concluded that, although an incorrect administrative interpretation may have some bearing on determining whether or not a party acted knowingly, it does not provide immunity to the party.

Finally, in denying the FEC motion to dismiss, the Court held that the plaintiff had alleged facts sufficient to withstand a motion to dismiss. However, the Court pointed out that this opinion could not be construed as concluding that a violation had occured or that the FEC had actually failed to perform its statutory duty.

The Commission has requested the District Court's approval to seek an appeal of the decision.

## CHANGE OF ADDRESS

*Record* subscribers, when calling or mailing in a change of address, are asked to provide the following information: 1) Name of person to whom the *Record* is sent; 2) Old address; 3) New address; 4) Subscription number.

**The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.**

**NOTE: Registered candidates and committees are automatically sent the *Record* and do not have this subscription number on their mailing labels. Any change of address by a registered entity must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization for a Political Committee) or FEC Form 2 (Statement of Candidate), and be placed on the public record.**

## LEGISLATION

### FEC TESTIFIES ON CONGRESSIONAL PUBLIC FINANCING

On March 15, 1979, FEC Chairman Joan Aikens testified before the House Administration Committee on H.R. 1, a proposed House bill which would provide public financing for general election campaigns for the House of Representatives. At the Committee's request, Chairman Aikens, accompanied by Vice Chairman Robert Tiernan, testified on the FEC's experience in administering public financing in the 1976 Presidential election.

In its testimony, the Commission took no position on the substantive merits of public financing for Congressional elections. However, the Commission:

1. Stressed the importance of effective safeguards to ensure the integrity of the public financing system, including a certification review process and postelection audits;
2. Recommended a repayment provision for situations where public money is certified in excess of eligibility or used for nonqualified campaign purposes; and
3. Expressed concern about the administrative problems in enforcing expenditure limits.

The Commission estimated, in response to a question from the Committee, that the checkoff fund would require an additional $35 to $44 million if public financing were extended to House candidates. In additional testimony prepared at the request of the Committee, on April 10, 1979, Chairman Aikens responded to questions concerning the assumptions on which the cost estimates had been based. On April 23, 1979, the Commission submitted another estimate based on assumptions specified by the House Administration Committee. The revised figures projected that the cost to the checkoff fund would be $27 to $29 million if House candidates received public financing.

## AUDITS

### AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act requires the Commission to periodically make 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 between April 2, 1979, and May 7, 1979:

| Audit | Date Made Public |
|---|---|
| 1. Comite Pro Baltasar Corrada Santurce, Puerto Rico | 4/4/79 |
| 2. Comite Amigos de Jaime Benitez San Juan, Puerto Rico | 4/4/79 |
| 3. Republican State Committee of Delaware | 4/17/79 |
| 4. Democratic State Committee of Delaware | 4/17/79 |
| 5. Minnesota Independent Republican Finance Committee | 4/23/79 |
| 6. National Republican Congressional Committee | 4/23/79 |
| 7. Krasnoff for Congress Committee, LA/1 | 4/27/79 |
| 8. Washington State Democratic Committee, Washington State Democratic Committee/ Federal | 4/27/79 |
| 9. Washington State Democratic Telethon Committee | 4/27/79 |

FEDERAL ELECTION COMMISSION
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