FEDERAL ELECTION COMMISSION

RECORD

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PUBLIC FUNDING

TREASURY ADOPTS FINAL RULES ON PUBLIC FUNDING PAYMENTS

On May 10, 1991, the Department of Treasury, Internal Revenue Service, published final rules on the financing of Presidential elections (26 CFR Parts 701 and 702; see 56 FR 21596).

The new rules explain how Treasury will handle payments from the Presidential Election Campaign Fund in the event of a shortfall of checkoff dollars in the Fund.[1] Treasury will first set aside the full amount of estimated funds needed for the conventions and general election candidates, disbursing the remaining funds to primary candidates on a pro rata basis.

One provision in the new rules changes the payment schedule for primary matching funds. Treasury will now make matching fund payments to primary campaigns only once a month, at the end of the month. Under the old system, Treasury made payments soon after the Commission certified them, which was usually every two weeks.[2]

Treasury's Full Set-Aside

Under 26 U.S.C. §9037(a), funding for the conventions and the general election nominees takes priority over funding for

(continued, p. 2)

[1]The Commission has estimated that in 1992 the Fund will be about $3 million dollars short of the amount needed to make matching fund payments in full. However, candidates should receive full payment sometime in 1993.

[2]The Treasury regulations appear to establish a monthly payment schedule regardless of whether there is a shortage in the Fund. However, Treasury staff have indicated to the FEC that Treasury would provide payments more frequently if a shortfall did not occur. The Commission recently requested a written opinion from the Secretary of the Treasury to clarify this point.

CONFERENCE SURVEY IN THIS ISSUE

Please take the time to fill out the short survey on the next to the last page of this issue. It concerns upcoming FEC conferences in Boston and Chicago. Your response will help the agency design workshops best suited to your needs.

The Commission would also appreciate responses to a survey recently mailed to nonconnected PACs about a possible Washington, DC conference.

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primary candidates. Treasury interprets this provision to mean that the full amount of estimated payments for the conventions and general election candidates must be set aside by January 1 of the Presidential election year.

Specifically, Treasury will set aside convention and general election funds by transferring moneys from the Presidential Election Campaign Fund to a Nominating Convention Account (first priorty) and to a General Election Account (second priority). The Treasury, in consultation with the FEC, will determine the estimated amount needed for these two accounts.

The dollars remaining in the Fund after the full set-aside will be deposited into the Primary Account. Checkoff dollars deposited in the Fund after January 1 will also be transferred to the Primary Account. The transfer of additional funds into the Primary Account may take place only through September 30 of the year following the Presidential election; checkoff dollars deposited into the Fund after that date must be reserved for the next Presidential election.

In the event of a shortfall—if the amount of matching funds certified by the Commission for payment to primary candidates in one month exceeds the dollars in the Primary Account as of the last day of that month—each candidate will receive a pro rata share of available funds rather than the full amount certified. The pro rata payment will be determined by the following formula:

$$\text{Amount certified for candidate} \times \frac{\text{Balance in account last day of month}}{\text{Total certified for all candidates that month}}$$

For example, in a given month, the Commission certifies $200,000 for Candidate X. At the end of that month, the fund balance is $1,000,000 but certifications for all candidates total $2,000,000. Candidate X would therefore receive only $100,000, as shown below:

$$\$200,000 \times \frac{\$1,000,000}{\$2,000,000} = \$100,000$$

The difference between the amount certified and the amount actually paid to the candidate would be carried over to the next month. The unpaid entitlement would be added to the next month's certifications.

FEC's Partial Set-Aside: Not Adopted

FEC Proposal. In written comments and testimony,[3] the FEC had recommended that Treasury adopt a partial set-aside approach. Instead of setting aside 100 percent of estimated funds for the conventions and general elections, the FEC had proposed that Treasury set aside a smaller amount that would take into account a conservative estimate of checkoff dollars that would be deposited in the Fund from January 1 of the election year through July or August (when general election payments are made). The Commission said that a partial set-aside for the 1992 elections would provide more money to primary candidates during the crucial early months of the campaign while still ensuring full funding[4] for the conventions and general election.

Treasury Response. Treasury rejected the partial set-aside approach because of the possibility that the Fund balance might

[3] See article in the March 1991 issue.

[4] The Commission estimates that primary matching fund certifications in January 1992 will total $19.2 million. Under Treasury's rule, only $14.5 million will be available to make the payments. Under a partial set-aside approach, $18.2 million would have been available.

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800/424-9530 202/376-3120 202/376-3136 (TDD)

be insufficient to cover the general election payments should actual checkoff deposits to the Fund be less than anticipated. Although acknowledging that this possibility could be mitigated by reducing payments to primary candidates to allow a margin for error, Treasury said that "permitting this possibility to exist" would be inconsistent with its interpretation of the statute.

SPECIAL ELECTIONS

CORRECTION: REPORTING FOR ILLINOIS SPECIAL ELECTION

PACs and party committees should note an important correction to the April 1991 Record chart on reporting dates for the Illinois special election (page 4). The last sentence in footnote 3 should read: "Therefore, the mid-year report is waived for those committees required to file the Illinois post-general [not pre-general] election report."

The material below provides clarification on reporting by PACs and party committees in connection with the July 2 Illinois special general election.

(NOTE: Authorized committees of candidates running in the July 2 special election are automatically required to file both the pre- and post-general election reports. The mid-year report is waived for these committees.)

Committees that Filed the Pre-General Report

If a PAC or party committee filed the pre-general election report that was due on June 20, the committee will also have to file a post-general election report if it makes contributions or expenditures in connection with the general election between June 13 and July 22 (the report's coverage dates). The report is due August 1.

- o Committees that file the post-election report do not file a mid-year report.
- o Committees that do not file the post-election report must file a mid-year report that is due July 31 and that covers the period from June 13 through June 30.

Committees That Did Not File the Pre-General Report

A PAC or party committee that did not file the pre-general election report for the Illinois special will nevertheless have to file the post-general election report if the committee makes contributions or expenditures in connection with the general election during the following period: The day after the closing date of the last report filed, through July 22 (the report's coverage dates). The report is due August 1.

- o Committees that file the post-general election report do not file a mid-year report.
- o Committees that do not file the post-general election report must file a mid-year report that is due July 31 and that covers the following period: the day after the closing date of the last report filed, through June 30.

PUBLIC APPEARANCES

FEC STAFF TO VISIT RALEIGH, BATON ROUGE AND SALT LAKE CITY

In August 1991, FEC public affairs specialists will be holding informal meetings in the above cities to help candidates, party committees and PACs comply with the federal campaign law. Anyone interested in scheduling a meeting should call either of the specialists listed for your location. Call 800/424-9530 or 202/376-3120. At the time this issue went to press, the dates for the visits had not yet been set, but the specialists can provide further information.

- o **Raleigh, North Carolina**
  Patricia Klein and Greg Scott
- o **Baton Rouge, Louisiana**
  Janet Hess and Dorothy Hutcheon
- o **Salt Lake City, Utah**
  Ian Stirton and Kathlene Martin

JULY PUBLIC APPEARANCES

7/15 National Association of County Recorders and Clerks
Salt Lake City, Utah
Michael G. Dickerson
Chief, Public Records

7/28-31 Iowa State Association of County Auditors
Burlington, Iowa
Penelope S. Bonsall
Clearinghouse Director
Janet C. McKee, Clearinghouse

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for review and comment in the FEC's Public Records Office.

AOR 1991-18
Payment arrangement between telemarketing vendor and committee. (Date Made Public: May 22, 1991; Length: 17 pages plus 22-page attachment)

AOR 1991-19
Payroll deductions for employee contributions to SSF after corporate reorganization. (Date Made Public: June 14, 1991; Length: 2 pages)

ADVISORY OPINION SUMMARIES

AO 1991-5: Party Office Building Fund; Preemption Issues

The Tennessee Democratic Party (TDP) may accept corporate donations to a separate building fund account. Although the Federal Election Campaign Act (the Act) preempts any Tennessee law that would prohibit corporate donations to the account, the Act does not preempt reporting requirements under state law.

Corporate Donations to Building Fund

Under an exemption in the Act and FEC regulations, a donation to a national or state political party to defray the cost of constructing or purchasing an office building is not a contribution or an expenditure as long as:

- The donation is specifically designated for this purpose; and
- The building will not be used to influence any particular federal election. 2 U.S.C. §431(8)(B)(viii); 11 CFR 100.7(b)(12), 100.8(b)(13) and 114.1(a)(2)(ix).

TDP indicated it will comply with these conditions; therefore, it may accept corporate donations to the building fund. See AO 1986-40.

Reporting

FEC rules provide that building fund donations need not be reported if made to a committee that is not a "political committee" as defined under 11 CFR 100.5 (i.e., a federal political committee). The donations TDP intends to solicit for its building fund will not meet any of the conditions for the deposit of funds in a political committee account (i.e., a federal account):

- The donations will not be designated for the federal account;
- They will not result from a solicitation that expressly states that the funds will be used in connection with a federal election; and
- Contributors will not be informed that their donations are subject to the Act's limitations and prohibitions. 11 CFR 102.5(a)(2).

Thus, TDP will have to deposit building fund donations in a separate account. Because the separate account will not be considered a "political committee" under federal law, the donations need not be reported to the FEC. AO 1986-40.

Preemption Issues

The Act and FEC rules "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453. FEC rules specify three areas in which federal law supersedes state law:

- The organization and registration of political committees supporting federal candidates;
- The disclosure of receipts and expenditures by federal candidates and political committees; and
- The limitations on contributions and expenditures regarding federal candidates and political committees. 11 CFR 108.7.

The Act's provision on party building funds speaks to these three areas.

Congress explicitly decided not to place any prohibitions or limits on building fund donations. In addition, there is no indication in the legislative history that Congress intended to limit this exemption only to the allocated federal portion of building fund donations.[1] Therefore, the Act and FEC rules, which exempt party building fund donations from the corporate prohibition, preempt the application of any state or local law

[1] In the case of exemptions for certain local party activities, Congress did limit the exemptions to the allocated federal portion of the expenses. See Report of the Committee on House Administration, Federal Election Campaign Act Amendments of 1979, H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 8-10 (1979). See also 11 CFR 100.7(b)(9), (15)(ii), (17)(ii) and 100.8(b)(10), (16)(ii) and (18)(ii).

prohibiting corporate donations to a building fund.

By contrast, any Tennessee law that requires reporting of building fund receipts and disbursements would not be preempted. The Commission has construed the Act and Congressional intent as requiring only national party committees to disclose such activity at the federal level. 11 CFR 104.8(f) and 104.9(d). A state law requiring disclosure of a state party's building fund activity would not encroach upon a regulatory area occupied by the Act.

Commissioners Lee Ann Elliott and Thomas J. Josefiak issued dissenting opinions. (Date issued: May 3, 1991; Length: 8 pages, including dissents)

AO 1991-9: Retroactive Interest Payments on Loans Made by Candidate

The Hoagland for Congress Committee may pay Congressman Peter Hoagland interest on loans he made to the Committee for his 1988 campaign, but only on the unpaid balance as of July 23, 1990, when the Committee entered a written agreement to pay interest to the candidate. The Committee may not pay retroactive interest on amounts that had already been repaid by that date, since the Committee had not previously disclosed any interest rate for the loans.

Repayment of loans made by the candidate and payment of commercially reasonable interest on such loans are both generally treated as committee operating expenditures rather than as the conversion of excess campaign funds to the candidate's personal use, which is prohibited (except for "grandfathered" candidates).[1] 2 U.S.C. §439a; 11 CFR 100.7(a)(1), 100.8(a)(1)(i) and 113.2(d). See also AO 1986-45.

In this case, however, the Committee failed to disclose any interest rate on the loans until after the Committee executed a promissory note on July 23, 1990. Therefore, interest charged on amounts that had already been repaid by that date would represent a prohibited conversion of excess funds to the candidate's personal use. AO 1977-58. The Committee may, however, pay accrued interest at a commercially reasonable rate on the unpaid balance of the loans as of July 23, 1990, until the loans are repaid. (The candidate planned to charge interest at 8.47 percent per year, the "applicable federal rate published by the Internal Revenue Service around the time of the execution of the note.") The Committee's execution of the note, as well as the disclosure of the interest rate in reports filed after that date, is similar to a renegotiation of the loans.

With respect to bank loans obtained by Mr. Hoagland, it appears from the Committee's reports that in 1989 he repaid the loans to the bank directly. That repayment now appears on the Committee's reports as a loan owed to the candidate. However, because the Committee did not report the interest he paid to the bank as a new loan owed to the candidate, he is prohibited from recovering interest that accrued before the date of the promissory note.

The note indicated that the Committee owed the candidate $10,500 for his repayment of the bank loans. The Committee may pay him interest accruing on this loan from the time of the note (July 1990) until the loan was repaid in November 1990. The candidate may charge the same interest rate as the bank, 11.5 percent.

The Committee should report interest payments as operating expenditures, itemizing each payment separately on Schedule B. See 11 CFR 104.3(b)(4)(i) and (iii) and AO 1986-45, note 4.

(Date issued: May 14, 1991; Length: 5 pages)

AO 1991-13: Labor Union Jointly Established by Two Other Unions

A proposed separate segregated fund (SSF) to be formed by the New York State Public Employees Federation AFL-CIO (PEF) would be affiliated with the SSFs of two unions that jointly established and exercise equal control over PEF but that are not themselves affiliated. PEF's committee would share contribution limits with the committees of the other two unions: For each contribution made by PEF's committee, half would be apportioned to the limit of one union's committee, and half to the other's.

PEF was established by two international unions that are not affiliated with each other: the American Federation of Teachers (AFT) and the Service Employees International Union (SEIU). PEF is a local unit of both unions. This situation is analogous to AO 1987-34, which concerned two unaffiliated parent corporations that formed a joint venture partnership. In that case, the Commission determined that a third corporation, wholly owned by the joint venture partnership, was affiliated

(continued)

[1] Congressman Hoagland does not qualify for the personal use exemption for "grandfathered" candidates because he was not a Member of Congress on January 8, 1980.

with both parent corporations because the partnership was equally owned and controlled by both parents. In this case, the Commission similarly determined that PEF is affiliated with both AFT and SEIU, based on factors indicating that PEF is "established, financed, maintained or controlled" by AFT and SEIU. 11 CFR 100.5(g)(2), (4)(ii) and 110.3(a)(1)(ii), (3)(ii).

An affiliation agreement signed by all three unions provides evidence of the affiliated relationship between PEF and the other two unions. The agreement explicitly states that PEF was "jointly created and jointly financed" by AFT and SEIU. The agreement also provides for AFT's and SEIU's continuing authority over the structure and operation of PEF.

By virtue of PEF's affiliation with the other two unions, PEF's committee would be affiliated with the committees of the other two unions (AFT-COPE and SEIU-COPE).[1] This conclusion stands despite PEF's assertion that the two unions would not be involved in the contribution activity of PEF's committee. AFT-COPE and SEIU-COPE, however, are not affiliated with each other, based on the facts presented in the advisory opinion request.

PEF's committee would immediately qualify as a multicandidate committee upon its establishment because its affiliates—AFT-COPE and SEIU-COPE—have qualified. AOs 1986-42 and 1980-40. PEF's committee, however, would have to share its contribution limits with the other two committees. Half of each contribution made by PEF's committee would apply to the limit of AFT-COPE, and half would apply to the limit of SEIU-COPE. AO 1987-34. For example, if PEF's committee made a $500 contribution to a candidate, $250 would count toward the limit shared with AFT-COPE, and $250 would count toward the limit shared by SEIU-COPE. Moreover, if AFT-COPE or SEIU-COPE contributed up to the limit to a candidate for an election ($5,000), PEF's committee would not be able to contribute to that candidate for that election. The limits shared by PEF's committee would apply retroactively to contributions made by the other two committees before PEF established its committee. AO 1985-27.

An alternative apportionment of the contribution limits could be applied in specific cases, if agreed to by all three SSFs and if PEF's committee provided written instructions to the recipient candidates or committees to allow them to monitor the limits. 2 U.S.C. §441a(f); 11 CFR 102.9(a) and 102.9(c). PEF's committee would have to keep a copy of the written instructions for three years after the contribution was reported. 11 CFR 104.14(b); see also 11 CFR 102.9(b)(1) and 102.9(c).

Finally, AFT-COPE and SEIU-COPE would have to list PEF's committee as an affiliated committee on their Statements of Organization. PEF's committee would similarly have to identify the other two committees as affiliated committees.[2] 2 U.S.C. §433(b)(2); 11 CFR 102.2(a)(1)(ii).

(Date issued: May 20, 1991; Length: 8 pages)

[1] This conclusion applies to any committee established by PEF. PEF has already established one committee, PEF-COPE, which considers itself affiliated with AFT-COPE and SEIU-COPE.

[2] PEF-COPE and PEF's new committee would also have to identify each other as affiliated committees.

COURT CASES

STERN v. GENERAL ELECTRIC COMPANY

On January 28, 1991, the U.S. Court of Appeals for the Second Circuit ruled that the Federal Election Campaign Act (the Act) does not preempt state law doctrine on corporate waste (924 F.2d 472). Philip M. Stern, a General Electric (GE) stockholder, filed suit alleging that GE's funding of its separate segregated fund (GE/PAC) constituted a waste of corporate assets under state law. The district court had dismissed the allegations, ruling that they were preempted by the Act. Reversing the district court decision on this issue, the appeals court held that the Act did not preempt Mr. Stern's allegations of corporate waste. The court, however, dismissed the allegations on other grounds but granted Mr. Stern leave to replead. With respect to Mr. Stern's allegations that GE violated federal lobbying and anti-bribery statutes, the appeals court affirmed the district court's dismissal of the claims.

Allegations of Corporate Waste

Mr. Stern alleged that GE's payment of GE/PAC's administrative and solicitation expenses constituted a waste of corporate assets under state law because:

o GE did not realize any benefit from

GE/PAC's contributions to incumbent candidates since they were made without regard to the candidates' positions on issues of concern to GE; and

- GE's payments for administrative and solicitation expenses were excessive in relation to the amount of contributions the PAC collected.

In response, GE argued that the allegations should be dismissed because they fell within the FEC's exclusive jurisdiction under 2 U.S.C. §437c(b)(1). (Under that provision, the FEC has exclusive jurisdiction over civil enforcement of the Act.) The appeals court rejected this argument because Mr. Stern's allegations focused on GE's waste of corporate assets under state law rather than on whether GE's activities violated the Act.[1]

In reversing the district court holding that the allegations of corporate waste were preempted by the Act, the appeals court pointed out the "narrow wording" of statute's preemption clause: the Act preempts "any provision of state law with respect to election to Federal office." 2 U.S.C. §453. The court said that Congress did not intend the Act to preempt the entire field of corporate political spending. That would result in a total absence of regulation on the appropriate amounts that corporations may spend on their PACs, since the Act is silent on this issue.

The court found that state regulation of corporate waste did not conflict with federal law in this case. The Act's provision allowing a corporation to pay for the costs of administering and soliciting contributions to a PAC (2 U.S.C. §441b(b)(2)(C)) was designed to limit, rather than encourage, corporate political spending "in order to preserve the integrity of the political process....Thus, state-law regulations that tend to reduce a corporation's support of its political action committee do not impede the FECA's goals."

The court, however, dismissed Mr. Stern's allegations of corporate waste because he failed to allege fraud or "bad faith" on the part of the company's directors. The court, however, granted Mr. Stern leave to replead these allegations.[2]

Other Allegations

The court of appeals upheld the district court's dismissal of Mr. Stern's allegation that GE's administrative and solicitation payments for GE/PAC were actually lobbying expenditures that should have been reported pursuant to the Federal Regulation of Lobbying Act. Mr. Stern had alleged that the failure on the part of GE directors to comply with this statute exposed GE to prosecution under 2 U.S.C. §269 and therefore constituted a breach of fiduciary duty. The appeals court disagreed, finding that GE's spending did not constitute "direct communication" with government officials and therefore was not subject to the lobbying statute.

Similarly, the court of appeals upheld the district court's dismissal of Mr. Stern's allegation that GE directors exposed GE to liability by acquiescing in GE/PAC's violation of the federal anti-bribery statute. Mr. Stern had claimed that certain GE/PAC contributions violated the statute because they were given to "grandfathered" Members of Congress with the knowledge that the contributions might be converted to the candidate's personal use under 2 U.S.C. §439a. The appeals court said that because such use is lawful under the Act, the contributions did not violate the anti-bribery statute (18 U.S.C. §203). Moreover, "[c]riminal intent under section 203 turns not on what the contributor expects the recipient to do with the money, but rather on what the contributor expects to receive for that money."

(Court Cases continued)

[1] Mr. Stern, in August 1988, filed an administrative complaint with the FEC alleging that GE's support of its PAC resulted in prohibited corporate expenditures because GE/PAC's contributions were made for lobbying rather than for political purposes. When the FEC dismissed the complaint, Mr. Stern filed suit challenging the decision. In August 1989, a district court upheld the Commission's dismissal (see November 1989 Record, p. 4) and a court of appeals affirmed (see February 1991 issue, p. 7).

[2] Mr. Stern recently filed a new suit against GE directors.

NEW LITIGATION

Republican Party of Kentucky v. FEC

The Republican Party of Kentucky asks the court to declare that the Commission's failure to act on its complaint is contrary to law and to order the agency to take action within 30 days.

In October 1990, the Party filed an administrative complaint with the FEC alleging that the Democratic Party of Kentucky violated the contribution and party expenditure limits of the Federal Election Campaign Act. The original complaint also named as respondents the Sloane for Senate Committee, the Association of Trial Lawyers of America and its PAC, and the firm of Greer, Margolis, Mitchell & Associates, Inc. In November 1990, the Party provided new information to the agency and amended its complaint to add the Democratic National Committee and Mary Bingham as respondents. Alleging that the FEC has failed to take action on its complaint, the Party filed suit under 2 U.S.C. §437g(a)(8)(A), which permits a complainant to petition the court if the Commission fails to act on an administrative complaint within 120 days.

U.S. District Court of the District of Columbia, Civil Action No. 91-1064, May 10, 1991.

FEC v. Friends of Schaefer

The FEC asks the court to declare that Friends of Schaefer, the principal campaign committee of Michael Schaefer, and its treasurer, Mr. Schaefer himself:

- Failed to file Statements of Candidacy and Organization on time, in violation of 2 U.S.C. §§432(e)(1) and 433(a);
- Accepted excessive contributions totaling $29,500, in violation of §441a(f);
- Failed to continuously report a $30,000 debt, in violation of §434(b)(8);
- Accepted a $28,000 corporate contribution, in violation of §441b; and
- Failed to file mid-year and year-end reports on time, in violation of §434(a)(2).

The FEC also asks the court to assess a civil penalty against defendants, permanently enjoin them from further similar violations and award the FEC its costs.[1]

U.S. District Court for the Southern District of California, Civil Action No. 91-650-GT-CM, May 15, 1991.

[1]Mr. Schaefer recently filed suit against the FEC in bankruptcy court; see the June 1991 issue, p. 11.

International Association Managers, Inc. v. FEC

International Association Managers, Inc. (IAM) and 13 other plaintiffs—five other corporations and eight individuals associated with IAM or the other corporations—ask the court to review the FEC's conduct in an enforcement case (MUR 2984). Plaintiffs in this case were named respondents in MUR 2984, which the FEC is still investigating to determine whether there is probable cause to believe the respondents violated several provisions of the Federal Election Campaign Act (the Act).[1] Plaintiffs allege that the FEC has unconstitutionally interpreted and administered the Act's enforcement provisions (2 U.S.C. §437g) in its handling of MUR 2984.

Plaintiffs also ask the court to require the FEC to:

- Inform every person the agency contacted in connection with MUR 2984 that the Act does not prohibit their discussion of the FEC's investigation with plaintiffs;
- Notify plaintiffs of any additional alleged violations;
- Provide every deponent in MUR 2984 with a copy of his or her transcript; and
- Promptly conclude the investigation with regard to the five original respondents named in the MUR.

With respect to the other nine respondents named in the MUR, plaintiffs ask the court to enjoin the FEC from conducting any further investigation until it concludes its investigation relevant to the five original respondents.

U.S. District Court for the District of Arizona, Phoenix Division, Civil Action No. 91-804 PHX RGS, May 20, 1991.

(On May 21, 1991, plaintiffs filed a motion to transfer this case to the judge who heard two earlier suits, now closed, that were filed by the FEC against the five original respondents in MUR 2984: FEC v. Robert Johnson et al. and FEC v. National Association of Real Estate Appraisers, Inc., et al. (Civil Action Nos. 90-701 PHX PGR and 90-880 PHX PGR). In these earlier cases, defendants complied with an August 1990 bench order requiring depositions and a September 1990 court order requiring numerous subpoenaed documents. Defendants

[1]Specifically, the FEC found reason to believe that respondents had violated the disclaimer provision (§441d(a)); the contribution limits (§441a(a)(1)(A)); the prohibition on corporate contributions (§441b(a)); and the ban on contributions made in the name of another (§441f).

later asked the court to expedite the FEC's investigation in MUR 2984. On May 1, 1991, citing its lack of jurisdiction, the court denied the motion. (The earlier cases were not summarized in the Record, which normally does not cover subpoena enforcement suits.) The denial prompted defendants to file the above suit against the FEC. For another related suit, see Dole v. International Association Managers, Inc., June 1991 Issue, page 9.)

AUDITS

FEC RELEASES GEPHARDT AUDIT REPORT

On June 18, 1991, the Commission released the final audit report on the Gephardt for President Committee, Inc. Congressman Gephardt received $3.396 million in primary matching funds for his 1988 Presidential campaign. Based on the results of the audit, the Commission made an initial determination that the Committee repay a total of $126,383 to the U.S. Treasury for exceeding the Iowa expenditure limit (see below).

If the Committee does not dispute the initial determination within 30 days, the repayment amount becomes final and is payable within 90 days of the initial determination. 11 CFR 9038.2(c) and (d).

Final audit reports are available for review in the Public Records Office.

Calculation of Repayment Amount

The Commission determined that the Gephardt Committee had made $1,270,936 in expenditures that were allocable to the Iowa spending limit of $775,218. The Committee therefore overspent the limit by $495,718.

FEC Audit staff applied a formula to the excessive amount[1] to determine what portion of that amount was paid with public funds as opposed to private contributions in the Committee's account. (The formula is explained at 11 CFR 9038.2(b)(2)(iii).) The formula yielded a repayment amount of $126,383.

[1] In calculating the repayment amount, Audit staff reduced the amount spent in excess of the Iowa limit ($1,270,936) by $14,870, which represented bills for expenditures not paid as of the last day that matching funds remained in the Committee's account.

Allocation of Expenditures to Iowa Spending Limit

Based on the audit findings summarized below, the Commission allocated an additional $531,457 to the amount the Committee had allocated to the Iowa limit.

"National Campaign" Exemption. The Committee reduced its total costs allocated to Iowa by 25 percent, explaining that 25 percent should be allocated to the national spending limit since the Iowa campaign and the national campaign were "inextricably intertwined." However, because the law does not provide for such a "national campaign" exemption, the Commission disallowed the exemption and re-allocated $178,910 to the Iowa limit.

Staff Salaries. As a result of audit findings, the Commission found that $30,075 in Iowa staff salaries and related expenses (FICA payment and insurance benefits) should have been allocated to the Iowa limit. The audit report noted that the Committee used a standard 10-percent compliance exemption for a portion of its Iowa payroll, but applied a 100-percent exemption to certain other salaries and consulting fees. However, if a committee uses the standard 10-percent exemption, it must be applied consistently. (See 11 CFR 106.2(c)(5) and the FEC's Financial Control and Compliance Manual for Presidential Primary Candidates, page 28.)

With respect to the Committee's national staff, the audit report found that $6,549 in additional salaries and FICA payments should have been allocated to Iowa because the employees worked in Iowa for five or more consecutive days. (See 11 CFR 106.2(b)(2)(ii).)

Polling Expenses. The Commission determined that $19,288 in travel expenses associated with a polling consultant should have been allocated to Iowa. The Committee argued that the costs were not allocable because none of the travel involved a stay in Iowa for five consecutive days. The five-day rule, however, applies only to campaign staff, not consultants.

The Committee spent $36,001 to conduct focus group surveys in Iowa but did not allocate these costs to the Iowa limit, arguing that the product of a focus group has a broad national application. The Commission determined that expenses for the focus groups were not allocable to Iowa. Nor were $93,250 in consultant fees paid to the polling firm for other activities.

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Telemarketing Expenses. The Committee paid a vendor $100,542 for a telemarketing program directed to Iowa voters but failed to allocate $15,408 in vendor fees and charges for calls made to wrong or disconnected numbers, claiming that these expenses did not influence the nomination process. The Commission, however, viewed the expenses as part of the total cost of the program and therefore allocated $15,408 to Iowa.

The Committee similarly should have allocated $28,512 in fees paid to a vendor providing telemarketing materials used in Iowa and an additional $5,466 in another telemarketing program.

Media Expenses. The audit report revealed that, while the Committee had allocated the costs of media time buys to Iowa, it had not allocated a 15-percent vendor commission. In response to this finding, the Committee provided audit staff with an amendment to its vendor agreement that waived the 15-percent commission from the end of December 1987 through the date of the Democratic New Hampshire primary. Instead of a commission, the Committee was to pay a $110,000 consulting fee. The audit report noted that the amendment substituted a cost that is not normally allocable to state spending limits (the $110,000 fee) for an allocable cost (the 15-percent commission). The Commission decided that some portion of the fee was allocable to Iowa. In the absence of Committee records providing information on this point, the Commission determined that $74,236 was allocable to Iowa, an amount representing the allocable portion of the 15-percent commission specified in the original agreement.

Additional Allocations and Adjustments. The Commission determined that $192,205 in additional costs should have been allocated to the Iowa limit for various categories of expenses. Additional amounts allocable to the Iowa limit were reduced, however, by $19,192 in compliance and fundraising exemptions verified by audit staff.

VOTING PLACES MORE ACCESSIBLE TO ELDERLY, HANDICAPPED

Testifying before the U.S. House Subcommittee on Elections, FEC Chairman John Warren McGarry presented a report showing that 84 percent of some 136,043 nationwide polling places were accessible to the elderly and the handicapped in 1990. He noted the improvement over the past two elections. In 1988, 79 percent of evaluated polling places met accessibility requirements, and in 1986 only 73 percent were in compliance.

The report, Polling Place Accessibility in the 1990 General Elections, was prepared by the FEC's Clearinghouse on Election Administration. In his May 14, 1989, testimony, Chairman McGarry said that inaccessible polling places tend to occur in sparsely populated, rural and mountainous areas, where facilities are few, and in huge suburban sprawls, where private homes are used.

According to the report, of the 22,120 places found inaccessible in 1990, 13,319 (60 percent) had unramped stairs. Other problems included obstructed passages and inadequate parking.

As Chairman McGarry noted, the report predicts that polling place accessibility will continue to improve as a result of Congressional redistricting, which often leads to new voting facilities. The passage of Americans with Disabilities Act, which will become effective in 1992, will also encourage alternatives to inaccessible sites.

The 1990 report is the third progress report issued under the Voting Accessibility for the Elderly and Handicapped Act of 1984. Under that Act, the FEC must issue two more reports covering the 1992 and 1996 elections. The FEC is responsible for conducting surveys on accessibility and compiling the results; it has no jurisdiction over polling places.

For further information, call 800/424-9530 and ask for the Clearinghouse or call the office directly (202/376-5670). The TDD number is 202/376-3136; out-of-state callers may reverse the charges.

JULY REPORTING SCHEDULE

Mid-Year Report

The mid-year report is due July 31, 1991. This report must be filed by:

- Authorized committees of House and Senate candidates; and
- PACs and party committees that file on a semiannual (rather than monthly) basis.

The mid-year report covers activity from January 1 through June 30. There are two exceptions to the January 1 opening date:

- If the mid-year report is the committee's first report, the reporting period begins on the date of the committee's first activity. In the case of an authorized committee, that date may occur before the individual became a candidate.
- If the committee filed a previous report disclosing 1991 activity (such as a special election report), coverage for the mid-year report begins with the day following the closing date of the last report filed.

Please note that the mid-year report is waived for committees filing either the post-election report in connection with the Illinois special general election (see article on page 3) or the pre-primary report in connection with the Arizona special election.

Monthly Report

PACs, party committees and authorized committees of Presidential candidates that have chosen to file on a monthly basis must file a report due July 20, 1991, that covers the period from June 1 through June 30.

Quarterly Report (Presidential Committees)

Presidential committees filing on a quarterly (rather than monthly) basis must file a second quarter report due July 15, 1990. The report covers the period from April 1 through June 30.

Where to File

Instructions on where to file reports are given on the back of the Summary Page of the reporting form. A list of state filing offices is available from the Commission.

Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Failure to file a report on time could result in enforcement action by the Commission.

Further Information

Call the Commission for further information on reporting (800/424-9530 or 202/376-3120).

REPORTING DATES CHARTS

1991 Semiannual Reports

Report	Period Covered[1]	Filing Date[2]
Mid-year	1/1/91-6/30/91	7/31/91
Year-end	7/1/91-12/31/91	1/31/92

1991 Monthly Reports
June-December Activity

Report	Period Covered[1]	Filing Date[2]
July	6/1-6/30	7/20/91
August	7/1-7/31	8/20/91
September	8/1-8/31	9/20/91
October	9/1-9/30	10/20/91
November	10/1-10/31	11/20/91
December	11/1-11/30	12/20/91
Year-end	12/1-12/31	1/31/92

1991 Quarterly Reports
2nd-4th Quarter Activity
(Note: Quarterly reporting option available to Presidential committees only)

Report	Period Covered[1]	Filing Date[2]
2nd Quarter	4/1-6/30	7/15/91
3rd Quarter	7/1-9/30	10/15/91
Year-end	10/1-12/31	1/31/92

[1] The reporting period begins on the day following the closing date of the last report filed. If the report is the first report filed by the committee, however, the report must disclose any activity that occurred before the committee registered and, in the case of an authorized committee, before the individual became a candidate.

[2] Reports sent by registered or certified mail must be postmarked by the filing date; otherwise they must be received by that date. 11 CFR 104.5(e).

COMPLIANCE

MURS RELEASED TO THE PUBLIC

Listed below are MURs (FEC enforcement cases) recently released for public review. The list is based on the FEC press releases of April 29, May 13 and May 20, 1991. Files on closed MURs are available for review in the Public Records Office.

Unless otherwise noted, civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

MUR 1662/1545
Respondents: (a) Beatty for Congress Committee, Edward Myers, Jr., treasurer (NY); (b) Committee to Re-Elect Congressman Leo C. Zeferetti, Eileen Deering, treasurer (NY); (c) Brooklyn Democrats (federal), Alan Lebowitz, treasurer (NY); (d) Friends of Ed Towns, Vivian Y. Bright, treasurer (NY)
Complainant: FEC initiated
Subject: Failure to file reports on time; excessive contributions; inaccurate and incomplete disclosure
Disposition: (a) $15,000 civil penalty assessed against Mr. Myers (U.S. court of appeals); (b) $300 civil penalty; (c) $1,000 civil penalty; (d) $100 civil penalty (case was closed in 1988)

MUR 2695
Respondents: (a) California Lieutenant Governor Leo McCarthy; (b) McCarthy for U.S. Senator, Lance Olson, treasurer; (c) Californians for McCarthy Committee, Lance Olson, treasurer
Complainant: Robert W. Naylor, Chairman, California Republican Party
Subject: Failure to designate committee on time; corporate and union contributions; failure to register and report; failure to disclose in-kind contributions
Disposition: (a) Reason to believe but took no further action; (b)(1) probable cause to believe but took no further action (in-kind contributions); (b)(2) no probable cause to believe (corporate and union contributions); (c) no probable cause to believe

MUR 2724/2718/2698
Respondents: (a) Jack Davis (IL); (b) Davis for Congress Committee (federal), Jack Davis, treasurer (IL); (c) Jack D. Davis Committee (state), Jack Davis, treasurer (IL); (d) Will County Republican Central Committee, John P. Karubas, treasurer (IL)
Complainant: Richard M. Bates, Executive Director, Democratic Congressional Campaign Committee (DC) (2698 and 2718); Martin J. Gleason (IL) (2724)
Subject: Failure to disclose receipts and expenditures adequately; failure to file reports on time; failure to register on time; prohibited in-kind contributions from state committee
Disposition: (a) Reason to believe but took no further action; (b) and (c) $2,500 civil penalty; (d) no reason to believe

MUR 2978
Respondents: (a) Wallace, Dover & Dixon, P.A. (AR); (b) Wallace, Dover & Dixon PAC, J. Cal McCastlain, treasurer (AR)
Complainant: FEC initiated
Subject: Corporate contributions
Disposition: (a) and (b) Reason to believe but took no further action

MUR 3033
Respondents: (a) Commonwealth Bancshares Corporation, William D. Davis, Chairman (PA); (b) Commonwealth Bancshares Political Action Committee (federal), Eileen Johnson, treasurer (PA)
Complainant: Referral by the Comptroller of the Currency, Administrator of National Banks (NY)
Subject: Failure to disclose activity accurately; improper solicitations
Disposition: (a) and (b) $2,000 civil penalty

MUR 3090
Respondents: Common Cause (DC)
Complainant: William B. Canfield, III, Counsel, National Republican Senatorial Committee (DC)
Subject: Failure to disclose independent expenditures and in-kind contributions; corporate expenditures; disclaimers; failure to register and report
Disposition: No reason to believe

(continued, p. 15)

SURVEY ON UPCOMING CONFERENCES

The Federal Election Commission will be holding regional conferences in Boston and Chicago this fall. The conferences will offer workshops for House and Senate candidate committees, political party committees and separate segregated funds. The Commission would like your input to help us plan useful and interesting workshops for those in attendance.

We would appreciate your taking a few minutes to answer this two-page survey. Simply remove this page, staple it closed and drop it in the nearest mailbox. No postage is required. If possible, we would like to hear from you within the next two weeks.

BACKGROUND

1. Please check the type of organization you are associated with:
   - ☐ Candidate committee
   - ☐ Party committee
   - ☐ Separate segregated fund
     - ☐ Corporation
     - ☐ Labor organization
     - ☐ Trade association
     - ☐ Membership organization

2. What is your role in the organization?
   - ☐ Candidate
   - ☐ Treasurer
   - ☐ Campaign worker
   - ☐ Attorney
   - ☐ Accountant
   - ☐ Bookkeeper
   - ☐ Other _____

3. How many years have you worked with the campaign finance law?
   - ☐ less than one
   - ☐ 1-3 years
   - ☐ 4-6 years
   - ☐ 7-10 years
   - ☐ more than 10 years

4. Have you ever attended an FEC conference?
   - ☐ yes
   - ☐ no

If so, when? _____

where? _____

LOGISTICS

1. What length of conference would you prefer?
   - ☐ 2 days
   - ☐ 1 1/2 days
   - ☐ 1 day

2. I cannot come to Boston or Chicago, but would like to attend an FEC conference in (name city below)

_____

3. I would like to receive more information on the Boston/Chicago (circle one or both) conference. Please send an invitation to:

Name _____

Committee _____

Address _____

_____

Continued

Check the topics that would be of interest to you.

Candidate Committees

- ☐ Contributions
- ☐ Independent expenditures
- ☐ PAC support
- ☐ Party support
- ☐ Corporate/labor support
- ☐ Volunteer activity
- ☐ Fundraising
- ☐ Joint fundraising
- ☐ Reporting
- ☐ Advances made by committee staff
- ☐ Transfers of funds between authorized committees
- ☐ Debt reduction and settlement
- ☐ Other _____

Separate Segregated Funds

- ☐ Independent expenditures
- ☐ Contributions
- ☐ Solicitation rules
- ☐ Collecting agents
- ☐ Allocation of federal and nonfederal expenses
- ☐ Reporting
- ☐ Partisan and nonpartisan communications
- ☐ Use of corporate/labor facilities
- ☐ Other _____

Party Committees

- ☐ Contributions
- ☐ "Exempt activity"
- ☐ Coordinated expenditures
- ☐ Volunteer activity
- ☐ PAC support
- ☐ Fundraising
- ☐ Joint fundraising
- ☐ Allocation of federal and nonfederal expenses
- ☐ Reporting
- ☐ Other _____

General

- ☐ Recent trends in FECA issues
- ☐ Using the Public Records Office
- ☐ The FEC enforcement process
- ☐ Filing a complaint
- ☐ FEC aids to committees
- ☐ FEC organization
- ☐ Ethics laws
- ☐ Internal Revenue Service rules for political committees
- ☐ Other _____

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MUR 3115
Respondents: (a) Texans for Sweeney, Myles Sweeney, treasurer; (b) Catherine Sweeney (TX); (c) Barbara Webber (TX)
Complainant: FEC initiated
Subject: Excessive contributions
Disposition: (a) and (b) $1,000 civil penalty (joint conciliation agreement); (c) no reason to believe

MUR 3141
Respondents: Sibley for Congress, David M. Sibley, treasurer (TX)
Complainant: FEC initiated
Subject: Failure to file reports on time
Disposition: $1,000 civil penalty

MUR 3165
Respondents: Southern California Coalition for Responsible Government, Harold B. Nelson, treasurer
Complainant: Eugene L. Ferguson, Campaign Manager, Committee to Re-Elect Congressman Dana Rohrabacher (CA)
Subject: Failure to file reports on time
Disposition: Reason to believe but took no further action

MUR 3173
Respondents: Reynolds for Congress 1990, Earl S. Worthington, treasurer (IL)
Complainant: FEC initiated
Subject: Failure to file 48-hour reports and to amend Statement of Organization
Disposition: $2,500 civil penalty

MUR 3194
Respondents: (a) Michael Georgiou (VA); (b) Abdelaziz Gren (VA)
Complainant: Referral by U.S. Department of Justice
Subject: Contributions in the name of another
Disposition: (a) and (b) Reason to believe but took no further action

MUR 3200
Respondents: Dan Marriott for Congress, Brian C. McGavin, treasurer (UT)
Complainant: FEC initiated
Subject: Failure to file 48-hour reports
Disposition: $1,020 civil penalty

MUR 3215/3156
Respondents: Mike Easley for Senate Committee, John R. McArthur, treasurer (NC)
Complainant: FEC initiated
Subject: Failure to file 48-hour reports
Disposition: $2,000 civil penalty

MUR 3232/3186/3139
Respondents: General Development Corporation Better Government PAC, Franzine Shields, treasurer (FL)
Complainant: FEC initiated
Subject: Failure to file reports on time
Disposition: $3,100 civil penalty

MUR 3235
Respondents: LeBoeuf, Lamb, Leiby & MacRae PAC, Alan Berman, treasurer (NY)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $325 civil penalty

MUR 3236
Respondents: Wolpe for Congress, Marilyn S. Graber, treasurer (MI)
Complainant: FEC initiated
Subject: Failure to file 48-hour reports
Disposition: $1,650 civil penalty

MUR 3238
Respondents: Thomas Dyson (TX)
Complainant: William B. Canfield, III, Legal Counsel, National Republican Senatorial Committee (DC)
Subject: Failure to register and report (re Republican Presidential Task Force)
Disposition: No reason to believe but reported matter to U.S. Postal Service

MUR 3245
Respondents: Friends of Congressman Hochbrueckner, Mary M. Schumacher, treasurer (NY)
Complainant: FEC initiated
Subject: Failure to file 48-hour reports
Disposition: Reason to believe but took no further action

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