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COMMISSION
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2000 SEP 20 P 3:29

September 20, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director *[Signature]*

FROM: Lawrence M. Noble
General Counsel *[Signature]*

Kim Leslie Bright *[Signature]*
Associate General Counsel

Lorenzo Holloway *[Signature]*
Assistant General Counsel

Peter G. Blumberg *[Signature]*
Attorney

Jamila I. Wyatt *[Signature]*
Attorney

AGENDA ITEM
For Meeting of: 9-21-00

SUBMITTED LATE

SUBJECT: Dole/Kemp '96, Inc. --Response to the Proposed Statement of Reasons dated September 13, 2000

The Office of General Counsel prepared a draft Statement of Reasons supporting the Post-Administrative Review Repayment Determination dated August 18, 2000. The proposed Statement of Reasons was prepared in response to the Dole/Kemp '96, Inc.'s (the "General Committee") request for an administrative review of the Commission's Repayment Determination that was issued on June 3, 1999.¹ On September 11, 2000, the Office of General Counsel provided the General Committee with an advance copy of the proposed Statement of

¹ On June 3, 1999, the Commission approved the Report of the Audit Division on the General Committee and determined that Senator Robert J. Dole, Secretary Jack Kemp, and the General Committee must repay \$3,186,097 to the United States Treasury. On August 31, 1999, the General Committee submitted legal and factual materials pursuant to 11 C.F.R. § 9007.2(c)(2)(i) in an effort to demonstrate that no repayment or a lesser repayment is required to be paid to the United States Treasury. On December 15, 1999, the General Committee addressed the Commission in an oral hearing. The General Committee submitted additional documentation on December 22, 1999, five business days following the hearing.

Reasons. See 11 C.F.R. § 9007.1(e)(1). On September 13, 2000, the General Committee submitted a letter to the Office of General Counsel presenting additional documentation for the Commission's consideration. Attachment 1.

The Office of General Counsel recommends that the Commission disregard the letter and attached documentation from the General Committee in its consideration of the proposed Statement of Reasons. The Commission's regulations do not provide that committees may file materials during the Commission's consideration of the proposed Statement of Reasons. When a committee seeks an administrative review of a repayment determination, the committee may submit materials within 60 days after receiving the repayment determination. 11 C.F.R. § 9007.2(c)(2)(i). If the committee has an oral hearing, the Commission has a policy allowing committees to submit additional information within five days of the oral hearing. Any information submitted after these time frames is not timely.²

The General Committee submitted factual and legal materials in response to the repayment determination, as permitted by 11 C.F.R. § 9007.2(c)(2)(i). The General Committee also submitted information within five days after the oral hearing. However, the General Committee's letter dated September 13, 2000 was submitted outside the procedure and time frames established in the Commission's regulations, and should not be considered by the Commission.

The Commission's procedures more than provide for a committee's right to be heard by allowing it an opportunity to respond to the Repayment Determination, as well as provisions whereby the committee may file a petition for rehearing or seek judicial review. Once the Commission issues its Statement of Reasons, committees are permitted to file a petition for rehearing in some instances and to seek judicial review of the repayment determination. See 26 U.S.C. § 9011(a) and 11 C.F.R. §§ 9007.5 and 9008.14. The proposed Statement of Reasons references the Committee's right to file a petition for rehearing on any Commission repayment determination. 11 C.F.R. § 9007.5(a)(1).

In the case of the 1996 Committee on Arrangements for the Republican National Convention, the Commission denied its attempt to have additional documentation considered related to a proposed Statement of Reasons under Commission consideration. Similarly, the Commission denied the Fulani for President Committee's attempt to have additional documentation considered relating to the committee's initial repayment determination.

With respect to the Pete Wilson for President Committee, the Commission chose to consider a letter submitted by the committee in response to its proposed Statement of Reasons.

² Courts have upheld Commission decisions not to consider matters that are untimely. In *Americans for Robertson v. Federal Election Commission*, the court held that if a committee does not raise issues in a timely fashion, those issues are waived. *Robertson v. FEC*, 45 F.3d 486, 490 (D.C. Cir 1995)(court held that petitioner had waived his right to address an issue because he had not raised it until his oral hearing); see also *Fulani v. FEC*, 147 F.3d 924 (D.C. Cir. 1998)(court upheld Commission's refusal to consider information submitted outside of the Commission's established time frames).

The Wilson Committee failed to meet a deadline for document submission imposed by the Office of General Counsel, yet the Commission included the letter in its consideration of its proposed Statement of Reasons. The Office of General Counsel acknowledges that the Commission has considered committee submissions that were submitted outside of Commission's established regulatory procedures. However, given the regulatory and policy-based time frames, the Office of General Counsel believes that the better course of action is to reject the General Committee's submission and notify Senator Dole of his right to file a petition for rehearing.

Therefore, this Office recommends that the Commission disregard the General Committee's September 13, 2000 letter when it considers the proposed Statement of Reasons on the General Committee and exclude it from the administrative record of this proceeding.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Disregard the September 13, 2000 letter from the counsel for Dole/Kemp '96, Inc. when the Commission considers the proposed Statement of Reasons for Dole/Kemp '96, Inc. and exclude it from the administrative record of this proceeding; and
2. Approve the appropriate letter.

Attachment

Letter from Kenneth A. Gross dated September 13, 2000

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
http://www.skadden.com

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September 13, 2000

Via Hand Delivery

Lawrence M. Noble, Esq.
General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Statement of Reasons for Audit of Dole/Kemp '96, Inc.

Dear Mr. Noble:

In a letter, dated September 11, 2000, you provided us with the Statement of Reasons for the audit of Dole/Kemp '96, Inc. ("Committee"). In that Statement of Reasons, you state that the Committee must repay to the U.S. Treasury \$574,158 for non-qualified campaign expenditures representing expenses allegedly made on behalf of Dole for President, Inc. ("DFP"). The amount would not be due if DFP transferred that amount to the Committee. You claim that "aside from counsel's assertions, no other evidence was provided to demonstrate that this transfer occurred." Statement of Reasons, p. 14. Find enclosed documentation evidencing an October 7, 1999 transfer of \$574,000 from DFP to the Committee.

Please note that this issue could have been easily resolved, and in a more timely manner, if we were simply notified about this evidentiary concern. Rather, we first became aware of it in your letter which we received just two days ago.

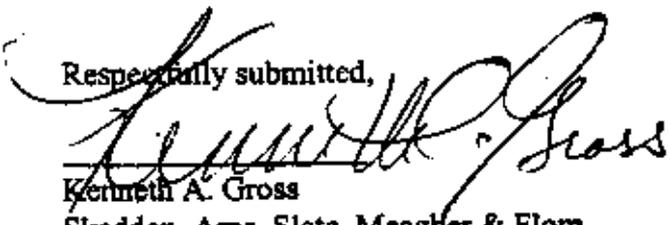
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 COMMISSION
 OFFICE OF THE
 GENERAL COUNSEL
 SEP 14 10 26 AM '00
 DIRECTORAL
 20213717007
 DIRECTOR
 20213717056

ATTACHMENT 1
 PAGE 1 OF 5

Lawrence M. Noble, Esq.
September 13, 2000
Page 2

Please call us with any questions or other concerns.

Respectfully submitted,



Kenneth A. Gross

Skadden, Arps, Slate, Meagher & Flom
LLP

Attorney for Dole/Kemp '96, Inc.

Enclosures

cc: The Commissioners
Robert J. Costa
Reports Analysis

ATTACHMENT 1

Page 2 of 5

Certification by Ted Koch

This certifies that the attached bank statement reflects an October 7, 1999 transfer of \$574,000 from Dole for President, Inc. to Dole/Kemp '96, Inc.

Theodore V. Koch

Ted Koch
Assistant Controller
Dole for President, Inc.,
Dole/Kemp '96, Inc.



BB&T OF THE DISTRICT OF COLUMBIA

STATEMENT DATE
10-29-99

PAGE 1

XX

12201 O C 001 30
DOLE FOR PRESIDENT
OPERATING 2 ACCT
PO BOX 25382
ALEXANDRIA VA 22313-5382

5160056136

PLEASE SEE IMPORTANT PRICING INFORMATION
ENCLOSED WITH THIS STATEMENT. THANK YOU.

BUSINESS REGULAR CHECKING
3000024220

ACCOUNT NUMBER
TAXPAYER ID

5160056136
521910003

-----ACCOUNT SUMMARY-----

| | | |
|---------------------------------|---------------|-----------|
| PREVIOUS BALANCE AS OF 09-30-99 | | 50,000.00 |
| 10 DEPOSITS/CREDITS | 2,626,956.70+ | |
| 5 CHECKS/DEBITS | 2,679,101.70- | |
| SERVICE CHARGE | .39- | |
| NEW BALANCE AS OF 10-29-99 | | 1,484.82 |

-----SWEEP ACCOUNT SUMMARY-----

| | | |
|----------------|----------------------------|-----------------|
| ACCOUNT NUMBER | REPURCHASE AGREEMENT SWEEP | CURRENT BALANCE |
| 5160056136 | | .00 |

-----OTHER WITHDRAWALS/DEBITS-----

| DATE | AMOUNT | DESCRIPTION | REFERENCE NUMBER |
|-------|------------|-------------------------|------------------|
| 10-01 | 525,096.02 | SWEEP TRANSFER | 42001 |
| 10-04 | 525,275.43 | SWEEP TRANSFER | 42001 |
| 10-05 | 525,335.25 | SWEEP TRANSFER | 42001 |
| 10-06 | 525,395.08 | SWEEP TRANSFER | 42001 |
| 10-07 | 574,000.00 | TELEPHONE TRANSFER | 111 |
| | | TRANSFER TO CHECKING | 111 |
| | | 5160055687 10-07-99 | 111 |
| 10-21 | .39 | ANALYSIS SERVICE CHARGE | |

-----DEPOSITS/OTHER CREDITS-----

| DATE | AMOUNT | DESCRIPTION | REFERENCE NUMBER |
|-------|------------|-----------------------------|------------------|
| 10-01 | 59.80 | REPURCHASE OF 09-30-99 | 5160056136 |
| | | AT 4.1000000 - INTEREST DUE | 5160056136 |
| 10-01 | 525,036.22 | REPURCHASE OF 09-30-99 | 5160056136 |
| | | AT 4.1000000 - MATURITY | 5160056136 |
| 10-04 | 179.41 | REPURCHASE OF 10-01-99 | 5160056136 |
| | | AT 4.1000000 - INTEREST DUE | 5160056136 |
| 10-04 | 525,096.02 | REPURCHASE OF 10-01-99 | 5160056136 |
| | | AT 4.1000000 - MATURITY | 5160056136 |
| 10-05 | 59.82 | REPURCHASE OF 10-04-99 | 5160056136 |
| | | AT 4.1000000 - INTEREST DUE | 5160056136 |
| 10-05 | 525,275.43 | REPURCHASE OF 10-04-99 | 5160056136 |
| | | AT 4.1000000 - MATURITY | 5160056136 |
| 10-06 | 59.83 | REPURCHASE OF 10-05-99 | 5160056136 |
| | | AT 4.1000000 - INTEREST DUE | 5160056136 |
| 10-06 | 525,335.25 | REPURCHASE OF 10-05-99 | 5160056136 |
| | | AT 4.1000000 - MATURITY | 5160056136 |
| 10-07 | 59.84 | REPURCHASE OF 10-06-99 | 5160056136 |
| | | AT 4.1000000 - INTEREST DUE | 5160056136 |

SEE REVERSE SIDE FOR RECONCILEMENT AND OTHER IMPORTANT INFORMATION

ATTACHED
Page 4 of 5
09/12/2000 19:24



BB&T OF THE DISTRICT OF COLUMBIA

STATEMENT DATE
10-29-99

PAGE 2-1

XX

12201 0 C 001 30
DOLE FOR PRESIDENT
OPERATING 2 ACCT
PO BOX 25382
ALEXANDRIA VA 22318-5382

5160056136

BUSINESS REGULAR CHECKING
3000026220

ACCOUNT NUMBER
TAXPAYER ID

5160056136
521910003

DEPOSITS/OTHER CREDITS

| DATE | AMOUNT | DESCRIPTION | REFERENCE NUMBER |
|-------|------------|---|--------------------------|
| 10-07 | 525,595.00 | REPURCHASE OF 10-06-99 AT 4.1000000 - MATURITY | 5160056136 5160056136 |

DAILY BALANCE SUMMARY

| DATE | BALANCE | DATE | BALANCE | DATE | BALANCE |
|-------|-----------|-------|-----------|-------|----------|
| 10-01 | 50,000.00 | 10-05 | 50,000.00 | 10-07 | 1,454.92 |
| 10-04 | 50,000.00 | 10-06 | 50,000.00 | 10-21 | 1,454.53 |

FOR ASSISTANCE, CALL (202) 838-9200 OR FOR BB&T PHONE24, CALL (800)BANKBET (1-800-228-5228).

SEE REVERSE SIDE FOR RECONCILEMENT AND OTHER IMPORTANT INFORMATION

ATTACHED
Page 5 of 5