The original documents are located in Box 2, folder "Republican National Committee - White House Accounts (1)" of the Benton L. Becker Papers at the Gerald R. Ford Presidential Library.

8/4/75

FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

1325 K Street, N. W.
Washington, D. C. 20463
202-382-5162

July 30, 1975

Honorable James O. Eastland
President Pro Tempore
United States Senate
Washington, D. C. 20510

Dear Mr. President:

In accordance with Section 316(c) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 438c, the Federal Election Commission transmits herewith a proposed regulation pertaining to accounts used to support the activities of Federal officeholders.

The proposed regulation serves several purposes, all related to the Commission's mandate to secure compliance with the disclosure and contribution and expenditure limitations of the 1971 Act as amended. It requires the establishment of a system of accounts which differentiates between funds spent under 39 U.S.C. Section 3210, relating to the use of the frank, and funds otherwise contributed or expended to support the activities of Federal officeholders, other than appropriated funds. It requires full disclosure of contributions to and expenditures from each account. It affirms the applicability of the limitations of 18 U.S.C. Sections 608, 610, 611, 613, 614 and 615, to contributions and expenditures of funds supporting the activities of Federal officeholders, save for funds designated for use and used under 39 U.S.C. Section 3210, and funds appropriated by the Congress for legislative activities. The regulation also partially qualifies the uses to which excess campaign funds may be put.

A unanimous Commission believes that the proposed regulation represents both a fair and a necessary effort to fulfill the Commission's obligation to cause the fullest possible disclosure of election-related contributions and expenditures, and to assure observance of the limitations on contributions and expenditures which are at the heart of the 1971 Act, as amended.

The Commission includes with this letter three attachments. Attachment 1 is the text of the proposed regulation, and Attachments 2 and 3 are, respectively, the explanation and justification of the proposed regulation, as required by the Act.

Sincerely yours,

Thos B Curtis

Thomas B. Curtis
Chairman

TBC:me
Attachments

PART 113 - OFFICE ACCOUNTS AND FRANKING ACCOUNTS; EXCESS CAMPAIGN CONTRIBUTIONS

§ 113.1 Definitions.

(a) Commission. "Commission" means the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, (202) 382-5162.

(b) Excess campaign funds. "Excess campaign funds" means the surplus of campaign receipts, including all contributions, sales and income, over campaign expenditures.

(c) Franking account. "Franking account" means an account which is used exclusively for the purpose of receiving and expending funds pursuant to 39 U.S.C. §3210. Such funds may not be transferred to any other account or political committee.

(d) Office account. "Office account" means an account other than a franking account which is used for the purpose of supporting the activities of a federal officeholder.

(e) Principal campaign committee. "Principal campaign committee" means the political committee designated by a candidate as his or her principal campaign committee pursuant to 2 U.S.C.§432(f)(1).

(f) Legislative activities. "Legislative activities" means those activities which are paid for solely out of appropriations approved by either or both houses of Congress, for use by members and members-elect of Congress. Such appropriations include but are not limited to those for salaries, constituent services, stationery, travel and general office expenses.

§ 113.2 Contribution and Expenditure Limitations and Prohibitions.

(a) All funds including but not limited to gifts, loans, advances, credits or deposits of money or any other thing of value which are received or expended by an incumbent or elected holder of a federal office for the purpose of supporting his or her activities as a holder of such office shall be considered contributions or expenditures subject to the limitations of 18 U.S.C. §§ 608, 610, 611, 613, 614 and 615.

(b) Notwithstanding subsection (a) of this section the limitations of 18 U.S.C. § 608 do not apply (1) when a contributor states in writing that the contribution is to be used exclusively for expenditures made pursuant to 39 U.S.C. §3210, provided that such contributions shall be deposited in a franking account, or (2) when expenditures are made from funds provided for legislative activities.

§ 113.3 Deposits of Funds into Office and Franking Accounts.

Except for funds appropriated for legislative activities, all funds received by or on behalf of a federal officeholder for the purpose of supporting his or her activities as a holder of such office shall be deposited into one of the following accounts:

(a) an account of the officeholder's principal campaign committee, pursuant to 2 U.S.C. §437b, or

(b) a franking account, or

(c) an office account, pursuant to 2 U.S.C. §437b.

§113.4 Reports of Franking Accounts.

(a) All individuals having franking accounts shall file reports with the Commission on April 10 and October 10 of each year.

(b) The April 10 report shall include all receipts and expenditures

made from October 1 of the prior year to March 31 of each year.

The October 10 report shall include all receipts and expenditures made from April 1 to September 30 of each year. These reporting obligations shall be effective prospectively on the effective date of this regulation (designated Part 113).

(c) Such reports shall include the name, address, occupation and principal place of business of all persons making contributions aggregating in excess of $100 during the reporting period. Such reports shall include the name and address of all persons receiving expenditures aggregating more than $100 during the reporting period.

(d) Forms will be provided by the Commission to implement this section.

§113.5 Reports of Office Accounts.

(a) All individuals having office accounts shall report as if such account is a political committee, and on forms provided for that purpose, pursuant to 2 U.S.C. §434.

(b) If the officeholder, former officeholder, or candidate has designated a principal campaign committee such individual shall file the reports required by this section with such principal campaign committee.

(c) If the officeholder, former officeholder, or candidate has not designated a principal campaign committee such individual shall file the reports required by this section with the Commission.

§ 113.6 Excess Campaign Funds.

(a) A principal campaign committee may transfer excess campaign funds to an office account, a franking account, an organization

described in 26 U.S.C.§170(c), or for any other lawful purpose.

(b) Excess campaign funds expended on or before December 31 in an election year will be considered expenditures for the last election of that year. Excess campaign funds not expended or transferred by December 31 of an election year will be considered expenditures for the next election when they are expended or transferred. Except for transfers to a franking account, such expenditures, whether made before or after December 31 of an election year, are subject to the expenditure limitations of 18 U.S.C. 608(c).

ATTACHMENT 2

EXPLANATION OF PART 113 - OFFICE ACCOUNTS AND FRANKING ACCOUNT; EXCESS CAMPAIGN CONTRIBUTIONS

The following explanation of part 113 will follow the proposed regulation section by section, omitting only those sections which are self-explanatory.

§113.1 Definitions.

(b) Excess campaign funds. The terms "contribution" and "expenditure" are defined in the Federal Election Campaign Act, 2 U.S.C. §431 et seq. The Commission, in regulations which are to follow this regulation, will further define these two terms. The term "expenditures" includes, for the purposes of this regulation, goods or services ordered or received but not yet paid for. The term "receipts" includes all money or other things of value actually received. For example, if a principal campaign committee orders and receives $10,000 worth of bumper stickers but does not pay for them, the $10,000 nonetheless counts as an expenditure. A pledge to make a $1,000 contribution does not count for excess campaign funds purposes until actual receipt of the monies pledged. In other words, excess campaign funds are the total assets of a campaign less debts and other commitments.

(c) Franking account. A franking account can be used for all uses enumerated in 39 U.S.C. §3210 including, but not limited to:

(1) mail matter regarding governmental programs, and actions of a past or current Congress,

(2) newsletters,

(3) press releases,

(4) questionnaires.

Personal and political letters can not be sent under the frank. Mass mailings can not be sent under the frank less than 28 days before an election.

Expenditures can be made from a franking account for the preparation and printing of materials sent under the frank.

(d) Office account. Examples of expenditures which would be made from an office account are travel expenses, expenditures for printing non-frankable matter (e.g., newsletters and questionnaires sent less than 28 days before an election) and telephone expenses over and above Congressional allowances.

(f) Legislative activities. Activities paid for by donations, over and above Congressional allowances, are deemed not to be legislative activities.

§113.2 Contribution and Expenditure Limitations and Prohibitions.

All contributions and expenditures from an office account are treated as political contributions and expenditures. A person can therefore make only a $1,000 contribution per election to either a candidate's office account or to his or her principal campaign committee, or can split the $1,000 between the two accounts. 18 U.S.C. §608(b). Similarly, a candidate and his immediate family can personally spend only $25,000, if a Member of the House of

Representatives, or $35,000 if a Senator, for office expenses and campaign expenditures combined. 18 U.S.C. §608(a).

The above contribution and expenditure limitations do not apply to contributions "earmarked" for a franking account or expended by such an account. However, contributions to a franking account from corporate and union treasuries are prohibited (18 U.S.C. §610), as are contributions by government contractors (18 U.S.C. §611), contributions by foreign nationals (18 U.S.C. §613), contributions in the name of another (18 U.S.C. §614) and cash contributions of more than $100 (18 U.S.C. §615).

§113.3 Deposits of Funds into Office and Franking Accounts.

This section provides for the deposit of funds into three segregated accounts: 1) principal campaign committee, 2) office, and 3) franking. An officeholder is not required to set up any of these accounts if he or she does not receive contributions or make expenditures over and above Congressional allowances for legislative activitie Further, even if an officeholder receives contributions to support his or her activities as a holder of such office, the officeholder need not establish a principal campaign committee. An officeholder, not wishing to establish a campaign organization, can set up an office account and not designate a principal campaign committee.

Office accounts, inasmuch as they are treated as political committees, must designate depository pursuant to 2 U.S.C. §437(b).

§113.4 Reports of Franking Accounts.

Franking accounts are required to file two six month reports per year with the Commission on April 10 and October 10. These reports will include the same type of information that is required on reports of political committees. The October 10 report will include expenditures for mass mailings made prior to the general election, since a franking account can not be used for such mailings 28 days before an election.

§113.5 Reports of Office Accounts.

Office accounts are required to file quarterly reports of receipts and expenditures in the same manner as political committees. If the officeholder has designated a principal campaign committee the office account will file reports with the principal committee. If the officeholder has not designated a principal campaign committee the officeholder's office accounts will file reports directly with the Commission.

§113.6 Excess Campaign Funds.

If, after a campaign and after meeting all debts and other obligations, a principal campaign committee has funds left over, the excess can be given to charity, to an office account, a franking account or for any other lawful purpose. For example, if a successful

candidate for the House of Representatives raises $100,000 in contributions for the general election and expends only $60,000, he or she has $40,000 in excess campaign funds. This member-elect of Congress has until December 31 to expend the $40,000 surplus. Only $10,000 can be expended out of an office account during this period because of the $70,000 expenditure limit imposed by 18 U.S.C. §608. However, the remaining $30,000 can be expended by a franking account without affecting the $70,000 limitation. More than $10,000 can be put in the office account. However, no more than $10,000 can be expended before December 31 of the election year. Expenditures by the office account in January of the next year will count toward the member's limit for the next election, either a special election or a primary election.

JUSTIFICATION OF PART 113 - OFFICE ACCOUNTS AND FRANKING ACCOUNT: EXCESS CAMPAIGN CONTRIBUTIONS

This statement will provide justification for the proposed office account regulation on a section-by-section basis.

§113.2 Contribution and Expenditure Limitations and Prohibitions.

Contributions to and expenditures by an office account are treated as political contributions and expenditures subject to the limitations and prohibitions on such transactions. There are two exceptions: Matter sent under the frank and monies appropriated by Congress to fulfill the functions of a Member of Congress.

The Commission, pursuant to its duty to formulate general policy with respect to the administration of the Federal Election Campaign Act, as amended (the Act) [See 2 U.S.C. §437d(a)(9)], and to its authority under 2 U.S.C. §437d(d)(8), has determined that expenditures and contributions over and above the two exceptions should be treated as political in nature. This determination is based on recent legislation concerning the frank and the tax treatment of newsletter accounts.

Congress has determined that the cost of preparing and printing frankable matter should not be considered a contribution or an expenditure for the purpose of determining any limitation on expenditures or contributions. 39 U.S.C. §3210(f). The Commission has followed this precedent in

its treatment of frankable matter. Congressman Frenzel, in supporting the Federal Election Campaign Act Amendments of 1974, stated:

> Questions have been raised as to whether or not congressional newsletters and other similar publications would be considered expenditures under the provisions of this bill. The congressional franking law passed last spring clearly states that such newsletters and other similar publications are legitimate expenses and can be sent under the frank. In general, I believe the Commission should follow the following guideline: If any item or publication can be sent under the frank, it should not be counted as an expenditure for the purpose of influencing an election. Hence, congressional newsletters and other similar publications need not be credited to the contribution or expenditures limits of congressional candidates.
>
> 120 Cong. Rec.
> H 10333 (Daily Ed., October 10, 1974)

It logically follows at the very least that a newsletter and other matter not sent under the frank should be considered political and therefore funds contributed and expended to support such newsletters and other matter should be subject to the limitations of 18 U.S.C. §608(c).

Several other laws deal with franked matter which suggest its use should be non-political. See 39 U.S.C. §3210(a)(5)(C). For example, no franked mass mailings are permitted less than 28 days before an election. Activities such as soliciting contributions and mass mailings within four weeks of an

election are clearly political and funds used for these purposes should clearly be treated as expenditures and contributions subject to all limitations in the Federal Election Campaign Act.

Recent tax legislation reflects the intimate relationship between newsletter funds and campaign funds. The conference report to the Upholstery Regulator Act states: "Generally newsletter committees (and separate funds are to be treated for tax purposes in the same manner as political campaign committees." H. Rept. 93-1642, 93d Cong., 2nd Sess. 22. During the debate on this legislation, several Members further noted the similarity between these two types of funds:

> MR. SCHNEEBELI. Another change of importance would make individual contributions to candidates for public office which are used for newsletters to be eligible for the above-mentioned income tax credit for deductions.
>
> Mr. ULLMAN. Mr. Speaker these provisions place in the law the procedures outlining how we can use funds we have collected for political purposes, for newsletter purposes. We think this avoids the necessity for having a separate newsletter fund for Members who have a continuing campaign fund (emphasis added). (Congressional Record, daily edition December 20, 1974, page H12597.)

This exchange and the quoted report seem to the Commission to be a statement of Congressional awareness of the political and campaign nature of some newsletters.

The Upholstery Regulator Act permits individual taxpayers to take a tax deduction or a tax credit for money

given to a newsletter account. 26 U.S.C. §§41 and 218. These sections of the Internal Revenue Code treat newsletter fund contributions and political contributions in the same manner; lumping the two together to allow an aggregate tax deduction or credit. Following this precedent, the Commission will treat funds contributed to support a non-frankable newsletter as a political contribution and expenditures made in connection with such newsletter as an expenditure subject to the limitations of the Act.

The Commission is of the opinion, however, that Congressional appropriations for staff salaries, newsletters, stationery and travel are for presumptively non-political, legislative activities and, therefore, not subject to the limitations and prohibitions of the Act. One may assume that Congress has provided or will provide sufficient funds for the non-political functions of the Membership. Accordingly, additional monies not appropriated by Congress but rather raised independently by the Members themselves or their supporters should be viewed as political and not legislative funds. Congress is, of course, always free to appropriate any additional funds deemed necessary to enable Members to carry out their legislative functions. Indeed, the point was recently emphasized by the Honorable Wayne L. Hays, when he indicated that such additional money should come from

the public treasury and not from contributions to Members or from the Members' own pocket.[1]

§113.3 Deposits of Funds into Office and Franking Accounts.

This section was drafted to implement 2 U.S.C. 439a. The provision of separate accounts facilitates reporting so that different accounts are not commingled. Members of Congress will have the option of using a principal campaign committee or an office account to make certain expenditures, such as for a non-frankable newsletter or questionnaire.

§113.4 Reports of Franking Accounts and

§113.5 Reports of Office Accounts

2 U.S.C. 439a provides that contributions to a federal officeholder for the purpose of supporting his or her activities as an officeholder and expenditures thereof "shall be fully disclosed in accordance with rules promulgated by the Commission." The Commission determined that office accounts, since they are treated for most purposes as political (See Section 113.2, supra), should file in the same manner and at the same time as political committees. Franking accounts are required to file less often, twice a year, so as not to

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1. "Bearing the Costs of Government" by the Honorable Wayne L. Hays, Washington Post at A14 (July 19, 1975).

be unduly burdensome to legislators. The times for filing were established so that the franking account reports would be available for public inspection prior to the general elections.

§113.6 Excess Campaign Funds

This section has been proposed pursuant to the Commission's rulemaking authority under 2 U.S.C. 439a.

August 12, 1975

John G. Murphy, Jr.

This letter is our request for a Counsel's opinion on a series of questions. These arise from anticipated circumstances in the campaign to elect Mr. Louis Wyman in the Special Senate election in New Hampshire on September 16, 1975.

President Ford and former Governor Reagan may travel to New Hampshire. While here, they may hold rallies, press conferences, and attend public meetings. On these occasions they may appear with Lou Wyman and endorse his candidacy. Their expenses will not be paid by the Wyman for Senate Committee which is the principal campaign committee for him.

Our questions are (1) does this constitute a contribution in kind to the Wyman campaign? If so, (2) how is that contribution to be computed? (3) Does their travel to and from New Hampshire count, and (4) what does a candidate do to avoid accepting this kind of contribution under the law?

We would appreciate your prompt response since decisions are being made daily which affect the points raised in this letter.

George Young
Campaign Chairman

MEMORANDUM #31

FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

AGENDA ITEM
For Meeting of: 8/28/75
Agenda Item: IIC
Discussion:

August 26, 1975

MEMORANDUM TO: The Commissioners

FROM: Jack Murphy JM

Attached please find OC 1975-48 for your review subject to the two-day rule. It will be listed on the agenda for Thursday, August 28, 1975.

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

OC 1975-48

Mr. George Young
Wyman-for-Senator Committee
Concord, New Hampshire

Dear Mr. Young:

This letter is in response to your request dated August 12, 1975, for an opinion of counsel. In your request you state that "President Ford and former Governor Reagan may travel to New Hampshire. While [there] they may hold rallies, press conferences and attend public meetings. On these occasions they may appear with Louis Wyman and endorse his candidacy. Their expenses will not be paid by the Wyman-for-Senate Committee which is [the candidate's] principal campaign committee."

The questions you pose are:

1. Does this constitute a contribution-in-kind to the Wyman campaign? If so:

2. How is that contribution to be computed?

3. Does their travel to and from New Hampshire count?

4. What does a candidate do to avoid accepting this kind of contribution under the law?

Each of these issues is addressed below.

1. Characterization of activities

The cost of the described activities will be a contribution-in-kind subject to the appropriate contribution limitations in 18 U.S.C. §608(b), if the actual expenses are assumed by an individual or by a political committee other than the national or state Republican party committee.

Such contribution will also be attributed to the Wyman campaign expenditure limitation set out in 18 U.S.C. §608(c).

If, however, either party committee assumes such expenses, the cost of the trip may be either a contribution-in-kind or an expenditure by the party under 18 U.S.C. §608(f). The Federal Election Campaign Act Amendments of 1974 established a separate expenditure limitation for political parties; under 18 U.S.C. §608(f), the national and the state Republican party committees are each entitled to spend $20,000 in the Wyman campaign. If the party and the candidate agree, the cost of this trip may be treated as an expenditure under 18 U.S.C. §608(f), rather than as a contribution-in-kind to, and expenditure by, the Wyman campaign.

A further question arises because of the political status of the individuals involved. President Ford is an announced candidate for the Republican presidential nomination for 1976. Former Governor Reagan has authorized a political committee (within the meaning of that term as defined in 18 U.S.C. §591(d)) and, arguably, may be a candidate for the Republican presidential nomination. Therefore, the cost of the type of activities described in this request might well be considered an expenditure by either presidential candidate and attributable, in whole or in part, to his expenditure limitation under 18 U.S.C. §608(c). While there may be some carryover effect to the presidential campaigns of both individuals, the General Counsel is of the opinion that these expenses should be attributed solely to the Wyman senatorial campaign. There are approximately three weeks remaining until the September 16th special election. The timing of these visits raises the presumption that these visits are likely to have maximum effect on the more proximate election rather than on the 1976 presidential election, nominating convention or March 2 New Hampshire primary election. It must be emphasized that this analysis pertains only to this particular set of circumstances and is not to be construed as applicable to other campaign activity engaged in by presidential candidates.

2. Computation

(a) Services. To the extent that either President Ford or former Governor Reagan volunteers his unreimbursed time on behalf of the Wyman candidacy the character of such activity will be considered "services provided without compensation by individuals who volunteer a portion . . . of their time

on behalf of a candidate"; thus the value of such services will not be a contribution within the definition of 18 U.S.C. §591(e).

(b) Travel and living expenses. All travel and living expenses attributable to the Reagan and Ford visits to New Hampshire must be computed as part of the amount contributed by those individuals or their committees to the Wyman candidacy. To the extent that such expenses are unreimbursed, the five hundred dollar ($500) exemption set out in 18 U.S.C. §591(e)(5)(D) is applicable. Any unreimbursed amount in excess of $500 expended on travel and living expenses by either President Ford or ex-Governor Reagan will, of course, constitute contributions to which the limitations of 18 U.S.C. §608(b) apply. Any amounts so contributed will, of course, also be considered expenditures made by or on behalf of the Wyman candidacy and counting toward the candidate's overall spending limitation.

The General Counsel recognizes that the foregoing rule, which attributes all portal to portal (and return) travel expenses toward the individual's contribution limits may, in the case of an individual who resides some distance from the candidate's jurisdiction, restrict that individual's capacity to volunteer his or her services to that candidate. Nevertheless, this office believes that such a rule will promote volunteer participation at the local level which is certainly a countervailing consideration implicit throughout the 1974 Amendments. Moreover, the plain language of the statute requires the conclusion that "unreimbursed travel" under 18 U.S.C. §591 means any travel in behalf of a candidate.

Presidential expenditures in connection with such a visit provide unique problems of attribution. It would be illogical, and unnecessarily restrictive, to require the attribution of the actual cost of a presidential campaign foray. Hence, only the equivalent commercial rates will be chargeable against an incumbent President's individual contribution limitations and against the candidate's overall expenditure limitation. Expenses for accompanying staff personnel will be charged against the foregoing limitations only if such staff personnel serve primarily as advance persons or other campaign staff members and do not provide support services to the Office of the President. Additionally, special costs

attendant upon Ford's office as President, such as the Secret Service, police and medical attention, are not to be included within this amount. These costs are relatively fixed and are related to Ford's position as President and not to his political function as head of his party.

Finally, if travel, living or any other non-exempt expenses incurred by either President Ford or ex-Governor Reagan during his proposed New Hampshire trip, are reimbursed by a political party, such reimbursement may be characterized by that political party as either a contribution to the candidate under 18 U.S.C. §608(b) or as a party expenditure under 18 U.S.C. §608(f). To the extent that such amounts are characterized and reported as party expenditures under 18 U.S.C. §608(f), they will not count toward the candidate's overall expenditure ceiling.

3. Independent expenditures

The fourth question raised in this request is "[h]ow to avoid accepting these contributions?" The cost of these trips would not be considered a contribution to or an expenditure on behalf of the Wyman campaign only if the trips do not have the effect of influencing the senatorial race in New Hampshire. If Mr. Wyman does not appear with the individuals and disavows their visits and if the individuals involved assume the cost of the trip, the expenses might be considered an independent expenditure by the individuals limited to $1,000 under 18 U.S.C. §608(e).

Please bear in mind that this letter is to be regarded as only the opinion of the General Counsel and does not constitute a policy decision or advisory opinion of the Commission. Any interpretation or ruling contained herein is limited to the facts of the request. The Commission has been made aware of the opinion and has voiced no objection.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

August 15, 1975

Honorable Thomas B. Curtis, Chairman
The Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20005

Dear Chairman Curtis:

On August 7, 1975, Philip W. Buchen, Counsel to the President, wrote your office in response to its letter of July 10, 1975, which raised certain inquiries relative to a White House office account, newsletter fund, and similar accounts within the purview of 2 U.S.C. 439a. Mr. Buchen's communication made reference to expenditures paid by the Republican National Committee in furtherance of Party goals for activities performed by the President and Vice President as titular head of their political party.

Mr. Buchen stated:

> "It is our understanding that for a number of years the two national political committees have undertaken certain expenditures in furtherance of party goals for activities by the President and Vice President as the titular heads of their political parties. The Republican National Committee has made such expenditures during the present and prior Administrations. I have, therefore, requested the General Counsel of the Republican National Committee to respond

to you directly with respect to these expenditures. He has advised that these expenditures have already been filed with the Federal Election Commission, the Clerk of the House and the Secretary of the Senate, in the Committee's quarterly reports, and that he will promptly contact the FEC to discuss the matter further."

This is to advise that the Republican National Committee is currently undertaking the draftsmanship of a communication to the Federal Election Commission which documents would purport to disclose the history and purpose of the expenditures referred to in Mr. Buchen's correspondence, offer a rationale for same and generally acquaint the FEC with the need to recognize the concept that major parties payments for on-going party expenses in both election and non-election years are not chargeable to any Federal candidate.

It is anticipated that this project will be completed and transmitted to your office no later than September 12, 1975. In the interim, should you have any questions or inquiry regarding this matter, do not hesitate to call upon me.

Sincerely,

BENTON L. BECKER for the
Republican National Committee

BLB:dsl

federal register

THURSDAY, AUGUST 21, 1975

PART IV:

FEDERAL ELECTION COMMISSION

■

ADVISORY OPINIONS

FEDERAL ELECTION COMMISSION

[Notice 1975–30; opinions 1975–8, 1975–13]

HONORARIUMS AND RELATED BENEFITS FOR MEMBERS OF CONGRESS, AND LEGALITY OF PRESIDENTIAL CANDIDATE RECEIVING TRAVEL EXPENSES FROM CORPORATIONS

Advisory Opinions

The Federal Election Commission announces the publication today of Advisory Opinions 1975–8 and 1975–13. The Commission's opinions are in response to questions raised by individuals holding Federal office, candidates for Federal office and political committees, with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of the Federal Election Campaign Act of 1971, as amended, of Chapter 95 or Chapter 96 of Title 26 United States Code, or of Sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 United States Code.

ADVISORY OPINION 1975–8: HONORARIUMS AND RELATED BENEFITS FOR MEMBERS OF CONGRESS

This advisory opinion is rendered under 2 U.S.C. 437f in response to requests for advisory opinions submitted by Congressman Dan Rostenkowski, Congressman Rhodes, and Senators Mike Mansfield and Hugh Scott which were published together as AOR 1975–8 in the July 2, 1975, FEDERAL REGISTER (40 FR 28044). Interested parties were given an opportunity to submit written comments relating to the requests.

A. *Request of Congressman Dan Rostenkowski.* Congressman Rostenkowski in his letter of May 8, 1975, asks for clarification of Section 616 of Title 18, United States Code, which provides limitations on the acceptance of honorariums. He generally describes situations in which a Member of Congress prefers not to accept an honorarium for a speech, and instead suggests to the speech's sponsor that at least part of the intended honorarium could be donated to one of two bona fide charitable organizations. The donation would not be a prerequisite to or a requirement for making the speech. Congressman Rostenkowski wishes to know whether the amount of the donation to charity by the other party will count towards the honorarium limits of a Congressman. Specifically, the following circumstances are described:

(1) A Member of Congress is offered a $500.00 honorarium to speak at a convention when he already has accepted $4,000 in honoraria during the calendar year. Congressman Rostenkowski asks whether the honorarium is considered accepted if the Congressman declines the entire honorarium and suggests instead that it be given to either of two specific charities which are named by that Congressman;

(2) A Member of Congress is offered a $1,500 honorarium to speak at a convention when he already has accepted $4,000 in honoraria during the calendar year. Congressman Rostenkowski asks whether the honorarium is considered accepted if the Congressman specifies that he will accept only $1,000 of the honorarium and suggests that a $500.00 donation be given to either of two specific charities which are named by that Congressman;

(3) A Member of Congress is offered a $500.00 honorarium to speak at a convention when he already has accepted his limit of $15,000 in honoraria during the calendar year. Congressman Rostenkowski asks whether the honorarium is considered accepted if the Congressman agrees to make the speech but declines the honorarium, and suggests instead that it be given to either of two specific charities which are named by that Congressman.

Do these transactions constitute acceptance of an honorarium, and therefore come within the provisions of 18 U.S.C. § 616?

Section 616 of Title 18, United States Code, provides that:

> Whoever, while an elected or appointed officer or employee of any branch of the Federal Government—
>
> (1) accepts any honorarium of more than $1,000 (excluding amounts accepted for actual travel and subsistence expenses) for any appearance, speech, or article; or
>
> (2) accepts honorariums (not prohibited by paragraph (1) of this section) aggregating more than $15,000 in any calendar year;
>
> shall be fined not less than $1,000 nor more than $5,000.

This section on its face strictly limits the financial benefits that a Member of Congress may receive from the acceptance of an honorarium. The legislative history of the section indicates that this view accords with the intent of Congress. This history shows a strong Congressional concern with limiting the amounts, and thus the benefits, that a Federal official may receive in exchange for an appearance, speech, or article. Congress does not evidence in this section any interest in specifically exempting from the limitations, honorariums that are accepted and subsequently applied to a particular purpose, no matter how commendable may be this purpose. Even the indirect acceptance of an honorarium for subsequent charitable use can produce benefits for a Member of Congress. For example, he thereby may become entitled to an income tax deduction for making a charitable contribution. A Congressman also could receive valuable public exposure by donating to charity an honorarium which he possessed or controlled. Accordingly, to implement Congress' intent to limit the benefits which may be received from honorariums, it is the opinion of the Commission that the limits imposed by 18 U.S.C. § 616 shall apply to any honorarium accepted by a Congressman in exchange for an appearance, speech, or article.

The question then arises as to what action by a Member of Congress constitutes acceptance of an honorarium. An honorarium is considered to have been "accepted" under 18 U.S.C. § 616 when there has been active or constructive receipt of the honorarium and the federal officeholder or employee exercises dominion or control over it. A federal officeholder or employee is considered to have accepted an honorarium if he receives it for his personal use, if he receives it with the intent or subsequently donating the honorarium to charity, if he directs that the organization offering the honorarium give the honorarium to a charity which he names, or if he suggests that the honorarium might be given to a charity of the organization's own choosing. In addition, a Federal officeholder or employee will be presumed by the Commission to have accepted as an honorarium, any charitable donation made by an organization in the name of that Federal officeholder or employee, assuming that sometime earlier the officeholder or employee had made an appearance or speech, or written an article, for the donating person or organization.

The Commission intends to apply its policy on honorariums as follows:

(1) If a Congressman declines an entire honorarium and instead requests that it be given to either of two specific charities, the honorarium will be treated as accepted by the officeholder. In this case, a Congressman would be sufficiently attempting to influence an organization's choice of recipients as to constitute, for purposes of 18 U.S.C. § 616, the exercise of dominion.

(2) If a Congressman wishes to accept part and decline part of a proposed honorarium and suggests that the difference in amount be given to either of two specific charities, the honorarium will be treated as accepted by the officeholder. By suggesting how the proposed honorarium should be allocated, a Congressman would exercise sufficient dominion over the honorarium to constitute acceptance under 18 U.S.C. § 616.

(3) If a Congressman declines an entire honorarium to avoid exceeding the aggregate limit on honoraria and then suggests that it be given to either of two specific charities, the Commission would conclude that the honorarium has been accepted by the officeholder. For purposes of 18 U.S.C. § 616, the honorarium has been accepted by the officeholder through an attempt to exercise sufficient dominion and control over its use. Therefore, the officeholder would have violated the limits provided in this section.

The Commission does not wish to discourage charitable donations by Federal officeholders or employees, either directly or indirectly, nor charitable donations by any organization, but it will examine the particulars of each donation for any improper implications under 18 U.S.C. § 616.

This section of this opinion assumes that the officeholder receiving the honorarium is not making an appearance or speech before a substantial number of people who comprise a part of the electorate with respect to which the officeholder is a Federal candidate. Compare part C of this opinion.

B. *Request of Congressman John J. Rhodes.* Congressman Rhodes in his letter of May 6, 1975, requests an advisory opinion as to whether a Member of Congress may request, in lieu of an honorarium for a speech, that an organization make an appropriate donation to a charitable organization. Congressman Rhodes

asks whether a Member of Congress, who has already received the full amount of honoraria permitted by the cited statute, would be in violation of the law if he or she requires or requests that the sponsors of the Member's appearance donate an amount equal to, but in lieu of the honorarium, directly to "bona fide charities" named by the Member or the donor.

The principles established in part A of this advisory opinion also are applicable to this request. Accordingly, no further elaboration is necessary.

The opinion presented in part A of this advisory opinion may be relied upon as controlling the factual situation presented in this request, and if there is good faith compliance with that part of the opinion, there will be a presumption of compliance with the provisions of 18 U.S.C. §616, pursuant to 2 U.S.C. §437f (b), with respect to the issues raised by this request.

C. Joint Request of Senators Mansfield and Scott. Senators Mike Mansfield and Hugh Scott in their joint letter of June 26, 1975, request an advisory opinion as to whether travel and subsistence expenses are included in the limitation on honorariums. Specifically, they ask whether a Member of Congress, who has reached the aggregate limit of $15,000 in a calendar year, may accept a speaking engagement, receive no honorarium, and still be able to have travel and subsistence expenses paid by the sponsor of the enagement. As a related issue, they ask whether a sponsor of a speaking engagement may provide travel and subsistence expenses in these circumstances, if the sponsor would ordinarily and otherwise be prohibited from making a campaign contribution.

It is provided in 18 U.S.C. § 616 that:

> Whoever, while an elected or appointed officer or employee of any branch of the Federal Government—
>
> (1) accepts any honorarium of more than $1,000 (excluding amounts accepted for actual travel and subsistence expenses) for any appearance, speech, or article; or . . . shall be fined not less than $1,000 nor more than $5,000.

Thus, this section on its face shows a legislative intent to treat "actual travel and subsistence expenses" differently from honorariums. The legislative history of 18 U.S.C. § 616 confirms that this view accords with the intent of Congress. (See *Congressional Record*, daily edition, October 8, 1974, S. 18526.) The legislative history shows a clear Congressional intent to exclude money given for actual transportation expenses, accommodations, and meals, from any amount given as an honorarium to an elected or appointed officer or employee of the Federal Government. It should be noted that the Internal Revenue Code similarly distinguishes between an honorarium, which is treated as income, and expenses for transportation, accommodations, and meals which are deductible from income as an ordinary and necessary cost of doing business.

Accordingly, it is the opinion of the Commission that the actual costs of transportation, accommodations, and meals are excluded from the limitations on honorariums provided in 18 U.S.C. § 616. Thus, Members of Congress who reach the aggregate limit of $15,000 on honorariums received in any calendar year may continue to accept speaking engagements for which they receive only their own personal actual transportation, accommodation, and meal expenses.

It is further asked whether an organization could provide reimbursement for these expenses, even if the organization is prohibited from making campaign contributions. The language of 18 U.S.C. § 616 expressly applies to any "elected or appointed officer or employee of any branch of the Federal Government." A review of the legislative history of this section (see the *Congressional Record*, daily edition, August 7, 1974, H. 7816; and October 8, 1974, S. 18526) indicates that the intent of Congress in enacting this section was to limit the amounts of honorariums received by Federal officeholders and employees.

On the other hand, 18 U.S.C. § 610 which prohibits contributions or expenditures by a national bank, corporation, or labor organization and 18 U.S.C. § 611 which prohibits contributions by government contractors, are more broadly applicable to contributions or expenditures made to any candidate in connection with any election to federal office. Thus, it seems clear that 18 U.S.C. § 616, is not intended to supercede the application of 18 U.S.C. § 610 and § 611 to officeholders once they become candidates. Accordingly, once an individual (including an officeholder) becomes a candidate for federal office, all speeches made before substantial numbers of people, comprising a part of the electorate with respect to which the individual is a federal candidate, are presumably for the purpose of enhancing the candidacy and the candidate is prohibited from accepting expense money for transportation, accommodations and meals from organizations covered by 18 U.S.C. §§ 610 and 611. See Advisory Opinion 1975–13, issued August 14, 1975.

This advisory opinion is to be construed as limited to the facts of the request and should not be relied on as having any precedential significance except as it relates to those facts at the time of its issuance.

Advisory Opinion 1975–13: Legality of Presidential Candidate Receiving Travel Expenses From Corporations

The Federal Election Commission renders this advisory opinion under 2 U.S.C. § 437f in response to a request submitted by a candidate. The request was made public by the Commission and published in the Federal Register on July 17, 1975 (40 FR 30258). Interested parties were given an opportunity to submit comments relating to the request.

The requesting party seeks an advisory opinion as to whether 18 U.S.C. § 610 prohibits a Presidential candidate from receiving travel expenses for a speaking engagement at a Chamber of Commerce, if the Chamber's general treasury includes money contributed by corporations.

Section 610 prohibits corporations from making contributions or expenditures in connection with Federal elections, and prohibits any person from accepting or receiving any such contributions or expenditures. As used in section 610, contribution includes "any direct or indirect payment, * * * to any candidate, * * * in connection with any election to [Federal office] * * * *" Thus, reimbursing the travel expenses of a Presidential candidate from corporate funds would be prohibited by 18 U.S.C. § 610, since any public appearance of such a candidate before an audience, comprised of individuals who could be influenced to take affirmative action in support of his candidacy as result of that appearance, is connected with an election.

The Commission's opinion is that, once an individual has become a candidate for the Presidency, all speeches made before substantial numbers of people are presumably for the purpose of enhancing his candidacy. (See also Advisory Opinion 1975–8 issued August 14, 1975, in which the Commission decided that certain travel and subsistence expenses paid to officeholders who are also candidates are subject to 18 U.S.C. § 610 and § 611). Accordingly, since the requesting party is a Presidential candidate, he would be prohibited from accepting corporate funds to pay his travel expenses in connection with the speaking engagement. The Commission notes, however, that organizations, such as Chambers of Commerce, could properly (within the limits of 18 U.S.C. § 608) pay the travel expenses of candidates by making such payments from separate segregated accounts containing non-corporate funds.

Dated: August 18, 1975.

Thomas B. Curtis,
Chairman for the
Federal Election Commission.

[FR Doc.75–22096 Filed 8–20–75;8:45 am]

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

Post - August 29, 1975 - Friday

Unit Compromises On Election Fund

COMMISSION, From A1

The 20-state, $100,000 standard was written into law last year in order to keep frivolous candidates from receiving federal funds, but the commission had been deadlocked for

"20 phone calls in 20 states," but he also expressed reservations about "netting out" the contributions when the matching funds begin.

The commission left unsettled for at least another week the simmering controversy

Rowland Evans and Robert Novak

The President's Campaign Financing

President Ford intends to campaign this year without obeying stringent financial regulations imposed on all other presidential candidates by the new election law—an exercise in loophole-seeking which could land him in political and legal trouble.

The President's intentions became

"Although Mr. Ford is an announced candidate for President, his lawyers claim he is traveling politically this year as leader of the Republican Party, not as a candidate."

gaged in fund-raising and directly

The upshot: The White House is

spending," he admonished the con-

gressmen: "If your voice is heard in Congress . . . let us hope that this will lead to positive results."

A footnote: The embassy cable does not show the response from the congressmen. After we reported last month's exchanges between senators and the Russians, which the senators

8/21/75 Rose

8/27/75 Post

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Ford Schedules Weekend Travels; Trips Said Not Part of Campaign

Associated Press

President Ford has tentatively scheduled out-of-town trips almost every weekend for the rest of the year. White House press secretary Ron Nessen said the Republican National Committee will pay for some of the travel, but that no other candidate for office has.

"The President is required to make decisions day in and day out and then live with the consequences. If one blows up in his face, he's got a political liability on his hands that no other, nonincumbent candi-

travel costs when he is on official duties, in his role as head of the GOP and as a candidate for the presidential nomination in 1976.

Nessen said the committee will act with approval of the election commission in deter-

	Initials	Date
Prepared By	AA	
Approved By		9/3

45-804 EYE-EASE
45-904 20/20 BUFF
NATIONAL Made in U.S.A.

Schedule of Payables

As of 8/31/75

		1	2	3	4
1					
2	Vendors, Expense Reports,				
3	Etc. Non White House		3461A075		
4					
5	White House:		5264869		
6	Total Payables on Hand		39878944		
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19	White House Expenditures to Date:				
20					
21	Prudential		25149786		
22					
23	Vice Presidential		461724		
24	Total Expenditures		25611510		
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30					
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	Initials	Date
Prepared By	AA	
Approved By	NT	9/3

NATIONAL 45-804 EYE-EASE 45-904 20/20 BUFF Made in U.S.A.

Fund Raising Chairmans Office
Schedule of Expenditures
Year to Date Through 9/3/75

	1	2	3	4
Account	Total Expenditures			
Salaries	126,417			
Payroll Taxes & Ins. - Employer	8,238			
Prof. Consultants	99,256			
Travel & Transportation Exp.	72,887			
Telephones Long Dist & Credit Cards	8,409			
Meetings & Conferences	11,025			
Miscellaneous operating cost	3,998			
Total through July 31	366,236			
Expenditures 8/1 - 9/3/75	213,534			
Total through 9/3/75	579,770			

	Initials	Date
Prepared By		
Approved By		

NATIONAL | 45-804 EYE-EASE 45-904 20/20 BUFF Made in U.S.A.

		1	2	3	4
850	Activity I - President & First Family				
	851 - Travel & Transportation		549174		
	852 - Advancemen		557003		
	853 Receptions		124205		
	854 gifts		546327		
	855 Misc. Expenses		161531		
				1938317	
860	Activity II - W-H Staff				
	861 - Staff Political Exp.		26678		
	862 - Receptions + Special Events		3868		
	863 - Office Supplies		-0-		
	864 - Telephone Charges		-0-		
	865 - Telegraph Charges		505467		
	866 - Opinion Polls		493173		
				5748586	
870	Activity III - PR Operations				
	872 Data Processing		5000		
	873 Postage		-0-		
	874 Mailing lists		-0-		
	875 Film, Photo, Tapes		4250		
	876 RNC Services		8780		
				18030	
880	Activity IV - Vice Pres.				
	881 Travel & Transp.		181278		
	882 Advancemen		197913		
	883 Misc. Exp.		12867		
	884 gifts		69666		
	885 Reimbursements		(100000)		
				361724	
					25511510

THE WHITE HOUSE

WASHINGTON

Dear Mr. Curtis:

This is in response to your letter of July 10, 1975, inquiring whether President Ford maintains an office account, newsletter fund or similar account within the purview of 2 U.S.C. 439a.

I regret the delay in responding to your inquiry. However, it was necessary to review in detail our present practices in order to respond fully to your question. No such accounts are maintained by or on behalf of the President to defray "any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office...."

As an accommodation to the White House press corps which travels with the President on all trips, regardless of the nature of the trip, the White House travel office does maintain a so-called press travel account. This account receives payments from the White House press corps for its share of the costs of travelling on Air Force One, the press charter plane which follows the President's plane, and any ground transportation necessary for the press to accompany the President at virtually all times while away from Washington.

Due to the unique nature of the President's schedule; e.g., confidential departure times, use of military bases, possibilities for sudden schedule changes, etc., the White House travel office makes the necessary arrangements for these transportation costs and bills the media accordingly. Receipts are maintained in an account used only for this purpose. Disbursements from this account are generally made into the Treasury of the United States for travel on government planes, to the airlines from whom planes have been chartered, and to the appropriate companies for ground transportation expenses. While this account is not used for support of a holder of Federal office, we would be pleased to make its records available for inspection by members of your staff.

It is our understanding that for a number of years the two national political committees have undertaken certain expenditures in furtherance of party goals for activities by the President and Vice President as the heads of their political parties. The Republican National Committee has made such expenditures during the present and prior Administration. I have, therefore, requested the General Counsel of the Republican National Committee to respond to you directly with respect to these expenditures. He has advised that these expenditures have already been filed with the Federal Election Commission in the Committee's quarterly reports and that he will promptly contact the FEC to discuss the matter further.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. Thomas B. Curtis
Chairman
Federal Election Commission
Washington, D.C. 20463

Clerk of House
Secretary of Senate

THE WHITE HOUSE

WASHINGTON

September 3, 1975

Dear Mr. Curtis:

This is in response to Notice 1975-38 (F.R. 40202) in which the Federal Election Commission has sought comments concerning a request from the campaign manager for Mr. Louis Wyman for an opinion of the FEC General Counsel on several questions relating to possible travel by "President Ford and former Governor Reagan" to New Hampshire for the purpose of endorsing Mr. Wyman in the September 16, 1975, special Senatorial election. The General Counsel has proposed for Commission review an opinion responding to this request which states, in part, as follows:

> "Presidential expenditures in connection with such a visit provide unique problems of attribution. It would be illogical, and unnecessarily restrictive, to require the attribution of the actual cost of a presidential campaign foray. Hence, only the equivalent commercial rates will be chargeable against an incumbent President's individual contribution limitations and against the candidate's overall expenditure limitation. Expenses for accompanying staff personnel will be charged against the foregoing limitations only if such staff personnel serve primarily as advance persons or other campaign staff members and do not provide support services to the Office of the President. Additionally, special costs attendant upon Ford's office as President, such as the Secret Service, police and medical attention, are not to be included within this amount. These costs are relatively fixed and are related to Ford's position as President and not to his political function as head of his party."

In the form of comment on this one provision, we wish to bring to your attention the manner in which we intend to apportion the various costs incurred to operate government-owned aircraft on which the President and accompanying government personnel travel to and from localities where the President appears for other than official purposes. As the General Counsel's proposed opinion indicates, expenditures for such travel by the President present problems that are unique to his Federal office, in that the President must continue to perform in his official capacity at the same time he undertakes political activities.

For this reason, whenever the President travels, regardless of the purpose of the particular trip, he is accompanied by a number of persons who are present to support him in his official role. For example, certain members of the White House staff, military aides, medical aides, Secret Service and communications personnel are present not for any political purpose, but solely to provide the President with support which in many cases they are required by law to perform. The Secret Service, in particular, is required by P.L. 90-331 to provide protection to "major Presidential and Vice Presidential" candidates at the direction of the Secretary of the Treasury and on the basis of consultation with an advisory committee of bipartisan congressional membership.

(1) Costs of Operating Government-Owned Aircraft on Political Trips

When the President travels on a trip which entails only political stops, the cost of operating the Government-owned aircraft that are used to transport the President can be readily determined from the enclosed hourly rate schedule, used by the Department of Defense to recover its costs from other government agencies that use military aircraft. In our view, the costs of transporting any persons aboard the aircraft who are traveling for political purposes should be borne by the appropriate political committee. On the other hand, the costs of transporting those persons who are traveling for the purpose of supporting the Office of the President should not be attributed to a political committee.

For the purpose of the President's future travels, we will identify those individuals who could be considered to be present for a

political purpose. We plan to treat as political travelers the President and First Family, political committee officials, certain White House and other officials, e.g., Cabinet officers who may perform some political activities and any other persons whose activities could be viewed as political. Although White House officials are present for official support activities, and generally spend a substantial majority, if not all, of their time on official business, we intend to consider the following categories of officials to be political for the purpose of such travel: White House officials who may advise on political matters (e.g., Donald Rumsfeld, Robert Hartmann, John Marsh, Ron Nessen, Richard Cheney, etc.), speechwriters, advancemen, and a White House photographer.

The remainder of the White House personnel is present for the purpose of supporting the President in his official capacity, e.g., a civilian aide or personal secretary, along with non-White House support personnel, e.g., the Secret Service, military aides, medical and communications personnel, etc. They are not present for any political purpose, and the costs of their travel should not be attributed to a political committee. In this regard, it is our understanding that in 1972 the Secret Service paid up to the cost of comparable first-class airfare for its agents traveling on board chartered aircraft of non-incumbent Presidential candidates.

Therefore, on future Presidential travel the appropriate political committee will be charged by DOD for its pro rata share of the hourly costs of using government-owned aircraft, based on the percentage of the persons on board who are present mainly or in part for a political purpose.

(2) Costs of Operating Government-Owned Aircraft on Mixed Official-Political Trips

In most cases, it is not possible to schedule the President's travel in a manner that will allow trips to be solely official or solely political. We believe that the best formula for apportioning the transportation costs on mixed official-political purpose trips is one which may be referred to as the "round trip airfare formula." Under this formula, the political stops are

isolated from the official stops in order to establish the political trip that would have been made if the President did not have the responsibilities of his office. For this purpose, where a particular stop includes both official and political events, it will be treated as a political stop. A stop will be regarded as official when that is its main purpose, even though the President may meet, incidental to the official event, with political figures in an informal and unpublicized meeting, e.g., a private breakfast with a local political figure or greeting a small group of local politicians.

Once the political stops of such a trip have been determined, DOD calculates the cost of that "political" trip and charges the appropriate political committee for its share, as described above, of the costs of the trip, based on the round trip flying time between the initial point of departure, generally, Washington, D.C., and the political stops made. An example might help to clarify this approach. Suppose the President makes a trip from Washington to San Francisco for official purposes, then to Los Angeles for political purposes, and returns to Washington via St. Louis where a stop is made for official purposes. Under this formula, the appropriate political committee is charged for its pro rata share of the hourly costs of a trip from Washington to Los Angeles and return to Washington, even though there was no direct Washington to Los Angeles leg of the flight.

(3) Other Travel Costs

In order to assure that all costs related to the political portion of a trip are treated as political costs, the appropriate political committee will be charged the expenses for each political stop of any member of the Presidential party who is present mainly or in part for a political purpose, as determined above. Thus, political funds will pay the expenses of the President and these other officials, but not the expenses of those persons who are present to support the President entirely in his official capacity.

Such items as communications arrangements, motorcades, automobile rentals, and other miscellaneous items are readily identifiable as to their purpose, and are to be paid by the appropriate political committee when they are for political purposes.

Where an item, such as the cost of a bus for a motorcade involves a mixed purpose, e.g., transporting the members of the Presidential party who are considered to be present for a political purpose, and also those serving the President in his official capacity, the appropriate political committee will bear the full cost of that item.

In every case where a candidate for Federal office is an incumbent, either in an office to which he seeks re-election or in another office, his campaign activities may become intermingled with his official activities, and similar problems will arise in ascertaining which costs he incurs are campaign-related. The proposals herein made provide a reasonable method for resolving such problems.

(4) Services of Government Personnel

For the purpose of identifying the costs of travel to be borne by the appropriate political committee, we understand that it is not necessary to apportion the salaries of those members of the personal staffs of incumbent candidates for Federal office within either the Executive or Legislative Branches who, in addition to their official duties, also participate in some limited political activities. For example, employees "paid from the appropriation for the office of the President "are exempted by 5 U.S.C. 7324(d)(1) from the general prohibition contained in 5 U.S.C. 7324(a)(2) against Executive Branch employees participating in "political management or in political campaigns." This section effectively places the White House staff in a position comparable to that of the personal staffs of members of Congress.

No precise dividing line now exists, nor is one likely to be drawn, which clearly indicates when such employees are performing official duties and when those duties are political. So long as these employees expend a substantial majority (an average in excess of forty hours per week) of their time on official duties, there is no need to attribute any portion of the salaries of such employees to a political committee.

The reason for this letter is to bring to the Commission's attention the means by which we intend to attribute to a political committee the costs of the President's travel for purposes of support of the

Republican Party, support of specific candidates, or support of his own candidacy. To the extent this treatment may be different from that proposed by the General Counsel, we do not imply that a change need be made in the proposed opinion of such counsel. Rather we believe that the proposed opinion is consistent with the requirements of the applicable law and that if a more liberal attribution of expenses is made to a political committee such is within a candidate's discretion.

We intend to now implement with respect to future travel by the President, this treatment for attribution of such travel costs. We would appreciate very much any comments or suggestions the Commission may think are appropriate to make with respect to our treatment of the President's travel costs.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable Thomas B. Curtis
Chairman
Federal Election Commission
Washington, D.C. 20463

MEMORANDUM FOR: Members of the Media
FROM: Mary Louise Smith, Chairman RNC
SUBJECT: Presidential and Vice Presidential expenditures paid by RNC
DATE: September 3, 1975

There have been a number of inquiries from members of the media concerning Presidential and Vice Presidential expenditures paid by the Republican National Committee and their amounts.

Historically, the two national political parties have paid certain expenditures in furtherance of party goals for activities of the President and Vice President as titular heads of their political parties.

The Republican National Committee has made such expenditures during the present and prior administrations. As you are probably aware, our counsel is now drafting a communication to the Federal Election Commission which will document precedence for such expenditures, illustrate their purpose, offer a rationale for them, and generally acquaint the FEC with the need to recognize the concept that both major parties payments for on-going party expenses and party building in both election and non-election years are not chargeable to any Federal candidate.

Attached you will find a list of expenditures of this kind paid for by the Republican National Committee in 1975. You will also find a list of 1975 bills on hand which have been approved for payment. Note that there is a 60-90 day lag on incoming bills after the expenses have been incurred. These expenses are comparable to other non-election year payments for party building expenses incurred by other Administrations so far as we can document.

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DEMOCRATIC NATIONAL COMMITTEE **PRESS RELEASE**

1625 Massachusetts Avenue, N.W. Washington, D.C. 20036 202/797-5900

Robert S. Strauss, *Chairman*

FOR IMMEDIATE RELEASE:
Friday, September 5, 1975

STRAUSS CRITICIZES RNC FUNDING
OF FORD CAMPAIGN TRAVELS

The new federal elections law is admittedly complex, and requires very careful interpretation despite the immediacy of its application and the signficant political consequences inherent in it. The Federal Elections Commission is working hard to come up with fair rulings as questions arise --- many of those questions brought by us. But despite my sympathy for the task of the commissioners, as Chairman of the Democratic Party I must nevertheless question ruling when we feel they have erred --- as I believe they did yesterday in their ruling on the assignment of expenditures in the New Hampshire senatorial campaign.

The letter from our counsel, stating our position, is available, and I will comment further on New Hampshire later. But there is a much broader question pending, not only before the commission, but really before the nation -- and that is the way in which President Ford's political expenses are being paid.

I say this is a question before the nation because it was a national outcry against the most scandalous political fundraising and spending abuse in our nation's history that brought about the new law. The new law sets careful and specific limits on the amounts which may be raised and spent by candidates for nomination or election for federal office, and by committees, such as the DNC or RNC, operating on their behalf.

The Republican National Committee is paying for the current political travels of President Ford, stating publicly that he is traveling as the leader of their party, performing party work. They point out --- specifically in a statement yesterday by the Republican Party Chairman --- that this is a practice which has been followed by national committees on behalf of previous presidents. I fully agree. This was the past practice. But that is precisely the point --- that practice is past, it was found to be unacceptable, and falls before the new law, as it should. They ignore the new law and we have seen what happens when the law is ignored.

A multi-candidate committee is limited to the expenditure of $5,000 on behalf of any candidate for nomination for federal office, including the presidency. The Republican National Committee is such a committee, and President Ford is such a candidate. There can be no question about the nature of the President's travels: every newscast, every newspaper article, puts a trip such as he is making now in perspective. The stories say "President Ford, on the campaign trail", "President Ford trying to nail down the Republican nomination", or President Ford, trying to woo away potential Reagan supporters". He is campaigning for his party's nomination almost every day. There is no question about that.

The spending of an admitted $300,000 plus dollars by the RNC to advance the nomination of President ~~Ford~~ --- and the probable spending of much more than that by this time --- greatly exceeds the modest $5,000 limit placed by the law.

As for the decision on New Hampshire, our position is clear, but let me cite one line from it. "Where he (the President) is acting in a political capacity, and is himself a candidate, I believe that there should be a presumption that his activities are political and a further presumption that any expenditures incurred by him or on his behalf are properly charged to his own candidacy, with the burden of rebutting these presumtions placed upon the President." In other words, the public, wanting to reform political spending, doesn't want loopholes. The public knows that the President has duties to preform as President, but there are also political activities, either on his own behalf or on behalf of others. The lines can be drawn. If anyone wants an opinion other than that of the Chairman of the Democratic National Committee as to whether or not President Ford is travelling politicaly to further his chances for the Republican nomination I would refer them to Ronald Reagan, to his campaign staff, Meldrim Thompson of New Hampshire or any other Reagan supporters.

But some things are unreasonable. Some things suchas saying that President Ford is campaigning today in California not as a candidate, but as aparty leader. Suppose I as Chairman of the Democratic Party, should name one of our presidential candidates, or four of them, or all of them, as party leaders and sent them around the country at DNC expense, without limit, and without allocating charges against their spending limits? It would be an abusrdity. And that is what we are being presented with by the Republican Party, an absurdity.

Republican
National
Committee.

Mary Louise Smith
Chairman

September 15, 1975

Honorable Thomas B. Curtis
The Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20005

Dear Chairman Curtis:

As indicated by Philip W. Buchen, Counsel to the President, on August 7, 1975, the Republican National Committee (R.N.C.) has undertaken the payment of certain expenditures incurred by the President, Vice President and their aides when engaged in National, state or local political party promotional activities. He correctly observed that these R.N.C. expenditures are within the public domain, having been filed quarterly by the R.N.C. with the Federal Election Commission, the Clerk of the House of Representatives and the Secretary of the United States Senate. This correspondence shall serve to further amplify those filings, to discuss the historical tradition associated with the President's role and obligation as head of the Republican Party, to consider alternative sources of payment for such expenditures, and, finally, to briefly categorize the items paid for by the Republican National Committee.

Mr. Buchen's letter of September 3, 1975, responded to F.E.C. Notice 1975-38 (F.R. 80202) wherein the Commission, "sought comments concerning a request from the Campaign Manager for Mr. Louis Wyman". Counsel's correspondence disclosed the method employed by the White House to allocate the cost of operating Government-owned aircraft on political and mixed official-political trips by the President, Vice President and their aides. Accordingly, this Memorandum will not address itself to the apportionment formula contained in Mr. Buchen's letter of September 3, 1975.

The question to be considered is:

"DOES THE FEDERAL ELECTION CAMPAIGN LAW OF 1974 HAVE APPLICATION TO THE HISTORICAL TRADITION OF A NATIONAL POLITICAL PARTY'S PAYMENT OF EXPENSES INCURRED BY THE PRESIDENT OF THE UNITED STATES, THE VICE PRESIDENT OF THE UNITED STATES AND THEIR AIDES WHILE ENGAGED IN NATIONAL, STATE, OR LOCAL PARTY PROMOTIONAL ACTIVITIES?"

The question of the Federal Election Campaign Law's application is restricted to expenses incurred for acts of the President, Vice President and their aides when engaged in Republican Party political activities and is not addressed to those expenses incurred by the President, Vice President and their aides when engaged politically on behalf of any individual political candidate, including the candidacy of the President and Vice President themselves.

National political parties in the United States arose in the late Eighteenth and Nineteenth centuries. What had been largely legislative parties evolved into constituency-based parties when the states expanded male suffrage by eliminating property-owning and taxpaying qualifications for the voting franchise. Although not mentioned in the American Constitution, National political parties have historically served to effectuate, organize and promote the exercise of the franchise right by the electorate.

In the early days of the Republic, Federal candidates had no great need for funds to reach a vast popular electorate. The electorate was widely scattered, served by a primitive communication system and largely restricted in its size by racial, sexual and property holding qualifications. The typical campaign was waged, almost exclusively, in the newspapers and financed largely by the individual candidates themselves. With the abolition of voting right restrictions, a new electorate resulted. To service, to communicate and to persuade that new electorate, National political parties evolved.

The American President has traditionally served as the leader of his party. President John F. Kennedy viewed the Presidents' partisan role in the following manner:

> "No President, it seems to me, can escape politics. He has not only been chosen by the nation--he has been chosen by his party. . . if he neglects the party machinery and avoids his party's leadership--then he has not only weakened the political party. . . he has dealt a blow to the democratic process itself."1/

In the minds of the public, the programs of the President are also the programs of his party; his personal success or failure becomes the party's success or failure. The Chief Executive is the embodiment of his party.

Thomas W. Madron and Carl P. Chelf, 1974 treatise titled Political Parties in the United States, commented on the President's role as head of the party:

> "Frequently the party and the executive constitute a sort of mutual accommodation society. . . the executive uses the party as a channel for interacting with other elements in the political system, while on other occasions the executive will function as a vehicle for promoting party goals." 2/

But, who shall assume the cost incurred when the executive so functions?

1/ Quoted by Stuart G. Brown, The American Presidency: Leadership, Partisanship, and Popularity (New York: The Macmillan Co., 1966) Flyleaf.

2/ Mandron and Chelf, Political Parties in the United States, Holbrook Press, 1974, at page 286.

The Federal Election Campaign Law of 1974 reflects definitional distinctions between a "national committee" [2 U.S.C. 431 (1)]m a " state committee" [2 U.S.C. 431 (1)], and a "political committee" [2 U.S.C.,431 (d)]. These distinctions are indicative of Congress' recognition of the existence of general partisan acitvity conducted on an ongoing basis by National political parties when compared to those activities of a specific candidate's organization seeking election to a specific office within a specific geographical area. State and National party organizations engage in a day-to-day business which, among other things, includes maintaining offices, staffs, telephones, registration drives, speaker programs, publications, research, travel, fund raising, convention arrangements and voter education in both election and non-election years. The 1974 Act contains no limiting provision for expenditures by a National or State political party for these functions. The Act does limit the amounts that National and State parties may contribute to individuals ~~candidates for office~~, but does not impose a maximum monetary budget for the conduct of ongoing party business.

Political campaign committees accept contributions and make expenditures that are identifiable with that committee's support of its particular candidate for a particular office. National political parties, conversely, are charged with the ongoing responsibility of creating voter recognition of party identity and ideology, without reference to an individual candidate or election. A large measure of this function is performed by the President, Vice President and their aides on behalf of their National and State parties. When these party functions are performed and costs result from same, the beneficiary of those functions, i.e., the National or State political parties, should and does assume the cost incurred.

Obviously, some slight personal political dividends may accrue to an incumbent President traveling and speaking on his National party's behalf simply by the Presidential exposure. Such incidentals, as name recognition and constituency exposure, are not specifically

prohibited by the Federal Election Campaign Law and are, in fact, reserved under the Act, itself, to incumbent United States Senators and Representatives seeking re-election by virtue of the Act's allowed continuing use of franked mail privileges after a declaration of candidacy ~~[2 U.S.C. 439(b)]~~. The legislative body that enacted the Federal Election Campaign Law rightfully concluded that a declaration of candidacy should not prohibit a legislator from continuing to conduct his or her usual, routine on-going business, ~~and~~ thereby allowed continued free mailing privileges ~~even when seeking reelection.~~ To postulate a different rule for an incumbent President seeking reelection, and thereby mandating an abdication by an incumbent President of his continuing ~~to conduct~~ routine ongoing National party obligations, would be manifestly unfair. He would be required, as President Kennedy suggested, to avoid the party's leadership role he was chosen to fulfill and thereby weakening his political party and dealing a blow to the democratic process itself.

Partisan political activity is a recognized and Federally codified facet of an incumbent President's ordinary business. The purposes of the Federal Hatch Act (5 U.S.C. 7321, et seg.) is to prohibit partisan political activities by employees of the Executive Branch of the Federal government. That prohibition excludes employees of the Office of the President. This statutory exclusion is a Congressional recognition of the inherent partisan nature and duties of the Presidency. It does not necessarily follow that because Congress recognized the political role of the President of the United States as head of his party, and authorized his aides to assist him in fulfilling that role, that the expenses thereby incurred should be borne by the Treasury of the United States. As suggested earlier, ~~the~~ a more feasible and practical alternative to the taxpayer bearing these costs is that payment of these obligations be assumed by the beneficiary of the acts, i.e., the President's National Political Party.

In 1975, the Republican National Committee allocated the sum of Five Hundred Thousand Dollars ($500,000) to support the activities of the President, the Vice President and their aides when engaged in the role as head of the National party. This budgetary allotment is consistent with past years budgets, without regard to whether the year in question was an election or nonelection year. On September 1, 1975, the Republican National Committee had paid ~~and/or received~~ bills totaling Three Hundred Nine Thousand Dollars ($309,000) ~~toward~~ the annual ~~allotment.~~ The Republican National Committee has filed quarterly reports reflecting its quarterly expenditures with the Federal Election Commission since the establishment of that agency. The Republican National Committee believes that it is the proper body to assume these expenditures, just as ~~presumably~~ the Democratic National Committee believed it was the proper body to pay the expenses incurred by Democratic Presidents engaged in their National party affairs during the years 1960 through 1968.

When the President, Vice President and their aides are engaged in political activity on behalf of their National or State political parties, the R.N.C. assumes the cost of their travel and transportation, advance men expense, telephone and telegraph cost and the cost of receptions incidental to those activities. In addition, the Republican National Committee assumes the costs incurred for films and photographs taken during such Presidential travel and the expense of Presidential and Vice Presidential gifts such as cuff links, tie bars and charm bracelets picturing the Presidential or Vice Presidential seal.

The Republican National Committee does not assume the expenses resulting from Presidential ~~and Vice Presidential~~ travel incurred when engaged in Presidential ~~or Vice Presidential~~ candidacy or travel associated with the candidacy of other individuals. In those instances, the candidate's committee is ~~required to pay all costs~~ in accordance with the strictures of the Federal Election Campaign Law. With one notable exception, the R.N.C. does not pay any of the expense associated with Presidential official travel, i.e., travel occurring as an adjunct to the Chief Executive's role as President of the United States, having no political overtones. That exception is the expenditures incurred by advance men during Presidential official travel. These charges are incurred by individuals, most frequently not employed by

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that exception relates to certain expenditures incurred by ~~someone~~ advancemen in the course of official travel by the President. These expenditures, which in most cases are for persons not employed by the government, are assumed by the RNC ~~because~~ the Chief Executive's appearances, regardless of ~~the~~ their purpose, furthers party interest.

~~the Government, and not engaged in any official Government business. Although the National Committee is not, per se, a beneficiary of official Presidential travel, it assumes the advance men cost on official trips in the belief that such an expenditure from the United States Treasury would be unjustified.~~ All other expenditures incurred during the Presidential official travel are borne ~~by the White House budget.~~ from appropriated funds.

The differing roles of a Presidential candidate and a Presidential party leader are sometimes subtle, but nonetheless real and subject to dispassionate analysis. The past and present system of payments by National political parties for expenses incurred by the President, Vice President and their aides for party promotional activity has the virtue of fairness. The alternatives, full payment of Presidential party promotional expenses by the taxpayers or, in those years when applicable, by the incumbent President's campaign committee, are simply not practicable. The former would constitute an improper expenditure of Government funds and the latter imposes an ~~equitable~~ inequitable disadvantage upon incumbent Presidents seeking reelection, requiring them to deplete a significant amount of their Ten Million Dollar ($10,000,000) primary election limit for expenses unrelated to the primary campaign effort. Incumbency would then become a serious political liability to an American President.

The Republican National Committee plans to continue to implement the procedures outlined in this communication. Naturally, the records of the R.N.C. reflecting these past expenditures are available for inspection by the F.E.C., should the Commission so desire. We would appreciate very much any comments or suggestions that the Commission may think appropriate to make with respect to our treatment of the payment of expenses incurred by the President, the Vice President and their aides when engaged in party promotional activities.

Sincerely yours,

MARY LOUISE SMITH
Chairman

presidential candidates, or four of them, or all of them, as party leaders and send them around the country at DNC expense, without limits, and without allocating charges against their spending limits? It is both wrong and unjust to insist that the political status of an individual automatically devises to the candidate the National Political Party of the services of its party spokesman.

fund raising event for his State or National Party should not deplete his Ten Million Dollar ($10,000,000) ~~from~~ presidential primary effort. The party role performed by such individuals is identical to that party role assumed by the President of a President.,

, acting as party spokesmen at party functions

Neither ~~member~~ incurres the expenditures associated with their ~~that~~ role in furtherence of their quest,", for nomination for election, or for election, to Federal office.." (18 USC 608) Democratic National Committee Chairman Strauss' September 5, 1975, press release postulates ~~the~~ this very question. Labling it as absurd, he stated, "Suppose I as Chairman of the Democratic Party, should name one of our

obligation

The ~~duty~~ to assume a party role for one's national political party is not restricted to the President of the United States. Senators and Congressmen ~~Representatives~~ are frequently called upon to ~~function as~~ function as spokesmen for, to aid in fundraising events and, generally, to represent ~~to be as representatives~~ of their own National Political ~~Parties~~ Party. Such a party role ~~may~~ is often undertaken by Members of Congress who are also party leaders, after ~~he or she has announced~~ announcing their ~~candidacy~~ candidancy for re-election to the position they presently hold ~~and~~ and/or after announcing their ~~candidacy~~ candidancy to the Office of President of the United States. Examples ~~of such instances are legion~~ legion. The costs incurred by a U.S. Senator ~~who~~ who is an announced candidate for the Presidency, when attending a State Party fundraiser, ~~for the~~