

FEDERAL ELECTION COMMISSION,
Washington, D.C.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: In accordance with § 316(c) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 438, the Federal Election Commission transmits herewith an amendment to its proposed Disclosure Regulation, with an explanation and justification, which treats the allocation of polling expenses, § 106.4.

This proposed amendment was published for comment in the *Federal Register* on July 9, 1976 (41 FR 28413). Written comments were received and reviewed, and are reflected in this amendment.

It is the Commission's hope that this amendment to the Disclosure Regulation will provide persons subject to this Act with a readable and practical guide for effective participation in the Federal election process. We trust they will assist persons subject to the Act, and the public in general, in going forward with the campaign process in a manner in which all citizens may have confidence.

Sincerely yours,

VERNON W. THOMSON,
Chairman for the
Federal Election Commission.

Enclosure.

§ 106.4 Allocation of polling expenses

(a) The purchase of opinion poll results by a candidate or a candidate's authorized political committee or agent is an expenditure by the candidate. Regarding the purchase of opinion poll results for the purpose of determining whether an individual should become a candidate, see § 100.7(b)(2).

(b) The purchase of opinion poll results by a political committee or other person not authorized by a candidate to make expenditures and the subsequent acceptance of the poll results by a candidate or a candidate's authorized political committee or agent or by another unauthorized political committee is a contribution in-kind by the purchaser to the candidate or other political committee and an expenditure by the candidate or other political committee. Regarding the purchase of opinion poll results for the purpose of determining whether an individual should become a candidate, see § 100.4(b)(1). The poll results are accepted by a candidate or other political committee if the candidate or the candidate's authorized political committee or agent or the other unauthorized political committee:

- (1) requested the poll results before their receipt;
- (2) uses the poll results; or
- (3) does not notify the contributor that the results are refused.

(1)

(c) The acceptance of any part of a poll's results which part, prior to receipt, has been made public without any request, authorization, prearrangement, or coordination by the candidate-recipient or political committee-recipient, shall not be treated as a contribution in-kind and expenditure under paragraph (b).

(d) The purchase of opinion poll results by an unauthorized political committee for its own use, in whole or in part, is an overhead expenditure by the political committee under § 106.1(c)(1) to the extent of the benefit derived by the committee.

(e) The amount of a contribution under paragraph (b) or of any expenditure under paragraphs (a) and (b) attributable to each candidate-recipient or political committee-recipient shall be:

(1) that share of the overall cost of the poll which is allocable to each candidate (including State and local candidates) or political committee, based upon the cost allocation formula of the polling firm from which the results are purchased. Under this method the size of the sample, the number of computer column codes, the extent of computer tabulations, and the extent of written analysis and verbal consultation, if applicable, may be used to determine the shares; or

(2) an amount computed by dividing the overall cost of the poll equally among candidates (including State and local candidates) or political committees receiving the results; or

(3) a proportion of the overall cost of the poll equal to the proportion that the number of question results received by the candidate or political committee bears to the total number of question results received by all candidates (including State and local candidates) and political committees; or

(4) an amount computed by any other method which reasonably reflects the benefit derived.

(f) The first candidate(s) or committee(s) receiving poll results under paragraph (b) or (d) and any candidate or political committee receiving poll results under paragraph (b) within 15 days after receipt by the initial recipient(s) shall compute the amount of the contribution in-kind and the expenditure as provided in paragraph (e).

(g) The amount of the contribution and expenditure reported by a candidate or a political committee receiving poll results under paragraph (b) more than 15 days after receipt of such poll results by the initial recipient(s) shall be:

(1) if the results are received during the period 16 to 60 days following receipt by the initial recipient(s), 50 percent of the amount allocated to an initial recipient of the same results;

(2) if the results are received during the period 61-180 days after receipt by the initial recipient(s), 5 percent of the amount allocated to an initial recipient of the same results;

(3) if the results are received more than 180 days after receipt by the initial recipient(s), no amount need be allocated.

(h) A contributor of poll results under paragraph (b) shall maintain records sufficient to support the valuation of the contribution(s) in-kind and shall inform the candidate-recipient(s) or political committee-recipient(s) of the value of the contribution(s).