

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

October 7, 1986

Senator John M. Engler
 Senate Majority Leader
 The Senate, 35th District
 State of Michigan
 Lansing, Michigan 48909

Dear Senator Engler:

This is in response to your letter of September 9, 1986, requesting a declaratory ruling pursuant to the Campaign Finance Act, 1976 PA 388, as amended (the "Act").

The issues presented in your letter focus on the treatment of expenses incurred by candidates for participation in "non-election meetings and forums to discuss pending legislation". You set forth a series of "facts" which form the basis for your request as follows:

1. Governor Blanchard has announced plans to make public appearances in selected state senate districts to encourage voters to support his position on pending legislative matters.
2. Governor Blanchard is a candidate for re-election as Governor and in exchange for \$750,000 in taxpayer funds, has agreed to limit the expenditures of his candidate committee, Blanchard for Governor, to \$1 million during the 1986 general election campaign.
3. Other candidates for public office who are regulated by the Act are equally concerned with pending legislative issues and are frequently invited to participate in or arrange on their own public forums to present their views regarding pending legislation. As the Senate Majority Leader, I am invited to participate in public meetings throughout the state to discuss pending legislation.
4. While participating in a public forum regarding pending legislation, the Governor and other candidates may be asked questions about campaign issues or other election matters. In addition, candidates participating in legislative meetings and forums may be greeted by their campaign supporters who voluntarily appear at such public meetings.
5. I am an interested person whose course of action would be affected by a Declaratory Ruling regarding the applicability of the Act to participation by candidates in non-election meetings and forums to discuss pending legislation."

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These "facts" are general statements that do not describe the meetings, identify sponsorship or specify who is invited. Also, no information is given with respect to presentations which will be made. Materials publicizing the proposed events are not supplied, nor are the types of expenses in question identified.

The administrative rules promulgated to implement the Act include 1979 AC R169.6, which establishes the requirements for declaratory rulings pursuant to the Act:

"Rule 6. (1) The secretary of state, on written request of an interested person, may issue a declaratory ruling as to the applicability of the act or these rules to an actual statement of facts. An interested person is a person whose course of action would be affected by the declaratory ruling. A brief or other reference to legal authorities, upon which the person relies for determination of the applicability of the act or of a rule to the statement of facts, may be submitted with the request.

(2) If the secretary of state decides to issue a declaratory ruling, the person requesting it shall be furnished with a statement to that effect. The statement shall set forth the time in which the ruling shall be issued.

(3) The secretary of state may refuse to issue a declaratory ruling if the request is anonymous, or it is determined the subject matter is frivolous on its face, indefinite, or lacks specificity. If the secretary of state refuses to issue a declaratory ruling, the person making the request, if known, shall be notified of the reason for the refusal.

(4) A ruling shall include the statements of facts, the legal authority, if any, and the rationale on which the secretary of state relies for the ruling, and the determination." (Emphasis supplied)

In view of the rule, a declaratory ruling may not be issued in response to your request due to your failure to provide any specific facts. Your letter is so general that it permits only the following similarly general analysis, which is offered in an effort to be helpful by directing you to some previous interpretations and rulings which may be of assistance.

The Act requires candidates for office to keep records and file reports of contributions received and expenditures made regardless of when the activity occurs. When one reporting period ends, another begins. Individuals become candidates pursuant to the Act when they meet the criteria of section 3(1) of the Act (MCL 169.203):

"Sec. 3. (1) 'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective

office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only.

For purposes of sections 61 to 71, 'candidate' only means in a primary election, a candidate for the office of governor; and in a general election, a candidate for the office of governor or lieutenant governor of the same political party in a general election shall be considered as 1 candidate."

As you point out, officials like you, because of your incumbency, may often be involved in meetings and forums to consider legislative or administrative issues. The Act is limited to reporting and regulation of "contributions" and "expenditures" which are defined in detail in sections 4 and 6 of the Act (MCL 169.204 and 169.206). Section 6(3)(c) includes language which creates an exception to the definition of expenditure which provides in pertinent part:

"(3) Expenditure does not include:
(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference.....".

As a general rule, noncampaign related activity is not covered by the Act unless there is an intent to influence voters. What constitutes noncampaign related activity depends on the facts pertaining to the activity.

Although the Department does not appear to have addressed previously "non-election meetings and forums to discuss pending legislation", there have been several interpretations in related areas. In a declaratory ruling to Richard D. McLellan, dated August 21, 1979, the Department ruled expenditures made to influence a political convention in which no candidates are nominated are not subject to the reporting requirements of the Act. In a letter to James DeSana, dated April 24, 1981, the Department stated the purchase of advertising in a testimonial book for a member of Congress which advocates the reelection of a state officeholder making the purchase is an "expenditure" which must be made from the officeholder's candidate committee. In a letter to Jack Bailey, dated December 2, 1981, it was indicated a radio program hosted by an elected public official does not constitute an "expenditure" by the radio station, nor by the commercial sponsors of the program, provided that the content of the program does not "support or oppose a ballot issue or candidate by name or clear inference," including the host candidate.

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Several previous interpretations relating to activities of political parties may be helpful. An interpretative statement to Philip Van Dam, dated April 12, 1982, said a disbursement made by a political party committee to influence the Apportionment Commission, the Supreme Court, or other body with respect to apportionment, where permissible, is not an expenditure, and is not subject to the Act. In another letter to Philip Van Dam, dated October 31, 1984, the Department stated that if newsletters, organizational materials, campaign materials, campaign manuals, fundraising manuals and other communications published and distributed by a political party do not support or oppose a candidate or ballot issue by name or clear inference, then funds expended for producing and distributing these communications are not expenditures under the Act and are not reportable. The same letter analyzed a comprehensive series of political party activities and offered counsel concerning whether funds contributed and expended in support of these activities were reportable under the Act. A letter to David A. Lambert, dated October 31, 1984, set forth an analysis of similar political party activities.

Your attention is also directed to review interpretations issued by the Department concerning corporate participation in political activity. In a Letter to Elwin Skiles, Jr., dated January 22, 1982, the Department stated a corporation which permits candidates to visit the company's plants is not making a corporate contribution, provided that the visits are equally available to all candidates for a particular office, and there is no communication by the corporation in support of or in opposition to a candidate. A declaratory ruling to Art Kelsey, dated August 21, 1979 said equipment furnished to a candidate for non-election purposes may not be used for campaign purposes. A letter to David A. Lambert, dated September 21, 1983, indicated a corporation may purchase advertising in a program book, ad book, or newsletter published by a political party committee only if it does not support or give assistance to a candidate.

The Federal Election Commission (the "FEC") has previously dealt with the general issue your letter addresses. These pronouncements have been issued in the form of regulations and advisory opinions. Regulations of the FEC include provisions which specifically deal with the allocation of expenses for travel which combines campaign related activity with noncampaign appearances. The regulations are found at 11 CFR 106.3 for candidates other than presidential and vice-presidential candidates participating in public financing of their campaign. Similar regulations for these candidates are found at 11 CFR 9004.7. Copies of these regulations are enclosed for your edification.

In addition, the FEC has issued advisory opinions which provide a framework for distinguishing activities which are noncampaign related from those activities which are covered by the Federal Election Campaign Act (the "FECA"). In AO 1978-4 the FEC concluded that a testimonial for an incumbent congressman was not covered by the FECA even though it was held during a election year in his congressional district. Likewise, AO 1981-26 concludes, for similar reasons, that a birthday party for a member of Congress was not covered by the FECA provided it was conducted in a particular fashion. Copies of these advisory opinions are also enclosed. (It should be noted, in passing, that these activities may have implications under Michigan's Lobby Law.)

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No rules have been promulgated in Michigan which parallel the federal regulations and no previous written requests have been made of this Department which would prompt the kind of guidance provided in AO 1978-4. While the cited opinions of the FEC are not binding on persons participating in state or local elections, they do provide a reference which may be useful in examining a set of facts in order to ascertain what, if any, expenditures are to be reported under the Act. This agency has relied previously on FEC interpretations in the formulation of its rulings and interpretations.

Hopefully, this reply which is informational only and does not constitute a declaratory ruling, will nonetheless provide some assistance in determining when expenditures are to be reported. In the event you still require a declaratory ruling, please provide "facts" which are specific and which pertain to your particular office and candidacy, not to that of another individual. Any statement of facts must elaborate upon your reference to "non-election meetings and forums to discuss pending legislation".

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF:bk

Enclosures

[45292] AO 1978-3: Christmas Gifts as Campaign Expenditure

[A campaign committee may reimburse the candidate for the expense of Christmas gifts. Answer to Representative Gillespie V. Montgomery.]

This refers to your letter of January 23, 1978 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a proposed reimbursement to you by your principal campaign committee for your purchase of Christmas gifts in 1977.

Your letter explains that last fall you spent \$504 to purchase 72 Christmas gifts which you gave to individuals and firms, including media representatives, with whom you have worked closely in carrying out your responsibilities as Representative of the Third Congressional District of Mississippi. You believe that the cost of these items represents a legitimate campaign expenditure and state that no advocacy of your election or solicitation of funds accompanied the gifts. You request an opinion as to whether your principal campaign committee may now reimburse you for the amount (\$504) which you paid to purchase the gifts.

The Commission has stated in past advisory opinions that candidates and their principal campaign committees have broad discretion under the Act in deciding which expenditures will best serve their candidacies. See Advisory Opinions 1977-11 and 1977-60, copies enclosed. Accordingly, the Commission concludes that the cost of the Christmas gifts may be regarded as an expenditure of your committee and may be reimbursed to you.

The payment to you from your committee should be reported by the committee as an expenditure to the person or business from whom you purchased the Christmas gifts. This disclosure is required by 2 U.S.C. §434(b)(9) and the Commission's regulations at 11 CFR 104.2(b)(9). Those sections state that when an expenditure exceeding \$100 is made by or on behalf of a political committee or candidate the name and address of the person to whom the expenditure is made as well as the amount, date, and particulars of the expenditure must be reported. Your committee should note on its reports, however, that actual disbursement was made to you personally as reimbursement for an expense you paid on behalf of the committee. You would also need to provide your committee with a receipted bill from the vendor or, if a receipted bill is not available, your cancelled check showing payment of the bill plus the bill, invoice or contemporaneous memorandum of the transaction supplied by the person who sold you the gifts. See 2 U.S.C. §432(d) and 11 CFR 102.9(c).

The Commission may express no opinion on the possible application of Rules of the House of Representatives to the proposed reimbursement since they are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning application of a general rule of law as stated in the Act or prescribed as a Commission regulation to the specific factual situation set forth in your report. See 2 U.S.C. §437f.

Dated: February 21, 1978.

[45293] AO 1978-4: Committee Conducting Non-Profit Testimonial

[A committee organizing a non-profit, non-partisan testimonial to a Congressman does not have to register with the Commission. Answer to Dwight Patterson and Clara B. Emmett, Co-Chairmen, John J. Rhodes Commemorative Committee, P. O. Box "C", Mesa, Arizona 85201.]

This refers to your letter of January 10, 1978, asking whether the John Rhodes Commemorative Committee ("the Committee") is required to register, report, and otherwise conduct its activities as a "political committee" under the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations.

Your letter explains that the Committee has been organized by a large group of people in Arizona to sponsor a banquet "honoring Congressman John Rhodes on his completion of 25 years as the Congressman from Congressional District One." Tickets will be sold in amounts "just enough to cover the expenses" of the event which you characterize as a "non-profit, non-partisan salute to our Congressman." The dinner is scheduled for March 3 in Mesa, Arizona. Your letter also states that neither Mr. Rhodes nor his campaign committee will "accrue any financial benefit" from the dinner, but you do anticipate that some type of silver memento will be given to Mr. and Mrs. Rhodes as a remembrance of this 25th anniversary of his congressional service.

The Commission concludes that ticket sales for the banquet and expenses incident thereto would not be contributions and expenditures under the Act and thus would not require the Committee to register and report as a "political committee." This conclusion is based on the representations in your letter that the event is designed and held only as a "non-profit, non-partisan salute" to Mr. Rhodes and not for the purpose of influencing his nomination or election to Federal office. The Commission regards the event you describe as a bona fide testimonial event rather than a campaign event so long as (i) no political contributions are solicited, made, or received by any person in conjunction with the event and (ii) the event does not involve any communication addressed to the attendees as a group which expressly advocates Mr. Rhodes' nomination or election to Federal office or the defeat of any other Federal candidate.

This response constitutes an advisory opinion concerning application of a general rule of law stated in the Act or prescribed as a Commission regulation to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Dated: February 24, 1978.

DISSENTING OPINION OF COMMISSIONERS HARRIS AND STAEBLER
TO ADVISORY OPINION 1978-4

While the question is not free from doubt, we think the conclusion reached by the Commission is erroneous.

Congressman Rhodes is a candidate for re-election. The testimonial banquet is being held in an election year. It is being held in Congressman Rhodes' Congressional district. Undoubtedly, many voters will attend.

Men are held to intend the probable consequences of their acts, and the testimonial banquet will inevitably have some effect upon the election. Hence, we conclude that ticket purchases to fund the banquet are "contributions" under the definition in the Federal Election Campaign Act.

[15294] AO 1977-53: Foreign Trade Association

[A foreign trade association consisting of foreign chambers of commerce cannot form a political action committee. Answer to Thomas H. McGowan of Kirkwood, Kaplan, Russin and Vecchi, 1218 Sixteenth Street, N. W., Washington, D. C. 20036.]

This responds to letters dated September 26 and November 16, 1977 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and relevant regulations of the Commission to the proposal of the Asia-Pacific Council of American Chambers of Commerce (APCAC) to establish a political committee.

An advisory opinion is requested to confirm three assertions:

- "1. APCAC . . . is a federation of trade associations as defined in Section 114.8(g) of the Commission's regulations.
- "2. APCAC may solicit from U.S. citizens who are managerial level employees, officers, directors or shareholders of the member companies of . . . AmChams . . . and their families.

When an executive employee who has designated funds for an individual account in HALLPAC-Missouri or HALLPAC-Kansas, authorizes a transfer of funds from the individual account to HALLPAC-Federal, a "political committee" under the Act, a contribution from the employee to HALLPAC-Federal would result. Such a contribution would be subject to an aggregate limit of \$5,000 per calendar year. 2 U.S.C. §441a(a)(1)(C); 11 CFR 110.1(c). When an employee-authorized disbursement is made from funds in his/her individual account in HALLPAC-Federal to a candidate for Federal office designated by the employee, a contribution by the employee to that candidate would occur. This contribution would be subject to an aggregate limit of \$1,000 per election with respect to that candidate. 2 U.S.C. §441a(a)(1)(A); 11 CFR 110.1(a).

With regard to reporting obligations, the Commission's regulations provide that HALLPAC-Federal, as a conduit or intermediary of a designated contribution, shall report certain information including the original contributor and intended recipient of the contribution. 11 CFR 110.6(c). Commission regulations at 11 CFR 110.6(d) provide that if a conduit or intermediary exercises any direction or control over the choice of the recipient candidate of an earmarked contribution, a contribution by both the employee and the conduit results and must be reported accordingly. Since this request presents no factual information regarding the making of these earmarked contributions, this opinion does not reach the issue of whether HALLPAC-Federal exercises "direction or control over the choice of the recipient candidate" and thus, whether earmarked contributions in this situation are contributions from HALLPAC-Federal to the designated candidate. See the Commission's response to Advisory Opinion Request 1976-92 [46051], copy enclosed.

Based on the specific factual situation presented by your request, the Commission concludes that the proposed transfer of funds from an individual account in either HALLPAC-Missouri and HALLPAC-Kansas into an individual account in HALLPAC-Federal for the purpose of making a contribution to a candidate for Federal office is not prohibited by the Act provided the limitations, prohibitions and reporting provisions of the Act are observed.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Dated: June 4, 1981.

*/ HALLPAC's Articles of Operation, Article III, dealing with membership, indicates that the Executive Committee is empowered to solicit "qualified management and administrative employees of Hallmark Cards, Inc. for membership" but that an employee who expresses a desire to "be a member of HALLPAC... will be extended an invitation." The Commission notes that its regulations at 11 CFR 114.5(j) in conjunction with 11 CFR 114.5(g), permit a separate segregated fund to accept contributions from persons not within the solicitable class of executive and administrative employees of the corporation but it is not permitted to solicit voluntary contributions from such persons except under the twice yearly provisions of 11 CFR 114.6.

[95612] AO 1981-26: Party for Member of Congress

[A person giving a party for a member of Congress does not have any reporting obligations where the Congressman is not an announced candidate and the party is not a fundraiser. Answer to Representative Charles E. Bennett.]

This responds to your letter of May 19, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a party to be hosted on your behalf.

According to your request, a friend of yours would like to host a party for you in the "near future." He will pay all the expenses, and the party is primarily to introduce you to his friends and neighbors in Jacksonville, Florida, which is within your congressional district. You explain that this party is not a fundraiser nor is it "motivated for reflecting" you, but rather is purely a social event given by a friend.

This statement the Commission takes to mean that there will be no advocacy of your reelection in connection with the event. You further state that you are not an announced candidate nor do you expect any opposition in the next election. In light of the situation you ask whether or not there is any reporting obligation regarding the costs of the party to your host.

Given the stated facts and the Commission's understanding of them, as well as the most recent report filed by your 1980 campaign committee, the Commission concludes that no reporting obligation is incurred for the costs connected with this party.

You state that you are not an announced candidate for election. Additionally, it appears that you have not filed a statement of candidacy for the 1982 election, nor do you have a campaign committee for the 1982 election registered with the Commission. Reports filed for the Committee to Re-elect Charles E. Bennett ("the Committee") indicate that this Committee was established as your principal campaign committee for the 1980 election. Although the Committee has not terminated, as of the latest report filed January 31, 1981, the financial activity of the Committee relates only to the 1980 election.

In light of this information, under the Act and Commission regulations, specifically 2 U.S.C. §431 and 11 CFR 100.3, you are not now a candidate for any Federal office. Both 2 U.S.C. §431(2) and 11 CFR 100.3(a) establish a \$5,000 threshold of contributions or expenditures to trigger candidate status, although they do not require the making of a public announcement. Moreover, 11 CFR 100.3(b) states that for purposes of determining whether an individual is a candidate, contributions or expenditures shall be aggregated on an election cycle basis. From Committee reports filed as of January 31, 1981, it appears that neither contributions nor expenditures related to any Federal election other than the 1980 election have occurred. Thus, since the information shown on your January 31 report does not indicate that you are a candidate for a 1982 election, and since the proposed activity is neither a campaign fundraiser nor, according to you, to influence your election, the Commission concludes that no reporting obligation is incurred regarding the expenses of the party. This result also follows from Advisory Opinion 1978-4 [45293], copy enclosed. The Commission there concluded that a testimonial event to honor the service of an incumbent member of Congress was a *bona fide* testimonial rather than a campaign event and so was not subject to the Act so long as (i) no political contributions are solicited, made or received by any person in conjunction with the event and (ii) the event does not involve any communications addressed to the attendees as a group which expressly advocates the incumbent's nomination or election to Federal office or the defeat of any other candidate.

The Commission notes that it expresses no opinion regarding possible application of House rules to the proposed activity since those rules are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Dated: June 26, 1981.

[95613] AO 1981-23: Solicitation by Agricultural Cooperative's PAC

[The political action committee of an agricultural cooperative may not solicit individual members of incorporated cooperatives that are members of the sponsoring cooperative. Answer to Richard H. Magnuson, Vice President/General Counsel, Land O'Lakes, Inc., P. O. Box 116, Minneapolis, Minnesota 55440.]

This responds to your letter of May 1, 1981, with attachments, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation by Land O'Lakes of contributions to its separate segregated fund from individual members of the member associations of Land O'Lakes.

percentage in accordance with paragraph (e) of this section.

(d) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(e) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section

shall be documented and retained for Commission inspection. For compliance and fundraising deductions that exceed the 10% exemptions under paragraph (c)(5) of this section, such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

§ 100.3 *Allocation of expenses between campaign and noncampaign related travel.* [1 803]

(a) This section applies to allocation for expenses between campaign and non-campaign related travel with respect to campaigns of candidates for Federal office, other than Presidential and Vice Presidential candidates who receive federal funds pursuant to 11 CFR Part 9005 or 9036. [See 11 CFR 9004.7 and 9034.7] All expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees or by any other political committee shall be reported.

(b) (1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related.

(2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin.

(3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

(c) (1) Where an individual, other than a candidate, conducts campaign-related activities on a trip, the portion of the trip attributed to "each candidate" shall be allocated on a reasonable basis.

(2) Travel expenses of a candidate's spouse and family are reportable as expenditures only if the spouse or family members conduct campaign-related activities.

(d) Costs incurred by a candidate for the United States Senate or House of Representatives for travel between Washington, D. C. and the State or district in which he or she is a candidate need not be reported herein unless the costs are paid by the candidate's authorized committee(s), or by any other political committee(s).

(e) Notwithstanding (b) and (c) above, the reportable expenditure for a candidate who uses government conveyance or accommodations for travel which is campaign-related is the rate for comparable commercial conveyance or accommodation. In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and non-campaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) above.

qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or Criminal Penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(5) *Solicitation Expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005.

§ 1145

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

§ 1146

§ 9004.8 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to

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the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%. Reimbursements received in compliance with the requirements of this section may be deducted from the amount of expenditures that are subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1), except to the extent that such reimbursements exceed the amount actually paid by the committee for the services provided.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

§ 1147

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

§ 1147

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be

qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 1148

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 900.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).