The original documents are located in Box 16, folder "Federal Election Commission - RNC and PFC Payment of Presidential Travel Expenses (4)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

October 16, 1975

MEMORANDUM FOR: DON RUMSFELD
BOB HARTMANN
DICK CHENEY
JIM CONNOR
RON NESSEN

FROM: PHIL BUCHEN P.W.B.

SUBJECT: PFC Comments on
RNC Expenditures

Attached is a draft letter from the PFC commenting on RNC expenditures in support of the President as head of the party.

I would appreciate any comments you might have by C.O.B. today in order that this letter can meet tomorrow's filing deadline.

Thank you.

(NO comments
(FROM Ron Nessen)

DRAFT - 3
RPV - 10/16/75

Office of General Counsel,
Advisory Opinion Section
The Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: AOR 1975-72

Gentlemen:

The President Ford Committee hereby submits the following comments in support of the position taken by the Chairman of the Republican National Committee, Mary Louise Smith, in her September 15 letter regarding the historical role of the President of the United States in his capacity as head of his national party. It is our understanding that the Democratic Senatorial Campaign Committee ("DSCC") has submitted comments alleging violation of certain provisions of the Federal Election Campaign Act of 1971, as amended, (the "Act") by both the Republican National Committee ("RNC") and The President Ford Committee ("PFC"). In particular, both the RNC and the principal campaign committee for the President were recklessly charged by the DSCC with a knowing criminal violation of Section 608(b)(2) of Title 18, United States Code, regarding the payment by the RNC of Presidential travel expenses solely involving Republican Party political activities. Such assertions are without merit and lack any substantive legal or factual basis.

It is our position, as demonstrated below, that such payments by the President's national party are both proper and lawful. Moreover, such payments recognize the three traditional and important functions of any incumbent President. He is President, the leader of his national party and possibly a Presidential candidate.

First, it is clear that the limitation set forth in Section 608(b)(2) regarding contributions by a political committee to a federal candidate relate solely to payments:

> ". . . made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States; . . ."
> 18 U.S.C. §591(e)(1) (Emphasis Added)

Similarly, the definition of "expenditure" in Title 18 excludes any payment from being charged against the candidate's primary expenditure limitation of Ten Million Dollars ($10,000,000) unless it is in furtherance of one of the above cited purposes. Moreover, the definition of expenditure also explicitly excludes "any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office". 18 U.S.C. §591(f)(4)(F) As set forth in greater detail in Mrs. Smith's letter, the RNC has not and will not assume the

expenses of Presidential travel in connection with either the candidacy of the President himself or with the candidacy of any other individual. In the latter circumstances, of course, the appropriate contribution and expenditure provisions of the Act would apply on an allocable basis.

Second, the strength of the RNC position is underscored by the legislative history of the Act itself. One of the important goals of the legislative reform sought by the 1974 amendments was to strengthen the national, state and local party structures and their impact upon the political process while, at the same time, stemming the unchecked flow of undisclosed private funds from being covertly channeled into a federal candidate's coffers.

In the Senate Report on the 1974 Amendments, it was stated in a paragraph entitled "Strengthening Political Parties" that the Senate Committee "agrees that a vigorous party system is vital to American politics and has given this matter careful study." The Committee stated that "the parties will play an increased role in building strong coalitions of voters and in keeping candidates responsible to the electorate through the party reorganization". Finally, they noted

> "[P]arties [such as the RNC] will continue to perform crucial functions in the election apart from fundraising, such as registration and voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues. Indeed, the combination of substantial public financing with limits on private gifts to candidates will release large sums presently committed to individual campaigns and make them available for donation to the parties, themselves. As a result, our financially hard-pressed parties will have increased resources not only to conduct party-wide election efforts, but also to sustain important party operations in between elections.
> Senate Report 93-689 at 7-8 (Emphasis Added)

The traditional and one of the most effective methods by which a national party obtains funds to support such activities and strengthen its political base is by inviting interested persons to fundraising events at which party leaders, and in particular, an incumbent President, speak on issues of concern to the Party. To date, it is my understanding that such activities on behalf of the RNC by President Ford have raised over $2,250,000 for his Party. The pragmatic effect of any blanket rule denying the RNC the party services of its chief spokesman would be to dramatically undercut and weaken that which the Act sought to promote and strengthen.

Thus, the RNC should be permitted to pay for expenses incurred by the President and his aides for party promotional activity since such activities are undertaken at the singular request of the RNC for its own purposes and benefit. In fact, the PFC has not been involved in any efforts to initiate

and/or coordinate any of the President's recent trips on behalf of the RNC. Such invitations and acceptances are independent judgmental determinations made by the RNC and White House in connection with party matters and for party purposes. Moreover, such activities are totally unrelated to the PFC campaign efforts which are directed towards the raising of money and the scheduling of activities for the purpose of influencing the nomination of the President for a full term.

Third, the test for determining whether or not a contribution or expense is a campaign expense related to a federal candidate's election and therefore chargeable to the aggregate limitations set forth in the Act, is one of intent and purpose. Although, as Mrs. Smith noted with regard to the differing roles of the President, such distinctions are sometimes subtle, they are nonetheless real and subject to dispassionate analysis. No inflexible rule should be issued by the Commission which would obviate and eliminate partisan but non-candidate related activities. Instead, it is our considered opinion that a

clear distinction exists between the activities of a President in his official capacity, the activities of a President in his party leader capacity and, finally, the activities of a President as a candidate for nomination. Further, reason dictates that any such determination by the Commission in this regard must be made on a case by case basis.

It was recognized in the Opinion of Counsel issued to the campaign manager of the Wyman-for-Senator Committee, that the fact that there will always be the possibility or even likelihood of "some carryover effect" or other incidental benefit to the President in connection with his appearance in New Hampshire on behalf of that candidate is immaterial when the timing of such a visit would have no significan demonstrable or measurable effect on the 1976 Presidential election, nominating convention or New Hampshire primary election. Although that opinion was restricted to a particular set of circumstances and was not deemed necessarily applicable to other campaign activity engaged in by a Presidential candidate, the logical conclusion is that a similar approach and analysis must be taken toward non-campaign activity by a federal candidate. In fact, there are no applicable contribution or expenditure limitations for ongoing party business and activities which are not for the purpose of influencing the election of a federal candidate.

The distinction between official acts by a federal office holder and candidate related activities is reflected

in both the legislative history of the Act (see, *e.g.* H.R. 93-1279 at 150) and in the initial Task Force draft regarding Allocation of Expenditures. Moreover, an equally real and viable distinction exists between candidate related activities and party related activities, particularly during the primary period prior to the nomination at the national parties' annual conventions.

Fourth, in order to determine whether or not partisan political activity is directed toward party activity or an individual's own candidacy, we would respectfully suggest that the following approach be considered in connection with the Commission's Advisory Opinion in this matter and as a basis for any proposed regulation in this area. The cost of promotional or other partisan activities on behalf of a national, state or local party by a candidate for federal office, whether or not a holder of public office, shall not be attributable as a campaign expenditure by such candidate if the activity is (1) at the sole invitation of such party, (2) for a recognized and legitimate purpose on behalf of the party and not for the purpose of directly raising funds for such candidate or for the purpose of influencing his election, provided that, notwithstanding the above, the costs of any such activities by a candidate who has registered and qualified as a candidate or been placed on the ballot in the

state in which such activity is held, shall be deemed an expenditure from the date of registration or placement on the ballot, in any event, at any time such activities are undertaken in that state within forty-five (45) days prior to the date of the respective state presidential primary.

This approach recognizes the importance and value of party promotional activity by federal candidates, while at the same time providing a pragmatic time frame within which any such activity would be deemed candidate related. In addition, of course, any alleged party activity which is demonstrated to be for the purpose of influencing the candidate's own election would be appropriately allocated and charged against the Act's contribution and expenditure limitations. This is in accordance with the approach recently discussed by the Commission regarding "unearmarked" contributions to the national committee of such a candidate.

Accordingly, in the foregoing discussion we have established that payment by the RNC of expenditures incurred by the President and his aides, when solely engaged in national, state or local political party promotional activities, are not subject to the Act's contribution and spending limits. Hence, the FEC should confirm in its Advisory Opinion that it is legally permissible for the RNC to continue to make such expenditures. Moreover, in any event, the Commission should also rule that the effect of an Advisory Opinion in this matter must be prospective only.

In the first place, the statutory language of Section 437(f) of Title 2, United States Code, which authorizes the FEC to render Advisory Opinions clearly reflects the fact that such Advisory Opinions look only to future acts, and not past acts. Section 437(f) states, in pertinent part, that:

> "(a) Upon written request to the Commission . . . the Commission shall render an advisory opinion, in writing, within a reasonable time with respect to whether any specific transaction or activity . . . would constitute a violation . . . ."
> (Empahsis Added)

The words "would constitute" do not encompass acts that occurred in the past. As the Comptroller General has frequently ruled that the question of retroactivity is strictly a function of the interpretation of the relevant statute in question, the conclusion that all Advisory Opinions must be solely prospective in application is compelling (See, *e.g.* 49 Comp. Gen. 505 (1970), 48 Comp. Gen. 477 (1969), 48 Comp. Gen. 15 (1968) and 47 Comp. Gen. 386 (1968))

Moreover, even if, arguendo, Advisory Opinions are not limited to matters of prospective application only in all matters subject to such rulings, the Commission still has full discretion to limit its opinions to matters in the future in appropriate cases. The United States Supreme Court, in Chenery v. SEC, 332 U.S. 194 (1947), held that an agency of the federal government may, in its discretion,

give a ruling prospective effect only. The Court stated that the agency, in exercising this discretion, should follow a balancing test, which involves weighing "the mischief of producing the result which is contrary to a statutory design or to legal and equitable principles" against "the ill effect of the retroactive application of a new standard . . ." (332 U.S. at 203).

The foregoing test is similar to the criteria followed by the United States Supreme Court on the question of whether a particular judicial holding should be given retroactive application. Recently the Court stated that the following matters should be considered in this regard:

> "'(a) The purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards'" Gosa v. Mayden, 413 U.S. 655, 679 (1973), quoting, 388 U.S. at 297.

At issue before the Commission is the appropriateness of the application of the Act's contribution and expenditure limitations set forth in 18 U.S.C. 608 to a Presidential candidate's travel for party purposes. Title 18, of course, is a criminal statute and

provides for extensive criminal penalties including imprisonment and fines. As with all criminal statutes, a principal feature of that section is that a violation cannot occur unless it is a "knowing violation". In this respect, subsection (h) of Section 608 states as follows:

> "(h) No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the the benefit or use of a candidate, or knowingly made any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section." (Emphasis Added)

Any person found violating any perovision of this section shall be fined not more than $25,000 or imprisoned not more than 1 year, or both (18 U.S.C. §608(i)).

The enforcement powers of the Commission set forth in 24 U.S.C. §437g also make it clear that the Commission may not order repayment of any such past payments in any event for a violation of Section 608. Appropriate apparent violations of Section 608 are to be referred to the appropriate law enforcement authorities. In the present instance any such referral would be ludicrous. Accordingly, the Commission would be committing an abuse of discretion if it should attempt

to retroactively apply any new standard against The President Ford Committee or the RNC in this instance.

The President Ford Committee and the RNC have at all times acted in good faith in accordance with their understanding of the law. The RNC expenditures in question have been filed quarterly with the FEC, the Clerk of the House of Representatives and the Secretary of the United States Senate and it would be unfair and an unconstitutional denial of due process to apply any new standard before such time as the PFC or RNC might be said to have been on notice that their position was not in accordance with the FEC's view of the law. Thus, it is impossible to conclude that such committees were ever on such notice as would support a conclusion that there had been a "knowing violation" of the law. Indeed, the Commission has still not in any way ruled upon the question now before it and any Advisory Opinion must be applied prospectively only in this matter.

Finally, I would like to review certain additional pragmatic considerations for the Commission's consideration. Allegations that the recognition of the role of political parties in the maintenance and development of a viable political structure in the United States would work an unfair burden upon non-incumbents and allow unlimited corporate and labor organization spending for federal candidates through the general treasuries of state party committees are both misleading and fallacious. As a general policy matter, as well as pragmatic political practice, the 1974 Amendments

were not intended (nor should they have been) to provide a perfect cosmic balance on which both incumbents and non-incumbents must be evenly weighed in either. Again, as noted in Mrs. Smith's letter, the question presented does not revolve solely upon the President's role as party leader but involves any incumbent federal office-holder. The fact that such party leaders are generally incumbent officeholders is merely a reflection of the public's real life interest in recognized elected leaders and public figures. Non-incumbents always perforce are faced with the traditional obstacle and challenge of name recognition and acceptance. The plain fact that many incumbents have lost to earnest new challengers even prior to the federal election campaign laws establishes that the advantages of incumbency are not all compelling. Further, the burdens of incumbency, including the obligation to speak and act responsibly toward his constituency and to represent their best interests in the harsh world of decision as opposed to the speculation and mere promise of the non-incumbent, are all too quickly and easily forgotten by those who would seek to mystically equalize the political system to their own advantage.

Similarly, the alrm sounded regarding corporate and labor organization spending is false and a sham. The Commission has already indicated that state parties will have to maintain separate, segregated funds regarding any support for federal candidates, which funds must exclude monies from corporations and unions that

may be accepted by them under State law for state and local candidates and activities. Full disclosure and exacting reporting requirements of such funds will avoid any such anticipated and feigned abuse. In addition, as in all of these matters, the watchful eye of the press as well as opposing candidates will expose and question any deceitful artifice or device. Accordingly, only legitimate state party business activities would be financed from the general treasuries of such state parties. Section 610 of Title 18, United States Code, would properly have no application to such legitimate state activities.

Reliance upon Advisory Opinion Request 1975-13 and the proposed House Account regulation is again misplaced. That Advisory Opinion solely decided that the payment of a Presidential Candidate's travel expenses from corporate funds was illegal. It in no way addressed the question whether the President may engage in political activities unrelated to his candidacy. The distinction in the House account proposal is self-apparent. In that situation, money is being contributed directly to the candidate to support activities that can have no substantive purpose other than to assist the candidate in influencing his constituency and, of greater

importance, such contributions certainly do not serve to advance a stated major purpose of the Act - the strengthening of political parties. Moreover, in its second proposed version of the House Account regulation it was again recognized by the Commission that, even with regard to such direct contributions to Congressmen, the application of the Act's limitations would apply only to a foreshortened period prior to an announced candidate's election.

In conclusion, we appreciate the opportunity afforded the PFC to comment on the above-referenced Advisory Opinion Request and we trust that these comments may prove useful in assisting the Commission in arriving at its determination in this matter.

Sincerely,

Robert P. Visser
General Counsel

Campaign

THE WHITE HOUSE

WASHINGTON

October 16, 1975

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may be accepted by them under State law for state and local candidates and activities. Full disclosure and exacting reporting requirements of such funds will avoid any such anticipated and feigned abuse. In addition, as in all of these matters, the watchful eye of the press as well as opposing candidates will expose and question any deceitful artifice or device. Accordingly, only legitimate state party business activities would be financed from the general treasuries of such state parties. Section 610 of Title 18, United States Code, would properly have no application to such legitimate state activities.

Reliance upon Advisory Opinion Request 1975-13 and the proposed House Account regulation is again misplaced. That Advisory Opinion solely decided that the payment of a Presidential Candidate's travel expenses from corporate funds was illegal. It in no way addressed the question whether the President may engage in political activities unrelated to his candidacy. The distinction in the House account proposal is self-apparent. In that situation, money is being contributed directly to the candidate to support activities that can have no substantive purpose other than to assist the candidate in influencing his constituency and, of greater

importance, such contributions certainly do not serve to advance a stated major purpose of the Act - the strengthening of political parties. Moreover, in its second proposed version of the House Account regulation it was again recognized by the Commission that, even with regard to such direct contributions to Congressmen, the application of the Act's limitations would apply only to a foreshortened period prior to an announced candidate's election.

In conclusion, we appreciate the opportunity afforded the PFC to comment on the above-referenced Advisory Opinion Request and we trust that these comments may prove useful in assisting the Commission in arriving at its determination in this matter.

Sincerely,

Robert P. Visser
General Counsel

THE WHITE HOUSE
WASHINGTON

October 17, 1975

Mr. B,

I spoke with Barry and he indicates that the PFC is considering whether or not to specifically respond to the Reagan point.

If you (Ron) are asked any questions, you can respond that"this question is before the FEC and the the President stated his view of his role as party leader at the Press Conference on October 9, and I don't think it is necessary to go beyond that statement."

If you receive further questions on the letter you can indicate that the RNC obviously feels that the President is the head of the party as they are the ones who have requested to continue such party expenditures.

THE WHITE HOUSE

WASHINGTON

FEC

October 17, 1975

MEMORANDUM FOR: RON NESSEN

FROM: PHILIP BUCHEN P.

Attached is a copy of the letter from the Citizens for Reagan for President Committee to the Federal Election Commission.

The President Ford Committee is preparing to send a letter on the same subject to the FEC today supporting the position of the RNC. This letter meets the objections raised earlier by the Democratic Senatorial Campaign Committee in its letter of October 7. Whether it will be changed before submission to include arguments against the Reagan position, I do not know.

Attachment

Citizens for Reagan
For President

October 14, 1975

Federal Election Commission
Office of the General Counsel
Advisory Opinion Comment
1325 K Street, N.W.
Washington, D.C. 20463

Dear Sirs:

We respectfully submit the following comments on AOR-1975-72. We hope this will be helpful to the Commission.

AOR 1975-72 raises the question of whether the Republican National Committee (RNC) can legitimately provide funds, in light of the recent federal election law amendments, for political travel by President Ford while he is a candidate for his party's presidential nomination. And further, whether these expenditures count against candidate Ford's campaign expenditure limitations under 18 U.S.C. section 608(c). It appears to our committee that several facts must be considered before a conclusion on the RNC's request can be reached.

First, President Ford is an announced and declared candidate for his party's nomination. He has, as of this date, made campaign trips and authorized a committee which has made campaign expenditures on behalf of his campaign. He indicated on a nationally televised news conference (October 9, 1975) that he hoped his political trips made on behalf of the RNC would help his election. He has made the decision to actively campaign at an earlier date than has been the customary political practice of past incumbent Presidents.

Second, Gerald R. Ford was the first individual appointed to the Vice Presidency under the provisions of the recently enacted 25th Amendment. Following the resignation of Richard M. Nixon as President, Gerald R. Ford succeeded to that office. His Vice President, Nelson A. Rockefeller, also became such by the operation of the 25th Amendment, after having been rejected for the Republican presidential nomination by the Republican National Conventions of 1964 and 1968. These facts are quite important in providing some political perspective to the relationship of the Presidency, its current occupant, and the Republican Party.

Third, there is an active political committee in existence, authorized by Governor Reagan, and registered with the Federal Election Commission, that has raised significant amounts of money from many thousands of persons in every state. This committee is actively promoting the candidacy of Governor Ronald Reagan for the Republican Party's presidential nomination.

Fourth, one of the basic purposes of the 1974 amendments to the body of federal election law is to insure that no candidate, regardless of his position or financial means, could "buy" the Presidency by means of excessive financial expenditures. To this end, the key provision of the 1974 Act is 18 U.S.C. section 608. This section imposes strict expenditure limitations on all candidates for federal office. The purpose of these limitations is, in part, to provide every candidate with an equal opportunity to present his campaign to the electorate.

Fifth, a key criticism of the new election law is that it favors incumbents in that it protects them against challengers. This is so, many feel, because a challenger can only overcome the multiple advantages of incumbency by greater campaign spending than the incumbent. It is certainly true that an incumbent President enjoys great political advantages by virtue of his official position, advantages such as government-paid travel around the country to "non-political events" and the national forum of the televised Presidential press conference (recently exempted from equal time by the Federal Communications Commission). Does he also, in a primary campaign situation, enjoy the official mantle of the party and use of its funds merely by virtue of his title?

With these basic factual referents in mind we submit the following analysis of the RNC's request:

Traditionally an incumbent President seeking reelection has been considered unchallengable within his own political party for his party's nomination. No incumbent President in this century has been denied renomination by his party. In fact, so strong is the traditional role of the incumbent President that only twice in this century has one been defeated in a general election. In 1975 and 1976 the situation in this country is and will be unique politically. The incumbent President and Vice President of the Republican Party have never faced the national electorate or, in the case of President Ford, the Republican Party membership as expressed through its national party convention. Thus, President Ford is clearly not in the same position as former Republican Party presidents were. In fact, it is clear that one of the important factors in the 1976 nomination contest is the current lack of a nationally chosen or mandated Republican Party "leader" in the traditional sense. The Republican Party's only elected national spokesman is its chairman, Mrs. Mary Louise Smith. →

Thus, while Gerald R. Ford is legally and constitutionally the Chief Executive, with all the President's powers and privileges, and entitled to all the traditional support and respect due our Head of State, he does not stand in the traditional role an incumbent President has had as the titular leader of the Republican Party. Further, actions that tend not only to place him in such a role but also to emphasize it directly benefit his campaign for the party's nomination for President. In fact, a key selling point of the President's campaign has been his incumbency. To argue that his campaign for the nomination should not be hindered because of his activities as "party leader," is very like the boy, who having killed his parents, says he should not be punished because he is an orphan.

Only the 1976 nominee of the Republican National Convention will be the party's chosen leader.

The 1974 amendments to federal election law mandate strict expenditure limitations for all federal candidacies. They do this separately with respect to candidates for the nomination of parties and

for the candidates of parties in general elections. Further, the law embodies a very expansive and comprehensive definition of contributions and expenditures so as to close nearly every potential loophole left in past legislative attempts at regulation. This legislative plan clearly manifests the intent of Congress, as ratified by President Ford in signing the law, to establish a system of electoral regulation that would control, limit and disclose all expenditures that promote and influence a federal campaign. It cannot be seriously argued that political trips made by a declared candidate, as "leader" of a political party, directed at those very individuals who will ultimately choose the party's nominee, does not directly benefit and influence and promote such candidate's campaign. If President Ford's campaign is not charged with the cost of trips made as the "leader" of the Republican Party under these circumstances then section 608 is not the comprehensive expenditure limitation section it clearly was intended to be.

If the Commission's interpretation of this new law is not to favor incumbents over other candidates and if the traditional relationship of the Presidency to its own political party is not to become a vehicle for allowing the new election law to be gravely distorted then the RNC's planned actions must be modified. It would certainly be divisive within the Republican Party if the RNC were to bestow a non-reportable and uncontrolled election benefit on only one candidate for the party's nomination. This would raise constitutional questions of whether 18 U.S.C. section 608's effect, if not its purpose, is to stifle legitimate political challenges to incumbents from within their own parties.

If the party provided truly equal treatment to all candidates for its nomination then few serious objections could be raised. Then, the party would not be promoting a campaign but would be providing its national membership with a better opportunity for seeing all its candidates. It would be performing a legitimate informational function by helping members to make more intelligent choices among the candidates. While a TV appearance by one candidate benefits his campaign, a program presenting all of the candidates equally benefits the electorate. Of course, a fair and equitable mechanism would have to be worked out to determine who the individuals are who are legitimately entitled to such consideration. But this should not be difficult. A simple criterion, like qualification for federal matching funds, would provide an adequate method for discriminating between bona fide candidates and others.

If the RNC chooses not to consider such an option it seems to our committee that its current proposal raises serious questions under both the contribution limitations and the expenditure limitations of section 608. If party "leadership" is to confer substantial financial electoral benefits it should be both formalized and brought within the guidelines of the election law. Governor Reagan has over the past years raised millions of dollars for the Republican Party at numerous party events across the nation and by direct mail. He has done this as a member of the party who deeply believes in its principles. Our committee feels that the party treasury, built up in the interests of the whole party, should not become a vehicle for any single candidate in contest for the party's nomination, regardless of any office he may hold.

In 1975 and 1976 a new federal election law prevails. Examples of past practice no longer suffice to justify present actions. We hope our comments will aid the Federal Election Commission in deciding this question.

Very truly yours,

Loren A. Smith
General Counsel

LAS:jf

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Hon. Neil Staebler
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Hon. Thomas E. Harris
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Hon. Mary Louise Smith

THE WHITE HOUSE

WASHINGTON

October 17, 1975

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FROM: PHILIP BUCHEN P.

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The President Ford Committee is preparing to send a letter on the same subject to the FEC today supporting the position of the RNC. This letter meets the objections raised earlier by the Democratic Senatorial Campaign Committee in its letter of October 7. Whether it will be changed before submission to include arguments against the Reagan position, I do not know.

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October 14, 1975

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Advisory Opinion Comment
1325 K Street, N.W.
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Fourth, one of the basic purposes of the 1974 amendments to the body of federal election law is to insure that no candidate, regardless of his position or financial means, could "buy" the Presidency by means of excessive financial expenditures. To this end, the key provision of the 1974 Act is 18 U.S.C. section 608. This section imposes strict expenditure limitations on all candidates for federal office. The purpose of these limitations is, in part, to provide every candidate with an equal opportunity to present his campaign to the electorate.

Fifth, a key criticism of the new election law is that it favors incumbents in that it protects them against challengers. This is so, many feel, because a challenger can only overcome the multiple advantages of incumbency by greater campaign spending than the incumbent. It is certainly true that an incumbent President enjoys great political advantages by virtue of his official position, advantages such as government-paid travel around the country to "non-political events" and the national forum of the televised Presidential press conference (recently exempted from equal time by the Federal Communications Commission). Does he also, in a primary campaign situation, enjoy the official mantle of the party and use of its funds merely by virtue of his title?

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Hon. Benton L. Becker
Hon. Mary Louise Smith

President Committee

1828 L STREET, N.W., SUITE 250, WASHINGTON, D.C. 20036 (202) 457-6400

October 17, 1975

Office of General Counsel,
Advisory Opinion Section
The Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: AOR 1975-72

Gentlemen:

The President Ford Committee hereby submits the following comments in support of the position taken by the Chairman of the Republican National Committee, Mary Louise Smith, in her September 15 letter regarding the historical role of the President of the United States in his capacity as head of his national party.

We have had the opportunity to review the comments of the Democratic Senatorial Campaign Committee ("DSCC") alleging violation of certain provisions of the Federal Election Campaign Act of 1971, as amended, (the "Act") by both the Republican National Committee ("RNC") and the principal campaign committee for the President, The President Ford Committee ("PFC"). In particular, both the RNC and the PFC were recklessly charged by the DSCC with a knowing criminal violation of Section 608(b)(2) of Title 18, United States Code, regarding the payment by the RNC of Presidential travel expenses solely involving Republican Party political activities. Such assertions are without merit and lack any substantive legal or factual basis.

It is our position, as demonstrated below, that such payments by the President's national party are both proper and lawful. Moreover, such payments recognize three traditional and important functions of any incumbent President. He is President, the leader of his national party and at times a Presidential candidate.

First, it is clear that the limitation set forth in Section 608(b)(2) regarding contributions by a political committee to a federal candidate relate solely to payments:

> ". . . made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States . . . ."
> 18 U.S.C. §591(e)(1) (emphasis added)

Similarly, the definition of "expenditure" in Title 18 excludes any payment from being charged against the candidate's primary expenditure limitation of Ten Million Dollars ($10,000,000) unless it is in furtherance of one of the above-cited purposes. Moreover, the definition of expenditure also explicitly excludes ". . . any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office". 18 U.S.C. §591 (f)(4)(F). As set forth in greater detail in Mrs. Smith's letter, the RNC has not and will not assume the expenses of Presidential travel in connection with either the candidacy of the President himself or with the candidacy of any other individual. In the latter circumstances, of course, the appropriate contribution and expenditure provisions of the Act would apply on an allocable basis.

Second, the strength of the RNC position is underscored by the legislative history of the Act itself. One of the important goals of the legislative reform sought by the 1974 Amendments was to strengthen the national, state and local party structures and their impact upon the political process while, at the same time, stemming the flow of undisclosed private funds which may be covertly channeled into a federal candidate's coffers. In a paragraph entitled "Strengthening

Political Parties", the Senate Report on the 1974 Amendments states that the Senate Committee "agrees that a vigorous party system is vital to American politics and has given this matter careful study". Further, the Committee stated that "the parties will play an increased role in building strong coalitions of voters and in keeping candidates responsible to the electorate through the party reorganization". Finally, they noted:

> "[P]arties [such as the RNC] will continue to perform crucial functions in the election apart from fundraising, such as registration and voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues. Indeed, the combination of substantial public financing with limits on private gifts to candidates will release large sums presently committed to individual campaigns and make them available for donation to the parties, themselves. As a result, our financially hard-pressed parties will have increased resources not only to conduct party-wide election efforts, but also to sustain important party operations in between elections." S. Rep. No. 689, 93d Cong., 2d Sess. 8 (1974) (emphasis added)

The traditional and one of the most effective methods by which a national party obtains funds to support such activities and strengthen its political base is by inviting interested persons to fundraising events at which party leaders, and in particular, an incumbent President, speak on issues of concern to the Party. In this regard, as evidenced by Mrs. Smith's Advisory Opinion Request, the RNC has selected President Ford as not only its principal spokesman but also the leader of the Republican Party. To date, it is our understanding that such activities by President Ford have raised over $2,250,000 in 1975 for his Party. The pragmatic effect of any blanket rule denying the

RNC the party services of its chief spokesman would be to dramatically undercut and weaken that which the Act sought to promote and strengthen.

Thus, the RNC should be permitted to pay for expenses incurred by the President and his aides for party promotional activity since such activities are undertaken at the singular request of the RNC for its own purposes and benefit. In fact, the PFC has not initiated, participated in, and/or coordinated any of the President's trips on behalf of the RNC. Such invitations and acceptances are independent determinations made by the RNC and the White House in connection with party matters and for party purposes. Moreover, such activities are totally unrelated to the PFC campaign efforts which are directed towards the raising of money and the scheduling of activities for the purpose of influencing the nomination of the President for a full term.

Third, the test for determining whether or not a contribution or expense is a campaign expense related to a federal candidate's election, and therefore chargeable to the aggregate limitations set forth in the Act, is one of intent and purpose. Although, as Mrs. Smith noted with regard to the differing roles of the President, such distinctions are sometimes subtle, they are nonetheless real and subject to dispassionate analysis. No inflexible rule should be issued by the Commission which would obviate and eliminate partisan but non-candidate related activities. Instead, it is our considered opinion that a clear distinction exists between the activities of a President in his official capacity, the activities of a President in his party leader capacity and, finally, the activities of a President as a candidate for nomination. Reason dictates that any such determination by the Commission in this regard must be rendered on a case by case basis.

Further, in the Opinion of Counsel issued to the campaign manager of the Wyman-for-Senator Committee the Commission recognized the relative immateriality of the "carryover effect" or other incidental benefit to the President in connection with his appearance in New Hampshire on

behalf of Wyman, particularly when the timing of such a visit had no significant demonstrable or measurable effect on the 1976 Presidential election, nominating convention or New Hampshire primary election. Although that opinion was restricted to a particular set of circumstances and was not deemed necessarily applicable to other "campaign" activity engaged in by a Presidential candidate, the logical conclusion is that a similar approach and analysis must be taken toward non-campaign activity by a federal candidate.

The distinction between official acts by a federal officeholder and candidate related activities is also reflected in both the legislative history of the Act (see, H. R. Rep. No. 1239, 93d Cong., 2d Sess. 150 (1974) and in the Commission's initial Task Force draft regarding Allocation of Expenditures. Moreover, an equally real and viable distinction exists between candidate related activities and party related activities, particularly during the primary period prior to the nomination at the national parties' annual conventions.

Fourth, it has also been suggested that the Commission should rely upon Advisory Opinion 1975-13 and the proposed House Account regulations. Such reliance is, in our opinion, misplaced. That Advisory Opinion merely decided that the payment of a Presidential Candidate's travel expenses from corporate funds was illegal. It in no way addressed the question whether the President may engage in political activities unrelated to his candidacy. The distinction in the House Account proposal is self-apparent. In that situation, money is being contributed directly to the candidate to support activities that can have no substantive purpose other than to assist the candidate in influencing his constituency and, of greater importance, such contributions certainly do not serve to advance a stated major purpose of the Act - the strengthening of political parties. Moreover, in its second proposed version of the House Account regulation it was again recognized by the Commission that, even with regard to such direct contributions to Congressmen, the application of the Act's limitations would apply only to a foreshortened period prior to an announced candidate's election.

Fifth, it is possible to develop objective criteria for determining whether or not partisan political activity is directed toward party activity or an individual's own candidacy. One such approach that may be considered in connection with the Commission's Advisory Opinion in this matter and as a basis for any proposed regulation in this area is as follows:

> The cost of promotional or other partisan activites on behalf of a national, state or local party by a candidate for federal office, whether or not a holder of federal office, shall not be attributable as a campaign expenditure by such candidate if the activity is (1) at the invitation of such party, (2) for a recognized and legitimate purpose on behalf of the party and not for the purpose of directly raising funds for such candidate or for the purpose of influencing his election, provided that, notwithstanding the above, the costs of any such activities by a candidate who has registered and qualified as a candidate or has been placed on the ballot in the state in which such activity is held, shall be deemed an expenditure from the date of registration, qualification or placement on the ballot, or, in any event, at any time such activities are undertaken in that state within thirty (30) days prior to the date of an election regarding such candidate as defined in 2 U.S.C. §431(a).

This approach recognizes the importance and value of party promotional activity by federal candidates who are also recognized party leaders, while at the same time providing a pragmatic time frame within which any such activity would be deemed candidate related. In addition, of course, any alleged party activity which is demonstrated to be for the purpose of

influencing the candidate's own election would be appropriately allocated and charged against the Act's contribution and expenditure limitations. This is in accordance with the approach recently discussed by the Commission regarding "unearmarked" contributions to the national committee of such a candidate.

Accordingly, we have herein established that payment by the RNC of expenditures incurred by the President and his aides, when solely engaged in national, state or local political party promotional activities, are not subject at this time to the Act's contribution and expenditure limitations. Hence, the Commission should confirm in its Advisory Opinion that it is legally permissible for the RNC to continue to make such expenditures. In any event, the Commission's opinion in this matter can have only a prospective effect.

Supporting this proposition, the statutory language of Section 437f which authorizes the Commission to render Advisory Opinions, clearly states that Advisory Opinions look only to future and not past acts:

> "Upon written request to the Commission . . . the Commission shall render an advisory opinion, in writing, within a reasonable time with respect to whether any specific transaction or activity . . . would constitute a violation . . . . ."
> 2 U.S.C. §437f(a) (emphasis added)

The words "would constitute" do not emcompass acts that occured in the past. As the Comptroller General of the United States has frequently ruled, the question of retroactivity is strictly a function of the interpretation of the relevant statute in question. (See, *e.g.* 49 Comp. Gen. 505 (1970), 48 Comp. Gen. 477 (1969), 48 Comp. Gen. 15 (1968) and 47 Comp. Gen. 386 (1968).) Accordingly, the conclusion that all Advisory Opinions must be solely prospective in application is compelling.

Moreover, assuming, *arguendo*, that Advisory Opinions are not statutorily limited to matters of prospective application, the Commission still has full discretion to limit its opinions to matters in the future. The United States Supreme Court, in *Chenery v. SEC*, 332 U.S. 194 (1947), held that an agency of the federal government may, in its discretion, give a ruling prospective effect only. The Court stated that the agency, in exercising this discretion, should follow a balancing test, which involves weighing " . . . the mischief of producing the result which is contrary to a statutory design or to legal and equitable principles" against "the ill effect of the retroactive application of a new standard . . ." 332 U.S. at 203.

At issue here is the application of the Act's contribution and expenditure limitations set forth in 18 U.S.C. 608 to a Presidential candidate's travel for party purposes. Title 18, of course, is a criminal statute and provides for extensive criminal penalties including imprisonment and fines. As with all criminal statutes, a principal feature of that section is that a violation cannot occur unless it is a "knowing violation". In this respect, subsection (h) of Section 608 states as follows:

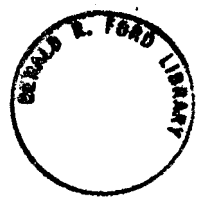
> "No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section."
> 18 U.S.C. §608(h) (emphasis added)

Thus, it is impossible to conclude that the RNC or PFC were ever on notice that there may have been a "knowing violation" of the law. Indeed, the Commission has still not in any way ruled upon the question now before it and any Advisory Opinion must be applied prospectively.

The enforcement powers of the Commission set forth in 2 U.S.C. §437g, establish that the Commission may not order repayment of any such past payments in any event for a violation of Section 608. Apparent violations of Section 608 are to be referred to the appropriate law enforcement authorities. The Commission would be committing an abuse of discretion if it should attempt to retroactively apply any new standard against the PFC or the RNC in this instance.

Additionally, the PFC and the RNC have at all times acted in good faith and in accordance with their understanding of the law. The RNC expenditures in question have been filed quarterly with the Commission, the Clerk of the House of Representatives and the Secretary of the United States Senate. It would, therefore, be unfair and an unconstitutional denial of due process to apply a new legal standard or presumption before the PFC or RNC have been on notice that their position is not in accordance with the Commission's view of the law.

Finally, a review of certain additional pragmatic considerations appears appropriate for the Commission's consideration. Allegations that the recognition of the role of political parties in the maintenance and development of a viable political structure in the United States would (a) work an unfair burden upon non-incumbents and (b) allow unlimited corporate and labor organization spending for federal candidates, through the general treasuries of state party committees are both misleading and fallacious. As a general policy matter, as well as pragmatic political practice, the 1974 Amendments were not intended (nor should they have been) to provide a perfect cosmic balance on which both incumbents and non-incumbents must be evenly weighed. Again, as noted in Mrs. Smith's letter, the question presented does not revolve solely upon the President's role as the RNC's chosen party leader but involves any party leader. The fact that such party leaders are generally incumbent officeholders is merely a reflection of the public's real life interest in recognized elected leaders



and public figures. Non-incumbents are necessarily faced with the traditional obstacle and challenge of name recognition and acceptance. Further, the burdens of incumbency are all too quickly and easily forgotten by those who would seek to mystically equalize the political system to their own advantage. An incumbent has the obligation to speak and act responsibly toward his constituency and to represent their best interests in the harsh world of decision as opposed to the speculation and mere promise of the non-incumbent.

Similarly, the alarm sounded regarding corporate and labor organization spending is false and a sham. The Commission has already indicated that state parties will have to maintain separate, segregated funds regarding any support for federal candidates, which funds must exclude monies from corporations and labor organizations that may be accepted by them under state law for state and local candidates and activities. Full disclosure and exacting reporting requirements of such funds will avoid any such anticipated and feigned abuse. Accordingly, only legitimate state party business activities would be financed from the general treasuries of such state parties. Section 610 of Title 18, United States Code, would properly have no application to such legitimate state activities.

In conclusion, we appreciate the opportunity afforded the PFC to comment on the above-referenced Advisory Opinion Request and we trust that these comments may prove useful in assisting the Commission in arriving at its determination in this matter.

Sincerely,

THE PRESIDENT FORD COMMITTEE

Robert P. Visser

Robert P. Visser, General Counsel

T. Timothy Ryan

T. Timothy Ryan, Assistant
General Counsel

Friday 11/7/75

11:45 John Hart of NBC would like to talk with you about your September 3rd letter to the Federal Election Committee -- copy attached.

686-4283

Done

THE WHITE HOUSE

WASHINGTON

chron

September 3, 1975

Dear Mr. Curtis:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Other Travel Costs

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

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

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

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

(4) Services of Government Personnel

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

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

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

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

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

Sincerely,

Philip W. Buchen
Counsel to the President

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

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

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

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

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

Jet Star (VC-140)

Cost per hour:	$ 889.00
Passengers:	8

White Top Helicopter (VH-3A)

Cost per hour:	$ 723.00
Passengers:	12

Huey Helicopter (VH-IN)

Cost per hour:	$ 262.00
Passengers:	8

PFC

Monday 11/10/75

9:20 Barry checked to see if we had received the memo from Jim Connor on the President's Boston trip.

(We got a copy and Barry read it, talked with Connor and made the note to you on the second page advising of the conversation.)

THE WHITE HOUSE

WASHINGTON

November 10, 1975

MEMORANDUM FOR: DICK CHENEY

FROM: JIM CONNOR

I talked with Bob Visser this morning about how we should handle the trip costs for Boston. You will recall that the President mentioned his intention to run in the primaries and that this received quite a bit of public coverage. The problem we face is that we have been telling the Federal Election Commission and the press that it is appropriate for the President in his role as Party Leader to raise money for the party. The expenses for party fund raising should be borne by the RNC and not chargeable to the President's campaign expenditure limitations.

We have supported this position by argument that the President does not on these trips talk about his own campaign or take any steps publically to enhance his candidacy. In Boston, however, it was clear that he did talk publically about his own campaign ratherthan solely confining himself to the party efforts. For that reason we must come up today with a decision on how we intend to handle inquiries about costs of the trip. We have three choices:

(1) Announce that the PFC will pay for the entire costs of the trip. This approach would parallel our treatment of political trips where a single major political activity makes the entire stop political. Bo Callaway urges against this approach and suggests that it is an unnecessarily strict intrepretation of the law.

(2) Announce today that the PFC and the RNC will share the costs of the trip on a 50/50 basis. This approach is acceptable to Bo. It is likely that when the FEC rules on the question of how subject costs should be allocated that they will require no more than a 50/50 approach.

(3) Announce today that there will be an allocation of costs. The exact distribution is now being worked on by the RNC and PFC and will be reported shortly to the FEC. Have Nessen announce this and also state our policy has been to review all trips after the fact.

We should be prepared to let Nessen deal with this question at his briefing this morning.

THE WHITE HOUSE

WASHINGTON

November 10, 1975

MEMORANDUM FOR: DICK CHENEY

FROM: JIM CONNOR

I talked with Bob Visser this morning about how we should handle the trip costs for Boston. You will recall that the President mentioned his intention to run in the primaries and that this received quite a bit of public coverage. The problem we face is that we have been telling the Federal Election Commission and the press that it is appropriate for the President in his role as Party Leader to raise money for the party. The expenses for party fund raising should be borne by the RNC and not chargeable to the President's campaign expenditure limitations.

We have supported this position by argument that the President does not on these trips talk about his own campaign or take any steps publically to enhance his candidacy. In Boston, however, it was clear that he did talk publically about his own campaign rather than solely confining himself to the party efforts. For that reason we must come up today with a decision on how we intend to handle inquiries about costs of the trip. We have three choices:

(1) Announce that the PFC will pay for the entire costs of the trip. However Bo Callaway urges against this approach and suggests that further it is unnecessarily strict in its interpretation of the law.

(2) Announce today that the PFC and the RNC will share the cost of the trip on a 50/50 basis. This approach is acceptable to Bo. It is likely that when the FEC rules on the question of how subject costs should be allocated that they will require no more than a 50/50 approach.

(3) Announce today that there is a question of allocating the costs and that the PFC and the RNC will propose a formula to the FEC which if they approve will be implemented. This approach is most acceptable to Bo and is the one I would recommend since it appears likely that if there is an allocation formula it would not be asstrict as 50/50.

We should be prepared to let Nessen deal with this question at his briefing this morning.

10/19/75
PWB:
I suggested to Jim that he modify along following approach:

Announce today that there will be an allocation of costs and that PFC & RNC are now working this out and will report to the FEC (but not necessarily for their decision).

Also Nessen should point out that we review after trips as well as before.

Finally, they should realize that this approach is not entirely consistent with FEC proposed regulation and could be criticized by media.

Jim bought this approach & is changing memo.

Bern

Commissioner Memo #192

P&P Activities

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 19, 1975

MEMORANDUM TO: The Commission

THROUGH: Lan Potter

FROM: Jack Murphy JM by DJ

Attached find a copy of the draft opinion in AO 1975-72. The position taken reflects the consensus expressed at the allocation task force meeting of November 17, 1975. Pursuant to the Commission's instruction to this office of November 18, 1975, the opinion is forwarded for action on the agenda of the Commission's meeting of November 20th.

Attachment

AGENDA ITEM
For Meeting of: NOV 20 1975
Agenda Item No: II-B-4
Exhibit No:

ADVISORY OPINION 1975-72

Application of Contribution and Spending Limits in 18 U.S.C. §608 to Presidential Candidate's Travel for Party Purposes

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request by a Republican National Committee (hereinafter RNC). The request was published as AOR1975-72 in the Federal Register for September 24, 1975 (40 FR 44041). Interested parties were given an opportunity to submit written comments relating to the request. Numerous comments were received by the Commission.

The request asked specifically whether ". . . the . . . Federal Election Campaign Law of 1974 . . . (has) . . . application to . . . (a) . . . national party's payment of expenses incurred by the President of the United States, the Vice President of the United States, and their aides while engaged in national, State, or local party promotional activities?"

It is the opinion of the Commission that a political party may designate any person to represent them at a legitimate party promotional event. If such person is a candidate under the Federal Election Campaign Act, as amended, the Commission will presume after January 1 of an election year, for reasons noted infra, that the

candidate's appearances benefit his candidacy directly and must be treated as subject to the provisions of the FECA, as amended. The Commission is also of the opinion that candidate appearances at a legitimate party promotional event, prior to January 1 of an election year are party building in nature and are not inherently intended to influence the candidate's nomination for election to Federal office. Therefore, these appearances are not subject to the limitations of the FECA, as amended, as long as all other candidates for nomination to the same office are treated fairly.

Since President Ford is a candidate within the meaning of 2 U.S.C. §431(b)(2) and 18 U.S.C. §591(b)(2), the question to be answered here is whether a political committee's payment to a candidate for his expenditures in connection with an appearance at a legitimate party promotional activity is "made for the purpose of influencing the nomination . . . of (the candidate) to Federal office . . . ." (See 2 U.S.C. §431(f), 18 U.S.C. §591(f).)

The FECA implicitly recognizes the role of political parties in our electoral process and encourages stronger and more competitive, major, minor and new parties through the payment of Federal monies.

The report of the Senate Rules and Administration Committee issued to accompany S. 3044 (Report No. 93-689) expresses this point:

> "(the) Committee agrees that a vigorous party system is vital to American politics and has given this matter careful study . . . . Parties will retain their essential nonfinancial responsibilities in electoral politics . . . . [P]arties will play an increased role in building stronger coalitions of voters and in keeping candidates responsible to the electorate through the party organization . . . . [P]arties will continue to perform crucial functions in the election apart from fundraising, such as registration in voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues. Indeed, the combination of substantial public financing with limits on private gifts to candidates will release large sums presently committed to individual campaigns and make them available for donation to the parties, themselves. As a result, our financially hard-pressed parties will have increased resources not only to conduct party wide election efforts, but also to sustain important party operations in between elections."

See also, comments of Rep. Bill Frenzel in Congressional Record, H. 10333, daily ed., October 10, 1974).

While there is no question, given the nature and functions of the RNC, that such appearances can and do promote party-building, there is also little doubt that when these appearances occur in proximity to an election in which the President is a candidate, the appearances may be reasonably construed to confer a benefit to the President's own candidacy. Cognizant of these realities, the Commission will divide President Ford's

party appearances into two categories: those occurring before January 1 of the election year, and those occurring after January 1 of the election year. The post January 1 appearances will be presumed to be candidate-related and will be governed by the relevant portions of the FECA, as amended. Those before January 1 will be presumed not to be candidate related. The Commission's conclusions may be rebutted upon a showing, inter alia, that the solicitations for the party event, or the setting of the event, or the remarks made by candidates who were invited to attend were "for the purpose of influencing the nomination for election, or election, of [that candidate(s)] to Federal office." (See 2 U.S.C. §§431(c) and (f); 18 U.S.C. §591(e) and (f).)

In situations where it can be shown that President Ford, after the date he became a candidate,1/ attended an event which did not, under the preceding criteria, fulfill legitimate party building purposes, the Commission assumes that the RNC will treat its expenditures on behalf of the President as contributions in kind, subject to the $5,000 limitation in 18 U.S.C. §608(b)(2). In the event this limit is exceeded, the President Ford Committee may repay the RNC for costs incurred on behalf of the President and then list such repayments as expenditures, subject to the provisions of 18 U.S.C. §608(c).

1/ Since President Ford, on June 20, 1975, authorized a political committee to receive contributions and make expenditures on his behalf, at that time he became a candidate within the meaning of 2 U.S.C. §431(b)(2) and 18 U.S.C. §591(b)(2).

The Commission notes that the matching payment period for the payment of public funds to properly qualified Federal candidates begins on January 1 of the presidential election year (see 26 U.S.C. §9037(b)). At the very least, the Congressional determination that the public payments shall become available on January 1 supplies a persuasive suggestion that Congress believed that date to mark the commencement of increasingly serious presidential campaigning which will consume an increasing portion of the candidate's time. This justifies the view that almost all public activities engaged in thereafter are candidate related.

The opinion expressed herein is distinguishable from AO 1975-13 (appearing in 40 FR 36747) in which the Commission indicated that "once an individual has become a candidate for the presidency, all speeches made before substantial numbers of people are presumed for the purpose of enhancing his candidacy." When the statement is examined in context--namely as a response to a question as to whether 18 U.S.C. §610 prohibited a presidential candidate from receiving corporation paid travel expenses for a speaking engagement before a local chamber of commerce, it becomes clear that it is applicable only to an appearance which in contrast to the present situation, serves directly to benefit the candidate. This is not the case with regard to party appearances prior to January 1 of the election year.

Although the views expressed in this opinion are specifically applicable to the RNC, as the requesting party herein (see 2 U.S.C. §437f), they would also be applied by the Commission to presidential candidates other than President Ford, should these candidates make advisory opinion requests to the Commission alleging facts similar to those alleged herein.

This advisory opinion is issued on an interim basis only pending promulgation by the Commission of rules and regulations or policy statements of general applicability.

Pres Travel

THE WHITE HOUSE

WASHINGTON

November 20, 1975

MEMORANDUM FOR: JIM CONNOR

THROUGH: PHIL BUCHEN

FROM: BARRY ROTH BR

SUBJECT: FEC Decision on Presidential Travel

Per your request, attached is the text of the advisory opinion adopted by a 5-1 vote today by the FEC on payment by the RNC of Presidential travel expenses in connection with party promotional activities. The Commission determined that a political party could "designate any person to represent them at a legitimate party event." If that person is a candidate, then appearances after January 1 of the election year are presumed to benefit his candidacy directly and are subject to the restrictions of the Federal Election Campaign Act. Conversely, appearances prior to January 1 are presumed to be party building in nature and are not inherently intended to influence the candidate's nomination for election to Federal office. This presumption can be rebutted by the circumstances surrounding a particular appearance, e.g., by the nature of the audience, the substance of the President's remarks, the use of banners with the President's likeness, etc. As long as other Republican candidates for the Presidency are treated equitably, party promotional activities in 1975 are not subject to the limitations of FECA.

If we have not yet publicly stated so, we believe it is to our advantage to point out that some portion of the Boston and Georgia-North Carolina trips will be paid by the PFC, and that the exact proportion of the allocation between the PFC and RNC can only be made once all the bills have arrived. To wait any longer, we risk appearing to respond to a complaint, rather than having initiated the allocation as we did. Benton Becker agrees with this recommendation. We defer to you for a decision and appropriate follow-up.

You should also be aware that the DNC has publicly stated that it is contemplating challenging today's decision in court.