

# Record

September 1997

Federal Election Commission

Volume 23, Number 9

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## Court Cases

### New Litigation

#### RNC v. FEC (97-1552)

The Republican National Committee (RNC) asks the court to find that the FEC's dismissal of an administrative complaint it filed against its counterpart, the Democratic National Committee (DNC), was contrary to law and to order the FEC to bring itself into compliance within 30 days.

The RNC filed the administrative complaint with the FEC in August 1995. In it, the RNC alleged that the DNC had used impermissible funds to pay for a nationwide media campaign in 1993 and 1994 to rally support for President Bill Clinton and other Democratic candidates in connection with Democratic legislative proposals for health care reform. Specifically, the RNC charged that the DNC had acted contrary to the Federal Election Campaign Act (the Act) and FEC regulations when it paid for the media campaign with more than \$3 million in nonfederal funds. No federal dollars were spent on this media effort.

Commission regulations state that if a political committee has both federal and nonfederal accounts, then it must allocate its administra-

*(continued on page 6)*

## Compliance

### MUR 4398

#### German National Pays Record Penalty for Contributions to U.S. Elections

Thomas Kramer, a German national and the owner of at least 17 Florida businesses, has paid a \$323,000 civil penalty to the FEC for violating the section of the Federal Election Campaign Act (the Act) that prohibits contributions by foreign nationals in connection with U.S. elections. 2 U.S.C. §441e. Altogether, he contributed over \$300,000 in connection with U.S. elections.

Mr. Kramer also was cited by the FEC for having made contributions in the name of another when he reimbursed his secretary, Terri Bradley, for \$21,000 in contributions to candidates and national political committees during the 1994 election cycle. 2 U.S.C. §441f. Ms. Bradley paid a \$21,000 penalty for her part in the contributions scheme. The Republican Party of Florida paid an \$82,000 civil penalty for accepting \$110,000 in impermissible foreign contributions from Mr. Kramer and one of the corporations he owns.

Mr. Kramer's civil penalty is the largest ever paid by an individual to

*(continued on page 2)*

## Compliance

(continued from page 1)

the Commission, and the total sum of civil penalties attached to this case—\$426,000—is among the largest in the FEC’s history.

### Law, Regulations and Advisory Opinions

In addition to the broad ban at 2 U.S.C. §441e that prohibits any foreign national from contributing to federal, state or local elections, Commission regulations at 11 CFR 110.4(a) state further that it is unlawful for any foreign national to “direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation...” with regard to decisions concerning the making of contributions in connection with such elections.

One exemption from this rule allows foreign nationals to contribute to party committees so long as those funds are used solely for noncampaign-related, redistricting issues. AOs 1982-14 and 1981-35.

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Additionally, it is unlawful for any person to make a contribution in the name of another person or to knowingly permit his or her name to be used in such a scenario. 2 U.S.C. §441f.

### Violations

Mr. Kramer made a total of \$322,600 in impermissible contributions to federal, state and local political committees in his own name (\$13,000), through 17 companies that he owned and controlled (\$287,600), by reimbursing his secretary (\$21,000) and through unknown intermediaries (\$1,000).

Additionally, Mr. Kramer contributed a total of \$205,000 to the Republican Party of Florida. The party, in turn, deposited \$95,000 of the donations in a segregated redistricting account—a permissible donation—and deposited the remainder in its federal and nonfederal accounts—prohibited in U.S. elections. The party said it was unaware that Mr. Kramer was a foreign national or that the corporation, through which more than half of the contributions were received, was controlled by a foreign national.

Mr. Kramer’s secretary was directed to make a \$1,000 contribution to the Mitchell for Senate committee and a \$20,000 contribution to the Democratic Senatorial Campaign Committee. She was then reimbursed for the full amounts by Mr. Kramer.

This MUR, or Matter Under Review, was initiated by Mr. Kramer after news accounts revealed that his contributions were most likely illegal. Following a review of the information, but prior to finding probable cause to believe that Mr. Kramer, Ms. Bradley or the Florida Republicans had violated the law, the Commission entered into conciliation agreements with them. ♦

## MUR 3546 Coordinated Party Expenditures Result in Excessive Contribution

President Bill Clinton’s 1992 Presidential primary committee, the Clinton for President Committee, and the Democratic National Committee (DNC) each paid \$10,000 civil penalties to the FEC for having violated the election law in connection with a televised town hall meeting that included a toll-free number for viewers.

During the 30-minute town hall meeting that was televised nationwide in June 1992, then Gov. Clinton answered questions from the television audience, while a toll-free, 800 number periodically appeared on the screen. People who called the number were offered three options:

- Receive the President’s “Plan for America’s Future,”
- Leave a message for Mr. Clinton, or
- Make a contribution to the Clinton for President Committee, his primary election campaign committee.

The DNC paid for both the broadcast and the 800 number, treating them as coordinated party expenditures under 2 U.S.C. §441a(d). Because the 800 number included a solicitation for contributions to Mr. Clinton’s primary election committee, a portion of the DNC’s expenditure had to be considered a contribution to Mr. Clinton’s primary campaign rather than a coordinated party expenditure made in connection with the general election. Multicandidate political committees have a \$5,000 limit per election for contributions to any candidate or candidate’s authorized committee. 2 U.S.C. §441a(a)(2)(A). Because the portion of the broadcast and 800 number expenditures attributable to the primary amounted to \$120,000, which exceeds the \$5,000 limit, the

DNC made an excessive contribution to Mr. Clinton's primary campaign. The Clinton committee violated the Act at 2 U.S.C. §441a(f) when it accepted the excessive contribution from the DNC.

Furthermore, because the televised town hall meeting included express advocacy<sup>1</sup> and a solicitation for contributions, it had to include a disclaimer stating who paid for and who authorized the communication. 2 U.S.C. 441d(a). The DNC included only a partial disclaimer in the broadcast. It stated that it paid for the town hall meeting, but failed to say whether or not the payment was authorized by a candidate.

This MUR, or Matter Under Review, was initiated after the FEC received a complaint from the Republican National Committee. The Commission found probable cause to believe that a violation of the Act had occurred and entered into a conciliation agreement with the candidate and the party committee. ♦

<sup>1</sup> As evidence of express advocacy, the conciliation agreement stated that the television program started with people stating that they were undecided voters. Mr. Clinton indicated, near the beginning, that he wanted to help listeners make the right decision in the Presidential race. Later, Mr. Clinton explained his position on a variety of issues important in the 1992 Presidential campaign. In response to a question about affordable health care, Mr. Clinton said, "I will do that if elected President."

## Statistics

### Semiannual PAC Count Shows Decrease

As of July 1997, there were 3,875 political action committees, or PACs, registered with the FEC. That figure represents a drop of 204 PACs since the last survey was taken in December 1996.

The table below shows midyear and year-end PAC figures compiled by the FEC since 1990. For a complete listing of PAC statistics dating back to 1974, go to the FEC's web site at <http://www.fec.gov> or request a copy of the FEC's July 25 Press Release from the Public Records Office at 1/800-424-9530 (press 3). ♦

### Federal Register

Federal Register notices are available from the FEC's Public Records Office.

#### Notice 1997-12

Definition of "Member" of a Membership Association: Advance Notice of Proposed Rulemaking (62 FR 40982, July 31, 1997)

#### Notice 1997-13

Filing Dates for New York Special Election (62 FR 43733, August 15, 1997)

### Midyear and Year-End PAC Counts, July 1990-July 1997

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected <sup>1</sup>	Total
Jul. '90	1,782	346	753	58	139	1,115	4,193
Dec. '90	1,795	346	774	59	136	1,062	4,172
Jul. '91	1,745	339	749	57	137	1,096	4,123
Dec. '91	1,738	338	742	57	136	1,083	4,094
Jul. '92	1,731	344	759	56	144	1,091	4,125
Dec. '92	1,735	347	770	56	142	1,145	4,195
Jul. '93	1,715	338	767	55	139	1,011	4,025
Dec. '93	1,789	337	761	56	146	1,121	4,210
Jul. '94	1,666	336	777	53	138	963	3,933
Dec. '94	1,660	333	792	53	136	980	3,954
Jul. '95	1,670	334	804	43	129	1,002	3,982
Dec. '95	1,674	334	815	44	129	1,020	4,016
Jul. '96	1,645	332	829	43	126	1,058	4,033
Dec. '96	1,642	332	838	41	123	1,103	4,079
Jul. '97	1,602	332	826	41	118	953	3,875 <sup>2</sup>

<sup>1</sup> Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor "connected organizations" that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.

<sup>2</sup> During the first six months of 1997, 227 PACs were administratively terminated because of inactivity.

## Advisory Opinions

### AO 1997-9 Electronic Collection of Member Traders' PAC Contributions

The Chicago Board of Trade's (CBOT's) PAC may collect voluntary contributions from its member traders through a monthly electronic deduction and transfer of funds from the traders' personal trading accounts maintained by trading firms. It is permissible for a trading firm to perform these functions so long as the firm and the CBOT follow guidelines set out in this advisory opinion.

The CBOT is a licensed commodity exchange, and the Auction Markets Political Action Committee (AMPAC) is its separate segregated fund (SSF). The CBOT identifies as its members those who own a seat on the exchange, lease a self-owned or firm-owned seat or are named a member on a firm-owned seat. Typically, traders conduct their business through a trading firm—a partnership, corporation or limited liability company—which clears the trades executed by its members. These trading firms are also identified as members by the CBOT.

#### Role of the CBOT

While the Act prohibits corporate contributions or expenditures in connection with a federal election, it does allow such businesses to establish and pay the administrative costs of an SSF. 2 U.S.C. §441b(b)(2)(C). An SSF established by a corporation without capital stock, such as a membership association, may solicit contributions from its members. The Commission assumed that the CBOT was a membership organization and that the member traders who would be using their individual trading accounts qualified as members

under the Act. AO 1997-5. (See the [July 1997 Record](#).)

Currently, the CBOT sends each member firm a monthly statement letting it know how much the CBOT is owed by all the individual members who maintain trading accounts with the firm. The firm collects the fees from its traders by electronically deducting the amounts from their personal accounts. Those amounts are then electronically transferred from the firm's bank account to the CBOT's account.

The proposal for deducting and transferring SSF contributions would work similarly. However, the contributions would be separated from the other monthly fees and automatically transferred from the CBOT's bank account to AMPAC's bank account. The CBOT would receive authorization from member traders for the check-off before it proceeded with the deductions and transfers. Under the proposal, at the time of a transfer, a trader would have to satisfy the margin and risk exposure requirements of the CBOT and the firm, and all other currently owed obligations. The trader would have to have enough left over in his or her account to cover the contribution amount. In the event that an individual trader did not have sufficient funds in his or her account to cover the contribution, no deduction or transfer would occur. This would prevent AMPAC from receiving a prohibited corporate contribution or possibly an excessive contribution, if the member firm was a partnership or limited liability corporation. 2 U.S.C. §§441b(a), 441a(a)(1)(C) and 441a(f), and 11 CFR 110.1(e).

It also would avoid a firm's making a contribution in the name of one of its individual traders. 2 U.S.C. § 441f. Contributions must be transferred to the CBOT based upon the status of the trader's account at the time of the transfer, not any period prior to that.

In transferring SSF contributions from its account to AMPAC's

account, the CBOT would be performing the functions of a collecting agent. 11 CFR 102.6(b). By virtue of this status, the CBOT could pay the solicitation and transfer costs it incurred for soliciting and transmitting the contributions it received. So long as the CBOT did not engage in any other activities that influenced federal elections, it could serve as a collecting agent without registering as a political committee and reporting to the FEC. Contributions of \$50 or less would have to be transmitted from the CBOT to AMPAC within 30 days; contributions that are more than \$50 would have to be transmitted within 10 days. 11 CFR 102.8(b)(1) and (2).

Under FEC regulations, one check from a contributing member to the collecting agent, representing both a contribution and other fees, is permissible so long as the funds are drawn on a personal account or nonrepayable corporate drawing account of the member. 11 CFR 102.6(c)(3). Although, in this case, the deduction and transfer are not carried out with an actual check, the CBOT's electronic transaction contains the same protections as those described in AO 1990-4, which addressed combining a contribution and a membership fee in one written check.

#### Role of Member Clearing Firms

The member firm would be involved in transmitting contributions to CBOT, but it would qualify as neither a connected organization of AMPAC nor a collecting agent. That means that the cost to the trading firm for transmitting contributions and monitoring the accounts would be considered an in-kind contribution unless one of two possible exemptions applied.

Under Commission regulations, legal and accounting services provided to political committees are not considered contributions so long as the person paying for such services is the regular employer of



the individual rendering the services and the services are rendered solely to ensure compliance with the Act and the provisions in title 26. 11 CFR 100.7(b)(14). In this case, reviewing traders' accounts and setting up the process for deducting contributions and sending them to the CBOT (which includes, as an integral part, a method for ensuring that sufficient funds are available) would be for the purpose of ensuring AMPAC's compliance with the Act. Consequently, regular employees of the member firms could carry out such functions without making an in-kind contribution. AMPAC would have to report the value of the service as a memo entry on Schedule A.

The second exemption would allow the CBOT to treat the member firms' expenses as exempt administrative costs so long as it paid the member firms for these costs. The CBOT would pay the firms on a periodic basis or, if the actual cost were difficult to determine, it could contract with member firms for an amount based on a reasonable estimate of the costs of such services, and thereafter pay that amount.

Date Issued: July 31, 1997;  
Length: 10 pages. ♦

### **AO 1997-11** **Use of Campaign Funds for Language Program**

Congresswoman Lucille Roybal-Allard may use campaign funds for tuition, travel and other related expenses to participate in a Spanish language immersion program. Such expenses do not constitute personal use.

Ms. Roybal-Allard, who represents a California congressional district with a large constituency of Spanish speakers and people who speak limited English, plans to enroll in a language immersion program to help her be more effective and responsive to those constituents' needs and concerns. She

wants to enroll in a program that could cost as much as \$5,000.

Candidate committees may not convert campaign funds to the personal use of the candidate or any other person. 11 CFR 113.1(g) and 113.2(d). FEC guidelines define personal use as "any use of funds in a campaign account...that would exist irrespective of the candidate's campaign or duties as a federal officerholder." Among the personal use examples listed at 11 CFR 113.1(g)(1)(i) is tuition payments, unless those payments are for training campaign staff. In addition, the regulations state that excess campaign funds may be used to pay for travel for the candidate to participate in functions so long as they are directly connected to bona fide official responsibilities. 11 CFR 113.2(a).

Because effective communication with constituents is part of a member's representative function, tuition for the immersion program is directly related to Ms. Roybal-Allard's duties as a congresswoman. The travel expenses related to the immersion program would not exist if Ms. Roybal-Allard were not a federal officeholder. Consequently, campaign funds may be used to pay for them. In making this determination, the Commission emphasized the importance of the limited duration of classes (two weeks) and the program's immediate link to Ms. Roybal-Allard's duties as she interacts with constituents in her district.

The optional add-ons in each of the programs Ms. Roybal-Allard is considering—golfing in the case of one program and after-class excursions and a trip to Acapulco in the case of another—do not have a substantive link to the immersion program. Payments for these expenses would therefore be deemed a personal expense and could not be paid for with campaign funds. Any campaign committee disbursements that are permissible in this advisory opinion, but are not

campaign related, should be reported as "other disbursements."

Date Issued: July 25, 1997;  
Length: 4 pages. ♦

### **Alternative Disposition of Advisory Opinion Request**

#### **AOR 1997-08**

This advisory opinion request, submitted by Congressman Lamar Smith and his authorized committee, was withdrawn from consideration on July 14. Mr. Smith had requested an opinion on the use of campaign funds to rent space in a dwelling that he owns. ♦

### **Advisory Opinion Requests**

Advisory opinion requests are available for review and comment in the Public Records Office.

#### **AOR 1997-15**

Establishment of nonconnected PAC by incorporated membership organization's CEO (Kenneth Nickalo; July 21, 1997; 2 pages plus 23-page attachment)

#### **AOR 1997-16**

Methods of providing PAC endorsements of federal candidates to restricted class (Oregon Natural Resources Council Action Federal PAC; July 31, 1997; 2 pages plus 24-page attachment) ♦

### **Correction**

Acceptable depositories for political committees registered with the FEC include federally chartered institutions or banks where accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A footnote to the article summarizing Advisory Opinion 1997-6, which appeared in the August *Record*, incorrectly stated that bank accounts insured by the Federal Savings and Loan Insurance Corporation (FSLIC) also were acceptable depositories. The FSLIC was abolished in 1989. ♦

## FEC Sets Conference Schedule

The FEC has set dates for three regional conferences, and tentative dates for four others for 1997 and 1998. To register for any of the three scheduled conferences, call Sylvester Management at 1/800-246-7277 or send an e-mail message to [TSYLVESTER@WORLDNET.ATTNET](mailto:TSYLVESTER@WORLDNET.ATTNET).

### Seattle

Date: September 24-26, 1997  
Location: Cavanaugh's Inn  
Registration: \$175  
Hotel rate: \$134  
Candidates, political parties, corporate and labor organizations

### Atlanta

Date: October 15-17, 1997  
Location: Sheraton Colony Square  
Registration: \$180  
Hotel rate: \$149  
Candidates, political parties, corporate and labor organizations

### Washington, DC

Date: November 6-7, 1997  
Location: Madison Hotel  
Registration: \$180.50  
Hotel rate: \$124  
Corporate and labor organizations

Read future issues of the *Record* to get more scheduling information for these conferences:

### Washington, DC

December 1997  
Trade and membership associations

### Washington, DC

February 1998  
Candidate committees

### Denver

March 1998  
Candidates, political parties, corporate and labor organizations

### Washington, DC

April 1998  
Nonconnected committees

For more information, call the FEC at 1/800-424-9530 (press 1).

## Court Cases

(continued from page 1)

tive and generic expenses between those two accounts. 11 CFR 102.5. During a non-presidential election year, national party committees must allocate at least 60 percent of such expenses to the federal account. 11 CFR 106.5(b)(2)(ii).

The Commission reviewed the RNC's complaint—designated MUR 4246—and voted unanimously to close the case. This vote came after the Commission had failed to accept a recommendation from the Commission's general counsel that it accept a DNC proposal that would have had the Democrats admit violating the Act and pay an undisclosed penalty.<sup>1</sup>

In addition to the alleged violations of the Act and Commission regulations, the RNC's court complaint points to a 1995 advisory opinion from the Commission that, the RNC believes, describes a situation that is legally indistinguishable from the DNC's health care reform campaign. In AO 1995-25, the Commission told the RNC that it had to allocate, between its federal and nonfederal accounts, its expenditures for a media campaign that highlighted several Republican legislative initiatives. The RNC states that the Commissioner who cast the dissenting vote to adopt the general counsel's recommendation for MUR 4246 had voted to approve AO 1995-25.

U.S. District Court for the District of Columbia, 97-1552, July 7, 1997. ♦

<sup>1</sup> *Three commissioners voted to accept the general counsel's recommendation, one commissioner voted against the recommendation and one commissioner recused himself from voting on this issue. There is one vacancy on the six-member Commission.*

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## Change of Address

### Political Committees

Treasurers of registered political committees automatically receive the Record. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate or the FEC (as appropriate) and with the appropriate state office.

### Other Subscribers

Record subscribers who are not registered political committees should include the following information when requesting a change of address:

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber's name;
- Old address; and
- New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

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