



FEDERAL ELECTION COMMISSION  
WASHINGTON, D. C. 20463

August 22, 1985

MEMORANDUM

TO: FRED EILAND  
PRESS OFFICE

FROM: ROBERT J. COSTA *RJC*  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF FINAL AUDIT REPORT -  
CRANSTON FOR PRESIDENT COMMITTEE, INC.

Attached please find a copy of the final audit report of Cranston for President Committee, Inc. which was approved by the Commission on August 14, 1985.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: FEC Library  
RAD  
Public Record  
Office of General Counsel

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# FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

## REPORT OF THE AUDIT DIVISION ON CRANSTON FOR PRESIDENT COMMITTEE, INC.

### I. Background

#### A. Overview

This report is based on an audit of Cranston for President Committee, Inc. ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037."

In addition, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission on November 22, 1982 as the Cranston Presidential Advisory Committee, Inc. In addition, the Committee conducted testing of the waters activity commencing January 1, 1982. The Committee changed its name to Cranston For President Committee, Inc. on March 24, 1983. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from January 1, 1982, through May 31, 1984, the last day covered by the most recent report filed with the Commission at the time of the audit. In addition, certain activity was reviewed through July 13, 1984 for the Statement of Net Outstanding Campaign Obligations and through August 31, 1984 for allocation of expenditures to States. The Committee reported an opening cash balance of \$-0-, total

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receipts of \$7,294,652.16, total disbursements of \$7,279,893.52, and a closing cash balance of \$14,758.64 on May 31, 1984. However, the Committee continued to receive contributions and make disbursements. In addition, revised Statements of Net Outstanding Campaign Obligations have been submitted with each matching fund submission as required by 11 C.F.R. § 9034.5(d). Under 11 C.F.R. § 9038.1(b)(3) and (e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

This report is based upon documents and working papers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The Treasurers of the Committee during the period audited were:

Mr. Ronald C. Peterson	11/22/82 - 3/23/83
Mr. William M. Landau	3/23/83 - present

C. Scope

The audit included such tests as verification of total reported receipts, disbursements and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances.

II. Finding and Recommendation Related to Title 2, United States Code

A. Matters Referred to the Office of General Counsel

Certain matters noted during the audit were referred to the Commission's Office of General Counsel.

III. Findings and Recommendations Related to Title 26, United States Code

A. Calculation of Repayment Ratio

Section 9038(b)(2) of Title 26, United States Code states if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made or to repay loans the proceeds of which were used to defray qualified campaign expenses, it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

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The Commission, in a Notice of Proposed Rulemaking published in the Federal Register on June 28, 1984, set forth a pro-rata formula which would base repayments for non-qualified campaign expenses on the proportion of federal funds to total funds received by the candidate. The text of the regulation and the Explanation and Justification were published in the Federal Register on August 22, 1984, and transmitted to Congress. On March 5, 1985, the revised regulations were resubmitted for publication. The proposed regulations were before the Congress for 30 legislative days as of May 20, 1985, and approved by the Commission for publication in final form on June 11, 1985.

The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

Total Matching Funds Certified Through the Date of Ineligibility (3/1/84) <sup>1/</sup>  
Numerator + Private Contributions Received Through 3/1/84

$$\begin{array}{r} \$ \quad 1,697,633.91 \\ \hline (\$1,697,633.91 + \$3,409,801.88) \end{array} = .332385$$

Thus, the repayment ratio for non-qualified campaign expenses is 33.2385%.

B. Use of Funds for Non-Qualified Campaign Expenses

Section 9038.2(b)(2)(i)(A) of Title 11, Code of Federal Regulations provides, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account, or contributions received by the candidate, were used for purposes other than qualified campaign expenses. Further, 11 C.F.R. § 9038.2(b)(2)(ii)(C) provides, in part, that an example of a Commission repayment determination under paragraph (b)(2) of this section includes determinations that funds were expended for expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.

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<sup>1/</sup> On March 8, 1984, the Commission determined that the date of ineligibility under 11 C.F.R. § 9033.5(a) for Senator Alan Cranston is March 1, 1984.

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1. Disbursements for Fines and Penalties

A review of the Committee's disbursement activity revealed that the Committee disbursed \$875.00 for traffic and parking ticket fines. Additionally, the Committee disbursed \$6,076.96 for penalties for filing their Federal and State taxes on an untimely basis. These apparent non-qualified campaign expenses totaled \$6,951.96.

At the exit conference on October 19, 1984, the Audit staff presented Committee officials with schedules of the apparent non-qualified campaign expenses.

In the interim audit report, the Audit staff recommended that, absent a showing to the contrary, the Commission make an initial determination that the amount of payments of fines and penalties (\$6,951.96) be viewed as non-qualified campaign expenses and the pro-rata portion of \$2,310.73 ( $\$6,951.96 \times .332385$ ) be repaid to the U.S. Treasury pursuant to 26 U.S.C. § 9038(b)(2).

The Committee's response to the interim audit report dated May 2, 1985 did not address this issue.

Conclusion

On August 14, 1985, the Commission made an initial determination that the amount (\$6,951.96) of payments for fines and penalties be viewed as non-qualified campaign expenses and the pro-rata portion of \$2,310.73 be repaid to the U.S. Treasury within 90 calendar days of receipt of this report in accordance with 11 C.F.R. § 9038.2(d).

Repayment Amount: \$2,310.73

2. Bank Charges Assessed for Issuance of Checks Drawn on Accounts with Non-Sufficient Funds

During the audit, the Audit staff noted \$5,502 in bank charges for Committee checks which were drawn on 3 bank accounts with insufficient funds. These charges occurred from October, 1983 through March, 1984. A Committee worksheet entitled "Bad Check List-Final" lists 736 checks, totaling \$166,498.07, that were drawn on these accounts.

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In the interim audit report, the Audit staff recommended that, absent a showing to the contrary, the Commission make an initial determination that the amount of bank charges (\$5,502) be viewed as non-qualified campaign expenses and the pro-rata portion, \$1,828.78 (\$5,502 x .332385), be repaid to the U.S. Treasury pursuant to 26 U.S.C. § 9038(b)(2).

On May 2, 1985, the Committee responded that:

"section 9032(a) of Title 26, United States Code defines a qualified expense as a purchase, payment, distribution, loan, advance, deposit or gift of money or of anything of value incurred by the candidate, or by his authorized committee, in connection with his campaign for nomination or election, and neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred. These bank charges fall squarely within this statutory definition. They constitute payments due under a contract between the banks and the Committee and are not expenses which arise from a violation of law. Thus, they are analogous to finance charges charged on credit card accounts, which are clearly qualified expenses, rather than governmental fines or penalties."

The Commission has not previously encountered the issuance of insufficient fund checks on such a large scale by a publicly-funded committee. Here, the Committee issued hundreds of bad checks under circumstances suggesting either knowledge that the checks were unsupported or at least disregard for whether there would be sufficient funds to cover the checks. Although the Commission has accorded wide discretion to candidates in how to conduct their publicly-funded campaigns, and therefore in what costs are qualified campaign expenses, it has also found in specific cases certain expenses are not legitimate ones to be paid for with public funds. Thus, in contrast to legitimate finance charges mentioned by the Committee, the bank penalties result here from behavior which is not the type of activity Congress intended to finance with public funds in enacting the Matching Payment Account Act, and in fact could be illegal. While not intruding on the Committee's legitimate discretion in how to run its publicly-funded campaign, the Commission believes that public funds should not subsidize bank charges for widespread issuance of bad checks.

Conclusion

On August 14, 1985, the Commission made an initial determination that the amount (\$5,502) of bank charges be viewed as non-qualified campaign expenses and the pro-rata portion of \$1,828.78 be repaid to the U.S. Treasury within 90 calendar days of receipt of this report in accordance with 11 C.F.R. § 9038.2(d).

Repayment Amount: \$1,828.78

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RECAP OF REPAYMENT AMOUNTS

III.B.1. Disbursements for Fines and Penalties	2,310.73
III.B.2. Bank Charges Assessed for Issuance of Checks Drawn on Accounts with Non-Sufficient Funds	<u>1,828.78</u>
Repayment Pursuant to 26 U.S.C. § 9038(b)(2)	<u>\$4,139.51</u> 2/

C. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11, Code of Federal Regulations requires that the candidate submit a Statement of Net Outstanding Campaign Obligations (NOCO) which discloses among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of the necessary winding down costs within 15 days of the candidate's date of ineligibility.

On March 8, 1984, the Commission determined that the date of ineligibility for Senator Alan Cranston was March 1, 1984. Pursuant to 11 C.F.R. § 9033.5(a), that is the date Senator Cranston's candidacy terminated for the purpose of incurring qualified campaign expenses.

The Committee submitted the original NOCO on March 15, 1984 and has continued to submit a revised NOCO with each matching fund submission.

2/ The potential for an additional repayment(s) exists regarding expenses incurred by the Committee with respect to the Iowa state spending limitation (11 CFR § 9038.2(b)(2)(ii)(A)). Based on audit fieldwork performed through August 31, 1984, the Committee made \$641,424.40 in payments deemed allocable to the Iowa limit of \$684,537.50. In addition, approximately \$178,000 in accounts payable allocable to Iowa were noted. The Audit Division plans to perform follow-up fieldwork covering the period from September 1, 1984 through the disposition of the Committee's last matching fund payment (3/20/85) to verify the additional amounts paid and allocable to the Iowa state limit. After this audit work is completed, an addendum to this report will be prepared.

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The Audit staff reviewed the NOCO dated July 13, 1984. This review was limited to verifying cash on hand, accounts receivable, capital assets and certain large accounts payable.<sup>3/</sup> The audited NOCO statement is included at Exhibit A.

In its response to the interim audit report, the Committee did not address the NOCO statement. Should the Committee's financial position change substantially, additional fieldwork may be required to assess the impact of the change on the deficit and to verify additional components of the NOCO.

### Conclusion

The Committee received individual contributions totaling \$89,103.14 and a matching fund payment totaling \$34,131.07 during the period July 13, 1984 through August 31, 1984. Therefore, the Committee's remaining entitlement as of August 31, 1984, as audited, is \$1,100,472.72 (\$1,223,706.93 - \$123,234.21).

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<sup>3/</sup> The Committee's NOCO included other payables, however, these items were excluded since the Committee did not present documentation supporting these items prior to the completion of audit fieldwork.

## Cranston for President Committee, Inc.

Revised Statement of Net Outstanding Campaign Obligations  
July 13, 1984 (Audited Statement)Assets

Cash	\$	44,572.09
Accounts Receivable		15,520.36
Capital Assets		<u>10,000.00</u>

Total Assets		\$	70,092.45
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Obligations

Accounts Payable for Qualified Campaign Expenses		1,212,647.98
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Estimated Winding Down Costs 7/13/84 to 12/31/84		
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Salaries, Consulting	\$40,000.00	
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Rent	15,000.00	
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Supplies, Postage, Xerox, Furniture Rental	7,151.40	
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Computer Services	10,000.00	
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Telephones	5,000.00	
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Travel Expenses	<u>4,000.00</u>	
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	<u>81,151.40</u>	
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Total Obligations		<u>1,293,799.38</u>
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Net Outstanding Campaign <u>a/</u> Obligations - Deficit		<u>(\$1,223,706.93)</u>
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a/ Since certain estimates were used in computing this amount, the Audit staff will review the Committee's reports and records as necessary to compare the actual figures with the estimates and prepare adjustments accordingly.

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