The original documents are located in Box 44, folder "President - Campaign Legal Manual (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

I N D E X

TAB
A

THE PRESIDENT FORD COMMITTEE

IMPORTANT DATES

1976
JANUARY:

9 - Withdrawal date for Presidential candidates in Massachusetts

11 - Final date for filing in New Hampshire for delegates

14 - Final date for filing in Illinois for delegates

27 - Opening date for solicitation of signatures for petition in Pennsylvania

FEBRUARY:

1 - Secretary of State of Florida announces candidates placed on ballot

1 - Secretary of State of Georgia announces candidates placed on ballot

1 - Secretary of State of California announces candidates placed on ballot

2 - Final date for filing petition with Secretary of State of Texas for Presidential candidates

3 - North Carolina State Board of Election nominates candidates

3 - Wisconsin State Selection Committee meets to select candidates

6 - Wisconsin certification of candidates and notification

7 - Final date for filing petitions in West Virginia for Presidential candidates

9 - Presidential candidates must file the names and addresses of Delegate Selection Committee consisting of 10 voters with Secretary of State of Texas

10 File petition w/ 200 Rep signatures and $1000 in Vermont

16 - Final date for meeting of Delegate Selection Committee in Texas

16-19 - Period for filing of delegates in New York for primary

FEBRUARY:

17 - Final date for filing petition to have name placed on ballot in Pennsylvania

18 - Beginning date to file petitions with Secretary of State in Indiana

20 - Secretary of State of Rhode Island announces candidates to be placed on ballot

24 - New Hampshire Primary date

MARCH:

1 - Final date for filing delegate slate in Texas

1 - Final date for filing delegate slate in Rhode Island

2 - Massachusetts Primary date

2 - Vermont Primary date

4 - Secretary of State of Tennessee certifies names of candidates for primary

5 - Secretary of State of Michigan certifies names of candidates for primary

8 - Final date for filing delegate candidates in Maryland

9 - Florida Primary date

9 - Beginning date to file as candidate in Arkansas

10 - Final date to file delegates in Rhode Island

15 - Final date for filing candidate's petitions in Indiana

15 - Secretary of State of Oregon announces names of candidates for ballot

16 - Illinois Primary date

18-26 - Secretary of State of Maryland announces names of candidates on ballot

18-16 - Final date for filing delegates pledged to candidate in South Dakota

19 - Last day to withdraw a candidates name from Michigan ballot

MARCH:

19 - Final date for filing in District of Columbia

23 - Final date for filing petitions by candidate in Montana

23 - North Carolina Primary date

25 - Secretary of State of Idaho announces the Presidential candidates on ballot

25 - Secretary of State of Maryland announces the Presidential candidates on ballot

31 - Final date for Nominating Committee to announce candidates on ballots in Kentucky

APRIL:

6 - New York Primary date

6 - Wisconsin Primary date

6 - Final date for Presidential candidates filing in Arkansas

15 - Final date for filing delegate slate in South Dakota

25 - Final date for candidate withdrawal in Idaho

27 - Pennsylvania Primary date

29 - Final date for candidates to file in New Jersey

MAY:

1 - Texas Primary date

4 - District of Columbia Primary date

4 - Georgia Primary date

4 - Indiana Primary date

4 - Alabama Primary date

6 - Tennessee Primary date

11 - Nebraska Primary date

MAY:

11 - West Virginia Primary date

18 - Maryland Primary date

18 - Michigan Primary date

25 - Idaho Primary date

25 - Kentucky Primary date

25 - Nevada Primary date

25 - Oregon Primary date

JUNE:

1 - Montana Primary date

1 - South Dakota Primary date

1 - Rhode Island Primary date

8 - California Primary date

8 - New Jersey Primary date

8 - Ohio Primary date

IMPORTANT DATES WITH REGARD TO STATE
PRESIDENTIAL PREFERENCE PRIMARIES

STATE	DATE OF PRIMARY	ACCESS TO BALLOT	DATE FOR WITHDRAWAL
ALABAMA	5/4/76	Candidate files petition by 3/1/76 1/	
ARKANSAS	6/8/76	Candidate files petition by 4/6/76	No provision for withdrawal once a candidate has filed
CALIFORNIA	6/8/76	Secretary of State places the names of all persons who are generally advocated or recognized news media candidates for the Republican Presidential nomination on the primary ballot. Slate of pledged delegates must be filed with Secretary of State by 5/9/76	Candidate may withdraw his name by filing an affidavit with the Secretary of State by 4/4/76
DISTRICT OF COLUMBIA	5/4/76	Candidate files petition by 3/5/76	
FLORIDA	3/9/76	Presidential nominations by Selection Committee before 1/20/76	
GEORGIA	5/4/76	Secretary of State prepares a list of potential candidates by the end of January. 2/1/76 Secretary of State announces candidates on ballot	2/20/76
IDAHO	5/25/76	Secretary of State places names of all persons who are generally advocated or recognized news media candidates on the primary ballot by 3/25/76	4/25/76

1/ The Republican Party for the State of Alabama has not determined whether a primary will be held--this decision will be made by the end of January; the above dates reflect the primary as established for the Democratic Party. According to our sources, this date will also be utilized by the Republican Party for our primary.

STATE	DATE OF PRIMARY	ACCESS TO BALLOT	DATE FOR WITHDRAWAL
ILLINOIS	3/16/76	12/29/76 [filed]	
INDIANA	5/4/76	File petitions between 2/18/76 and 3/15/76	3/15/76
KENTUCKY	5/25/76	State Board of Elections meets prior to 3/31/76 to nominate as Presidential preference primary candidates all those who are generally advocated, nationally recognized as candidates for the Presidential nomination 2/	
MARYLAND	5/18/76	Secretary of State places names of all persons who are generally advocated or recognized in the news media as candidates for the Presidential nomination on the ballot no sooner than 3/18/75 nor later than 3/25/76	Candidate may withdraw his name by filing an affidavit prior to 4/2/76
MASSACHUSETTS	3/2/76	Secretary of State places the names of all persons who are generally advocated or recognized as candidates for the Presidential nomination on the ballot	Candidate may withdraw his name by filing an affidavit with the Secretary of State by 1/9/76

2/ After notification by Secretary of State, candidate must pay $250 fee and Notice of Candidacy.

STATE	DATE OF PRIMARY	ACCESS TO BALLOT	DATE FOR WITHDRAWAL
MICHIGAN	5/18/76	Secretary of State places the names of all persons who are generally advocated or recognized as candidates for the Presidential nomination on the ballot by 3/5/76	3/19/76
MISSISSIPPI	3/15/76	3/	
MONTANA	6/1/76	A petition signed by at least 1000 qualified voters from each Congressional district must be filed by 3/23/76	4/7/76
NEBRASKA	5/11/76	Secretary of State places the names of all persons who are generally advocated in the news media as candidates for the Presidential nomination on the primary ballot. (Appears Secretary of State must announce by 3/11/76.)	Candidate may withdraw his name; however, he may not withdraw if his name appears on the ballot in any other state
NEVADA	5/25/76	Secretary of State places the names of all persons who are generally advocated in the news media as candidates for the Presidential nomination on the primary ballot by 4/25/76	
NEW HAMPSHIRE	2/24/76	12/24/75 [filed]	
NEW JERSEY	6/8/76	4/29/76	5/4/76

3/ Republican Party will decide whether to utilize primary rather than convention system sometime in January, 1976.

STATE	DATE OF PRIMARY	ACCESS TO BALLOT	DATE FOR WITHDRAWAL
NEW YORK	4/6/76	5/	
NORTH CAROLINA	3/23/76	2/3/76--State Board of Elections nominates candidates approved for Federal matching funds	
OHIO	6/8/76	3/25/76--Declaration of Candidacy must be filed by the delegates and delegates-at-large. 6/	
OREGON	5/25/76	Secretary of State announces names of persons on primary ballot by 3/15/76	

5/ There is no Presidential preference primary in New York. District delegates are elected at primaries, at-large delegates are elected by the Republican State Committee after the primaries. Delegates must file between February 16--19, 1976.

6/ For each Declaration of Candidacy the delegate or delegate-at-large must certify in writing his first or second choice for the Party's Presidential candidate, which Presidential candidate must give his written consent.

STATE	DATE OF PRIMARY	ACCESS TO BALLOT	DATE FOR WITHDRAWAL
PENNSYLVANIA	4/27/76	Names of Presidential candidates placed on ballot by petition filed with the Secretary of the Commonwealth on or before 2/17/76	2/24/76
RHODE ISLAND	6/1/76	Secretary of State prepares a list of all bona fide national candidates by 2/20/76. Delegates must file by 3/1/76.	Candidate may withdraw his name by filing an affidavit with the Secretary of State by 5/2/76
SOUTH DAKOTA	6/1/76	Petitions for slate of delegates and alternates pledged to candidate must be filed between 3/18 and 4/16/76 7/	
TENNESSEE	5/6/76	Secretary of State certifies the names of all persons who are generally advocated or recognized in the news media as candidates by 3/4/76. Deadline for filing of delegate slate 3/25/76.	A candidate may withdraw his name by filing an affidavit stating without qualification that he is not now and does not intend to become a candidate. (No date is given.)

7/ First group of candidates supporting a specific Presidential candidate to file a nominating petition is the only group to appear on the ballot as preferring that candidate. The group shall not appear on the ballot if the Presidential candidate whom the group prefers files a verified notice of disapproval of the group with the Secretary of State between 3/19 and 4/16/76.

STATE	DATE OF PRIMARY	ACCESS TO BALLOT	DATE FOR WITHDRAWAL
TEXAS	5/1/76	Presidential candidate must file an application and petition with the Secretary of State by 2/2/76 to have slate placed on ballot. 2/9/76 candidate must file the names of members of delegate selection committee with Secretary of State. 3/1 delegate slate filed with Secretary of State.	Presidential candidate may withdraw his slate of delegates from the primary by filing with the Secretary of State a signed request to that effect by 4/10/76
WEST VIRGINIA	5/11/76	Presidential candidate may have his name placed on the ballot by filing a fee of $2,000 with the Secretary of State between 1/5/76 and 2/7/76	
WISCONSIN	4/6/76	Nominating Committee meets on 2/3/76 to nominate all persons who are generally advocated and nationally recognized as candidates for the Presidential nomination. Names are certified to the Secretary of State by 2/6/76	2/29/76
Vermont	March 2, 1976	File petition with 200 Rep signatures and $1000 by Feb 10, 1976	

TAB
B

THE WHITE HOUSE

WASHINGTON

September 3, 1975

Dear Mr. Curtis:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Other Travel Costs

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

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

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

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

(4) Services of Government Personnel

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

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

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

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

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

Sincerely,

Philip W. Buchen
Counsel to the President

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

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

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

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

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

Jet Star (VC-140)

Cost per hour:	$ 889.00
Passengers:	8

White Top Helicopter (VH-3A)

Cost per hour:	$ 723.00
Passengers:	12

Huey Helicopter (VH-IN)

Cost per hour:	$ 262.00
Passengers:	8

THE WHITE HOUSE

WASHINGTON

December 9, 1975

MEMORANDUM FOR: DICK CHENEY

FROM: PHIL BUCHEN P.W.B.

SUBJECT: Costs of Mixed Official - Political Travel by Presidential Surrogates

Secretary Morton's recent letter to certain members of the Cabinet concerning the "100 Committee" has raised anew the question of how we handle the travel expenses of Presidential surrogates on mixed official-political campaign trips. Set out below is a description of how such expenses are presently handled, along with a proposed new method for their handling, and which I understand is to be discussed at tomorrow's Cabinet meeting.

At the present time, political funds are generally required to be used for mixed official-political travel by government officials, other than the President and Vice President, only for the incremental increase in costs caused by attendance at the political event. GAO has never addressed this question head-on, but this approach is consistent with both the Government travel regulations issued by GSA and GAO transportation regulations dealing with payments for services required by the traveler in excess of those required for official business.

While this method is the least expensive for the political committee, it does pose several serious problems. The Federal Election Commission will submit for Congressional approval later this month proposed regulations for the allocation of campaign expenditures including provisions relating to "campaign" travels at Government expense. These regulations are not yet in final form, but they almost assuredly will require, at a minimum, that we propose a reasonable method of allocating to the President's campaign expenditure limitation the "political" costs of such travel. The present procedure is also subject to considerable criticism from the public and media for misuse of

official funds by the possibility of scheduling official appearances that would not otherwise be made or be gerrymandered to avoid payments by the PFC. In this regard, Common Cause has requested that all Presidential candidates refrain from the use of tax-supported services, e.g., transportation for campaign purposes, except as required for personal security reasons. Even where the official undertakes the political event only after he has previously scheduled bona fide official business in that location, there remains a credibility gap which frequently cannot be narrowed.

Accordingly, my office has worked with the General Counsel of the PFC to develop a possible new method of allocating the costs of such trips, and which will minimize the criticism of possible misuse of official funds. Basically, except for the costs of travel, i.e., transportation, accommodations, etc., which can be associated with a particular event, travel costs for mixed official-campaign trips would be apportioned between the Government and the PFC in relation to the percentage of time spent at official versus campaign activities. For example, if the Government official were to spend two hours in official meetings and two hours in campaign meetings, then his travel costs would be apportioned equally between the Government and the PFC. As with Presidential travel, de minimis political activity would not alter the character of an official stop, and no allocation to the PFC would be necessary to insure that there is substantial and bona fide official business at a particular stop before allocation of the costs is made between the Government and the PFC.

This approach has the advantage of minimizing the current problems related to the use of appropriated funds. While this method does lessen the advantages of incumbency, it allows the incumbent to use surrogates in a manner that is not available to non-incumbents, and a possibility remains that it would be criticized by other candidates. However, that result is inevitable regardless of the method used.

In discussing this with the Cabinet, it should be made clear that this procedure applies only to mixed official-political trips and that it does not affect any personal matters they may undertake during a trip. In addition, it is not possible to make a final

decision on how such surrogate travel will be handled until the FEC finalizes the allocation regulations. Tomorrow's meeting will give the Cabinet an opportunity to comment on this proposed new method which does relate to how they spend their own agency's funds. I might add that this approach has been favorably received by the FEC staff in the course of informal discussions with the PFC General Counsel.

the corporation can play safe in its partisan political activity only if it limits its appeals, whether written or oral, so as to avoid the general public and communicate rather *to its stockholders.* On principle it seems a corporation should be allowed to appeal also to its employees, along with its stockholders, although there is no decision which settles this point. (Emphasis added). W. Barton, "Corporation in Politics: How Far Can They Go Under the Law," 50 *ABA Journal* 228, 231 (1964).

There have been no court decisions which have held that under § 610 corporations are authorized to solicit contributions from employees.

We see no warrant for the construction of § 610 adopted by the majority.

B. The Establishment of SUN–EPA.

We also dissent from the majority's ruling monies to establish a "trustee" plan contribution program for its employees.

1. As previously noted, the intent of the Hansen Amendment was to set forth in "clear and unequivical statutory language" the *"limited* circumstances" under which corporations could spend treasury money in connection with federal elections. Those "limited circumstances" included the establishment of segregated funds. They did not include any other types of political contributions or expenditures from general corporate funds. The majority ruling, permitting corporations to subsidize "trustee" plans with treasury funds, simply does violence to the plan language of § 610 which authorizes only three types of activities which are supportable with corporate or union treasury money.

2. The meanings of the terms "expenditure" and "in connection with a federal election," as used in § 610, are broad enough to embrace the "trustee" plan proposed by Sun Oil. Certainly, the expenditure of treasury funds for SUN-EPA is intended to be "in connection with a federal election" inasmuch as Sun Oil has admitted that as a result of these expenditures, its employees will have a facility through which they can make contributions to candidates for federal office. The Justice Department made a similar observation in its comments when it said that "the general objective of the program is certainly 'political' in that it encourages employees to participate voluntarily in politics through personal contributions."

This conclusion is consistent with judicial interpretations of the terms "expenditure" and "in connection with." As noted by the D.C. Circuit United States Court of Appeals in *Buckley v. Valeo,* 519 F. 2d 821, 852–53 (D.C. Cir. Aug. 29, 1975):

> An expenditure may obviously inure to the benefit of a candidate even though the expenditure was not directed by the candidate and the candidate was not in control of the expenditures or of the goods or services purchased.

Similarly, Mr. Justice Rutledge, concurring in *United States v. CIO, supra,* characterized the broad reach of the terms "expenditure" and "in connection with" as used in section 610. (*Id.* at 133):

> The crucial words are "expenditure" and "in connection with." Literally they cover any expenditure whatever relating at any rate to a pending election, and possibly to prospective elections or elections already held. The broad dictionary meaning of "expenditure" takes added color from its context with "contribution." *The legislative history is clear that it was added by the 1947 amendment expressly to cover situations not previously included within the legislative interpretation of "contribution." The coloration added is therefore not restrictive, it is expansive.* * * * (Emphasis added).

principles, regarding the breadth of the term "expenditures," in upholding an indictment prosecuted under section 610. See, *United States v. UAW, supra,* at 585.

It matters not that Sun Oil will exercise no control over the operations of SUN–EPA or the activities of employees participating in the program. The law prohibits expenditures in connection with Federal elections—it does not go behind those expenditures to determine whether they will be made with a benevolent or patriotic intent. By facilitating employee contributions, through its subsidization of SUN–EPA, Sun Oil is necessarily using treasury funds in connection with Federal elections.

3. The majority concluded that expenditures for SUN–EPA were not prohibited by § 610 because they would not represent "any direct or indirect payment by Sun Oil *to* any candidate, campaign committee, or political party or organization." (Emphasis added). This conclusion apparently relies on the definition of the terms "contribution" and "expenditure" added to § 610 by the 1971 Amendment. But, that definition says that these terms "shall *include*" certain transactions. Since this is not language of limitation, it is clear that the majority's interpretation of these terms is too narrow. Mr. Justice Rutledge's broad interpretation of these terms in the *CIO* case has still survived the 1971 Amendment and is controlling. Accordingly, the majority should have restricted its focus to the broader concept of an expenditure "in connection with a federal election" which would have made expenditures for SUN–EPA unlawful. The Justice Department recently prosecuted a § 610 case against a labor union official where it expressed its views on the meaning of "contribution" and "expenditure" prior to the 1971 Amendment. In *United States v. Boyle,* 482 F. 2d 755 (D.C. Cir.), *cert. denied* —— U.S. ——, 94 S. Ct. 593 (1973), the Justice Department advised the trial court that:

> It is important to note that Section 610 itself *does not speak in terms of contributions to candidates for office but rather in terms of "in connection with any election."* (Emphasis added).

Trial Brief for Department of Justice at 11, *United States v. Boyle,* No. 1741–71 (D. D.C.)

The trial court sustained this view of the law in rejecting the defendant's motion to dismiss the indictment on the grounds that Section 610 was unconstitutional or vague. *United States v. Boyle,* 338 F. Supp. 1028, 1031–32 (D. D.C., 1972). This case shows that what makes an expenditure of treasury funds unlawful is simply the fact that it is "in connection with" an election.

4. The majority's narrow interpretation of § 610, to permit expenditures for SUN–EPA, has the effect of overruling by implication practically all of the advisory opinions which have dealt with indirect contributions or expenditures. Three opinions which immediately come to mind are (1) AO 1975–4, 40 Fed. Reg. 29793 (July 15, 1975), in which the Commission held that the guarantee of a loan made to the Democratic National Committee, to the extent that the loan was not repaid, was a contribution even though the loan itself was not; (2) AO 1975–14, 40 Fed. Reg. 34084 (Aug. 13, 1975), in which the Commission held that the donation by a corporation of a computer, to analyze the results of a non-partisan public issue opinion poll issued by a Congressman, was a violation of Section 610; and (3) AO 1975–27, 40 Fed. Reg. 51351 (Nov. 4, 1975), in which the Commission held that expenses incurred by a candidate for legal and accounting fees for the purpose of complying with the election laws were expenditures.

majority view that expenditures for SUN–EPA are lawful under § 610.

Sun Oil has not asked and the Commission has not ruled whether the two plans are permissible under § 611, assuming that Sun Oil is a government contractor. It should be noted, however, that the language of § 611 is even broader than that of § 610. It provides severe criminal penalties for any government contractor who "directly or indirectly makes any contribution of money or other thing of value * * * to any person for any political purpose or use." And while § 611 contains a special proviso, added by the 1974 Act, validating a "separate segregated funds" which meets the requirements of § 610, it contains no exception in favor of a trustee plan, such as SUN–EPA.

THOMAS E. HARRIS,
Comissioner for the Federal Election Commission.

ROBERT O. TIERNAN,
Comissioner for the Federal Election Commission.

[FR Doc.75–32172 Filed 12–2–75;8:45 am]

[Notice 1975–84]

ADVISORY OPINION 1975–59

Acceptance of Corporate Contributions for Non-Federal Purposes; Correction

The Federal Election Commission on November 19, 1975, at 40 FR 53723, published Advisory Opinion 1975–59. As published the citation to the Advisory Opinion Request in the first paragraph was incorrect. We should have stated that the request was published on September 18, 1975, in the FEDERAL REGISTER at 40 FR 43166.

Dated: November 24, 1975.

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

[FR Doc.75–32171 Filed 12–2–75;8:45 am]

[Notice 1975–86]

ADVISORY OPINION

Contribution and Spending Limits to Presidential Candidates Travel for Party Purposes

The Federal Election Commission announces the publication today of Advisory Opinion 1975–72. The Commission's opinion is in response to questions raised by individuals holding Federal office, candidates for Federal office and political committees, with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of the Federal Election Campaign Act of 1971, as amended, of Chapter 95 or 96 of Title 26 United States Code, or of sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 United States Code.

The Commission points out that this advisory opinion should be regarded as an interim ruling which is subject to modification by future Commission regulations of general applicability. In the event that a holding in opinion is altered

by the Commission's regulations, the person to whom the opinion was issued will be notified.

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 AOR 1975–72 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 RNC request stated that:

> National political parties * * * are charged with the ongoing responsibility of promoting voter registration and creating voter recognition of party identity and ideology, without reference to an individual candidate or election. A large measure of this function is performed by the President, Vice President and their aides on behalf of their National and State parties * * *.
>
> When the President, Vice President, and their aides are engaged in political activity on behalf of their National, State or Local political parties, the R.N.C. assumes the cost of their travel and transportation, advance men expense, telephone and telegraph cost and the cost of receptions incidental to those activities.

The RNC indicated that in 1975 it had allocated the sum of $500,000 to meet the costs noted *supra*, and that as of September 1, 1975, it had received or paid $309,000 in bills against this allotment.

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 a presidential election year, for reasons noted infra, that the candidate's appearances benefit his candidacy directly and must be treated as subject to the previsions 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 a presidential 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 they are in compliance with the guidelines set forth herein.

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 moneys

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).) Moreover, the Commission presumes that in the period prior to January 1, 1976, the NRC will accord equitable treatment to all of its presidential candidates.

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 should 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).

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

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[1] Since President Ford, on June 19, 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).

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, where such appearances are not accompanied by any express communication evidently directed to advancing a candidate's chances for election.

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.

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.

Commissioner Harris dissents.

Dated: November 26, 1975.

NEIL STAEBLER,
Vice Chairman for the
Federal Election Commission.

[FR Doc.75-32447 Filed 12-2-75;8:45 am]

Republican
National
Committee.

Mary Louise Smith
Chairman

September 15, 1975

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

Dear Chairman Curtis:

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

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

The question to be considered is:

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

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

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

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

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

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

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

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

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

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

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

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

The Federal Election Campaign Law of 1974 reflects definitional distinctions between a "national committee" [2 U.S.C. 431 (1)], a "state committee" [2 U.S.C. 431 (1)], and a "political committee" [2 U.S.C. 431 (d)]. The distinctions are indicative of Congress' recognition of the existence of general partisan activity conducted on an ongoing basis by National political parties when compared to those activities of a specific candidate's organization seeking election to a specific office within a specific geographical area. National and State party organizations engage in day-to-day business which, among other things, includes maintaining offices, staffs, telephones, registration drives, speaker programs, publications, research, travel, fund raising, convention arrangements and voter education in both election and non-election years. The 1974 Act contains no limiting provision for expenditures by a National or State political party for these functions. The Act does limit the amounts that National and State parties may contribute to, or spend on behalf of, individuals seeking, " . . . Nomination for election, or for election, to Federal office . . ." (18 U.S.C. 608), but it does not impose a maximum monetary budget for the conduct of ongoing party business.

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

Partisan political activity is a recognized and Federally codified facet of an incumbent President's ordinary business. The purpose of the Federal Hatch Act (5 U.S.C. 7321, et seq.) is to prohibit partisan political activities by employees of the Executive Branch of the Federal Government. That prohibition excludes employees of the Office of

the President and the President, himself. This statutory exclusion is a Congressional recognition of the inherent partisan nature and duties of the Presidency. It does not necessarily follow that because Congress recognized the political role of the President of the United States as head of his party, and authorized his aides to assist him in fulfilling that role, that the expenses thereby incurred should be borne by the Treasury of the United States. As suggested earlier, a more feasible and practical alternative to the taxpayer bearing these costs is that payment of these obligations be assumed by the beneficiary of the acts, i.e., the President's National Political Party.

The obligation to assume a party role for one's National Political Party is not restricted to the President of the United States. Senators and Congressmen frequently are called upon to function as spokesmen for, to aid in fund raising events of, and, generally, to represent their own National Political Party. Such a party role is often undertaken by Members of Congress after announcing their candidacy for reelection to the position they presently hold and/or after announcing their candidacy to the Office of President of the United States. The costs incurred by a United States Senator, who is an announced candidate for the Presidency, when attending a fund raising event for his National or State Party should not deplete his Ten Million Dollar ($10,000,000) Presidential primary effort. The party role performed by such individuals, acting as party spokesmen at party function, is identical to that party role of a President. Neither incurs the expenditures associated with their role in furtherance of their quest, " . . . for nomination for election, or for election, to Federal office . . ." (18 U.S.C. 608). Democratic National Committee Chairman Strauss' September 5, 1975, press release reflected his disagreement with this principle and argued:

> "Suppose I as Chairman of the Democratic Party, should name one of our presidential candidates, or four of them, or all of them, as party leaders and sent them around the country at D.N.C. expense, without limit, and without allocating charges against their spending limits?"

Where the purpose of an expenditure is not for furthering an individual's candidacy, it is both wrong and unjust to insist that the political status of an individual's candidacy automatically denies to the National Political Parties the party services of its party spokesmen. If that is to be the result, then an artificial distinction has been established which ignores the purpose of the expenditure and, at the same time, expands 18 U.S.C. §608 to limit expenditures which are made for purposes other than those covered by the statute.

In 1975, the Republican National Committee allocated the sum of Five Hundred Thousand Dollars ($500,000) to support the activities of the President, the Vice President and their aides when engaged in a party role. This budgetary allotment is consistent with past years budgets, without regard to whether the year in question was an election or nonelection year. On September 1, 1975, the Republican National Committee had received and/or paid bills totaling Three Hundred Nine Thousand Dollars ($309,000) against the annual allotment. The National Party and various State Parties have been substantially aided financially and otherwise by this effort. The purpose of the travel associated with these payments by R.N.C. was not to further the candidacy of the incumbent President, but rather to further Republican Party interest. The Republican National Committee has filed quarterly reports reflecting its quarterly expenditures with the Federal Election Commission since the establishment of that agency. The Republican National Committee believes that it is the proper body to assume these expenditures, just as the Democratic National Committee believed it was the proper body to pay the expense incurred by Democrat Presidents engaged in their National party affairs during the years 1960 through 1968.

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

The Republican National Committee does not assume the expenses resulting from Presidential travel incurred when engaged in Presidential candidacy or Presidential travel associated with the candidacy of other individuals. In those instances, the candidate's committee is primarily responsible for the payment of cost, in accordance with the structures of the Federal Election Campaign Law. With one notable exception, the R.N.C. does not pay any of the expense associated with Presidential official travel, i.e., travel undertaken by the President of the United States in his role as Chief Executive. That exception is for certain expenditures incurred by advance men in relation to official travel by the President. These expenditures, which in most cases are for persons not employed by the Government, are assumed by the R.N.C. because the Chief Executive's appearances, regardless of their purpose, further party interest. All other expenditures incurred during the Presidential official travel are borne from appropriated funds.

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

The Republican National Committee plans to continue to implement the procedures outlined in this communication. Naturally, the records of the R.N.C. reflecting these past expenditures are available for inspection by the F.E.C., should the Commission so desire. We would appreciate very much any comments or suggestions that the Commission may think appropriate to make with respect to our

treatment of the payment of expenses incurred by the President, the Vice President and their aides when engaged in party promotional activities.

Sincerely yours,

MARY LOUISE SMITH
Chairman

President Ford 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

THE WHITE HOUSE

WASHINGTON

September 4, 1975

MEMORANDUM FOR: DICK CHENEY

THROUGH: PHIL BUCHEN

FROM: BARRY ROTH BR

SUBJECT: FEC Decision on Attribution of Presidential Travel Expenses to the Wyman Campaign

The Federal Election Commission (FEC) held an open hearing today at which it discussed the Wyman campaign request for an opinion concerning what, if any, costs related to a possible Presidential appearance on behalf of Wyman would be attributed to Wyman's campaign spending limitation. The FEC formally approved (an unusual, but favorable action) an opinion of their General Counsel which held that only the normal commercial rate for travel by the President, any advancemen and other persons who serve primarily in a political role, need be attributed to the political campaign. Both Chairman Curtis and the General Counsel felt that the formula to be used for the President's political travels, as described in Phil Buchen's letter, is more restrictive than necessary. The General Counsel used Don Rumsfeld as an example of a person who he felt should be considered official. Although the FEC indicated that they would further examine this formula, their reaction was definitely favorable. The FEC also approved the portion of the opinion which stated that in this one particular case, such expenditures should not be attributed to the Ford Presidential campaign, but indicated they would not likely be so inclined in other circumstances.

In a related action, the FEC established a task force chaired by Vice Chairman Staebler (D) and Thompson (R) to study the apportionment of expenditures by all incumbent candidates, and not just the President.

Finally, in discussing the refusal of the Eugene McCarthy Committee to allow the FEC to audit their financial records, Chairman Curtis read from Bo Calloway's letter submitting a PFC fundraising manual to the FEC for review, and stated that the cooperation exemplified by the PFC was what the Commission expected from the other political committees.

THE WHITE HOUSE

WASHINGTON

August 29, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CONNOR

THROUGH: PHIL BUCHEN T.W.B.

FROM: BARRY ROTH BR

SUBJECT: Travel by the President Aboard Governmental Aircraft

You have inquired whether on the basis of current interpretations of the Internal Revenue Code, the President should be considered, at least on some trips, as a private traveler aboard Government aircraft. It is my understanding you have in mind a trip that is either primarily or partially for purposes of a vacation, for example, the recent trip to Vail.

The tax consequences of travel aboard Presidential aircraft were recently addressed with respect to former President Nixon. However, the only opinion that has been made public to date with respect to such travel is a staff report prepared by the Joint Committee on Internal Revenue Taxation. It should be noted that this report was publicly released, but never formally adopted by the Committee members. Although the IRS presumably studied this issue, its determinations with respect to Mr. Nixon have not been released.

The Committee staff report stated the following with respect to the same question you have raised:

> "One question involves the issue of whether there should be an inclusion in income of any amount with respect to the President's own use of Government aircraft. Some of his use could be classified as primarily personal since the flights take him to locations where he spends a significant part of his time on vacation. However, it is also

pointed out that the President, by the nature of the office, must hold himself available for work at virtually any time. In part because of this characteristic of the Presidency and in part because of the uncertain status of such items in the past, the staff is not recommending that any amounts be included in income with respect to personal transportation of the President. In making this recommendation, the staff is not suggesting that this be foreclosed as a possible issue in the future."

Although the treatment to be afforded future Presidents is left open, the same reasons for the staff's conclusion at that time are applicable today. For example, the trip to Vail was actually a working vacation, and unlike other Government officials, the President can not "get away from it all" for even just a few days. From a legal standpoint, there is no reason to treat the cost of the President's own air travel to Vail as a personal expense.

The treatment of the costs for flights by non-official or non-political guests of the President, including the First Family, is a separate issue. On this point the Committee staff's conclusion was that such travel was income to the President in the amount of first class airfare for a comparable commercial trip. The result was the same regardless of whether the President was on the plane or not. Inasmuch as you anticipate an informal opinion early next month from Treasury on this entire question of travel aboard Governmental aircraft, we recommend that any decisions on how such travel is to be handled be made once we have reviewed this opinion.

August 7, 1975

Dear Mr. Curtis:

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

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

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

Due to the unique nature of the President's schedule; e.g., confidential departure times, use of military bases, possibilities for sudden schedule changes, etc., the White House travel office makes the necessary arrangement for these transportation costs and bills the media accordingly. Receipts are maintained in an account used only for this purpose. Disbursements from this account are generally made into the Treasury of the United States for travel on government planes, to the airlines from whom planes have been chartered, and to the appropriate companies for ground transportation expenses.

While this account is not used for support of a holder of Federal office, we would be pleased to make its records available for inspection by members of your staff.

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

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

Sincerely,

Philip W. Buchen
Counsel to the President

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

CC: Cramer, Haber & Becker

bcc: Don Rumsfeld
Dick Cheney
Jim Connor
John Marsh
Robert Hartmann
Ron Nessen
Peter Wallison

PWB: Barry Roth:sk

FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

July 10, 1975

Philip W. Buchen, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Buchen:

The Federal Election Commission is currently conducting a review of 2 U.S.C. §439(a) of the Federal Election Campaign Act, as amended, concerning what is frequently referred to as an "office account" or "newsletter fund".

As we are now drafting the necessary regulations, it would be most helpful if your office would inform the Commission as to whether President Ford maintains an account of this nature. Certainly any input from your office in this area as to past, present, and future procedure would be appreciated.

If we can be of any service, please contact us.

Thank you for your assistance.

Sincerely,

Thos B Curtis

Thomas B. Curtis
Chairman

TBC:nkb