



THE FEDERAL ELECTION COMMISSION

RECORD

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

September 1979

Volume 5, Number 9

LEGISLATION

FEC TESTIFIES ON AMENDMENTS TO ACT

Testifying before the Senate Rules committee on July 13, 1979, FEC Chairman Robert O. Tiernan, accompanied by Vice Chairman Max L. Friedersdorf, recommended several revisions to the Federal Election Campaign Act (the Act). Since 1975, the Commission has made annual recommendations for legislative revisions to the Act, which was last amended in 1976. In his testimony, Chairman Tiernan reiterated Commission support of the previous recommendations and emphasized three areas of particular concern:

1. Simplification

The Commission recommended that reporting requirements be simplified to the greatest extent possible. The FEC's recommendations would reduce the number of required reports by up to 60 percent per election cycle, substantially alleviating the burden on candidates and their committees. Chairman Tiernan pointed out that fewer reports would promote fuller compliance and would probably result in fewer errors. Such simplification, he emphasized, is not only consistent with full disclosure, but would actually improve it.

2. Encourage Party and Grass Roots Activity

In response to the concern that the Act has had a restrictive effect on party and grass roots political activity, the Commission recommended "vitally needed" changes to encourage local volunteer efforts and to give State and local party committees greater flexibility in their campaign activity. The Commission recommended that State parties be permitted to make coordinated expenditures (2 U.S.C. §441a(d)) on behalf of Presidential candidates. These expenditures would be in addition to those now made by the national party.

3. Clarification

The Chairman also recommended several changes which would clarify the Act's requirements on con-

tribution limitations and the public financing of Presidential elections. Finally, the Chairman suggested changes to eliminate cumbersome procedures and reduce delays in administration of the law. One of the recommended changes, for example, would allow any person subject to the provisions of the Act to have standing to request an advisory opinion.

The Chairman concluded by stating that the proposed revisions are designed to make the Act more effective and less burdensome on those required to comply with it. (The *FEC Annual Report 1978* contains a complete discussion of previous legislative recommendations.)

COMMISSIONERS

NEW COMMISSIONER

On July 31, 1979, Frank P. Reiche of Princeton, New Jersey, was sworn into office as an FEC Commissioner by Supreme Court Justice William R. Rehnquist. The ceremony took place at the FEC. Mr. Reiche replaces Commissioner Vernon W. Thomson whose term has expired. Mr. Reiche, who will be the tenth Commissioner since the FEC's founding in 1975, joins two fellow Republicans and three Democrats on the bipartisan Commission.

The new Commissioner was born in Hartford, Connecticut. He received his A.B. from Williams College in 1951 and an M.A. in Foreign Affairs from George Washington University in 1959. An attorney specializing in taxation, Mr. Reiche graduated from Columbia Law School in 1959, and received a Master of Laws degree in Taxation from New York University in 1966. Mr. Reiche was with the Princeton firm of Smith, Stratton, Wise and Heher from 1962 until his appointment to the Commission.

Mr. Reiche was a member of New Jersey Governor William T. Cahill's Tax Policy Committee from 1970 to 1972. Governor Cahill appointed Mr. Reiche Chairman of the first New Jersey Election Law Enforcement Commission in 1973; he was reappointed as Chairman by Governor Brendan Byrne in 1975. The Commission is

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responsible for the administration and enforcement of the New Jersey campaign finance disclosure act. Prior to that, Mr. Reiche served in a variety of Republican party positions, including eight years as a Republican county committeeman. Mr. Reiche's term as an FEC Commissioner will expire on April 30, 1985.

OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists recently received 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
1979-39	Treatment of fundraising commissions by Presidential candidate committee.	7/18/79	2
1979-40	Activities of unauthorized draft committee for Presidential candidate.	7/20/79	5
1979-41	Status and reporting obligations of political committee.	8/3/79	2
1979-42	Administrative expenses of national bank's separate segregated fund.	8/8/79	2
1979-43	Definition of "primary election" as applied to Vice Presidential candidate.	8/8/79	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 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 1979-24: Sale of Campaign Materials

A State political action committee (State PAC) may purchase unused campaign materials from Ronald Hein's Federal campaign committee (the Committee). Although the State PAC is permitted, under State law, to accept corporate contributions, no prohibited contribution to the Committee would result provided the materials are purchased at no more than the usual and normal charge for those materials in the market from which they would ordinarily be purchased.

In addition, Mr. Hein's State Senate Committee may purchase the materials at the usual and normal charge without making a prohibited contribution. The Commission offered no guidance as to whether the State PAC could purchase the materials from the Committee and, in turn, donate them to Mr. Hein's State Senate Committee. That issue is beyond Commission jurisdiction. (Date Issued: July 13, 1979; Length: 3 pages)

AO 1979-28: Contribution From Unincorporated Association

The Treasury Employees Political Action Committee (TEPAC), the separate segregated fund of the National Treasury Employees Union (NTEU), may accept a political contribution from an unincorporated recreation association of Federal employees (the Association) represented by NTEU.

The Association maintains vending machines in Federal facilities, and the proposed contribution is comprised of profits derived from those machines. The contribution did not result from a TEPAC or NTEU solicitation. Since the Association is not a corporation, and assuming it is not a government contractor, TEPAC may accept the unsolicited contribution subject to the contribution limits. (Date Issued: July 19, 1979; Length: 2 pages)

AO 1979-30 Transfers Among Subordinate Committees of State Party Committee

The Jefferson-Jackson Day Committee (JJDC), an unregistered fundraising committee of the Democratic Party, may make coordinated party expenditures to retire the debts of the Miller for Senate Committee (the Miller Committee) and the 1978 Virginia Democratic Campaign Committee (VDCC), provided it registers with the Commission, segregates its funds and organizes its operations in accordance with Commission Regulations.

The JJDC has cash-on-hand which includes union and corporate funds. The Miller Committee and the VDCC have outstanding debts. The JJDC may transfer its

The RECORD is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Robert O. Tiernan, Chairman; Max L. Friedersdorf, Vice Chairman; Joan D. Aikens; Thomas E. Harris; John W. McGarry; Frank P. Reiche; 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.

surplus funds to help these committees retire their debts provided it:

1. Establishes a separate Federal campaign committee which registers as a "political committee" affiliated with the Virginia Democratic Party;
2. Discloses, with regard to this "political committee," the source of any cash-on-hand at the time of registration, and excludes from its cash any contributions not permissible under the Act.

The JJDC may then make coordinated expenditures on behalf of the Miller Committee in either of the alternative methods it has proposed:

1. Directly to the creditors of the Miller Committee; or
2. As a transfer to the VDCC for payment to the Miller creditors.

The JJDC may also transfer additional funds to the VDCC to retire its' debts, since Commission Regulations permit unlimited transfers between committees of the same political party. (Date Issued: July 13, 1979; Length: 4 pages)

AO 1979-32: State Report Does Not Meet Act's Requirements

The Kanawha County democratic Executive Committee (the Committee) may not submit a State campaign finance report to the Commission to satisfy the Committee's 1978 filing obligations. The State reports fail to provide the mailing address, occupation and principal place of business of contributors to the Committee, as required by the Act. 2 U.S.C. §434(b). To satisfy the reporting requirements of the Act, the Committee must submit the required information to the Commission. (Date Issued: July 27, 1979; Length: 2 pages)

AO 1979-33: Union Reimburses Separate Segregated Fund

District 1199-C of the National Union of Hospital and Health Care Employees (the Union) may use general treasury funds to reimburse the District 1199-C Political Action Fund (the Fund) for administrative costs inadvertently paid by the Fund.

The Fund spent \$1,050 to purchase tickets to an AFL-CIO Council COPE banquet which the Fund believed was political campaign activity. It later discovered that the banquet proceeds were used exclusively for and contributed to a "segregated and nonpartisan register and vote campaign fund."

A labor organization's financial support for nonpartisan registration and voter drives directed toward its members and their families is excluded from the Act's definition of contribution or expenditure. 2 U.S.C. §441b(b)(2)(B). Since the proceeds of the banquet were used for an exempt activity, the Union could have paid these costs directly from its treasury without violating the Act. (Date Issued: July 13, 1979; Length: 2 pages)

AO 1979-34: Public Financing Payments for New Party Candidate

Mr. Morris Woods, the Presidential candidate of the Freedom Party, is not entitled to receive preelection public financing payments from the Presidential Election Campaign Fund. A new party Presidential candidate is eligible only for "retroactive" public financing payments (i.e., postelection), and then only if the candidate receives five percent or more of the total number of popular votes cast for the office of President in the election. 11 CFR 142.3(a). (Date Issued: July 19, 1979; Length: 2 pages)

AO 1979-36: Direct Mail Agreement

Amounts expended in accord with a direct mail agreement by Working Names, Inc. during the initial stages of a direct mail fundraising program which it is conducting on behalf of the Committee for Fauntroy (the Committee) would not be considered campaign contributions provided that the proposed agreement, described below, conforms with ordinary business practice in the direct mail industry.

Under the proposed agreement, Working Names will incur the initial expenses in preparing and mailing the fundraising materials; it will then bill the Committee for those expenses and its own fees. Contributions received as a result of the direct mail program will be deposited in the Committee's account, although 75 percent of those contributions will be designated as reimbursement for Working Names. The agreement provides that the cost to the Committee will generally not exceed 75 percent of all contributions collected.

The Commission concluded that the amounts initially advanced by Working Names, which are subject to reimbursement by the Committee, would not be campaign contributions provided that:

1. The provisions regarding initial expenditures by Working Names and the limited liability of the Committee in the event of an unsuccessful fundraising campaign are normal industry practice;
2. The terms of credit are similar to those extended to nonpolitical clients; and
3. Working Names charges the Committee the same rates it charges to all other clients for the same services.

The Commission noted that if any of the provisions deviated from the normal course of doing business, a prohibited contribution could occur. (Date Issued: July 27, 1979; Length: 3 pages)

AO 1979-37: Donations to Federal Officeholder

Donations from partnerships, associations, corporations or unions to a trust established by Representative Daniel Flood to pay his legal defense expenses are not contributions or expenditures under the Act, since they

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are not made for the purpose of influencing the nomination or election of a person to Federal office. 2 U.S.C. §431(e) and (f). Nothing in the Act or Commission Regulations would limit or prohibit the trust from receiving donations from the described sources. Furthermore, neither Representative Flood nor the trust would be required to file campaign finance disclosure reports.

The Commission expressed no opinion on the applicability of the House Rules, Federal income tax statutes or any other Federal law to the establishment and use of the trust since those issues are beyond Commission jurisdiction. (Date Issued: July 19, 1979; Length: 3 pages)

AO 1979-38: Solicitation of Corporation's Licensees

Hardee's Good Government Fund (the Fund) may solicit contributions from the executive and administrative personnel of Hardee's licensees and their families because Hardee's and its licensees are affiliates. 11 CFR 114.5(g)(1). Since Hardee's maintains continuing direction and control over its licensees through the franchise agreement, Hardee's and its licensees are affiliates within the meaning of the Act and Regulations. Therefore, solicitation of executive and administrative personnel of the licensees by Hardee's is permissible, if conducted in accordance with Commission Regulations. (Date Issued: July 31, 1979; Length: 2 pages)

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. For additional information, please contact the sponsoring organization.

- 9/4-5 American Enterprise Institute
Conference on Parties, Interest
Groups and Campaign Finance
Washington, D.C.
William Oldaker, General Counsel
- 9/10-11 Secretaries of State Annual Meeting
Lake of the Ozarks, Missouri
Gary Greenhalgh,
Clearinghouse Director
- 9/28 National Federation of Republican
Women
Convention Workshops
Indianapolis, Indiana
Commissioner Joan Aikens

PUBLIC FINANCING

FINANCIAL CONTROL AND COMPLIANCE MANUAL AVAILABLE

The *Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing)* is now available, as part of the Commission's Outreach Program, to Presidential candidates who anticipate receiving public funds. Interested parties who are not directly involved in Presidential campaigns may obtain a copy of the Manual, at a cost of \$7.50, through the Commission's Office of Public Records.

THE LAW IN THE COURTS

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.

California Medical Association and California Medical Political Action Committee v. FEC, U.S. District Court for the Northern District of California, Docket No. C-79-1089-CFP, May 7, 1979.

Plaintiffs allege that certain provisions of the Act constitute an unconstitutional abridgement of their First and Fifth Amendment rights.

FEC v. California Medical Association and California Medical Political Action Committee, U.S. District Court for the Northern District of California, Docket No. C-79-1197-ACW, May 22, 1979.

The FEC alleges that the California Medical Association made contributions in excess of the limits to the California Medical Political Action Committee (CALPAC), and that CALPAC knowingly accepted the excessive contributions. The Commission also alleges that CALPAC and an affiliated committee, the Los Angeles Physicians Committee, made contributions in excess of the limits to a candidate for Federal office, and failed to report affiliation with each other.

FEC v. Sanford Krasnoff, U.S. District Court for the Eastern District of Louisiana, Docket No. 79-1905, Section A-5, May 30, 1979.

The FEC alleges that the defendant violated the Act by failing to designate a campaign depository and by commingling personal funds with campaign funds.

FEC v. Comite Amigos de Jaime Benitez, U.S. District Court for the District of Puerto Rico, Docket No. 79-1406, June 21, 1979.

The FEC alleges that the defendant violated the Act by failing to: report receipts, keep adequate records of contributions, designate a campaign depository, include required notices on contribution solicitations and file required reports in a timely fashion. The FEC also alleges that the defendant accepted corporate contributions.

FEC v. MILTON WEINSTEIN AND WINFIELD MANUFACTURING COMPANY

On June 8, 1979, the U.S. District Court for the Southern District of New York issued a consent judgment in a suit which the FEC had filed against Milton Weinstein and the Winfield Manufacturing Company on March 2, 1978.

In its suit, the Commission alleged that Milton Weinstein, President of Winfield Manufacturing (a government contractor), used corporate funds to reimburse employees of Winfield Manufacturing Company for contributions they made to the 1976 Presidential primary campaign of Milton Shapp.

The consent decree stated that use of corporate funds in this manner had violated the Act's prohibitions against:

- The use of corporate funds in connection with Federal elections (2 U.S.C. §441b);
- Contributions by government contractors (2 U.S.C. §441c); and
- Contributions made in the name of another (2 U.S.C. §441f).

The Court levied a civil penalty of \$5,000, enjoined the defendants from future violation of the Act, and retained jurisdiction over the case for three years to ensure compliance with the provisions of the decree.

HENRY WALTHER v. FEC

On June 15, 1979, the U.S. District Court for the District of Columbia granted summary judgment to the FEC in a suit which Henry Walther filed against the FEC on November 21, 1978.

The suit contended that the Commission acted contrary to law in dismissing 45 complaints filed by Walther and the National Right to Work Committee pursuant to 2 U.S.C. §437g(a)(1). Based on the standard of judicial review that only arbitrary and capricious administrative actions of an agency may be reversed, the Court determined that the Commission's decision not to investigate Walther's complaints was "eminently reasonable." The Court characterized the Walther complaints as a "shambles" containing serious shortcomings.

On August 3, 1979, the same Court dismissed seventeen cases (which had been consolidated, with *Henry Walther v. FEC*, as *In Re Federal Election Campaign Act Litigation*) brought by Walther against the candidates and committees whom Walther had named in the complaints filed with the Commission. In those seventeen cases, the Commission appeared as *amicus curiae*. The seventeen cases, and three other cases previously dismissed by Federal District Courts, alleged the same violation of the Act which was at issue in the suit against the FEC. The Court determined that it was "clearly without subject matter jurisdiction to entertain Mr. Walther's attempt at the direct enforcement of the Federal election laws."

AUDITS

REVISED PROCEDURES FOR REVIEWING AUDIT REPORTS

On April 26, 1979, the Commission modified its procedures for considering audit reports. Previously, discussion of all audit reports at Commission meetings took place during executive sessions which are closed to the public. This procedure was based on Commission Sunshine Act Regulations which exempt from public discussion any information which might invade the privacy of an individual or significantly frustrate implementation of a proposed Commission action. Sunshine Act Regulations 3.2(b)(iii) and 3.2(b)(v).

These procedures have been modified so that audits will no longer automatically be placed on the agenda for closed executive sessions. Instead, each audit report will be circulated to the Commissioners for approval. If the audit report is approved, it will be released to the public as the final audit report. If the audit report is not

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Forms for candidate and committees to register and report are available at any time by contacting: 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, which is designated in the upper left hand corner as: **FEC Form 3 REVISED, January 1978**. All Presidential candidates must file on **FEC Form 3P**, even if they do not receive public funds. Filers must submit legible reports which can be reproduced clearly; candidates or committees who file illegible or barely legible reports will be required to refile.

approved, the Commissioners will vote to determine whether the report should be considered in open or closed session. Accordingly, when the audit report is initially circulated, the Commissioners will have three options:

1. Approval of the recommendations contained in the audit report;
2. Objection to the recommendations and a vote to consider the objection in open session;
3. Objection to the recommendation and a vote (under specific Sunshine exemptions) to consider the matter in closed executive session.

Sunshine exemptions include, among others, the fact that the audit may involve a compliance action or the fact that the open session discussion might significantly frustrate implementation of a proposed Commission action. Unless a specific exemption applies (number three above), audits will be discussed in open session. Agenda Document #79-190 provides a complete discussion of these procedures.

In accordance with additional procedures adopted on June 15, 1979 (Directive 22), any audit report which is considered in open session, but not approved by the Commission, will be available to the public as an interim report. When the Commission approves the final audit report, that report will replace the interim report as the final public document.

Both Directive 22 and Agenda Document #79-190 are available for sale through the Commission's Office of Public Records.

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act requires the Commission to periodically conduct 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. Audit reports which have been approved by the Commission, either through a tally vote or after discussion in open session, are released as final audit reports. If an audit report has been discussed in open session, but has not been approved by the Commission, the report is available as an interim audit report. Both final and interim reports are available through the Office of Public Records and Press Office. In the list below, interim reports are designated by an asterisk(*). All others are final audit reports. The following is a chronological listing of audits released between June 28, 1979, and August 6, 1979:

Audit Report	Date Made Available
1. Tribute to Gerald Ford	6/28/79
2. United Campaign Committee of Davidson County Democratic Executive Committee #2	7/5/79
3. Area Wide Rally/Joint Fundraising Committee for James Sasser and Ed Jones	7/5/79
4. Republican State Central Committee of New Mexico and Republican Campaign Committee of New Mexico	7/18/79
5. West Virginia Republican State Executive Committee	7/25/79
6. Indiana Republican State Central Committee	7/26/79
7. Livingston for Congress Committee LA/1	8/2/79

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