

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, advancement, 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.

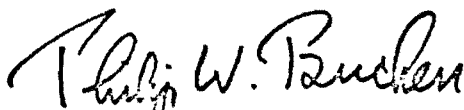
No precise dividing line now exists, nor is one likely to be drawn, which clearly indicates when such employees are performing official duties and when those duties are political. So long as these employees expend a substantial majority (an average in excess of forty hours per week) of their time on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