FEDERAL ELECTION COMMISSION

RECORD

August 1987 999 E Street NW Washington DC 20463 Volume 13, Number 8

ADVISORY OPINIONS

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

AOR 1987-10: Contributions to Presidential Primary Candidate's 1988 Campaign Used to Retire 1984 Presidential Campaign Debts

In a letter of July 1, 1987, the Acting General Counsel stated that, until a final determination is made by the Commission concerning Mr. Hart's eligibility for matching funds, the Commission has decided to suspend and hold in abeyance any further consideration of the advisory opinion request.

AOR 1987-19: Contributions and Donations by Principal Campaign Committee and Multicandidate PAC

The requester withdrew the advisory opinion request in a letter of July 7, 1987.

AOR 1987-20: Solicitation for PAC of U.S. Subsidiary of Canadian Corporation

The requester withdrew the advisory opinion request in a letter of July 7, 1987.

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject
1987-19:	Contributions and Donations by Principal Campaign Committee and Multicandidate PAC. (Date made public: June 8, 1987; Length 1 page)
1987-20:	Solicitations for PAC of U.S. subsidiary of Canadian corporation. (Date made public: June 9, 1987; Length: 3 pages)
1987-21:	Affiliation between PACs of corporation and its spin-off corporation. (Date made public: June 12, 1987; Length: 5 pages, plus 112-page supplement)

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

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AO 1987-11 Use of Excess Campaign Funds

The Committee to Re-Elect Senator Zorinsky, the principal campaign committe of the late Senator Edward Zorinsky, may dispose of approximately $180,000 in excess campaign funds in the following ways:

1. Transfer the excess funds to the late Senator's wife.
2. Transfer the excess funds to a trust for the benefit of Mrs. Zorinsky.
3. Create a charitable foundation under Mrs. Zorinsky's control.
4. Transfer the excess funds to the Zorinsky family.
5. Transfer the excess funds to various qualified charitable organizations.
6. Transfer the excess funds to local or national political party committees.
7. Use excess funds to defray costs incurred by Senator Zorinsky's widow in closing the Senator's Washington office and moving back to Nebraska.
8. Refund contributions to original donors.
9. Use excess campaign funds to create a state political action committee to support or oppose ballot issues and to support candidates for state and federal offices.

The Act provides that excess campaign funds may be: used by an individual or candidate to defray ordinary and necessary expenses incurred in connection with his or her duties as a holder of federal office; donated to qualified charitable organizations; transferred without limit to any national, state or local political party committee; or used for "any other lawful purpose"; except that a candidate other than one who was a Senator or Representative in Congress on January 8, 1980, may not use excess campaign funds for personal use. 2 U.S.C. §439a and 11 CFR 113.2. However, since Mr. Zorinsky was a member of the U.S. Senate on January 8, 1980, the distribution of excess campaign funds for the personal use of his family members would not be prohibited by the Act.

Payment of expenses to close down the late Senator's office and move his widow from Washington, D.C. to Nebraska are specifically permitted under the Act because they constitute ordinary and necessary expenses in connection with the duties of a Federal office holder. Furthermore, refunding contributions is lawful since the reporting provisions of the Act anticipate the making of such refunds. 2 U.S.C. §434(b)(4)(F) and (b)(5)(E).

Use of excess campaign funds to create a state political action committee to support or oppose ballot issues and to support candidates for state and federal offices is permitted by the Act. However, the Commission noted that if the Zorinsky Committee made a contribution to any federal political committee, the contribution limits contained in the Act would apply. (Date issued: June 11, 1987; Length: 6 pages)

AO 1987-13 Trade Association's Solicitation of Contributions

GHAA PAC, the separate segregated fund of the Group Health Association of America, Inc. (GHAA), an incorporated trade association, may not solicit contributions from physicians who, operating as partnerships, provide health care pursuant to contracts with health maintenance programs.

Prepaid health care systems that are eligible for membership in GHAA are defined as health maintenance organizations (HMOs) and/or competitive medical plans. These organizations provide basic health services to enrolled participants through physicians with whom they have made prior arrangements. The HMOs may provide care in a variety of ways, for example, through organized groups of physicians (group practice model), such as physician partnerships. GHAA asked whether these physicians could be solicited for contributions to the PAC.

Under the Act, an incorporated trade association may solicit its noncorporate members for contributions to its separate segregated fund. 11 CFR 114.7(c). Commission regulations define a membership organization's members as "all persons who are currently satisfying the requirements for membership in a membership organization." 11 CFR 114.1(e). To qualify as a member, the Supreme Court in Federal Election Commission v. National Right to Work Committee, 459 U.S. 197 (1982) stated that some relatively enduring and independently significant financial or organizational attachment is required to be a "member" under the Act. Generally, this has meant that persons must have some right to participate in the governance of the organization and pay regular dues.

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The physician partnerships had no obligation to pay dues and no right to participate in GHAA's governance in their capacity as independent contractors. Moreover, these physicians had chosen not to become direct, individual members, with financial obligations and rights to participate in governing GHAA. Therefore, the Commission concluded that physician partners under contract with the HMO members of GHAA would not themselves be considered "members" for purposes of solicitation. (Date issued: June 25, 1987; Length: 3 pages)

AO 1987-14 National Bank's SSF Supporting Only State and Local Candidates

Even though the separate segregated fund of the First National Bank of Shreveport will be organized solely for the purpose of financing political activity in connection with state and local elections, it will be subject to the solicitable class restrictions, the voluntary contribution requirements and the solicitation notice provisions of the Act. 11 CFR 114.2(a)(2).

Under the Act, a national bank is prohibited from making a contribution or expenditure in connection with any election to any political office, including local, state and federal offices. 2 U.S.C. §441b(b)(2)(C). However, a national bank is permitted to establish and sponsor a separate segregated fund for financing political activity if it wishes to engage in political activity on a local, state or federal level. Commission regulations, however, specifically exempt a separate segregated fund from the registration requirements if it is established solely to finance state and local election activity. 11 CFR 102.1(c). The Shreveport Bank fund will not be subject to the rules concerning registration, recordkeeping, reporting and contribution limits. However, because the fund is a "separate segregated fund," under 2 U.S.C. §441b, the solicitable class restrictions, the voluntary contribution requirements and the solicitation notice provision contained in the Act will apply. 2 U.S.C. §441b(b)(3). (Date issued: June 25, 1987; Length: 4 pages)

AO 1987-16 Transfers from State Campaign Committee to Federal Campaign Committee

The Dukakis Gubernatorial Committee (the state committee) may transfer, without limit, computer equipment and contributor and supporter lists to the Dukakis for President Committee, Inc. (the federal committee).

Because the computer and contributor lists are things of value, they would be considered contributions-in-kind (or transfers) from the state committee.

Under Commission regulations, transfers may be made without limit between affiliated committees. 11 CFR 106.6(a). The state and federal committees are considered affiliated because they were both established and controlled by the same person, Mr. Dukakis. See 2 U.S.C. §441a(a)-(5) and 11 CFR 100.5(g)(2) and 110.3(a)(1)(i).

The Commission's approval of the asset transfers was conditioned on its understanding that the state committee accepted only funds that were lawful under the Federal Election Campaign Act. Therefore, the transfer of assets could not be seen as an indirect corporate or labor contribution, which is prohibited by the Act. 2 U.S.C. §441b.

Finally, the Commission noted that these asset transfers should be reported by the federal committee as an in-kind contribution from the state committee with a brief description of the equipment and supporter lists.

In a footnote, the Commission observed that the state committee had registered earlier as a political committee, as required by law, when it transferred $380,000 to the federal committee. That monetary transfer was subject to Commission regulations requiring review, reporting and exclusion of prohibited contributions received by the state committee account. Further, because the state committee had received contributions during the current election cycle (i.e., in the period since the general election in 1986), the state committee (now registered as a political committee under the Act) had to be sure the transfer did not cause donors to exceed their contribution limits. To this end, the committee was required to aggregate contributions made after the 1986 election with those made to the federal committee by the same donor. (Date issued: July 9, 1987; Length: 6 pages)

AO 1987-17: Combined Membership Dues and Contribution on Billing Statement

AGFUND, the separate segregated fund of the Texas Farm Bureau, may use a billing statement, accompanied by an explanatory notice, that combines a dues statement with a solicitation to the PAC. The billing statement includes the following information:

AGFUND Voluntary Contribution(s) Suggested (See Enclosure)	**$ 1.00**
Membership Dues	**20.00**
Total Amount	**$21.00**

The accompanying notice describing the political purpose of AGFUND explains that the contribution printed on the statement is a suggestion only, and that the member can

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contribute more or less than $1.00, and that the decision to contribute or not will not favor or disadvantage the member. The combined billing statement and notice are acceptable because:

1. They notify members of the political purpose of AGFUND and of their right to refuse to contribute without reprisal.
2. They emphasize the voluntary nature of the PAC contributions.
3. They convey a clear distinction between the membership dues portion of the total and the suggested AGFUND contribution.

In previous advisory opinions, the Commission has approved several specific proposals for combining contribution solicitations with dues statements. See Advisory Opinions 1982-61, 1982-11, and 1981-4. Compare AO 1987-6 where the Commission concluded that the combined billing statement and contribution solicitation were improper. See May 1987 Record, page 5.

Contributions to AGFUND must otherwise comply with the Act and FEC regulations, including the requirement that individuals who are solicited on the basis of their membership in the Texas Farm Bureau must meet the Commission's standard for membership. 11 CFR 114.1(e) and 114.7. (Date issued: June 25, 1987; Length: 5 pages)

AO 1987-18: PAC Matches Employee Contributions with Commodity Charitable Donations

Texas Industries, Inc. (TXI) may encourage contributions to its PAC (TXI-PAC) by matching individual contributions with donations to a charity of the contributor's choice. Under a proposed plan, TXI would:

1. Allow contributors to designate a charity from a list of 5-10 selected by TXI;
2. Match voluntary contributions with charitable donations of money and/or commodities; and
3. Distribute the charitable donations over a two-year period after the contribution was made to TXI-PAC.

The Commission noted that this plan was materially indistinguishable from the one previously approved by the Commission in Advisory Opinion 1986-44.

Under the Act, a corporation is prohibited from making contributions or expenditures in connection with any federal election. 2 U.S.C. §441b. However, election law allows a corporation to pay for the establishment, administration and solicitation expenses of its PAC, provided it does not use this process as a means of exchanging treasury monies for voluntary contributions. See 11 CFR 114.5(b). TXI's donations to charities would be considered a solicitation expense and not a prohibited exchange of treasury monies.

The Commission noted that, since the communication of this plan constitutes a solicitation, TXI and TXI-PAC may offer the plan only to those persons who may be solicited for contributions. The corporation and PAC must also comply with the other solicitation requirements of FEC regulations. (Date issued: July 9, 1987; Length: 4 pages)

PUBLIC FUNDING

BUSH AND DOLE DECLARED ELIGIBLE FOR PRIMARY MATCHING FUNDS

On June 8, 1987, Vice President George Bush was declared eligible to receive federal matching funds in his bid to win the Republican nomination for President. On June 15, another Republican candidate, Senator Robert Dole, also established matching fund eligibility.

In order to become eligible for matching funds, a candidate must raise over $100,000 by collecting more than $5,000 in 20 different states in amounts no greater than $250 from any individual. Presidential candidates may begin seeking eligibility for primary matching funds after January 1, 1987. However, matching funds will not be distributed until after January 1, 1988.

The maximum amount of matching funds a Presidential candidate may receive is half of the base spending limit. Since that limit may be as much as $22 million in 1988, Presidential primary candidates could qualify for as much as $11 million in federal dollars.

MONDALE/FERRARO FINAL REPAYMENT DETERMINATION

On July 9, 1987, the Federal Election Commission determined that the Mondale/Ferraro Committee, Inc., (the Committee) must repay $180,784.59 to the United States Treasury in accordance with the final repayment determination. This amount includes repayments of $90,642.40 in surplus funds and $90,142.19 in net interest income earned by the committee. The Committee had received $40,309,357.60 from the Presidential Election Campaign Fund in 1984, but its final Statement of Net Outstanding Qualified Campaign Expenses indicated qualified net expenditures of only $40,303,656.60. The Commission also approved a Statement of Reasons in support of the final repayment determination.

Copies of the Mondale/Ferraro Final Repayment Determination may be obtained from the Commission's Public Records Office. Call 800/424-9530 or, locally, 376-3140.

COMPLIANCE

EXTENSIONS OF TIME IN ENFORCEMENT MATTERS

On June 4, 1987, the Federal Election Commission adopted several new procedures concerning Commission policy on granting extensions of time in enforcement matters. The new procedures are intended to expedite responses to requests for time extensions by giving the Office of General Counsel (OGC) greater latitude to grant extensions without first obtaining Commission approval.

Under the Federal Election Campaign Act, respondents have an opportunity to submit responses to allegations made against them at several stages during the enforcement process. The new procedures focus on the respondent's response at three stages in particular:

- o After being notified about a complaint;
- o After the Commission finds "reason to believe" the Act has been violated; and
- o After the General Counsel issues a brief, recommending "probable cause to believe" the Act has been violated.

The Commission approved the following new procedures recommended by OGC:

1. The Commission authorized OGC to grant extensions of time of up to 30 days for responses to complaint notifications. Because this is a critical stage in the enforcement process, OGC will limit extensions to no more than 15 or 20 days and will grant 30 days only where exceptional good cause is demonstrated.
2. OGC was given discretion to grant or deny extension requests of up to 45 days for "reason to believe" and "probable cause" briefs. Extensions beyond 30 days, however, will be granted only in exceptional circumstances.
3. Commission approval will no longer be required for additional requests or requests for extensions of time that are submitted later than 5 days prior to the original due date, as long as the requested extension does not exceed 30 days from the original due date for responses to complaints or 45 days from the original due date for responses to "reason to believe" findings and "probable cause" briefs.
4. The Commission will continue to require that requests for extensions of time be made in writing and that requests that do not meet certain guidelines be submitted to the Commissioners for their approval.
5. OGC will inform the Commission about any extensions of time (including the reasons for the extension and the new due dates) whenever an extension delays the General Counsel's reports on "reason to believe" or "probable cause" recommendations.

REGULATIONS

INTERIM RULES REVISING FOIA AND PUBLIC DISCLOSURE REGULATIONS

On June 18, 1987, the Federal Election Commission approved for publication in the Federal Register interim rules governing the Freedom of Information Act (FOIA) and access to Public Disclosure Division documents (11 CFR Parts 4 and 5). These interim rules were precipitated by the enactment of the Freedom of Information Reform Act of 1986 (the Reform Act) on October 27, 1986, as sections of the omnibus Anti-Drug Abuse Act of 1986. The Reform Act expanded the law enforcement protections of the FOIA and also modified the FOIA's fee provisions, including the fee waiver standard.

The new law enforcement amendments were effective immediately upon the enactment of the Reform Act. However, with regard to FOIA fees, the statute specified that the new provisions would not take effect for 180 days to allow the Office of Management and Budget to issue agency guidelines on the new FOIA fee schedules. These guidelines were published March 27, 1987. Since the Reform Act required that agencies follow the new fee provisions beginning April 27, 1987, the Commission published a new FOIA fee schedule, on which it sought public comment, as interim rules. The interim rules, effective on June 24, 1987, are summarized below. Comments must be submitted in writing by July 24, 1987, to Ms. Susan Propper, Assistant General Counsel, FEC, 999 E Street N.W., Washington, D.C. 20463. Comments should refer to specific sections of the proposed regulations.

Law Enforcement Provisions 11 CFR 4.5(a)(7)

Congress adopted the new enforcement provisions primarily to protect law enforcement records sufficiently to enable agencies to enlist informants and to carry out confidential investigations. The previous provisions did not provide sufficient protection because the language permitted records to be exempted from disclosure only when those records would clearly reveal an informant's identity or a confidential investigation. Anything short of that definitive standard had to be disclosed. The Reform Act revised the language to exempt from disclosure any information that could "reasonably be expected" to reveal a confidential source or investigation.

In addition, under the interim rules, information originally compiled for law enforcement purposes does not lose its special exemption from FOIA disclosure when it is included on another document. For example, when the Commission receives records from the Department of Justice

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(as part of a referral) which are subject to an exemption from FOIA disclosure because they include information originally compiled for law enforcement purposes, the records would retain that exempt status while in the Commission's possession.

Fee Provisions
11 CFR 4.9(c)

The Reform Act aims to establish a uniform standard for FOIA fees among all agencies. To this end, OMB has issued guidelines which permit agencies to develop their own fee schedules in conformance with government-wide standards. Accordingly, the proposed fee schedule, set forth at 11 CFR 4.9(c)(4), has been revised to reflect changes in the direct cost for various services (including photocopying, computer services, microfilming and staff salaries). As recommended by OMB, the Commission has determined these fees on the basis of the Commission's average costs for the services.

The Reform Act does, however, impose some restrictions on an agency's ability to assess FOIA fees. It also divides FOIA requesters into several categories, each of which may only be charged for certain services. For instance, except in the case of a commercial use requester, an agency may not charge an FOIA fee for the first two hours of search time and the first 100 pages of duplication. No fee may be assessed for search time related to FOIA requests from educational, scientific or news media organizations. Further, an agency may not charge a fee to a requester when the direct cost of the FOIA request is equal to or less than the agency's cost of routinely collecting and processing an FOIA request fee.

In addition to revising the FOIA fee provisions, the Reform Act also amended the fee waiver standard. Under the new standard, incorporated in the interim rules, the Commission will consider reducing or waiving FOIA fees if it determines that disclosure is in the public interest (i.e. promotes public understanding of government) and is not primarily in the commercial interest of the requester.

Further, the proposed interim rules include procedures for requesting a fee reduction or waiver. They also would permit the Commission to charge interest on FOIA fees which are not paid within 30 days. Finally, there is a provision prohibiting requesters from aggregating requests for the purpose of evading the assessment of fees and another provision detailing the conditions under which the Commission would require advance payment before responding to an FOIA request.

Proposed Update of Public Disclosure Fees
11 CFR 5.6

While the fee schedule for regular public disclosure through the Commission's Public Records Office is distinct from the FOIA fee schedule, it also needs updating to reflect recent changes in cost to the Commission. The Commission also proposed changes to 11 CFR 5.6 reflecting the costs of microfilm and staff time. These changes are consistent with the new FOIA fee schedule.

STATISTICS

FINANCIAL ACTIVITY OF PACS FOR 1985-86

Direct contributions to federal candidates by PACs continue to increase according to figures released on May 21 by the Federal Election Commission. The figures indicate that PAC contributions to Congressional candidates in the 1986 election rose 26 percent compared with the amount given to candidates seeking Congressional seats in 1984.

In compiling figures for the 1985-86 cycle, the Commission reviewed the activity of 4,568 PACs. However, of these PACs, only 3,152 actually contributed to federal candidates during the 1985-86 cycle. According to their reports, PACs began 1985 with cash-on-hand of $55 million. They raised an additional $353 million and spent a total of $338 million during the 1985-86 cycle. Chart I compares PAC contributions over five election cycles. Chart II shows financial activity for PACs over five election cycles.

PARTY ACTIVITY DECLINES IN 1985-86

A decline in financial activity at the federal level by both major political parties can be seen in the newly released Commission figures for the 1985-86 elections. As Charts III and IV show, the total amount of money raised and spent by both parties was less than in the previous 1983-84 cycle. Both parties ended the election year with less cash and higher debts.

In addition, the figures show that the Republican Party continued to lead in overall fundraising and spending. In direct support of federal candidates, the Republicans maintained a slightly less than two-to-one lead. The press release detailing the amounts raised and spent by both major parties, as well as contributions made to federal candidates and monies spent on their behalf, may be obtained from the Commission's Public Records Office. The FEC Report on Financial Activity, 1985-86: Party and Non-Party Political Committees, Final Report will be published in the Fall of 1987.

CHART I
PAC CONTRIBUTIONS TO SENATE AND HOUSE CANDIDATES, 1985-86

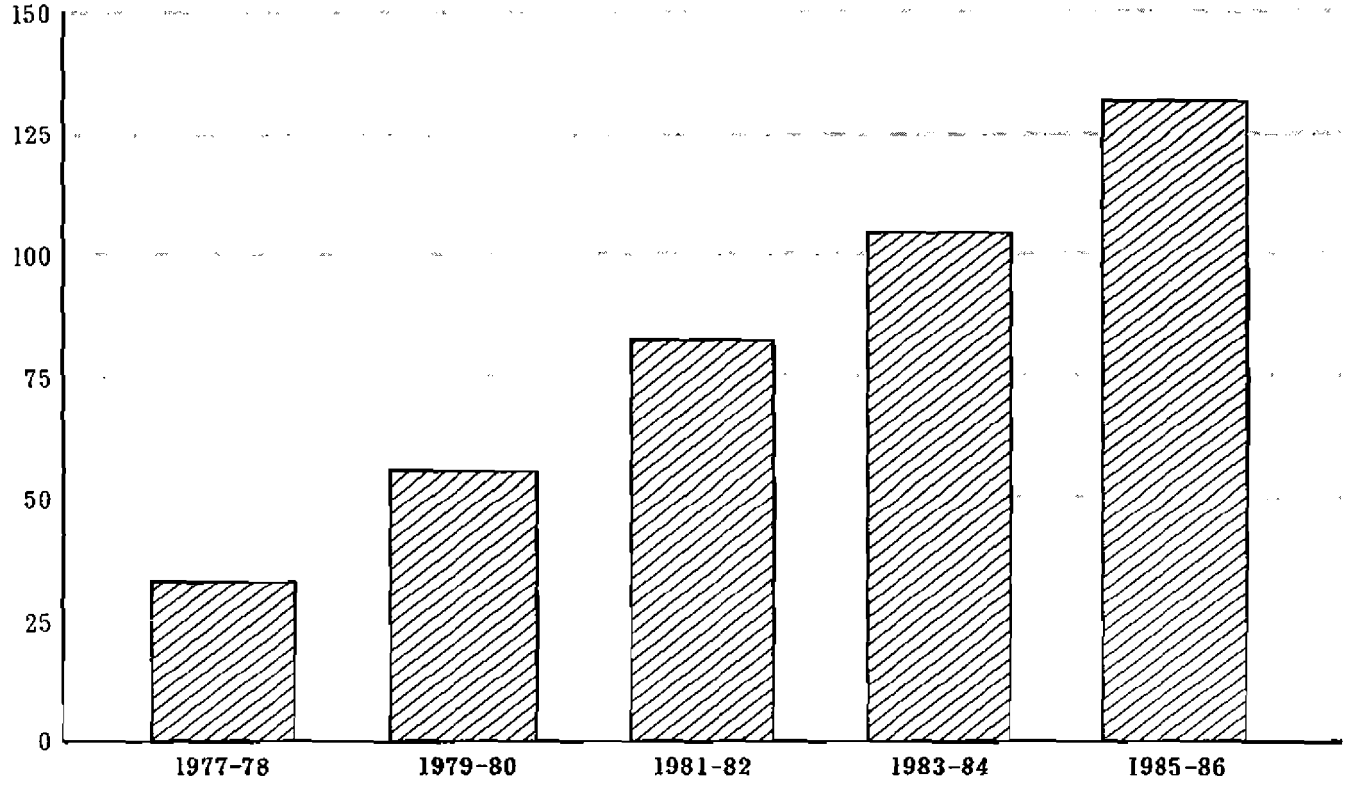


CHART II
PAC FINANCIAL ACTIVITY

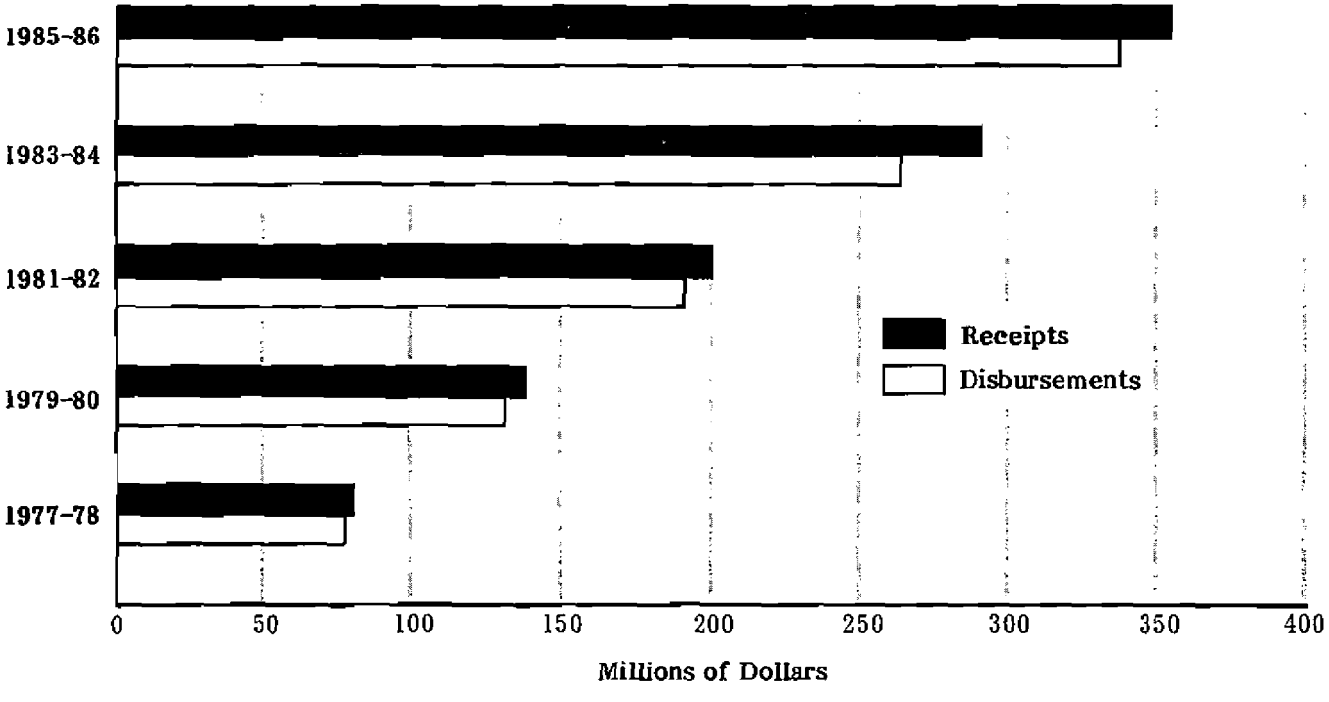


CHART III
DEMOCRATIC PARTY ACTIVITY, 1985-86*

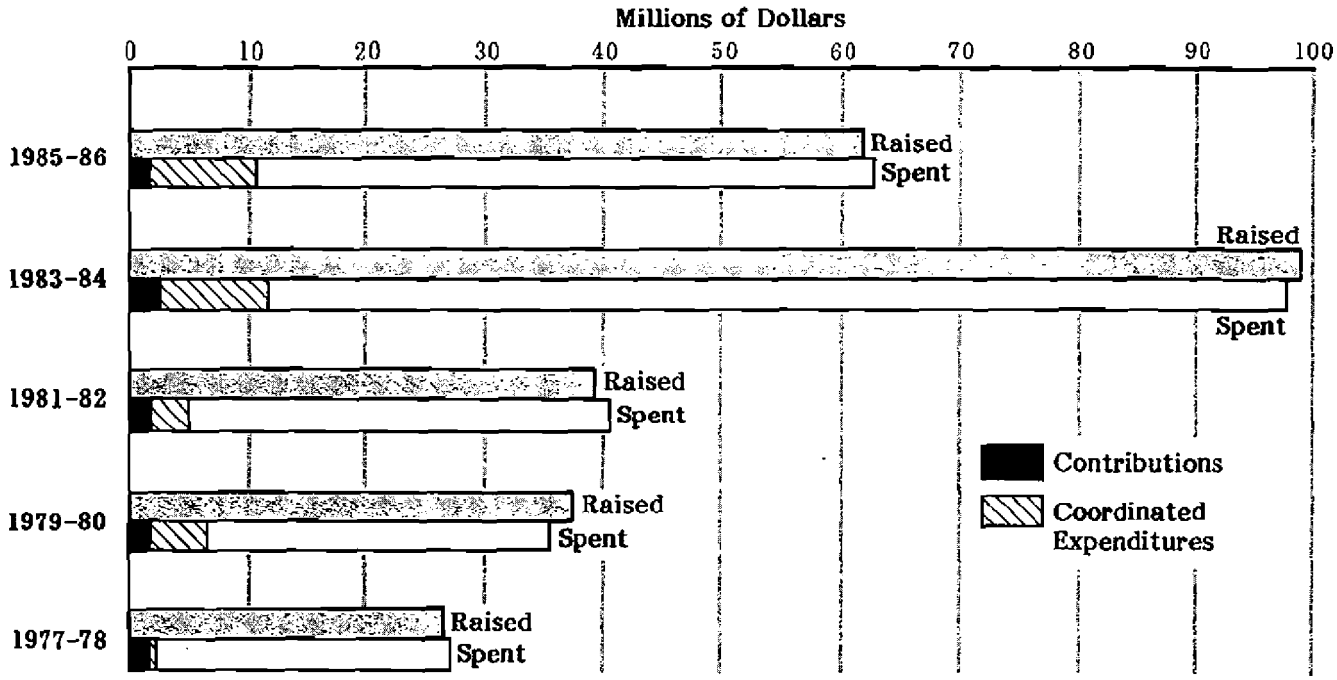
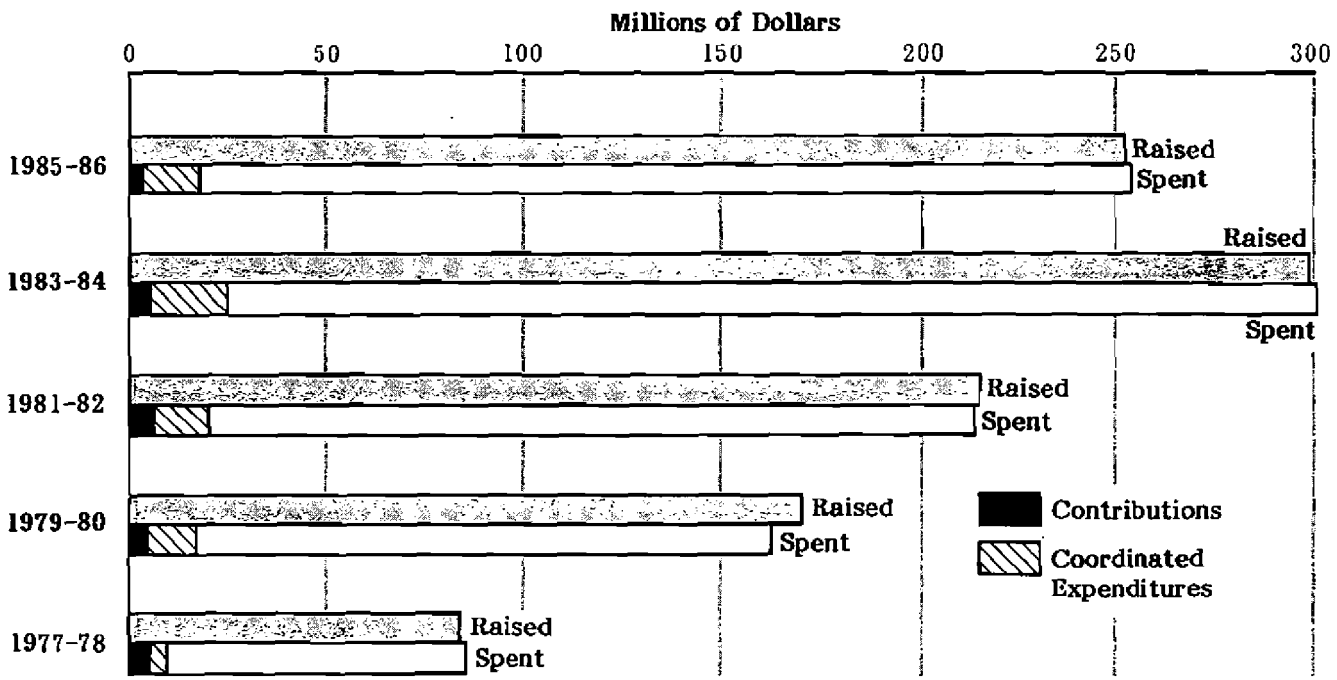


CHART IV
REPUBLICAN PARTY ACTIVITY, 1985-86*



*With regard to the bar called "spent," the difference between the total spent, on the one hand, and contributions and expenditures for candidates, on the other, reflects a variety of party building and administrative costs, including (but not limited to) staff salaries, fundraising expenses, research, contributions to state and local party committees, etc.

COURT CASES

FEC v. AMERICANS FOR JESSE JACKSON

On May 21, 1987, the United States District Court for the District of Maryland issued a consent order in FEC v. Americans for Jesse Jackson (CA No. Y-86-3766). Americans for Jesse Jackson was a 1984 political committee that was not authorized by Presidential primary candidate Jesse Jackson. In the consent order, the parties agreed that Americans for Jesse Jackson violated the Act in several ways:

- o The committee failed to file a statement of organization with the Commission after it had spent over $1,000 expressly advocating the election of Presidential candidate Jesse Jackson. 2 U.S.C. §433(a).
- o It failed to file the required reports of receipts and expenditures with the Commission. 2 U.S.C. §434.
- o It used the name of Jesse Jackson in its name even though the committee was not authorized by the candidate. 2 U.S.C. §432(e)(4).
- o It failed to include, on a mail solicitation for contributions, the name of the person who paid for the communication. 2 U.S.C. §441d(a)(3).

The defendant agreed to pay a civil penalty of $500 and to file all outstanding reports with the Commission within 30 days.

CLEARINGHOUSE

RENEWAL OF CLEARINGHOUSE ADVISORY PANEL CHARTER

On June 4, 1987, the Federal Election Commission, pursuant to the Federal Advisory Committee Act,* approved the biennial renewal of the Clearinghouse Advisory Panel Charter (Advisory Panel), beginning July 1987.

The objective of the Advisory Panel is to advise the Commission, through its Clearinghouse on Election Administration, on ways in which the administration of Federal elections may be improved. Drawing upon the expertise of its members and other sources, the Advisory Panel makes recommendations regarding possible topics of Clearinghouse research efforts as well as suggestions for other means of assisting election administrators in the performance of their tasks.

The Advisory Panel consists of sixteen members, nominated by the Clearinghouse Director through the Staff Director of the Federal Election Commission and appointed by the Federal Election Commission. When selecting members to fill vacancies, care is taken to ensure a balanced representation from state election officials and local election administrators. The Advisory Panel reports to the Commission through the Staff Director and the Director of the Clearinghouse on Election Administration, who also coordinates all activities of the Panel.

Under the Charter, the Advisory Panel will terminate in two years unless terminated earlier or renewed by the Commission.

800 LINE

HONORARIA

The Federal Election Commission often receives calls concerning the laws for giving and receiving honoraria. This article is intended to highlight some of the pertinent points in the Federal Election Campaign Act and the corresponding regulations that deal with the subject.

The Definition of an Honorarium

An honorarium is a payment of money (or anything of value) to an officer or employee of the federal government in consideration of an appearance, speech or article. 11 CFR 110.12 (b).

An appearance means attendance at a public or private gathering, convention, meeting, social event, or like gathering, and the incidental conversation or remarks made at that time. 11 CFR 110.12(b)(2).

A speech means an address, oration or other form of oral presentation, regardless of whether presented in person, recorded or broadcast over the media. 11 CFR 110.12(b)(3).

An article is a writing, other than a book, which has been or is intended to be published. 11 CFR 110.12(b)(4).

The law covers appointed and elected officials of the federal government and federal government employees. 11 CFR 110.12(b)(1). Federal candidates who are not simultaneously federal officeholders or employees are not subject to the honoraria provisions. See Advisory Opinion Request 1976-59.

The Limit for an Honorarium

The law places a limit of $2,000 on any one honorarim. 2 U.S.C. 441i(a) and 11 CFR 110.12 (a). The Act no longer mandates a total annual limit. (However, incumbent members of Congress should consult Senate and House Rules concerning "outside income.") An honorarium donated to a charitable organization is not subject to the honorarium limit. 2 U.S.C. 441i(b) and 11 CFR 110.12 (b)(5).

continued

**P. L. 92-463; 5 U.S.C. App.*

What is Not an Honorarium

Certain kinds of payments are not considered honoraria and, consequently, are not subject to the limits of the Act on honoraria. An honorarium does not, for example, include payments for transportation, housing or meals for the officeholder, a spouse or an aide. 11 CFR 110.12 (b). In effect, then, the recipient of the honorarium may accept such payments over and above what he or she receives as honorarium. For example, in Advisory Opinion 1984-29, the Commission said that a Senator could accept payments for the travel expenses of his older daughter (who functioned as an aide) and not count them as part of the honorarium, but payments for the Senator's infant daughter would be counted as part of the honorarium.

Payments for agent's fees and commissions are also not considered part of the honorarium. 11 CFR 110.12(b).

The definition of an honorarium does not include an award, a gift or a stipend. 11 CFR 110.12(c). An award is a gift of money or anything of value given primarily in recognition of some achievement. An award is based on an established selection process and does not require the recipient to take any action to compete for, or to receive, the award. 11 CFR 110.12(c)(1). For example, in AO 1975-85, a medal and a $5,000 prize received by a Senator in recognition of his public service in the field of human rights was considered an award -- not an honorarium. The Senator was not required to make an appearance or speech or prepare an article in order to receive the prize.

A gift is a voluntary conveyance of real or personal property which is made gratuitously and is not supported by consideration. 11 CFR 110.12(c)(2). Neither an award nor a gift may be made to serve in place of an honorarium or a contribution.

A stipend is a payment for services on a continuing basis. This includes payments by news media for commentary on events other than the campaign of the individual being compensated. 11 CFR 110.12(c)(3). In AO 1980-140, the Commission said that payments received by a Senator for making periodic radio commentaries while under contract to a production company were stipends. In AO 1985-4, payments received by a Senator for conducting seminars on government and public affairs at a university were stipends, not honoraria.

Honorarium for Article vs. Royalty for Book

Although compensation for an article is an honorarium, compensation for a book -- a royalty -- is not. In AO 1978-59, the Commission said that payments to a Senator for republication of his works as articles were honoraria even though the works were originally published in book form.

On the other hand, payments for works that are republished in a book, regardless of their original form, are not considered honoraria. In AO 1979-78, the fee paid to a Senator for serialization of his book in a magazine was considered a book royalty rather than an honorarium because the Senator's publisher negotiated the serialization fee, received the fee from the magazine and paid the Senator his percentage of the fee.

Honorarium vs. Contribution

It is important to understand the distinction between a contribution and an honorarium. A contribution is a gift, subscription, loan (other than by a qualified lending institution), advance or deposit of money or anything of value made by any person for the purpose of influencing an election for federal office. 11 CFR 100.7(a)(1). An honorarium, which is specifically exempted from this definition (11 CFR 100.7(b)(19)), is a payment given in consideration for an appearance, speech or article. 11 CFR 110.12(b).

The Commission has recognized that federal officeholders, who are also candidates for reelection, may receive lawful honoraria for non-campaign related appearances. (See AO 1984-29). In AO 1978-32, the Commission said that, as a general rule, the principal campaign committee of an incumbent should regard a receipt as a contribution when the donor indicates, orally or in writing, that the payment is for the purpose of supporting the candidate's reelection and is not an honorarium for the candidate's appearance as a federal officeholder. When determining whether a receipt is a contribution or an honorarium, all the facts and circumstances of a given situation are relevant.

Reporting Requirements

Under the Federal Election Campaign Act, candidates are not required to report the receipt of an honorarium. However, a candidate may need to disclose honoraria under the provisions of the Ethics in Government Act. For further details on reporting honoraria, House candidates should contact:

Committee on Standards of Official Conduct
HT-2 Capitol Building
Washington, D.C. 20515
202/225-7103.

Senate candidates should contact:
The Select Committee on Ethics
220 Hart Senate Office Building
Washington, D.C. 20510
202/224-2981.

A corporation or a labor union that gives an honorarium is not required, under the Federal Election Campaign Act, to report that disbursement unless the honorarium is paid from its PAC (i.e. its separate segregated fund).

In addition to the provisions of the Federal Election Campaign Act and corresponding regulations, candidates and political committees should consult Senate and House Rules and the Ethics in Government Act.

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CONFERENCE SERIES REMINDER

The three Fall conferences on election laws are proceeding on schedule. For more information on the series, contact the FEC's Information Services Division at: 202/376-3120 or toll-free 800/424-9530.

Conference Schedule

September 16-18*	Burlington, Vermont FEC and Vermont Secretary of State
October 15-16*	Madison, Wisconsin FEC and Wisconsin State Election Board
November 15-17*	Austin, Texas FEC and Texas Secretary of State

**The first day of the conference is for registration and, in some cases, a reception.*

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