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FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20563

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22 AUG 1975

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OC 1975-48

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

Dear Mr. Young:

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

The questions you pose are:

1. Does this constitute a contribution-in-kind to the Wyman campaign? If so:
2. How is that contribution to be computed?
3. Does their travel to and from New Hampshire count?
4. What does a candidate do to avoid accepting this kind of contribution under the law?

Each of these issues is addressed below.

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1. Characterization of activities

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

26 AUG 1975

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

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

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

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2. Computation

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



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

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

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

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

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Baker
letter

Pollock: Rumbold
Nissen
Haltmann
Speed writer.



28 AUG 1975

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

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

3. Independent expenditures

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

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

③ The C. has considered the point noted it w/ approval.

Sincerely yours,

John C. Murphy, Jr.
General Counsel



WILLIAM BISSON
P.O. Box 1457 Concord, N.H. 03301
XX

75 AUG 15 AM 9:54

JACK DRAYTON
Finance Chairman

DR. ALBERT E. BARKOMB
State Chairman

E. WILLIAM BISSON
Fiscal Agent

August 12, 1975

#240

Mr. John G. Murphy, Jr.
General Counsel
Federal Election Commission
Washington, D.C. 20463

Dear Mr. Murphy:

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

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

Our questions are:

1. Does this constitute a contribution in kind to the Wyman campaign?

If so:

2. How is that contribution to be computed?
3. Does their travel to and from New Hampshire count?
4. What does a candidate do to avoid accepting this kind of contribution under the law?

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

Sincerely,

George Young
GEORGE YOUNG
Campaign Manager



CY:lm

Staebler/Vaughn
September 4, 1975

PROPOSED AMENDMENTS TO OC-48

On page 1. delete the sentence just prior to numbered section 1, and insert in its place the following paragraphs:

①
It must be noted at the outset that the New Hampshire Senate election is for purposes of the Federal Election Campaign Act a general election. Under 18 U.S.C. § 608(f)(3), therefore, the respective national, state, and subordinate political party committees are allowed special expenditure limitations with respect to that election, which will not be available to those party committees outside New Hampshire during the election, nor anywhere outside New Hampshire between now and the beginning of the general election campaign, except for any other intervening special general election.

The ability of the various party committees to assume various appropriate expenses, as outlined in this opinion of counsel, is therefore limited to the New Hampshire Senate election. The ability of party committees to assume the campaign expenses of candidates other than in special general or general elections is limited by the provisions of 18 USC §608(b)(1) and (2) as appropriate. It would thus be misleading to in the extreme, apply the reasoning of this letter to the months between now and the

general Presidential election.

Subject to the foregoing limitations, each of these issues is addressed below:

Delete the fourth, fifth, and sixth sentences in the second full paragraph of page 2, and insert in their place:

Not approved

~~The General Counsel is of the opinion that, in general elections, such as in the instant case, the allocation of expenses to the respective spending limits should be that made by the various candidates and committees. Special problems arise in connection with primary elections. The Commission will, in the future deal with the problems raised by allocations of expenditures in primary elections.~~

FEDERAL ELECTION COMMISSION

[Notice 1975-13; AOR 1975-13—AOR 1975-17]

ADVISORY OPINION REQUESTS

In accordance with the procedures set forth in the Commission's Notice 1975-4, published on June 24, 1975, (40 FR 26660), Advisory Opinion Requests 1975-13 through 1975-17 are published today. Some of the Requests consist of similar inquiries from several sources which have been consolidated in cases where appropriate.

Interested persons wishing to comment on the subject matter of any Advisory Opinion Request may submit written views with respect to such requests on or before July 23, 1975. Such submission should be sent to the Federal Election Commission, Office of General Counsel, Advisory Opinion Section, 1325 K Street, NW., Washington, D.C. 20463. Persons requiring additional time in which to respond to any Advisory Opinion Request will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered by the Commission before it issues an advisory opinion. The Commission recommends that comments on pending Advisory Opinion Requests refer to the specific AOR number of the Request commented upon, and that statutory references be to the United States Code citations, rather than to the Public Law Citations.

AOR 1975-13: Bentsen in '76 Committee (Reimbursement of Travel Expenses from Corporate Funds) (Request Edited by the Commission).

"Dear Commissioners: This is a request for an advisory opinion on behalf of the Bentsen in '76 political committee as to the legality under Section 610 of Title 18, U.S. Code, of a Presidential candidate receiving travel expenses for a speaking engagement at a Chamber of Commerce, where the Chamber has money contributed by corporations in its general treasury.

"Senator Lloyd Bentsen was invited to address a luncheon meeting of a Chamber of Commerce in the State of New York. The Chamber has offered to pay from its general treasury travel expenses for the Senator and Mrs. Bentsen from Washington, D.C. to New York State, and back. Like other Chambers of Commerce, this Chamber is supported by contributions from dues-paying members, many of whom are corporations. The Senator addressed the Chamber on the state of our nation's economy and on the crisis of confidence in government.

"Senator Bentsen is a declared candidate for the Democratic nomination for President of the United States. He has been filing personal Reports of Receipts and Expenditures with the appropriate supervisory offices for some time under the Federal Election Campaign Act. Moreover, he has a registered political committee working actively on his behalf.

"Our specific question is whether or not Senator Bentsen may legally receive a reimbursement from the Chamber of Commerce for air fare and other travel

expenses under the circumstances noted above. We refer you specifically to Section 610 which prohibits corporations from making contributions or expenditures in connection with Federal elections, and prohibits any person from accepting or receiving any such contribution.

ROBERT N. THOMSON,
Counsel for Bentsen in '76.

Source: Bentsen in '76 by Robert N. Thomson, Counsel, Preston, Thorgrimson, Ellis, Holman, Fletcher, 1776 F Street, NW., Washington, D.C. 20006 (June 6, 1975).

AOR 1975-14: Contributions by Banks, Corporations, and Labor Unions to Defray Constituent Service Expenses.

A. Request of Congressman Moore (Contribution of Corporation's Computer to Analyze Response to Constituent Survey) (Request Edited by the Commission).

"Dear Mr. Chairman: I plan in the near future to send out a franked questionnaire to my constituents in an attempt to learn their feelings on various issues. My question is this:

"If a corporation donates the use of its computer to analyze the results of this questionnaire, is this considered a corporate contribution to my campaign?"

W. HENSON MOORE,
Member of Congress.

Source: Congressman W. Henson Moore, 427 Cannon House Office Building, Washington, D.C. 20515 (June 23, 1975).

B. Machinists Non-Partisan Political League (Contributions from Union Dues, to Congressional Office, Constituency or Newsletter Funds) (Request Edited by the Commission).

"Dear Sir: As provided for under Title II, USC, Section 437F, I am requesting an advisory opinion in regards to donating monies out of our educational fund (which is dues monies from our various local lodges) to incumbent United States Senators and Representatives for their Office, Constituency or Newsletter funds. Specifically, I would like to know if there is any restriction that would prevent us from making such contributions to these or similar funds under the present or any previous election law that is still in existence."

WILLIAM J. HOLAYTER,
Director, MNPL.

Source: William J. Holayter, Director, Machinists Non-Partisan Political League, 1300 Connecticut Ave. NW., Washington, D.C. 20036 (June 23, 1975).

C. Request of Congressman Butler (Contributions by Banks to Defray Expenses of Conference with Constituents) (Request Edited by the Commission).

"... It is my intent to hold my fourth annual Farm Conference this August for the purpose of giving the farmers and other agricultural interests in the Sixth Congressional District the opportunity to present their views and concerns to me, as well as, to the various heads of the Federal and State agricultural agencies.

"(My question is whether) this conference would be considered official business (so) that * * * any contribution made by a bank or bank holding company to defray the expenses of the conference would not come under the coverage of the Federal Election Laws.

"I would greatly appreciate a written advisory on this matter. * * *

M. CALDWELL BUTLER,
Member of Congress.

Source: Congressman M. Caldwell Butler, 109 Cannon House Office Building, Washington, D.C. 20515 (June 23, 1975).

AOR 1975-15: Payment of Royalties by Campaign Committee to Candidate (Request Edited by the Commission).

"Dear Mr. Curtis:

"There is * * * enclosed a copy of the contract that this Corporation has with George C. Wallace and we ask you for a written opinion as to whether or not there is any prohibition against receiving payments under this contract. When we advertise these articles we intend to state that George C. Wallace receives a royalty and have previously advertised that royalties are being paid."

CHARLES S. SNIDER,
Executive Director.

The Wallace contract provides as follows:

"THIS AGREEMENT made and entered into this ___ day of _____ 1974, by and between The Wallace Campaign, a non-profit corporation, hereinafter called Campaign; and George C. Wallace, hereinafter called Wallace;

"Witnesseth:

"1.) Wallace does hereby grant unto the Campaign the sole and exclusive right to use his photograph, facsimile signature, a photo biograph and a minted likeness of himself on the following items:

"In a book, on a watch, on specially minted medallion or coin like replicas.

"Said right to the exclusive use thereof shall be for a period of ten (10) years.

"2.) In consideration of such exclusive use which the Campaign may copyright or trade-mark, if necessary, in the name of Wallace but still owning only the license above granted, the Campaign shall retain a royalty for Wallace in the following portions:

	Each
Photo biograph	\$1
Watches	7
Gold coin or medal	5
Silver coin or medal	3
Bronze coin or medal	2

"All such royalties to be net to Wallace, the Campaign to bear the full cost of sale, mailing, promotion and distribution.

"3.) As the Campaign collects funds from the above items, it shall maintain and keep an account of all such items above referred to and furnish Wallace with an accounting thereof. It shall pay Wallace the sum of Fifteen Thousand Dollars (\$15,000.00) per annum and no more. Same may be paid whenever

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

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

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

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

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

Whoever, while an elected or appointed officer or employee of any branch of the Federal Government—

(1) accepts any honorarium of more than \$1,000 (excluding amounts accepted for actual travel and subsistence expenses) for any appearance, speech, or article; or shall be fined not less than \$1,000 nor more than \$5,000.

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

distinguishes between an honorarium, which is treated as income, and expenses for transportation, accommodations, and meals which are deductible from income as an ordinary and necessary cost of doing business.

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

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

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

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

ADVISORY OPINION 1975-13: LEGALITY OF PRESIDENTIAL CANDIDATE RECEIVING TRAVEL EXPENSES FROM CORPORATIONS

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

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

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

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

Dated: August 18, 1975.

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

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