The original documents are located in Box 17, folder "Federal Election Commission" of the John Marsh Files at the Gerald R. Ford Presidential Library.

MAR 25 1975

THE WHITE HOUSE
WASHINGTON

Date: 3.26.75

TO: Jack Marsh

FROM: Max L. Friedersdorf

For Your Information ✓

Please Handle

Please See Me

Comments, Please

Doug Bennet spoke with Mose about this & he is reportedly happy.

House

Joseph McDade	Urges the President to accept Secretary Simon's recommendation and impose countervailing duties on the importation of dairy products from Europe; says that our dairy farmers have enough problems without trying to compete with unfairly subsidized products in the market.
Elliott Levitas	Asks that the President set up a commemorative meeting at the White House on April 8 and invite leaders from the Jewish and Christian communities which would bring about an awareness of Yom Ha-Shoah the Day of the Holocaust.
Gene Snyder	Encloses copies of six additional letters of recommendation of Wm Bertelsman to be U.S. District Judge for the Eastern District of Kentucky.
Manuel Lujan	Recommends that Charles Oliver, II, be appointed as Administrator of the FAA.
Floyd Spence	Recommends that consideration be given to appointing Dr. Nat Winston, Dr. John Routson and Mrs. Miriam Putnam to the Federal Council on Aging.
Carroll Hubbard	Recommends that Carl Clewlow be appointed to the U.S. Civil Service Commission.
W. Henson Moore	Explains why he voted against nomination of Mr. Neil Staebler when his name was submitted to the House Administration Committee; since he has not heard anything from the White House, assumes it will now be necessary to openly oppose Mr. Staebler on the Floor of Congress.
Spark Matsunaga	Recommends that S. Kenric Lessey be appointed to the CAB.
Carl Perkins	Recommends that Henry Brooks be appointed to the Board of Directors of the National Institute of Building Science.

distribution 8/8/75 - Commissioners, Staff Director & General Counsel. Jr.

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION
SUITE H-326, U.S. CAPITOL
Washington, D.C. 20515

August 7, 1975

Honorable Thomas B. Curtis
Chairman
The Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

This refers to your letter dated July 17, 1975 and delivered to the Speaker of the House of Representatives on August 1, 1975 transmitting by the Federal Election Commission "a proposed regulation which pertains to the filing of required statements and reports by Federal candidates and political committees" in accordance with Section 316(c) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 438(c). On August 1, 1975 the Speaker of the House referred this matter to the Committee on House Administration.

It is noted that the Federal Election Commission published on August 6, 1975 in the Federal Register its Notice of Proposed Rulemaking (Notice 1975-21) on "Document Filing" which except for paragraph numbering and titles is the same proposed regulation as was delivered to the Speaker of the House on August 1, 1975. Notice 1975-21 cites 2 U.S.C. 437(d) as its authority which provides that the Commission makes its rules pursuant to the provisions of Chapter 5 of Title 5, United States Code. In addition, Notice 1975-21 invites written comments from the general public including interested candidates and political committees on its proposed rule on document filing to be submitted to the Commission on or before September 5, 1975. This procedure gives the Commission the benefit of knowing the competing views of the various special interests within the general public prior to promulgation of its Rules. It was also contemplated that the Commission would subsequently summarize and publish in the Federal Register these competing views and to provide additional time to permit these special interests to rebut in writing one another's comments. Needless to say, if the comments of the general public in unanimity were adverse to a portion of the proposed rule, the Commission in all probability would modify it accordingly. Such a procedure gives the general public a full and fair opportunity to participate in the rulemaking process and provides the Commission with the maximum information prior to making a final judgment on the Rule itself.

Section 316(c) of the Act contemplates that the House of Representatives would approve or disapprove within no more than 30 legislative days the rule or regulation proposed by the Commission in its final form prior to promulgation. Under the right set of circumstances, the House need not wait the full 30 legislative days to approve a rule but could do so sooner by enactment of a House Resolution specifically approving the rule under review. The Act does not intend the House to review a rule still subject to possible modification by the Commission as a result of the 2 U.S.C. 437(d) rulemaking process as is the case in this rule on document filing. Surely the Commission does not expect the House to approve a proposed rule prior to the time the general public has had a full and fair opportunity to comment thereon. As a matter of general policy, this Committee has no choice but to return a copy of your letter delivered on August 1, 1975 together with the proposed rule on filing election reports and statements by Federal candidates and political committees as not meeting the requirements of Section 316(c) of the Act. Copies of future letters transmitting proposed rules that are not in strict compliance with the Act will be similarly returned. It is respectfully requested that upon completion of the rulemaking process on "document filing" the final rule be transmitted to the Speaker of the House as prescribed by Section 316(c) of the Act.

In addition, for the record, I must state that in the past I have been keenly aware and will continue to be equally cognizant in the future that time is of the essence in this matter. For example, I called and scheduled hearings on March 10, 1975 before the Committee on House Administration on the confirmation of your Commissioners before the President named his nominees. Furthermore, the House was the first body to confirm your Commissioners on March 19, 1975. In addition, the House passed H.R. 7950 on June 19, 1975 which authorized appropriations for your Commission and amended S. 1434 that same date. The House has been awaiting action by the other body on S. 1434 since that date. Further, all requests made by the Commission to this Committee were accomplished in a timely manner. Notwithstanding my concern for timeliness and the need for promulgated rules now considered overdue, I fully intend to carry out my oversight responsibilities of the Act both with regard to House candidates and political committees supporting them, but also with regard to the Federal Election Commission meticulously meeting its statutory obligations to all parties thereunder.

With kindest personal regards, I am

Very sincerely yours,

WAYNE L. HAYS
CHAIRMAN

WLH:ckc

Attachment

(3)

FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

August 22, 1975

MEMORANDUM TO: Chairman Curtis

FROM: Jack Murphy

Attached please find Carolyn Reed's memorandum re Point of Entry in response to Congressman Brademas' letter.

Attachment

JGM:jl

To: Jack Murphy

FROM: Carolyn Reed

Re: Point of Entry CR

Attached is the memorandum in response to the letter of Congressman Brademas.

Congressman John Brademas has submitted a memorandum dated July 30, 1975, to the Commission stating his views on the point of entry of campaign finance reports filed by Congressional candidates and their supporting committees pursuant to the Federal Election Campaign Act of 1971, as amended (the Act).

Congressman Brademas has raised two issues regarding the point of entry filing requirement. These issues are:

1. Whether statements and reports of House and Senate candidates and their principal campaign committees should be filed initially with the Clerk of the House and the Secretary of the Senate; and

2. Whether the Clerk of the House and the Secretary of the Senate should perform "desk audits" of the statements and reports filed with them.

The Commission is of the opinion that the language of the statute requires candidates for the House and Senate and committees who support them to file the reports and statements initially with the Commission. In addition, the Commission has the duty under the Act to perform audits of all reports and statements required to be filed under the Act. These two issues are addressed separately in the following discussion.

A) Initial Point of Filing

The Commission has addressed this issue at length in its previous memorandum. There are, however, a few points which the Commission considers relevant to review at this time.

It is the position of the Commission that the clear language of the Act requires candidates and their supporting committees to file reports and statements initially with the Commission. 2 U.S.C. §434 is the only section of the Act which requires candidates and political committees to file reports of receipts and expenditures. The one exception to Commission filing - filing with the principal campaign committee - is clearly set forth in 2 U.S.C. §434(2). The section requiring candidates to file statements of organization, 2 U.S.C. §433, clearly requires political committees to file statements of organization with either the Commission or the appropriate principal campaign committee.

Congressman Brademas has stated that these sections "speak of the general duties of the Commission. The law, for the sake of simplicity, speaks in the general sections of filing reports and statements with the Commission just as it speaks of the other general duties of the Commission." The Commission is of the opinion, however, that 2 U.S.C. §433 and 2 U.S.C. §434 are not simply general sections pertaining to the duty of the Commission. Rather, these sections place a legal obligation upon certain candidates and political committees to register and report under the Act. These sections clearly state that in order to comply with

these requirements, a candidate or political committee must file a statement of organization and periodic reports with either the Commission or the appropriate principal campaign committee.

The statutory section pertaining to the custodial duty of the Clerk of the House and the Secretary of the Senate, 2 U.S.C. §438(d), does not require candidates and their supporting political committees to file reports and statements with the Clerk or the Secretary. Rather, this section requires the Commission to prescribe regulations to insure that appropriate reports and statements are transmitted to the Clerk and the Secretary in a timely fashion. The custodial duties of the Clerk and the Secretary with respect to the reports received by them are set forth in 2 U.S.C. §438(d)(1)(C).

In interpreting the meaning of 2 U.S.C. §§433, 434 and 438(d), the Commission cannot look at these sections in isolation from the remaining provisions of the Act. The Supreme Court has stated:

> When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into the execution the will of the Legislature. (citations omitted) Kokoszkau. Belford, 417 U.S. 642 (1974).

The Commission is of the opinion that, when viewed in its entirety, the Act requires Congressional candidates and their supporting committees to file initially with the Commission.

Under the prior law, the Clerk and the Secretary were vested with the supervisory responsibilities pertaining to candidates for the House and Senate and their supporting political committees. Under the present Act, the Commission, with minor exception, has been vested with the supervisory responsibilities for all candidates and political committees. Both the Commission and the Clerk of the House are required to make the reports and statements of candidates for the House and their supporting political committees available for public inspection and copying and to preserve such reports and statements. 2 U.S.C. §438(a)(4) and (5); 2 U.S.C. §438(d)(1)(C). Since both entities are charged with the responsibility of making the reports and statements available for public inspection, these sections do not assist in determining the initial point of entry of the documents. The Commission and the Secretary of the Senate have these responsibilities with regard to reports and statements filed by Senatorial candidates and their supporting committees.

The Commission, however, is vested with other supervisory responsibilities. These responsibilities include the following sections of 2 U.S.C. §438(a):

> (6) Index of reports and statements; publication in Federal Register. To compile and maintain a cumulative index of reports and statements filed with it, which shall be published in the Federal Regsiter at regulat intervals and which shall be available for purchase directly or by mail for a reasonable price;

> (7) Special reports; publication. To prepare and publish from time to time special reports listing those candidates for whom reports were filed as required by this title and those candidates for whom such reports were not filed as so required;
>
> (8) Audits; investigations. To make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this chapter, and with respect to alleged failures to file any reports or statement required under the provisions of this chapter;

Under the prior law, the supervisory officer with whom the reports was filed had the responsibility to perform these duties with respect to the reports filed with him. It is the position of the Commission that, in order to perform these duties, the original reports and statements must initially be filed with the Commission. For example, 2 U.S.C. §438(a)(6) requires the Commission to compile and maintain a cumulative index of reports and statements filed with it. Although the Secretary and the Clerk previously compiled such indexes, it is now the Commission, rather than the Clerk and the Secretary, which is charged with the responsibility to compile such indexes. Therefore, if the Commission does not receive the reports and statements of House and Senate candidates and their supporting political committees there will be no timely index with respect to those candidacies and committees.

The obligation to compile an index is a function designed to assure that the public will have effective access to all reports

and statements filed under the Act. Practically speaking, such an index is essential since individual reports and statements could not otherwise be found amidst the massive amounts of paper submitted to the Commission. In order for the public to have timely access, i.e., within 48-56 hours after the time of filing under 2 U.S.C. §438(a)(4), this index will have to be compiled on a daily basis. Daily compilation to this end requires that the original documents be filed with the Commission.

The Commission will also need the original filings to perform its responsibilities under 2 U.S.C. §438(a)(7). This section requires the Commission to "prepare and publish from time to time, special reports listing those candidates for whom reports were filed as required by this title and those candidates for whom such reports were not filed as so required." The reports to be issued cannot be assuredly accurate if filings arrive at different methods and criteria for assessing the existence of violations and for recommending amended or supplemental filings.

In addition, the Commission is vested with the sole responsibility of making audits and investigations with respect to reports and statements filed under the provisions of the Act and with respect to alleged failures to file reports or statements. This supervisory responsibility is discussed further in section B of this memorandum. However, the Commission is of the opinion that to perform this duty effectively, the reports and statements must initially be filed with the Commission.

Congressman Brademas proposes that the available legislative history pertaining to 2 U.S.C. §438(d) overrides the plain meaning of the Act. He indicates that legislative history pertaining to this section favors initial filing by Congressional candidates and their supporting committees with the Clerk of the House and the Secretary of the Senate.

In its duty to prescribe rules and regulations to carry out the provisions of the Act, the Commission must follow general principles of statutory interpretation. Although the primary rule of statutory construction is to ascertain and declare the intention of the legislature, the meaning of a statute and legislative intent are not determined conclusively by legislative history. The legislative history of a statute may not compel construction at variance with its plain words. Where the language of a statute is clear and unambiguous, consideration of legislative history has not been permitted by the courts. Fairport, P. & E.R. Co. v. Meredith, 292 US 589 (1934).

The guidelines rendered by federal courts for treatment of committee reports and explanatory comment by legislative members in charge of the bill under debate must be particularly noted. Decisions generally lend credence to the substance of committee reports when the language of a statute is ambiguous or "not free from doubt" as to its proper meaning. Wright v. Vinton Branch, 300 US 440 (1937); U.S. v. Missouri Pac. R. Co., 278 US 269 (1928).

But committee reports cannot be used "to construe a statute contrary to the natural import of its terms." U.S. v. Shreveport Grain & Elevator Co., 287 US 77 (1932). The Supreme Court, in one of the most celebrated of many opinions on this topic, has held that it "is not at liberty to...refer to committee reports" in order to "construe language so plain as to need no construction."

Federal courts have, in recent cases, ~~faithfully~~ abided by the principle that committee reports cannot control, or even be considered, when construction of the statute on its face does not lead to absurd or impractical consequences or when, taken as a whole, statutory language is clear. In National Life and Accident Ins. Co. v. U.S., 381 F. Supp. 1034 (M.D. Tenn., 1974), the court asserted: "When a Congressional statute is clear and straight-forward, reference to legislative history is neither necessary nor permitted." [See also Brennan v. Taft Broadcasting Co., F.2d 212 (5th Cir., 1974); Weidenfeller v. Kidulis, 380 F. Supp. 445 (E.D. Wisc., 1974).]

Similarly, courts have resorted to statements by members of the legislature, generally committee members or chairmen in charge of a bill, in construction of ambiguous statutes. Apparently, these explanatory statements are regarded in the same category as supplemental reports, and given just as much weight. Duplex Printing Press Co. v. Deering, 254 US 443 (1920). Like committee reports, explanatory statements made in presenting the bill

for passage by representatives of the committee recommending it cannot control nor be considered when the language of enactment is clear or when, taken as a whole, the effect of the language used is certain in its meaning. J. Peckham, in U.S. v. Trans-Missouri Freight Assoc., 166 US 290 (1896), justified the precedent for sparing use of comments from debates:

> All that can be determined from debates and reports is that various members had various views...[I]t is impossible to determine with certainty what construction was put upon an act by the members of a legislative body... by resorting to the speeches of individual members thereof. 166 US at 318.

The Supreme Court has consistently refused to consider explanatory statements when the effect of statutory language is clear, as a whole, because "...such aids are only admissible to solve doubt and not to create it." Railroad Commission of Wisconsin v. Chicago, B. & Q.R. Co., 257 US 563 (1922). [See also U.S. v. Missouri Pac. R. Co., 278 US 269 (1929).]

Although Congressman Brademas' statement in floor debate on the conference report is unequivocal regarding his interpretation of "custodial duties", it is not, by force, indicative of the entire Congress' understanding of the filing requirement in the Act. As the Court of Appeals in the Eighth Circuit recognized, "the fact that no senator or representative expressed a view (i.e., took issue with the explanatory comment), does not necessarily compel a conclusion that Congress agreed...." American

Smelting and Refining Co. v. Occupational Smelting and Health Review Commission, 501 F.2d 504 (8th Cir., 1974). It is the opinion of the Commission that, under the well established principles of statutory construction, the clear language of the Act controls the point of entry question.

B) "Desk Audits"

The second issue raised by Congressman Brademas is whether the Commission or the Clerk and the Secretary are under a duty to perform "desk audits" of the statements and reports of House and Senate candidates and their supporting committees. The Commission is of the opinion that the clear language of the statute requires the Commission to perform the audits of all reports and statements required to be filed under the Act. The duties of the Commission are set forth in subsection (a) of 2 U.S.C. §438. 2 U.S.C. §438(a)(8) provides:

> (8) To make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this chapter, and with respect to alleged failures to file any report or statement required under the provisions of this chapter; (emphasis supplied)

Under this language, then, the Commission has the duty to audit all of the reports and statements required to be filed under the Act.

The duties of the Clerk and the Secretary are set forth in 2 U.S.C. §438(d)(1)(C). In enumerating the duties of the Clerk and the Secretary, the statute refers back to subsection (a) of §438 and states that the Clerk and the Secretary have two specific duties. They are making reports and statements received by them available for public inspection, 2 U.S.C. §438(a)(4), and preserving such reports and statements in accordance with 2 U.S.C. §438(a)(5). This section does not provide that any other "supervisory" duties enumerated in subsection (a) are to be required of the Clerk and the Secretary. 2 U.S.C. §438, then, clearly provides that the Commission, not the Clerk and the Secretary, is under a duty to audit the reports of House and Senate candidates and their supporting committees.

The fact that the Clerk and the Secretary are under a duty to refer apparent violations of the Act to the Commission does not imply that they, rather than the Commission, have the authority to conduct desk audits. Under both the prior law and the present Act, the authority to conduct audits and the duty to refer violations have been separate responsibilities and set forth in different sections of the law. (§308(a)(11) and §308(a)(12) under the prior law and presently 2 U.S.C. §438(a)(8) and (9) and §437g(a)(1)(B)) Since the Commission has the duty to conduct audits, the implication of §437g(a)(1)(B) is that the Clerk and the Secretary are to perform backup checks on possible violations

which are apparent from the face of the reports and statements which the Commission has transmitted to them. In addition, the Clerk and the Secretary have a duty to refer apparent violations of Title 18 which could not be uncovered by a desk audit. For example, 2 U.S.C. §437g(a)(1)(B) places the Clerk and the Secretary under an obligation to refer apparent violations of 18 U.S.C. §617, a section which prohibits fraudulent misrepresentation of campaign authority.

Congressman Brademas has raised the additional question of whether the Clerk and the Secretary, if they are determined to be the initial point of entry, need give the Commission copies of all statements and reports or just copies of those reports which include apparent violations. It is the position of the Commission that, in order to perform its statutory duties, it must receive all reports and statements required to be filed under the Act. For example, 18 U.S.C. §608(b)(3) establishes a $25,000 limitation on individual contributions in any calendar year. In order to enforce this individual contribution limitation, one entity must have the reports of all candidates and political committees to which a contribution would count against an individual's contribution limitation. Since there is no statutory language to indicate that the Clerk and the Secretary are to receive reports of presidential candidates and their supporting committees, the only entity which could discover violations of this contribution limitation, then, is the Commission.

In addition, the Commission will be required to have all reports in order to prepare an index of the reports and statements and to publish lists of candidates who did not file reports.

Conclusion

It is the opinion of the Commission that the Act requires candidates for the House and Senate and their supporting committees to file reports and statements initially with the Commission. The Commission is required to prescribe regulations to insure that the appropriate reports and statements are transmitted to the Clerk and the Secretary. The proposed regulation establishes a procedure which will enable both the Commission and the Clerk and the Secretary to perform their respective duties under the Act. The Commission has the duty to audit all of the reports and statements required to be filed under the Act. Although the Clerk and the Secretary have the responsibility to report apparent violations of the Act to the Commission, they do not have the express or implied power to conduct audits pertaining to the reports and statements received by them.

MEMORANDUM

TO: BARRY SHILLITO

FROM: ORLANDO B. POTTER

DATE: June 16, 1975

RE: THE LIBRARY OF CONGRESS REPORT ON THE QUESTION OF INITIAL POINT OF ENTRY

For whatever it may be worth as the discussion on this matter unfolds, here are a few recollections of the legislative history that led up to the 1974 Amendments.

In the spring of 1973, the Secretary of the Senate appeared before the Senate Subcommittee on Privileges and Elections which was ~~there~~ hearing a wide range of commentary on the experience gained under the Federal Election Campaign Act of 1971, as related to a bill then pending before the Senate which I think was designated S. 372. That bill was never enacted although I do believe it did pass the Senate and many of the provisions in it and assumptions underlying it became part of the background for the Federal Election Campaign Act Amendments of 1974.

One of the Secretary's basic recommendations at that time was that there should be some acknowledgment of as well as correction of the fact that the 1971 law provided three separate and co-equal supervisory officers but made no provision for collaboration or cooperation between them. As a remedy, the Secretary proposed that the three existing supervisors namely, the Secretary of the Senate, the Clerk of the House, and the Comptroller General be constituted as a joint board of supervisors with authority to collaborate and cooperate in promulgating rules, regulations, and forms and in jointly enforcing the statute. While many persons and groups were already favoring the establishment of a Commission, and I believe S. 372 in fact provided for one, the Secretary's proposal for a joint board of the existing supervisors was a palatable alternative for those who opposed the Commission or were apprehensive of its independence. Accordingly, the concept of the joint board became embedded in the language of many of the subsequent versions of the reform legislation as it made its way through the House of Representatives. As I recall it, the concept of the joint board went through several modifications and mutations in the process, all tending eventually towards more independence from Congress but still retaining until the last stages the designation of board or joint board out of deference to those who opposed the concept of the Commission. At one point the Comptroller General was dropped from participation but the concept of the board was still preserved and as I recall it in one intermediary stage, the idea was advanced that Members of Congress might sit on the board with the two Congressional officers. Finally in the last stages both the concept and the actual designation of the "Commission" was adopted and the two Congressional Officers were relegated to non-voting and ex officio status.

The point of all of this, and I think that the legislative history will bear it out, that at any stage in the legislative history at which the term "board" or "joint board" is used the concept of the Commission had not yet fully ripened, and the role at that point envisioned for the Clerk and the Secretary was more substantial than that which finally emerged in the statute as enacted. I therefore tend to think that the references to the Conference Report which appear on page CRS-4 of the Library study are somewhat anachronistic in content at least in the minds of the people who drafted the language and perhaps in the mind of Congressman Brademas himself.

jrd

OBP Copy
- Pers. Ltr

DUTIES OF THE CLERK OF THE HOUSE OF REPRESENTATIVES UNDER THE FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974 (PUBLIC LAW 93-443)

This report discusses the following two questions: (1) under current law, where must candidates and others file their reports and statements; and (2) under the Federal Election Campaign Act Amendments of 1974 (Pub. L. 93-443), what are the duties of the Clerk of the House of Representatives.

(1) Place for filing reports and statements.

Various statutory provisions require reports or statements to be filed "with the Commission" (for example, see 2 U.S.C. § 433(a), relating to statements of organization filed by political committees, and 2 U.S.C. § 434(a)(1), relating to reports of receipts and expenditures by candidates and principal campaign committees). Furthermore, 2 U.S.C. § 436(d) provides that, if certain, specified reports or statements are "delivered by registered or certified mail, to the Commission or principal campaign committee with which [they are] required to be filed" [emphasis added], then such reports or statements are deemed filed on the dates specified in the postmarks on the envelopes. Thus, the foregoing statutory language suggests that such reports and statements are to be sent to the Commission and not directly to the

Clerk of the House of Representatives, in the case of candidates for Representative, Delegate, or Resident Commissioner.

Nevertheless, in the course of the House debate on the Conference Report on S. 3044, Congressman Brademas, in briefly summarizing the major provisions of the bill, stated:

> "Under the bill, candidates for the House and Senate would continue to file disclosure reports with the Clerk of the House and the Secretary of the Senate" (Cong. Record, Daily Ed., p. H. 10328, October 10, 1974).

Apparently, Congressman Brademas, a member of the Committee on House Administration, had in mind one or both of the following statutory provisions: (1) 2 U.S.C. § 437g (a)(1)(B); or (2) 2 U.S.C. § 438 (d). The first of such provisions, 2 U.S.C. § 437g (a)(1)(B), requires "the Clerk of the House of Representatives or the Secretary of the Senate (who receive reports and statements as custodian for the Commission)" [emphasis added] to refer any apparent violations discovered with respect to such reports and statements to the Commission. The latter provision, 2 U.S.C. § 438 (d), requires the Commission to promulgate rules and regulations to require, inter alia, that required reports or statements from candidates for Representative, Delegate, or Resident Commissioner and from political committees supporting such candidates "shall be received by the Clerk of the House of Representatives as custodian for the Commission" [emphasis added].

Hence, the question is whether the requirement that the Clerk "receive" certain reports and statements means that such reports and statements must be sent directly to the Clerk or that they must be sent to the Commission and subsequently transmitted, by the Commission, into the custody of the Clerk, after the Commission has completed its review of them.

The legislative history on this point is inconclusive. Subsection (d) of 2 U.S.C. § 438 (the latter provision discussed earlier) was added to H.R. 16090 by a committee amendment offered during the course of the House debate. In explaining the amendment, Congressman Brademas, who offered it on behalf of the Committee on House Administration, stated:

> "Most of the supervisory responsibilities of the Clerk of the House and Secretary of the Senate would be vested in the Board [i.e. - the proposed "Board of Supervisory Officers"] except that the Secretary and Clerk would act as custodians for the Board with respect to reports filed by candidates to the House and Senate ..." (Cong. Record, Daily Ed., p. H. 7905, August 8, 1974).

The phrase "act as custodians" does not clarify the problem. However, the debate concerning this amendment (see Cong. Record, Daily Ed., pp. H. 7905 through H. 7908, August 8, 1974) strongly emphasized the independence of the proposed Board from either executive or congressional control. Thus, there is at least some suggestion of a legislative intent to impose only ministerial functions on the Clerk and to insulate

the review and investigatory functions of the Commission. Such a suggestion comports with a finding that reports and statements would be sent to the Commission and, after examination, be transmitted into the custody of the Clerk, or the Secretary, as the case may be.

The strongest argument that reports and statements are to be filed directly with the Clerk (in appropriate cases) is derived from the Conference Report (see S. Rept. 93-1237, at p. 81), wherein the following statement appears:

"F. CUSTODIAL RECEIPT OF REPORTS

Senate bill

No provision.

House amendment

Section 205(b) of the House amendment amended section 308 of the Act by inserting a new subsection (c). Such subsection provided that the supervisory officer shall prescribe rules to carry out title III of the Act, including rules to require that (1) reports required to be filed by candidates for the office of Representative, Delegate, or Resident Commissioner, shall be filed with the Clerk of the House of Representatives as custodian for the Board of Supervisory Officers (hereinafter in this statement referred to as the "Board"); (2) reports required to be filed by candidates for the office of Senator shall be filed with the Secretary of the Senate as custodian for the Board; and (3) the Clerk of the House of Representatives and the Secretary of the Senate shall be required to (A) make such reports available for public inspection; and (B) preserve such reports.

Subsection (c) also required the Clerk of the House of Representatives and the Secretary of the Senate to cooperate with the Board in carrying out its duties under the Act.

Conference substitute

The conference substitute is the same as the House amendment."

Despite the language in the Conference Report explanation requiring appropriate reports and statements to be "filed with" the Clerk, no supportive statements have been discovered in the debates in either the House or the Senate anteceding the Conference Report. The only statement supporting such an interpretation discovered in any of the debates leading to the enactment of Public Law 93-443 is the statement by Congressman Brademas (quoted above), made after the Conference Report had been written. Thus, the legislative history is inconclusive.

It may be possible to draw certain inferences from the language of other statutory provisions. But, in some instances, such inferences conflict and, hence, leave the ambiguity unresolved. For instance, 2 U.S.C. § 437g, relating to "enforcement", illustrates such conflicting inferences. Subsection (a)(1)(B) requires, inter alia, that the Clerk, receiving reports and statements as a custodian, must refer any apparent violations discovered to the Commission. This requirement could be taken to imply that pertinent reports and statements should be filed directly with the Clerk and the Clerk should examine the same for apparent violations and refer any such violations to the Commission. But, subsection (a)(2) of the same section requires the Commission to take specified action upon receiving a complaint or a referral from the Clerk (or the Secretary) or upon discovering any apparent violations on its own. This requirement could be taken to imply that reports and statements should be filed initially with the

Commission and then transmitted to the Clerk and, if the Clerk discovers any apparent violations not already discovered by the Commission, he should refer them to the Commission. Thus, while this section apparently imposes a duty to review reports and statements on both the Commission and the Clerk (or the Secretary), it does not resolve the question as to the proper place for initial filing.

Perhaps the strongest inference that the proper place for initial filing is the Commission is derived from the statutory language appearing in the two provisions cited at the outset in this report, 2 U.S.C. § 433 (relating to statements of organization) and 2 U.S.C. § 434 (relating to reports of receipts and expenditures) and in a third provision, 2 U.S.C. § 432 (relating to the organization of political committees). Under 2 U.S.C. § 433, subsection (e) expressly provides, as follows:

> "In the case of a political committee which is not a principal campaign committee, reports and notifications required under this section to be filed with the Commission shall be filed instead with the appropriate principal campaign committee" [emphasis added].

Under 2 U.S.C. § 434, subsection (a)(1) provides that, "except as provided by paragraph (2)" [emphasis added], reports of receipts and expenditures must be filed by candidates and treasurers of political committees "with the Commission" and then subsection (a)(2) expressly provides, as follows:

> "Each treasurer of a political committee which is not a principal campaign committee shall file the reports required under this section with the appropriate principal campaign committee."

Finally, under 2 U.S.C. § 432, subsection (f)(2) expressly provides, as follows:

> "Notwithstanding any other provision of this title, each report or statement of contributions received or expenditures made by a political committee (other than a principal campaign committee) which is required to be filed with the Commission under this title shall be filed instead with the principal campaign committee for the candidate on whose behalf such contributions are accepted or such expenditures are made" [emphasis added].

If, in fact, the legislative intent was to require certain reports and statements to be filed directly with the Clerk, it would seem somewhat incongruous that such intent was expressed so ambiguously, especially in contrast to the foregoing clear exclusionary provisions.

Thus, on balance, not withstanding the language in the Conference Report and Congressman Brademas' statement during the debate on that Report, it would appear from the statutory language itself that reports and statements are to be filed with the Commission and pertinent ones are to be subsequently transmitted to the Clerk or the Secretary for preservation and public accessibility.

(2) Duties of the Clerk.

Under the Federal Election Campaign Act Amendments of 1974 (Pub. L. 93-443), the following duties are expressly imposed on the Clerk of the House of Representatives:

(1) in "receiving" reports and statements as custodian for the Commission, if the Clerk discovers an apparent violation of some specified statutory provision, he must refer the same to the Commission [2 U.S.C. § 437g (a)(1)(B)];

(2) under a rule or regulation to be promulgated by the Commission, the Clerk must "receive", as custodian for the Commission, reports and statements required to be filed by candidates for Representative, Delegate, or Resident Commissioner and by political committees supporting such candidates [2 U.S.C. § 438 (d)(1)(A)];

(3) under a rule or regulation to be promulgated by the Commission, the Clerk, as custodian for the Commission, must make statements and reports "received" by him available for public inspection and copying in accordance with 2 U.S.C. § 438 (a)(4) [2 U.S.C. § 438 (d)(1)(C)];

(4) under a rule or regulation to be promulgated by the Commission, the Clerk, as custodian for

the Commission, must preserve statements and reports "received" by him in accordance with 2 U.S.C. § 438 (a)(5) [2 U.S.C. § 438 (d)(1)(C)]; and

(5) the Clerk must cooperate with the Commission in carrying out its duties and must furnish such services and facilities as may be required in accordance with 2 U.S.C. § 438 [2 U.S.C. § 438 (d)(2)].

In addition to the foregoing express duties, there may be an implied duty to review reports and statements "received" for apparent violations (see 2 U.S.C. § 437g (a)(1)(B)).

FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20463

August 26, 1975

The Honorable John Brademas
U. S. House of Representatives
Washington, D. C. 20515

Dear John:

Thank you for your letter of July 30 and the memorandum outlining in some detail your thinking on the subject of the single point of entry as set forth in the Commission's proposed Regulation #1 which it has since forwarded to the Speaker of the House and the President Pro Tempore of the Senate on August 1, 1975.

I appreciate your statement that the discussion we had along with Neil Staebler and your staff somewhat in depth was of help. Your offer to prepare and send the memorandum was very welcome. It enables the Commission to respond with an answering memorandum, which I am enclosing with this letter, and so move the dialogue forward on a high plane. Perhaps when you have had a chance to review it, you will wish to make further response. I would welcome the opportunity to have a further personal discussion with you and any other of your colleagues concerned with this matter, particularly Chairman Hays and other members of the House Administration Committee.

I want to clear up one point of possible misunderstanding. I was instructed by the Commission to hand deliver the proposed Regulation and the accompanying letters and materials to the Speaker of the House and President Pro Tempore of the Senate on Monday, July 21. I had forwarded a copy to Chairman Hays the previous Thursday and had an appointment to discuss the matter with him on Monday, July 21, before making the deliveries. At Chairman Hays' request, I did not make the delivery, but reported back to the Commission his deep concern about the proposed Regulation and his opposition to it. In my discussion with him and his Chief of Staff, yours and Congressman Frenzel's roles and deep interest in the matter were emphasized. This led to my communication with you and our meeting. I told you we wanted to file the Regulation before Congress recessed, which would give the additional time to the Congress to consider the proposed Regulation inasmuch as none of the thirty legislative days required for the Regulation to be before the Congress before the Commission could "prescribe" it would be used up.

I am very hopeful that this difference of opinion can be worked out, but if it cannot, then let the House work its will after listening to the arguments presented by all sides. Our exchanges and discussions, and those with Chairman Hays and others, will certainly help to sharpen the issue and enable the House to reach a better judgment.

There is one matter about which I am personally very sensitive, as I stated to you during our discussion. In no way do I believe the Commission is seeking to go against "the intent of Congress." As a Member of Congress for 18 years, I became very critical of the agencies of government writing regulations based upon a statute which I felt did go beyond the legislative intent, and even contrary to it, as expressed in the statute. Anyone caring to do the research could undoubtedly find words of mine in the Congressional Record expressing this strong point of view.

With this in mind, I asked our legislative counsel to be particularly careful and as exhaustive in their research as possible on the point of congressional intent and legislative history, both in general and in respect to the specific matter at hand.

I believe the accompanying memorandum read in context of our previous memorandum is one of fine scholarship. A scholarly brief was also prepared independently by the Legislative Reference Service of the Library of Congress (actually this brief was available at the time of our discussion, but I was unaware of it) which I believe goes a long way to establishing the point that the Commission's Regulation expresses the intent of Congress as derived from the statute. I am enclosing a copy of this brief for your consideration.

The matter of legislative intent and legislative history in developing the intent in a written statute has been the subject of many Supreme Court decisions over the years. An excellent chapter in Sutherland's "Statutory Construction" (1968), Chapter 48, "Extrinsic Aids - Legislative History," presents the matter in considerable depth. It is notable that even though the U. S. Courts have taken a more liberal view than the British Courts in respect to parlimentarian intent, the strong prevailing position of the U. S. Supreme Court is that the words of the statute are preeminent, as the memorandum prepared by our legal staff demonstrates.

Indeed it would make somewhat a mockery of those of us who have been trying to raise the level of legislative drafting to that of the profession it is, at least in the legislative drafting service of the U. S. Congress, if we were to pay too much attention to "extrinsic aids" in interpreting the language that the drafters have carefully worked up under the direction of the Congressional Members. This is exactly the reason I believe the British Courts have taken a very stern view of going outside the language of the statute itself. It also has great dangers to the integrity of the legislative process itself, Supreme Court Justice Robert Jackson said in support of his preference for making decisions, "by analysis of the statute instead of by psychoanalysis of Congress. When we decide from legislative history, including statements of witnesses at hearings, what Congress probably had in mind, we must put ourselves in the place of a majority of Congressmen and act according to the impression we think this history should have made on them. That process seems to me to be not interpretation of a statute but creation of a statute." I think those of us who are dedicated to reestablishing the power and strength of the Congress should eschew Court interpretation of what Congress meant as much as possible, and instead rely on perfecting our legislative drafting skills to say better and more clearly what we mean in the statutory language, and then if after all that care we find we have been unclear, come back and clarify it, rather than ask the Courts to do it. In the present instance, if it is not clear that the Commission was meant to centralize federal election reporting, enforcement, and dissemination of information in the reports, then let Congress make it clear. Or if it is Congress' judgment on reflection that it does not wish the Commission to provide this centralization, make it clear the other way.

The substantive matter at issue, I believe, is very critical for the Commission and for the general public's approval of the Commission's existence. I do not believe it is a matter of real substance for those in the House who were reluctant to see an independent Election Commission established and carried on the battle against it. The Commission, not a Board of Supervisory Officers, was established. It is largely independent and the public views it this way. I think the statute, reading it in toto, as we must, is clear.

The issue on point of entry is primarily a matter of efficiency and centralization which even those arguing for a Board of Supervisory Officers agreed to. The remnant of the Clerk of the House and the Secretary of the Senate receiving the reports for

the candidates for House and Senate respectively has no substantive value to anyone, whatever position they might hold on the philosophical issue. If the word "receive" were to be enlarged beyond its ordinary meaning to mean "filed" we would have a serious decentralization which would achieve no useful purpose, but would create substantial added cost, prevent the Election Commission from doing an efficient job, and be a matter of confusion to those in the public who must deal with the federal election laws. In essence, the public will receive a very poor impression of the efficacy of the Federal Election Commission if the House were to adopt this line of thinking. The U. S. Senate notably agrees with the proposed Regulation.

I look forward to your further comments on this matter. I am assuming that it meets with your approval to send copies of this letter and the enclosed briefs to Chairman Hays and others interested in this problem, just as I circulated your brief to the other members of the Commission, our legal staff, and others, which I know you contemplated.

With best personal regards,

Sincerely,

Thomas B. Curtis
Chairman

TBC/cmk

Enclosures (2)

cc: Wayne L. Hays
Bill Frenzel

FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20463

29 AUG 1975

Honorable Wayne L. Hays
Chairman, Committee on House
Administration
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letters of August 7 and 8, 1975 wherein you stated that this Commission's proposed regulations on document filing, and franking and office accounts, were improperly submitted to the Congress, inasmuch as Section 316(c) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §438(c), had not been complied with, and further that certain procedures contemplated by the Administrative Procedure Act, 5 U.S.C. §553, had not been followed. The Commission is of the opinion that these proposed regulations were properly submitted to the House of Representatives and that all other procedural requirements with regard thereto have been met.

Submission to the House of Representatives

Section 316(c) of the Act requires the Commission to transmit to the Senate or the House of Representatives, as the case may be, a statement which "shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation." The Commission duly complied with that requirement on July 31, 1975 and August 1, 1975 respectfully by transmitting the required statement to the Senate and House of Representatives with each of the proposed regulations. The constitutional record of the House of Representatives, the House Journal, reflects that the Commission's proposed regulations were laid down before the House as Communication No. 1515 and Communication No. 1525 of the 94th Congress, the respective entries being dated July 31 and August 1, 1975. No later entry in the journal of the House refers to these Communications.

You correctly point out in your letters that the proposed regulations were also published in the Federal Register on August 6, 1975 (document filing) and on August 5, 1975 (franking and office accounts) pursuant to 2 U.S.C. §437(d). Nothing in the Act or its legislative history, however, specifies the order in which proposed regulations are to be submitted either to the Federal Register or the respective House of Congress. Furthermore, the 30-calendar day period during which public comment may be received on a proposed regulation published in the Federal Register serves neither to toll the 30-legislative day period for Congressional consideration of the regulation under 2 U.S.C. §438(c)(2), nor to invalidate or suspend an otherwise properly submitted proposed regulation.

In that regard, the Commission would like clarified the procedure whereby the Committee on House Administration purported to reject our submission of these proposed regulations. It is our understanding of 2 U.S.C. §438(c)(2) that only the appropriate body of Congress, that is, either the House of Representatives or the Senate, can disapprove a proposed regulation within 30 legislative days, and that the power of disapproval does not rest with the Committee on House Administration. If in fact there was a procedural defect in the submission of the proposed regulations, and we would respectfully submit that there was none, it appears to the Commission that under normal House practice a resolution to that effect would be introduced and at some point be acted upon by the full House. According to the Congressional Record of July 31, 1975, at page H8046, and of August 1, 1975, at pages H8184-85, the proposed regulations were properly referred to your Committee by the Speaker of the House under the authority of Clause 2 of Rule XXIV of the Rules of the House of Representatives. It appears to the Commission that the obligation of the Committee thereafter was and remains to treat the Commission's communications in the normal course. This could involve the introduction by any member of the resolution to approve or disapprove the proposed regulation, which would be referred to your Committee by the Speaker. Then under Rule 12 of your Committee's Rules the resolution "referred to the Committee shall be referred by the Chairman to the Subcommittee on appropriate jurisdiction within two weeks unless by majority vote of the majority members of the full Committee, consideration is to be otherwise effective."

The Commission is accordingly of the view that even if, arguendo, the proposed regulations were improperly submitted, the Committee on House Administration is obliged to follow both its own and the House of Representatives' usual procedures. Hopefully, in doing so, the Committee or the appropriate Subcommittee thereof would hold hearings on this matter, in which the Commission would be pleased to participate. Thereafter, if the Committee acts on the resolution, the full House would have an opportunity in the normal course to affirm or reject the Committee's measure.

The foregoing represents the Commission's understanding of the manner in which the House of Representatives will proceed to consider regulations submitted by the Commission pursuant to 2 U.S.C. Sec. 438. We see no basis either in relevant House and Committee rules or in other precedents for the return by a Committee Chairman to the submitting Federal authority of a proposed regulation earlier submitted in the ordinary course to the House. Accordingly it is the view of the Commission that the two proposed regulations here under discussion remain pending business before the House of Representatives.

Administrative Procedures Act Compliance

Your views expressing a preference for the Commission to defer the submission of a proposed regulation to Congress until expiration of the time period for public comment are well taken. However, for compelling reasons, the Commission has chosen to transmit these proposed regulations to Congress before their publication in the Federal Register. First, the proposed regulation on document filing which was published in the Federal Register on August 6, 1975, need not have been published at all, inasmuch as the subject matter of the regulation is a combination of an interpretive rule and a rule of agency procedure and is, therefore, exempted under 5 U.S.C. §553(b)(A) from the publication requirement. The publication in that case was thus intended to serve more as a public notice of what the Commission proposed to do in this area rather than as an attempt to elicit meaningful comment, since those who would be affected by the regulation, namely the Clerk of the House, the Secretary of the Senate, and interested Members of Congress, will have an opportunity to present their views on the regulation during the 30-legislative day period. I note that with regard to the Commission's proposed regulation on franking and office accounts, which was submitted to the Congress first but which you purported to return to the Commission the day after purporting to return the

later-submitted regulation on document filing, the publishing requirement was satisfied by the August 5, 1975 publication in the Federal Register (Notice 1975-18, 40 Federal Register 32951). It is important to note further in this regard that on June 2, 1975 the Commission had requested comment on precisely this subject, in a Notice of Proposed Rulemaking, Notice 1975-2 (published at 40 Federal Register 23833, paragraph I.F.). Public comments with regard thereto were duly received.

As a matter of clarification, there is no further requirement, contrary to the views expressed in your letter, either under the Administrative Procedure Act or the Federal Election Campaign Act Amendments of 1974, that the Commission further publish any version of comments received on a proposed regulation in the Federal Register, nor is there any requirement that the Commission give additional time for the submission of rebutting comments. In fact, Title 44 of the United States Code, chapter 15, relating to public printing and documents, expressly provides in section 1505(b) that "comments . . . of any character may not be published in the Federal Register."

Finally, the Commission assumed a calculated risk that any forthcoming comments from the public at large might suggest the desirability of modifying the substance of the proposed regulations. In that event, the Commission could withdraw either regulation from Congressional consideration and substitute a regulation so modified. However, considering that time is of the essence for the promulgation of the proposed regulation on document filing in view of the October 10, 1975 deadline for filing reports under 2 U.S.C. §434(a)(1)(C), and considering the urgency with which many members of Congress expressed themselves with respect to the need for guidance regarding the use of office accounts, the Commission felt justified in exercising its discretion in the manner in which it did.

CONCLUSION

For the foregoing reasons, the Commission is of the view that the submission of the proposed regulations on document filing and franking and office accounts was proper under 2 U.S.C. §438(c), and that the regulations remain as pending business before the House of Representatives.

The Commission would like to thank you for reiterating in your letters your previously stated view that the Congress need not wait the full 30 legislative days to approve a regulation but could do so sooner by enactment of a resolution specifically approving the regulation under review.

Sincerely yours,

Thomas B. Curtis

Thomas B. Curtis
Chairman

cc: Honorable Carl Albert, Speaker
Honorable Thomas P. O'Neill, Jr., Majority Leader
Honorable John J. Rhodes, Minority Leader
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

September 4, 1975

MEMORANDUM FOR: JIM CONNOR

FROM: JACK MARSH

SUBJECT: Federal Election Commission

I have some suggestions on the proposed letter to the Federal Election Commission.

Mainly, I would try and have a shorter response. Although it should deal with the Committee's questions in a direct way, nevertheless, I feel it should be more general rather than as specific as this particular letter is. I think we run the risk of setting forth a number of representations that could become rules by which we will be bound later on as we move further into the campaign.

For example, I notice informal, unpublicized meetings with local politicians. This is an example that raises questions of interpretation. What if a local politicians' meeting is publicized? What if the meeting is attended by not local politicians, but state and regional politicians.

This is the general thrust of what I have in mind. It may be that we have to be specific in this letter, but I would be inclined to try and avoid it if we possibly can.

JOM/dl

SEP 5 1975

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 4, 1975

MEMORANDUM FOR: BOB HARTMANN
JACK MARSH
DONALD RUMSFELD
DICK CHENEY
MAX FRIEDERSDORF
BILL SEIDMAN

FROM: JIM CONNOR

The attached letter on the issue of proposed Presidential travel requirements was transmitted to the Federal Elections Commission. This copy is for your information. If you have questions on specific aspects of it, please contact either me or Barry Roth in the Counsel's office.

Attachment

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, 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 passengers 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

27000 (Air Force One) (VC-137C)

Cost per hour:	$2,206.00
Passengers:	Approximately 50

26000 (Air Force One backup) VC-137C)

Cost per hour:	$2,206.00
Passengers:	Approximately 50

Jet Star (VC-140)

Cost per hour:	$ 889.00
Passengers:	8

White Top Helicopter (VH-3A)

Cost per hour:	$ 723.00
Passengers:	12

Huey Helicopter (VH-IN)

Cost per hour:	$ 262.00
Passengers:	8

OCT 17 1975

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

October 17, 1975

Honorable Carl Albert, Speaker
House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

I want to register a strong objection to the procedures under which the House of Representatives is about to consider H. Res. 780 to disapprove Proposed Regulation 1 of the Federal Election Commission to require a single place of filing reports under the federal election laws.

As I discussed with you, and you agreed, the previous procedure the Chairman of the House Administration Committee, to which Committee you, as Speaker, properly referred FEC Proposed Regulation 1, sought to pursue by sending back to the FEC the Proposed Regulation on his own initiative without any action having been taken by the House Administration Committee or the House, was improper.

Now we are presented with different procedures which, although improved, are still improper and not conducive to a rational disposition of proposed regulations from the FEC.

I respectfully suggest that the proper procedure for the House to follow in carrying out its statutory authority to disapprove a proposed regulation of the FEC is for a member to introduce a resolution disapproving (or approving as we discussed) the proposed regulation. This resolution would be referred by the Speaker to the House Administration Committee to consider and report back to the House its recommendations for action so the House may work its will. The Committee then should have a public hearing on the proposed regulation and the supporting material accompanying it with the FEC testifying under cross examination. After the hearings have been held, then the Committee should consider and vote. If it desires to refer the matter to the House, its report to the House should set out the issues and the conclusions.

None of this latter procedure has been followed. The FEC asked for a public hearing and asked to testify. I thought I had an assurance from Chairman Hays that this would be done.

The federal election laws prescribe a new experiment in political science. They require the FEC to send its proposed regulations to the Congress to await 30 legislative days for a possible disapproval before they become effective. The laws require that the FEC send a brief and explanatory material along with its proposed regulation. This has been done in respect to its Proposed Regulation 1. However, the report of the House Administration Committee accompanying H. Res. 780 contains none of this material. The House members have no opportunity to consider the reasoning of the FEC.

The Senate Rules Committee, in considering S. Res. 275, to disapprove FEC Proposed Regulation 2 last week, did hold public hearings. The FEC did testify. In its report to the Senate accompanying S. Res. 275, the Committee set out the Proposed Regulation and the accompanying FEC material. The Senate debate proceeded on the basis of this material.

If the Chairman of the House Administration Committee had sought a rule from the House Rules Committee, these serious procedural flaws could have been pointed up and corrected. Instead, the Chairman sought to place the matter on the Suspension of Rules Calendar which requires the Speaker's acquiescence.

In light of the fact that the FEC has not been given an opportunity to present its views and the House Administration Committee report does not set forth the reasons behind Proposed Regulation 1, I strongly urge you, Mr. Speaker, to withdraw H. Res. 780 from the Suspension of Rules Calendar and let the House Administration Committee go to the Rules Committee for a rule. This will enable the Rules Committee to help develop orderly procedures for the handling of FEC proposed regulations in the future and, in

the specific instance, result in the FEC being permitted to testify in public hearings conducted by the House Administration Committee. In this way, the House may have the benefit of as many points of view as possible in working its will.

Respectfully,

Thomas B. Curtis
Chairman

TBC:me

cc to:
Honorable John Rhodes
Honorable Wayne L. Hays
Honorable William L. Dickinson
Honorable John H. Dent
Honorable Charles E. Wiggins