FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1985-18

of

COMMISSIONER THOMAS E. HARRIS

I dissent from the majority's opinion because I believe that the approach taken therein is fundamentally flawed. It is my view that this political fund should have registered with the Commission when it was formed in 1981. Information submitted by the requestor indicates that at that time one purpose of the Committee was to raise funds that might be used in federal elections. The solicitation materials used in 1981 avow a purpose to influence federal as well as non-federal elections. Donors to the Committee no doubt gave with an understanding that the funds might be used for the purpose of influencing federal elections. 1/ Further evidence that ACPAC should have registered when it was formed in 1981 comes from the statement in its own solicitation materials that "Contributions and sponsors will be reported in compliance with federal and state laws and regulations."

If the position I suggest were taken, there would be no need for the complicated procedure called for in the majority opinion of sending out a new notice to contributors and requesting their authorization to utilize the funds for federal election purposes. The original solicitation of ACPAC was adequate, in my view, except for the fact that it did not specifically apprise contributors that federal election contribution limits would apply. See 11 C.F.R. 102.5(a)(2)(iii). That the original solicitation was not completely adequate and that the committee did not register when it should have should not push the Commission to a post hoc rationalization that the committee was only recently established, however.

Under the majority opinion it is far from clear when a separate segregated fund should register. Would it be based on when a contribution or expenditure for a federal election actually is made? Would it be based on when the decision to make such a contribution or expenditure is made? Or would it be based on when the decision is made and a purge of the cash on hand is completed? I anticipate several more advisory opinion requests seeking to clarify this question.

The real danger I see with the majority opinion is that entities regulated by 2 U.S.C. 441b might assume that it is best to be ambiguous about the intended uses of a

political fund being created so that a large political war chest can be amassed with no disclosure until funds actually have been expended, in some cases well after the election. 2/ Such a result would obviously undermine a major function of the disclosure provisions of the statute.

1/ The term "political committee" is defined under the statute according to whether "contributions" have been received. See 2 U.S.C 431(4)(B) which refers to 2 U.S.C 441b(b)(2)(C) which contains the clause "establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes." The term "contribution" in turn is defined to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." It seems obvious that Congress intended any analysis of whether a "political committee" was established to include the perspective of the contributor as well as the perspective of the receiving entity.

2/ Contributions made by a political committee less than 20 days before an election need not be reported by such political committee until after the election. See 2 U.S.C. 434(a)(4); cf. 2 U.S.C. 434(a)(6)(A).