The original documents are located in Box 36, folder "Federal Election Commission" of the Ron Nessen Papers at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

Dear Chairman Curtis:

As I indicated at our meeting on January 19, the purpose of this letter is to describe the assignments and responsibilities it is planned that Secretary Rogers Morton will assume when he is appointed to the White House staff on February 2 as Counsellor to the President.

Secretary Morton's responsibilities will focus on a number of separate, but occasionally overlapping, areas. These are:

1. Counsellor to the President with Cabinet rank;

2. Principal White House official for liaison with the President Ford Committee (PFC) and the Republican National Committee (RNC);

3. Member of the Economic Policy Board (EPB), and the EPB Executive Committee;

4. Member of the Energy Resources Council (ERC), and the ERC Executive Committee; and

5. Member of the Domestic Council.

As Counsellor, Secretary Morton will be one of four Cabinet-level assistants appointed by the President to provide a broad range of advice on such subjects as the President may request. In this capacity, the Secretary will be filling an advisory role that has been vacant since Donald H. Rumsfeld left his position on the White House staff to become Secretary of Defense. His activities as Counsellor will include daily meetings with the President to review current assignments and events, daily senior White House staff meetings, Cabinet

meetings, congressional leadership meetings and special projects at the personal direction of the President.

As the official at the White House chiefly responsible for liaison with the PFC, Secretary Morton will maintain communication between the White House and the campaign committee in order to minimize demands on Gerald R. Ford as candidate and thereby to protect the time which he requires for his essential duties and responsibilities as President. In addition, the Secretary will attempt to assure that campaign spokesmen for the candidate accurately reflect the President's policies and positions. As the principal liaison official at the White House for the Republican National Committee, Secretary Morton will screen and funnel requests and information for the President in his traditional capacity as leader of his Party. Only an individual in such an official position can reflect the interests of the Presidency in judging whether specific questions or requests for the President's consideration from the political committees and campaign workers actually warrant the President's attention, and how they may be disposed of without taking an undue amount of the President's time.

Secretary Morton will continue to give specific substantive input on various domestic, economic and energy matters, many of which have been the focus of his attention as Secretary of the Interior and Secretary of Commerce. As a member of the Economic Policy Board and its Executive Committee, he will participate in their daily meetings, as well as in the comment and review process on current economic issues and proposed legislation. As a member of the Energy Resources Council and its Executive Committee, he will attend weekly meetings and participate with other Administration energy leaders in the review of energy policy, existing programs and proposed legislation.

Secretary Morton will continue to serve as a member of the Domestic Council. In particular, he will participate in various Domestic Council task forces and activities relating to existing and proposed programs and legislative initiatives concerning issues such as water quality, depletable mineral reserves, individual privacy, illegal aliens and general revenue sharing.

In the course of his official duties, Secretary Morton will review proposed Presidential speeches, statements and positions on issues, internal staffing memoranda to the President and personnel appointments. Secretary Morton will also participate in various public appearances as they relate to the President's official duties and the work of the Administration.

Apart from the aforementioned official duties, Secretary Morton plans to spend time of his own participating in campaign activities on behalf of the President. In particular, Secretary Morton will participate in ~~PFC~~ political strategy sessions, deliver political speeches, attend ~~PFC~~ fundraisers and engage in other campaign activities. Of course, any expenses incurred in relation to such campaign activities will be paid by the PFC in accordance with the Commission's proposed allocation regulations.

In describing his duties, Secretary Morton stated, on January 13, 1976:

> "I think that the political duties will be a concentration of the political duties now being carried out by other members of the staff. Dick Cheney has had a running liaison communication with the campaign community -- Bo Callaway's committee. There has been a normal communication between Bob Hartmann, for example, and the National Committee.
>
> "I think these duties would be concentrated into one shop, which I am very happy to do, and I don't think they are incidental in the sense of their importance, but I don't think they are going to be overwhelming in the sense of their consumption of time on my part.
>
> "I am not going to get into the management of the campaign. I have not thought of that. However, I think the President has to have some vehicle through which he can communicate with the campaign and also as

party leader with the National Committee. I am a very logical person, having been Chairman of the National Committee and having been involved in campaigns, to do that.

* * *

"I think I am here as an overall adviser to the President. The experience I have had in the EPB -- the Economic Policy Board -- the energy field, the resource management field in Government over the last five years -- previous to that on the Ways and Means Committee of the House of Representatives -- provides me with enough background to advise the President in the overall sense, and to take a matter that he can assign to me, look at it, evaluate it and give him my best judgment on whether it is a good way to go or whether it should be a different way to go or what have you."

The question of whether to treat a portion of the salaries of assistants to public officials, such as Secretary Morton or administrative assistants to incumbent Congressmen, Senators and Governors who seek Federal elective office, as campaign expenditures does not appear to be specifically addressed in either the Federal election laws or the regulations that have been proposed to date by the Commission. If the Commission believes that such matters are affected by the laws which it administers, it would seem appropriate to have complete and permanent guidelines or regulations on the subject which apply to all candidates similarly involved.

However, inasmuch as the promulgation of such guidelines or regulations may be a lengthy and slow process, we request that the Commission issue an Advisory Opinion, pursuant to Section 437f of Title 2, the United States Code, with respect to the matters set forth herein. In particular, we request the Commission to decide whether any portion of the salaries of assistants to public officials, such as Secretary Morton, should be considered as expenditures within the meaning of 18 U.S.C. 591(f) or

any other provision of the Federal election laws and, therefore, must be reported for the purpose of determining that a candidate has kept within his or her expenditure limits.

As I indicated to you at our meeting, the President has directed that his campaign be conducted in full compliance with both the letter and the spirit of the election laws. Accordingly, I can assure you that the White House and the President Ford Committee will abide by such opinion as the Commission may issue in this matter. Also, if it is determined that some portion of the salary of public officials such as Secretary Morton is to be treated as an expenditure under the Federal election laws, the President Ford Committee will then reimburse the Treasury of the United States for such amount, in a manner that is consistent with applicable Federal law, including 18 U.S.C. 209.

Due to the importance of this issue, we request that the Commission expedite to the greatest extent possible this request for an Advisory Opinion.

Sincerely,

Philip W. Buchen
Counsel to the President

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

A BILL

To establish the offices of members of the Federal Election Commission as officers appointed by the President, by and with the advice and consent of the Senate, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Federal Election Campaign Act Amendments of 1976.

SEC. 2(a). The text of paragraph 1 of section 310(a) of the Federal Election Campaign Act of 1971 (hereinafter "the Act) (2 U.S.C. 437c(a)) is amended to read as follows:

"There is established a Commission to be known as the Federal Election Commission. The Commission is composed of 6 members, appointed by the President, by and with the advice and consent of the Senate. No more than three of the members shall be affiliated with the same political party."

(b)(1) Subparagraph (A) and subparagraph (D) 310(a)(2) of the Act (2 U.S.C. 437c(a)(2)(A), 437c(a)(2)(D)) each are amended by striking out "of the members appointed under paragraph (1)(A)".

(2) Subparagraph (B) and subparagraph (E) of section 310(a)(2) of the Act (2 U.S.C. 437c(a)(2)(B), 437c(a)(2)(E)) each are amended by striking out "of the members appointed under paragraph (1)(B)".

(3) Subparagraph (C) and subparagraph (F) of section 310 (a)(2) of the Act (2 U.S.C. 437c(a)(2)(C), 437(a)(2)(F)) each are amended by striking out "of the members appointed under paragraph (1)(C)".

SEC. 3(a). The terms of the persons serving as members of the Federal Election Commission upon the enactment of this Act shall terminate upon the appointment and confirmation of members of the Commission pursuant to this Act.

(b) The persons first appointed under the amendments made by the first section of this Act shall be considered to be the first appointed under section 310(a)(2) of the Act (2 U.S.C. 437c(a)(2)), as amended herein, for purposes of determining the length of terms of those persons and their successors.

(c) The provision of section 310(a)(3) of the Act (2 U.S.C. 437c(a)(3)), forbidding appointment to the Federal Election Commission of any person currently elected or appointed as an officer or employee in the executive, legislative, or judicial branch of the

Government of the United States, shall not apply to any person appointed under the amendments made by the first section of this Act solely because such person is a member of the Commission on the date of enactment of this Act.

(d) Section 310(a)(4) of the Act (2 U.S.C. 437c(a)(4)) is amended by striking out "(other than the Secretary of the Senate and the Clerk of the House of Representatives)".

(e) Section 310(a)(5) of the Act (2 U.S.C. 437c(a)(5)) is amended by striking out "(other than the Secretary of the Senate and the Clerk of the House of Representatives)".

SEC. 4. All actions heretofore taken by the Commission shall remain in effect until modified, superseded or repealed according to law.

SEC. 5. The provisions of Chapter 14 of Title 2, the United States Code, of Section 608 of Title 18, and of Chapters 95 and 96 of Title 26 shall not apply to any election, as defined in Section 301 of the Act (2 U.S.C. 431(a)), that occurs after December 31, 1976, except run-offs relating to elections occurring before such date.

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

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

September 3, 1975

MEMORANDUM FOR: JIM CONNOR
RON NESSEN
BO CALLAWAY

FROM: DICK CHENEY

Attached is a good memo from Jack Calkins on how we handle travel costs. Jack has found a place in the Congressional Record during the debate over the Campaign Reform Act that specifically addresses the issue of what costs should be borne by the Election Committee of an incumbent President running for re-election.

I attach it for your information. I think it's a very useful item.

cc: Jack Calkins

Attachment

THE WHITE HOUSE

WASHINGTON

September 2, 1975

Dick handle
Jim Connor
W

MEMORANDUM TO: DON RUMSFELD

FROM: JACK CALKINS

In considering the knotty problem of cost allocations for Presidential and staff travel, I believe it should be kept in mind that the legislative history on the Federal Elections Act shows that it was the intent of the Congress that the costs of a Presidential or Vice Presidential incumbent candidate traveling on campaign trips chargeable against his spending limitation should be computed at the cost of a commercial flight to the same destination. See the attached excerpt from House debate floor statement by Rep. Bill Frenzel on October 10, 1974 when the Conference Report was being debated.

Given this history, it is likely that the FEC, even if it were to find that Presidential trips in 1975 should in fact be charged against campaign limitations, would nonetheless permit a computation of cost based on the commercial airline flight cost times the number of persons attributable to pure campaign activity.

I am told that the FEC recently issued an advisory opinion in a situation where Senator Bentsen proposed to fly from Washington to some other point for the purpose of talking with a group of businessmen. Bentsen claimed that he was making the visit for the purpose of soliciting their views on pending legislation and not as a Presidential candidate. Therefore, he asked for a ruling on the costs of his flight being borne by the business group, as they had offered to do. The FEC opined that, notwithstanding his position as a Senator, they viewed this activity as part of his campaign to get the Democratic Presidential nomination and that the cost of the travel on the part of him and his aides must be charged against

his spending limitation. With this sort of partial precedent, it is entirely possible that the FEC will rule that the President's activities during which he appears before Republican audiences are undertaken not as titular head of the Party but as a campaigner for nomination by the Republican Convention. Should this occur, this would place the President Ford Committee in the position of financer of political trips instead of the RNC, and certainly the "commercial flight" formula should be used both to keep the cost as low as possible and to limit the impact on the spending limitations imposed by the Act.

cc: RTH

Rep Frenzel, beg. on p. H 10331

from being credited to the candidates' spending and contribution limits—section 102(d)—should not allow five or more candidates—especially in large metropolitan areas—to join together in setting up dummy fundraising committees which would spend large sums of money allegedly raising funds for those candidates, but actually using fundraising techniques to increase the candidates' name recognition and expenditure limitation. Rather, it is intended to cover those groups which raise money genuinely independent of each candidate's campaign and which would be put at a disadvantage if the money they spend raising funds had to be prorated and added to the actual contribution given to each candidate.

SLATECARD EXEMPTION

I believe that the purpose of the provision which exempts slatecards and printed listings of three or more candidates for public office from the definitions of contribution and expenditure is not to allow candidates or political committees to circumvent the disclosure provisions and the limitations on contributions and expenditures by waging extensive campaigns using sample ballots, slatecards, and other similar devices, but rather to allow State and local parties to educate the general public.

IN-WRITING LOOPHOLE

The conference substitute states that if a contribution is given to a political committee authorized by the candidate in writing to accept contributions for that candidate, then that contribution is treated as a contribution to the candidate. This provision is not intended to allow a candidate to receive contributions in excess of the limits simply by having the contributions go to a political committee which is not authorized in writing to accept contributions for the candidate. Paragraph (6) of subsection 608(b) states that all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, shall be treated as contributions from the original donor to the candidate.

HONORARIUMS

The conference substitute limits honorariums to $1,000 per appearance and a total of $15,000 per calendar year. I concur with the discussion by Senators SCOTT and CANNON on page S18526 of the October 8, 1974, CONGRESSIONAL RECORD, except that I believe a candidate or Federal Government official cannot accept more than one $1,000 honorarium from the same organization in the same calendar year. I do not feel that it was the intent of the conferees to allow circumvention of the limitations on honorariums by accepting more than one honorarium from the same organization on the same trip or from the same organization during the same calendar year.

PRESIDENTIAL AND VICE-PRESIDENTIAL CAMPAIGN TRIPS

The President and Vice President often must fly an official plane to political events. The cost of such trips often runs into the tens of thousands of dollars and is sometimes paid for by the national committee of the President's party. Questions have arisen as to whether the cost of the trip should be counted as a contribution and/or expenditure. Certainly, it should not. Any other interpretation would be contrary to the spirit of the law. If these costs were to count as contributions, the President and Vice President would be faced with the choice of either violating the law by exceeding the $1,000 limit on contributions by individuals to a candidate or forgoing any political activity outside the Washington area.

These costs should not count against the candidate's expenditure limitation, because it would be unfair to both the President and the candidate to require the candidate to use up to $30,000 out of a $70,000 limitation just to fly with the President. The President has the same constitutional rights of free movement and free speech as other citizens. For the purposes of the limitations, the cost of such trips must be considered what it would normally cost a person to travel by commercial airline.

PREEMPTION OF STATE LAW

The conference bill specifically preempts State law. It is the intent of the conferees to preempt local laws as well. The legislative counsel informed members of the conference that to specifically mention local law in the bill would jeopardize the intent of the United States Code where reference to State law is also meant to include local law.

FULL-TIME COMMISSION

The bill provides that the Commission meets at least monthly and at the call of any Member. Fears have been expressed that the Commissioners will construe this provision to mean that, except for election time, they need only sweep into Washington once a month to meet the requirements of the job. To the contrary, the Commissioners should be continually on the job and ready to deal with the important, complex provisions of election law. The Congress intends that the Commission be genuinely full-time and that the Members meet frequently—daily or continually all year around if necessary—to oversee and supervise Federal elections.

CORPORATE CONTRIBUTIONS

Recently, several corporate consulting firms and other similar corporate entities have attempted to circumvent the prohibition on contributions by corporations by using the following device or a variation thereof. A candidate contracts with a corporate firm to have the firm perform certain services for the candidate. In turn, the contract stipulates that the candidate will reimburse the firm for its services. However, if the candidate fails to raise sufficient funds to pay for the services, the corporate firm will absorb the difference. Sometimes, by incurring the difference between the amount raised and the cost of the services provided, the corporate firm takes a large loss, even totaling in the hundreds of thousands of dollars. Since all of this exchange occurs under a contract, candidates and corporate consulting firms have even claimed that there is no debt involved and that nothing need be reported to the supervisory officer.

This is clearly a subterfuge and should be considered an illegal effort to circumvent the prohibition on corporate giving.

CONTRIBUTIONS "IN-KIND"

The definition of contribution includes the phrase "anything of value." The purpose of this phrase is to include donations that cannot be classified as deposits of money, loans, cash, and so forth, but which help influence elections. Such donations include cars, storefronts, airplanes, trucks, food and other items that are given to a candidate or committee in an effort to aid or abet his or its campaign. Clearly, all such donations and contributions must be reported and credited to a candidate's contribution and expenditure limitations. Charges have been recently made that donations of these types—contributions "in-kind"—are not and have not been reported. If the charges are true, such activities are in violation of the law.

For example, accusations have been made that individuals have been working, allegedly voluntarily, for a candidate when they are on the payroll of a political committee, group or organization which does not exclusively support the candidate. In the future, when such complaints are made, the Commission shall immediately and expeditiously make an investigation of such charges. If the Commission determines that a person is on the payroll of another organization or group, then the candidate or organization must be held responsible and liable for violation of the law and the value of his or its services must be credited to the candidate's limitation.

Similarly, if a complaint is filed that a candidate is receiving, free of charge, fleets of buses, cars or trucks or other goods and services from a committee, organization, or group that is not exclusively supporting that candidate, the Commission shall immediately and expeditiously make an investigation of such charge and make sure that any such donation is credited to the candidate's limitation and that any candidate or committee that violates this principle is held liable for his or its actions.

The Commission should also promulgate regulations requiring all contributions "in-kind" to be disclosed. Such regulations should also require that these donations be credited to the contribution and expenditure limitations of the candidate who benefits from such donations and expenses. The Commission should stipulate that any violation of these regulations will be treated as a violation of the law.

This interpretation of the phrase "contribution means anything of value" is necessary so that the letter and intent of the law will not be nullified.

Mr. Speaker, I am here urging everyone to support the conference on the bill S. 3044, the Federal Election Campaign Act Amendments of 1974 and to urge each of the Members to read the conference report and the bill itself. It is a monumental change over the way we have operated. It will change the way the Members campaign, the way they raise money, the way parties conduct

THE WHITE HOUSE
WASHINGTON

10/27/75

RON

Attached are the pertinent sections of the IRS regs regarding family and guest travel. You should also know that Jack Ford's hotel and meal expenses in Europe have been or will be billed to his father's personal account.

Dorothy Downton has already paid one of these. The other bills for hotel rooms will be sent over from the State Department and will be paid in the same manner.

If you need anything else, Good Luck!

JIM CONNOR

1.61-16 Incidental facilities, goods, and services benefiting employees.

(a) In general. Where an employer makes available to its employees generally facilities, goods, or services that exist incidentally to its trade or business, the resulting benefits to employees, their immediate families, or guests accompanying the employees shall not be treated as compensation includible in gross income under the following circumstances:

(1) The facilities, goods, or services are owned by or under the control of the employer for purposes proper to the conduct of the trade or business involved and are primarily unrelated to the personal use or consumption of such items by employees of the employer,

(2) The facilities, goods, or services are made available to employees under terms and conditions such that the employer incurs no substantial additional cost in making them so available, and

(3) The facilities, goods, or services are made available to employees generally or to reasonable classifications of employees determined, for example, on the basis of the nature of their work, seniority, or similar factors (but not including classifications primarily including only the most highly compensated employees).

The extension under like circumstances of similar privileges by an employer to individuals who are employees of another employer in the same or a related trade or business shall not be included in the income of such individuals or their employer.

Example (6). A company executive travels to City B on a company-owned plane to attend a two-day trade convention important to the business of the company. At his invitation he is accompanied by his wife and daughter and the president of a college located in the same community as the company. The wife, daughter, and college president occupy seats on the plane that otherwise would have gone unused. The wife, daughter, and the college president do not attend the trade convention. Under paragraph (a) transportation furnished to the wife, daughter, and college president do not constitute compensation includible in gross income to anyone because under paragraph (a) the flight to City B was primarily for a business purpose and was primarily unrelated to the personal enjoyment of the executive, the furnishing of transportaion to additional persons did not entail any substantial additional expense to the company, and the extension of the privilege of inviting guests to those classes of employees who are themselves traveling for a proper purpose of the employer is a reasonable classification. The furnishing of transportation to the wife, daughter, and college president does not constitute compensation includible in gross income.

Example (7). A company's plant is located in an area which is unsafe at night and in which there is not suitable public transportation available to employees leaving work between midnight and 6 a.m. An employee finishing work at 2 a.m. is reimbursed exactly for taxi fare home under a general policy extending taxi service or reimbursement to all employees finishing work between midnight and 6 a.m. Employees who drive their own automobiles may park in a protected area, but are not paid for taxi service not used.

RNC

THE WHITE HOUSE

WASHINGTON

February 16, 1976

Dear Mr. Gardner:

On behalf of the President, thank you for your telegram urging his support for prompt reconstitution of the Federal Election Commission. We appreciate your concern in this regard.

The President has today proposed legislation to the Congress to immediately reconstitute the Federal Election Commission with all of its powers intact. He has also called on the Congress to work with him to achieve this goal by February 29.

As you are aware, the Supreme Court's decision has sharply altered the comprehensive regulatory scheme provided for in the Federal Election Campaign Act Amendments of 1974. Accordingly, the President has proposed that the election laws relating to the Commission and the public financing provisions be limited to elections through 1976. This will ensure that Congress does undertake a full-scale review of the election laws. Once the current elections have been completed and we have had the opportunity to review any problems presented in the present law, the President will submit to Congress a new, comprehensive election reform bill to apply to future elections.

With the support of the Administration, members of Congress and groups such as Common Cause, prompt reconstitution of the Commission is possible, and the integrity ofour electoral process will have been protected.

I am enclosing for your information a copy of the President's message to the Congress and the legislation he has proposed to reestablish the Commission.

Sincerely yours,

Rog Morton

Rogers C. B. Morton
Counsellor to the President

Mr. John Gardner
Common Cause
2030 M Street, N. W.
Washington, D. C.

bcc: Ron Nessen

western union Telegram

LLE032 WAF113(1314)(2-021857E035)PD 02/04/76 1314 1976FEB-4 PM 1:
ICS IPMMTZZ CSP
2028331200 TDMT WASHINGTON DC 85 02-04 0114P EST
PMS PRESIDENT GERALD FORD, THE PRESIDENT FORD COMMITTEE, DLR
1828 L ST NORTHWEST SUITE 250
WASHINGTON DC
URGE YOU TO PUBLICLY ANNOUNCE YOUR SUPPORT FOR RECONSTITUTING THE FEDERAL ELECTION COMMISSION WITH ITS FULL POWERS INTACT. AS A PARTICIPANT IN THE PUBLIC FINANCING SYSTEM, YOU KNOW THAT INDEPENDENT ENFORCEMENT IS THE KEY TO MAKING THE NEW SYSTEM WORK. THE PUBLIC WILL NOT TOLERATE ANY INGENIOUS ARRANGEMENT WHICH PROVIDES THE CONTINUANCE OF PRESIDENTIAL SUBSIDY FUNDS WITHOUT ANY INDEPENDENT COMMISSION. THE NATIONS LONG FIGHT TO CLEAN UP ELECTIONS SHOULD NOT BE LOST AND THE PEOPLE'S CONFIDENCE ERODED ONCE MORE BY SHILLY-SHALYING IN CONGRESS
JOHN GARDNER CHAIRMAN DAVID COHEN PRESIDENT COMMON CAUSE

THE WHITE HOUSE

WASHINGTON

January 30, 1976

Dear Chairman Curtis:

As I indicated at our meeting on January 19, the purpose of this letter is to describe the assignments and responsibilities it is planned that Secretary Rogers Morton will assume when he is appointed to the White House staff on February 2 as Counsellor to the President.

Secretary Morton's responsibilities will focus on a number of separate, but occasionally overlapping, areas. These are:

1. Counsellor to the President with Cabinet rank;

2. Principal White House official for liaison with the President Ford Committee (PFC) and the Republican National Committee (RNC);

3. Member of the Economic Policy Board (EPB), and the EPB Executive Committee;

4. Member of the Energy Resources Council (ERC), and the ERC Executive Committee; and

5. Member of the Domestic Council.

As Counsellor, Secretary Morton will be one of four Cabinet-level assistants appointed by the President to provide a broad range of advice on such subjects as the President may request. In this capacity, the Secretary will be filling an advisory role that has been vacant since Donald H. Rumsfeld left his position on the White House staff to become Secretary of Defense. His activities as Counsellor will include daily meetings with the President to review current assignments and events, daily senior White House staff meetings, Cabinet

meetings, congressional leadership meetings and special projects at the personal direction of the President.

As the official at the White House chiefly responsible for liaison with the PFC, Secretary Morton will maintain communication between the White House and the campaign committee in order to minimize demands on Gerald R. Ford as candidate and thereby to protect the time which he requires for his essential duties and responsibilities as President. In addition, the Secretary will attempt to assure that campaign spokesmen for the candidate accurately reflect the President's policies and positions. As the principal liaison official at the White House for the Republican National Committee, Secretary Morton will screen and funnel requests and information for the President in his traditional capacity as leader of his Party. Only an individual in such an official position can reflect the interests of the Presidency in judging whether specific questions or requests for the President's consideration from the political committees and campaign workers actually warrant the President's attention, and how they may be disposed of without taking an undue amount of the President's time.

Secretary Morton will continue to give specific substantive input on various domestic, economic and energy matters, many of which have been the focus of his attention as Secretary of the Interior and Secretary of Commerce. As a member of the Economic Policy Board and its Executive Committee, he will participate in their daily meetings, as well as in the comment and review process on current economic issues and proposed legislation. As a member of the Energy Resources Council and its Executive Committee, he will attend weekly meetings and participate with other Administration energy leaders in the review of energy policy, existing programs and proposed legislation.

Secretary Morton will continue to serve as a member of the Domestic Council. In particular, he will participate in various Domestic Council task forces and activities relating to existing and proposed programs and legislative initiatives concerning issues such as water quality, depletable mineral reserves, individual privacy, illegal aliens and general revenue sharing.

In the course of his official duties, Secretary Morton will review proposed Presidential speeches, statements and positions on issues, internal staffing memoranda to the President and personnel appointments. Secretary Morton will also participate in various public appearances as they relate to the President's official duties and the work of the Administration.

Apart from the aforementioned official duties, Secretary Morton plans to spend time of his own participating in campaign activities on behalf of the President. In particular, Secretary Morton will participate in PFC political strategy sessions, deliver political speeches, attend PFC fundraisers and engage in other campaign activities. Of course, any expenses incurred in relation to such campaign activities will be paid by the PFC in accordance with the Commission's proposed allocation regulations.

In describing his duties, Secretary Morton stated, on January 13, 1976:

> "I think that the political duties will be a concentration of the political duties now being carried out by other members of the staff. Dick Cheney has had a running liaison communication with the campaign community -- Bo Callaway's committee. There has been a normal communication between Bob Hartmann, for example, and the National Committee.
>
> "I think these duties would be concentrated into one shop, which I am very happy to do, and I don't think they are incidental in the sense of their importance, but I don't think they are going to be overwhelming in the sense of their consumption of time on my part.
>
> "I am not going to get into the management of the campaign. I have not thought of that. However, I think the President has to have some vehicle through which he can communicate with the campaign and also as

party leader with the National Committee. I am a very logical person, having been Chairman of the National Committee and having been involved in campaigns, to do that.

* * *

"I think I am here as an overall adviser to the President. The experience I have had in the EPB -- the Economic Policy Board -- the energy field, the resource management field in Government over the last five years -- previous to that on the Ways and Means Committee of the House of Representatives -- provides me with enough background to advise the President in the overall sense, and to take a matter that he can assign to me, look at it, evaluate it and give him my best judgment on whether it is a good way to go or whether it should be a different way to go or what have you."

The question of whether to treat a portion of the salaries of assistants to public officials, such as Secretary Morton or administrative assistants to incumbent Congressmen, Senators and Governors who seek Federal elective office, as campaign expenditures does not appear to be specifically addressed in either the Federal election laws or the regulations that have been proposed to date by the Commission. If the Commission believes that such matters are affected by the laws which it administers, it would seem appropriate to have complete and permanent guidelines or regulations on the subject which apply to all candidates similarly involved.

However, inasmuch as the promulgation of such guidelines or regulations may be a lengthy and slow process, we request that the Commission issue an Advisory Opinion, pursuant to Section 437f of Title 2, the United States Code, with respect to the matters set forth herein. In particular, we request the Commission to decide whether any portion of the salaries of assistants to public officials, such as Secretary Morton, should be considered as expenditures within the meaning of 18 U.S.C. 591(f) or

any other provision of the Federal election laws and, therefore, must be reported for the purpose of determining that a candidate has kept within his or her expenditure limits.

As I indicated to you at our meeting, the President has directed that his campaign be conducted in full compliance with both the letter and the spirit of the election laws. Accordingly, I can assure you that the White House and the President Ford Committee will abide by such opinion as the Commission may issue in this matter. Also, if it is determined that some portion of the salary of public officials such as Secretary Morton is to be treated as an expenditure under the Federal election laws, the President Ford Committee will then reimburse the Treasury of the United States for such amount, in a manner that is consistent with applicable Federal law, including 18 U.S.C. 209.

Due to the importance of this issue, we request that the Commission expedite to the greatest extent possible this request for an Advisory Opinion.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

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

THE WHITE HOUSE
WASHINGTON

July 27, 1976

Ron,

For your information.

Phil Buchen

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
President Ford Committee) MUR 077 (76)
(Morton))

COMMISSION ACTION

1

The Federal Election Commission has reviewed the compliants in this matter and has concluded by a vote of 5-1 that there is no reason to believe that any violation of the Federal Election Campaign Act of 1971, as amended, has been committed. The Federal Election Commission has accordingly voted, 6-0, to close the file in this matter.

Marjorie W. Emmons

Secretary to the Commission

DATE: July 26, 1976

STATEMENT OF COMMISSIONER HARRIS

The question here presented is whether political activity by a federal employee on behalf of a candidate for federal office raises any issue within the purview of the Federal Election Campaign Act and of this Commission. It is assumed that the challenged political activity was carried on in part during normal working hours. No assumption is made as to whether time thus spent was made up by regular, non-political, work outside of normal hours.

This issue has been raised in connection with the executive branch of the government, including White House staff, but has application ~~too~~ also to congressional employees. It will be considered in the context of the other statutes, orders and rules which may bear upon it.

The political activity of federal employees is regulated primarily by the Hatch Act, which forbids covered employees from taking "an active part in political management or in political campaigns." 5 USC §7324a. This statute applies only to employees in the executive and not the legislative branch of the government; and numerous categories of executive branch employees are excluded from its reach, including "an employee paid from the appropriation for the office of the President." In any event, enforcement of the Hatch Act is

entrusted to the Civil Service Commission, not to this Commission. See 5 USC §7325; U.S. Civil Service Commission v. National Association of Letter Carriers, 412 U.S. 548, 574.

Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," contains general language which might be stretched to cover political activity in government offices, viz. Sec. 204:

> "An employee shall not use federal property of any kind for other than officially approved activities."

Apparently, however, official approval could be urged as a defense, and here again, this Order too is enforceable by the Civil Service Commission, not by this Commission.

Another statute cited as barring federal employee political activity, at least during normal working hours, is 31 USC §628, which provides:

> "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

This provision falls within the general investigative and reporting functions of the Comptroller General. 31 USC §53. Public Citizen and Ralph Nader have brought suit under §628 to bar the use of government employees to aid the re-election campaigns of incumbent federal officeholders. The suit was dismissed for lack of standing by the district court, but is pending on appeal. (No. 74-2025, D.C. Cir. Argued Oct. 23, 1975). Here again, there is no suggestion that this Commission

has any authority to enforce this statute.

Various provisions of the Rules of the two Houses of Congress and of the Legislative Reorganization Act of 1946 (60 Stat. 812) also deal, though indirectly, with the issue of political activities by congressional employees; and, although those provisions are of course not administered by this Commission, the interpretations the Houses have given their rules do throw light on their practices and understandings as to what is permissable. Rule 8 of House Rule XLIII provides:

> "A Member of the House of Representatives shall retain no one from his clerk hire who does not perform duties commensurate with the compensation he receives."

This rule has been interpreted by the House Committee on Standards of Official Conduct as follows:

> "As to the allegation regarding campaign activity by an individual on the clerk hire rolls of the House it should be noted that due to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on Congressional employees. At sometimes these employees may work more than double the usual work week -- at others, some less. These employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated but this Committee expects Members of the House to abide by the general proposition." [Congressional Record (daily edition), H. 6053, July 12, 1973].

This interpretation that congressional employees may engage in campaign activity on their own time, and that such activity even during normal working hours is permissible upon the assumption that the lost time is made up, parallels the interpretation this Commission's General Counsel has given to the definition of "contribution" in the Federal Election Campaign Act. See OC 1975-30 (March 22, 1976).

The Legislative Reorganization Act of 1946 (2 USC §72a(a)) and the Rules of the House, Rule XI, clause 6(a)(3)(B) and (C) could be regarded as imposing an absolute ban on political activity by professional staff members of standing committees, as distinguished from the staff of individual legislators. However, a study by the Congressional Research Service suggests that these provisions were only meant to ban political activity during normal working hours. See Maskell and Burdette, Political Activity by Congressional Employees, (Feb. 26, 1976), pp. 3-4.

Further light is shed on Congressional practice by Rule XLIII of the Standing Rules of the Senate. It reads:

POLITICAL FUND ACTIVITY BY OFFICERS AND EMPLOYEES

> 1. No officer or employee whose salary is paid by the Senate may receive, solicit, be the custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to any assistant to a Senator who has been

> designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who is compensated at a rate in excess of $10,000 per annum if such designation has been made in writing and filed with the Secretary of the Senate. The Secretary of the Senate shall make the designation available for public inspection.

The second sentence of this provision makes it absolutely clear that, as far as the Senate is concerned, there is no bar to political activity by senatorial assistants paid above $10,000 per annum.

We come then to the question of the application of the Federal Election Campaign Act to political activities of federal employees on behalf of candidates for federal office.

The most elaborate presentation made in support of the complaints is the memorandum amicus curiae filed by Public Citizen. (This organization, as noted, is also engaged in attempting to litigate the applicability of 31 USC §628 to federal employee political activity).

Public Citizen argues that "government payment of the salary of an official who spends a substantial part of his working hours campaigning" is a "contribution" under the Act, and hence an "expenditure" by the recipient candidate or his committee. The definition of "contribution" relied on is 2 USC §431(e)(4), which provides that "contribution":

> "means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose."

The brief amicus points out that "person" is broadly defined to include "any other organization" (2 USC §431(h)), and argues at some length that the government is a "person" within this definition.

One obstacle to this argument is that "In common usage that term [person] does not include the sovereign, and statutes employing it will ordinarily not be construed to do so." U.S. v. United Mine Workers, 330 U.S. 258, 687. A still more formidable barrier is the absurdity of the result, for if the United States is a "person", and its payments of salary for time spent politicking are "contributions", it is subject to the $1,000. ceiling on contributions of §441a(a)(1), and is subject to the Act's criminal provisions. See §441j.

A more plausible line of argument is that, although these salary payments are not a contribution within §431(e)(4), they are a contribution under the general language of §431(e)(1) as "a gift ... of money or anything of value made for the purpose of -- (A) influencing" nomination or election to federal office. If this language were viewed as applicable it would be possible to disregard the role of the United States as contributor, but to require recipient candidates or committees to report the salary payments as contributions in-kind to them and as expenditures by them -- a result less absurd than would follow from holding the United States to be a "person".

However this construction, too, runs afoul of the literal language of the statute, for the "gift" is "made" by the United States, and the United States has no purpose to influence an election: only the incumbent officeholder and the employee have that purpose.

This contribution would also involve the Commission in great practical difficulties of administration. The definition of "contribution" excludes "the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee". §431(e)(5). Thus if complaints were filed the Commission would have to determine in each instance:

(a) Whether the services were in fact volunteered, or were required by the incumbent officeholder;

(b) Whether a normal day's work was done by the employee, so that the services could be said to be "without compensation".

(c) Whether particular activities were intended to influence the election, or to report to constituents on public issues or to assist them with particular problems.

This last distinction would be impossible of administration, except upon a presumption based on proximity to the election. And, as the Court of Appeals noted in Buckley v. Valeo:

> "It is certainly appropriate for Congress to assure that steps taken to diminish incumbency advantage do not have the result of eroding representation or the effectiveness of a legislator in communicating with his constituents."

The Court also noted:

> "Any advantage gained by incumbents from service to their constituents is neither novel nor pernicious. Indeed, this may be a vindication of the principles of democracy."

These three types of determinations would have to be made in the first instance by reporting candidates and committees, but would be reviewable by the Commission if complaints were filed, as many surely would be by competing candidates.

If the services were (a) not volunteered, or (b) even if they were to the extent that they were in lieu of, and not in addition to, normal non-political work, or (c) if the services were for the purpose of influencing the election, as distinguished from constituent reporting or service, then the value of the services (presumably the salary paid) would be reportable as contributions and expenditures.

The Commission as presently staffed and budgeted could not conceivably handle the problems to which such a construction of the Act would give rise. Assuming that the United States is not subject to the ceilings on contributions, the consequence of holding that government employee political activity is a contribution and an expenditure would, in the case of congressional elections, be simply to trigger a reporting obligation. In the case of a presidential general election, however, such a holding would be an absolute barrier to employee political activity on behalf of an incumbent President accepting public financing.

Public Citizen argues that that is just what Congress must have intended.

Public Citizen points out that much of the impetus for the 1974 amendments to the Act came from the abuses of the Nixon administration during the 1972 election, and that "among the most prominent of these abuses was the extraordinary use of the federal government for campaign purposes, including the extensive use of Cabinet officials and White House advisors in campaign activities." The sequitur asserted is that the 1974 amendments must have been meant to bar these abuses.

However there is nothing in the language or the legislative history of the 1971 Act (enacted in 1972), the 1974 amendments, or the 1976 amendments, that even hints that Congress meant to deal with federal employee political activity via the Election Campaign Act. It is inconceivable to me that Congress intended, without mentioning it, to confer on this Commission responsibility for monitoring political activity by government employees, including congressional staffs. If, as Public Citizen says, the 1972 misuse of White House staff was prominently before Congress in 1974, its total omission to deal explicitly with that problem via the Election Campaign Act must indicate a decision to leave its handling to other statutes, rules and orders, and to agencies other than this Commission. None of the studies made by the Congressional Research Service early this year suggests that the Elections Act has application to the problem.

I accordingly conclude that the complaints filed with this Commission do not allege any violation of law within the jurisdiction of this Commission. It goes without saying that I do not, in reaching this conclusion, negate or minimize the possibilities of abuse which exist as respects political activities by federal employees on behalf of incumbent federal officeholders, nor do I minimize the advantage this may give incumbents over challengers. I simply conclude that this Commission has not been empowered to do anything about it.

STATEMENT OF COMMISSIONER STAEBLER
CONCURRING IN RESULT

While I concur in the action of the Commission in closing the file in MUR-077, I do so solely on the basis of the Commission's inherent discretion not to pursue matters which will not further the purposes of the Act. I cannot, however, concur in the conclusion of my fellow Commissioners that the Commission has found "no reason to believe" that a violation of the Act has occurred.

I. PURSUIT AT THIS TIME OF MUR-077 WILL NOT FURTHER THE PURPOSES OF THE ACT

Resolution of this particular, well-publicized case, caught in the aftermath of the Buckley decision, frought with procedural complexities, and largely mooted by subsequent events, has been delayed far too long. Nothing submitted to the Commission indicates any intentional violation by Mr. Morton, the President Ford Committee, or the White House. Any possible continuing questions as to the propriety of Mr. Morton's status were closed by his resignation within a matter of weeks after the events which prompted the complaints. As will be discussed in more detail below, the reach of the law in this delicate area is less than completely clear. There is every indication that if any technical violation occurred it would have been found to be both inadvertent and minimal in effect. Under such circumstances to commit scarce Commission resources to a full-blown investigation of this particular case cannot, in my opinion, be justified.

I believe, however, that the issues presented by the complaints are issues of great public significance and merit further discussion. I do so here in order that the Commission's decision not be misunderstood and that Congress and the public be made aware of questions which yet remain with respect to the Commission's mandate.

II. POLITICAL USE OF GOVERNMENT EMPLOYEES REMAINS A MAJOR AMBIGUITY IN THE LAW

This case highlights a major ambiguity in the political process which remains despite all recent reform legislation: the extent to which government employees and other government resources may be used for political purposes. In many higher level positions of government, there is an inevitable, perhaps inseparable involvement with politics; the gradation between general political matters and campaign-related acitivity can be almost imperceptible.

Access to government employees and resources constitutes an undeniable and material advantage to candidates with power to make political use of them. This is particulary true with respect to an incumbent President, campaigning for re-election, possessed of great resources, and subject to a tight limit on his campaign spending. The literal language of the definition of a contribution and an expenditure under the Act includes "anything of value used to influence the nomination of a candidate for Federal office". The points raised by Commissioner Harris as to whether government assets may be contributions or expenditures at all is not answered by resort to the legislative

history of the FECA. However, the use of government employees for political use is considered an abuse in the mind of the public. Such abuse creates a loophole of major proportions in the contribution and expenditure limits established by the Federal Election Campaign Act. It is most unfortunate that the guidance given by the law in this area is so unclear.

III. UNDER DIFFERENCE CIRCUMSTANCES THERE MIGHT BE SUFFICIENT EVIDENCE TO WARRANT INVESTIGATION

To close the file for lack of sufficient evidence, as the General Counsel's report recommends, may convey the impression that all similar complaints will be similarly dismissed. While a consistent standard of evidence for all such complaints is certainly necessary, I believe that the Commission must hold itself in readiness to proceed to obtain independent evidence, based on a standard of evidence no higher than present in these complaints, when circumstances are more appropriate than here.

I do not believe, as the Commission's letter implies and the General Counsel's report states, that Congress intended the Commission to be so procedure-bound that only a documented, prima facie case can justify an investigation. Campaign violations have usually taken place in secret, and have often been unravelled only by the thinnest threads of evidence. I note parenthetically that Watergate could never have been investigated based on such a lofty standard; and I do not believe

that a prima facie case can be required as a prerequisite to Commission investigation. Rather, I believe that "lack of evidence" here serves merely as a euphemism for the combination of factors described in Section I, above, and not as a statement of the standard of evidence that the Commission will require. To base closing the file in MUR-077 on lack of evidence, as is suggested, is unwarranted as a matter of both law and policy.

IV. THE COMMISSION HAS AT LEAST ARGUABLE JURISDICTION OVER THE MATTERS COMPLAINED OF

A second argument to support closing the file is advanced by Commissioner Harris in his separate statement. Regardless of the capacity of the government to be a contributor within the meaning of the Act, the value of government resources used by the President for political purposes should be treated as a campaign expenditure subject to the Act and is, I believe, conceded to be so by the White House.

Since the value of government services so provided cannot be a contribution in kind from the government to the candidate, the only appropriate remedy consistent with the purposes of the Act is reimbursement to the government by the campaign. Indeed, unless reimbursement is required, the law stands without any effective means of redress. I would not understand Commissioner Harris to assert any less. Rather, he would conclude only that such a determination must be made by the Civil Service Commission or the General Accounting Office, rather than the Commission.

As is pointed out above, the literal language of the contribution and expenditure definitions of the Act include all things of value (including personal services) which influence the nomination of a person to Federal office. The effectiveness of limits on campaign spending in Presidential elections depends on effective limits on all monies used in connection with the campaign. Determination long after the fact by some other agency that reimbursement is required on the basis of a different statutory mandate will not preserve the integrity of those limits.

I believe that the Commission does have jurisdiction over the matters here in question and I will be prepared to vote to assert jursidiction in appropriate cases raising similar issues.

V. CONCLUSION

The Commission has taken the correct action in closing the file in MUR-077. I believe that the purposes of the Act are not served by keeping the matter open, and I believe all my fellow Commissioners share that view. It is therefore unfortunate to explain the closing in a way which may be misleading. Accordingly, I concur in the result in MUR-077 but dissent from the explanation given in the letter of transmittal and the General Counsel's report.

Neil Staebler, Commissioner

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 077 (76)
President Ford Committee (Morton)	)	
	)	

GENERAL COUNSEL'S REPORT

I. Allegations

During January 1976, the Federal Election Commission received three separate notarized complaints and a number of letters directed against the activities of Roger C. B. Morton in his then position as Counselor to the President. In substance, it was alleged that Mr. Morton was participating in campaign activities on behalf of the President, and that such activities constituted contributions within the meaning of the Federal Election Campaign Act of 1971, as amended (the Act). Accordingly, it was alleged that the payment of Mr. Morton's salary out of public funds actually constituted a reportable expenditure by the President Ford Committee under Title 2 of U.S.C.A., and in addition, counted against the President's spending limits set forth in 18 U.S.C. Section 608(c), now U.S.C. Section 441a(b).

II. Evidence

Other than the allegations outlined, supra, and the presentation of various news clippings providing a general description of Mr. Morton's role, none of the complainants

delineated specific examples of Mr. Morton's use of his office on behalf of the President. On April 2, 1976, having resigned his position as counsellor, Mr. Morton was appointed National Campaign Director for the President's campaign.

III. Analysis and Recommendation

None of the complainants in this matter have furnished the Commission with evidence that the political activities of Mr. Morton have occurred during his working time as counsellor to the President. Submissions on behalf of the President support a contrary view. Absent such evidence, we find no basis for the Commission to proceed with further investigation of this matter.

2 U.S.C. §431(e)(5)(A) states that there is no contribution in a situation involving "the value of services provided without compensation by individuals who volunteer a portion . . . of their time on behalf of a candidate." The Commission has repeatedly construed this as meaning that campaign-related services provided outside the course of a normal work day are not contributions. See Proposed Regulation on Disclosure §100.4(b)(2); AO 1975-94 (41 FR 4742); OC 1975-30 (March 22, 1976). There is no basis for believing that such is not the case here.

Relevant in this connection is the applicable language of the Hatch Act. As an employee who is "paid from the appropriation for the Office of the President," Mr. Morton is exempted by 2 U.S.C. §7324(d) from the blanket proscription of 2 U.S.C. §7324(a) on political activity by an employee of an executive agency. A reasonable construction of this exemption is that it permits an exempt employee -- e.g., Mr. Morton -- to engage in campaign-related activities in non-business hours.*/ Although Mr. Morton would arguably have violated the Hatch Act had he aided the President's campaign during the business work day, there is no proof that he did so. It should also be noted that there is no standard definition of ordinary business work day for a person at Mr. Morton's level.

---

*/ This construction appears to follow from the language of United Public Workers v. Mitchell, 330 U.S. 75 (1947). Discussing the absolute ban on political activity by executive employees the Court noted:

> "We do not find persuasion in appellant's argument that such activities during free time are not subject to regulation even though admittedly political activities cannot be indulged in during work hours." (Id. at 330 U.S. 95) (Emphasis added.)

See also, Mtr. of Charles P. Demsey, LSC, F-1215-47, 1 Par. 325, holding that even though an individual Government employee was not subject to political activity restrictions because of his temporary situation, he still could not engage in political activity on the job.

We are mindful that the underlying issue herein--when and to what extent staff members to a candidate who are paid from public funds may perform campaign related tasks--presents serious problems. However, the present case, for the reasons outlined, supra, is not an appropriate vehicle for resolution of the issue posed.

IV. Conclusion

Close file.

John G. Murphy, Jr.
General Counsel

DATE: July 12, 1976