The original documents are located in Box 16, folder "Federal Election Commission - RNC and PFC Payment of Presidential Travel Expenses (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE

WASHINGTON

November 26, 1974

MEMORANDUM FOR: PHIL BUCHEN

FROM: DUDLEY CHAPMAN DC

SUBJECT: Reporting of RNC Expenditures for White House Political Expenses

Rod Smith, Comptroller of the RNC, tells me that all such expenditures are reported as RNC outlays. He adds that the White House is not designated in the report. A travel reimbursement, for example, will simply show a check to the U. S. Treasury for travel. The invoice would have to be inspected to determine that the expense was incurred through White House activity.

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11/26
Phil A—
To add to Dudley's earlier memo.
D

THE WHITE HOUSE

WASHINGTON

November 26, 1974

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Form DJ-150
(Ed. 4-26-65)

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

Memorandum

TO : Laurence H. Silberman
Deputy Attorney General

DATE: JAN 23 1975

FROM: Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

SUBJECT: Legal questions concerning "political funds".

This is in response to your request for the views of this Office on questions raised by the White House concerning payment of the costs of political activities undertaken by the President and his immediate staff. We are informed that such costs are traditionally borne by the President's political party in one of two ways: Either through disbursements from a White House account funded for that purpose by a political committee (e.g., the Republican National Committee (RNC), the Committee to Re-elect the President), or through direct payment by the political committee of bills forwarded by the White House staff.

18 U.S.C. 603

The first question is whether the activity described above runs afoul of 18 U.S.C. § 603, which provides

> "Whoever, in any room or building occupied in the discharge of official duties by any person mentioned in Section 602 of this Title, or in any navy yard, fort or arsenal, solicits or receives any contribution of money or other thing of value for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both."

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The persons "mentioned in Section 602" include any person who "receives compensation for services rendered from monies derived from the United States Treasury." Thus, rooms and buildings occupied by the President and all members of the White House staff are included. Despite a contrary view expressed by a staff memorandum of the Special Prosecutor's Office, we are of the firm opinion that--as the clear language of the statute indicates--it is the place of solicitation or receipt and not the status of the person solicited to which the prohibition is addressed. Even if the language were not unambiguous,

nothing in the legislative history is sufficient to narrow the provision to cover only solicitation or receipt from Federal employees.

It is our opinion, however, that the term "contribution" does limit the reach of the statute. The concern of the legislative history is with solicitation and receipt of money or other things of value from primary donors. The sponsors of Sec. 603 (enacted originally in 1883) sought to prevent Federal premises from being used for political fundraising. Although the term "contribution" is defined in the general definitional section of the Chapter, 18 U.S.C. § 591(e), in such a way as to include transfers of funds between political committees, the definitions of that section are expressly not made applicable to Section 603. There is no reason, when approaching the latter section, to stretch the term "contribution" beyond its more normal meaning, referring to the initial donation to a particular political group and not to subsequent transfers of the contributed funds within that group. Such a limited interpretation is entirely consistent with the statute's general purpose.

The foregoing analysis does not, however, entirely resolve the present problem. While deposits in a White House account by an organization such as CREEP, whose funds are all directed exclusively to furthering the President's personal political interests, seem clearly exempt, it is by no means clear that contributions from the RNC to the President are merely transfers within units of the same political group and hence not "contributions" for purposes of Section 603. In our view the touchstone of Section 603's applicability is whether the transfer has the effect of committing the funds to a political cause to which they were not previously unqualifiedly committed. Such a transfer from the RNC to the campaign of a particular Congressman would meet this test; and it is arguable that a transfer from the RNC to the President's campaign (at least once he is an announced candidate) is no different. It seems more reasonable, however, to take note of the fact that the President, unlike a Congressman, is the head of his party as well as an individual candidate; he expends his political funds for party as well as personal purposes, and indeed has an obligation to do so; his success and that of his party are usually closely interdependent. In these circumstances, the RNC and the President may properly be said to represent one and the same political cause, in which case transfer of funds to the President

would not represent a "contribution" under Section 603. Nevertheless, this issue is not entirely free from doubt, and the safest cause is clearly direct billing of the RNC rather than payment through a White House account.

In a narrow sense, political activity by members of the White House staff for which there is no reimbursement with political funds might be considered a form of political contribution of the market value of their services. However the line between those "political" functions of the President and his staff emanating from the President's role as head of the Executive branch and those emanating from his role as the head of a political party has always been extremely hazy. See Rossiter, the American Presidency (1964) at 28-30. There is no indication that this statute, drawn in simple terms of solicitation and receipt of contributions, was intended to enter this murky area. We think that extension of a criminal statute such as Section 603 in such a manner would create a standard too vague for enforcement, and would be improper. See Prussian v. United States, 282 U.S. 675 (1931); Cf. The Regional Rail Rorganization Act Cases, ____ U.S. ____, ____ (1974), 43 U.S.L.W. 4031, 4041 (U.S. Dec. 16, 1974).

As strange as it may seem, there is a simple technical means of avoiding all problems with Section 603. The statute only applies if funds are solicited or received on Federal property. If the RNC funds are accepted for deposit at RNC Headquarters, deposited in a bank account, and checks and disbursement from that account written in the White House, Section 603 would have no application. This is in no way an evasion of the law. It is a technical statute and can be technically complied with. If this approach is adopted, however, it would be essential to avoid any phone call from the White House to the RNC regarding the funds which could be deemed a "solicitation." Both because of the difficulty of avoiding this problem, and because of the technicality which is not particularly appealing from a public relations standpoint, we still consider the best resolution to be the forwarding of invoices for payment. It is simply not a good idea to have White House staff members disbursing political money.

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Registration and Reporting

The question to be addressed here is whether the forwarding of invoices covering charges for political activities from White House personnel to political committees, or the receipt by White House personnel of funds from political committees to pay such charges, causes such personnel to qualify as a separately identifiable "political committee", subject to the registration and reporting requirements of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 et seq. (FECA).

A "political committee" is defined by the 1974 Amendments as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000." Section 301(d), as amended (P.L. 93-443, § 201). The contributions and expenditures referred to only bring a committee within the definition if they are made for the purpose of influencing a Federal election, a nomination for such an election, a Federal primary, the selection of delegates to a national nominating convention, or the selection of Presidential electors. See § 301(e), (f), as amended. For purposes of the Act's reporting provisions, the term "contribution" includes transfers of funds between political committees. Section 301(e)(3), as amended.

The primary purpose of the FECA is to allow the public to trace the source and disposition of funds used to influence Federal elections. See House Rep. No. 93-1239, 93d Cong., 2d Sess., (1974) at 2, 7. It is clear that an itemized report on the disposition of funds transferred into a White House account and spent for the purposes of influencing a Federal election will be required of someone, and the only question is of whom.

It seems to us that application of the reporting provisions in the present case depends upon whether White House staff members making the expenditure do so with a sufficient degree of independence from the RNC to be considered a separate committee; or whether they are, rather, merely agents or instruments for the disbursal of funds by the RNC itself. Section 302(a) of the Act specifically contemplates such agents. ("No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.") (emphasis added.) An agency relationship would impose a requirement to report

only upon the Committee. It can only exist if the expenditures are related to the lawful purpose of the RNC, treated in a manner consistent with its statement of organization under § 303 of the Act, and subject to its control. The last requirement is obviously difficult to establish. Specification by the RNC of the individual expenditures to which the funds are to be devoted would surely meet the requirement; specification of particular purposes for the expenditures would probably suffice, so long as they are not stated at such a level of generality as to confer broad discretion upon the White House staff, thereby making them a "separate committee."

Of course the expectation and understanding of the parties themselves will be persuasive though not necessarily conclusive in determining whether an agency relationship or a "separate committee" exists. As part of any understanding of an agency relationship, it would seem essential that the RNC be provided with fully detailed reports concerning disbursements to enable the Committee to fulfill its reporting obligation. Such internal reporting would also objectively manifest the understanding of the parties.

Under the foregoing principles, where the RNC disburses money to White House personnel for payment of bills presented by the Government with respect to particular instances of political use of Government property authorized by the Committee, and where the Committee itself regards the transaction as an internal transfer reportable by it, we would consider it an intra-Committee matter giving rise to no registration or reporting requirement on the part of White House staff. Where, however, the White House retains complete discretion as to the disposition of the money, and makes no accounting concerning it, the White House staff would probably be regarded as a separate political committee liable to registration and reporting under the FECA.

The foregoing analysis, resting the judgment of what is a "separate committee" upon mutual agreement concerning the reporting obligation, and upon the degree of centralization of control of disbursement decisions, is in our view a logical and reasonable interpretation of the Act. However, with neither an informative legislative history nor case law to go on, it is impossible to say with certainty that the Supreme Court will adopt this approach toward the new statute. Hence, with respect

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to this issue of reporting, as with respect to the previously discussed issue of § 603 liability, the safest course is to keep White House staff members free from the actual disbursement of funds, and simply to forward bills from the White House to the RNC for payment. Under such a system, even if complete freedom to decide what expenditures should be made is vested in designated White House staff members, the actual expenditures will be made by the Committee, and the flow of funds from itemized contribution to itemized expenditure (the monitoring of which is the primary concern of the FECA) will be reflected in the first instance in the Committee's books. Since the Committee itself is paying the bills, it has the ultimate responsibility of seeing to it that such expenditures are both within its registration statement filed under § 303 and otherwise lawful. The purpose of the Act is not to maximize the number of registration statements or reports, but to trace the source and disposition of money. If bills are sent to a political committee either indirectly by the White House staff or directly by the supplier of the service and the committee pays them, it is totally consistent with the FECA for the committee to be the only reporting unit.

Assuming, however, that funds for the purpose of influencing a Federal election are transferred to the broad discretionary control of the White House, or that it is otherwise felt that registration by White House staff members as a political committee is appropriate, the nature of applicable registration and reporting requirements would depend on several variables. For example, different procedures would appear to be required depending upon whether one person or a group of several persons at the White House has responsibility for matters relating to the disbursement of funds. Compare newly added § 304(e) with §§ 303 and 304(a), as amended and new § 308. Perhaps more important, procedures will differ depending upon whether expenditures are made for the general purpose of "influencing the outcome of an election" or for the more narrow purpose of supporting a specific "candidate." Compare newly added § 308 with § 304, as amended. See § 304(e) applicable to both situations.

"Candidate" as defined by the FECA

As indicated above, what must be reported and to whom depends to some extent upon whether a committee is

supporting a "candidate", as that term is defined in the Act. The specific question relevant here is the effect of President Ford's early announcement of candidacy. If the President is now a candidate under the Act, or when he becomes such a candidate, he must designate a "principal campaign committee" (§ 302(f) as amended) to which other political committees supporting him must report, and must file individual reports under § 304.1/ He must also designate one or more national or state banks as his "campaign depositories" wherein contributions to his political committees must be kept. Sec. 309.

Under both the original FECA and its 1974 Amendments, the mere announcement of one's candidacy for the Office of President does not, in itself, give rise to any obligations. In order to be subject to the obligations imposed on candidates, one must have performed one of several "acts of candidacy" specified in the definition of that term in Section 301(b) of the Act. These include: (1) qualifying for nomination or election to Federal office under the law of at least one state; (2) personally accepting political expenditures to advance one's candidacy; and (3) giving one's tacit or express consent to another individual or entity to make expenditures or receive contributions to advance one's candidacy. Thus, if monies have either been received or expended to advance the President's 1976 candidacy with his tacit approval, he is a "candidate" within the meaning of the FECA, without regard to the identity of the individual or entity effecting the transaction, and he must proceed under the Act.

The question then arises whether transfer of money by a committee into a White House account for general political purposes, or payment by a committee for political functions carried out by the President, coupled with the President's announcement of candidacy would make him a "candidate" under the Act. The answer turns on a determination of whether the funds are contributed or expended "with a view to bringing about his nomination" § 301(b). In our view a President's general political role in his party can ordinarily be separated from his own quest for

1/ The nature of reporting requirements will differ depending on whether the filing is for a period prior to January 1, 1975. See Amendments to § 304.

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renomination. The two can become intertwined, however, and the determination required here will have to be made in a specific factual context.

Finally, all of this raises questions concerning the propriety of full time Federal employees in the White House devoting all or a substantial portion of their working hours to partisan political activities, such as fund-raising or supervising a re-election campaign. Insofar as White House activities are concerned, the President operates in a dual capacity: Under the Constitution he is head of the Executive branch of government; he is concomitantly the head of the political party of which he is a member. Under our system it is not always possible, and perhaps not always even desirable if we are to maintain a politically viable Executive branch, to ascertain in which capacity a President is acting in a particular instance. This duality of Presidential function appears to be an accepted part of our political system. To some extent Presidential staff work will share the same characteristic, and it must likewise be accepted.

Again, however, the question can not be answered entirely outside the context of a particular fact situation. In an aggravated case, White House political activity could be considered a possible misuse of appropriated funds for a political purpose, a fraud against the government, and a violation of the Federal Election Campaign Act of 1974. Even then, any minor excesses constituting technical violations would probably best be corrected through traditional political remedies rather than by use of criminal sanctions.

GSA
3 yrs intervening in rate cases
Utilities need rate relief.
Now in 124 cases

P.O. on Monday

Working on
letter to

Ruth

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President
Campaign

THE WHITE HOUSE

WASHINGTON

May 19, 1975

MEMORANDUM FOR: DICK CHENEY

FROM: PHIL BUCHEN P.W.B.

SUBJECT: LA Times Story on Polling Expenses

I believe that our legal position is sound in that you may use Republican Party funds for political purposes that relate to the Presidency itself as distinguished from the President's own personal candidacy. Since there are continuing political expenses relating to the Presidency, we cannot avoid all such criticism by simply stopping the expenditures. We should be cautious, however, to be sure that the facts in all cases are persuasive that the expenditure is legitimately in the interest of the Party and not just of the candidate, since the propriety of our position depends on this factual distinction. Polling is a particularly sensitive activity which calls for considerable discretion in deciding what information we are to seek.

As soon as the President has his own source of political funds, it would be helpful to run some polls clearly related to his own candidacy so that their subject matter would provide a contrast to polls conducted with Party funds.

cc: Don Rumsfeld
Jerry Jones

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THE WHITE HOUSE

WASHINGTON

May 12, 1975

MEMORANDUM FOR: DUDLEY CHAPMAN

FROM: PHILIP BUCHEN P.W.B.

Please prepare a reply for my signature to the attached memo from Dick Cheney raising questions concerning the Los Angeles Times story of May 9, 1975, as to the legality of certain expenditures by the Republican National Committee.

Attachment

THE WHITE HOUSE

WASHINGTON

May 10, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DICK CHENEY

Attached is a piece out of the Los Angeles Times from Friday, May 9th, raising questions about the legality of the RNC providing support for polls for the White House, etc.

I would appreciate it if you would review this and let me have your thoughts on it.

cc: Don Rumsfeld
Jerry Jones

Attachment

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GOP Committee Spending $40,000 on Ford Polls

BY ROBERT SHOGAN
Times Political Writer

WASHINGTON—The Republican National Committee, which is limited by a new campaign reform law to $5,000 contribution to a candidate for the presidential nomination, has al-

tions posed at the suggestion of White House aides.

GOP officials, White House aides and Dean Burch, chairman of Mr. Ford's newly organized "informal" campaign committee, defended the

tee on behalf of Mr. Ford was questioned by aides to potential rivals in both parties.

"If this money was spent solely on the President, who, if he isn't a candidate already technically, will presu-

Walter T. Skallerup, treasurer of the campaign committee for Democratic Sen. Henry M. Jackson of Washington, said the polling sponsored by the Republican committee raised "a very serious question" and

eral Elections Commission is going to enforce the law."

The polls in question were conducted by Decision Making Information, a Los Angeles-based firm, in February, March and April. The survey included voter reaction in five states Mr. Ford has visited—Texas, Kansas, Florida, Indiana and California—to his proposals on energy and the economy, plus a nationwide sample which rated Mr. Ford's overall performance

$25,000, informed sources said. The money came from $500,000 budgeted by the National Committee for White House political expenses, which includes part of the cost of presidential trips, the distribution of such presidential mementos as cuff links, tie tacks and ladies' pins, and political receptions in Washington.

The purpose of the poll, Mabe said, was "to study how the President's

THE WHITE HOUSE

WASHINGTON

Book loaned to Cheney

6/13 memo from GOP to go on tour w/ Colson needed Rptd.

Republican
National
Committee.

June 13, 1975

TO: Recepients of the GOP Federal Election Law Manual

FROM: Jacquie Nystrom

Enclosed for your review is the first publication in the Federal Register of proposed actions by the Federal Election Commission.

Republican State and County organizations should pay particular note to the July 1, 1975 deadline for submitting written comments concerning the proposed rulemaking for the reporting and accountability of these organizations.

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Title 11—Federal Elections

CHAPTER I—COMPTROLLER GENERAL

CAMPAIGN COMMUNICATIONS AND DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

Revocations

The Federal Election Campaign Act Amendments of 1974, Public Law 93-443, 88 Stat. 1263, October 15, 1974, has made extensive changes in the Federal laws relating to Federal election campaign financing and disclosure. Among these changes are (1) the replacement of the three supervisory officers (Comptroller General, Secretary of the Senate, and Clerk of the House of Representatives) named in the Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 3, by a new Federal Election Commission; (2) the repeal of title I—Campaign Communications—of the Federal Election Campaign Act of 1971, relating to communications media charges for campaign advertising, expenditure limitations for the use of communications media, and certification requirements for the use of communications media; (3) extensive amendments to title III of the Federal Election Campaign Act of 1971, relating to registration and financial reporting by candidates for Federal elective office and supporting political committees; and (4) a transition period between the enactment of the new law and the appointment and organization of the newly created Federal Election Commission.

The transition provision, which is section 208(b) of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1286, states that the Comptroller General, the Secretary of the Senate, and the Clerk of the House of Representatives shall continue to carry out their responsibilities under title I and title III of the Federal Election Campaign Act of 1971, as such titles existed prior to the date of enactment of the Amendments, until the appointment and qualification of all the members of the Federal Election Commission and its general counsel, and until the transfer provided for in section 208(b).

The Federal Election Commission, on May 13, 1975, published a notice in the FEDERAL REGISTER, 40 FR 20854, stating that, as provided by section 208(b), the transfer of authority from the supervisory officers designated by the Federal Election Campaign Act of 1971 to the Federal Election Commission will be completed by May 30, 1975. Accordingly:

(1) Title 11, Chapter 1, Subchapter A, entitled "Campaign Communications" and Subchapter B, entitled "Disclosure of Federal Campaign Funds" of the Code of Federal Regulations are revoked effective May 30, 1975.

(2) Title 11, Chapter 1, Supplement B—Federal Campaign Funds: Comptroller General—which contains questions and answers on the administration of the Federal Election Campaign Act of 1971 by the Office of Federal Elections in the General Accounting Office, is revoked effective May 30, 1975.

(3) The communications media expenditure limitations applicable to each Federal election during 1975, issued by the General Accounting Office pursuant to title I of the Federal Election Campaign Act of 1971, and published in the FEDERAL REGISTER on February 18, 1975 (40 FR 7080), are revoked effective May 30, 1975.

The Federal Election Commission has stated its intention, on an interim basis, to accept registration statements and financial reports prepared in conformity with the provisions of Subchapter B—Disclosure of Federal Campaign Funds—with certain modifications, with respect to campaigns for nomination or election to the offices of President and Vice President of the United States. For further information, see the Federal Election Commission's notice published in Part III of today's FEDERAL REGISTER.

(Secs. 205(b), 208(b), and 208(c), 88 Stat. 1263, 1278, 1286.)

[SEAL] ELMER B. STAATS,
Comptroller General of the United States.

[FR Doc.75-14506 Filed 5-30-75;3:45 am]

CHAPTER II—FEDERAL ELECTION COMMISSION

[Notice 1975-1]

INTERIM GUIDELINES; REPORTS

Pending the issuance of revised regulations and forms under the Federal Election Act Amendments of 1974, committees, candidates and others subject to the Act may, in complying with the reporting requirements of the Act, as amended, submit such reports in conformance with regulations promulgated by the previous Supervisory Officers under the Federal Election Campaign Act of 1971, the Secretary of the Senate, the Clerk of the House of Representatives, and the Comptroller General of the United States.

Such reports will be accepted by the Federal Election Commission on forms heretofore published by the previous Supervisory Officers. The Commission recommends that reporting parties observe the following modifications in completing said forms:

(1) In connection with reports due on or before July 10, 1975, on the front page of the Reports of Receipts and Expenditures (for either a political committee or a candidate) issued by the previous Supervisory Officers, the date July 10 should be typed in the section captioned "Type of Report." Committees, candidates and others who have heretofore filed reports with the Secretary of the Senate or the Clerk of the House of Representatives should file the July 10, 1975 reports with those officers as before. Committees, candidates and others who have heretofore filed reports with the Comptroller General of the United States should file the July 10 report with the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. All other persons subject to the Act should file with the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

(2) The definition of "file," "filed" and "filing" has been superseded by provisions of the 1974 Act which stipulated that the U.S. postmark shall be deemed to be the date of filing. [2 U.S.C. 436 (d)]

(3) The definition of "periodic reports" has been revised to mean reports filed not later than the tenth day following the close of a calendar quarter. [2 U.S.C. 434(a)(1)(C)]

(4) The definition of "pre-election report" has been revised to mean those reports filed not later than the tenth day before the date on which such elections are held. [2 U.S.C. 434 (a)(1)(A)(i)]

(5) The instructions entitled "Dates for Closing Books" have been modified by provisions of the 1974 Act which stipulate that pre-election reports shall be complete as of the 15th day before such election; that reports filed not later than the 30th day after an election shall be complete as of the 20th day after such election, and that periodic reports shall be complete as of the close of the calendar quarter. [2 U.S.C. 434(a)(1) (A), (B), and (C)]

(6) In Parts 5 and 10 on the Summary Page issued by the previous Supervisory Officers, both the total amount of transfers and the portion thereof comprised of transfers between political committees which support the same candidate and which do not support more than one candidate should be entered on the same line separated by an oblique (/), pursuant to the requirements of 2 U.S.C. 434(b) (8) and (11). For example, the Part 5 entry might be 800/500, the 800 figure representing the total transfers, the 500 after the oblique representing the amount transferred between political committees supporting the same and no other candidate. In computing the "Total Receipts" amount in the line immediately below Part 5, the total transfer figure (in the foregoing example, 800) should be used. In computing the "Total Expenditures" amount in the line immediately below Part 10, the total transfer figure (the figure before the oblique /) should similarly be used.

(7) Expenditures, including communications media expenditures, need be itemized only when they aggregate in excess of $100 to any individual in a calendar year [See 2 U.S.C. 434(b)(9)]. Communications media expenditures need not be separately itemized under Part 6 of the Summary Page issued by the previous Supervisory Officers, but may be included under Part 9 of the Summary Page.

The Commission will at the earliest possible date issue interim guidelines relating to the following matters (as well as matters described in the Commission's Notice of Proposed Rulemaking published in today's FEDERAL REGISTER): (a) When and how a candidate should designate a principal campaign committee; (b) when and how a candidate should designate campaign depositories.

Effective date: May 30, 1975.

THOMAS B. CURTIS,
Chairman, for the Federal Election Commission.

[FR Doc.75-14505 Filed 5-30-75;8:45 am]

FEDERAL ELECTION COMMISSION

[11 CFR Ch. II]

[Notice 1975–2]

IMPLEMENTATION OF FEDERAL ELECTION CAMPAIGN ACT

Notice of Proposed Rulemaking

The Federal Election Commission (FEC) was established by the Federal Election Campaign Act Amendments of 1974 (Pub. L. 93–443, 2 U.S.C. 431 et seq.). The FEC is responsible for the administration of, for obtaining compliance with, and for formulating policy with respect to the Federal Election Campaign Act of 1971, as amended (the Act), and sections 608, 610, 611, 613, 614, 615, 616 and 617 of Title 18, United States Code (the Act and these sections are collectively referred to herein as the "Statutory Provisions".) Pursuant to these responsibilities, the FEC is preparing regulations to implement certain of the Statutory Provisions; the FEC proposes to make rules with respect to some or all of the aforementioned matters. Such regulations will be designed to insure that all persons and organizations subject to the Statutory Provisions are equally treated, and that the public interest requiring a clear development of constitutional safeguards is served.

Any interested person or organization is invited to submit written comments to the FEC concerning any part of this notice. The facts, opinions, and recommendations presented in writing, in response to this notice will be considered in drafting regulations related to the Statutory Provisions.

Set forth below is a general description of the subjects and issues that the FEC believes require the most immediate attention:

I. Procedures

A. Comments should be directed to whether or not the Commission has the authority to issue regulations generally for 18 U.S.C. 608, 610, 611, 613, 614, 615, 616 and 617, similar to its authority with respect to Title 2, or whether the Commission can only issue regulations in respect to Title 18 so far as there is a question of:

1. General policy;

2. Where such regulations are necessary or appropriate in connection with the reporting requirements under Title 2; or

3. Where there are parallel references in Titles 2 and 18.

B. Comments should be addressed to general rulemaking procedures of the FEC and consideration should be given to the manner in which comments should be solicited, hearings (if deemed appropriate, the timing, location and duration of said hearings), and the manner in which notices and regulations shall be made public.

C. Advisory opinion requests. Among other considerations, comments should be addressed to whether or not the FEC should have a procedure for issuing opinions to other than the categories of persons listed in 2 U.S.C. 437f(a).

[See generally 2 U.S.C. 437f.]

D. Complaints. Comments should be addressed to whether or not complaint hearings such as those contemplated by 2 U.S.C. 437g(a)(4) should, if ever, be closed to the public. Additional comments as to the entire complaint procedure may be submitted.

E. Comments are invited concerning the manner in which requests under the Freedom of Information Act should be processed.

F. The regulations and procedures necessary to carry out the provision of 2 U.S.C. 439a requiring disclosure of excess contributions and any other amounts contributed to an individual for the purpose of supporting his activities as a holder of Federal office.

II. Definitions

A. "News story, commentary or editorial" is used in the definition of "expenditure" under the Act at 2 U.S.C. 431(f) and in 18 U.S.C. 591(f) but is not mentioned in the definition of "contribution" in 2 U.S.C. 431(e) of the Act and 18 U.S.C. 591(e). Comments may be addressed to the issue of whether a "news story, commentary or editorial" is to be included in the definition of a "contribution".

B. "Debt" is not defined in the Act or in Title 18. Comments may be addressed to the distinction between "debt" and "loan" and " anything of value". In this regard comments are solicited concerning "debts" incurred in the normal course of business and consideration should be given to both contingent fees and 18 U.S.C. 610. In addition, comments may be addressed to the question of whether both the expenditure of the proceeds of a loan and the repayment of the loan itself are "expenditures" for the purposes of 2 U.S.C. 431(f) of the Act and 18 U.S.C. 591(f); similar attention should be given to a "debt".

[See 2 U.S.C. 436(c).]

C. "Slate cards" are defined in 2 U.S.C. 431 of the Act and 18 U.S.C. 591 to require the listing of three or more candidates and costs involving such cards are excluded from expenditures. Comments regarding further definitions of "slate cards" may be concerned with the treatment of slate cards that include partial slates and the printing requirements of such cards in regards to the size and type of print of the cards.

D. "Unreimbursed payment for travel expense" is used in 2 U.S.C. 431(e)(5)(D) and 431(f)(4)(E) of the Act and 18 U.S.C. 591(e)(5)(D) and 591(f)(4)(E), but is not defined. Comments may be addressed to the issue of whether or not the $500 limitation regarding unreimbursed travel expenses is applicable to travel to a campaign site, to travel expenses at or near the campaign site, and to living expenses at said campaign site.

E. Comments are invited with respect to interpretive rules governing the application of 18 U.S.C. 608(e), the "independent expenditure" limitation, including the definition of the word "directly or indirectly, on behalf of a particular candidate" in 18 U.S.C. 608(b)(6) so as to make it clear that only truly independent expenditures will be considered under 18 U.S.C. 608(e), and the scope of activities covered.

F. "Ordinary and necessary expenses incurred * * * in connection with his duties as a holder of Federal office" is used in 2 U.S.C. 491(a) but is not defined. Comments may be submitted concerning the distinctions between "ordinary and necessary expenses" and political expenses, whether or not there should be time limits placed on the use of excess funds prior to and after an election, whether or not a distinction should be drawn between a declared and non-declared candidate for reelection and other matters concerning 2 U.S.C. 439(a).

G. Comment is invited as to whether the term "new party" as defined in 26 U.S.C. 9002(8) includes only organizations that formally considered themselves political parties and nominate candidates for a number of offices, or whether it includes any political organization which serves as the principal campaign committee for a presidential candidate which does not qualify as a "major party" or "minority party" under 26 U.S.C. 9002(6), (7).

III. Committees

Persons and/or organizations commenting on this section should attempt to suggest ideas and recommendations that will allow local committees to file relatively simple, although comprehensive, reports that will not require extensive backup material or a professional staff to maintain said backup material or prepare the required reports. One purpose of the Act is to encourage widespread participation in the political process, and to such end the FEC will attempt to avoid any regulation tending to limit the economic feasibility of local committees.

1. Comments are invited concerning allocation of expenditures among candidates by multi-candidate committees and by hybrid committees contributing to both non-Federal and Federal candidates.

2. Comments are invited concerning filing requirements for multi-candidate committees and local and State committees, both Federal and non-Federal. Comments may involve whether such committees are required to file and/or register with the FEC and/or file with a principal campaign committee. Standards for such filings may involve the degree of control and/or fund interchange among various committees.

3. Comments are invited concerning the issue of whether local and State party committees are required to register with the FEC.

IV. Elections

1. *Unopposed primary nominations.* Comments are invited to discuss whether or not a candidate who is unopposed on the last day of filing for a party nomination and otherwise qualifies to be the nominee of a party should be entitled to the same expenditures under 18 U.S.C. 608(c)(1) during the primary period as a candidate running opposed in the primary.

2. *Independent nominees.* Comments are invited to discuss whether or not candidates not chosen by a primary election, who may [or may not] be required to secure nominating petitions before appearing on the general election ballot, should be entitled to the same expenditures under 18 U.S.C. 608(c)(1) during the primary period as a candidate running opposed in the primary.

V. Campaign Deficits

1. Comments are invited to discuss whether or not contributions made after January 1, 1975, the effective date of the Act, should be allowed to reduce a campaign deficit in existence prior to January 1, 1975 and whether or not such contributions should be counted toward the limits of the next "election".

2. Comments are invited to discuss whether or not the 1974 Amendments to the Act should be applied to a run-off election held after January 1, 1975 but arising out of an election in 1974.

3. Comments are invited to discuss whether or not contributions received after an election to retire a deficit should be counted for the election just completed. Comments are invited to discuss how businesses should be allowed to deal with valid business debts which a political committee or candidate cannot pay due to lack of campaign funds or expenditure limits.

VI. National Conventions

1. Comments are invited on the method which should be used to determine payout schedules and amounts.

2. Comments are invited to discuss the treatment of "in kind" contributions, such as reduced room rates, reduced car rental, payment of expenses to site selecting committees, and reduced charges for use of convention halls.

VII. Publications

Comments are solicited on the number, type and orientation of materials which the Commission should publish to serve as guides to compliance with the laws in the most convenient form and efficient manner.

Comments with respect to additional matters not specifically mentioned are also invited.

Comment Period. Comments should be mailed to Rulemaking Section, Office of General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463 by July 1, 1975. For further information call (202) 382-5162.

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

May 29, 1975.

[FR Doc.75-14504 Filed 5-30-75;8:45 am]

THE WHITE HOUSE
WASHINGTON

February 6, 1975

Phil

You will be interested in this.

Phil Areeda

I agree with Dudley, and I have informally initiated steps that put the decision-making within practical limits at the RNC and put all the disbursing there. P.

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THE WHITE HOUSE
WASHINGTON

① Make one copy of Dudley's memo (not the attachment) for Political Reporting file.

② Give the memo + attachment to P.B. with note:

P.B. You will be interested in this

P.A.

THE WHITE HOUSE

WASHINGTON

February 6, 1975

MEMORANDUM FOR: PHIL AREEDA

FROM: DUDLEY CHAPMAN DC

SUBJECT: OLC Draft Memorandum on Political Funds

I have a number of questions as to the validity of the criteria used in this memorandum and their adequacy for answering the question that we posed.

1. 18 U.S.C. 603. The questions raised by this statute are (1) what is a "contribution" and (2) where is a contribution "received" within the meaning of the statute?

(a) The question of what is a contribution includes two sub-questions:

(i) Is there a distinction between primary donors and subsequent "internal" transfers? I agree with OLC's conclusion that the law's intent should be limited to primary donors, though the opinion might have provided more detailed support from the legislative history.

(ii) What kind of subsequent transfers can be said to be "internal" transfers rather than a new "contribution?" OLC's criterion is whether the transfer has "the effect of committing the funds to a political cause to which they were not previously unqualifiedly committed." No authority or analysis is offered in support of the "political cause" criterion. Applying that criterion, OLC would find no contribution in a transfer of funds from CREEP to the White House, but could find one for a transfer from the RNC to the White House. The reasoning is that the objectives of a

committee such as CREEP are more nearly identical with the political objectives of the White House than the broader purposes of the RNC. Applying this same criterion, I would find it equally plausible to argue that funds donated to the RNC or DNC embrace the entire range of Republican or Democratic objectives, including those of a Republican or Democratic White House respectively, so that such a transfer involves no commitment to a new political cause. I would draw the same conclusions for an allocation of funds by the national committee to any individual candidate for Congress or for a state office. An example of a transfer from one political cause to another could be a donation by Congressional Candidate A of his own surplus funds to Congressional Candidate B, since funds originally committed to an individual candidate rather than a more general cause would not imply a purpose to support another candidate.

(iii) An alternative criterion would be the concept of agency which the OLC memorandum considers only in the context of the registration and reporting requirement. As applied under 18 U.S.C. 603, it could be said that any transfer of funds held by a political organization for expenditure in furtherance of the objectives of that organization is an internal or agency transfer and not a contribution. Under this criterion, funds provided by the RNC, as well as a CREEP-type Committee, should fall outside the scope of the statute.

(b) The second principal question is to determine the location at which funds are "received" within the meaning of the statute. This question would not even be reached if the answer to the first question is that transfers from the RNC to the White House are not a "contribution." The OLC memorandum appears to overlook this solution, and proposes two others:

(i) OLC advises that bills be referred to the RNC rather than paid from the White House. It is, of course, a further defense to a charge that a "contribution" has been received in the White House if no money is sent there. On the other hand, if such a transfer would otherwise be a contribution, there remains the question, not addressed by OLC, of whether receipt of the fruits of an expenditure within the White House would be equivalent to

receipt of a contribution. If, for example, a political mailing from the White House is paid for by a bill sent to the RNC, is this any less a "receipt" than if the check were written against a White House account? The same question would be raised with respect to expenses for political entertainment at the White House and distribution there of politically financed mementos.*/

(ii) OLC's second alternative I find wholly unpersuasive. The draft states that --

> "If the RNC funds are accepted for deposit at RNC headquarters, deposited in a bank account, and checks and disbursement from that account written in the White House, Section 603 would have no application."

The apparent rationale is that the funds are never physically present in the White House. That paragraph then goes on to state that if this approach is adopted --

> "It would be essential to avoid any phone call from the White House to the RNC regarding the funds which could be deemed a 'solicitation.'"

I do not see how the writing of checks within the White House could be condoned if a phone call soliciting funds cannot be. More basically, I question whether it is tenable to argue that there is no "receipt" at the place where a check is written because the funds against which the check is written are physically located elsewhere.

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*/ For this reason, it is unavoidable that some White House personnel will make decisions on the uses of political funds. It may, therefore, be impossible to achieve the degree of insulation implied by the last sentence on page 3 of the OLC memo: "It is simply not a good idea to have White House staff members disbursing political money."

2. Registration and reporting

(a) The critical question raised by the Federal Election Campaign Act (P.L. 92-225, 86 Stat. 3 (1972)) is what constitutes a distinct political "committee"? Depending on how broadly or narrowly that term is construed, transfers of funds between people or groups seeking a common political objective could imply the existence of separate committees resulting from almost any transfer, or only with respect to transfers between clearly separate and distinct entities. The statute defines the term "committee" differently in two different titles (Sections 201 and 301(d), including the word "individual" in the former but not the latter). Violations of the Act carry criminal sanctions; and the formation of a committee involves a number of detailed organizational and other requirements that people would be unlikely to observe if they did not have the conscious intention to form a committee. An interpretation of the Act that would lead to the conclusion that transfers of money result in the involuntary creation of a committee, particularly in circumstances where people would not ordinarily be aware that such is the consequence of their acts, should therefore be disfavored. All of this suggests a need for careful scrutiny of what Congress had in mind in terms of what would constitute separate committees, and why the different definitions of that term were used under different titles of the same Act. The OLC memo offers only the conclusion that the legislative history does not answer specific questions. We are given no description of what history there was and what inferences might be drawn from it for purposes of analysis. What, for example, was the purpose of defining a "committee" and prescribing its organization in detail? Is there any connection to the practice of proliferating "committees" as a means of avoiding gift taxes for political donors? If so, that would imply a purpose to restrict the concept of a separate committee; and it would also show a lack of purpose directed toward intragroup transfers. The memo offers instead only "a reasonable interpretation" that is conducive to proliferating the number of separate "committees."

(b) The statutory definition of a committee includes two distinct ideas -- (i) The existence of some entity, which (ii) acts to receive or spend political funds. The OLC analysis focuses

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almost exclusively on the latter, virtually eliminating any requirement that there be some meaningful entity. The analysis of the second element also appears deficient in failing to distinguish decisions on substantive principles from those of detail and implementation. Both confusions emerge in the following criterion for determining the existence of distinct committees --

> "where...the White House retains complete discretion of the disposition of the money, and makes no accounting concerning it, the White House staff would probably be regarded as a separate political committee liable to registration and reporting under the FECA."

This proposition links together a number of factors all emphasizing the locus of the decision making in the White House as distinct from the RNC. But if the central question is where the decision is made, is it not possible to distinguish decisions in principle to make certain categories of expenditures from decisions of detail that are merely implementation -- just as we do in appraising delegations of legislative power? If the RNC decides, for example, to fund all political mailings from the White House, or all political travels of the President, or all political entertainment at the White House, or distribution of political mementos at the White House, or political entertainment by the President or White House personnel outside the premises, or all of the above, cannot this be said to be the RNC's decision? Is that conclusion changed by the fact that total discretion to make each of the individual expenditures is exercised within the White House? Does it make any difference whether that discretion is exercised only within each of the various categories described above, rather than generally as to all of them?

(c) The above quoted statement from the OLC memo indicates that once the combination of elements needed to conclude that the locus of decision making is in the White House occurs, it follows that "the White House staff would probably be regarded as a separate political committee liable to registration and reporting under the FECA." This fails to analyze the statutory concept of a

"committee" in terms of realistic entities, which leads to all sorts of anomalies. If staff member A draws on the funds for a political mailing, staff member B draws on them to pay for a political luncheon at the Hay Adams, and staff member C draws on them to pay for Presidential travel for political purposes, while staff members D through ZZZ have no dealings with the funds at all, which members (and their secretaries?) belong to a "political committee," and how many committees are there?

(d) The inescapable reality is that certain political activities generating expenditures of political funds are going to occur in the White House, and the decisions to conduct the activities and make the expenditures are going to be made by people physically located there. The President's political travels alone compel this conclusion. The crucial question is therefore whether this means that there must inevitably be one or more "political committees" in the White House? If the answer is no, it is unlikely to depend solely on where the checks are written, since the benefit will accrue to persons in the White House as a result of decisions made there. The place of "expenditure," therefore, cannot be located with assurance outside the White House. Rather, a conclusion that no separate committee is involved must be based on the theory that the only political committee involved is the RNC, and that the RNC makes the critical decision that funds are to be spent for a category or categories of uses by various people in the White House. The fact that a variety of different people on the White House staff make the actual expenditures, of different kinds and for different purposes, seems more consistent with the conclusion that they are acting as agents for purposes of directing funds to purposes for which they have been committed by the RNC, than to dub each staff member (and his secretary) or the staff as a whole as a separate political committee. It would, of course, reinforce the concept of agency to have the bills paid by the RNC, rather than from an account within the White House, which appears to be the most important advantage of such an arrangement.

cc: Ken Lazarus

DRAFT

Laurence H. Silberman
Deputy Attorney General

JAN 23 1975

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Legal questions concerning "political funds".

This is in response to your request for the views of this Office on questions raised by the White House concerning payment of the costs of political activities undertaken by the President and his immediate staff. We are informed that such costs are traditionally borne by the President's political party in one of two ways: Either through disbursements from a White House account funded for that purpose by a political committee (e.g., the Republican National Committee (RNC), the Committee to Re-elect the President), or through direct payment by the political committee of bills forwarded by the White House staff.

18 U.S.C. 603

The first question is whether the activity described above runs afoul of 18 U.S.C. § 603, which provides

> "Whoever, in any room or building occupied in the discharge of official duties by any person mentioned in Section 602 of this Title, or in any navy yard, fort or arsenal, solicits or receives any contribution of money or other thing of value for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both."

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The persons "mentioned in Section 602" include any person who "receives compensation for services rendered from monies derived from the United States Treasury." Thus, rooms and buildings occupied by the President and all members of the White House staff are included. Despite a contrary view expressed by a staff memorandum of the Special Prosecutor's Office, we are of the firm opinion that--as the clear language of the statute indicates--it is the place of solicitation or receipt and not the status of the person solicited to which the prohibition is addressed. Even if the language were not unambiguous,

nothing in the legislative history is sufficient to narrow the provision to cover only solicitation or receipt from Federal employees.

It is our opinion, however, that the term "contribution" does limit the reach of the statute. The concern of the legislative history is with solicitation and receipt of money or other things of value from primary donors. The sponsors of Sec. 603 (enacted originally in 1883) sought to prevent Federal premises from being used for political fundraising. Although the term "contribution" is defined in the general definitional section of the Chapter, 18 U.S.C. § 591(e), in such a way as to include transfers of funds between political committees, the definitions of that section are expressly not made applicable to Section 603. There is no reason, when approaching the latter section, to stretch the term "contribution" beyond its more normal meaning, referring to the initial donation to a particular political group and not to subsequent transfers of the contributed funds within that group. Such a limited interpretation is entirely consistent with the statute's general purpose.

The foregoing analysis does not, however, entirely resolve the present problem. While deposits in a White House account by an organization such as CREEP, whose funds are all directed exclusively to furthering the President's personal political interests, seem clearly exempt, it is by no means clear that contributions from the RNC to the President are merely transfers within units of the same political group and hence not "contributions" for purposes of Section 603. In our view the touchstone of Section 603's applicability is whether the transfer has the effect of committing the funds to a political cause to which they were not previously unqualifiedly committed. Such a transfer from the RNC to the campaign of a particular Congressman would meet this test; and it is arguable that a transfer from the RNC to the President's campaign (at least once he is an announced candidate) is no different. It seems more reasonable, however, to take note of the fact that the President, unlike a Congressman, is the head of his party as well as an individual candidate; he expends his political funds for party as well as personal purposes, and indeed has an obligation to do so; his success and that of his party are usually closely interdependent. In these circumstances, the RNC and the President may properly be said to represent one and the same political cause, in which case transfer of funds to the President

would not represent a "contribution" under Section 603. Nevertheless, this issue is not entirely free from doubt, and the safest cause is clearly direct billing of the RNC rather than payment through a White House account.

In a narrow sense, political activity by members of the White House staff for which there is no reimbursement with political funds might be considered a form of political contribution of the market value of their services. However the line between those "political" functions of the President and his staff emanating from the President's role as head of the Executive branch and those emanating from his role as the head of a political party has always been extremely hazy. See Rossiter, the American Presidency (1964) at 28-30. There is no indication that this statute, drawn in simple terms of solicitation and receipt of contributions, was intended to enter this murky area. We think that extension of a criminal statute such as Section 603 in such a manner would create a standard too vague for enforcement, and would be improper. See Prussian v. United States, 282 U.S. 675 (1931); Cf. The Regional Rail Rorganization Act Cases, ____ U.S. ____, ____ (1974), 43 U.S.L.W. 4031, 4041 (U.S. Dec. 16, 1974).

As strange as it may seem, there is a simple technical means of avoiding all problems with Section 603. The statute only applies if funds are solicited or received on Federal property. If the RNC funds are accepted for deposit at RNC Headquarters, deposited in a bank account, and checks and disbursement from that account written in the White House, Section 603 would have no application. This is in no way an evasion of the law. It is a technical statute and can be technically complied with. If this approach is adopted, however, it would be essential to avoid any phone call from the White House to the RNC regarding the funds which could be deemed a "solicitation." Both because of the difficulty of avoiding this problem, and because of the technicality which is not particularly appealing from a public relations standpoint, we still consider the best resolution to be the forwarding of invoices for payment. It is simply not a good idea to have White House staff members disbursing political money.

Registration and Reporting

The question to be addressed here is whether the forwarding of invoices covering charges for political activities from White House personnel to political committees, or the receipt by White House personnel of funds from political committees to pay such charges, causes such personnel to qualify as a separately identifiable "political committee", subject to the registration and reporting requirements of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 et seq. (FECA).

A "political committee" is defined by the 1974 Amendments as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000." Section 301(d), as amended (P.L. 93-443, § 201). The contributions and expenditures referred to only bring a committee within the definition if they are made for the purpose of influencing a Federal election, a nomination for such an election, a Federal primary, the selection of delegates to a national nominating convention, or the selection of Presidential electors. See § 301(e), (f), as amended. For purposes of the Act's reporting provisions, the term "contribution" includes transfers of funds between political committees. Section 301(e)(3), as amended.

The primary purpose of the FECA is to allow the public to trace the source and disposition of funds used to influence Federal elections. See House Rep. No. 93-1239, 93d Cong., 2d Sess., (1974) at 2, 7. It is clear that an itemized report on the disposition of funds transferred into a White House account and spent for the purposes of influencing a Federal election will be required of someone, and the only question is of whom.

It seems to us that application of the reporting provisions in the present case depends upon whether White House staff members making the expenditure do so with a sufficient degree of independence from the RNC to be considered a separate committee; or whether they are, rather, merely agents or instruments for the disbursal of funds by the RNC itself. Section 302(a) of the Act specifically contemplates such agents. ("No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.") (emphasis added.) An agency relationship would impose a requirement to report

only upon the Committee. It can only exist if the expenditures are related to the lawful purpose of the RNC, treated in a manner consistent with its statement of organization under § 303 of the Act, and subject to its control. The last requirement is obviously difficult to establish. Specification by the RNC of the individual expenditures to which the funds are to be devoted would surely meet the requirement; specification of particular purposes for the expenditures would probably suffice, so long as they are not stated at such a level of generality as to confer broad discretion upon the White House staff, thereby making them a "separate committee."

Of course the expectation and understanding of the parties themselves will be persuasive though not necessarily conclusive in determining whether an agency relationship or a "separate committee" exists. As part of any understanding of an agency relationship, it would seem essential that the RNC be provided with fully detailed reports concerning disbursements to enable the Committee to fulfill its reporting obligation. Such internal reporting would also objectively manifest the understanding of the parties.

Under the foregoing principles, where the RNC disburses money to White House personnel for payment of bills presented by the Government with respect to particular instances of political use of Government property authorized by the Committee, and where the Committee itself regards the transaction as an internal transfer reportable by it, we would consider it an intra-Committee matter giving rise to no registration or reporting requirement on the part of White House staff. Where, however, the White House retains complete discretion as to the disposition of the money, and makes no accounting concerning it, the White House staff would probably be regarded as a separate political committee liable to registration and reporting under the FECA.

The foregoing analysis, resting the judgment of what is a "separate committee" upon mutual agreement concerning the reporting obligation, and upon the degree of centralization of control of disbursement decisions, is in our view a logical and reasonable interpretation of the Act. However, with neither an informative legislative history nor case law to go on, it is impossible to say with certainty that the Supreme Court will adopt this approach toward the new statute. Hence, with respect

to this issue of reporting, as with respect to the previously discussed issue of § 603 liability, the safest course is to keep White House staff members free from the actual disbursement of funds, and simply to forward bills from the White House to the RNC for payment. Under such a system, even if complete freedom to decide what expenditures should be made is vested in designated White House staff members, the actual expenditures will be made by the Committee, and the flow of funds from itemized contribution to itemized expenditure (the monitoring of which is the primary concern of the FECA) will be reflected in the first instance in the Committee's books. Since the Committee itself is paying the bills, it has the ultimate responsibility of seeing to it that such expenditures are both within its registration statement filed under § 303 and otherwise lawful. The purpose of the Act is not to maximize the number of registration statements or reports, but to trace the source and disposition of money. If bills are sent to a political committee either indirectly by the White House staff or directly by the supplier of the service and the committee pays them, it is totally consistent with the FECA for the committee to be the only reporting unit.

Assuming, however, that funds for the purpose of influencing a Federal election are transferred to the broad discretionary control of the White House, or that it is otherwise felt that registration by White House staff members as a political committee is appropriate, the nature of applicable registration and reporting requirements would depend on several variables. For example, different procedures would appear to be required depending upon whether one person or a group of several persons at the White House has responsibility for matters relating to the disbursement of funds. Compare newly added § 304(e) with §§ 303 and 304(a), as amended and new § 308. Perhaps more important, procedures will differ depending upon whether expenditures are made for the general purpose of "influencing the outcome of an election" or for the more narrow purpose of supporting a specific "candidate." Compare newly added § 308 with § 304, as amended. See § 304(e) applicable to both situations.

"Candidate" as defined by the FECA

As indicated above, what must be reported and to whom depends to some extent upon whether a committee is

supporting a "candidate", as that term is defined in the Act. The specific question relevant here is the effect of President Ford's early announcement of candidacy. If the President is now a candidate under the Act, or when he becomes such a candidate, he must designate a "principal campaign committee" (§ 302(f) as amended) to which other political committees supporting him must report, and must file individual reports under § 304.1/ He must also designate one or more national or state banks as his "campaign depositories" wherein contributions to his political committees must be kept. Sec. 309.

Under both the original FECA and its 1974 Amendments, the mere announcement of one's candidacy for the Office of President does not, in itself, give rise to any obligations. In order to be subject to the obligations imposed on candidates, one must have performed one of several "acts of candidacy" specified in the definition of that term in Section 301(b) of the Act. These include: (1) qualifying for nomination or election to Federal office under the law of at least one state; (2) personally accepting political expenditures to advance one's candidacy; and (3) giving one's tacit or express consent to another individual or entity to make expenditures or receive contributions to advance one's candidacy. Thus, if monies have either been received or expended to advance the President's 1976 candidacy with his tacit approval, he is a "candidate" within the meaning of the FECA, without regard to the identity of the individual or entity effecting the transaction, and he must proceed under the Act.

The question then arises whether transfer of money by a committee into a White House account for general political purposes, or payment by a committee for political functions carried out by the President, coupled with the President's announcement of candidacy would make him a "candidate" under the Act. The answer turns on a determination of whether the funds are contributed or expended "with a view to bringing about his nomination" § 301(b). In our view a President's general political role in his party can ordinarily be separated from his own quest for

1/ The nature of reporting requirements will differ depending on whether the filing is for a period prior to January 1, 1975. See Amendments to § 304.

renomination. The two can become intertwined, however, and the determination required here will have to be made in a specific factual context.

Finally, all of this raises questions concerning the propriety of full time Federal employees in the White House devoting all or a substantial portion of their working hours to partisan political activities, such as fund-raising or supervising a re-election campaign. Insofar as White House activities are concerned, the President operates in a dual capacity: Under the Constitution he is head of the Executive branch of government; he is concomitantly the head of the political party of which he is a member. Under our system it is not always possible, and perhaps not always even desirable if we are to maintain a politically viable Executive branch, to ascertain in which capacity a President is acting in a particular instance. This duality of Presidential function appears to be an accepted part of our political system. To some extent Presidential staff work will share the same characteristic, and it must likewise be accepted.

Again, however, the question can not be answered entirely outside the context of a particular fact situation. In an aggravated case, White House political activity could be considered a possible misuse of appropriated funds for a political purpose, a fraud against the government, and a violation of the Federal Election Campaign Act of 1974. Even then, any minor excesses constituting technical violations would probably best be corrected through traditional political remedies rather than by use of criminal sanctions.

THE WHITE HOUSE

WASHINGTON

January 24, 1975

MEMORANDUM FOR: PHIL AREEDA

FROM: KEN LAZARUS

SUBJECT: Scalia Memo on "Political Funds"

I have reviewed Nino's draft memo and offer the following:

1. p. 1 -- The last full sentence should be deleted as it is disjointed and lends nothing to the discussion at hand.

2. p. 2 -- I take issue with the "touchstone" suggested in the second paragraph, i.e. "whether the transfer has the effect of commiting the funds to a political cause to which they were not previously unqualifiedly committed." Given the gravamen of the offense, a better "touchstone" would be "whether the transfer has the effect of commiting funds to a political cause to which they were previously not available.

3. p. 2 -- Operating under the "touchstone" noted above, a discussion follows of distinctions based on the President's role as the head of his political party. The suggestion is made that a transfer by RNC to a Congressman would be a "contribution" within the meaning of section 603 while a transfer by RNC to the President would not be subject to 603. In light of the general intent behind section 603, this result should not obtain. It strikes me as a logical absurdity developing from the infirmed "touchstone".

4. p. 3 -- the first full paragraph could be deleted.

5. p. 3 -- Compare the third and sixth sentences. If a phone call can constitute "solicitation", can't the writing of a check constitute "receipt". The distinction drawn begs the real question of whether secondary transfers of political funds are embraced by section 603.

6. pp. 4-6 -- The discussion of registration and reporting fails to treat the fact that there is a specific intent requirement which would appear to be controlling (noted in second paragraph on p. 4).

7. pp. 6-7 -- The first paragraph under "Candidate . . ." draws a distinction based on the President's announcement to run in '76. It would seem that the focus should be on the establishment of a campaign organization.

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THE WHITE HOUSE

WASHINGTON

March 3, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS KL

SUBJECT: Fund-raising letter by the President.

You asked me to explore any problems which might be presented should the President authorize the use of his signature on letters supporting the April 15 fund-raising dinner which will be conducted by House and Senate campaign committees.

After discussing the matter with Congressman Michel, Jack Calkins and Bruce McBrarity (McBrarity is the fellow at the RNC who is actually managing the effort), I offer the following:

(1) Although no legal problem is faced directly by the President's support of this fund-raiser, there may be merit in emphasizing the President's role as leader of the nation while de-emphasizing, at the moment, such visible partisan activity as a fund-raiser. I am told that this assignment is normally given to the Vice President or other political figure.

(2) Apparently, the use of the President's signature would have real utility in support of the fund-raising effort that would result in more than a marginal increase benefit.

(3) Assuming the President sees fit to grant this request, my concern is not so much with the content of the letter as with the ground rules for distribution. In this regard, Chapter 29 of Title 18 U.S.C. places a number of limitations upon solicitations for political contributions. Thus, one federal official cannot solicit a political contribution from another federal official (§602); a solicitation cannot be made on federal property (§603); a firm or individual contracting with the United States is prohibited from making political contributions (§611); and political contributions by agents of foreign principals are prohibited (§613). Bruce McBrarity has assured me that RNC personnel who will be managing

this program are sensitive to my concerns and that their procedures are adequate to avoid any proscribed activity or appearances of such activity.

(4) Although I have doubts about the advisability of the President's participation in this effort, I believe we have reasonable assurances to the effect that such participation will not expose the President to any unexpected adverse reaction.

THE WHITE HOUSE

WASHINGTON

July 15, 1975

MEMORANDUM FOR PHILIP BUCHEN

FROM: ERIC ROSENBERGER R

SUBJECT: Legal Restrictions Governing Press Advance Salaries

Due to the increased travel schedule for the President, and in connection with his candidacy for President, it will be necessary to add two or three more people to the White House Press Advance staff. These people should be hired now so that the minimum six month training period will be completed before the domestic travel picks up momentum.

Ron Nessen and I share the concern of the legal restrictions in paying the salaries of these additional advancemen. The advancemen are being hired essentially to support the election efforts. As we see it, the options are:

1. The President Ford Committee will pay the salaries and expenses.

2. The RNC will pay the salaries and expenses.

3. The advancemen will be brought on as consultants, and paid on a per diem basis with expenses paid for by the RNC.

4. The individuals are on loan with pay from private organizations with their expenses borne by the White House.

We need legal guidance on the above suggested means of payment for those people brought aboard to work through the election period. It is most important that we hear from you as soon as possible.

Thank you.

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file
Campaign

Wednesday 7/16/75

Meeting
~~7/16/75~~
7/17
2:30 p.m.
9:30 ?

10:05 We have scheduled a short meeting with Barry Roth and Mr. Hills and you to discuss what the office should be doing in connection with political travel and other matters -- at ~~2:30~~ this afternoon (~~Wed. 7/16~~).

9:30 Thurs. 7/17

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2:30 mtg

THE WHITE HOUSE

WASHINGTON

July 15, 1975

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THE WHITE HOUSE

WASHINGTON

July 1, 1975

MEMORANDUM FOR THE RECORD

FROM: BARRY ROTH BR

SUBJECT: Use of RNC Funds by White House Advancemen

Jerry Jones, Red Cavaney and Dave Hoopes have all raised questions regarding the use of funds provided to the White House by the Republican National Committee to pay the expenses of Presidential advancemen in connection with trips by the President in either his official capacity or as head of the Party. Due to the need for a quick decision in this regard, and after initial review of the law, Phil Buchen has approved the continued use of RNC funds for these two categories of expenditures. I have so advised these three persons on an interim basis, and indicated that we will probably seek an advisory opinion from the Federal Election Commission on this matter. I also advised that expenses in connection with any Ford candidacy-related trips should be paid by the President Ford Committee.

After obtaining more information from the advance office and other offices in the White House on current practices, I will prepare a memorandum from Phil Buchen to (1) formally advise on whether or not we can continue to follow our current procedures and (2) whether an advisory opinion from the FEC should be sought.

THE WHITE HOUSE

WASHINGTON

July 1, 1975

MEMORANDUM FOR THE RECORD

FROM: BARRY ROTH BR

I have advised Dianna Gwin, Jerry Jones' office, that all requests from the President Ford Committee (PFC) to the White House for photographs and similar items are to be paid for by the PFC. This advice resulted from a request from Dean Burch to Jerry Jones for two dozen pictures of the President for the PFC office.

Rod Hills has approved this decision.

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THE WHITE HOUSE

WASHINGTON

July 8, 1975

MEMORANDUM FOR THE RECORD

FROM: BARRY N. ROTH BR

Ken Lazarus has today advised Dave Hoopes that allowing Bo Calloway or a PFC messenger to park on a space available basis on West Executive Avenue does not violate the Federal Election Campaign Act nor does it constitute a use of official funds for political purposes.

THE WHITE HOUSE
WASHINGTON

Date 7/3

TO: Phil Buchen
Rod Hills
FROM: Barry Roth

FYI - this is the latest discussion paper on Presidential travel expenditures.

BR

RMH - Mr Buchen has not seen. RH

DRAFT

MEMORANDUM FOR: RICHARD B. CHENEY

FROM: JAMES E. CONNOR

SUBJECT: Apportionment of Expenditures for Mixed Political and Official Trips of the President of the United States

For purposes of discussion, you requested a review of the procedures used to apportion expenditures on mixed political and official trips by the President.

Varied Roles of the President

During future months, the President will be traveling in at least three different capacities, and at first glance, there may be three units from which to seek reimbursement of the costs of that travel:

-- As head of the Republican Party (expenses paid by the Republican National Committee)

-- As President of the United States (expenses paid from appropriated funds; e.g., WHO, DOD, etc.)

-- As candidate for President (expenses paid by the President Ford Committee)

Others who Travel

In the past, regardless of the nature of a particular trip, it was considered necessary that certain government employees accompany him. These Federal employees include, but are not limited to: United States Secret Service agents, White House Communications Agency personnel, and White House staff (excluding advance personnel). It has been generally agreed that during any Presidential trip, whether political or official, certain members of the official staff are required to carry on the day to day matters of the Presidency -- "he is President 24 hours a day".

However, there may be some First Family members and government officials who travel independent of the President as surrogates. The travel expenses of these individuals must be carefully reviewed in terms of the purpose of the particular trip. For example, where Cabinet members and First Family members travel to further the election of the President, such costs are clearly political and should not be borne by official appropriated funds. Further, where First Family members travel for purely personal reasons, travel expenses should be borne by the President from personal funds, as is presently the practice. A careful look must be taken in scheduling and advancing these surrogates as we enter the forthcoming campaign.

Several Conceptual Formulas have been under consideration for Presidential Air Travel

While he was Vice President, the President travelled according to the guidelines set forth in the memorandum of July 19, 1974, at Tab A. The RNC paid for political expenses while the Federal government paid for official expenses. Where mixed political and official stops were made, the President felt comfortable with the "round trip" method. Each formula considered to date is noted below:

1. All-or-nothing Method

Under this formula which is presently in use, if any part of the trip is considered political, the entire trip is treated as such.

Advantages: While there is no possibility for misuse of appropriated funds or criticism by the media, there are disadvantages.

Disadvantages: It would require that political funds be unfairly used to pay official expenses relating to an official event. The attorneys might even go as far as to suggest that in some instances it constitutes an illegal augmentation of appropriations. In sum, this approach might break the bank at either the RNC or the PFC.

2. Round trip method

Under the formula used by Vice President Ford, the political committee (RNC or PFC) would be billed for the "round trip" estimated aircraft flying hours from Andrews AFB to each of

the various political stops on a trip and the return to Andrews. The remainder of the travel costs would be borne by the government. Advantages: Lessens (but does not eliminate) the burden on political funds being used in part for official purposes. Also, by treating the political portions in isolation from the official, it prevents any criticism of "piggybacking" official travel on to political in order to reduce the political costs. Disadvantages: On many mixed trips, the political funds will have to share an excessively large portion of the total costs in relationship to degree of political activities.

3. Round trip to furthest Political Stop Method

Under this approach, the appropriate political committee would be billed for the "round trip" estimated aircraft flying time from Andrews to the political stop furthest from Andrews, and return. Advantages: Lessens (but does not eliminate the burden on political funds being used in part for official purposes. Disadvantages: Costs thereby apportioned to political travel will not always be representative of actual costs incurred, and will therefore be subject to media andpolitical criticism.

4. Ad hoc Apportionment

Under this method, ad hoc apportionment of costs would be based on such factors as percentage of the trip which is official

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versus political, which invitations were accepted first, and the proximity of locations concerned. Advantages: Political funds would be used only in relationship to political activitiy and not for official purposes. Disadvantages: Opens the President up to criticism for supporting political events with official appropriated funds. Also, there is no precise formula that can be developed, instead it is a matter of judgment on each trip.

5. Last Stop Method

As used during the Johnson Administration and a portion of the Nixon Administration, this method operated in one of two ways depending on how a particular trip was arranged; (a) political funds would be used to pay for air travel to the last political stop or (b) everything after the first political stop is paid from political funds. Advantages: Little cost to political committees. Disadvantages: In view of the opportunities to "piggyback" political events on official travel, it is doubtful that this approach would be accepted in today's environment.

6. First Class Air Fare Method

Basically a variation on the all-or-nothing method, political funds would be used to pay for all of the President's travel, as well as that of any "political" staff during any mixed trip. However,

rather than basing the cost on the hourly rate for AF-1, it would be based on the comparable first class airfare for the entire trip. There is precedent for this cost approach in the treatment afforded to non-official travel of members of the First Family by the Joint Committee on Internal Revenue Taxation in its review of President Nixon's taxes. The same cost method could be adapted to virtually any of the other methods. Advantages: Eliminates the burden on political funds of the high costs uniquely found in Presidential travel. Disadvantages: Subject to criticism for not bearing relationship to costs incurred to operate either AF-1 or any chartered plane.

Regardless of which method is used to apportion costs on mixed trips, there are a number of other ways in which such costs may be held down; e.g., use of the Jet Star as the major campaign vehicle, apportionment of pro rata costs of flights among all the passengers (only the actual cost of air travel of the political participants, including the President, would be paid from political funds, while other Government employees and the media would pay their own share), and use of commercial charters. All of these will continue to be explored.

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Recommendation: That we cost-out today's trip using each of these approaches in order to see how they work. In terms of public and media perception, the round trip method (Option 2) with apportionment of the pro rata cost of the flight, the passengers may be the best method here. However, no final decision should be implemented without obtaining an advisory opinion from the Federal Election Commission.

That opinion is also necessary in order to establish guidelines for determining within which of the President's three capacities a particular activity will fall, as well as identifying when we must transition from RNC funds to PFC funds.

Within City Costs

Although similar to air travel, the issue of in-city costs on a mixed stop is somewhat different. Typical of these costs are those for the motorcade (presently paid by the RNC whether the trip is official or non-candidate-related political), per diem for employees, hotels and sound systems. The following options are available:

1. All-or-nothing Method

   Except for costs than can unquestionably be identified as official (per diem for WHCA or Secret Service, etc.), once any time spent in a city is for political purposes, all costs would be borne by political funds. Advantage: Eliminates criticism for misuse of

the President's position as an incumbent. Disadvantages: Excessively burdensome on political funds, and does not allow for apportionment for official events.

2. Percentage Method

Allocate such costs as motorcade, sound systems, etc., between political and official funds in relationship to time spent in each category of activities. Advantage: Less burdensome on the political funds. Disadvantages: Subject to criticism for misuse of President's position as an incumbent, as well as objections by FEC, media and political opponents.

3. Ad hoc Method

Apportion in city costs between political and official funds on a case-by-case basis. Advantage: More reflective of the reasons for which costs are incurred. Disadvantages: Imprecise and subject to considerable criticism in cases of misapportionment.

4. Status quo

At the present time, when a non-publicized political event is tacked onto an official stop (e.g., breakfast w/ local officials awaiting airport greeting), costs have not been attributed to political funds.

Recommendation: An advisory opinion from the FEC is clearly needed in order to set the necessary guidelines. In the interim, all costs for mixed stops to be paid from official funds must be carefully reviewed prior to final approval.

Some Additional Considerations

In the past, criticism has emerged occasionally when the nature of a trip -- political or official -- has not been clearly stated prior to the trip. Specifically, a trip the Former President made to Connally's Ranch in Texas "became" political after it was over, and several members of Congress who accompanied the President became quite concerned because they felt they were accompanying the Former President on an "official" trip. Subsequently, they insisted on reimbursing the Federal government for their pro rata expenses for the trip costs.

Budgeting

Plans ought to begin immediately to provide a framework for budgeting for the future political events in which the President may participate. Unquestionably the FPC will insist on a budget framework, especially in view of the expenditure limitations placed on candidates during this election.

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Use of Government Aircraft for
Other Presidential Candidates and Surrogates

While security considerations and the requirements of the Secret Service will probably answer most inquiries as to why United States Government aircraft might be employed from time to time by "other" Presidential candidates, it has been recalled that there were several requests by surrogates within the Democratic Party for United States Government aircraft in certain circumstances (e.g., if Secretary Butz can have an aircraft to give a speech on behalf of the incumbent President, why cannot House Speaker Albert have one to assist the Democratic Party's Presidential nominee).

OFFICE OF THE VICE PRESIDENT

WASHINGTON

July 19, 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Billing Procedures for Travel via Military Air

1. All Political Mission:

a. RNC pays for aircraft flying hours and in-flight expenses.

b. Press is billed for first class fare plus tax and $1.00 non-competitive charge.

c. Payment received from RNC for aircraft usage is paid to the Treasurer of the U.S. Payment for in-flight expenses is paid to the 89th In-Flight Fund.

d. Payments received from the Press are paid to the RNC.

2. All Official Mission:

a. Aircraft flying hour cost is absorbed by the Government.

b. Press is billed as in 1b above for fare plus pro-rata share of in-flight expenses

c. All other passengers are billed for pro-rata share of in-flight expenses.

d. Payments received from the Press are paid to the Treasurer of the U.S.

e. All payments received for in-flight expenses are paid to the 89th In-Flight Fund.

3. Mixed Mission:

a. RNC is billed for that portion of the mission which is of a political nature for aircraft flying hours using the "round trip" method, i.e., one leg of mission is political - RNC would be billed for "round trip" estimated aircraft flying hours from Andrews AFB to "Point X" and return to Andrews; remainder of trip aircraft flying hour cost is absorbed by the Government.

b. All in-flight expenses are paid by the RNC.

c. Press is billed for first class fare plus tax and $1.00 non-competitive charge.

d. Payment received from RNC for the political "round trip" is paid to the Treasurer of the U.S.

e. Payments received from Press are paid to the RNC for only that leg of the mission which is termed political with the remainder of the payment going to the Treasurer of the U.S.

f. Payments received for in-flight expenses are paid to the 89th In-Flight Fund.

4. Questions:

a. Reference 2c above:

(1) Is there a simpler method of collection of in-flight expenses which fall into this category? It is quite possible and most likely that a separate billing procedure for each individual, other than Press and Secret Service, would generate a voluminous amount of paper work, plus an additional bookkeeping procedure.

b. Reference 3a above:

(1) Is it unquestionably legal to collect for a "round trip" mission when in fact none was performed?

(2) What is the Air Force position on submitting this type of bill to the VP office?

c. Is there any possible conflict, by definition from an outside source, that handling of funds that are political in nature by a career civil service employee might be in violation of the Hatch Act or other Federal law? If not, can a written determination be obtained for the protection of the individual involved in handling these funds?

Thursday 7/17/75

Meeting
7/17/75
6:30p.m.

6:25 Meeting with Barry and Mr. Hills to discuss political travel will be at 6:30 p.m. (Thursday 7/17).

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THE WHITE HOUSE

WASHINGTON

July 19, 1975

MEMORANDUM FOR: JIM CONNOR

FROM: PHIL BUCHEN P.W.B.

SUBJECT: Press Bills for Travel with the First Lady

I agree with Tom DeCair that action must be taken now to bill the press for its share of the airplane costs of trips with the First Lady.

The question of a press travel account in the First Lady's office is examined by the Department of Justice in the attached memorandum. Although Justice advises that it is legally permissible to maintain a press travel account as a clearing account for official, but not political, trips by the First Lady, my office remains unconvinced that such an account is necessary or desirable.

I recommend that bills be sent out immediately to the press for their share of the costs of any official trips they may have taken with Mrs. Ford, and for which they have not yet been billed. These bills should instruct the press that payment is due within ten days and the check should be made payable to the Treasury of the United States.

It is my understanding that only official trips are now at issue. If this proves otherwise, or if there are any questions on how this matter should be handled, please have the appropriate person contact Barry Roth of my office as soon as possible.

The press was advised when they took these trips with Mrs. Ford that their costs would be based on the first class airfare for a comparable commercial trip. While these bills must therefore be at this rate, I suggest that we explore the possibility of billing for future trips based on the pro rata cost of using the plane. I believe that this approach will tend to minimize problems with First Family travel that could arise under the amended Federal Election Campaign Act.

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