



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MUR 1094.

31010221515



FEDERAL ELECTION COMMISSION

Various conciliation attempts and
correspondence

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

- | | |
|--|---|
| <input type="checkbox"/> (1) Classified Information | <input type="checkbox"/> (6) Personal privacy |
| <input type="checkbox"/> (2) Internal rules and practices | <input type="checkbox"/> (7) Investigatory files |
| <input checked="" type="checkbox"/> (3) Exempted by other statute | <input type="checkbox"/> (8) Banking Information |
| <input type="checkbox"/> (4) Trade secrets and commercial or financial information | <input type="checkbox"/> (9) Well Information (geographic or geophysical) |
| <input type="checkbox"/> (5) Internal Documents | |

Signed RB

date 7/24/81

FEC 9-21-77

81000001517



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1094.

81010221518





FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20541

THIS IS THE END OF MUR # 1094

Date Filmed 9/22/81 Camera No. --- 2

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BAKER & HOSTETLER

ATTORNEYS AT LAW

610 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

(202) 691-1500

TELESCOPE (202) 691-0000

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 521-0200
TWX 510 481 2372

IN DENVER, COLORADO
500 CAPITOL LIFE CENTER
DENVER, COLORADO 80202
(303) 691-0000

IN ORLANDO, FLORIDA
550 CHA TOWER
ORLANDO, FLORIDA 32802
(407) 941-1111

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 222-1541

August 31, 1981

WRITER'S DIRECT DIAL NO.:
(202) 691-1572

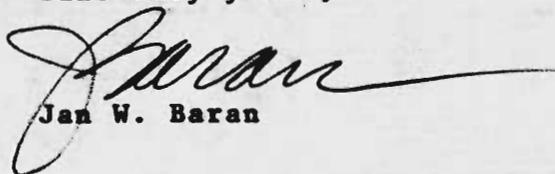
Robert I. Bogin, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: Matter Under Review 1094

Dear Mr. Bogin:

Enclosed please find a check in the amount of \$2,500 signed by my client, John B. Nicholson. This check is for payment of a civil penalty in connection with the conciliation agreement entered into by Mr. Nicholson and the Federal Election Commission in Matter Under Review 1094.

Sincerely yours,


Jan W. Baran

JWB:gh
Encl.

81040293566

26 AUG 31 1981

GENERAL INVESTIGATIVE DIVISION

EQUITABLE MONEY MARKET ACCOUNT, INC. *MAR 10 94*

No. 010001

50-235
219

PAYABLE AT
THE BANK OF NEW YORK - MUTUAL FUNDS DIVISION
NEW YORK, NEW YORK

DATE July 15 1981

TO THE ORDER OF United States Treasurer

AMOUNT
Two thousand five hundred and no-cents dollars

\$ 2,500.00

NOT VALID IF DRAWN FOR LESS THAN \$500 ACCT ID 120 00015169-6
JOHN B NICHOLSON

John B Nicholson

NOTE Please sign exactly as your name is shown. If the account is held jointly, all joint owners MUST sign. When signing as attorney, executor, administrator, trustee or guardian, please give your full title as such.

⑈000151696⑈ ⑆021902352⑆ 99⑈000031⑈

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BAKER & HOSTETLER

818 CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006

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Robert I. Bogin, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 23, 1981

Jan W. Baran, Esquire
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1094

Dear Mr. Baran:

On July 22, 1981, the Commission accepted the conciliation agreement signed by your client and a civil penalty in settlement of a violation of 2 U.S.C. §§ 441f and 441b, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: *Kenneth A. Gross*
Associate General Counsel

81040293569



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jan W. Baran, Esquire
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1094

Dear Mr. Baran:

81040293570
On , 1981, the Commission accepted the conciliation agreement signed by your client and a civil penalty in settlement of a violation of 2 U.S.C. §§ 441f and 441b, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

RB
7/23

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
John B. Nicholson

)
)
)

MUR 1094

CONCILIATION AGREEMENT

This matter having been initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities, and after probable cause to believe having been found that John B. Nicholson ("Respondent") violated 2 U.S.C. § 441b and § 441f by making corporate contributions in connection with a federal election and by permitting his name to be used to effect a contribution made by another person;

NOW, THEREFORE, the Commission and John B. Nicholson having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the respondent and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission pursuant to 2 U.S.C. § 437g(a)(4)(A).

IV. The pertinent facts in this matter are as follows:

A. Respondent at all times relevant to this matter was executive vice-president, which is the senior staff position, of the National Association of Real Estate Investment Trust, Inc. (NAREIT), a corporation. Respondent reported to the members

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of NAREIT through NAREIT's Board of Governors and various committees composed of members. Mr. Donald W. MacLeod was the chairman of the NAREIT Program Committee which was responsible for arrangements for NAREIT's annual conferences.

B. In the summer of 1979, Respondent at the direction of the ~~Program Committee~~ sought to obtain Congressman John Anderson as a speaker for the 1979 NAREIT annual conference after another speaker had cancelled his earlier acceptance. Mr. Robert N. Pyle was retained by Respondent for purposes of obtaining Congressman Anderson as a speaker. Respondent never spoke with Congressman Anderson or any of his representatives.

C. At all times relevant to this matter, Respondent knew that Congressman Anderson was a candidate seeking his party's nomination for the office of president of the United States. Moreover, Respondent was advised by Mr. Pyle that Congressman Anderson had met the honoraria limit for 1979, and was thereby precluded from accepting payment for his appearance at the annual conference.

D. In lieu of an honorarium, payment for Congressman Anderson's appearance at the annual conference consisted of five checks made out to the campaign by individuals associated with NAREIT in the amount of \$250.00 cash. Respondent was advised by Mr. Pyle that contributions of \$250 or less to the Anderson for President Committee might be matched dollar for dollar by the federal government.

E. Respondent implemented a plan with Donald W. MacLeod whereby Mr. MacLeod was to obtain five contributions

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payable to the Anderson for President Committee, the principal campaign committee for Mr. Anderson. The five contributors, in turn, were reimbursed out of a \$1,250 NAREIT check authorized by Respondent and made payable to Mr. MacLeod.

F. Respondent, along with four others, made contributions to the Anderson for President Committee from their personal checking accounts after receiving \$250 of NAREIT funds. The checks were given to Mr. Pyle and delivered to the Anderson for President Committee.

G. After the five contributions were made to the Anderson for President Committee, Congressman Anderson wrote NAREIT, in care of Robert Pyle, to thank Mr. Pyle for the contributions. Congressman Anderson did appear at and gave a speech before the 1979 NAREIT annual conference on October 4, 1981.

H. Prior to the commencement of this investigation, the Anderson for President Committee having learned about the source of the five contributions made by the individuals associated with NAREIT, refunded all five contributions including the \$250 made by Respondent. Due to the timeliness of the refunds, none of these contributions were submitted for matching funds nor ever matched. Respondent subsequently refunded \$250 to NAREIT.

I. Respondent is not an attorney and did not consult with legal counsel prior to his participation in the above-described payments to Anderson for President Committee.

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WHEREFORE, Respondent agrees that:

V. 2 U.S.C. § 441b makes it unlawful for a corporation to make a contribution in connection with any federal election or for an officer to consent to the making of such corporate contribution or expenditure. Since Respondent as a corporate officer authorized corporate funds to be expended in connection with a Presidential primary election, Respondent is in violation of 2 U.S.C. § 441b(a).

VI. 2 U.S.C. § 441f prohibits a person from knowingly permitting his name to be used to effect a contribution made by another. Since Respondent permitted his name to be used to effect a contribution with funds supplied by NAREIT, Respondent violated 2 U.S.C. § 441f.

VII. John B. Nicholson will pay a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) to the United States Treasury pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII. Respondent agrees that he shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

GENERAL CONDITIONS:

IX. The Commission, upon request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1), concerning the matters at issue herein, or on its own motion, may review compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

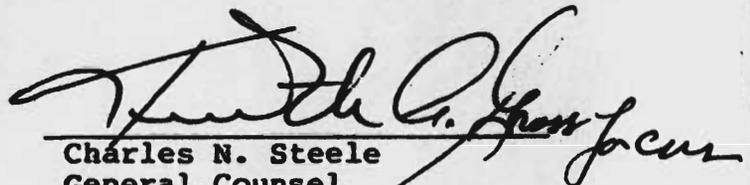
81040293574

X. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire Agreement.

XI. It is agreed that respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

81040293575

Date July 23, 1981


Charles N. Steele
General Counsel
Federal Election Commission

Date July 14, 1981

John B. Nicholson

BY: 
Jan W. Baran, Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
John B. Nicholson)

MUR 1094

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 22, 1981, the Commission decided by a vote of 6-0 to take the following actions regarding MUR 1094:

1. Authorize the General Counsel to affix his signature to the conciliation agreement signed by John Nicholson in settlement of this matter.
2. Notify counsel of the Commission's acceptance of the conciliation agreement.
3. Close the file.

Commissioners Aikens, Harris, McGarry, Reiche, Thomson and Tiernan voted affirmatively in this matter.

Attest:

7-22-81
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

81040293576

Received in Office of the Commission Secretary: 7-20-81, 11:38
Circulated on 48 hour vote basis: 7-20-81, 4:00

1094

RECEIVED
GCC#5042
81 JUL 10 P12:00

AFFIDAVIT

District of Columbia) SS

Robert N. Pyle, being duly sworn, deposes and says that:

1. I reside at 3255 "O" Street, N.W., Washington, D.C.;

2. In about August, 1979, in the normal course of my business activities, I spoke with Mr. John B. Nicholson, then Executive Vice President of the National Association of Real Estate Investment Trusts (NAREIT) which had retained me to assist in arranging for Congressman John Anderson to speak before a NAREIT meeting. In our conversations we discussed the fact that Mr. Anderson had reached his annual honoraria limit but would be interested in receiving individual contributions of up to \$250 to his election campaign. I advised Nicholson that gifts up to that amount would qualify for matching federal funds. At no time did I advise him to have NAREIT pay money to certain of its members and have them then write their personal checks to the Anderson campaign. I only learned this method had been used by being told by Nicholson after he had left the employ of NAREIT.

81040293577

Robert N. Pyle
Robert N. Pyle

Sworn to before me this
9th day of July, 1981

J. Helen P. Jansenstein
Notary Public

81 JUL 10 P1:20
GENERAL COUNSEL

8 Form 3811, Jan. 1978
RETURN RECEIPT, REGISTERED, INSURED, AND CERTIFIED MAIL

MUK 1094 - Bogie

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered.....
 Show to whom, date and address of delivery.....
 RESTRICTED DELIVERY
 Show to whom and date delivered.....
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 J. Addison Mitchell

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 _____ 20166b _____
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

4-15-81

☆UFO: 1978-300-460

MUK 1094 - Bogie

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered.....
 Show to whom, date and address of delivery.....
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 Show to whom and date delivered.....
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 Show to whom, date, and address of delivery.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Betty Jean MacLeod

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 _____ 70256b _____
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

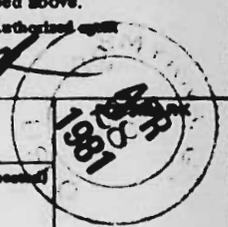
4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

4-15-81

☆UFO: 1978-300-460





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 15, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Addison Mitchell
3826 Paces Ferry West
Atlanta, GA

RE: MUR 1094

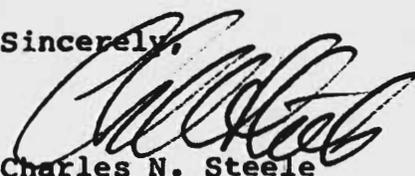
Dear Mr. Mitchell:

On December 21, 1979, the Commission found reason to believe that you had violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that permitting your name to be used to effect a contribution made by another nevertheless appears to be a violation of 2 U.S.C. § 441f and you should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Robert Bogin at 202/523-4000.

Sincerely,


Charles N. Steele
General Counsel

81040293579

RECEIVED

81 JUL 10 12:09

LAW OFFICES

JACKSON, CAMPBELL & PARKINSON, P. C.

ONE LAFAYETTE CENTRE

SUITE 300 SOUTH

1120 20TH STREET, N. W.

WASHINGTON, D. C. 20036

Federal Elections Committee
Attn: Robert Bogin, Esq.
Washington, D.C. 20463

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Dear Mr. Mitchell:

On December 21, 1974, the Commission learned that you had advised the Federal Bureau of Investigation with the Bureau's permission to submit my name to do so within 10 days.

The Commission's primary concern is to use to effect a comprehensive program appears to be a significant immediate step to take in the future.

If you have any questions, please direct Bogin at 202/522-2000.

Sincerely,

Charles
General

RIBogin:ano 4/14/81
KAGross



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 15, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Betty Jean MacLeod
6250 Weatherly Drive
Atlanta, GA 30328

RE: MUR 1094

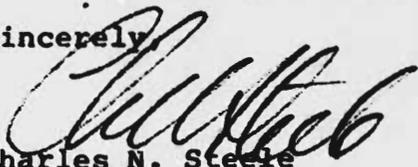
Dear Ms. MacLeod:

On December 21, 1979, the Commission found reason to believe that you had violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that permitting your name to be used to effect a contribution made by another nevertheless appears to be a violation of 2 U.S.C. § 441f and you should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Robert Bogin at 202/523-4000.

Sincerely,


Charles N. Steele
General Counsel

81040293582

MUK 1094- Bsg

Form 3811, Jan. 1979

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered.
 Show to whom, date and address of delivery.
 RESTRICTED DELIVERY Show to whom and date delivered.
 RESTRICTED DELIVERY. Show to whom, date, and address of delivery.

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Mary M. Thomas

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 6016hb

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
 Mary M. Thomas

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

POSTMARK: WASHINGTON, GA STATION 3, APR 24 1981, USA

L-1581

☆GPO : 1979-300-088

MUK 1094- Bsg

Form 3811, Jan. 1979

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered.
 Show to whom, date and address of delivery.
 RESTRICTED DELIVERY Show to whom and date delivered.
 RESTRICTED DELIVERY. Show to whom, date, and address of delivery.

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Ronald W. MacLeod

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 L016hb

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
 Ronald W. MacLeod

4. DATE OF DELIVERY
 4/21/81

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

POSTMARK: WASHINGTON, GA STATION 3, APR 20 1981, USA

☆GPO : 1979-300-088



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 15, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Donald W. MacLeod
FRT Property Company, Inc.
6540 Powers Ferry Road #160
Atlanta, GA 30339

RE: MUR 1094

Dear Mr. MacLeod:

On December 21, 1979, the Commission found reason to believe that you had violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that permitting your name to be used to effect a contribution made by another nevertheless appears to be a violation of 2 U.S.C. § 441f and you should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Robert Bogin at 202/523-4000.

Sincerely,


Charles N. Steele
General Counsel

81040293585

On December 21, 1971, the Commission found that the...
...a provision of the...
...of 1971, as amended, in...
...after consulting...
...Commission has determined...
...should not...
...the public good, since...

...admitting your name to be...
...used by...
...should...
...via radio.

If you have any questions, please direct them to...
...202/502-...

Sincerely,

Charles E. Stacks
General Counsel

RIBogintano 4/14/81
KAGross



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 15, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary M. Thomas
3011 Greenwood Trail
Marietta, GA 30067

RE: MUR 1094

Dear Ms. Thomas:

On December 21, 1979, the Commission found reason to believe that you had violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that permitting your name to be used to effect a contribution made by another nevertheless appears to be a violation of 2 U.S.C. § 441f and you should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Robert Bogin at 202/523-4000.

Sincerely,


Charles N. Steele
General Counsel

81040293587

Dear Mr. Thomas:

The Commission is concerned that you are violating 18 U.S.C. § 424, a provision of the Federal Espionage Laws of 1916, in connection with the release of information after the termination of the employment of a former employee of the Commission. It is requested that you submit any information which you possess regarding this matter to the Commission as soon as possible.

The Commission is committed to the effort to protect the national defense and to take immediate steps to prevent the disclosure of information in the future.

If you have any questions, please direct them to Robert Rogin at 202/523-5000.

Sincerely,

Charles M. ...
General Counsel

RIEgin:ano 4/14/81
KAGross

[Handwritten signature]



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 15, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

National Association of Real Estate
Investment Trust, Inc.
1101 Seventeenth St., N.W.
Suite 700
Washington, D.C. 20036

RE: MUR 1094

Dear Gentlemen:

On December 21, 1979, the Commission found reason to believe that your corporation had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the use of corporate funds in connection with a federal election nevertheless appears to be a violation of 2 U.S.C. § 441b and your corporation should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Robert Bogin at 202/523-4000.

Sincerely,


Charles N. Steele
General Counsel

81040293590



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 15, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Roger V. Barth, Esquire
Jackson, Campbell & Parkinson, P.C.
One Lafayette Centre
Suite 300 South
1120 20th Street, N.W.
Washington, D.C. 20036

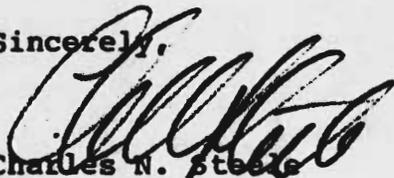
RE: MUR 1094

Dear Mr. Barth:

On May 13, 1980, the Commission found reason to believe that your client, Robert Pyle, had violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to Robert Bogin at 202/523-4000.

Sincerely,


Charles N. Steele
General Counsel

81040293592

RELOCATED 4/16/81
RICHMOND

10
11



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 13, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jan W. Baran, Esquire
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1094

Dear Mr. Baran:

On April 7, 1981, the Commission determined there is probable cause to believe that your client committed a violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 441b(a) and 441f in connection with corporate contributions made to the Anderson for President Committee.

The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it along with the civil penalty to the Commission within ten days. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

81040293594

MEMORANDUM

TO : SAC, [illegible]

FROM : [illegible]

SUBJECT: [illegible]

0104020304

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
John B. Nicholson)
National Association of Real)
Estate Investment Trust,)
INC. (NAREIT))
Donald W. MacLeod)
Betty Jean MacLeod)
Mary Ann Thomas)
Jay Addison Mitchell)
Robert N. Pyle)

MUR 1094 (79)

CERTIFICATION

I, Lena L. Stafford, Recording Secretary for the Federal Election Commission's Executive Session on April 7, 1981, do hereby certify that the Commission decided by a unanimous vote of 6-0 to take the following actions with regard to MUR 1094:

1. FIND PROBABLE CAUSE TO BELIEVE that John Nicholson violated 2 U.S.C. §§ 441b(a) and 441f.
2. TAKE NO FURTHER ACTION against NAREIT, Donald W. MacLeod, Betty Jean MacLeod, Mary Ann Thomas, Jay Addison Mitchell and Robert N. Pyle.
3. Approve the letters to all respondents attached to the General Counsel's Report dated March 22, 1981.
4. Approve the conciliation agreement to John Nicholson attached to the above-named report.

Attest:

4-9-81

Date

Lena L. Stafford

Lena L. Stafford
Recording Secretary

81040293598

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
John B. Nicholson)
National Association of)
Real Estate Investment)
Trust, INC. (NAREIT)) MUR 1094 (79)
Donald W. MacLeod)
Betty Jean MacLeod)
Mary Ann Thomas)
Jay Addison Mitchel)
Robert N. Pyle)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

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This matter was generated when Donald MacLeod and representatives of the Anderson for President Committee (Committee) and the National Association of Real Estate Investment Trusts, Inc., (NAREIT) voluntarily came forth to admit a violation of the Federal Election Campaign Act of 1971, as amended at a meeting on October 31, 1979. Based on this information, the Commission on December 21, 1979, found reason to believe that John B. Nicholson, as executive vice president of NAREIT, and NAREIT violated 2 U.S.C. § 441b and § 441f by permitting corporate monies to be contributed to the Committee in the names of others. In addition, the Commission found reason to believe that Donald MacLeod, his wife Betty Jean MacLeod and Mr. MacLeod's two associates, Mary Ann Thomas and Mitchell Jay Addison, violated 2 U.S.C. § 441f by knowingly permitting their names to be used to effect a contribution to the Committee with funds supplied by NAREIT.

In response to the Commission's reason to believe finding, NAREIT, Donald MacLeod, Betty Jean MacLeod, Mitchell Jay Addison and Mary Ann Thomas, reiterated in writing the facts that were previously communicated to staff members of the Office of General Counsel at the meeting of October 31, 1979. [Attached as Exhibit A is the response from NAREIT . Attached as Exhibit B is the response from Donald MacLeod.] On March 17, 1980, this Office received a letter from counsel representing John B. Nicholson in response to the Commission's reason to believe findings. Based on Mr. Nicholson's response, the Commission, on May 13, 1980, found reason to believe that Robert Pyle violated 2 U.S.C. § 441f by making a contribution in the name of another. Mr. Pyle's response to the Commission's finding is attached as Exhibit C.

II. LEGAL ANALYSIS

John B. Nicholson

On January 29, 1981, a brief stating the position of the General Counsel on the legal and factual issues in MUR 1094 was sent to respondent Nicholson's counsel. See Office of General Counsel's Brief, attached as Exhibit D. On February 25, 1981, this Office received respondent's brief (attached as Exhibit E). After reviewing respondent's brief, it is the recommendation of the Office of the General Counsel that the Commission find probable cause to believe that John Nicholson violated 2 U.S.C. §§ 441b(a) and 441f.

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Respondent does not dispute that in his capacity as a corporate officer of NAREIT he implemented a scheme wherein general treasury funds of NAREIT were contributed to the Anderson for President Committee in the names of others. Moreover, it is not in dispute that respondent Nicholson received \$250 of NAREIT funds which he contributed to the Committee by personal check.

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In his brief, respondent contends that the money flowing to the Committee was not a contribution, since the purpose of the money was not to influence John Anderson's election but rather to secure Mr. Anderson as a speaker. In support of this contention, Respondent's Brief cites Advisory Opinion 1978-32, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5334 (August 28, 1978) and Federal Election Commission v. Committee for Constitutional Presidency, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9075 (D.D.C. 1979) as permitting corporate payments to a candidate's campaign committee to be considered as other than a contribution. Respondent's contention is wrong and should be rejected.

Neither of the opinions cited by respondent stand for the proposition that corporate payments to a principal campaign committee are other than contributions subject to § 441b. While it is true that the Commission has held that the Act does not preclude a principal campaign committee from receiving payments which are personal funds of the candidate, (See A.O. 1978-32), such payments will nonetheless

be deemed a contribution if paid by a corporation directly to the principal campaign committee. In this matter, the NAREIT funds were paid in connection with John Anderson's campaign for his party's nomination. The use of corporate funds in connection with an election is a violation of 2 U.S.C. § 441b when paid to the campaign committee and not to the candidate in his personal capacity.

III. Discussion of Conciliation and Civil Penalty

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Attached is a proposed conciliation agreement this Office recommends be authorized by the Commission. The proposed agreement contains admissions of violations and a civil penalty of

Under the Act, any conciliation agreement proposed by the Commission may include a requirement that the respondent pay a civil penalty which does not exceed the greater of \$5,000 for each violation or an amount equal to any contribution or expenditure involved in such violation. 2 U.S.C. § 437g(a)(5)(A). In this matter, the Commission could seek a maximum civil penalty of \$10,000 representing a \$5,000 civil penalty for the § 441b violation and an additional \$5,000 for the § 441f violation.

It is the recommendation of the Office of General Counsel that the Commission assess a civil penalty of

in this matter. A civil penalty of is warranted because respondent caused corporate funds to be contributed

in connection with a federal election. The funds so contributed were purposely designed to appear as if they were made by individuals. Furthermore, respondent knew that contributions by individuals could be matched. Consequently, respondent's actions were designed to maximize the amount of matching funds the donee committee could request. In these circumstances, a substantial civil penalty should be imposed. However, there are some mitigating factors to be found in this matter, including the uncontested assertion that respondent was told that this manner of proceeding was legitimate. Thus, it is the recommendation of this Office that the statutory maximum be assessed in this matter.

IV. Other Actions

It is the recommendation of the Office of General Counsel that the Commission take no further action against any of the other respondents in this matter.

a. NAREIT

The Commission's investigation into this matter demonstrates that other than John Nicholson, no other officer or director of NAREIT had any knowledge of the matters at issue in MUR 1094. Knowledge is not a requisite element for a finding of probable cause to believe that NAREIT violated 2 U.S.C. § 441b, nonetheless such a finding is not warranted in this case. NAREIT voluntarily apprised the Commission of the violation at issue and undertook to reverse these illegal transactions. (See Exhibit A at 7.) In these circumstances, the Commission should not take any further action.

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b. Donald MacLeod

Donald MacLeod was chairman of the Program Committee of NAREIT. One of Mr. MacLeod's responsibilities was arranging for a speaker for NAREIT's annual conference. Mr. MacLeod worked with John Nicholson in making these arrangements. It was to Mr. MacLeod that John Nicholson sent a NAREIT check for \$1,250 and advised Mr. MacLeod that the Anderson for President Committee would prefer individual contributions of \$250 rather than a lump sum speaking fee. Mr. MacLeod, thus made a \$250 contribution to the Committee using NAREIT funds. Although the Commission could find probable cause to believe that Mr. MacLeod violated 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made by NAREIT to the Anderson for President Committee, no further action in this matter is warranted for the following reasons. Upon specific inquiry about the propriety of undertaking this course of action, Mr. MacLeod "was assured by the Executive Director of Nareit that there was nothing improper in these transactions." Exhibit B at 2. Mr. MacLeod felt that he could rely on these assurances, "since NAREIT was served by an Executive Director with several years of Washington experience, as well as by both in-house and outside counsel of considerable experience." Id. Furthermore, Mr. MacLeod voluntarily brought this matter to the Commission's attention and participated in a reversal of the illegal transactions.

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c. Betty Jean MacLeod, Mary Ann Thomas, Mitchell Jay Addison

All the above-reasoning is applicable for the Commission taking no further action with respect to these three individuals who permitted their names to be used to effect a contribution made by NAREIT to the Anderson for President Committee.

d. Robert Pyle

The Commission found reason to believe that Robert Pyle violated 2 U.S.C. § 441f by accepting NAREIT funds for the purpose of contributing those funds to Congressman Anderson. Mr. Pyle, allegedly, effected the contribution to the Anderson for President Committee by depositing the NAREIT money into the campaign depository of BAKEPAC, (Mr. Pyle is treasurer of BAKEPAC), causing BAKEPAC to contribute to the Anderson for President Committee. A review of the BAKEPAC reports indicates that BAKEPAC did make a \$250 contribution to the Committee by check dated August 28, 1979. However, bank statements for BAKEPAC covering the period July 25 through September 26, 1979 do not show any deposits into the BAKEPAC depository, although Mr. Pyle's records show that he deposited \$750 of NAREIT funds in his personal account in August, 1979. Exhibit C at 4, 5. Moreover, the contribution made by BAKEPAC to the Anderson for President Committee appears to be part of a program of giving to various presidential candidates during this period of time. Id. at 2,9. Furthermore, based on a response to questions posed to Michael F. MacLeod, Administrative Assistant to John Anderson, the campaign received as payment for Congressman Anderson's appearance

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only five checks made out to the campaign by individuals in the amount of \$250.00. Exhibit F at 2.

It is clear that Robert Pyle acted as go-between in making the arrangements for NAREIT and Congressman Anderson. In addition, it is contended that Mr. Pyle told Mr. Nicholson that the speaker's fee was to be paid through individual intermediaries to the Anderson for President Committee. Exhibit E at 13. Although there is evidence that Mr. Pyle might have misled John Nicholson into implementing a scheme that is illegal under the Act, there is insufficient evidence to take any further action against Mr. Pyle.

V. RECOMMENDATION

1. Find probable cause to believe that John Nicholson violated 2 U.S.C. §§ 441b(a) and 441f.

2. Take no further action against NAREIT, Donald W. MacLeod, Betty Jean MacLeod, Mary Ann Thomas, Jay Addison Mitchell and Robert N. Pyle.

3. Approve attached letters to all respondents.

4. Approve attached conciliation agreement to John Nicholson.

27 March 1981
Date


Charles N. Steele
General Counsel

Attachments

1. Exhibit A - response from NAREIT
2. Exhibit B - response from Donald MacLeod
3. Exhibit C - response from Robert Pyle
4. Exhibit D - OGC Brief
5. Exhibit E - Respondent's Brief
6. Exhibit F - Response from Michael MacLeod
7. Letter to John Nicholson
8. Proposed Conciliation Agreement
9. Proposed sample letter to all other respondents

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RECEIVED
GENERAL COUNSEL

REC'D
30 JAN 21 11:13
CC #124

NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS INC

30 JAN 21 9:50

January 11, 1980

Begin

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1094(79)

Dear Mr. Steele:

This will acknowledge receipt of your letter addressed to me as Counsel for the National Association of Real Estate Investments Trusts, Inc. (the "Association") stating that the Commission has found reason to believe that the mode and manner of certain transactions on behalf of the Association may have given rise to possible violations of Sections 441b and 441f of the Federal Election Campaign Act of 1971, as amended (the "Act").

As you know, the facts and circumstances considered by the Commission, with regard to the above-referenced subject matters, were first discovered by the officers and staff of the Association and after a reasonably short but thorough investigation by the staff of the Association, voluntarily brought to the attention of the staff of the Commission. At the time they first presented information to the Commission, the representatives of the Association believed, and they continue to believe, that they and the Association had acted in good faith by so doing. Accordingly, and in response to your request for further information, I am submitting herewith, on behalf of the Association, material below to support our contention

Exhibit A

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that the Association did not violate Section 441b or Section 441f of the Act or, alternatively, if a violation did occur, that such violation was contrary to the policy and practices of the Association and took place without any authorization, expressed or implied, from the elected Board of Directors or officers of the Association. In addition, within ten days of discovery of the transactions in question, this matter was brought to the attention of the Commission at the initiative of the Association, and the transactions in question corrected promptly thereafter. Accordingly, we believe that under these facts and circumstances, further action vis-a-vis the Association is clearly not warranted.

The following information, based on knowledge, information and belief, constitutes a comprehensive chronology of the events before and after certain payments were made on behalf of the Association to the Anderson for President Committee (the "Committee") in consideration for the appearance of Congressman Anderson as a luncheon speaker at the Annual Conference of the Association on October 4, 1979:

1) August, 1979:

Specific dates unknown but final plans were completed no later than the second week of August.

Arrangements completed through the offices of John B. Nicholson, Executive Vice President of the Association, for the luncheon speech of Congressman Anderson. Based on information later furnished the Association by Congressman Anderson's office, a Robert N. Pyle, apparently met with Michael F. MacLeod of Congressman Anderson's office to determine the final arrangements. Despite representations to the contrary, Mr. Pyle was not known to the Association and appears to have been acting at the request of Mr. Nicholson. There is no indication of any authorization for the employment of such an agent or emissary. The Association has no direct specific knowledge of the arrangements proposed and accepted, but the understanding of the Executive Committee and President was that such arrangements were limited to time, place and the payment of a legal honorarium.

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2) August 14, 1979:

Nicholson letter to Donald W. MacLeod, President of IRT Property Company, an Atlanta-based real estate investment trust, who was serving as the Association's Program Director in his capacity as an elected member of the Association Board of Directors (attached) enclosing NAREIT checks for \$1,250.00 payable to Mr. MacLeod as reimbursement for speakers's expenses advances (presumably including an honorarium and expenses) and referring to \$750.00 sent to Robert N. Pyle (purportedly as compensation for arrangements and expenses). Note: Despite this letter Donald MacLeod indicates no knowledge of Mr. Pyle.

3) August 17*, 1979:
*Approximate

According to statements subsequently made by Donald W. MacLeod, his response to the above letter was to call John Nicholson to express his lack of knowledge concerning how the transaction was to be handled and to elicit more details or suggestions as to how payment could properly be made. During the internal investigation by the Association, Mr. MacLeod further stated that, in response to this call, John Nicholson verbally advised him that the Anderson For President Committee would prefer individual contributions of \$250.00 rather than a lump sum honorarium. Mr. MacLeod has further stated that John Nicholson suggested that Mr. MacLeod obtain five individual contributions from individuals who would then be reimbursed from the funds advanced to Mr. MacLeod by the Association. Other officers of NAREIT did not have any knowledge of this transaction and, accordingly, no reason to assume that payment was being made in any form other than that of an honorarium. Mr. Nicholson did not refer this matter to Counsel for advice, notwithstanding that Counsel was readily available and generally involved specifically for such purposes as a matter of policy and practice of the Association, or to any other member of the Association staff.

4) September 21, 1979:

Letter to Pyle from Anderson expressing thanks for contributions to be arranged. Letter delivered to John Nicholson's office but not revealed to other officers of the Association until inadvertently discovered on October 16, 1979.

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5) September 29, 1979:

Checks issued to the Anderson For President Committee by Donald MacLeod and his associates Betty MacLeod, J.A. Mitchell and Mary Thomas. Mr. MacLeod has stated that subsequent to this date he spoke with John Nicholson in the office of the latter and stated that he (MacLeod) could not arrange for a fifth contribution, suggested that Nicholson make the fifth contribution and that he be reimbursed from the remainder of Association funds held by MacLeod. Mr. MacLeod has further stated that five checks (from MacLeod, B. J. MacLeod, Mitchell, Thomas and Nicholson) each in the amount of \$250.00 were transmitted by Nicholson to the Anderson For President Committee.

6) October 4, 1979:

Congressman Anderson appears as guest luncheon speaker.

7) October 11, 1979:

New Counsel, David Bernabucci, joins the Association staff. Former General Counsel Walter B. Laessig, having left the Association staff on July 31, 1979, now serves as Special Counsel to the Association.

8) October 12, 1979:

Completely unrelated to the transactions now in question, John B. Nicholson officially terminates as Executive Vice President of the Association. The subject of the checks earlier issued by the Association in connection with Congressman Anderson's appearance on October 4, is brought to the attention of Mr. Bernabucci and Mr. Laessig by other Association staff at this time. The question of whether the amounts paid as honoraria may have been excessive under the House of Representatives Ethics Code (unless expense reimbursement is involved) arises. Accordingly, the decision is made to investigate the handling of the two transactions. At this point current officers, Directors and staff of the Association do not have any knowledge of any other direct or indirect transactions.

9) October 16, 1979:

Anderson letter of September 21, 1979 (see above) referring to contributions is discovered during routine cleaning of John Nicholson's vacated office. Association Counsel, Special Counsel and Acting Executive Vice President confer to discuss ramifications of this letter.

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10) October 17, 1979:

Conference call by Association President, Acting Executive Vice President and Counsel to Donald W. MacLeod to determine what his understanding of the arrangements concerning the payment of funds and reimbursement of expenses had been. His response was essentially as indicated in paragraphs 2, 3 and 5 above. Subsequently, Counsel advises the President and the Acting Executive Vice President that, on the basis of the facts as they have been revealed, it seems possible that a violation of the Federal Election Campaign Act may have occurred, however advertently or inadvertently, and that it would be prudent to consider steps to determine additional facts and reverse the transaction or transactions, subject to the advise and counsel of the F.E.C. It is also determined to meet the next day with former Association General Counsels Walter B. Laessig and Nicholas G. Buffington.

11) October 18, 1979:

Afternoon meeting with Association President Joseph D. Riviere, Acting Executive Vice President Ronald Utt, Counsel David Bernabucci, Former General Counsel Walter B. Laessig, and Former Executive Vice President and General Counsel Nicholas G. Buffington. It is determined that the staff of the Association must proceed to ascertain what, if any, additional facts may be known to the staff of the Congressman and, if necessary, mitigate any possible violation of the law by correcting or reversing the transactions after notifying the F.E.C.

12) October 18-19, 1979:

Association Counsel contacts Daniel J. Swillinger, Counsel to the Anderson For President Committee to advise him of the possible receipt by the Committee of illegal contributions, to inquire if certain contributions were in fact received, and to confer on possible courses of action to reverse any such illegal transactions. Swillinger agrees to research the contributor lists and recommends and arranges for an immediate meeting with Michael F. MacLeod of Congressman Anderson's office.

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13) October 22, 1979:

Meeting with Association President Joseph Riviere, Acting Executive Vice President Ronald Utt, Counsel David Bernabucci, on behalf of the Association, and Michael F. MacLeod, on behalf of the Congressman Anderson's Office, to determine the latter's understanding with regard to the arrangements for the Congressman's appearance, the manner and method of anticipated compensation and what arrangements, if any, would be acceptable if it became legally necessary to reverse or refund any improper payments. Michael MacLeod referred to his meeting with Robert Pyle. Representatives of the Association could make no determination that the representatives of the Congressman expected any payments or honoraria other than a number of bona fide individual contributions properly arranged from interested third parties. It was tacitly agreed that a refund procedure would be arranged and confirmed by Association and Committee Counsel, subject to the prior approval of the F.E.C.

14) October 24, 1979:

Daniel Swillinger contacted Association Counsel, at the request of Association Counsel as relayed by Michael MacLeod, to confirm receipt of payments from five NAREIT affiliated individuals, the tentative refund arrangements, and indicate that he had, with the concurrence of the Association, arranged for a meeting with the staff of the General Counsel's Office at the F.E.C. on October 31, 1979.

15) October 31, 1979:

Meeting with Ken Gross and Robert Bogin of the Office of General Counsel of the F.E.C. and Daniel J. Swillinger of the Anderson For President Committee, Donald W. MacLeod, and Joseph Riviere, President, Ronald Utt, Acting Executive Vice President, David Bernabucci, Counsel and Walter Laessig, Special Counsel, to present the facts as understood by the parties. The parties proposed to reverse the transaction by instituting refunds from the Anderson For President Committee to the five known individual contributors. It was understood that refunds from the contributors to the Association cannot be guaranteed. The F.E.C. staff gives its tacit approval to the proposal and advises the parties that the facts of the case will be submitted to the Commission.

16) November 5, 1979:

Refunds totalling \$1,250.00 are mailed to the five known individual contributors by the Committee.

17) November 9-15, 1979:

Funds received by the five individuals are returned to the Association.

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In conclusion, the factual information presented hereinabove is offered in a further attempt by the Association to achieve an expeditious and mutually satisfactory conclusion to the procedures initiated after the Association first revealed the transaction in question to the Anderson For President Committee and the Commission. The Association believes that the facts speak for themselves in this matter and that those facts adequately demonstrate: (1) any violation of the Federal Election Campaign Act of 1971, as amended, is such a violation did occur, did not arise out of any policy or practice of the Association; (2) the Association, upon ascertaining that the transaction may have given rise to a technical violation of the law, immediately sought to determine the facts, reverse the transaction notify the staff of the Commission and provide other proper relief; and (3) the Association, its elected Officers and Directors, were unaware of the circumstances and nature of the transactions, had no prior knowledge of and did not give approval to such transactions.

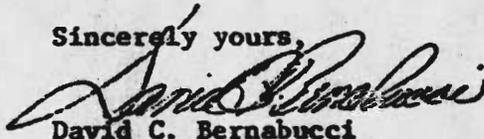
The Association cannot express any conclusions with regard to the intentions or actions of any other party to the transaction in question. We do believe, however, that one isolated transaction of an individual or individuals should not be attributed to the Association or any of its elected Officers or Directors who may have been innocently and inadvertently involved.

Accordingly, and in view of the action of the Association in disclosing the matter, the Association respectfully submits that there is no factual basis upon which to conclude that any action against it would be warranted and believes that no enforcement action should be taken against the Association with regard to the above-referenced matter now or in the future.

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The Conclusions stated above are not necessarily intended to present a full legal brief or memorandum on the legal issues raised and the Association would respectfully wish to reserve the right to expand the foregoing remarks in response to specific statements received, or further inquiry made, by the Federal Election Commission. Of course, if you or any member of the Commission's staff wish to discuss this matter further, representatives of the Association will be most happy to meet with you at your convenience. In the meantime, the Association does request that this matter remain confidential pursuant to the provisions of 2 U.S.C. §437g(a)(3)(B).

Sincerely yours,



David C. Bernabucci

Counsel

DCB:ar

CC: Robert Bogin, Attorney, Federal Election Commission
Joseph D. Riviere, President, NAREIT
Mercer L. Jackson, Executive Vice President, NAREIT

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JOHN B. NICHOLSON
Executive Vice President

August 14, 1975

Mr. Donald W. MacLeod
IRT Property Company, Inc.
5540 Powers Ferry Road #160
Atlanta, Ga. 30339

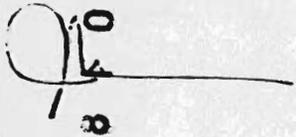
Dear Don:

Pursuant to our conversations yesterday, enclosed is a check for \$1,250.00 to cover the speaker's expense fee that you incurred. I've had the check made out to you since I'm not exactly sure to whom the check should be drawn.

I have also had a check for \$750.00 sent to Robert N. Pyle, with whom you made the arrangements and who will handle all details regarding the speaker. I believe this covers his fee and all expenses associated with Rep. Andersen's appearance, including drafting the speech, ferrying him to and from the Sheraton, etc.

I appreciate the extra trouble and time you've devoted to getting us a to-flight speaker. I especially appreciate your willingness to commit for the speaker's fee so as to nail down the engagement — we've had several back out of the verbal commitment already.

Sincerely,



JEN:me

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PROPERTY COMPANY
6540 Powers Ferry Road, Suite 160
Atlanta, Georgia 30339
(404) 955-4406

RECEIVED
FEDERAL ELECTION
COMMISSION

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January 2, 1980

Certified Mail
Return Receipt Requested

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

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Bogert

Re: MUR 1094(79)

Dear Mr. Steele:

This will acknowledge receipt of your letter to me of December 26, 1979 relating to a possible violation of 2 U.S.C. Sec. 441f of the Federal Election Campaign Act of 1971, as amended, which matter you have numbered MUR 1094(79). Similar letters have been received by my wife, Betty Jean MacLeod, and by Mr. J. A. Mitchell and Ms. Mary M. Thomas, each of whom will be responding directly.

After our meeting with the Federal Election Commission on October 31, 1979, I had assumed (obviously incorrectly) that the entire matter had been fully reported and settled to the satisfaction of the Federal Election Commission. Since this is apparently not the case I will again state the facts and circumstances as they relate to my involvement and the involvements of my wife, Ms. Thomas and Mr. Mitchell in this matter.

1. I am President of IRT Property Company, a real estate investment corporation based in Atlanta, Georgia.
2. Ms. Mary M. Thomas is the Treasurer of IRT Property Company and Mr. J. Addison Mitchell has been associated with me in the mortgage banking business in Atlanta.
3. IRT Property Company is the successor corporation to Investors Realty Trust.
4. IRT Property Company and/or Investors Realty Trust have, since 1971, been dues-paying members of the National Association of Real Estate Investment Trusts ("NAREIT"), an industry trade association based in Washington, D. C.

Exhibit B

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5. I am not an officer of NAREIT but am a member of the Board of Governors of NAREIT.
6. In 1979 I was chairman of the Program Committee of NAREIT. One of the responsibilities of the Program Committee is arranging a program for NAREIT's annual conference, which in 1979 was held in Washington on October 3 - 5. The Committee's responsibilities included the selection of topics and speakers for the conference.
7. For the Washington conference, it was determined that the featured speakers would include a humorist (Mark Russell), an economist (Anthony Downs of Brookings Institute) and a political speaker. The honorarium for each of these featured speakers was budgeted by NAREIT at \$2,000.
8. After several unsuccessful attempts to obtain a political speaker, it was suggested that Congressman Anderson might be considered. As a result, the then Executive Director of NAREIT contacted Mr. Anderson's office through an intermediary, and we were advised that Congressman Anderson would agree to speak at this conference. My understanding was that he would receive \$1,250 for his appearance.
9. Subsequently in August 1979, I was advised by the Executive Director of NAREIT that the Anderson for President Committee would prefer individual contributions of \$250 rather than a lump sum speaking fee.
10. To accomplish this, it was proposed by the Executive Director of NAREIT that I obtain five individual contributions (\$250 each) and that the five contributors in turn would be reimbursed out of a check which was sent to me by NAREIT. I specifically inquired about the propriety of such actions and was assured by the Executive Director of NAREIT that there was nothing improper in these transactions. Since NAREIT was served by an Executive Director with several years of Washington experience, as well as by both in-house and outside legal counsel of considerable experience, I felt that I could rely

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10. Continued.
on the assurances of NAREIT as communicated by
its Executive Director.
 11. Based on these assurances, I delivered to the
Executive Director of NAREIT four checks for
\$250 each payable to the Anderson for
President Committee from me, my wife, Ms.
Thomas and Mr. Mitchell. I also gave the
Executive Director my check for \$250 payable
to him, representing the balance of the
NAREIT check to me for \$1,250.
 12. My understanding is that the four checks
given by me to the Executive Director of
NAREIT together with his personal check for
\$250 payable to the Anderson for President
Committee were delivered to that Committee.
 13. Subsequent to the NAREIT conference and the
resignation of the Executive Director of
NAREIT (which occurred shortly thereafter),
a routine review of the files of this
ex-Executive Director apparently disclosed
the transactions outlined above. As a result,
several discussions were held between various
NAREIT representatives, representatives of the
Anderson for President Committee and the
Federal Election Commission. On October 31, 1979,
I attended a meeting at your offices at
which all of these matters were reviewed.
 14. At this meeting, the Anderson for President
Committee agreed to return the \$250
contributions to the various individuals involved,
with the understanding that these individuals
would in turn forward individual checks to
NAREIT payable to that Association. To the
best of my knowledge this was accomplished.

After this meeting with the Federal Election Commission,
I assumed that the entire matter had been fully reported and
settled to the satisfaction of the Federal Election Commission,
particularly in view of the fact that:

- a) the matter was voluntarily brought
to the attention of the Federal
Election Commission, an action which,
according to your office, is probably
without precedent;

January 2, 1980
Charles N. Steele, Esquire
Page Four

- b) As soon as any suggestion of impropriety was made, full restitution was made by the contributors and by the Anderson for President Committee;
- c) no personal advantage was received or intended by any of the contributors involved, the sole intent being to obtain a satisfactory speaker for a NAREIT conference.

I trust that the foregoing is the information that you were requesting. Copies of this letter have been delivered to Ms. Thomas, Mr. Mitchell and my wife, who will be responding directly to you.

Sincerely,



Donald W. MacLeod
President

:d

cc: Mrs. Betty Jean MacLeod
Mr. J. A. Mitchell
Ms. Mary M. Thomas

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B-4

RE
OFF
GENERAL
LAW OFFICES

JUN 1980

600# 1526

JACKSON, CAMPBELL & PARKINSON, P. C.

999 JUNAYETTE CENTER
SUITE 300 SOUTH
1120 20th STREET, N.W.
WASHINGTON, D.C. 20036

(202) 457-1600

May 30, 1980

MARYLAND OFFICE
414 HUNGERFORD DRIVE
ROCKVILLE, MARYLAND 20850
(301) 340-0480
VIRGINIA OFFICE
2000 N. 18th STREET
ARLINGTON, VIRGINIA 22201
(703) 982-1330

ROGER H. NUZZALL
COUNSEL

DIRECT DIAL NUMBER

208261

JUN 2 11:16

RECEIVED
GENERAL COUNSEL

EDMUND D. CAMPBELL *
THOMAS BEARING JACKSON *
JAQUELIN ANBLER MARSHALL
N. DONALD RISTLER
BENJAMIN W. GULANY *
KENNETH WELLS PARKINSON
DANIEL WEBSTER COON *
THOMAS PENFIELD JACKSON *
ARTHUR C. ELOIN, JR. *
JAMES P. SCHALLER *
ROGER V. BARTH *
JAMES E. BRAMMER
PATRICIA D. GURNE
NICHOLAS STILLWELL MCCONNELL **
ALAN R. SWENDINAN +
PATRICK L. WOODWARD +
JAMES R. NICHAL
CLIFFORD A. WILSON +
DAWN V. WHITE +
DAVID H. COX

* ALSO ADMITTED IN MARYLAND
** ALSO ADMITTED IN VIRGINIA

Mr. Robert O. Tieman, Chairman
Federal Election Commission
Washington, D.C. 20463

Dear Sir:

Re: MUR 1094

We represent Mr. Robert N. Pyle, to whom you directed a letter dated May 16, 1980 and received by him on May 22, 1980. This letter constitutes a formal response by Mr. Pyle. We note your letter indicates a 10 day response period while the enclosed "Description of Preliminary Procedures" allows 15 days. An inquiry of your staff was not successful in resolving this difference.

Your letter to Mr. Pyle states that,

"you received general treasury funds from the National Association of Real Estate Investment Trusts, Inc. for the purpose of contributing some of those funds to the Anderson Committee and that you deposited \$250 into the BAKEPAC account to make a \$250 contribution to the Anderson Committee."

You allege a violation of 2 U.S.C. §41 f.

Based upon our investigation to date we have determined the following:

1. In the normal course of his business activities, Mr. Pyle in August, 1979 received a fee of \$750 from the National Association of Real Estate Investment Trusts, Inc. (NAREIT) for his services in arranging for Congressman John Anderson to address a meeting of NAREIT, assisting in preparation of the speech to be delivered, preparation and dissemination of press and biographical materials, and arranging transportation for Mr. Anderson to the meeting. Such services have been provided for a fee in a similar manner by Mr. Pyle for other clients as part of his professional activities. Enclosed herewith is a copy of Mr. Pyle's bank check entry book for the account into which his business receipts are deposited. The \$750 NAREIT deposit on August 15 is clearly identified.

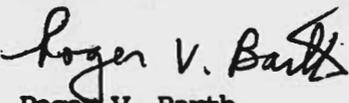
Exhibit C

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2. Mr. Pyle did not transfer any part of his fee to BakePAC, nor has he ever personally contributed to BakePAC. The enclosed BakePAC bank statements for periods ending 8/22/79 and 9/26/79 demonstrate that no deposits at all were made during the time involved, much less a \$250 deposit from Mr. Pyle.

3. BakePAC made a \$250 contribution to the Anderson Committee by a check dated August 28, 1979 in connection with a Northern Virginia fund raising event which was in fact attended by two Independent Bakers Association employees. Attached is a copy of that check. This contribution was made upon the recommendation of Mr. Pyle, but at the direction of the Chairman of BakePAC. As you can see from the check, two signatures are needed. Mr Pyle did not have authority to determine which contributions would be made. The contribution was part of a program of giving to various presidential candidates by BakePAC during this period of time. See: 1) the above BakePAC bank statements; 2) copies of checks to the Connally and Bush campaigns and 3) a September 17, 1979 letter to BakePAC supporters from its Chairman clearly spelling out the program of giving.

If you need any further information on this matter please advise me.

Sincerely,

Roger V. Barth

31040293621

RVB:sls

Enclosures

cc: Mr. Robert N. Pyle

PLEASE BE SURE TO DEDUCT CHARGES THAT AFFECT YOUR ACCOUNT

NO	DATE	ISSUED TO OR DESCRIPTION OF DEPOSIT	AMOUNT OF PAYMENT	✓	AMOUNT OF DEPOSIT	BALANCE FORWARD
	8/10	NARETT			75000	
1768	8/15	Master Customer	75000	✓		
1769	8/15	CASH	2000	✓		
	8/16	TO FOX'S 100LSUM			15300	
	8/16	TO 150			233200	(406804)
1771	8/16	TO TRUST - MINE WASSER	15908	✓		
1772	8/31	TO GELCO (F)	4329	X		
1773	8/31	TO ENVELOPES UNLIMITED	14427	X		
1774	8/16	TO RICK LYNCH	3231	✓		
1775	8/31	TO BACARDI'S	9783	X		
1776	8/31	TO Am Exp.	4429	✓		
1777	8/31	TO DINERS (900.00) INT. 11.98	29235	✓		
1778	8/31	TO TELEPHONE	50244	X		

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BAKEPAC POLITICAL ACTION COMMITTEE OF THE
INDEPENDENT BAKERS ASSOCIATION

DUPLICATE

596

15-35/540

July 12 1979

PAY
TO THE
ORDER OF

George Bush for President

\$ 300.00

Three Hundred and no/100

DOLLARS

FOR



AMERICAN SECURITY BANK, N.A.

WISCONSIN AND BURNSBARTON AVENUES, N. W.
WASHINGTON, D. C.

[Handwritten signature]

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⑈0000030000⑈

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BAKEPAC-POLITICAL ACTION COMMITTEE OF THE
INDEPENDENT BAKERS ASSOCIATION

598

P.O. Box 3731
Washington, DC 20007

07193

August 6 1979

15-55/540

PAY TO THE ORDER OF Connally for President Committee

\$ 1,000.00

One Thousand and no/100----- DOLLARS

FOR

AMERICAN SECURITY BANK, N.A.
WISCONSIN AND DUMBAR "DE AVENUE" N. W.
WASHINGTON, D. C.

Handwritten signature

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BAKEPAC-POLITICAL ACTION COMMITTEE OF THE
INDEPENDENT BAKERS ASSOCIATION
P.O. Box 3731 Howard Denk, Chairman
Washington DC 20007

600

August 28 19 79

15-55/540

PAY TO THE ORDER OF Anderson for President Committee \$ 250.00

Two Hundred Fifty and no/100----- DOLLARS

FOR AMERICAN SECURITY BANK, N.A.
WISCONSIN AND DUMFRIES AVENUES, N.W.
WASHINGTON, D.C.

Howard Denk
James J. [unclear]

SEP. 6 1979

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⑈0000025000⑈

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BAKEPAC

Post Office Box 3731, Washington, D.C. 20007 (202) 223-2325

September 17, 1979

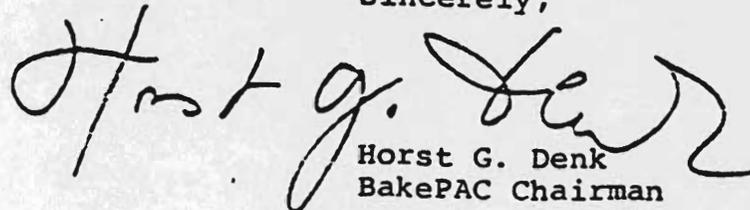
Dear BakePAC Supporter:

This is our first request for funds since last spring and we hope very much that you can make a cash contribution at this time. BakePAC, as the political action committee of the Independent Bakers Association, has continued to make campaign contributions to Senators and Congressmen who have taken key roles in supporting our positions and who support the free enterprise system in their Congressional votes.

We have also made contributions to five of the Republican Presidential candidates. We have made major contributions to Senator Howard Baker of Tennessee, the Senate Majority Leader and to former Treasury Secretary and Texas Governor John Connally. In addition, we have made smaller contributions to the campaigns of Senator Robert Dole of Kansas, Congressman John Anderson of Illinois and former UN Ambassador George Bush. We expect to make a major contribution in connection with Ronald Reagan's scheduled speech on December 5th before BakePAC in Washington. The Committee feels it is vital that our segment of the baking industry has entree and contact with these national leaders and their positions.

It is most important that we continue to have income for these needs and trust you will continue to support IBA's PAC. When sending your check please complete and return the enclosed contribution card.

Sincerely,



Horst G. Denk
BakePAC Chairman

PS: We also enclose your 1980 BakePAC company authorization which should be filled out and returned at your earliest convenience.

HGD

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
John B. Nicholson

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MUR 1094 (80)

GENERAL COUNSEL'S BRIEF

I. Statement of Case

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This matter was generated when representatives of the Anderson for President Committee (Committee) and the National Association of Real Estate Investment Trusts, Inc., (NAREIT) voluntarily came forth to admit a violation of the Federal Election Campaign Act of 1971, as amended. Based on the information supplied by the Committee and NAREIT, the Commission on December 21, 1979, found reason to believe that John B. Nicholson violated 2 U.S.C. § 441b and § 441f by permitting corporate money to be contributed to the Committee in the names of others.

At all times relevant to this matter, Mr. Nicholson was the Executive Vice President of NAREIT and the senior staff person hired by the Association. Mr. Nicholson worked with members of the Program Committee, including Donald W. MacLeod, president of IRT Property Company of Atlanta, Georgia, in obtaining a speaker to the 1979 NAREIT annual conference. Sometime in July, 1980, Mr. Nicholson and Mr. MacLeod decided that Representative John B. Anderson might be a possible speaker. Working through Robert N. Pyle, an intermediary, Mr. Nicholson learned that John Anderson was available to speak at the annual conference, but that he could not accept a speaker's fee since the Congressman had already met his honoraria limit for 1979. In lieu of an

Exhibit D

honorarium, it was proposed that individuals associated with NAREIT make contributions to the presidential campaign of John Anderson. These contributions in turn could be submitted to the Commission for federal matching funds. To effect this plan, John Nicholson, in his capacity as executive vice-president of NAREIT, signed and mailed a NAREIT check for \$1,250 to Donald MacLeod with the understanding that Mr. MacLeod would use the NAREIT check to reimburse individuals contributing to the Anderson for President Committee.

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On September 11, 1979, Mr. Donald MacLeod was in Washington and during his stay met with Mr. Nicholson. Mr. Donald MacLeod asked Mr. Nicholson to be one of the five individuals who would make a \$250 payment to the Committee. Mr. Nicholson accepted that responsibility. Mr. Donald MacLeod handed four checks in the amount of \$250 each to Mr. Nicholson. Each check was payable to the Committee. The checks were drawn on the personal checking accounts of the following individuals: Mr. Donald MacLeod, Mrs. Donald MacLeod, Ms. Mary Thomas, and Mr. J. Addison Mitchell. Mr. Donald MacLeod also gave his personal check in the amount of \$250 to Mr. Nicholson which check was payable to Mr. Nicholson. Mr. Nicholson accepted this check, then made out another check drawn on his (Nicholson's) personal checking account payable to the Committee in the amount of \$250. This check and the four other individual checks were transmitted to Mr. Pyle by Mr. Nicholson and subsequently contributed to the Anderson for President Committee.

Legal Analysis

The facts of this matter are generally not in dispute. John Nicholson, in his capacity as executive vice-president of a corporation caused corporate funds to be contributed in connection with John Anderson's primary campaign.

2 U.S.C. § 441b makes it unlawful for a corporation to make a contribution in connection with any federal election or for an officer of the corporation to consent to the making of such contributions. Based on the facts of this matter, the Commission has probable cause to believe that John Nicholson as an officer of a corporation consented to the making of contributions in connection with a federal election.

It is also beyond dispute that John Nicholson accepted \$250 of NAREIT funds from Donald MacLeod for the purpose of making a contribution to John Anderson's campaign.

2 U.S.C. § 441f states that "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." Based on the facts of this matter, the Commission has probable cause to believe that John Nicholson violated 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made by NAREIT to John Anderson's campaign.

Respondent denies violating the Act based on the contention that the payments to John Anderson are not contributions as defined in the Act. 2 U.S.C. § 431(e)(1)(1977)(amended 1980).

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Respondent contends that in order to be a contribution, the payment must be "made for the purpose of influencing" a candidate's nomination or election. Since the purpose of Mr. Nicholson's involvement was to obtain Mr. Anderson as a speaker and not to influence his primary campaign, then the payments to Mr. Anderson should be regarded as honoraria and not contributions.

This contention is specious and should be summarily rejected by the Commission.

It is incongruous for respondent to now assert that his payments to John Anderson were honoraria. Mr. Nicholson knew that John Anderson could not accept further honoraria. The payments were purposely designed not to be honoraria. Furthermore, the checks were made payable to the Anderson for President Committee. This was done not only to avoid the honoraria limits, but to have these payments matched with federal funds. Written instruments made payable to a principal campaign committee with the intention of having those payments matched with federal funds must be considered a contribution. Moreover, in the context of proving a violation of 2 U.S.C. § 441b, the Commission must demonstrate that corporate money was given "in connection with" a federal election. Mr. Nicholson knew that John Anderson was a candidate for federal office eligible to receive primary matching fund payments and that the checks made payable to the Anderson for President Committee were to be matched. Clearly, in these circumstances, the payments involved in this matter were forwarded to the Anderson for President Committee in connection with John

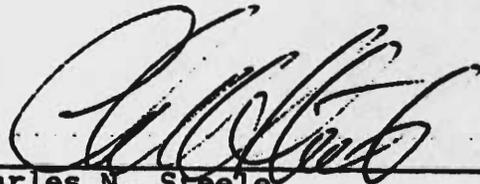
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Anderson's campaign.

III. General Counsel's Recommendation

Find probable cause to believe that John B. Nicholson violated 2 U.S.C. §§ 441b(a) and 441f.

29 January 1981
Date



Charles N. Steele
General Counsel

Attachment
Letter to Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of)
John B. Nicholson) MUR 1094 (80)

RESPONDENT'S BRIEF

I. Introductory Statement

This brief and attached affidavit and exhibit are submitted by John B. Nicholson ("Nicholson") through his attorneys, Baker & Hostetler, in response to the General Counsel's Brief ("G.C. Brief") of January 29, 1981 regarding Matter Under Review ("MUR") 1094. The General Counsel recommends to the Federal Election Commission ("FEC" or "Commission") that it find probable cause to believe that Nicholson violated 2 U.S.C. §§ 441b and 441f. Nicholson requests that the FEC reject this recommendation and in lieu thereof find no probable cause to believe that he committed such violations.

II. Counterstatement of the Case

From March 1977 until October 1979 Nicholson was the Executive Vice President of the National Association of Real Estate Investment Trusts, Inc. ("NAREIT") and worked for NAREIT's Board of Governors and Executive Committee.

Affidavit of John B. Nicholson ¶ 2

Exhibit E

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(hereafter "Nicholson Aff."). Among his duties, Nicholson was required to assist Donald W. MacLeod ("D. MacLeod"), NAREIT's Program Committee Chairman, in making arrangements for NAREIT's annual conference including securing a speaker. Nicholson Aff. ¶ 3. NAREIT did not authorize Nicholson to select a speaker or to design a program without approval from D. MacLeod. Id.

The 1979 NAREIT Annual Conference was held in Washington, D.C., on October 4, 1979. Nicholson Aff. ¶ 4. G. William Miller was to be the speaker at this event but he cancelled his commitment in late June of 1979. Id. John B. Anderson ("Anderson") was considered as a substitute speaker. After D. MacLeod approved the choice of Anderson as a speaker, D. MacLeod authorized Nicholson to enlist the services of Robert N. Pyle ("Pyle") for purposes of securing Anderson's appearance in return for a speaker's fee. Nicholson Aff. ¶ 5.

Nicholson retained Pyle's services. Pyle handled all negotiations with Anderson and/or his agent concerning Anderson's appearance at the 1979 NAREIT Annual Conference. Nicholson never discussed with Anderson or any of Anderson's agents, including his committee, Anderson for President Committee ("APC"), any matters relating to Anderson's appearance at the 1979 NAREIT Annual Conference. Nicholson Aff. ¶ 16. Pyle told Nicholson that an agent for Anderson had requested

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that the speaker's fee not be paid to Anderson, but to APC via individual intermediaries because Anderson had met an honorarium limit. Nicholson Aff. ¶¶ 7 and 8. Upon inquiry from Nicholson, Pyle told Nicholson that this method of payment was proper but may have income tax consequences. Nicholson Aff. ¶ 10. Pyle had represented to Nicholson that he, Pyle, was knowledgeable about laws relating to honoraria fees and campaign financing. Id.

Nicholson agreed to pay Pyle a consulting fee for Pyle's services in arranging Anderson's appearance. Nicholson Aff. ¶ 11. D. MacLeod agreed to participate in arranging payment to APC in accordance with Anderson's wishes as represented by Pyle. Nicholson Aff. ¶ 12. At all times Nicholson believed that the payments to Pyle and to APC were fees in connection with Anderson's appearance and speech. Nicholson Aff. ¶ 13. At all times Nicholson believed that the payments were proper. Nicholson Aff. ¶ 14. At no time did Nicholson desire to advance Anderson's candidacy for President. Nicholson Aff. ¶ 15.

Under these conditions and circumstances, Anderson appeared and gave a speech before the 1979 NAREIT Annual Conference on October 4, 1979.

III. Exceptions To Statement of Case in G.C. Brief.

Nicholson was a participant in effecting a payment from NAREIT to APC via various intermediaries. The issue

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confronting the FEC is whether this payment constituted a "contribution" as defined by the Federal Election Campaign Act, as amended ("Act"). Nicholson consistently has maintained that NAREIT funds were used solely as consideration for an appearance and speech by Anderson at the 1979 NAREIT Annual Conference. Consequently, Nicholson disputes any and all references to "contributions" contained in that portion of the G.C. Brief which purports to recite the "facts" of this case. Such characterizations constitute conclusions of law and not statements of fact.

Furthermore, the G.C. Brief erroneously states that Nicholson was informed by Pyle the person who directly negotiated with Anderson's agent for his appearance, that Anderson "could not accept a speaker's fee." G.C. Brief at 1. To the contrary, Pyle informed Nicholson that a speaker's fee was demanded in order to secure Anderson's appearance and only the method of payment was at issue. Letter of March 17, 1980, to Robert I. Bogin at 6; Nicholson Aff ¶¶ 6-8. Pyle stated that Anderson simply did not want any fee paid directly to Anderson. Nicholson Aff. ¶ 7. ^{1/}

IV. Argument

A. Summary

It is undisputed that the transactions subject to this inquiry were the result of NAREIT's desire to obtain a

^{1/} There is an apparent typographical error in the G.C. Brief which states that Nicholson and D. MacLeod met in July, 1980, instead of the correct date, July, 1979. G.C. Brief at 1.

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speaker for its annual convention and Anderson's willingness to appear as a speaker in return for a payment. Contemporaneous documents and Nicholson's affidavit support the conclusion that Nicholson and others at NAREIT participated in effecting payments to APC out of a singular need and desire to secure Anderson's appearance. See Exhibit A; Nicholson Aff. ¶¶ 3-5 and 15. The total circumstances of this case do not support a legal finding that Nicholson, in any way, was motivated by a desire to advance Anderson's candidacy for President.^{2/} The FEC should find no probable cause to believe that Nicholson violated the Act.

B. Payments of NAREIT funds were Made in Return for Anderson's Appearance and Speech.

1. Corporate Payments in Return for an Individual's Appearance or Speech are not contributions under Section 441b.

The Act specifically defines a contribution as a payment "made for the purpose of influencing" a candidate's nomination or election. 2 U.S.C. § 431(e)(1)(1976) (amended

^{2/} This case is materially distinguishable from other cases that have been before the FEC such as the "Shapp" matter which involved patterns of hidden gifts to a candidate's campaign for the purpose of circumventing contribution limits and to establish a candidate's qualification for federal matching funds. See MUR 256, In re Weinstein, et al. There has been no allegation that Nicholson or anyone else was attempting to circumvent a contribution limit or assist Anderson in qualifying for matching funds.

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1980). With respect to corporate payments, the Act prohibits contributions in connection with any federal election. 2 U.S.C. § 441b (1976). However, payments to an officer of the federal government as consideration for his appearance or speech are neither contributions under the Act, 11 C.F.R. § 100.7(b)(19)(1980), nor corporate contributions in connection with an election, 11 C.F.R. § 114.1(a)(2)(iv)(1980).

The G.C. Brief argues that corporate payments need only be "in connection with" an election in order to establish a violation of Section 441b. Ordinarily this is correct. However, payments made as consideration for an appearance or speech are not "in connection with" an election by virtue of the Commission's regulations. 11 C.F.R. § 114.1(a)(2)(iv)(1980).

The Commission has noted that payments to a candidate's campaign committee are not per se contributions. Advisory Opinion 1978-32, Fed. Elec. Camp. Fin. Guide. (CCH) ¶ 5334 (August 28, 1978).

The Act and Commission regulations do not preclude a principal (or other authorized) campaign committee of a candidate from receiving payments which are personal funds of the candidate, rather than contributions from other persons.

The Commission also stated in Advisory Opinion 1978-32 that

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all circumstances incident to the making and receipt of a gift of money, or other thing of value, are relevant on the question of whether the gift is intended as a political contribution or as an honorarium.

In this case, the circumstances surrounding the payments to APC demonstrate that Nicholson believed the payments were speaker fees.

The G.C. Brief does not dispute that the payments to APC were part of a quid pro quo. The G.C. Brief does not dispute that the payments were made as consideration for Anderson's appearance at the 1979 NAREIT Annual Convention, and that Anderson would not appear without these payments. The payments were made to APC at the direction of the speaker in accordance with representations made by Pyle to Nicholson. Nicholson Aff. ¶ 8. This is not a situation unknown to the FEC. Similar fees have been paid by corporations to a candidate's committee without violating section 441b. See Federal Election Commission v. Committee for a Constitutional Presidency, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9075 (D.D.C. 1979).

The G.C. Brief places significance on Nicholson being informed that direct payments to Anderson were not desired because Anderson had apparently reached his honorarium limit. 2 U.S.C. § 441i (1976 & Supp. III 1979). Nicholson is not an attorney nor is he familiar with the Act. Nicholson Aff. ¶ 9. Nicholson did not confer with counsel

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with regard to the payments. Id. Nicholson did ask Pyle, a person who purported to be knowledgeable about election laws, whether it was all right to make the payments and Nicholson was told that they were proper. Nicholson Aff. ¶ 10. Whether Anderson had reached an honorarium limit was not a significant fact to Nicholson.

Anderson demanded a speaker fee in return for his appearance. Nicholson reasonably relied on Pyle's representation that payment to APC was proper. Pyle's representation implied that the honorarium limit did not affect such payments when made to someone other than the speaker. Honorarium payments do not have to be paid to the speaker as a matter of law. The Act permits designated payments directed to charitable organizations. 2 U.S.C. § 441i (1976 & Supp. III 1979). Futhermore, Advisory Opinion 1978-32 and the Committee for a Constitutional Presidency case, supra, describe circumstances in which honoraria payments were or could have been made to the speaker's campaign committee.

APC's intention to submit the payments for matching funds does not alter Nicholson's underlying belief that they constituted consideration for an appearance and speech. Contrary to the argument made by the G.C. Brief, the payments were not "purposely designed not to be honoraria." G.C. Brief at 4. This assertion is rebutted by contemporaneous documents. As stated in the letter of March 17, 1980 the checks drawn

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by Nicholson of \$1,250 and \$750 were specifically designated as speaker's expenses. Letter of March 17, 1980 to Robert I. Bogin, at 8. More importantly, a letter which accompanied the \$1,250 check to D. MacLeod specifically refers to both payments as a "speaker's expense fee." Letter of August 14, 1979, from Nicholson to D. MacLeod (copy attached as Exhibit A). There is no mention of a "contribution," but there are references to the fact that NAREIT money was being expended as a fee for Anderson's appearance.

The checks and letter signed by Nicholson unambiguously describe the payments as speaker fees and expenses. The G.C. Brief fails to produce any document created by Nicholson that reveals any other purpose or intention. The G.C. Brief does not set forth any testimony from any person associated with this case and does not indicate any testimony that establishes or suggests that Nicholson harbored any motive other than a desire to secure Anderson as a speaker.

The FEC has acknowledged that the intent behind a payment is an important, if not determinative, factor in establishing whether a payment is a contribution or an exempt honorarium, even if payment is made to the speaker's campaign committee. Advisory Opinion 1978-32, supra. The Commission must focus on the evidence relating to Nicholson's intent and motive. Notwithstanding that APC may have deemed the payments as contributions (although the payments were a

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condition of Anderson's appearance), Nicholson at all times viewed the payments solely as speaker's fees. Nicholson was misled by Pyle and/or Anderson who were the only persons who benefitted from these payments. Nicholson participated in payments which he viewed solely as speaker's fees, while the speaker and APC seem to have believed that the payments were individual personal contributions.

The facts do not support a conclusion that Nicholson violated Section 441b, and, accordingly, the FEC should find no probable cause to believe that such a violation occurred.

2. Payments that are not Contributions Cannot Violate Section 441f.

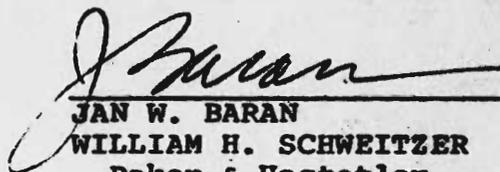
Section 441f prohibits contributions in the name of another person. For all the reasons stated above, the payments to APC do not constitute "contributions" as defined by the Act. The payments were not "for the purpose of influencing" Anderson's nomination or election. Furthermore, they were made solely as consideration for Anderson's appearance and speech and therefore constitute "honoraria." 11 C.F.R. § 110.12(b) (1980). As noted above, such payments are exempt from the definition of contribution and from the prohibition of Section 441b. 11 C.F.R. §§ 100.7(b)(19) and 114.1(a)(2)(iv) (1980). There is no statute that prohibits the payment of speaker's fees in the name of another person.

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V. Conclusion.

The FEC should reject the recommendation contained in the General Counsel's Brief and in lieu thereof find no probable cause to believe that John B. Nicholson violated 2 U.S.C. §§ 441b and 441f.

Respectfully submitted,



JAN W. BARAN
WILLIAM H. SCHWEITZER
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C.

Attorneys for Respondent
John B. Nicholson

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BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of
John B. Nicholson

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MUR 1094(80)

AFFIDAVIT

DISTRICT OF COLUMBIA)
)
)

ss:

John B. Nicholson for his affidavit deposes and
says:

1. I have personal knowledge of the facts con-
tained herein and am competent to testify thereto.

2. From March 1977 until October 1979 I was
Executive Vice President of the National Association of Real
Estate Investment Trusts, Inc. ("NAREIT"). I was the senior
staff person employed by NAREIT and worked for NAREIT's Board
of Governors and its Executive Committee.

3. Among my duties as Executive Vice President I
was required to work with NAREIT voting delegate, Donald W.
MacLeod ("D. MacLeod"), who was chairman of NAREIT's Program
Committee. The Program Committee was responsible for NAREIT's
annual conference and for obtaining a principal speaker at
such conference. I was not authorized to select a speaker
or to design a program without explicit approval by the
Program Committee Chairman.

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4. NAREIT held its 1979 annual conference in Washington, D.C. on October 4, 1979. Until late June of 1979, arrangements had been made to secure G. William Miller ("Miller") as the speaker for the conference. At that time Miller cancelled his commitment to appear and speak.

5. The services of Robert N. Pyle ("Pyle"), a Washington lobbyist, political consultant and fundraiser, were enlisted by me on behalf of NAREIT to assist the Program Committee in securing the appearance of John B. Anderson ("Anderson") as the substitute speaker. D. MacLeod first approved the selection of Anderson as speaker and Pyle as consultant.

6. Pyle told me that Anderson would be available to speak at the 1979 Annual Conference in return for a fee.

7. Pyle told me that Anderson, through his agent, asked that the fee not be paid directly to Anderson.

8. Pyle told me that Anderson, through his agent, had requested that the fee be paid through individual intermediaries to the Anderson for President Committee ("APC"). Pyle told me that this method of payment was requested because Anderson had met an honoraria limit.

9. I am not an attorney and did not consult with counsel regarding the payment of a fee to APC.

10. Pyle has represented to me that he is knowledgeable about laws relating to honoraria fees and campaign financing. I asked Pyle whether the suggested form of payment from NAREIT to APC in return for Anderson's speech was all right. Pyle told me that it was proper but may have income tax consequences.

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11. I agreed to pay Pyle a consulting fee for his services in obtaining Anderson and in arranging the details of Anderson's appearance.

12. D. MacLeod, as Chairman of the Program Committee, agreed to take responsibility for arranging payment to APC as requested by Anderson through Pyle.

13. At all times I believed that payments to APC and Pyle were fees in connection with Anderson's appearance and speech before the 1979 NAREIT Annual Conference.

14. At all times I believed that payments to APC and Pyle were proper.

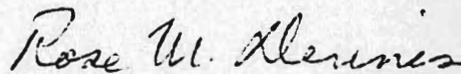
15. At no time did I have a desire to advance Anderson's candidacy for President.

16. All arrangements for Anderson's appearance were handled by Pyle on behalf of NAREIT. Neither I nor any other person associated with NAREIT to my knowledge discussed Anderson's appearance with Anderson, APC or any agent for Anderson or APC.



John B. Nicholson

Subscribed and sworn to before me this 24th day of February, 1981.



Notary Public

My commission expires: MAY 14, 1985

81040293647

JOHN B. NICHOLSON
Executive Vice President

August 14, 1975

Mr. Donald W. MacLeod
JRT Property Company, Inc.
5540 Powers Ferry Road #160
Atlanta, Ga. 30339

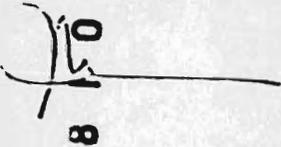
Dear Don:

Pursuant to our conversations yesterday, enclosed is a check for \$1,250.00 to cover the speaker's expense fee that you incurred. I've had the check made out to you since I'm not exactly sure to whom the check should be drawn.

I have also had a check for \$750.00 sent to Robert N. Pyle, with whom you made the arrangements and who will handle all details regarding the speaker. I believe this covers his fee and all expenses associated with Rep. Andersen's appearance, including drafting the speech, ferrying him to and from the Sheraton, etc.

I appreciate the extra trouble and time you've devoted to getting us a top-flight speaker. I especially appreciate your willingness to commit for the speaker's fee so as to nail down the engagement -- we've had several back out of the verbal commitment already.

Sincerely,



EV:me

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CONGRESSMAN JOHN B. ANDERSON
WASHINGTON, D.C. 20515

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JUN 10 AM 11:12
GENERAL COUNSEL

June 6, 1980

JUN 10 11:08

*bcc
1622*

Mr. Charles N. Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Dear Mr. Steele:

In response to your questionnaire of May 27, the following are the questions and my answers:

(1) Were you the person who made arrangements on behalf of Congressman Anderson for his appearance to speak on October 4, 1979, at the annual conference of the National Association of Real Estate Investment Trusts, Inc. (NAREIT)?

Yes.

(2) If the answer to question 1 is yes, who was the person that was making these arrangements on behalf of the NAREIT?

Bob Pyle

(3) Is this person an employee of NAREIT?

It was not clear to me at the time.

(4) If the answer to question 3 is no, what was your understanding as to this person's authority to negotiate for NAREIT?

Whatever his employee status, it was clear from our conversation that he claimed authority to negotiate for NAREIT.

(5) How many times did you talk or meet with this person in connection with this matter?

We talked on the telephone several times and met over lunch on one occasion in connection with this matter.

(6) What fee did you request on behalf of Congressman Anderson for his appearance to speak at the annual conference?

I did not request a fee because Mr. Anderson had already met, or had come very close to meeting, his honoraria limit for 1979.

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Exhibit F

Mr. Charles N. Steele
June 6, 1980
Page Two

(7) At the time the fee was to be made, had Congressman Anderson already met his honoraria limit for 1979?

Same as item 6.

(8) If the answer to question 7 is yes, what was your understanding of how Congressman Anderson was to be paid for his speech?

I suggested to Mr. Pyle, or perhaps he suggested to me initially, that in lieu of an honorarium, perhaps individuals associated with NAREIT could make contributions to the presidential campaign. In connection with the conversation about the honorarium, I told Mr. Pyle that NAREIT could not contribute to the presidential campaign and that any political contributions would have to come from individuals.

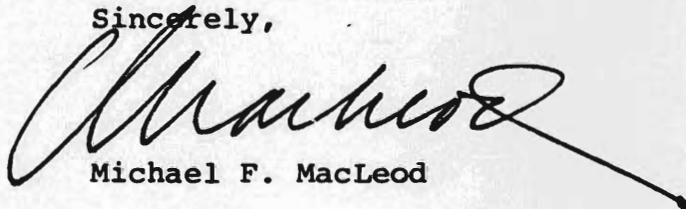
(9) How was Congressman Anderson paid for his speech?

The campaign received five checks made out to the campaign by individuals in the amount of \$250.00 each.

(10) Did you represent to the person who was arranging this speaking engagement on behalf of NAREIT that NAREIT could pay individuals to contribute to the Anderson for President Committee?

Precisely the opposite. I told Mr. Pyle that the contributions had to be voluntary and from individuals and could not come from the NAREIT treasury, either directly or indirectly.

Sincerely,



Michael F. MacLeod

MFM:jhf

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jan W. Baran, Esquire
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1094

Dear Mr. Baran:

On _____, 1981, the Commission determined there is probable cause to believe that your client committed a violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 441b(a) and 441f in connection with corporate contributions made to the Anderson for President Committee.

The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it along with the civil penalty to the Commission within ten days. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

Attachment 7

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Letter to Jan W. Baran, Esquire
Page Two
MUR 1094

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Robert I. Bogin, the attorney assigned to this matter, at 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

S A M P L E

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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RE: MUR 1094

Dear

On , 1981, the Commission found reason to believe that you had violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that permitting your name to be used to effect a contribution made by another nevertheless appears to be a violation of 2 U.S.C. § 441f and you should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Robert Bogin at 202/523-4000.

Sincerely,

Charles N. Steele
General Counsel

Attachment 9

GOC
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BAKER & HOSTETLER

ATTORNEYS AT LAW

215 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

(202) 541-1500

TELECOPIER (202) 547-0000

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3200 NATIONAL CITY CENTER
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TWX 810 421 6375

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 226-1541

IN DENVER, COLORADO
500 CAPITAL LIFE CENTER
DENVER, COLORADO 80203
(303) 691-0800

IN ORLANDO, FLORIDA
850 CNA TOWER
ORLANDO, FLORIDA 32802
(305) 241-1111

February 25, 1981

WRITER'S DIRECT DIAL NO.:

861-1572

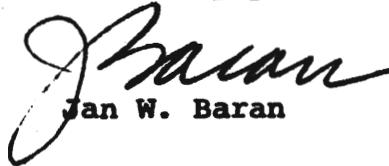
Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1094

Dear Mr. Steele:

On behalf of John B. Nicholson I hereby submit three copies of Respondent's Brief in Matter Under Review ("MUR") 1094 pursuant to 11 C.F.R. § 111.16(c) (1980). The original and ten copies have been submitted to the Commission Secretary on this date.

Sincerely yours,


Jan W. Baran

JWB:gh

cc: John B. Nicholson

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FEDERAL ELECTION COMMISSION
GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of)
) MUR 1094 (80)
John B. Nicholson)

RESPONDENT'S BRIEF

I. Introductory Statement

This brief and attached affidavit and exhibit are submitted by John B. Nicholson ("Nicholson") through his attorneys, Baker & Hostetler, in response to the General Counsel's Brief ("G.C. Brief") of January 29, 1981 regarding Matter Under Review ("MUR") 1094. The General Counsel recommends to the Federal Election Commission ("FEC" or "Commission") that it find probable cause to believe that Nicholson violated 2 U.S.C. §§ 441b and 441f. Nicholson requests that the FEC reject this recommendation and in lieu thereof find no probable cause to believe that he committed such violations.

II. Counterstatement of the Case

From March 1977 until October 1979 Nicholson was the Executive Vice President of the National Association of Real Estate Investment Trusts, Inc. ("NAREIT") and worked for NAREIT's Board of Governors and Executive Committee.

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(hereafter "Nicholson Aff."). Among his duties, Nicholson was required to assist Donald W. MacLeod ("D. MacLeod"), NAREIT's Program Committee Chairman, in making arrangements for NAREIT's annual conference including securing a speaker. Nicholson Aff. ¶ 3. NAREIT did not authorize Nicholson to select a speaker or to design a program without approval from D. MacLeod. Id.

The 1979 NAREIT Annual Conference was held in Washington, D.C., on October 4, 1979. Nicholson Aff. ¶ 4. G. William Miller was to be the speaker at this event but he cancelled his commitment in late June of 1979. Id. John B. Anderson ("Anderson") was considered as a substitute speaker. After D. MacLeod approved the choice of Anderson as a speaker, D. MacLeod authorized Nicholson to enlist the services of Robert N. Pyle ("Pyle") for purposes of securing Anderson's appearance in return for a speaker's fee. Nicholson Aff. ¶ 5.

Nicholson retained Pyle's services. Pyle handled all negotiations with Anderson and/or his agent concerning Anderson's appearance at the 1979 NAREIT Annual Conference. Nicholson never discussed with Anderson or any of Anderson's agents, including his committee, Anderson for President Committee ("APC"), any matters relating to Anderson's appearance at the 1979 NAREIT Annual Conference. Nicholson Aff. ¶ 16. Pyle told Nicholson that an agent for Anderson had requested

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that the speaker's fee not be paid to Anderson, but to APC via individual intermediaries because Anderson had met an honorarium limit. Nicholson Aff. §§ 7 and 8. Upon inquiry from Nicholson, Pyle told Nicholson that this method of payment was proper but may have income tax consequences. Nicholson Aff. § 10. Pyle had represented to Nicholson that he, Pyle, was knowledgeable about laws relating to honoraria fees and campaign financing. Id.

Nicholson agreed to pay Pyle a consulting fee for Pyle's services in arranging Anderson's appearance. Nicholson Aff. § 11. D. MacLeod agreed to participate in arranging payment to APC in accordance with Anderson's wishes as represented by Pyle. Nicholson Aff. § 12. At all times Nicholson believed that the payments to Pyle and to APC were fees in connection with Anderson's appearance and speech. Nicholson Aff. § 13. At all times Nicholson believed that the payments were proper. Nicholson Aff. § 14. At no time did Nicholson desire to advance Anderson's candidacy for President. Nicholson Aff. § 15.

Under these conditions and circumstances, Anderson appeared and gave a speech before the 1979 NAREIT Annual Conference on October 4, 1979.

III. Exceptions To Statement of Case in G.C. Brief.

Nicholson was a participant in effecting a payment from NAREIT to APC via various intermediaries. The issue

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confronting the FEC is whether this payment constituted a "contribution" as defined by the Federal Election Campaign Act, as amended ("Act"). Nicholson consistently has maintained that NAREIT funds were used solely as consideration for an appearance and speech by Anderson at the 1979 NAREIT Annual Conference. Consequently, Nicholson disputes any and all references to "contributions" contained in that portion of the G.C. Brief which purports to recite the "facts" of this case. Such characterizations constitute conclusions of law and not statements of fact.

Furthermore, the G.C. Brief erroneously states that Nicholson was informed by Pyle the person who directly negotiated with Anderson's agent for his appearance, that Anderson "could not accept a speaker's fee." G.C. Brief at 1. To the contrary, Pyle informed Nicholson that a speaker's fee was demanded in order to secure Anderson's appearance and only the method of payment was at issue. Letter of March 17, 1980, to Robert I. Bogin at 6; Nicholson Aff ¶¶ 6-8. Pyle stated that Anderson simply did not want any fee paid directly to Anderson. Nicholson Aff. ¶ 7. ^{1/}

IV. Argument

A. Summary

It is undisputed that the transactions subject to this inquiry were the result of NAREIT's desire to obtain a

^{1/} There is an apparent typographical error in the G.C. Brief which states that Nicholson and D. MacLeod met in July, 1980, instead of the correct date, July, 1979. G.C. Brief at 1.

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speaker for its annual convention and Anderson's willingness to appear as a speaker in return for a payment. Contemporaneous documents and Nicholson's affidavit support the conclusion that Nicholson and others at NAREIT participated in effecting payments to APC out of a singular need and desire to secure Anderson's appearance. See Exhibit A; Nicholson Aff. ¶¶ 3-5 and 15. The total circumstances of this case do not support a legal finding that Nicholson, in any way, was motivated by a desire to advance Anderson's candidacy for President.^{2/} The FEC should find no probable cause to believe that Nicholson violated the Act.

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B. Payments of NAREIT funds were Made in Return for Anderson's Appearance and Speech.

1. Corporate Payments in Return for an Individual's Appearance or Speech are not contributions under Section 441b.

The Act specifically defines a contribution as a payment "made for the purpose of influencing" a candidate's nomination or election. 2 U.S.C. § 431(e)(1)(1976) (amended

^{2/} This case is materially distinguishable from other cases that have been before the FEC such as the "Shapp" matter which involved patterns of hidden gifts to a candidate's campaign for the purpose of circumventing contribution limits and to establish a candidate's qualification for federal matching funds. See MUR 256, In re Weinstein, et al. There has been no allegation that Nicholson or anyone else was attempting to circumvent a contribution limit or assist Anderson in qualifying for matching funds.

1980). With respect to corporate payments, the Act prohibits contributions in connection with any federal election. 2 U.S.C. § 441b (1976). However, payments to an officer of the federal government as consideration for his appearance or speech are neither contributions under the Act, 11 C.F.R. § 100.7(b)(19)(1980), nor corporate contributions in connection with an election, 11 C.F.R. § 114.1(a)(2)(iv)(1980).

The G.C. Brief argues that corporate payments need only be "in connection with" an election in order to establish a violation of Section 441b. Ordinarily this is correct. However, payments made as consideration for an appearance or speech are not "in connection with" an election by virtue of the Commission's regulations. 11 C.F.R. § 114.1(a)(2)(iv)(1980).

The Commission has noted that payments to a candidate's campaign committee are not per se contributions. Advisory Opinion 1978-32, Fed. Elec. Camp. Fin. Guide. (CCH) ¶ 5334 (August 28, 1978).

The Act and Commission regulations do not preclude a principal (or other authorized) campaign committee of a candidate from receiving payments which are personal funds of the candidate, rather than contributions from other persons.

The Commission also stated in Advisory Opinion 1978-32 that

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all circumstances incident to the making and receipt of a gift of money, or other thing of value, are relevant on the question of whether the gift is intended as a political contribution or as an honorarium.

In this case, the circumstances surrounding the payments to APC demonstrate that Nicholson believed the payments were speaker fees.

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The G.C. Brief does not dispute that the payments to APC were part of a quid pro quo. The G.C. Brief does not dispute that the payments were made as consideration for Anderson's appearance at the 1979 NAREIT Annual Convention, and that Anderson would not appear without these payments. The payments were made to APC at the direction of the speaker in accordance with representations made by Pyle to Nicholson. Nicholson Aff. ¶ 8. This is not a situation unknown to the FEC. Similar fees have been paid by corporations to a candidate's committee without violating section 441b. See Federal Election Commission v. Committee for a Constitutional Presidency, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9075 (D.D.C. 1979).

The G.C. Brief places significance on Nicholson being informed that direct payments to Anderson were not desired because Anderson had apparently reached his honorarium limit. 2 U.S.C. § 441i (1976 & Supp. III 1979). Nicholson is not an attorney nor is he familiar with the Act. Nicholson Aff. ¶ 9. Nicholson did not confer with counsel

with regard to the payments. Id. Nicholson did ask Pyle, a person who purported to be knowledgeable about election laws, whether it was all right to make the payments and Nicholson was told that they were proper. Nicholson Aff. ¶ 10. Whether Anderson had reached an honorarium limit was not a significant fact to Nicholson.

Anderson demanded a speaker fee in return for his appearance. Nicholson reasonably relied on Pyle's representation that payment to APC was proper. Pyle's representation implied that the honorarium limit did not affect such payments when made to someone other than the speaker. Honorarium payments do not have to be paid to the speaker as a matter of law. The Act permits designated payments directed to charitable organizations. 2 U.S.C. § 441i (1976 & Supp. III 1979). Furthermore, Advisory Opinion 1978-32 and the Committee for a Constitutional Presidency case, supra, describe circumstances in which honoraria payments were or could have been made to the speaker's campaign committee.

APC's intention to submit the payments for matching funds does not alter Nicholson's underlying belief that they constituted consideration for an appearance and speech. Contrary to the argument made by the G.C. Brief, the payments were not "purposely designed not to be honoraria." G.C. Brief at 4. This assertion is rebutted by contemporaneous documents. As stated in the letter of March 17, 1980 the checks drawn

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by Nicholson of \$1,250 and \$750 were specifically designated as speaker's expenses. Letter of March 17, 1980 to Robert I. Bogin, at 8. More importantly, a letter which accompanied the \$1,250 check to D. MacLeod specifically refers to both payments as a "speaker's expense fee." Letter of August 14, 1979, from Nicholson to D. MacLeod (copy attached as Exhibit A). There is no mention of a "contribution," but there are references to the fact that NAREIT money was being expended as a fee for Anderson's appearance.

The checks and letter signed by Nicholson unambiguously describe the payments as speaker fees and expenses. The G.C. Brief fails to produce any document created by Nicholson that reveals any other purpose or intention. The G.C. Brief does not set forth any testimony from any person associated with this case and does not indicate any testimony that establishes or suggests that Nicholson harbored any motive other than a desire to secure Anderson as a speaker.

The FEC has acknowledged that the intent behind a payment is an important, if not determinative, factor in establishing whether a payment is a contribution or an exempt honorarium, even if payment is made to the speaker's campaign committee. Advisory Opinion 1978-32, supra. The Commission must focus on the evidence relating to Nicholson's intent and motive. Notwithstanding that APC may have deemed the payments as contributions (although the payments were a

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condition of Anderson's appearance), Nicholson at all times viewed the payments solely as speaker's fees. Nicholson was misled by Pyle and/or Anderson who were the only persons who benefitted from these payments. Nicholson participated in payments which he viewed solely as speaker's fees, while the speaker and APC seem to have believed that the payments were individual personal contributions.

The facts do not support a conclusion that Nicholson violated Section 441b, and, accordingly, the FEC should find no probable cause to believe that such a violation occurred.

2. Payments that are not Contributions Cannot Violate Section 441f.

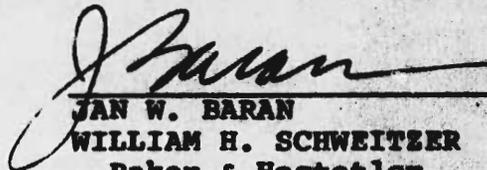
Section 441f prohibits contributions in the name of another person. For all the reasons stated above, the payments to APC do not constitute "contributions" as defined by the Act. The payments were not "for the purpose of influencing" Anderson's nomination or election. Furthermore, they were made solely as consideration for Anderson's appearance and speech and therefore constitute "honoraria." 11 C.F.R. § 110.12(b) (1980). As noted above, such payments are exempt from the definition of contribution and from the prohibition of Section 441b. 11 C.F.R. §§ 100.7(b)(19) and 114.1(a)(2)(iv) (1980). There is no statute that prohibits the payment of speaker's fees in the name of another person.

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V. Conclusion.

The FEC should reject the recommendation contained in the General Counsel's Brief and in lieu thereof find no probable cause to believe that John B. Nicholson violated 2 U.S.C. §§ 441b and 441f.

Respectfully submitted,



JAN W. BARAN
WILLIAM H. SCHWEITZER
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C.

Attorneys for Respondent
John B. Nicholson

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JOHN B. NICHOLSON
Executive Vice President

August 14, 1975

Mr. Donald W. MacLeod
LRT Property Company, Inc.
5540 Powers Ferry Road #160
Atlanta, Ga. 30339

Dear Don:

Pursuant to our conversations yesterday, enclosed is a check for \$1,250.00 to cover the speaker's expense fee that you incurred. I've had the check made out to you since I'm not exactly sure to whom the check should be drawn.

I have also had a check for \$750.00 sent to Robert N. Pyie, with whom you made the arrangements and who will handle all details regarding the speaker. I believe this covers his fee and all expenses associated with Rep. Andersen's appearance, including drafting the speech, ferrying him to and from the Sheraton, etc.

I appreciate the extra trouble and time you've devoted to getting us a flight speaker. I especially appreciate your willingness to commit to the speaker's fee so as to nail down the engagement -- we've had several back out of the verbal commitment already.

Sincerely,



EN:me

EXHIBIT A

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of
John B. Nicholson

)
)
)

MUR 1094(80)

AFFIDAVIT

DISTRICT OF COLUMBIA)

ss:

John B. Nicholson for his affidavit deposes and
says:

1. I have personal knowledge of the facts con-
tained herein and am competent to testify thereto.

2. From March 1977 until October 1979 I was
Executive Vice President of the National Association of Real
Estate Investment Trusts, Inc. ("NAREIT"). I was the senior
staff person employed by NAREIT and worked for NAREIT's Board
of Governors and its Executive Committee.

3. Among my duties as Executive Vice President I
was required to work with NAREIT voting delegate, Donald W.
MacLeod ("D. MacLeod"), who was chairman of NAREIT's Program
Committee. The Program Committee was responsible for NAREIT's
annual conference and for obtaining a principal speaker at
such conference. I was not authorized to select a speaker
or to design a program without explicit approval by the
Program Committee Chairman.

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4. NAREIT held its 1979 annual conference in Washington, D.C. on October 4, 1979. Until late June of 1979, arrangements had been made to secure G. William Miller ("Miller") as the speaker for the conference. At that time Miller cancelled his commitment to appear and speak.

5. The services of Robert N. Pyle ("Pyle"), a Washington lobbyist, political consultant and fundraiser, were enlisted by me on behalf of NAREIT to assist the Program Committee in securing the appearance of John B. Anderson ("Anderson") as the substitute speaker. D. MacLeod first approved the selection of Anderson as speaker and Pyle as consultant.

6. Pyle told me that Anderson would be available to speak at the 1979 Annual Conference in return for a fee.

7. Pyle told me that Anderson, through his agent, asked that the fee not be paid directly to Anderson.

8. Pyle told me that Anderson, through his agent, had requested that the fee be paid through individual intermediaries to the Anderson for President Committee ("APC"). Pyle told me that this method of payment was requested because Anderson had met an honoraria limit.

9. I am not an attorney and did not consult with counsel regarding the payment of a fee to APC.

10. Pyle has represented to me that he is knowledgeable about laws relating to honoraria fees and campaign financing. I asked Pyle whether the suggested form of payment from NAREIT to APC in return for Anderson's speech was all right. Pyle told me that it was proper but may have income tax consequences.

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11. I agreed to pay Pyle a consulting fee for his services in obtaining Anderson and in arranging the details of Anderson's appearance.

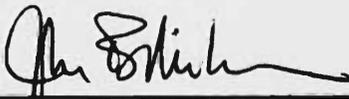
12. D. Macleod, as Chairman of the Program Committee, agreed to take responsibility for arranging payment to APC as requested by Anderson through Pyle.

13. At all times I believed that payments to APC and Pyle were fees in connection with Anderson's appearance and speech before the 1979 NAREIT Annual Conference.

14. At all times I believed that payments to APC and Pyle were proper.

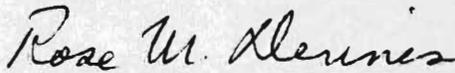
15. At no time did I have a desire to advance Anderson's candidacy for President.

16. All arrangements for Anderson's appearance were handled by Pyle on behalf of NAREIT. Neither I nor any other person associated with NAREIT to my knowledge discussed Anderson's appearance with Anderson, APC or any agent for Anderson or APC.



John B. Nicholson

Subscribed and sworn to before me this 24th day of February, 1981.



Notary Public
My commission expires: MAY 14, 1985

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BAKER, HOSTETLER, FROST & TOWERS

818 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20006

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

GCC# 4006

BAKER & HOSTETLER

ATTORNEYS AT LAW

618 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

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IN CLEVELAND, OHIO

3800 NATIONAL CITY CENTER

CLEVELAND, OHIO 44114

(216) 521-0200

TWR 510 481 8375

IN COLUMBUS, OHIO

100 EAST BROAD STREET

COLUMBUS, OHIO 43215

(614) 228-1541

February 18, 1981

WRITER'S DIRECT DIAL NO.:

861-1572

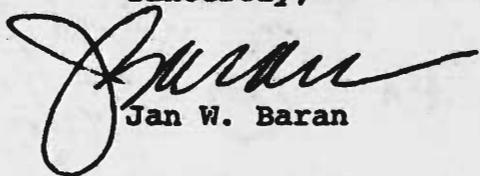
Robert I. Bogin, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1094

Dear Mr. Bogin:

This letter confirms our recent telephone conversation at which time I notified you that this office shall file a brief on behalf of our client, Mr. John B. Nicholson, in response to the General Counsel's Brief in Matter Under Review 1094. We expect to file our brief with the Secretary of the Commission on or before Monday, February 23, 1981.

Sincerely,



Jan W. Baran

JWB:gh

cc: John B. Nicholson

61040293671

BAKER & HOSTETLER

6100 CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006

8104010367

Robert I. Bogin, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

81040293673

Milk 1094 - Copier

PS Form 3811, Jan. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

Show to whom and date delivered.....

Show to whom, date and address of delivery.....

RESTRICTED DELIVERY
Show to whom and date delivered.....

RESTRICTED DELIVERY.
Show to whom, date, and address of delivery \$.....

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Jan W. Baird

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<i>948074</i>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

S. Cobb

4. DATE OF DELIVERY

2/3/81

POSTMARK

5. ADDRESS (Complete only if requested)

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CLERK'S INITIALS



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jan W. Baran
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

Re: MUR 1094

Dear Mr. Baran:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 21, 1979, found reason to believe that John B. Nicholson violated sections 441b(a) and 441f of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

Should you have any questions, please contact Robert I. Bogin at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

81040293674

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
John B. Nicholson

)
)
)

MUR 1094 (80)

GENERAL COUNSEL'S BRIEF

I. Statement of Case

81040293675
This matter was generated when representatives of the Anderson for President Committee (Committee) and the National Association of Real Estate Investment Trusts, Inc., (NAREIT) voluntarily came forth to admit a violation of the Federal Election Campaign Act of 1971, as amended. Based on the information supplied by the Committee and NAREIT, the Commission on December 21, 1979, found reason to believe that John B. Nicholson violated 2 U.S.C. § 441b and § 441f by permitting corporate money to be contributed to the Committee in the names of others.

At all times relevant to this matter, Mr. Nicholson was the Executive Vice President of NAREIT and the senior staff person hired by the Association. Mr. Nicholson worked with members of the Program Committee, including Donald W. MacLeod, president of IRT Property Company of Atlanta, Georgia, in obtaining a speaker to the 1979 NAREIT annual conference. Sometime in July, 1980, Mr. Nicholson and Mr. MacLeod decided that Representative John B. Anderson might be a possible speaker. Working through Robert N. Pyle, an intermediary, Mr. Nicholson learned that John Anderson was available to speak at the annual conference, but that he could not accept a speaker's fee since the Congressman had already met his honoraria limit for 1979. In lieu of an

honorarium, it was proposed that individuals associated with NAREIT make contributions to the presidential campaign of John Anderson. These contributions in turn could be submitted to the Commission for federal matching funds. To effect this plan, John Nicholson, in his capacity as executive vice-president of NAREIT, signed and mailed a NAREIT check for \$1,250 to Donald MacLeod with the understanding that Mr. MacLeod would use the NAREIT check to reimburse individuals contributing to the Anderson for President Committee.

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On September 11, 1979, Mr. Donald MacLeod was in Washington and during his stay met with Mr. Nicholson. Mr. Donald MacLeod asked Mr. Nicholson to be one of the five individuals who would make a \$250 payment to the Committee. Mr. Nicholson accepted that responsibility. Mr. Donald MacLeod handed four checks in the amount of \$250 each to Mr. Nicholson. Each check was payable to the Committee. The checks were drawn on the personal checking accounts of the following individuals: Mr. Donald MacLeod, Mrs. Donald MacLeod, Ms. Mary Thomas, and Mr. J. Addison Mitchell. Mr. Donald MacLeod also gave his personal check in the amount of \$250 to Mr. Nicholson which check was payable to Mr. Nicholson. Mr. Nicholson accepted this check, then made out another check drawn on his (Nicholson's) personal checking account payable to the Committee in the amount of \$250. This check and the four other individual checks were transmitted to Mr. Pyle by Mr. Nicholson and subsequently contributed to the Anderson for President Committee.

Legal Analysis

The facts of this matter are generally not in dispute. John Nicholson, in his capacity as executive vice-president of a corporation caused corporate funds to be contributed in connection with John Anderson's primary campaign.

2 U.S.C. § 441b makes it unlawful for a corporation to make a contribution in connection with any federal election or for an officer of the corporation to consent to the making of such contributions. Based on the facts of this matter, the Commission has probable cause to believe that John Nicholson as an officer of a corporation consented to the making of contributions in connection with a federal election.

It is also beyond dispute that John Nicholson accepted \$250 of NAREIT funds from Donald MacLeod for the purpose of making a contribution to John Anderson's campaign.

2 U.S.C. § 441f states that "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." Based on the facts of this matter, the Commission has probable cause to believe that John Nicholson violated 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made by NAREIT to John Anderson's campaign.

Respondent denies violating the Act based on the contention that the payments to John Anderson are not contributions as defined in the Act. 2 U.S.C. § 431(e)(1)(1977)(amended 1980).

81040293677

Respondent contends that in order to be a contribution, the payment must be "made for the purpose of influencing" a candidate's nomination or election. Since the purpose of Mr. Nicholson's involvement was to obtain Mr. Anderson as a speaker and not to influence his primary campaign, then the payments to Mr. Anderson should be regarded as honoraria and not contributions.

This contention is specious and should be summarily rejected by the Commission.

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It is incongruous for respondent to now assert that his payments to John Anderson were honoraria. Mr. Nicholson knew that John Anderson could not accept further honoraria. The payments were purposely designed not to be honoraria. Furthermore, the checks were made payable to the Anderson for President Committee. This was done not only to avoid the honoraria limits, but to have these payments matched with federal funds. Written instruments made payable to a principal campaign committee with the intention of having those payments matched with federal funds must be considered a contribution. Moreover, in the context of proving a violation of 2 U.S.C. § 441b, the Commission must demonstrate that corporate money was given "in connection with" a federal election. Mr. Nicholson knew that John Anderson was a candidate for federal office eligible to receive primary matching fund payments and that the checks made payable to the Anderson for President Committee were to be matched. Clearly, in these circumstances, the payments involved in this matter were forwarded to the Anderson for President Committee in connection with John

Anderson's campaign.

III. General Counsel's Recommendation

Find probable cause to believe that John B. Nicholson violated 2 U.S.C. §§ 441b(a) and 441f.

29 January 1981
Date


Charles N. Steele
General Counsel

Attachment
Letter to Counsel

81040293679



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/MARGARET CHANEY *mc*

DATE: JANUARY 29, 1981

SUBJECT: MUR 1094 - General Counsel's Brief,
Memorandum to the Commission
dated January 29, 1981.

The attached documents are circulated for your
information.

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ATTACHMENTS:
1) Memo; 2) Brief; 3) Letter

MEMORANDUM TO: Marjorie W. Hanson
FROM: Jane Colgrove
SUBJECT: MUR 1094

Please have the attached Memo and Brief circulated
to the Commission on an informational basis.

Thank you.

81040293601



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 JAN 29 AIO: 57

January 29, 1981

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele *CS*
General Counsel

SUBJECT: MUR 1094

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe was mailed on January 29, 1981. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments

1. Brief
2. Letter to Respondent

81040293682

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
John B. Nicholson

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MUR 1094 (80)

GENERAL COUNSEL'S BRIEF

I. Statement of Case

This matter was generated when representatives of the Anderson for President Committee (Committee) and the National Association of Real Estate Investment Trusts, Inc., (NAREIT) voluntarily came forth to admit a violation of the Federal Election Campaign Act of 1971, as amended. Based on the information supplied by the Committee and NAREIT, the Commission on December 21, 1979, found reason to believe that John B. Nicholson violated 2 U.S.C. § 441b and § 441f by permitting corporate money to be contributed to the Committee in the names of others.

At all times relevant to this matter, Mr. Nicholson was the Executive Vice President of NAREIT and the senior staff person hired by the Association. Mr. Nicholson worked with members of the Program Committee, including Donald W. MacLeod, president of IRT Property Company of Atlanta, Georgia, in obtaining a speaker to the 1979 NAREIT annual conference. Sometime in July, 1980, Mr. Nicholson and Mr. MacLeod decided that Representative John B. Anderson might be a possible speaker. Working through Robert N. Pyle, an intermediary, Mr. Nicholson learned that John Anderson was available to speak at the annual conference, but that he could not accept a speaker's fee since the Congressman had already met his honoraria limit for 1979. In lieu of an

81040293683

honorarium, it was proposed that individuals associated with NAREIT make contributions to the presidential campaign of John Anderson. These contributions in turn could be submitted to the Commission for federal matching funds. To effect this plan, John Nicholson, in his capacity as executive vice-president of NAREIT, signed and mailed a NAREIT check for \$1,250 to Donald MacLeod with the understanding that Mr. MacLeod would use the NAREIT check to reimburse individuals contributing to the Anderson for President Committee.

On September 11, 1979, Mr. Donald MacLeod was in Washington and during his stay met with Mr. Nicholson. Mr. Donald MacLeod asked Mr. Nicholson to be one of the five individuals who would make a \$250 payment to the Committee. Mr. Nicholson accepted that responsibility. Mr. Donald MacLeod handed four checks in the amount of \$250 each to Mr. Nicholson. Each check was payable to the Committee. The checks were drawn on the personal checking accounts of the following individuals: Mr. Donald MacLeod, Mrs. Donald MacLeod, Ms. Mary Thomas, and Mr. J. Addison Mitchell. Mr. Donald MacLeod also gave his personal check in the amount of \$250 to Mr. Nicholson which check was payable to Mr. Nicholson. Mr. Nicholson accepted this check, then made out another check drawn on his (Nicholson's) personal checking account payable to the Committee in the amount of \$250. This check and the four other individual checks were transmitted to Mr. Pyle by Mr. Nicholson and subsequently contributed to the Anderson for President Committee.

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Legal Analysis

The facts of this matter are generally not in dispute. John Nicholson, in his capacity as executive vice-president of a corporation caused corporate funds to be contributed in connection with John Anderson's primary campaign.

2 U.S.C. § 441b makes it unlawful for a corporation to make a contribution in connection with any federal election or for an officer of the corporation to consent to the making of such contributions. Based on the facts of this matter, the Commission has probable cause to believe that John Nicholson as an officer of a corporation consented to the making of contributions in connection with a federal election.

It is also beyond dispute that John Nicholson accepted \$250 of NAREIT funds from Donald MacLeod for the purpose of making a contribution to John Anderson's campaign.

2 U.S.C. § 441f states that "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." Based on the facts of this matter, the Commission has probable cause to believe that John Nicholson violated 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made by NAREIT to John Anderson's campaign.

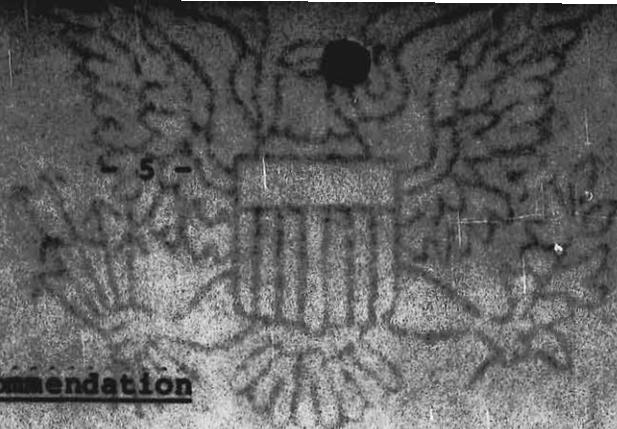
Respondent denies violating the Act based on the contention that the payments to John Anderson are not contributions as defined in the Act. 2 U.S.C. § 431(e)(1)(1977)(amended 1980).

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Respondent contends that in order to be a contribution, the payment must be "made for the purpose of influencing" a candidate's nomination or election. Since the purpose of Mr. Nicholson's involvement was to obtain Mr. Anderson as a speaker and not to influence his primary campaign, then the payments to Mr. Anderson should be regarded as honoraria and not contributions. This contention is specious and should be summarily rejected by the Commission.

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It is incongruous for respondent to now assert that his payments to John Anderson were honoraria. Mr. Nicholson knew that John Anderson could not accept further honoraria. The payments were purposely designed not to be honoraria. Furthermore, the checks were made payable to the Anderson for President Committee. This was done not only to avoid the honoraria limits, but to have these payments matched with federal funds. Written instruments made payable to a principal campaign committee with the intention of having those payments matched with federal funds must be considered a contribution. Moreover, in the context of proving a violation of 2 U.S.C. § 441b, the Commission must demonstrate that corporate money was given "in connection with" a federal election. Mr. Nicholson knew that John Anderson was a candidate for federal office eligible to receive primary matching fund payments and that the checks made payable to the Anderson for President Committee were to be matched. Clearly, in these circumstances, the payments involved in this matter were forwarded to the Anderson for President Committee in connection with John



Anderson's campaign.

III. General Counsel's Recommendation

Find probable cause to believe that John B. Nicholson violated 2 U.S.C. §§ 441b(a) and 441f.

Charles N. Steele
General Counsel

29 January 1981
Date

Attachment
Letter to Counsel

81040293687



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jan W. Baran
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

Re: MUR 1094

Dear Mr. Baran:

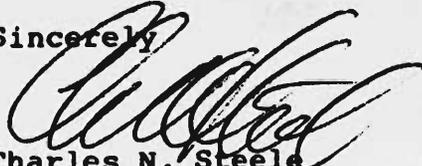
Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 21, 1979, found reason to believe that John B. Nicholson violated sections 441b(a) and 441f of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

Should you have any questions, please contact Robert I. Bogin at (202) 523-4000.

Sincerely


Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
John B. Nicholson

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MUR 1094 (80)

GENERAL COUNSEL'S BRIEF

I. Statement of Case

81040293689
This matter was generated when representatives of the Anderson for President Committee (Committee) and the National Association of Real Estate Investment Trusts, Inc., (NAREIT) voluntarily came forth to admit a violation of the Federal Election Campaign Act of 1971, as amended. Based on the information supplied by the Committee and NAREIT, the Commission on December 21, 1979, found reason to believe that John B. Nicholson violated 2 U.S.C. § 441b and § 441f by permitting corporate money to be contributed to the Committee in the names of others.

At all times relevant to this matter, Mr. Nicholson was the Executive Vice President of NAREIT and the senior staff person hired by the Association. Mr. Nicholson worked with members of the Program Committee, including Donald W. MacLeod, president of IRT Property Company of Atlanta, Georgia, in obtaining a speaker to the 1979 NAREIT annual conference. Sometime in July, 1980, Mr. Nicholson and Mr. MacLeod decided that Representative John B. Anderson might be a possible speaker. Working through Robert N. Pyle, an intermediary, Mr. Nicholson learned that John Anderson was available to speak at the annual conference, but that he could not accept a speaker's fee since the Congressman had already met his honoraria limit for 1979. In lieu of an

honorarium, it was proposed that individuals associated with NAREIT make contributions to the presidential campaign of John Anderson. These contributions in turn could be submitted to the Commission for federal matching funds. To effect this plan, John Nicholson, in his capacity as executive vice-president of NAREIT, signed and mailed a NAREIT check for \$1,250 to Donald MacLeod with the understanding that Mr. MacLeod would use the NAREIT check to reimburse individuals contributing to the Anderson for President Committee.

81040293690

On September 11, 1979, Mr. Donald MacLeod was in Washington and during his stay met with Mr. Nicholson. Mr. Donald MacLeod asked Mr. Nicholson to be one of the five individuals who would make a \$250 payment to the Committee. Mr. Nicholson accepted that responsibility. Mr. Donald MacLeod handed four checks in the amount of \$250 each to Mr. Nicholson. Each check was payable to the Committee. The checks were drawn on the personal checking accounts of the following individuals: Mr. Donald MacLeod, Mrs. Donald MacLeod, Ms. Mary Thomas, and Mr. J. Addison Mitchell. Mr. Donald MacLeod also gave his personal check in the amount of \$250 to Mr. Nicholson which check was payable to Mr. Nicholson. Mr. Nicholson accepted this check, then made out another check drawn on his (Nicholson's) personal checking account payable to the Committee in the amount of \$250. This check and the four other individual checks were transmitted to Mr. Pyle by Mr. Nicholson and subsequently contributed to the Anderson for President Committee.

Legal Analysis

The facts of this matter are generally not in dispute. John Nicholson, in his capacity as executive vice-president of a corporation caused corporate funds to be contributed in connection with John Anderson's primary campaign.

2 U.S.C. § 441b makes it unlawful for a corporation to make a contribution in connection with any federal election or for an officer of the corporation to consent to the making of such contributions. Based on the facts of this matter, the Commission has probable cause to believe that John Nicholson as an officer of a corporation consented to the making of contributions in connection with a federal election.

It is also beyond dispute that John Nicholson accepted \$250 of NAREIT funds from Donald MacLeod for the purpose of making a contribution to John Anderson's campaign.

2 U.S.C. § 441f states that "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." Based on the facts of this matter, the Commission has probable cause to believe that John Nicholson violated 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made by NAREIT to John Anderson's campaign.

Respondent denies violating the Act based on the contention that the payments to John Anderson are not contributions as defined in the Act. 2 U.S.C. § 431(e)(1)(1977)(amended 1980).

81040293691

Respondent contends that in order to be a contribution, the payment must be "made for the purpose of influencing" a candidate's nomination or election. Since the purpose of Mr. Nicholson's involvement was to obtain Mr. Anderson as a speaker and not to influence his primary campaign, then the payments to Mr. Anderson should be regarded as honoraria and not contributions.

This contention is specious and should be summarily rejected by the Commission.

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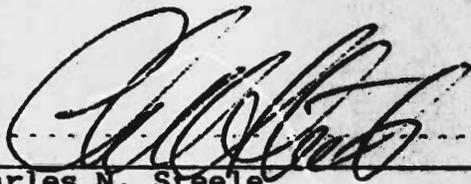
It is incongruous for respondent to now assert that his payments to John Anderson were honoraria. Mr. Nicholson knew that John Anderson could not accept further honoraria. The payments were purposely designed not to be honoraria. Furthermore, the checks were made payable to the Anderson for President Committee. This was done not only to avoid the honoraria limits, but to have these payments matched with federal funds. Written instruments made payable to a principal campaign committee with the intention of having those payments matched with federal funds must be considered a contribution. Moreover, in the context of proving a violation of 2 U.S.C. § 441b, the Commission must demonstrate that corporate money was given "in connection with" a federal election. Mr. Nicholson knew that John Anderson was a candidate for federal office eligible to receive primary matching fund payments and that the checks made payable to the Anderson for President Committee were to be matched. Clearly, in these circumstances, the payments involved in this matter were forwarded to the Anderson for President Committee in connection with John

Anderson's campaign.

III. General Counsel's Recommendation

Find probable cause to believe that John B. Nicholson violated 2 U.S.C. §§ 441b(a) and 441f.

29 January 1981
Date



Charles N. Steele
General Counsel

Attachment
Letter to Counsel

81040293693



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *mwe*
FROM: MARJORIE W. EMMONS / MARGARET CHANEY *mc*
DATE: JULY 9, 1980
SUBJECT: MUR 1094 - Interim Investigative Report dated
7-3-80; Received in OCS 7-8-80, 10:01

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 4:00, July 8, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

81040293694

July 1, 1954

MEMORANDUM TO: Marjorie W. Brown
FROM: Jane Colquhoun
SUBJECT: HR 1004

Please have the attached Internal Investigative Report on HR 1004 distributed to the Commission on a 24 hour no-objection basis.

Thank you.

6104029369

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

80 JUL 8 A10: 01

In the Matter of)
)
John Nicholson)
NAREIT)
Donald MacLeod)
Betty Jean MacLeod)
Mary Ann Thomas)
Jay Addison Mitchell)
Robert Pyle)

MUR 1094

INTERIM INVESTIGATIVE REPORT #2

On December 21, 1979, The Commission found reason to believe that all the above-named respondents except Robert Pyle violated various provisions of the Act. The Commission found reason to believe that Mr. Pyle violated the Act on May 15, 1980. In addition, The Commission authorized the sending of interrogatories to Michael MacLeod, Congressman Anderson's administrative assistant. This Office has now received responses from all respondents in this matter as well as from Michael MacLeod. Upon analyses of these responses, this Office will determine what further investigation, if any, should be undertaken.

81040293696

3 July 1980
date



Charles N. Steele
General Counsel



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 19, 1980

Jan W. Baran
Baker & Hostetler
818 Connecticut Ave., N.W.
Washington, D.C. 20006

RE: MUR 1094

Dear Mr. Baran:

Pursuant to your request, please find enclosed a copy of a letter to Donald W. MacLeod dated August 14, 1979 and signed by your client John Nicholson.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles N. Steele".

Charles N. Steele
General Counsel

Enclosure

81040293697

JOHN B. NICHOLSON
Executive Vice President

August 14, 1975

Mr. Donald W. MacLeod
JRT Property Company, Inc.
1540 Powers Ferry Road #160
Atlanta, Ga. 30339

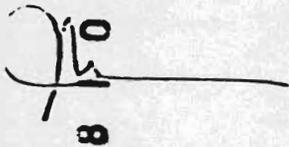
Dear Don:

Pursuant to our conversations yesterday, enclosed is a check for \$1,250.00 to cover the speaker's expense fee that you incurred. I've had the check made out to you since I'm not exactly sure to whom the check should be drawn.

I have also had a check for \$750.00 sent to Robert N. Pyle, with whom you made the arrangements and who will handle all details regarding the speaker. I believe this covers his fee and all expenses associated with Rep. Andersen's appearance, including drafting the speech, ferrying him to and from the Sheraton, etc.

I appreciate the extra trouble and time you've devoted to getting us a top-flight speaker. I especially appreciate your willingness to commit to the speaker's fee so as to nail down the engagement -- we've had several back out of the verbal commitment already.

Sincerely,



EN:me

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OFFICE OF THE GENERAL COUNSEL
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JUN 10 P 1:00
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CONGRESSMAN JOHN B. ANDERSON
WASHINGTON, D.C. 20515

June 6, 1980

Mr. Charles N. Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Dear Mr. Steele:

In response to your questionnaire of May 27, the following are the questions and my answers:

(1) Were you the person who made arrangements on behalf of Congressman Anderson for his appearance to speak on October 4, 1979, at the annual conference of the National Association of Real Estate Investment Trusts, Inc. (NAREIT)?

Yes.

(2) If the answer to question 1 is yes, who was the person that was making these arrangements on behalf of the NAREIT?

Bob Pyle

(3) Is this person an employee of NAREIT?

It was not clear to me at the time.

(4) If the answer to question 3 is no, what was your understanding as to this person's authority to negotiate for NAREIT?

Whatever his employee status, it was clear from our conversation that he claimed authority to negotiate for NAREIT.

(5) How many times did you talk or meet with this person in connection with this matter?

We talked on the telephone several times and met over lunch on one occasion in connection with this matter.

(6) What fee did you request on behalf of Congressman Anderson for his appearance to speak at the annual conference?

I did not request a fee because Mr. Anderson had already met, or had come very close to meeting, his honoraria limit for 1979.

81040293699

Mr. Charles N. Steele
June 6, 1980
Page Two

(7) At the time the fee was to be made, had Congressman Anderson already met his honoraria limit for 1979?

Same as item 6.

(8) If the answer to question 7 is yes, what was your understanding of how Congressman Anderson was to be paid for his speech?

I suggested to Mr. Pyle, or perhaps he suggested to me initially, that in lieu of an honorarium, perhaps individuals associated with NAREIT could make contributions to the presidential campaign. In connection with the conversation about the honorarium, I told Mr. Pyle that NAREIT could not contribute to the presidential campaign and that any political contributions would have to come from individuals.

(9) How was Congressman Anderson paid for his speech?

The campaign received five checks made out to the campaign by individuals in the amount of \$250.00 each.

(10) Did you represent to the person who was arranging this speaking engagement on behalf of NAREIT that NAREIT could pay individuals to contribute to the Anderson for President Committee?

Precisely the opposite. I told Mr. Pyle that the contributions had to be voluntary and from individuals and could not come from the NAREIT treasury, either directly or indirectly.

Sincerely,



Michael F. MacLeod

MFM:jhf

81040293700

81040193701



Mr. Robert Bogin, Attorney
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

REC
OFF
GENE
LAW OFFICES

2 JUN 1980

OGC
GCC# 1526

EDMUND S. CAMPBELL *
THOMAS SEARNS JACKSON *
JACQUELIN ANGLER MARSHALL
H. DONALD NETLER
BENJAMIN W. BULANT *
KENNETH WELLS PARRINSON
DANIEL WEBSTER COON *
THOMAS PENFIELD JACKSON *
ARTHUR C. ELGIN, JR. *
JAMES P. SCHALLER *
ROGER V. BARTH *
JAMES S. BRANNER
PATRICIA D. GURNE
NICHOLAS STILLWELL MCCONNELL **
ALAN R. SWENDEMAN *
PATRICK L. WOODWARD *
JAMES R. NICHOL
CLIFFORD A. WILSON *
DAWN V. WHITE *
DAVID H. COX

JACKSON, CAMPBELL & PARRINSON, P. C.

JUN 2 11 15 AM '80
SUITE 300 SOUTH
1120 20TH STREET, N. W.
WASHINGTON, D. C. 20036

(202) 457-1800

May 30, 1980

MARYLAND OFFICE
304 HUNTERFORD DRIVE
ROCKVILLE, MARYLAND 20850
(301) 340-0480

VIRGINIA OFFICE
2000 N. 18TH STREET
ARLINGTON, VIRGINIA 22201
(703) 822-1330

ROGER H. MUZZALL
COUNSEL

DIRECT DIAL NUMBER

208261

JUN 2 11:16

GENERAL COUNSEL

31040093702

Mr. Robert O. Tiernan, Chairman
Federal Election Commission
Washington, D.C. 20463

Dear Sir:

Re: MUR 1094

We represent Mr. Robert N. Pyle, to whom you directed a letter dated May 16, 1980 and received by him on May 22, 1980. This letter constitutes a formal response by Mr. Pyle. We note your letter indicates a 10 day response period while the enclosed "Description of Preliminary Procedures" allows 15 days. An inquiry of your staff was not successful in resolving this difference.

Your letter to Mr. Pyle states that,

"you received general treasury funds from the National Association of Real Estate Investment Trusts, Inc. for the purpose of contributing some of those funds to the Anderson Committee and that you deposited \$250 into the BAKEPAC account to make a \$250 contribution to the Anderson Committee."

You allege a violation of 2 U.S.C. §441 f.

Based upon our investigation to date we have determined the following:

1. In the normal course of his business activities, Mr. Pyle in August, 1979 received a fee of \$750 from the National Association of Real Estate Investment Trusts, Inc. (NAREIT) for his services in arranging for Congressman John Anderson to address a meeting of NAREIT, assisting in preparation of the speech to be delivered, preparation and dissemination of press and biographical materials, and arranging transportation for Mr. Anderson to the meeting. Such services have been provided for a fee in a similar manner by Mr. Pyle for other clients as part of his professional activities. Enclosed herewith is a copy of Mr. Pyle's bank check entry book for the account into which his business receipts are deposited. The \$750 NAREIT deposit on August 15 is clearly identified.

May 30, 1980

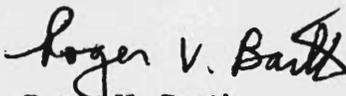
Page 2

2. Mr. Pyle did not transfer any part of his fee to BakePAC, nor has he ever personally contributed to BakePAC. The enclosed BakePAC bank statements for periods ending 8/22/79 and 9/26/79 demonstrate that no deposits at all were made during the time involved, much less a \$250 deposit from Mr. Pyle.

3. BakePAC made a \$250 contribution to the Anderson Committee by a check dated August 28, 1979 in connection with a Northern Virginia fund raising event which was in fact attended by two Independent Bakers Association employees. Attached is a copy of that check. This contribution was made upon the recommendation of Mr. Pyle, but at the direction of the Chairman of BakePAC. As you can see from the check, two signatures are needed. Mr Pyle did not have authority to determine which contributions would be made. The contribution was part of a program of giving to various presidential candidates by BakePAC during this period of time. See: 1) the above BakePAC bank statements; 2) copies of checks to the Connally and Bush campaigns and 3) a September 17, 1979 letter to BakePAC supporters from its Chairman clearly spelling out the program of giving.

If you need any further information on this matter please advise me.

Sincerely,



Roger V. Barth

RVB:sls

Enclosures

cc: Mr. Robert N. Pyle

81040293703

BAKEPAC-POLITICAL ACTION COMMITTEE OF THE
INDEPENDENT BAKERS ASSOCIATION

598

P.O. Box 3731
Washington, DC 20007

07193

August 6 1979

15-55/540

DAY TO THE ORDER OF Connally for President Committee \$ 1,000.00

One Thousand and no/100----- DOLLARS

FOR AMERICAN SECURITY BANK, N.A.

WISCONSIN AND DUMBARTON AVENUE, N.W.
WASHINGTON, D. C.

Handwritten signature

⑈000598⑈ ⑆054000551⑆23⑈863 43 316⑈ ⑆0000100000⑆

5
7
3
6
2
9
4
0
4
0
1
0

ACCOUNT NUMBER
23-86343316

NUMBER OF ENCLOSURES **3** PAGE **1**
X1700

**BAKE PAC POL ACTION COMM OF THE
 INDEPENDENT BAKERS ASSOCIATION
 P O BOX 3731
 WASHINGTON D C 20007**

- CA - CREDIT ADVISE
- CM - CREDIT MEMO
- CC - SERVICE CHARGE
- CH - CHG OF HANDLING
- UN - UNDEPOSITED FUNDS
- DM - DEBIT MEMO
- OD - OVERDRAWN
- S - INSTALLMENT LOAN
- ST - SYSTEMATIC TRANSFER
- MP - MORTGAGE PAYMENT

PERIOD BEGINNING **7/25/79**
 PERIOD ENDING **8/23/79**

BALANCE FORWARD	NO.	WITHDRAWALS AMOUNT	NO.	DEPOSITS AMOUNT	SERVICE CHARGE	STATEMENT BALANCE
385060	3	65000			00	320060

CHECKS AND OTHER CHARGES				DEPOSITS OR CREDITS		DATE	BALANCE
30000						0801	355060
15000		20000				0807	320060

STATEMENT OF ACCOUNT

61040293706

BAKEPAC-POLITICAL ACTION COMMITTEE OF THE
INDEPENDENT BAKERS ASSOCIATION

DUPLICATE

596

15-55/540

July 12 1979

PAY
TO THE
ORDER OF

George Bush for President

\$ 300.00

Three Hundred and no/100 ----- DOLLARS

FOR



AMERICAN SECURITY BANK, N.A.

WISCONSIN AND DUMBARTON AVENUES, N. W.
WASHINGTON, D. C.

✓ *Handwritten signature*

⑈000596⑈ ⑆054000551⑆23⑈863 43 316⑈

⑈0000030000⑈

3707

810402

PLEASE BE SURE TO DEDUCT CHARGES THAT AFFECT YOUR ACCOUNT

NO	DATE	ISSUED TO OR DESCRIPTION OF DEPOSIT	AMOUNT OF PAYMENT	✓	AMOUNT OF DEPOSIT	BALANCE FORWARD
	8/15	NARETT			74000	
1768	8/15	TO MASTER CARD	74000	✓		
1769	8/15	CASH	2000	✓		
	8/16	TO FOX'S			15300	
	8/16	100LSUM				
	8/16	TO 130			233200	(406804)
1771	8/16	TRUST - MINE WESSER	15908	✓		
1772	8/31	TO GRICO (P)	4329	X		
1773	8/31	TO ENVELOPES VALIUM	14427	X		
1774	8/16	TO RICK LYNCH	3231	✓		
1775	8/31	TO BARNSTON'S	9783	X		
1776	8/31	TO Am Exp.	4429	✓		
1777	8/31	TO Diners (900.0)	2935	✓		
1778	8/31	TO 11.98 TELEPHONE	50244	X		

81040293708

BAKEPAC

Post Office Box 3731, Washington, D.C. 20007 (202) 223-2225

September 17, 1979

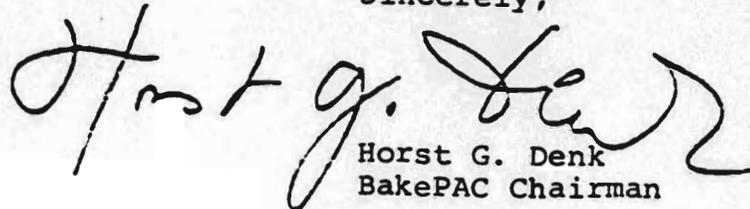
Dear BakePAC Supporter:

This is our first request for funds since last spring and we hope very much that you can make a cash contribution at this time. BakePAC, as the political action committee of the Independent Bakers Association, has continued to make campaign contributions to Senators and Congressmen who have taken key roles in supporting our positions and who support the free enterprise system in their Congressional votes.

We have also made contributions to five of the Republican Presidential candidates. We have made major contributions to Senator Howard Baker of Tennessee, the Senate Majority Leader and to former Treasury Secretary and Texas Governor John Connally. In addition, we have made smaller contributions to the campaigns of Senator Robert Dole of Kansas, Congressman John Anderson of Illinois and former UN Ambassador George Bush. We expect to make a major contribution in connection with Ronald Reagan's scheduled speech on December 5th before BakePAC in Washington. The Committee feels it is vital that our segment of the baking industry has entree and contact with these national leaders and their positions.

It is most important that we continue to have income for these needs and trust you will continue to support IBA's PAC. When sending your check please complete and return the enclosed contribution card.

Sincerely,



Horst G. Denk
BakePAC Chairman

PS: We also enclose your 1980 BakePAC company authorization which should be filled out and returned at your earliest convenience.

HGD

81040293709

BAKEPAC-POLITICAL ACTION COMMITTEE OF THE
INDEPENDENT BAKERS ASSOCIATION
P.O. Box 3731 Howard Denk, Chairman
Washington DC 20007

600

August 28 19 79

15-55/540

PAY TO THE ORDER OF Anderson for President Committee

\$ 250.00

Two Hundred Fifty and no/100-----DOLLARS

FOR AMERICAN SECURITY BANK, N.A.
WISCONSIN AND OUMSBARTON AVENUES, N. W.
WASHINGTON, D. C.

Howard Denk
James D. J.

SEP. 6 1979

⑈000600⑈ ⑆054000551⑆23⑈863 43 316⑈

⑈0000025000⑈

6104029 710

81040

LAW OFFICES

JACKSON, CAMPBELL & PARKINSON, P. C.

ONE LAFAYETTE CENTRE

SUITE 300 SOUTH

1120 20TH STREET, N. W.

WASHINGTON, D. C. 20036



Mr. Robert O. Tiernan, Chairman
Federal Election Commission
Washington, D.C. 20463

ROBERT N. PYLE
WASHINGTON REPRESENTATIVE

RECEIVED

SUITE 1000
1701 K STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONES: (202) 223-0225
(202) 224-2887
(202) 226-4228

COO 1415
MAY 21 AM 11:52

May 20, 1980

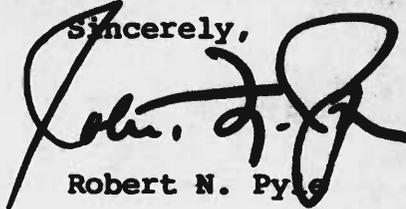
908100

Robert Bogin, Esquire
Federal Elections Commission
Washington, D. C. 20463

Dear Mr. Bogin:

With reference to MUR 1094, please be advised that I wish to be represented by counsel in this matter by Roger V. Barth and Kenneth W. Parkinson of the law firm of Jackson, Campbell and Parkinson, Suite 300 South, 1120 20th Steeet, N. W., Washington, D. C. 20036 at telephone 457-1600. I herein authorize them to receive any notifications and other communications from the Commission in connection with this matter.

Sincerely,



Robert N. Pyle

cc: Roger V. Barth

81040293712

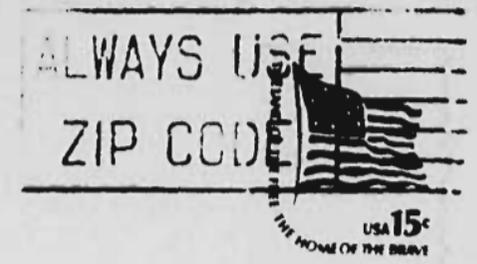
MAY 21 3:33 PM

GENERAL COUNSEL

MAILING ADDRESS: POST OFFICE BOX 3731, WASHINGTON, D.C. 20007

810402971

ROBERT N. PYLE
WASHINGTON REPRESENTATIVE
POST OFFICE BOX 3731
WASHINGTON, D.C. 20007



Mr. Robert Bogin
Federal Elections Commission
Washington, D. C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 27, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael MacLeod
Administrative Assistant
1101 Longworth House Office Building
Washington, D.C. 20515

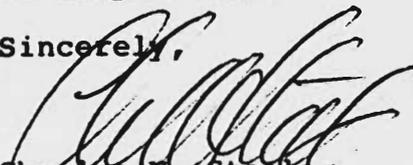
Dear Mr. MacLeod:

8 1 0 4 0 2 9 3 7 1 4
The Commission is investigating a matter concerning contributions by the National Association of Real Estate Investment Trusts, to the Anderson For President Committee which you brought to the Commission's attention at a meeting on October 31, 1979. In connection with this investigation, the Commission needs to know what arrangements and understandings you had with Robert N. Pyle with respect to Congressman Anderson's appearance and speech at NAREIT's annual conference of October 4, 1979. In order to assist in this investigation, the Commission requests that you answer the questions enclosed with this letter. The Commission would appreciate an expeditious response.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provisions of 2 U.S.C. §437g(a)(12)(A) will apply. This section of the Act prohibits the making public of any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made.

If you have any questions concerning this matter, please call Robert Bogin the attorney assigned to this matter at (202) 523-4073. Thank you for your cooperation.

Sincerely,


Charles N. Steele
General Counsel

cc: Daniel Swillinger

Enclosure

FEDERAL ELECTION COMMISSION

QUESTIONS TO BE ANSWERED BY MICHAEL MACLEOD

(1) Were you the person who made arrangements on behalf of Congressman Anderson for his appearance to speak on October 4, 1979, at the annual conference of the National Association of Real Estate Investment Trusts, Inc. (NAREIT)?

(2) If the answer to question 1 is yes, who was the person that was making these arrangements on behalf of the NAREIT?

(3) Is this person an employee of NAREIT?

(4) If the answer to question 3 is no, what was your understanding as to this person's authority to negotiate for NAREIT?

(5) How many times did you talk or meet with this person in connection with this matter?

(6) What fee did you request on behalf of Congressman Anderson for his appearance to speak at the annual conference?

(7) At the time the fee was to be made, had Congressman Anderson already meet his honoraria limit for 1979?

(8) If the answer to question 7 is yes, what was your understanding of how Congressman Anderson was to be paid for his speech?

(9) How was Congressman Anderson paid for his speech?

(10) Did you represent to the person who was arranging this speaking engagement on behalf of NAREIT that NAREIT could pay individuals to contribute to the Anderson for President Committee?

81040293715



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael MacLeod
Administrative Assistant
1101 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. MacLeod:

8 1 0 4 0 2 9 3 7 1 6
The Commission is investigating a matter concerning contributions by the National Association of Real Estate Investment Trusts, to the Anderson For President Committee which you brought to the Commission's attention at a meeting on October 31, 1979. In connection with this investigation, the Commission needs to know what arrangements and understandings you had with Robert N. Pyle with respect to Congressman Anderson's appearance and speech at NAREIT's annual conference of October 4, 1979. In order to assist in this investigation, the Commission requests that you answer the questions enclosed with this letter. The Commission would appreciate an expeditious response.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provisions of 2 U.S.C. §437g(a)(12)(A) will apply. This section of the Act prohibits the making public of any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made.

If you have any questions concerning this matter, please call Robert Bogin the attorney assigned to this matter at (202) 523-4073. Thank you for your cooperation.

Sincerely,

Charles N. Steele
General Counsel

RB
5/15/80

cc: Daniel Swillinger

Enclosure



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 16, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert N. Pyle
3255 O Street N.W.
Washington, D.C. 20007

RE: MUR 1094

Dear Mr. Pyle:

This letter is to notify you that the Federal Election Commission, in the normal course of its supervisory responsibilities has found reason to believe that you have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A summary of the possible violation is enclosed.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter within 10 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In absence of any information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred, and proceed with formal conciliation. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

81040293717

Letter to : Robert N. Pyle
Page 2
MJR 1094

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Robert Bogin, the attorney assigned to this matter at (202) 523-4073. For your information, we have attached a brief description of the Commission's procedures for handling possible violations.

Sincerely,
Robert O. Tiernan

Robert O. Tiernan
Chairman

Enclosures

Summary of Possible Violations
Procedures

81040293718

U.S. MAIL PERMIT NO. 1071 WASHINGTON, D.C. 20540

SENDER: Complete items 1, 2, and 3.
Add your address to the "RESTRICTED DELIVERY" space on reverse.

1. The following service is requested (check one):
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
Show to whom and date delivered.
 RESTRICTED DELIVERY
Show to whom, date, and address of delivery.
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Robert N. Pyle

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
194482

(Always obtain signature of addressee on back)

I have received the article:
SIGNATURE Address Authorized agent

4. DATE OF DELIVERY

5. ADDRESS (Complete only if restricted)

6. UNABLE TO DELIVER BECAUSE: (S) CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

U.S. MAIL PERMIT NO. 1071 WASHINGTON, D.C. 20540

MJR 1094 - Pyle

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE 5-16-80

MUR NO. 1094
STAFF MEMBER(S) & TEL. NO.
Robert Bcgin
(202) 523-4073

RESPONDENT Robert N. Pyle

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

Upon pursuing an investigation undertaken in the normal course of carrying out its supervisory responsibilities the Commission found reason to believe that you violated 2 U.S.C. § 441f by making a contribution to the Anderson for President Committee in the name of another.

FACTUAL BASIS AND LEGAL ANALYSIS

2 U.S.C. § 441f states that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

During an investigation into possible illegal contributions to the Anderson for President Committee, it was discovered that you received general treasury funds from the National Association of Real Estate Investment Trusts, Inc. for the purpose of contributing some of those funds to the Anderson Committee and that you deposited \$250 into the BAKEPAC account and as treasurer of BAKEPAC you caused BAKEPAC to make a \$250 contribution to the Anderson Committee.

Based on the foregoing analysis, the Federal Election Commission has found:

Reason to believe that you violated 2 U.S.C. § 441f.

31040293719

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Robert Pyle)

MUR 1094

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on May 15, 1980, the Commission decided by a vote of 6-0 to take the following actions regarding MUR 1094:

1. Find REASON TO BELIEVE that Robert N. Pyle violated 2 U.S.C. § 441f and authorize the sending of the letter of notification as attached to the General Counsel's April 15, 1980 report.
2. Approve sending the letter, as attached to the above-named report, to Michael MacLeod.

Voting for this determination were Commissioners Aikens, Friedersdorf, Harris, McGarry, Reiche, and Tiernan.

Attest:

3/15/80

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Report Signed;	5-12-80
Received in Office of the Commission Secretary:	5-12-80, 3:19
Circulated on 48 hour vote basis:	5-13-80, 11:00

81040293720



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *MWE*
FROM: MARJORIE W. EMMONS/MARGARET CHANEY *mc*
DATE: MAY 15, 1980
SUBJECT: COMMENTS REGARDING MUR 1094 - General Counsel's
Report dated 4-15-80, Signed 5-12-80

Attached is a copy of Commissioner Aikens'
vote sheet with comments regarding MUR 1094.

81040293721

ATTACHMENT:
Copy of Vote Sheet

lul



FEDERAL ELECTION COMMISSION

P 1 04

1325 K STREET N.W.
WASHINGTON, D.C. 20463

Date and Time Transmitted: 5-13-80

11:00

Commissioner FRIEDERSDORF, AIKENS, TIERNAN, MCGARRY, REICHE, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY: 5-15-80

11:00

MUR No. 1094 General Counsel's Report dated 4-15-80
S: 5-12-80

- I approve the recommendation
- I object to the recommendation

COMMENTS: Letter to Mackeod should identify
"AA to Congressman Anderson"

Date: 5-15-80 Signature: J. S. Aikens

THE OFFICE OF GENERAL COUNSEL WILL TAKE NO ACTION IN THIS MATTER UNTIL THE APPROVAL OF FOUR COMMISSIONERS IS RECEIVED. PLEASE RETURN ALL PAPERS NO LATER THAN THE DATE AND TIME SHOWN ABOVE TO THE OFFICE OF COMMISSION SECRETARY. ONE OBJECTION PLACES THE ITEM ON THE EXECUTIVE SESSION AGENDA.

81040293722





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael MacLeod
Administrative Assistant *to Congressman?*
1101 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. MacLeod:

The Commission is investigating a matter concerning contributions by the National Association of Real Estate Investment Trusts, to the Anderson For President Committee which you brought to the Commission's attention at a meeting on October 31, 1979. In connection with this investigation, the Commission needs to know what arrangements and understandings you had with Robert N. Pyle with respect to Congressman Anderson's appearance and speech at NAREIT's annual conference of October 4, 1979. In order to assist in this investigation, the Commission requests that you answer the questions enclosed with this letter. The Commission would appreciate an expeditious response.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provisions of 2 U.S.C. §437g(a)(12)(A) will apply. This section of the Act prohibits the making public of any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made.

If you have any questions concerning this matter, please call Robert Bogin the attorney assigned to this matter at (202) 523-4073. Thank you for your cooperation.

Sincerely,

Charles N. Steele
General Counsel

cc: Daniel Swillinger

Enclosure

81040293723

May 23, 1994

MEMORANDUM TO: Marjorie W. Evans
FROM: Elissa T. Carr
SUBJECT: MUR 1994

Please have the attached General Counsel's Report distributed to the Commission on a 48 hour tally basis. Thank you.

81040293724

BEFORE THE FEDERAL ELECTION COMMISSION
APRIL 15, 1980

RECEIVED

CONFIDENTIAL

In the Matter of
Robert Pyle

)
)
)

MUR 1094

80 MAY 12 P 3: 19

GENERAL COUNSEL'S REPORT

On December 21, 1979, the Commission found reason to believe that John B. Nicholson violated 2 U.S.C. § 441b and § 441f by permitting corporate money to be contributed to the Anderson for President Committee in the name of others. On March 17, 1980, this Office received a letter from the attorneys for respondent Nicholson in response to the Commission's reason to believe finding (attached). In that letter, counsel describes the role of Robert N. Pyle an acquaintance of Mr. Nicholson with respect to the payment to the Anderson for President Committee for Congressman Anderson's appearance at the National Association of Real Estate Investment Trusts, Inc., ("NAREIT") annual conference.

Quoting directly from the letter at pages 6 and 7: "Mr. Pyle said, however, that the Congressman's representative Mr. Michael MacLeod did not want this fee paid directly to the Congressman because he had already met his honoraria limit for 1979. Mr. Pyle described an alternative method for the payment of a speaker's fee which he said was satisfactory to the Congressman's representative. The proposed payment plan called for a payment by NAREIT of \$1,500 to be used by six individuals. Each individual was to make a separate \$250 payment to the Anderson for President Committee.

81040 93725

Mr. Pyle said that the balance of the \$3,000 speaker's fee would be secured by submitting the individual checks to the FEC for federal matching funds.

Mr. Nicholson asked Mr. Pyle whether payment of the speaker's fee in this fashion was permissible. Mr. Pyle responded that there may be income tax ramifications for any person who received money, but otherwise this payment plan was proper. Mr. Nicholson then asked Mr. Pyle whether he (Pyle) would accept a check from NAREIT for purposes of implementing this plan. Mr. Pyle said that he would take responsibility for effecting only one or two of the individual \$250 payments. He suggested that the other payments be made or arranged by a NAREIT member.

Upon later inquiry by Mr. Nicholson as to how Mr. Pyle had effected his individual payment to the Anderson for President Committee, Mr. Pyle responded that he made a deposit into the account of BAKEPAC, a political action committee with which Mr. Pyle is associated. He then indicated that BAKEPAC in turn had sent a payment to the Committee. A review of the reports filed by the Committee show that BAKEPAC made a \$250 contribution on September 10, 1979. A review of BAKEPAC's statement of organization shows that Robert N. Pyle is treasurer of BAKEPAC.

2 U.S.C. § 441f prohibits a person from making a contribution in the name of another person. If Mr. Pyle took NAREIT funds for the purpose of contributing any of those funds to Congressman Anderson and effected the contribution

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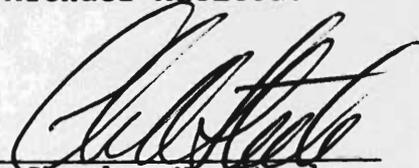
by depositing the NAREIT money into BAKEPAC and, caused BAKEPAC to contribute to the Anderson for President Committee, then Mr. Pyle violated 2 U.S.C. § 441f by making a contribution in the name of another.

Based on the information from all the respondents in this matter, the negotiators for Congressman Anderson's services were Mr. Pyle on behalf of NAREIT and Michael MacLeod on behalf of the Congressman. At this time we do not have any direct knowledge of exactly what was the understanding between these two men with respect to payment for Congressman Anderson's speech at NAREIT's annual conference. Thus, the Office of General recommends that the Commission approve the sending of the attached letter requesting Mr. MacLeod to answer questions concerning his discussions with Mr. Pyle.

Recommendation

1. Find reason to believe that Robert N. Pyle violated 2 U.S.C. § 441f and authorize the sending of letter of notification.
2. Approve the sending of letter to Michael MacLeod.

12 May 1980
Date


Charles N. Steele
General Counsel

Attachments

1. Letter from counsel of John B. Nicholson
2. Letter to Robert N. Pyle
 - a) Notification of Reason to Believe Finding
 - b) Procedures
3. Letter to Michael MacLeod

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ATTACHMENT +

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BAKER & HOSTETLER

ATTORNEYS AT LAW

616 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

(202) 297-1800

RECEIVED
FEDERAL ELECTION
COMMISSION

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IN CLEVELAND, OHIO
1988 UNION COMMERCE BUILDING
CLEVELAND, OHIO 44115
(216) 621-0200
TWX 610 421 6375

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 222-1541

IN ORLANDO, FLORIDA
850 GINA TOWER
ORLANDO, FLORIDA 32802
(305) 241-1111

WRITER'S DIRECT DIAL NO.:
(202) 857-1572

March 17, 1980

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HAND DELIVERED

Robert I. Bogin, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1094(79)

Dear Mr. Bogin:

This office represents Mr. John B. Nicholson in Matter Under Review ("MUR") 1094(79). This letter is being sent pursuant to the agreement that we reached with you and Mr. Hal Ponder, an Assistant General Counsel of the Federal Election Commission ("FEC" or "Commission"), during our recent meeting of March 7, 1980. The following factual and legal materials are submitted at this time in lieu of a deposition^{1/} of our client. This submission is intended to supplement our client's original response of January 14, 1980.

1/ On February 11, 1980, the Commission issued an order for our client's deposition. Apparently the order was not mailed until February 19, the date of the accompanying cover letter signed by Charles N. Steele, FEC General Counsel. The date for the deposition was February 25. However, this order was not received by our client until February 26. Furthermore, prior to receiving the Commission's order, he received a mailgram on February 25 (dated February 22) which informed him that the deposition had been rescheduled for February 29. A continuance was obtained by Mr. Nicholson so that he could retain counsel, which he did on February 28.

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Mr. Nicholson intends to be cooperative and forthcoming and wishes to resolve this matter expeditiously and to the Commission's satisfaction. This submission and Mr. Nicholson's letter of January 14 are good faith efforts by him to resolve the Commission's claim that a civil violation of the Federal Election Campaign Act, as amended,^{2/} ("Act") has occurred. As stated in Part II of this letter, Mr. Nicholson denies having violated any law or regulation.

We recognize that the Commission is empowered to investigate such matters and to promote compliance. 2 U.S.C. § 437d(a)(9) (1980). Therefore, we view this document and the letter of January 14 as part of the overall negotiation process which is provided in the Act and which is designed to encourage informal settlement of disputed transactions. 2 U.S.C. § 437g (1980). Furthermore, these documents do not in any way constitute a waiver of any legal or constitutional rights which may be asserted by Mr. Nicholson.

In our meeting, you and Mr. Ponder requested factual information regarding Mr. Nicholson's knowledge of five alleged contributions to the Anderson for President

^{2/} The Act as it existed at the time of the activities subject to this investigation is the applicable law in determining whether a violation has occurred. The Act was subsequently amended on January 8, 1980, by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339. Procedural matters are governed by the current version of the Act.

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Committee ("APC") which may have been made from the general treasury funds of the National Association of Real Estate Investment Trusts, Inc., ("NAREIT" or "the association") to APC in the name of other individuals, one of whom is alleged to be Mr. Nicholson. You have not identified any of the other four alleged conduits. Furthermore, the notification letter of December 26, 1979, to Mr. Nicholson signed by Charles N. Steele alleges that these putative contributions were made with Mr. Nicholson's consent. We offer the following information which may be relevant to your investigation of these transactions.

I. FACTUAL STATEMENT

A. Events Prior to the 1979 NAREIT Annual Conference

Among its activities as a national trade association, NAREIT conducts an annual conference which its members attend. In 1979 a conference was held in Washington, D.C., during October 3 through October 5. Organization of the annual conference was and has been one of the responsibilities of NAREIT's Program Committee.^{3/} The Program Committee

^{3/} Mr. Nicholson left NAREIT in October 1979 for reasons unrelated to the transactions subject to MUR 1094. The structure and operation of NAREIT depicted in this letter are such as were in effect at that time. Mr. Nicholson is unaware of any organizational changes made by NAREIT after his departure. During his tenure, NAREIT was governed by a Board of Governors whose members were elected from its

(Footnote continued)

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was headed by Mr. Donald W. MacLeod of Atlanta, Georgia, a member of NAREIT's Board of Governors and the Executive Committee. Our client was Executive Vice President of NAREIT and worked for and with the Governors and Executive Committee members, including Mr. Donald MacLeod.

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In preparing for the annual conference NAREIT normally invites a prominent public speaker who in return for his appearance is paid a speaker's fee and expenses. With respect to the 1979 annual conference, an initial commitment to speak was obtained from Mr. G. William Miller, then Chairman of the Federal Reserve Board. The commitment was procured by Mr. John A. Cervieri, Jr., who was then NAREIT's President. By late June Mr. Miller had cancelled his scheduled appearance. Thereafter it was incumbent on the Program Committee and its Chairman to obtain a speaker. In the ensuing weeks attempts were made to find a replacement for Mr. Miller. All attempts were unsuccessful, and the publication deadline for announcement of the annual conference was fast approaching.

(Footnote continued)

membership. Operation of NAREIT was in turn delegated to an Executive Committee which partially is composed of NAREIT officers (President, Secretary, Treasurer and three Vice Presidents) who are elected by the Board of Governors. The remaining members of the Executive Committee are Chairmen of topical operating committees, such as the Program Committee, and are selected by the President. Mr. Nicholson, as Executive Vice President of NAREIT, was the senior staff person hired by the association. He was not a member of NAREIT, nor was he a member of the Board of Governors, the Executive Committee or the Program Committee.

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In late July Mr. Nicholson and Mr. Donald MacLeod met in Mr. Nicholson's Washington office to discuss, among other subjects, speakers for the annual conference. During this meeting Congressman John B. Anderson was suggested as a possible speaker. Neither Mr. Nicholson nor Mr. Donald MacLeod knew Congressman Anderson. Consequently, Mr. Nicholson called Mr. Robert N. Pyle, a Washington lobbyist, political consultant and fundraiser with whom he was acquainted, to determine whether Mr. Pyle knew Congressman Anderson or any of his staff. Mr. Pyle acknowledged that he did have a contact in that office and that he would ascertain whether the Congressman was able and willing to accept the proposed speaking engagement. This telephone conversation occurred while Mr. Donald MacLeod was meeting with Mr. Nicholson.

Approximately two days later Mr. Pyle called Mr. Nicholson and informed him that Congressman Anderson would be available to speak. Mr. Nicholson told Mr. Pyle that the budget for the annual conference which had been approved by the Executive Committee and the Board of Governors provided for speaker's expenses of no more than \$2,000. Mr. Pyle then indicated that he would negotiate the fee. After this telephone conversation, Mr. Nicholson called Mr. Donald MacLeod in Atlanta and informed him that Mr. Pyle was making progress in obtaining Congressman Anderson as a speaker.

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Within a week thereafter, Mr. Pyle visited Mr. Nicholson at NAREIT's offices. It was either at this time or during the previously mentioned telephone conversations with Mr. Nicholson that Mr. Pyle first identified Mr. Michael MacLeod^{4/} as the person with whom he was dealing in negotiating Congressman Anderson's appearance. Mr. Nicholson was told by Mr. Pyle that Mr. Michael MacLeod was Congressman Anderson's administrative assistant. At no time during the period covered by this letter did Mr. Nicholson discuss these matters with Congressman Anderson, Mr. Michael MacLeod, anyone on Congressman Anderson's congressional staff, or anyone representing the Anderson for President Committee.

During Mr. Pyle's visit he informed Mr. Nicholson that a fee of \$3,000 was requested. Mr. Pyle said, however, that the Congressman's representative did not want this fee paid directly to the Congressman because he had already met his honoraria limit for 1979. Mr. Pyle described an alternative method for the payment of a speaker's fee which he said was satisfactory to the Congressman's representative. The proposed payment plan called for a payment by NAREIT of \$1,500 to be used by six individuals. Each individual was to make a separate \$250 payment to APC. Mr. Pyle said that the balance of the \$3,000 speaker's fee would be secured by

^{4/} Mr. Nicholson is not aware of any relationship between Mr. Donald MacLeod and Mr. Michael MacLeod.

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submitting the individual checks to the FEC for federal matching funds.

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Mr. Nicholson asked Mr. Pyle whether payment of the speaker's fee in this fashion was permissible. Mr. Pyle responded that there may be income tax ramifications for any person who received money, but otherwise this payment plan was proper. Mr. Nicholson then asked Mr. Pyle whether he (Pyle) would accept a check from NAREIT for purposes of implementing this plan. Mr. Pyle said that he would take responsibility for effecting only one or two of the individual \$250 payments. He suggested that the other payments be made or arranged by a NAREIT member. Mr. Nicholson accepted this suggestion. Mr. Pyle and Mr. Nicholson agreed that Mr. Pyle would receive a consulting fee for securing Congressman Anderson's appearance at the annual conference. Mr. Pyle further agreed to provide Congressman Anderson or an appropriate congressional staffer with comments and speech materials to be used by the Congressman at the time of his speech.

After the meeting, Mr. Nicholson called Mr. Donald MacLeod in Atlanta and related to him Mr. Pyle's representation that Congressman Anderson would speak at the annual conference if payment were made in the above described manner. Mr. Nicholson suggested that Mr. Donald MacLeod, as Chairman of the Program Committee, assume responsibility for implementing this plan. Mr. Donald MacLeod asked Mr. Nicholson

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whether this form of payment was legally permissible. Mr. Nicholson, relying on Mr. Pyle's advice, responded that it was lawful, although there were possible income tax consequences. Mr. Donald MacLeod then agreed to have a NAREIT check sent to him. After this telephone conversation, Mr. Nicholson signed and mailed a check for \$1,250 to Mr. Donald MacLeod, and another check for \$750 to Mr. Pyle. Both checks were designated as relating to expenses for a speaker at the annual conference.

On September 11, 1979, Mr. Donald MacLeod was in Washington and during his stay met with Mr. Nicholson. Mr. Donald MacLeod asked Mr. Nicholson to be one of the five individuals who would make a \$250 payment to APC. Mr. Nicholson accepted that responsibility. Mr. Donald MacLeod handed four checks in the amount of \$250 each to Mr. Nicholson. Each check was payable to APC. The checks were drawn on the personal checking accounts of the following individuals: Mr. Donald MacLeod, Mrs. Donald MacLeod, Ms. Mary Thomas, and Mr. J. Addison Mitchell. Mr. Donald MacLeod also gave a personal check in the amount of \$250 to Mr. Nicholson which check was payable to Mr. Nicholson. Mr. Nicholson accepted this check, then made out another check drawn on his (Nicholson's) personal checking account payable to APC in the amount of \$250. This check and the four other individual checks were transmitted to Mr. Pyle by Mr. Nicholson.

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Mr. Nicholson subsequently called Mr. Pyle and requested written confirmation of Congressman Anderson's acceptance of the speaking engagement.

In September, a letter from Congressman Anderson addressed to Mr. Pyle was received at the NAREIT offices. The letter thanked Mr. Pyle for his efforts in securing payments and confirmed that Congressman Anderson would appear at NAREIT's annual conference.

Subsequently, Mr. Nicholson encountered Mr. Pyle at a private social gathering. Mr. Nicholson inquired as to whether Mr. Pyle had made a payment to APC as originally agreed. Mr. Pyle replied that he had. Mr. Pyle also said that he and a son with whom he works had attended an Anderson fundraising event.

Several days prior to the annual conference, Mr. Nicholson was told by Mr. Ron Utt, NAREIT's Research Director, that a member of Congressman Anderson's staff had called. This staff member had requested data and materials to be used by the Congressman in his speech. Pursuant to the agreement with Mr. Pyle, Mr. Nicholson contacted Mr. Pyle and directed him to provide the congressional office with appropriate speech materials.

On October 4, 1979, Congressman Anderson was met at a Washington airport by Mr. Pyle's son. The Congressman was then driven to the site of the NAREIT annual conference.

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For the first and only time Mr. Nicholson met Congressman Anderson, who was accompanied by an aide, and escorted the Congressman to the dais. The speech was given and the Congressman departed immediately thereafter.

B. Events After the 1979 NAREIT Annual Conference

On October 10, Mr. Nicholson's relationship with NAREIT was terminated. Approximately two weeks later, Mr. Nicholson was personally told by Mr. Joseph D. Riviere, newly-elected President of NAREIT, that questions had been raised regarding the propriety of the payments. Mr. Nicholson informed Mr. Riviere that the payments were for speaker expenses and consulting fees and were legal and proper. Mr. Nicholson suggested that Mr. Riviere or another NAREIT official call Mr. Pyle who would be familiar with these payments and with the reasons for their propriety. After this exchange with Mr. Riviere, Mr. Nicholson called Mr. Pyle to inform him that the payments were being questioned, and that someone from NAREIT may be calling to discuss this. To the best of Mr. Nicholson's knowledge no one from NAREIT has ever spoken with Mr. Pyle.

Mr. Nicholson also spoke with Mr. Donald MacLeod. The latter was aware that the payments were subject to questioning at NAREIT. In the course of several telephone calls with Mr. Donald MacLeod during late October and early November, Mr. Nicholson was informed that representatives of NAREIT were going to meet with representatives of the FEC.

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During the same period, Mr. Nicholson spoke with Mr. David Bernabucci, NAREIT's Associate General Counsel,^{5/} who confirmed that a meeting with FEC staff was planned. Mr. Nicholson was not invited to this meeting and did not attend. He was told by Mr. Bernabucci that NAREIT regarded the payments as improper and wished to resolve the matter informally by voluntarily going to the FEC.

In early November, Mr. Nicholson received a call from Mr. Bernabucci who confirmed that a meeting between NAREIT officials (including himself, Mr. Donald MacLeod and Mr. Riviere) and FEC officials had taken place. Mr. Bernabucci described the meeting as a successful one in terms of the prospects of resolving the matter informally with the FEC staff. He indicated that there would be an attempt to reverse the process by which payments were made so that any doubts as to their propriety could be eliminated. Mr. Nicholson subsequently called Mr. Donald MacLeod who supported the statements made by Mr. Bernabucci in regards to the meeting at the FEC.

Shortly thereafter Mr. Nicholson received in the mail a check for \$250 from APC. Several days later Mr. Nicholson called Mr. Bernabucci. Mr. Nicholson suggested

^{5/} From late June until Mr. Nicholson's departure from NAREIT, the position of General Counsel was vacant. The former General Counsel of NAREIT, although no longer present on a day-to-day basis, maintained a relationship with the association in the capacity of outside counsel. Mr. Bernabucci was hired by Mr. Nicholson but did not commence work until shortly before our client left NAREIT.

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that the two of them have lunch on November 9. Mr. Bernabucci agreed. At the luncheon the check which Mr. Nicholson had received from APC was characterized by Mr. Bernabucci as a step in the reversal process. Mr. Bernabucci then requested a personal check from Mr. Nicholson to continue this process. Mr. Nicholson asked whether the check should be made payable to Mr. Donald MacLeod or to NAREIT. Mr. Bernabucci told him to make the check payable to NAREIT. Mr. Nicholson did so and said he was willing to make this effort in order to resolve the dispute as described by Mr. Bernabucci. Mr. Nicholson further asked whether he should retain counsel. Mr. Bernabucci said that he did not feel that counsel was necessary, but that the decision to retain counsel was up to Mr. Nicholson. The remainder of the luncheon conversation was unrelated to these matters.

Several weeks after this meeting, during the latter part of December, Mr. Bernabucci called Mr. Nicholson and advised him that the FEC would be sending a letter to Mr. Nicholson. Mr. Nicholson was told that the FEC had to formally open a file on this matter before it could be technically closed. Mr. Bernabucci noted that NAREIT wished to avoid any publicity in this regard, and that the matter could still be informally and confidentially resolved with the FEC.

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On January 4, 1980, Mr. Nicholson received a "reason to believe" letter from the Commission. He telephoned Mr. Donald MacLeod to ascertain whether he similarly had received a letter. Mr. Donald MacLeod answered that he had and that he was preparing a response, a copy of which he intended to send to NAREIT. Mr. Nicholson was under the impression that Mr. Donald MacLeod was acting without the benefit of counsel and had also been speaking with Mr. Bernabucci about these matters.

Mr. Nicholson also called Mr. Pyle to ascertain whether Mr. Pyle had received a letter from the FEC. He said that he had not. During the conversation Mr. Nicholson inquired as to how Mr. Pyle had effected his individual payment to APC. Mr. Pyle responded that he had made a deposit into the account of BAKEPAC, a political action committee with which Mr. Pyle is associated. He then indicated that BAKEPAC in turn had sent a payment to APC, but he was not specific as to how much money was handled in this fashion.

On January 8, Mr. Nicholson reached Mr. Bernabucci and informed him that the letter from the FEC had arrived. Mr. Nicholson asked what he should do next. Mr. Bernabucci told him to respond to the FEC letter. Mr. Nicholson asked whether counsel should be retained. Mr. Bernabucci reiterated his earlier opinion that such a decision was Mr. Nicholson's,

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but that the FEC letter should not be viewed as a significant impediment towards the anticipated informal resolution of this matter.

Mr. Nicholson spoke to Mr. Bernabucci again on January 11. Mr. Nicholson asked whether Mr. Bernabucci had received a copy of the response of Mr. Donald MacLeod. Mr. Bernabucci answered that he was not certain that he had. Mr. Nicholson asked whether a copy of his response similarly should be sent to NAREIT. Mr. Bernabucci answered that that was up to Mr. Nicholson. Mr. Bernabucci made the same response when he was again asked whether Mr. Nicholson should retain counsel. Mr. Nicholson then asked whether this matter was being resolved as originally intended, to which Mr. Bernabucci replied that he and Mr. Nicholson had not agreed to anything. Mr. Bernabucci then requested Mr. Nicholson to refrain from calling him any further and concluded the conversation.

On January 14, without conferring with counsel, Mr. Nicholson drafted and sent his response to the FEC. No copies were sent to anyone.

II. LEGAL STATEMENT

This letter is Mr. Nicholson's proffer to the Commission, after consultation with his own counsel, of his knowledge of the facts surrounding Congressman Anderson's appearance before the 1979 annual conference of NAREIT. Two

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fundamental points must be made. First, it was not until February 25, 1980, that he became aware of the gravity of the Commission's investigation. On that day he had his first personal contact with the Commission; he telephoned you to discuss the meaning of the mailgram which he had received that day from you. He immediately proceeded to retain counsel. Until that time his understanding of the FEC's handling of this matter was totally dependent on representations made by third parties, namely Mr. Bernabucci and Mr. Donald MacLeod. He believed that any questions relating to the payments to APC were not serious and were being resolved informally by third parties who were conferring directly with the FEC on behalf of NAREIT and apparently on behalf of Congressman Anderson as well. This is evident in his letter of January 14. Perhaps his trust was misplaced and unwarranted. He is uncertain as to what representations others may have made to the Commission with respect to the events surrounding Congressman Anderson's speech and Mr. Nicholson's role therein.

The second point concerns the substantive allegations in MUR 1094. It is our position, on the basis of the facts described above, that the payments made to APC were for one and only one purpose. The disbursement of NAREIT funds was intended solely as consideration for Congressman Anderson's appearance at the 1979 NAREIT annual conference. Mr. Nicholson

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never considered the payments to be other than a speaker's fee demanded, according to Mr. Pyle, in return for the Congressman's appearance. At no time did Mr. Nicholson believe that he was involved in any unlawful activity, and at no time did he intend these payments to constitute a political contribution. The payments were always viewed by Mr. Nicholson as part of a quid pro quo. He would not have participated in the making of these payments if Congressman Anderson had not agreed to be the conference speaker. Furthermore, Mr. Nicholson would have demanded repayment of these funds to NAREIT in the event Congressman Anderson had failed to fulfill his side of the bargain. Mr. Nicholson categorically denies having made any payment, directly or indirectly, to APC for the purpose of influencing the nomination or election of Congressman Anderson.

In regards to the manner in which these payments were made, Mr. Nicholson, and perhaps others, acted on the belief that this form of payment was requested on Congressman Anderson's behalf. Mr. Nicholson was assured specifically by Mr. Pyle as to the propriety of these payments in this form. If the facts and representations relating to the discussions between Mr. Pyle and Mr. Michael MacLeod are other than as described in this letter, Mr. Nicholson is not aware of them.

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Mr. Nicholson denies violating any provision of the Act. It is established under the Act that the underlying purpose of any payments to a candidate or committee is paramount. A payment is not a contribution unless, among other things, it is "made for the purpose of influencing" a candidate's nomination or election. 2 U.S.C. § 431(e)(1)(1977) (amended 1980); Buckley v. Valeo, 424 U.S. 1, 24 (1976); United States v. National Committee for Impeachment, 469 F.2d 1135, 1139-42 (2d Cir. 1972); ACLU v. Jennings, 366 F. Supp. 1041, 1055-57 (D.D.C. 1973) (three-judge court), vacated as moot sub nom. Staats v. ACLU, 422 U.S. 1030 (1975). On the other hand, an honorarium is a payment to an officer of the federal government as consideration for his appearance, speech or article. 11 C.F.R. § 110.12(b) (1977). Honoraria payments may be made to a political committee and would not be contributions, notwithstanding that the committee (including a speaker's principal campaign committee) may regard such receipts as contributions. Advisory Opinion 1979-32 (August 28, 1978).

Advisory Opinion 1978-32 states that payments made in conjunction with a Senator's appearance or speech may be treated as contributions if the sponsor of the event states that the payment is made for the purpose of supporting the Senator's election and not in exchange for the Senator's appearance. If the payment is contemporaneous to an oral or written representation of such a purpose, it would indicate

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that the payment was a contribution. The Commission's opinion further states that all circumstances relating to the making and receipt of such a payment are relevant in determining whether it is a contribution or an honorarium.

Mr. Nicholson has never represented, orally or in writing, that his reason for effecting payments to APC was to influence the nomination or election of Congressman Anderson. Although APC may regard these payments as contributions, Mr. Nicholson never intended these payments to be contributions. The circumstances relating to Mr. Nicholson's involvement in the making of these payments to APC demonstrate that the payments were intended as honoraria. The payments were made only after negotiations with the Congressman's representative. Those negotiations produced the conditions which had to be met before the Congressman would speak at the annual conference. Basically the Congressman wished to be paid for his appearance. NAREIT normally pays a fee to speakers at the annual conference. These payments were made from that item in NAREIT's budget which provided for speaker's fees. The checks to Mr. Donald MacLeod and Mr. Pyle were clearly designated as relating to speaker's fees. These payments were speaker's fees, i.e., honoraria.

The payment of honoraria to an officer of the federal government (including a member of the United States House of Representatives), by a corporation (including an

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incorporated trade association) does not constitute a contribution. 2 U.S.C. § 431(e)(5)(I)(1976) (amended 1980); 11 C.F.R. § 100.4(b)(10) and § 114.1(a)(2)(iv)(1977). The Commission has acknowledged that honoraria payments directed to a principal campaign committee by the speaker may constitute contributions to the committee from the candidate, rather than from the sponsor of the event at which the candidate has made a speech or appearance. Advisory Opinion 1978-32; Federal Election Commission v. Committee for a Constitutional Presidency, CCH ¶ 9074 (D.D.C. March 7, 1979). If any person has made a contribution in this case, it is not Mr. Nicholson nor NAREIT; it is Congressman Anderson.

In conclusion, Mr. Nicholson specifically denies having violated 2 U.S.C. § 441b(a) or 2 U.S.C. § 441f, because the payments made to APC were exempt honoraria and not contributions. We respectfully request that the Commission through appropriate action, find no reason to believe that Mr. Nicholson violated these sections of the Act and dismiss him as a respondent in MUR 1094.

Respectfully submitted,

Jan W. Baran

William H. Schweitzer

Attorneys for Respondent,
John B. Nicholson

II



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert N. Pyle
3255 O Street N.W.
Washington, D.C. 20007

RE: MUR 1094

Dear Mr. Pyle:

This letter is to notify you that the Federal Election Commission, in the normal course of its supervisory responsibilities has found reason to believe that you have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A summary of the possible violation is enclosed.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter within 10 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In absence of any information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred, and proceed with formal conciliation. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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Letter to : Robert N. Pyle
Page 2
MUR 1094

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Robert Bogin, the attorney assigned to this matter at (202) 523-4073. For your information, we have attached a brief description of the Commission's procedures for handling possible violations.

Sincerely,

Enclosures

Summary of Possible Violations
Procedures

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FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1094
STAFF MEMBER(S) & TEL. NO.
Robert Bogin
(202) 523-4073

RESPONDENT Robert N. Pyle

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

Upon pursuing an investigation undertaken in the normal course of carrying out its supervisory responsibilities the Commission found reason to believe that you violated 2 U.S.C. § 441f by making a contribution to the Anderson for President Committee in the name of another.

FACTUAL BASIS AND LEGAL ANALYSIS

2 U.S.C. § 441f states that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

During an investigation into possible illegal contributions to the Anderson for President Committee, it was discovered that you received general treasury funds from the National Association of Real Estate Investment Trusts, Inc. for the purpose of contributing some of those funds to the Anderson Committee and that you deposited \$250 into the BAKEPAC account and as treasurer of BAKEPAC you caused BAKEPAC to make a \$250 contribution to the Anderson Committee.

Based on the foregoing analysis, the Federal Election Commission has found:

Reason to believe that you violated 2 U.S.C. § 441f.

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III

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael MacLeod
Administrative Assistant
1101 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. MacLeod:

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The Commission is investigating a matter concerning contributions by the National Association of Real Estate Investment Trusts, to the Anderson For President Committee which you brought to the Commission's attention at a meeting on October 31, 1979. In connection with this investigation, the Commission needs to know what arrangements and understandings you had with Robert N. Pyle with respect to Congressman Anderson's appearance and speech at NAREIT's annual conference of October 4, 1979. In order to assist in this investigation, the Commission requests that you answer the questions enclosed with this letter. The Commission would appreciate an expeditious response.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provisions of 2 U.S.C. §437g(a)(12)(A) will apply. This section of the Act prohibits the making public of any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made.

If you have any questions concerning this matter, please call Robert Bogin the attorney assigned to this matter at (202) 523-4073. Thank you for your cooperation.

Sincerely,

Charles N. Steele
General Counsel

cc: Daniel Swillinger

Enclosure

FEDERAL ELECTION COMMISSION

QUESTIONS TO BE ANSWERED BY MICHAEL MACLEOD

(1) Were you the person who made arrangements on behalf of Congressman Anderson for his appearance to speak on October 4, 1979, at the annual conference of the National Association of Real Estate Investment Trusts, Inc. (NAREIT)?

(2) If the answer to question 1 is yes, who was the person that was making these arrangements on behalf of the NAREIT?

(3) Is this person an employee of NAREIT?

(4) If the answer to question 3 is no, what was your understanding as to this person's authority to negotiate for NAREIT?

(5) How many times did you talk or meet with this person in connection with this matter?

(6) What fee did you request on behalf of Congressman Anderson for his appearance to speak at the annual conference?

(7) At the time the fee was to be made, had Congressman Anderson already meet his honoraria limit for 1979?

(8) If the answer to question 7 is yes, what was your understanding of how Congressman Anderson was to be paid for his speech?

(9) How was Congressman Anderson paid for his speech?

(10) Did you represent to the person who was arranging this speaking engagement on behalf of NAREIT that NAREIT could pay individuals to contribute to the Anderson for President Committee?

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'80 APR 9 PM 12:41

GC04

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NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS, INC.

April 3, 1980

Mr. Robert Bogin, Attorney
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20043

007357

RE: MUR 1094(79)

Dear Mr. Bogin:

Pursuant to your request this date, I have enclosed two (2) xerox copies of a letter signed by John B. Andersen dated, September 21, 1979. These are copies of the letter referred to in item 4 of my response on behalf of the Association dated January 11, 1980, regarding the subject investigation.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

David C. Bernabucci
Counsel

Enclosures: 2

DCB:amh

30 APR 9 11:34

GENERAL COUNSEL

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HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

JOHN B. ANDERSON
SIXTEENTH DISTRICT
ILLINOIS

September 21, 1979

Mr. Robert Pyle
National Association of Real Estate
Investment Trusts, Inc.
1101 Seventeenth Street, N.W. Suite 700
Washington, D.C. 20036

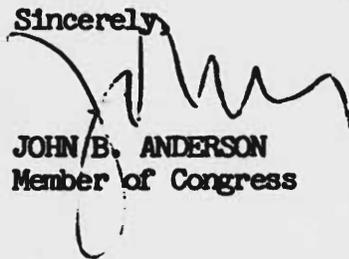
Dear Bob:

Mike MacLeod just gave me the heartwarming news about the generous contributions that you arranged for. I wanted to write right away to thank you personally for all your help. Needless to say, each of the individuals will also be receiving an acknowledgment, but I wanted you to know how grateful that I am for your role.

I look forward to seeing you on October 4.

With every best wish,

Sincerely,



JOHN B. ANDERSON
Member of Congress

JBA:jcl

postage applied

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HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

JOHN B. ANDERSON
SIXTEENTH DISTRICT
ILLINOIS

September 21, 1979

Mr. Robert Pyle
National Association of Real Estate
Investment Trusts, Inc.
1101 Seventeenth Street, N.W. Suite 700
Washington, D.C. 20036

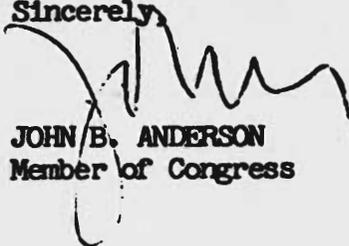
Dear Bob:

Mike MacLeod just gave me the heartwarming news about the generous contributions that you arranged for. I wanted to write right away to thank you personally for all your help. Needless to say, each of the individuals will also be receiving an acknowledgment, but I wanted you to know how grateful that I am for your role.

I look forward to seeing you on October 4.

With every best wish,

Sincerely,



JOHN B. ANDERSON
Member of Congress

JBA:jcl

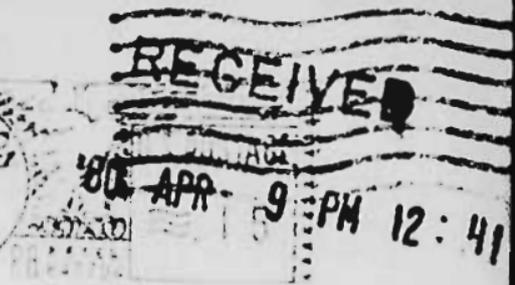
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National Association of Real Estate Investment Trusts, Inc.
1101 Seventeenth Street, N.W.
Washington, D.C.
20036

Mr. Robert Bogin, Attorney
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20043





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MWE

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS/MARGARET CHANEY *me*
DATE: APRIL 2, 1980
SUBJECT: MUR 1094 - Interim Investigative Report #1
dated 3-31-80; Received in OCS
3-31-80, 4:12

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, April 1, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

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MEMORANDUM FOR: Marjorie W. Rasmussen

FROM: William T. Carr

DATE: 1/11/54

Enclosed are the attached Martin Invest Report
submitted to the Commission. Thank you.

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 MAR 31 P 4: 12

In the Matter of)
)
John Nicholson)
National Association of Real Estate)
Investment Trusts, Inc.)
Donald MacLeod)
Betty Jean MacLeod)
Mary Ann Thomas)
Jay Addison Mitchell)

MUR 1094

INTERIM INVESTIGATIVE REPORT #1

On December 21, 1979, the Commission found reason to believe that the above-named respondents violated various provisions of the Act. On February 8, 1980, the Commission authorized the issuance of an order for the deposition of John Nicholson. After receiving this order, Mr. Nicholson requested time to retain counsel. We have met and conferred with Mr. Nicholson's counsel and have delayed the taking of the deposition pending a written response to the Commission's original reason to believe findings.

Upon receipt and analysis of this response, we will determine whether the taking of the deposition is necessary and what further investigation, if any, should be undertaken.

31 March 1980
Date



Charles N. Steele
General Counsel

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8

BAKER & HOSKETT

ATTORNEYS AT LAW

510 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20004

(202) 367-1800

RECEIVED
FEDERAL ELECTION
COMMISSION

MAR 17 PM 4:29

IN CLEVELAND, OHIO
1956 UNION COMMERCE BUILDING
CLEVELAND, OHIO 44115
(216) 621-0200
TWX 610 421 6378

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 222-1541

WRITER'S DIRECT DIAL NO.:

(202) 657-1572

March 17, 1980

IN ORLANDO, FLORIDA
850 GINA TOWER
ORLANDO, FLORIDA 32807
(305) 241-1111

RECEIVED
FEDERAL ELECTION
COMMISSION
MAR 17 9 PM 4:17
806960

HAND DELIVERED

Robert I. Bogin, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: NUR 1094(79)

Dear Mr. Bogin:

This office represents Mr. John B. Nicholson in Matter Under Review ("NUR") 1094(79). This letter is being sent pursuant to the agreement that we reached with you and Mr. Hal Ponder, an Assistant General Counsel of the Federal Election Commission ("FEC" or "Commission"), during our recent meeting of March 7, 1980. The following factual and legal materials are submitted at this time in lieu of a deposition^{1/} of our client. This submission is intended to supplement our client's original response of January 14, 1980.

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1/ On February 11, 1980, the Commission issued an order for our client's deposition. Apparently the order was not mailed until February 19, the date of the accompanying cover letter signed by Charles N. Steele, FEC General Counsel. The date for the deposition was February 25. However, this order was not received by our client until February 26. Furthermore, prior to receiving the Commission's order, he received a mailgram on February 25 (dated February 22) which informed him that the deposition had been rescheduled for February 29. A continuance was obtained by Mr. Nicholson so that he could retain counsel, which he did on February 28.

Robert I. Bogin, Esquire
March 17, 1980
Page 2

Mr. Nicholson intends to be cooperative and forthcoming and wishes to resolve this matter expeditiously and to the Commission's satisfaction. This submission and Mr. Nicholson's letter of January 14 are good faith efforts by him to resolve the Commission's claim that a civil violation of the Federal Election Campaign Act, as amended,^{2/} ("Act") has occurred. As stated in Part II of this letter, Mr. Nicholson denies having violated any law or regulation.

We recognize that the Commission is empowered to investigate such matters and to promote compliance. 2 U.S.C. § 437d(a)(9) (1980). Therefore, we view this document and the letter of January 14 as part of the overall negotiation process which is provided in the Act and which is designed to encourage informal settlement of disputed transactions. 2 U.S.C. § 437g (1980). Furthermore, these documents do not in any way constitute a waiver of any legal or constitutional rights which may be asserted by Mr. Nicholson.

In our meeting, you and Mr. Ponder requested factual information regarding Mr. Nicholson's knowledge of five alleged contributions to the Anderson for President

^{2/} The Act as it existed at the time of the activities subject to this investigation is the applicable law in determining whether a violation has occurred. The Act was subsequently amended on January 8, 1980, by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339. Procedural matters are governed by the current version of the Act.

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Committee ("APC") which may have been made from the general treasury funds of the National Association of Real Estate Investment Trusts, Inc., ("NAREIT" or "the association") to APC in the name of other individuals, one of whom is alleged to be Mr. Nicholson. You have not identified any of the other four alleged conduits. Furthermore, the notification letter of December 26, 1979, to Mr. Nicholson signed by Charles N. Steele alleges that these putative contributions were made with Mr. Nicholson's consent. We offer the following information which may be relevant to your investigation of these transactions.

I. FACTUAL STATEMENT

A. Events Prior to the 1979 NAREIT Annual Conference

Among its activities as a national trade association, NAREIT conducts an annual conference which its members attend. In 1979 a conference was held in Washington, D.C., during October 3 through October 5. Organization of the annual conference was and has been one of the responsibilities of NAREIT's Program Committee.^{3/} The Program Committee

^{3/} Mr. Nicholson left NAREIT in October 1979 for reasons unrelated to the transactions subject to MUR 1094. The structure and operation of NAREIT depicted in this letter are such as were in effect at that time. Mr. Nicholson is unaware of any organizational changes made by NAREIT after his departure. During his tenure, NAREIT was governed by a Board of Governors whose members were elected from its

(Footnote continued)

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Page 4

was headed by Mr. Donald W. MacLeod of Atlanta, Georgia, a member of NAREIT's Board of Governors and the Executive Committee. Our client was Executive Vice President of NAREIT and worked for and with the Governors and Executive Committee members, including Mr. Donald MacLeod.

In preparing for the annual conference NAREIT normally invites a prominent public speaker who in return for his appearance is paid a speaker's fee and expenses. With respect to the 1979 annual conference, an initial commitment to speak was obtained from Mr. G. William Miller, then Chairman of the Federal Reserve Board. The commitment was procured by Mr. John A. Cervieri, Jr., who was then NAREIT's President. By late June Mr. Miller had cancelled his scheduled appearance. Thereafter it was incumbent on the Program Committee and its Chairman to obtain a speaker. In the ensuing weeks attempts were made to find a replacement for Mr. Miller. All attempts were unsuccessful, and the publication deadline for announcement of the annual conference was fast approaching.

(Footnote continued)

membership. Operation of NAREIT was in turn delegated to an Executive Committee which partially is composed of NAREIT officers (President, Secretary, Treasurer and three Vice Presidents) who are elected by the Board of Governors. The remaining members of the Executive Committee are Chairmen of topical operating committees, such as the Program Committee, and are selected by the President. Mr. Nicholson, as Executive Vice President of NAREIT, was the senior staff person hired by the association. He was not a member of NAREIT, nor was he a member of the Board of Governors, the Executive Committee or the Program Committee.

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In late July Mr. Nicholson and Mr. Donald MacLeod met in Mr. Nicholson's Washington office to discuss, among other subjects, speakers for the annual conference. During this meeting Congressman John B. Anderson was suggested as a possible speaker. Neither Mr. Nicholson nor Mr. Donald MacLeod knew Congressman Anderson. Consequently, Mr. Nicholson called Mr. Robert N. Pyle, a Washington lobbyist, political consultant and fundraiser with whom he was acquainted, to determine whether Mr. Pyle knew Congressman Anderson or any of his staff. Mr. Pyle acknowledged that he did have a contact in that office and that he would ascertain whether the Congressman was able and willing to accept the proposed speaking engagement. This telephone conversation occurred while Mr. Donald MacLeod was meeting with Mr. Nicholson.

Approximately two days later Mr. Pyle called Mr. Nicholson and informed him that Congressman Anderson would be available to speak. Mr. Nicholson told Mr. Pyle that the budget for the annual conference which had been approved by the Executive Committee and the Board of Governors provided for speaker's expenses of no more than \$2,000. Mr. Pyle then indicated that he would negotiate the fee. After this telephone conversation, Mr. Nicholson called Mr. Donald MacLeod in Atlanta and informed him that Mr. Pyle was making progress in obtaining Congressman Anderson as a speaker.

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March 17, 1980
Page 6

Within a week thereafter, Mr. Pyle visited Mr. Nicholson at NAREIT's offices. It was either at this time or during the previously mentioned telephone conversations with Mr. Nicholson that Mr. Pyle first identified Mr. Michael MacLeod^{4/} as the person with whom he was dealing in negotiating Congressman Anderson's appearance. Mr. Nicholson was told by Mr. Pyle that Mr. Michael MacLeod was Congressman Anderson's administrative assistant. At no time during the period covered by this letter did Mr. Nicholson discuss these matters with Congressman Anderson, Mr. Michael MacLeod, anyone on Congressman Anderson's congressional staff, or anyone representing the Anderson for President Committee.

During Mr. Pyle's visit he informed Mr. Nicholson that a fee of \$3,000 was requested. Mr. Pyle said, however, that the Congressman's representative did not want this fee paid directly to the Congressman because he had already met his honoraria limit for 1979. Mr. Pyle described an alternative method for the payment of a speaker's fee which he said was satisfactory to the Congressman's representative. The proposed payment plan called for a payment by NAREIT of \$1,500 to be used by six individuals. Each individual was to make a separate \$250 payment to APC. Mr. Pyle said that the balance of the \$3,000 speaker's fee would be secured by

^{4/} Mr. Nicholson is not aware of any relationship between Mr. Donald MacLeod and Mr. Michael MacLeod.

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submitting the individual checks to the FEC for federal matching funds.

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Mr. Nicholson asked Mr. Pyle whether payment of the speaker's fee in this fashion was permissible. Mr. Pyle responded that there may be income tax ramifications for any person who received money, but otherwise this payment plan was proper. Mr. Nicholson then asked Mr. Pyle whether he (Pyle) would accept a check from NAREIT for purposes of implementing this plan. Mr. Pyle said that he would take responsibility for effecting only one or two of the individual \$250 payments. He suggested that the other payments be made or arranged by a NAREIT member. Mr. Nicholson accepted this suggestion. Mr. Pyle and Mr. Nicholson agreed that Mr. Pyle would receive a consulting fee for securing Congressman Anderson's appearance at the annual conference. Mr. Pyle further agreed to provide Congressman Anderson or an appropriate congressional staffer with comments and speech materials to be used by the Congressman at the time of his speech.

After the meeting, Mr. Nicholson called Mr. Donald MacLeod in Atlanta and related to him Mr. Pyle's representation that Congressman Anderson would speak at the annual conference if payment were made in the above described manner. Mr. Nicholson suggested that Mr. Donald MacLeod, as Chairman of the Program Committee, assume responsibility for implementing this plan. Mr. Donald MacLeod asked Mr. Nicholson

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March 17, 1980
Page 8

whether this form of payment was legally permissible. Mr. Nicholson, relying on Mr. Pyle's advice, responded that it was lawful, although there were possible income tax consequences. Mr. Donald MacLeod then agreed to have a NAREIT check sent to him. After this telephone conversation, Mr. Nicholson signed and mailed a check for \$1,250 to Mr. Donald MacLeod, and another check for \$750 to Mr. Pyle. Both checks were designated as relating to expenses for a speaker at the annual conference.

On September 11, 1979, Mr. Donald MacLeod was in Washington and during his stay met with Mr. Nicholson. Mr. Donald MacLeod asked Mr. Nicholson to be one of the five individuals who would make a \$250 payment to APC. Mr. Nicholson accepted that responsibility. Mr. Donald MacLeod handed four checks in the amount of \$250 each to Mr. Nicholson. Each check was payable to APC. The checks were drawn on the personal checking accounts of the following individuals: Mr. Donald MacLeod, Mrs. Donald MacLeod, Ms. Mary Thomas, and Mr. J. Addison Mitchell. Mr. Donald MacLeod also gave a personal check in the amount of \$250 to Mr. Nicholson which check was payable to Mr. Nicholson. Mr. Nicholson accepted this check, then made out another check drawn on his (Nicholson's) personal checking account payable to APC in the amount of \$250. This check and the four other individual checks were transmitted to Mr. Pyle by Mr. Nicholson.

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Mr. Nicholson subsequently called Mr. Pyle and requested written confirmation of Congressman Anderson's acceptance of the speaking engagement.

In September, a letter from Congressman Anderson addressed to Mr. Pyle was received at the NAREIT offices. The letter thanked Mr. Pyle for his efforts in securing payments and confirmed that Congressman Anderson would appear at NAREIT's annual conference.

Subsequently, Mr. Nicholson encountered Mr. Pyle at a private social gathering. Mr. Nicholson inquired as to whether Mr. Pyle had made a payment to APC as originally agreed. Mr. Pyle replied that he had. Mr. Pyle also said that he and a son with whom he works had attended an Anderson fundraising event.

Several days prior to the annual conference, Mr. Nicholson was told by Mr. Ron Utt, NAREIT's Research Director, that a member of Congressman Anderson's staff had called. This staff member had requested data and materials to be used by the Congressman in his speech. Pursuant to the agreement with Mr. Pyle, Mr. Nicholson contacted Mr. Pyle and directed him to provide the congressional office with appropriate speech materials.

On October 4, 1979, Congressman Anderson was met at a Washington airport by Mr. Pyle's son. The Congressman was then driven to the site of the NAREIT annual conference.

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For the first and only time Mr. Nicholson met Congressman Anderson, who was accompanied by an aide, and escorted the Congressman to the dais. The speech was given and the Congressman departed immediately thereafter.

B. Events After the 1979 NAREIT Annual Conference

On October 10, Mr. Nicholson's relationship with NAREIT was terminated. Approximately two weeks later, Mr. Nicholson was personally told by Mr. Joseph D. Riviere, newly-elected President of NAREIT, that questions had been raised regarding the propriety of the payments. Mr. Nicholson informed Mr. Riviere that the payments were for speaker expenses and consulting fees and were legal and proper. Mr. Nicholson suggested that Mr. Riviere or another NAREIT official call Mr. Pyle who would be familiar with these payments and with the reasons for their propriety. After this exchange with Mr. Riviere, Mr. Nicholson called Mr. Pyle to inform him that the payments were being questioned, and that someone from NAREIT may be calling to discuss this. To the best of Mr. Nicholson's knowledge no one from NAREIT has ever spoken with Mr. Pyle.

Mr. Nicholson also spoke with Mr. Donald MacLeod. The latter was aware that the payments were subject to questioning at NAREIT. In the course of several telephone calls with Mr. Donald MacLeod during late October and early November, Mr. Nicholson was informed that representatives of NAREIT were going to meet with representatives of the FEC.

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Page 11

During the same period, Mr. Nicholson spoke with Mr. David Bernabucci, NAREIT's Associate General Counsel,^{5/} who confirmed that a meeting with FEC staff was planned. Mr. Nicholson was not invited to this meeting and did not attend. He was told by Mr. Bernabucci that NAREIT regarded the payments as improper and wished to resolve the matter informally by voluntarily going to the FEC.

In early November, Mr. Nicholson received a call from Mr. Bernabucci who confirmed that a meeting between NAREIT officials (including himself, Mr. Donald MacLeod and Mr. Riviere) and FEC officials had taken place. Mr. Bernabucci described the meeting as a successful one in terms of the prospects of resolving the matter informally with the FEC staff. He indicated that there would be an attempt to reverse the process by which payments were made so that any doubts as to their propriety could be eliminated. Mr. Nicholson subsequently called Mr. Donald MacLeod who supported the statements made by Mr. Bernabucci in regards to the meeting at the FEC.

Shortly thereafter Mr. Nicholson received in the mail a check for \$250 from APC. Several days later Mr. Nicholson called Mr. Bernabucci. Mr. Nicholson suggested

^{5/} From late June until Mr. Nicholson's departure from NAREIT, the position of General Counsel was vacant. The former General Counsel of NAREIT, although no longer present on a day-to-day basis, maintained a relationship with the association in the capacity of outside counsel. Mr. Bernabucci was hired by Mr. Nicholson but did not commence work until shortly before our client left NAREIT.

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Robert I. Bogin, Esquire
March 17, 1980
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that the two of them have lunch on November 9. Mr. Bernabucci agreed. At the luncheon the check which Mr. Nicholson had received from APC was characterized by Mr. Bernabucci as a step in the reversal process. Mr. Bernabucci then requested a personal check from Mr. Nicholson to continue this process. Mr. Nicholson asked whether the check should be made payable to Mr. Donald MacLeod or to NAREIT. Mr. Bernabucci told him to make the check payable to NAREIT. Mr. Nicholson did so and said he was willing to make this effort in order to resolve the dispute as described by Mr. Bernabucci. Mr. Nicholson further asked whether he should retain counsel. Mr. Bernabucci said that he did not feel that counsel was necessary, but that the decision to retain counsel was up to Mr. Nicholson. The remainder of the luncheon conversation was unrelated to these matters.

Several weeks after this meeting, during the latter part of December, Mr. Bernabucci called Mr. Nicholson and advised him that the FEC would be sending a letter to Mr. Nicholson. Mr. Nicholson was told that the FEC had to formally open a file on this matter before it could be technically closed. Mr. Bernabucci noted that NAREIT wished to avoid any publicity in this regard, and that the matter could still be informally and confidentially resolved with the FEC.

Robert F. Bogin, Esquire
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Page 13

On January 4, 1980, Mr. Nicholson received a "reason to believe" letter from the Commission. He telephoned Mr. Donald MacLeod to ascertain whether he similarly had received a letter. Mr. Donald MacLeod answered that he had and that he was preparing a response, a copy of which he intended to send to NAREIT. Mr. Nicholson was under the impression that Mr. Donald MacLeod was acting without the benefit of counsel and had also been speaking with Mr. Bernabucci about these matters.

Mr. Nicholson also called Mr. Pyle to ascertain whether Mr. Pyle had received a letter from the FEC. He said that he had not. During the conversation Mr. Nicholson inquired as to how Mr. Pyle had effected his individual payment to APC. Mr. Pyle responded that he had made a deposit into the account of BAKEPAC, a political action committee with which Mr. Pyle is associated. He then indicated that BAKEPAC in turn had sent a payment to APC, but he was not specific as to how much money was handled in this fashion.

On January 8, Mr. Nicholson reached Mr. Bernabucci and informed him that the letter from the FEC had arrived. Mr. Nicholson asked what he should do next. Mr. Bernabucci told him to respond to the FEC letter. Mr. Nicholson asked whether counsel should be retained. Mr. Bernabucci reiterated his earlier opinion that such a decision was Mr. Nicholson's,

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Robert I. Bogin, Esquire
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Page 14

but that the FEC letter should not be viewed as a significant impediment towards the anticipated informal resolution of this matter.

Mr. Nicholson spoke to Mr. Bernabucci again on January 11. Mr. Nicholson asked whether Mr. Bernabucci had received a copy of the response of Mr. Donald MacLeod. Mr. Bernabucci answered that he was not certain that he had. Mr. Nicholson asked whether a copy of his response similarly should be sent to NAREIT. Mr. Bernabucci answered that that was up to Mr. Nicholson. Mr. Bernabucci made the same response when he was again asked whether Mr. Nicholson should retain counsel. Mr. Nicholson then asked whether this matter was being resolved as originally intended, to which Mr. Bernabucci replied that he and Mr. Nicholson had not agreed to anything. Mr. Bernabucci then requested Mr. Nicholson to refrain from calling him any further and concluded the conversation.

On January 14, without conferring with counsel, Mr. Nicholson drafted and sent his response to the FEC. No copies were sent to anyone.

II. LEGAL STATEMENT

This letter is Mr. Nicholson's proffer to the Commission, after consultation with his own counsel, of his knowledge of the facts surrounding Congressman Anderson's appearance before the 1979 annual conference of NAREIT. Two

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Robert I. Bogin, Esquire
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fundamental points must be made. First, it was not until February 25, 1980, that he became aware of the gravity of the Commission's investigation. On that day he had his first personal contact with the Commission; he telephoned you to discuss the meaning of the mailgram which he had received that day from you. He immediately proceeded to retain counsel. Until that time his understanding of the FEC's handling of this matter was totally dependent on representations made by third parties, namely Mr. Bernabucci and Mr. Donald MacLeod. He believed that any questions relating to the payments to APC were not serious and were being resolved informally by third parties who were conferring directly with the FEC on behalf of NAREIT and apparently on behalf of Congressman Anderson as well. This is evident in his letter of January 14. Perhaps his trust was misplaced and unwarranted. He is uncertain as to what representations others may have made to the Commission with respect to the events surrounding Congressman Anderson's speech and Mr. Nicholson's role therein.

The second point concerns the substantive allegations in MUR 1094. It is our position, on the basis of the facts described above, that the payments made to APC were for one and only one purpose. The disbursement of NAREIT funds was intended solely as consideration for Congressman Anderson's appearance at the 1979 NAREIT annual conference. Mr. Nicholson

Robert I. Bogia, Esquire
March 17, 1980
Page 16

never considered the payments to be other than a speaker's fee demanded, according to Mr. Pyle, in return for the Congressman's appearance. At no time did Mr. Nicholson believe that he was involved in any unlawful activity, and at no time did he intend these payments to constitute a political contribution. The payments were always viewed by Mr. Nicholson as part of a quid pro quo. He would not have participated in the making of these payments if Congressman Anderson had not agreed to be the conference speaker. Furthermore, Mr. Nicholson would have demanded repayment of these funds to NAREIT in the event Congressman Anderson had failed to fulfill his side of the bargain. Mr. Nicholson categorically denies having made any payment, directly or indirectly, to APC for the purpose of influencing the nomination or election of Congressman Anderson.

In regards to the manner in which these payments were made, Mr. Nicholson, and perhaps others, acted on the belief that this form of payment was requested on Congressman Anderson's behalf. Mr. Nicholson was assured specifically by Mr. Pyle as to the propriety of these payments in this form. If the facts and representations relating to the discussions between Mr. Pyle and Mr. Michael MacLeod are other than as described in this letter, Mr. Nicholson is not aware of them.

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Robert I. Bogin, Esquire
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Mr. Nicholson denies violating any provision of the Act. It is established under the Act that the underlying purpose of any payments to a candidate or committee is paramount. A payment is not a contribution unless, among other things, it is "made for the purpose of influencing" a candidate's nomination or election. 2 U.S.C. § 431(e)(1)(1977) (amended 1980); Buckley v. Valeo, 424 U.S. 1, 24 (1976); United States v. National Committee for Impeachment, 469 F.2d 1135, 1139-42 (2d Cir. 1972); ACLU v. Jennings, 366 F. Supp. 1041, 1055-57 (D.D.C. 1973) (three-judge court), vacated as moot sub nom. Staats v. ACLU, 422 U.S. 1030 (1975). On the other hand, an honorarium is a payment to an officer of the federal government as consideration for his appearance, speech or article. 11 C.F.R. § 110.12(b) (1977). Honoraria payments may be made to a political committee and would not be contributions, notwithstanding that the committee (including a speaker's principal campaign committee) may regard such receipts as contributions. Advisory Opinion 1979-32 (August 28, 1978).

Advisory Opinion 1978-32 states that payments made in conjunction with a Senator's appearance or speech may be treated as contributions if the sponsor of the event states that the payment is made for the purpose of supporting the Senator's election and not in exchange for the Senator's appearance. If the payment is contemporaneous to an oral or written representation of such a purpose, it would indicate

Robert I. Bogin, Esquire
March 17, 1980
Page 18

that the payment was a contribution. The Commission's opinion further states that all circumstances relating to the making and receipt of such a payment are relevant in determining whether it is a contribution or an honorarium.

Mr. Nicholson has never represented, orally or in writing, that his reason for effecting payments to APC was to influence the nomination or election of Congressman Anderson. Although APC may regard these payments as contributions, Mr. Nicholson never intended these payments to be contributions. The circumstances relating to Mr. Nicholson's involvement in the making of these payments to APC demonstrate that the payments were intended as honoraria. The payments were made only after negotiations with the Congressman's representative. Those negotiations produced the conditions which had to be met before the Congressman would speak at the annual conference. Basically the Congressman wished to be paid for his appearance. NAREIT normally pays a fee to speakers at the annual conference. These payments were made from that item in NAREIT's budget which provided for speaker's fees. The checks to Mr. Donald MacLeod and Mr. Pyle were clearly designated as relating to speaker's fees. These payments were speaker's fees, i.e., honoraria.

The payment of honoraria to an officer of the federal government (including a member of the United States House of Representatives), by a corporation (including an

81040293776

Robert I. Bogin, Esquire
March 17, 1980
Page 19

incorporated trade association) does not constitute a contribution. 2 U.S.C. § 431(e)(5)(I)(1976) (amended 1980); 11 C.F.R. § 100.4(b)(10) and § 114.1(a)(2)(iv)(1977). The Commission has acknowledged that honoraria payments directed to a principal campaign committee by the speaker may constitute contributions to the committee from the candidate, rather than from the sponsor of the event at which the candidate has made a speech or appearance. Advisory Opinion 1978-32; Federal Election Commission v. Committee for a Constitutional Presidency, CCH ¶ 9074 (D.D.C. March 7, 1979). If any person has made a contribution in this case, it is not Mr. Nicholson nor NAREIT; it is Congressman Anderson.

In conclusion, Mr. Nicholson specifically denies having violated 2 U.S.C. § 441b(a) or 2 U.S.C. § 441f, because the payments made to APC were exempt honoraria and not contributions. We respectfully request that the Commission through appropriate action, find no reason to believe that Mr. Nicholson violated these sections of the Act and dismiss him as a respondent in MUR 1094.

Respectfully submitted,

Jan W. Baran

William H. Schweitzer

Attorneys for Respondent,
John B. Nicholson

8104029377

BAKER & HOSTETLER
318 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20006

6 1 0 4 0 2 9 3 7 7 8

RECEIVED
FEDERAL ELECTION
COMMISSION

'80 MAR 17 PM 4:29

BY HANL

Robert I. Bogin, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

BARAN & HOSTETLER

ATTORNEYS AT LAW

555 OHIO AVENUE, N.W.

WASHINGTON, D. C. 20001

(202) 557-2000

IN CLEVELAND, OHIO
1956 UNION COMMERCE BUILDING
CLEVELAND, OHIO 44115
(216) 621-6200
TWX 910 421 6278

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43260
(614) 222-1541

IN ORLANDO, FLORIDA
850 CNA TOWER
ORLANDO, FLORIDA 32802
(305) 947-1111

February 28, 1980

WRITER'S DIRECT DIAL NO.
(202) 657- 1572

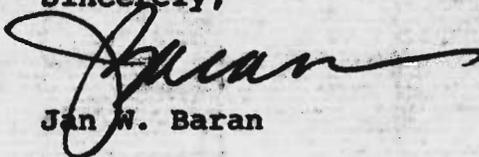
Robert Bogin, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1094

Dear Mr. Bogin:

Pursuant to our telephone conversation today, I hereby formally notify you that I have been retained by Mr. John Nicholson to represent him in the above-captioned matter. After I have had an opportunity to confer with my client I will contact you again. This should occur in the early part of next week.

Sincerely,


Jan W. Baran

JWB:gh

cc: John Nicholson

81040293779

568

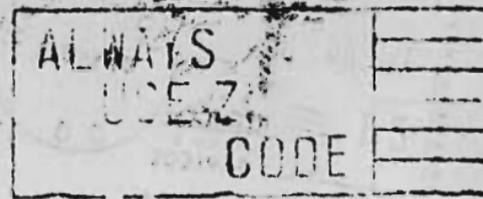
000006

80 MAR 3 AM 9:34

BAKER & HOSTETLER

CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006



31840103780

Robert Bogin, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

BAKER & HOSTETLER

ATTORNEYS AT LAW
610 CONNECTICUT AVE., N.W.
WASHINGTON, D. C. 20006
(202) 857-1572

RECEIVED
FEDERAL ELECTION
COMMISSION

ccct
536

IN CLEVELAND, OHIO
1986 UNION COMMERCE BUILDING
CLEVELAND, OHIO 44115
(216) 621-0200
TWX 810 421 8378

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43218
(614) 220-1541

80 FEB 29 AM 11:58

February 28, 1980

WRITER'S DIRECT DIAL NO.
(202) 857- 1572

IN ORLANDO, FLORIDA
880 CNA Tower
ORLANDO, FLORIDA 32802
(305) 841-1111

Robert Bogin, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

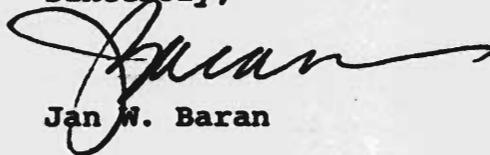
906558

Re: MUR 1094

Dear Mr. Bogin:

Pursuant to our telephone conversation today, I hereby formally notify you that I have been retained by Mr. John Nicholson to represent him in the above-captioned matter. After I have had an opportunity to confer with my client I will contact you again. This should occur in the early part of next week.

Sincerely,



Jan W. Baran

JWB:gh

cc: John Nicholson

81040293781

80 FEB 29 P 3: 18

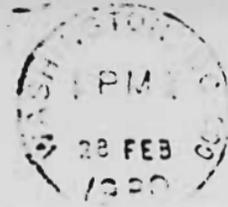
RECEIVED
OFFICE OF THE
GENERAL COUNSEL

BAKER & HOSTETLER

CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006

10401037



30 FEB 29 11 59

Robert Bogin, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

81040293783

PS Form 3811, Apr. 1977

RETURN RECEIPT REGISTERED INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 4.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
John B. Nickelson

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | *944071* | |
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
John Nickelson

4. DATE OF DELIVERY *7/17/80*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK
 MAR 1980
 U.S. POST
 SENDER'S INITIALS

Mue 1094

Boyer

☆ GPO: 1977-O-234-337



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 27, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John B. Nicholson
1429 44th Street, N.W.
Washington, D.C. 20007

Re: MUR 1094

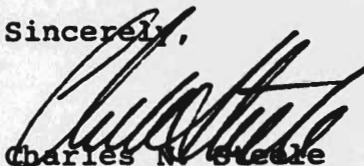
Dear Mr. Nicholson:

This is to confirm your telephone conversation with Robert Bogin of my staff on February 25, 1980, wherein you said that you did not receive the Commission's letter of February 19, 1980, requesting your appearance for deposition on February 25, 1980. However you did receive a mailgram dated February 22, 1980, rescheduling the deposition until February 29, 1980, at 2 P.M.

It is our understanding that you request the Commission to continue the time for the taking of your deposition until you retain counsel to represent you in this matter. Your request to reschedule the taking of your deposition presents no difficulty.

Please have your attorney contact Robert Bogin as soon as possible but no later than March 7, 1980, to schedule the taking of your deposition at a mutually convenient time. Mr. Bogin's telephone number is (202) 523-4073.

Sincerely,


Charles M. Steele
General Counsel

81040293784



600-498

4-0704658053002 02/22/80 ICG IPHNTZZ CDP WSHB
1 2025234073 MGM TDMT WASHINGTON DC 02-22 0541P EST

FEDERAL ELECTION COMMISSION
R BOGIN 1325 K ST NORTHWEST
WASHINGTON DC 20463

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2025234073 MGM TDMT WASHINGTON DC 39 02-22 0541P EST
5
21P
8
7
3
9
JOHN B NICHOLSON
1429 44 ST NORTHWEST
WASHINGTON DC 20007
DEPOSITION HAS BEEN RESCHEDULED FOR FEBRUARY 29, 1980 AT 2PM. PLEASE
CALL ROBERT BOGIN AT 523-4073 TO CONFIRM, THIS MATTER CONCERNS MUR
1094 WITH FEDERAL ELECTION COMMISSION
ROBERT BOGIN
17141 EST

MGMCOMP MGM

8 1 0 4 0
GENERAL
02 FEB 25 11 04

80 FEB 25 AM 10:17

FEDERAL ELECTION COMMISSION

5241 (R1/78)

181



WU
western union

Mailgram



MAILGRAM POSTAL
CHARGE \$ PAID

THIS MAILGRAM WAS TRANSMITTED ELECTRONICALLY BY WESTERN UNION TO A POST OFFICE NEAR YOU FOR DELIVERY



984376

81040293787

PS Form 3811 Aug 1978

RETURN RECEIPT REGISTERED INSURED AND CERTIFIED MAIL

● SENDER Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1 The following service is requested (check one).
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 Show to whom and date delivered.
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2 ARTICLE ADDRESSED TO:
 Mr. John B. M...
 1429 44th St., N.W.
 Wash., DC

3 ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED
 943015

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4 DATE OF DELIVERY 5-26-80 POSTMARK

5 ADDRESS (Complete only if requested)

6 UNABLE TO DELIVER BECAUSE

CLERK'S INITIALS

1094

Bogen

GPO: 1978-272-282



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

February 19, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John B. Nicholson
1429 44th Street, N. W.
Washington, D. C.

Re: MUR 1094 (79)

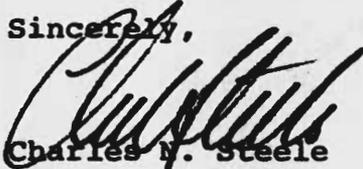
Dear Mr. Nicholson:

Please find enclosed an order requesting your appearance for deposition on February 25, 1980.

Pursuant to Commission regulations (11 C.F.R. §111.12), you will find enclosed witness fees for your attendance.

If you have any questions, please contact Robert Bogin (telephone no. (202) 423-4073), the attorney assigned to this matter.

Sincerely,


Charles N. Steele
General Counsel

Enclosures

81040293788

UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

Order to Appear for Deposition Upon
Oral Examination

TO: John B. Nicholson
1429 44th Street, N. W.
Washington, D. C.

RE: MUR 1094 (79)

At the instance of The Federal Election Commission,
pursuant to 2 U.S.C. §437d(a) (4), you are hereby ordered to
appear for deposition in connection with the Commission's
investigation of possible violations of the Federal Election
Campaign Act of 1971, as amended.

Notice is hereby given that the deposition is to be taken
at Room 714, 1325 K Street, N.W., Washington, D. C. at 2:00 p.m.
on Monday, February 25, 1980, and any and all dates adjourned
to by the Commission.

WHEREFORE, the Chairman of the Federal Election Commission
has hereunto set his hand at Washington, D.C., on this 11th
day of February, 1980.

Robert O. Tiernan
Robert O. Tiernan, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emons
MARJORIE W. EMONS
SECRETARY TO THE COMMISSION

040293789



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John B. Nicholson
1429 44th Street, N. W.
Washington, D. C.

Re: MUR 1094 (79)

Dear Mr. Nicholson:

Please find enclosed an order requesting your appearance for deposition on February 25, 1980.

Pursuant to Commission regulations (11 C.F.R. §111.12), you will find enclosed witness fees for your attendance.

If you have any questions, please contact Robert Bogin (telephone no. (202) 423-4073), the attorney assigned to this matter.

Sincerely,

Charles N. Steele
General Counsel

Enclosures

RB
2/11/80

81040293790



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS/MARGARET CHANEY *me*
DATE: FEBRUARY 11, 1980
SUBJECT: ORDER IN RELATION TO MUR 1094

The attached, order approved by a vote of 5-0 on
February 8, 1980, has been signed and sealed this
date.

81040293791

ATTACHMENT:
Order - Nicholson

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
John B. Nicholson)

MUR 1094 (79)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on February 8, 1980, the Commission authorized by a vote of 5-0 the issuance of the order for the deposition of John B. Nicholson, as attached to the Memorandum to the Commission dated February 6, 1980.

Voting for this determination were Commissioners Aikens, Friedersdorf, Harris, Reiche, and Tiernan. Commissioner McGarry abstained.

Attest:

2/8/80

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

81040293792

Received in Office of the Commission Secretary: 2-6-80, 12:59
Circulated on 48 hour vote basis: 2-6-80, 4:00

February 2, 1954

MEMORANDUM TO: Marjorie P. [unclear]
FROM: Jane Colgrove
SUBJECT: MUR 1094

Please have the attached [unclear] to the Commission
on MUR 1094 distributed to the Commission on a 48 hour
daily basis.

Thank you.

81040293793



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 FEB 6 11:00

February 6, 1980

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele *MS*
General Counsel

SUBJECT: Authorization to Issue Order in
Connection with MUR 1094 (79)

81040293794

On December 21, 1979, the Commission found reason to believe that the National Association of Real Estate Investment Trust, Inc. (NAREIT) violated 2 U.S.C. § 441f and § 441b(a) by making corporate contributions in the name of John Nicholson, Donald MacLeod, Betty Jean MacLeod, Mary Ann Thomas and Jay Addison Mitchell to the Anderson for President Committee. The Commission also found reason to believe that these above-named individuals violated 2 U.S.C. § 441f by knowingly permitting their name to be used to effect such contributions and that John Nicholson in his capacity of Executive Director of NAREIT violated 2 U.S.C. § 441b(a) by consenting to the contributions by NAREIT.

At this time, we have received responses from all the respondents. (See Attachment). Based on these responses, it appears that Mr. Nicholson played a central role in this matter. According to Mr. MacLeod, it was Mr. Nicholson who proposed that the fee for Mr. Anderson's speech to NAREIT be made in the manner described in the First General Counsel's Report. Mr. Nicholson writes that had he known at the time that his actions were contrary to law, he would not have done them. However, questions remain concerning Mr. Nicholson's intent and the involvement of others in this matter. Thus, in order to proceed with this investigation, we request approval of the attached order for the deposition of Mr. Nicholson.

Recommendation

Authorize the issuance of an order for the deposition of John B. Nicholson.

Attachments:

- Attachment I - Responses from Respondents
- Letter to John B. Nicholson
- Authorization to Issue Order
- Order to Appear for Deposition

JOHN BERRYHILL NICHOLSON

RECEIVED
FEDERAL ELECTION
COMMISSION
1429 44th St. N.W.
Washington, D.C. 20007
'80 JAN 17 10 11 AM 1980 52

GCC # 80

Bogin

Robert Bogin, Esq.
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

RE: MJR 1094(79)

Dear Mr. Bogin:

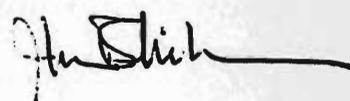
C05841

In response to Mr. Steele's letter of December 26, 1979, offering the opportunity to present my views regarding an alleged violation of the Campaign Act of 1971, please be advised that I believed at the time that my involvement in the alleged activities was proper. I would not have agreed to having myself become one of the five persons did I believe otherwise.

The re-examination of the transactions, and subsequent decision to bring the matter before the Commission in recognition that a different interpretation of law might be possible, occurred after my association with the National Association of Real Estate Investment Trusts terminated. Once more fully aware of the different interpretations possible, I concur with the Association's decision to voluntarily reverse the transactions so as to remove doubt about the differing legal interpretations. I did not, and do not, concur with activities leading anyone to believe that an intentional violation of law was undertaken by the Association, its members, the Congressional staff involved, or myself.

I believe the Association, Mr. MacLeod and others have received similar opportunities to present their views. I trust their recitation of the circumstances will be accurate and complete. I shall be glad to assist the Commission further if desired. I appreciate this opportunity to present my views.

Sincerely,



JBN:me

ATTACHMENT I

PROPERTY COMPANY
8540 Powers Ferry Road, Suite 160
Atlanta, Georgia 30339
(404)855-4408

RECEIVED
FEDERAL ELECTION
COMMISSION

9007
2.2

'80 JAN 8 PM 12.16

January 2, 1980

Certified Mail
Return Receipt Requested

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

905712

Bogert

Re: MUR 1094(79)

Dear Mr. Steele:

This will acknowledge receipt of your letter to me of December 26, 1979 relating to a possible violation of 2 U.S.C. Sec. 441f of the Federal Election Campaign Act of 1971, as amended, which matter you have numbered MUR 1094(79). Similar letters have been received by my wife, Betty Jean MacLeod, and by Mr. J. A. Mitchell and Ms. Mary M. Thomas, each of whom will be responding directly.

After our meeting with the Federal Election Commission on October 31, 1979, I had assumed (obviously incorrectly) that the entire matter had been fully reported and settled to the satisfaction of the Federal Election Commission. Since this is apparently not the case I will again state the facts and circumstances as they relate to my involvement and the involvements of my wife, Ms. Thomas and Mr. Mitchell in this matter.

1. I am President of IRT Property Company, a real estate investment corporation based in Atlanta, Georgia.
2. Ms. Mary M. Thomas is the Treasurer of IRT Property Company and Mr. J. Addison Mitchell has been associated with me in the mortgage banking business in Atlanta.
3. IRT Property Company is the successor corporation to Investors Realty Trust.
4. IRT Property Company and/or Investors Realty Trust have, since 1971, been dues-paying members of the National Association of Real Estate Investment Trusts ("NAREIT"), an industry trade association based in Washington, D. C.

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5. I am not an officer of NAREIT but am a member of the Board of Governors of NAREIT.
6. In 1979 I was chairman of the Program Committee of NAREIT. One of the responsibilities of the Program Committee is arranging a program for NAREIT's annual conference, which in 1979 was held in Washington on October 3 - 5. The Committee's responsibilities included the selection of topics and speakers for the conference.
7. For the Washington conference, it was determined that the featured speakers would include a humorist (Mark Russell), an economist (Anthony Downs of Brookings Institute) and a political speaker. The honorarium for each of these featured speakers was budgeted by NAREIT at \$2,000.
8. After several unsuccessful attempts to obtain a political speaker, it was suggested that Congressman Anderson might be considered. As a result, the then Executive Director of NAREIT contacted Mr. Anderson's office through an intermediary, and we were advised that Congressman Anderson would agree to speak at this conference. My understanding was that he would receive \$1,250 for his appearance.
9. Subsequently in August 1979, I was advised by the Executive Director of NAREIT that the Anderson for President Committee would prefer individual contributions of \$250 rather than a lump sum speaking fee.
10. To accomplish this, it was proposed by the Executive Director of NAREIT that I obtain five individual contributions (\$250 each) and that the five contributors in turn would be reimbursed out of a check which was sent to me by NAREIT. I specifically inquired about the propriety of such actions and was assured by the Executive Director of NAREIT that there was nothing improper in these transactions. Since NAREIT was served by an Executive Director with several years of Washington experience, as well as by both in-house and outside legal counsel of considerable experience, I felt that I could rely

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- 8 1 0 4 0 2 9 3 7 9 8
10. Continued.
on the assurances of NAREIT as communicated by its Executive Director.
 11. Based on these assurances, I delivered to the Executive Director of NAREIT four checks for \$250 each payable to the Anderson for President Committee from me, my wife, Ms. Thomas and Mr. Mitchell. I also gave the Executive Director my check for \$250 payable to him, representing the balance of the NAREIT check to me for \$1,250.
 12. My understanding is that the four checks given by me to the Executive Director of NAREIT together with his personal check for \$250 payable to the Anderson for President Committee were delivered to that Committee.
 13. Subsequent to the NAREIT conference and the resignation of the Executive Director of NAREIT (which occurred shortly thereafter), a routine review of the files of this ex-Executive Director apparently disclosed the transactions outlined above. As a result, several discussions were held between various NAREIT representatives, representatives of the Anderson for President Committee and the Federal Election Commission. On October 31, 1979, I attended a meeting at your offices at which all of these matters were reviewed.
 14. At this meeting, the Anderson for President Committee agreed to return the \$250 contributions to the various individuals involved, with the understanding that these individuals would in turn forward individual checks to NAREIT payable to that Association. To the best of my knowledge this was accomplished.

After this meeting with the Federal Election Commission, I assumed that the entire matter had been fully reported and settled to the satisfaction of the Federal Election Commission, particularly in view of the fact that:

- a) the matter was voluntarily brought to the attention of the Federal Election Commission, an action which, according to your office, is probably without precedent;

January 2, 1980
Charles N. Steele, Esquire
Page Four

- b) As soon as any suggestion of impropriety was made, full restitution was made by the contributors and by the Anderson for President Committee;
- c) no personal advantage was received or intended by any of the contributors involved, the sole intent being to obtain a satisfactory speaker for a NAREIT conference.

I trust that the foregoing is the information that you were requesting. Copies of this letter have been delivered to Ms. Thomas, Mr. Mitchell and my wife, who will be responding directly to you.

Sincerely,



Donald W. MacLeod
President

:d

cc: Mrs. Betty Jean MacLeod
Mr. J. A. Mitchell
Ms. Mary M. Thomas

81040293799

CC-106

RECEIVED
FEDERAL ELECTION

NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS, INC.

60 JAN 19 PM 12 '80

January 11, 1980

BOJIN

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

005873

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1094(79)

Dear Mr. Steele:

This will acknowledge receipt of your letter addressed to me as Counsel for the National Association of Real Estate Investments Trusts, Inc. (the "Association") stating that the Commission has found reason to believe that the mode and manner of certain transactions on behalf of the Association may have given rise to possible violations of Sections 441b and 441f of the Federal Election Campaign Act of 1971, as amended (the "Act").

As you know, the facts and circumstances considered by the Commission, with regard to the above-referenced subject matters, were first discovered by the officers and staff of the Association and after a reasonably short but thorough investigation by the staff of the Association, voluntarily brought to the attention of the staff of the Commission. At the time they first presented information to the Commission, the representatives of the Association believed, and they continue to believe, that they and the Association had acted in good faith by so doing. Accordingly, and in response to your request for further information, I am submitting herewith, on behalf of the Association, material below to support our contention

8104093800

that the Association did not violate Section 441b or Section 441f of the Act or, alternatively, if a violation did occur, that such violation was contrary to the policy and practices of the Association and took place without any authorization, expressed or implied, from the elected Board of Directors or officers of the Association. In addition, within ten days of discovery of the transactions in question, this matter was brought to the attention of the Commission at the initiative of the Association, and the transactions in question corrected promptly thereafter. Accordingly, we believe that under these facts and circumstances, further action vis-a-vis the Association is clearly not warranted.

The following information, based on knowledge, information and belief, constitutes a comprehensive chronology of the events before and after certain payments were made on behalf of the Association to the Anderson for President Committee (the "Committee") in consideration for the appearance of Congressman Anderson as a luncheon speaker at the Annual Conference of the Association on October 4, 1979:

1) August, 1979:
Specific dates unknown but final plans were completed no later than the second week of August.

Arrangements completed through the offices of John B. Nicholson, Executive Vice President of the Association, for the luncheon speech of Congressman Anderson. Based on information later furnished the Association by Congressman Anderson's office, a Robert N. Pyle, apparently met with Michael F. MacLeod of Congressman Anderson's office to determine the final arrangements. Despite representations to the contrary, Mr. Pyle was not known to the Association and appears to have been acting at the request of Mr. Nicholson. There is no indication of any authorization for the employment of such an agent or emissary. The Association has no direct specific knowledge of the arrangements proposed and accepted, but the understanding of the Executive Committee and President was that such arrangements were limited to time, place and the payment of a legal honorarium.

81040293801

2) August 14, 1979:

Nicholson letter to Donald W. MacLeod, President of IRT Property Company, an Atlanta-based real estate investment trust, who was serving as the Association's Program Director in his capacity as an elected member of the Association Board of Directors (attached) enclosing NAREIT checks for \$1,250.00 payable to Mr. MacLeod as reimbursement for speakers's expenses advances (presumably including an honorarium and expenses) and referring to \$750.00 sent to Robert N. Pyle (purportedly as compensation for arrangements and expenses). Note: Despite this letter Donald MacLeod indicates no knowledge of Mr. Pyle.

3) August 17*, 1979:
*Approximate

According to statements subsequently made by Donald W. MacLeod, his response to the above letter was to call John Nicholson to express his lack of knowledge concerning how the transaction was to be handled and to elicit more details or suggestions as to how payment could properly be made. During the internal investigation by the Association, Mr. MacLeod further stated that, in response to this call, John Nicholson verbally advised him that the Anderson For President Committee would prefer individual contributions of \$250.00 rather than a lump sum honorarium. Mr. MacLeod has further stated that John Nicholson suggested that Mr. MacLeod obtain five individual contributions from individuals who would then be reimbursed from the funds advanced to Mr. MacLeod by the Association. Other officers of NAREIT did not have any knowledge of this transaction and, accordingly, no reason to assume that payment was being made in any form other than that of an honorarium. Mr. Nicholson did not refer this matter to Counsel for advice, notwithstanding that Counsel was readily available and generally involved specifically for such purposes as a matter of policy and practice of the Association, or to any other member of the Association staff.

4) September 21, 1979:

Letter to Pyle from Anderson expressing thanks for contributions to be arranged. Letter delivered to John Nicholson's office but not revealed to other officers of the Association until inadvertently discovered on October 16, 1979.

81040293802

5) September 29, 1979:

Checks issued to the Anderson For President Committee by Donald MacLeod and his associates Betty MacLeod, J.A. Mitchell and Mary Thomas. Mr. MacLeod has stated that subsequent to this date he spoke with John Nicholson in the office of the latter and stated that he (MacLeod) could not arrange for a fifth contribution, suggested that Nicholson make the fifth contribution and that he be reimbursed from the remainder of Association funds held by MacLeod. Mr. MacLeod has further stated that five checks (from MacLeod, B. J. MacLeod, Mitchell, Thomas and Nicholson) each in the amount of \$250.00 were transmitted by Nicholson to the Anderson For President Committee.

6) October 4, 1979:

Congressman Anderson appears as guest luncheon speaker.

7) October 11, 1979:

New Counsel, David Bernabucci, joins the Association staff. Former General Counsel Walter B. Laessig, having left the Association staff on July 31, 1979, now serves as Special Counsel to the Association.

8) October 12, 1979:

Completely unrelated to the transactions now in question, John B. Nicholson officially terminates as Executive Vice President of the Association. The subject of the checks earlier issued by the Association in connection with Congressman Anderson's appearance on October 4, is brought to the attention of Mr. Bernabucci and Mr. Laessig by other Association staff at this time. The question of whether the amounts paid as honoraria may have been excessive under the House of Representatives Ethics Code (unless expense reimbursement is involved) arises. Accordingly, the decision is made to investigate the handling of the two transactions. At this point current officers, Directors and staff of the Association do not have any knowledge of any other direct or indirect transactions.

9) October 16, 1979:

Anderson letter of September 21, 1979 (see above) referring to contributions is discovered during routine cleaning of John Nicholson's vacated office. Association Counsel, Special Counsel and Acting Executive Vice President confer to discuss ramifications of this letter.

81040293803

10) October 17, 1979:

Conference call by Association President, Acting Executive Vice President and Counsel to Donald W. MacLeod to determine what his understanding of the arrangements concerning the payment of funds and reimbursement of expenses had been. His response was essentially as indicated in paragraphs 2, 3 and 5 above. Subsequently, Counsel advises the President and the Acting Executive Vice President that, on the basis of the facts as they have been revealed, it seems possible that a violation of the Federal Election Campaign Act may have occurred, however advertently or inadvertently, and that it would be prudent to consider steps to determine additional facts and reverse the transaction or transactions, subject to the advise and counsel of the F.E.C. It is also determined to meet the next day with former Association General Counsels Walter B. Laessig and Nicholas G. Buffington.

11) October 18, 1979:

Afternoon meeting with Association President Joseph D. Riviere, Acting Executive Vice President Ronald Utt, Counsel David Bernabucci, Former General Counsel Walter B. Laessig, and Former Executive Vice President and General Counsel Nicholas G. Buffington. It is determined that the staff of the Association must proceed to ascertain what, if any, additional facts may be known to the staff of the Congressman and, if necessary, mitigate any possible violation of the law by correcting or reversing the transactions after notifying the F.E.C.

12) October 18-19, 1979:

Association Counsel contacts Daniel J. Swillinger, Counsel to the Anderson For President Committee to advise him of the possible receipt by the Committee of illegal contributions, to inquire if certain contributions were in fact received, and to confer on possible courses of action to reverse any such illegal transactions. Swillinger agrees to research the contributor lists and recommends and arranges for an immediate meeting with Michael F. MacLeod of Congressman Anderson's office.

81040293804

81040293805

13) October 22, 1979:

Meeting with Association President Joseph Riviere, Acting Executive Vice President Ronald Utt, Counsel David Bernabucci, on behalf of the Association, and Michael F. MacLeod, on behalf of the Congressman Anderson's Office, to determine the latter's understanding with regard to the arrangements for the Congressman's appearance, the manner and method of anticipated compensation and what arrangements, if any, would be acceptable if it became legally necessary to reverse or refund any improper payments. Michael MacLeod referred to his meeting with Robert Pyle. Representatives of the Association could make no determination that the representatives of the Congressman expected any payments or honoraria other than a number of bona fide individual contributions properly arranged from interested third parties. It was tacitly agreed that a refund procedure would be arranged and confirmed by Association and Committee Counsel, subject to the prior approval of the F.E.C.

14) October 24, 1979:

Daniel Swillinger contacted Association Counsel, at the request of Association Counsel as relayed by Michael MacLeod, to confirm receipt of payments from five NAREIT affiliated individuals, the tentative refund arrangements, and indicate that he had, with the concurrence of the Association, arranged for a meeting with the staff of the General Counsel's Office at the F.E.C. on October 31, 1979.

15) October 31, 1979:

Meeting with Ken Gross and Robert Bogin of the Office of General Counsel of the F.E.C. and Daniel J. Swillinger of the Anderson For President Committee, Donald W. MacLeod, and Joseph Riviere, President, Ronald Utt, Acting Executive Vice President, David Bernabucci, Counsel and Walter Laessig, Special Counsel, to present the facts as understood by the parties. The parties proposed to reverse the transaction by instituting refunds from the Anderson For President Committee to the five known individual contributors. It was understood that refunds from the contributors to the Association cannot be guaranteed. The F.E.C. staff gives its tacit approval to the proposal and advises the parties that the facts of the case will be submitted to the Commission.

16) November 5, 1979:

Refunds totalling \$1,250.00 are mailed to the five known individual contributors by the Committee.

17) November 9-15, 1979:

Funds received by the five individuals are returned to the Association.

In conclusion, the factual information presented hereinabove is offered in a further attempt by the Association to achieve an expeditious and mutually satisfactory conclusion to the procedures initiated after the Association first revealed the transaction in question to the Anderson For President Committee and the Commission. The Association believes that the facts speak for themselves in this matter and that those facts adequately demonstrate: (1) any violation of the Federal Election Campaign Act of 1971, as amended, is such a violation did occur, did not arise out of any policy or practice of the Association; (2) the Association, upon ascertaining that the transaction may have given rise to a technical violation of the law, immediately sought to determine the facts, reverse the transaction notify the staff of the Commission and provide other proper relief; and (3) the Association, its elected Officers and Directors, were unaware of the circumstances and nature of the transactions, had no prior knowledge of and did not give approval to such transactions.

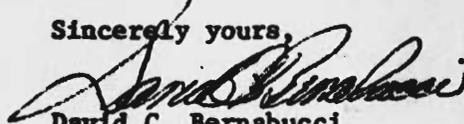
The Association cannot express any conclusions with regard to the intentions or actions of any other party to the transaction in question. We do believe, however, that one isolated transaction of an individual or individuals should not be attributed to the Association or any of its elected Officers or Directors who may have been innocently and inadvertently involved.

Accordingly, and in view of the action of the Association in disclosing the matter, the Association respectfully submits that there is no factual basis upon which to conclude that any action against it would be warranted and believes that no enforcement action should be taken against the Association with regard to the above-referenced matter now or in the future.

81040293806

The Conslusions stated above are not necessarily intended to present a full legal brief or memorandum on the legal issues raised and the Association would respectfully wish to reserve the right to expand the foregoing remarks in response to specific statements received, or further inquiry made, by the Federal Election Commission. Of course, if you or any member of the Commision's staff wish to discuss this matter further, representatives of the Association will be most happy to meet with you at your convenience. In the meantime, the Assocation does request that this matter remain confidential pursuant ot the provisions of 2 U.S.C. §437g(a)(3)(B).

Sincerely yours,



David C. Bernabucci

Counsel

DCB:ar

CC: Robert Bogin, Attorney, Federal Election Commission
Joseph D. Riviere, President, NAREIT
Mercer L. Jackson, Executive Vice President, NAREIT

81040293807

JOHN B NICHOLSON
Executive Vice President

August 14, 1975

Mr. Donald W. MacLeod
IRT Property Company, Inc.
6540 Powers Ferry Road #160
Atlanta, Ga. 30339

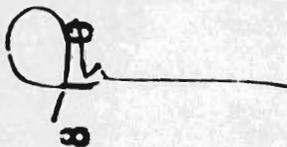
Dear Don:

Pursuant to our conversations yesterday, enclosed is a check for \$1,250.00 to cover the speaker's expense fee that you incurred. I've had the check made out to you since I'm not exactly sure to whom the check should be drawn.

I have also had a check for \$750.00 sent to Robert N. Pyle, with whom you made the arrangements and who will handle all details regarding the speaker. I believe this covers his fee and all expenses associated with Rep. Andersen's appearance, including drafting the speech, ferrying him to and from the Sheraton, etc.

I appreciate the extra trouble and time you've devoted to getting us a to-flight speaker. I especially appreciate your willingness to commit for the speaker's fee so as to nail down the engagement -- we've had several back out of the verbal commitment already.

Sincerely,



JBN:me



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John B. Nicholson
1429 44th Street, N. W.
Washington, D. C.

Re: MUR 1094 (79)

Dear Mr. Nicholson:

Please find enclosed an order requesting your appearance for deposition on February 20, 1980.

Pursuant to Commission regulations (11 C.F.R. §111.12), you will find enclosed witness fees for your attendance.

If you have any questions, please contact Robert Bogin (telephone no. (202) 423-4073), the attorney assigned to this matter.

Sincerely,

Charles N. Steele
General Counsel

Enclosures

040293809



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUTHORIZATION TO ISSUE ORDER

The Commission hereby authorizes the issuance of a subpoena to the following person in connection with MUR 1094 (79):

John B. Nicholson
1429 44th Street, N.W.
Washington, D.C.

Robert O. Tiernan
Chairman

Thomas E. Harris
Commissioner

Max L. Friedersdorf
Vice Chairman

John W. McGarry
Commissioner

Joan D. Aikens
Commissioner

Frank P. Reiche
Commissioner

81040293810

UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

Order to Appear for Deposition Upon
Oral Examination

TO: John B. Nicholson
1429 44th Street, N. W.
Washington, D. C.

RE: MUR 1094 (79)

At the instance of The Federal Election Commission,
pursuant to 2 U.S.C. §437d(a)(4), you are hereby ordered to
appear for deposition in connection with the Commission's
investigation of possible violations of the Federal Election
Campaign Act of 1971, as amended.

Notice is hereby given that the deposition is to be taken
at Room 714, 1325 K Street, N.W., Washington, D. C. at 2:00 p.m.
on Wednesday, February 20, 1980, and any and all dates adjourned
to by the Commission.

WHEREFORE, the Chairman of the Federal Election Commission
has hereunto set his hand at Washington, D.C., on this _____
day of _____, 1980.

Robert O. Tiernan, Chairman
Federal Election Commission

ATTEST:

MARJORIE W. EMMONS
SECRETARY TO THE COMMISSION

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

REC'D
OFFICE OF THE
GENERAL COUNSEL
80 JAN 21 11:13
REC # 124

NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS INC

80 JAN 21 9:58

January 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1094(79)

Dear Mr. Steele:

This will acknowledge receipt of your letter addressed to me as Counsel for the National Association of Real Estate Investments Trusts, Inc. (the "Association") stating that the Commission has found reason to believe that the mode and manner of certain transactions on behalf of the Association may have given rise to possible violations of Sections 441b and 441f of the Federal Election Campaign Act of 1971, as amended (the "Act").

As you know, the facts and circumstances considered by the Commission, with regard to the above-referenced subject matters, were first discovered by the officers and staff of the Association and after a reasonably short but thorough investigation by the staff of the Association, voluntarily brought to the attention of the staff of the Commission. At the time they first presented information to the Commission, the representatives of the Association believed, and they continue to believe, that they and the Association had acted in good faith by so doing. Accordingly, and in response to your request for further information, I am submitting herewith, on behalf of the Association, material below to support our contention

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that the Association did not violate Section 441b or Section 441f of the Act or, alternatively, if a violation did occur, that such violation was contrary to the policy and practices of the Association and took place without any authorization, expressed or implied, from the elected Board of Directors or officers of the Association. In addition, within ten days of discovery of the transactions in question, this matter was brought to the attention of the Commission at the initiative of the Association, and the transactions in question corrected promptly thereafter. Accordingly, we believe that under these facts and circumstances, further action vis-a-vis the Association is clearly not warranted.

The following information, based on knowledge, information and belief, constitutes a comprehensive chronology of the events before and after certain payments were made on behalf of the Association to the Anderson for President Committee (the "Committee") in consideration for the appearance of Congressman Anderson as a luncheon speaker at the Annual Conference of the Association on October 4, 1979:

1) August, 1979:
Specific dates unknown but final plans were completed no later than the second week of August.

Arrangements completed through the offices of John B. Nicholson, Executive Vice President of the Association, for the luncheon speech of Congressman Anderson. Based on information later furnished the Association by Congressman Anderson's office, a Robert N. Pyle, apparently met with Michael F. MacLeod of Congressman Anderson's office to determine the final arrangements. Despite representations to the contrary, Mr. Pyle was not known to the Association and appears to have been acting at the request of Mr. Nicholson. There is no indication of any authorization for the employment of such an agent or emissary. The Association has no direct specific knowledge of the arrangements proposed and accepted, but the understanding of the Executive Committee and President was that such arrangements were limited to time, place and the payment of a legal honorarium.

81040293813

2) August 14, 1979:

Nicholson letter to Donald W. MacLeod, President of IRT Property Company, an Atlanta-based real estate investment trust, who was serving as the Association's Program Director in his capacity as an elected member of the Association Board of Directors (attached) enclosing NAREIT checks for \$1,250.00 payable to Mr. MacLeod as reimbursement for speakers's expenses advances (presumably including an honorarium and expenses) and referring to \$750.00 sent to Robert N. Pyle (purportedly as compensation for arrangements and expenses). Note: Despite this letter Donald MacLeod indicates no knowledge of Mr. Pyle.

3) August 17*, 1979:
*Approximate

According to statements subsequently made by Donald W. MacLeod, his response to the above letter was to call John Nicholson to express his lack of knowledge concerning how the transaction was to be handled and to elicit more details or suggestions as to how payment could properly be made. During the internal investigation by the Association, Mr. MacLeod further stated that, in response to this call, John Nicholson verbally advised him that the Anderson For President Committee would prefer individual contributions of \$250.00 rather than a lump sum honorarium. Mr. MacLeod has further stated that John Nicholson suggested that Mr. MacLeod obtain five individual contributions from individuals who would then be reimbursed from the funds advanced to Mr. MacLeod by the Association. Other officers of NAREIT did not have any knowledge of this transaction and, accordingly, no reason to assume that payment was being made in any form other than that of an honorarium. Mr. Nicholson did not refer this matter to Counsel for advice, notwithstanding that Counsel was readily available and generally involved specifically for such purposes as a matter of policy and practice of the Association, or to any other member of the Association staff.

4) September 21, 1979:

Letter to Pyle from Anderson expressing thanks for contributions to be arranged. Letter delivered to John Nicholson's office but not revealed to other officers of the Association until inadvertently discovered on October 16, 1979.

81040293814

5) September 29, 1979:

Checks issued to the Anderson For President Committee by Donald MacLeod and his associates Betty MacLeod, J.A. Mitchell and Mary Thomas. Mr. MacLeod has stated that subsequent to this date he spoke with John Nicholson in the office of the latter and stated that he (MacLeod) could not arrange for a fifth contribution, suggested that Nicholson make the fifth contribution and that he be reimbursed from the remainder of Association funds held by MacLeod. Mr. MacLeod has further stated that five checks (from MacLeod, B. J. MacLeod, Mitchell, Thomas and Nicholson) each in the amount of \$250.00 were transmitted by Nicholson to the Anderson For President Committee.

6) October 4, 1979:

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7) October 11, 1979:

New Counsel, David Bernabucci, joins the Association staff. Former General Counsel Walter B. Laessig, having left the Association staff on July 31, 1979, now serves as Special Counsel to the Association.

8) October 12, 1979:

Completely unrelated to the transactions now in question, John B. Nicholson officially terminates as Executive Vice President of the Association. The subject of the checks earlier issued by the Association in connection with Congressman Anderson's appearance on October 4, is brought to the attention of Mr. Bernabucci and Mr. Laessig by other Association staff at this time. The question of whether the amounts paid as honoraria may have been excessive under the House of Representatives Ethics Code (unless expense reimbursement is involved) arises. Accordingly, the decision is made to investigate the handling of the two transactions. At this point current officers, Directors and staff of the Association do not have any knowledge of any other direct or indirect transactions.

9) October 16, 1979:

Anderson letter of September 21, 1979 (see above) referring to contributions is discovered during routine cleaning of John Nicholson's vacated office. Association Counsel, Special Counsel and Acting Executive Vice President confer to discuss ramifications of this letter.

81040293815

10) October 17, 1979:

Conference call by Association President, Acting Executive Vice President and Counsel to Donald W. MacLeod to determine what his understanding of the arrangements concerning the payment of funds and reimbursement of expenses had been. His response was essentially as indicated in paragraphs 2, 3 and 5 above. Subsequently, Counsel advises the President and the Acting Executive Vice President that, on the basis of the facts as they have been revealed, it seems possible that a violation of the Federal Election Campaign Act may have occurred, however advertently or inadvertently, and that it would be prudent to consider steps to determine additional facts and reverse the transaction or transactions, subject to the advise and counsel of the F.E.C. It is also determined to meet the next day with former Association General Counsels Walter B. Laessig and Nicholas G. Buffington.

11) October 18, 1979:

Afternoon meeting with Association President Joseph D. Riviere, Acting Executive Vice President Ronald Utt, Counsel David Bernabucci, Former General Counsel Walter B. Laessig, and Former Executive Vice President and General Counsel Nicholas G. Buffington. It is determined that the staff of the Association must proceed to ascertain what, if any, additional facts may be known to the staff of the Congressman and, if necessary, mitigate any possible violation of the law by correcting or reversing the transactions after notifying the F.E.C.

12) October 18-19, 1979:

Association Counsel contacts Daniel J. Swillinger, Counsel to the Anderson For President Committee to advise him of the possible receipt by the Committee of illegal contributions, to inquire if certain contributions were in fact received, and to confer on possible courses of action to reverse any such illegal transactions. Swillinger agrees to research the contributor lists and recommends and arranges for an immediate meeting with Michael F. MacLeod of Congressman Anderson's office.

81040293816

13) October 22, 1979:

Meeting with Association President Joseph Riviere, Acting Executive Vice President Ronald Utt, Counsel David Bernabucci, on behalf of the Association, and Michael F. MacLeod, on behalf of the Congressman Anderson's Office, to determine the latter's understanding with regard to the arrangements for the Congressman's appearance, the manner and method of anticipated compensation and what arrangements, if any, would be acceptable if it became legally necessary to reverse or refund any improper payments. Michael MacLeod referred to his meeting with Robert Pyle. Representatives of the Association could make no determination that the representatives of the Congressman expected any payments or honoraria other than a number of bona fide individual contributions properly arranged from interested third parties. It was tacitly agreed that a refund procedure would be arranged and confirmed by Association and Committee Counsel, subject to the prior approval of the F.E.C.

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Meeting with Ken Gross and Robert Bogin of the Office of General Counsel of the F.E.C. and Daniel J. Swillinger of the Anderson For President Committee, Donald W. MacLeod, and Joseph Riviere, President, Ronald Utt, Acting Executive Vice President, David Bernabucci, Counsel and Walter Laessig, Special Counsel, to present the facts as understood by the parties. The parties proposed to reverse the transaction by instituting refunds from the Anderson For President Committee to the five known individual contributors. It was understood that refunds from the contributors to the Association cannot be guaranteed. The F.E.C. staff gives its tacit approval to the proposal and advises the parties that the facts of the case will be submitted to the Commission.

16) November 5, 1979:

Refunds totalling \$1,250.00 are mailed to the five known individual contributors by the Committee.

17) November 9-15, 1979:

Funds received by the five individuals are returned to the Association.

81040293817

In conclusion, the factual information presented hereinabove is offered in a further attempt by the Association to achieve an expeditious and mutually satisfactory conclusion to the procedures initiated after the Association first revealed the transaction in question to the Anderson For President Committee and the Commission. The Association believes that the facts speak for themselves in this matter and that those facts adequately demonstrate: (1) any violation of the Federal Election Campaign Act of 1971, as amended, is such a violation did occur, did not arise out of any policy or practice of the Association; (2) the Association, upon ascertaining that the transaction may have given rise to a technical violation of the law, immediately sought to determine the facts, reverse the transaction notify the staff of the Commission and provide other proper relief; and (3) the Association, its elected Officers and Directors, were unaware of the circumstances and nature of the transactions, had no prior knowledge of and did not give approval to such transactions.

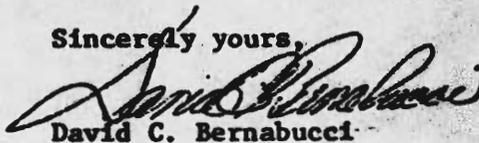
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Accordingly, and in view of the action of the Association in disclosing the matter, the Association respectfully submits that there is no factual basis upon which to conclude that any action against it would be warranted and believes that no enforcement action should be taken against the Association with regard to the above-referenced matter now or in the future.

81040293818

The Conclusions stated above are not necessarily intended to present a full legal brief or memorandum on the legal issues raised and the Association would respectfully wish to reserve the right to expand the foregoing remarks in response to specific statements received, or further inquiry made, by the Federal Election Commission. Of course, if you or any member of the Commission's staff wish to discuss this matter further, representatives of the Association will be most happy to meet with you at your convenience. In the meantime, the Association does request that this matter remain confidential pursuant to the provisions of 2 U.S.C. §437g(a)(3)(B).

Sincerely yours,



David C. Bernabucci

Counsel

DCB:ar

CC: Robert Bogin, Attorney, Federal Election Commission
Joseph D. Riviere, President, NAREIT
Mercer L. Jackson, Executive Vice President, NAREIT

81040293819

JOHN B. NICHOLSON
Executive Vice President

August 14, 1975

Mr. Donald W. MacLeod
IRT Property Company, Inc.
6540 Powers Ferry Road #160
Atlanta, Ga. 30339

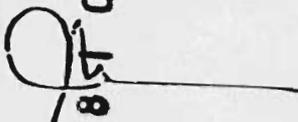
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I appreciate the extra trouble and time you've devoted to getting us a top-flight speaker. I especially appreciate your willingness to commit for the speaker's fee so as to nail down the engagement -- we've had several back out of the verbal commitment already.

Sincerely,



JBN:me

REIT

NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS
1101 Seventeenth St., N.W.
Washington, D.C. 20036

8 1 0 4 0 2 9 3 8 2 1

REIT[®]

Mr. Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

HAND DELIVERED

NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS
1101 17th St., N.W. • Washington, D. C. 20036

6004
106



RECEIVED
FEDERAL ELECTION
COMMISSION

NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS, INC.

'80 JAN 18 PM 12:03

January 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

005873

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1094(79)

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that the Association did not violate Section 441b or Section 441f of the Act or, alternatively, if a violation did occur, that such violation was contrary to the policy and practices of the Association and took place without any authorization, expressed or implied, from the elected Board of Directors or officers of the Association. In addition, within ten days of discovery of the transactions in question, this matter was brought to the attention of the Commission at the initiative of the Association, and the transactions in question corrected promptly thereafter. Accordingly, we believe that under these facts and circumstances, further action vis-a-vis the Association is clearly not warranted.

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81040293623

2) August 14, 1979:

Nicholson letter to Donald W. MacLeod, President of IRT Property Company, an Atlanta-based real estate investment trust, who was serving as the Association's Program Director in his capacity as an elected member of the Association Board of Directors (attached) enclosing NAREIT checks for \$1,250.00 payable to Mr. MacLeod as reimbursement for speakers's expenses advances (presumably including an honorarium and expenses) and referring to \$750.00 sent to Robert N. Pyle (purportedly as compensation for arrangements and expenses). Note: Despite this letter Donald MacLeod indicates no knowledge of Mr. Pyle.

3) August 17*, 1979:
*Approximate

According to statements subsequently made by Donald W. MacLeod, his response to the above letter was to call John Nicholson to express his lack of knowledge concerning how the transaction was to be handled and to elicit more details or suggestions as to how payment could properly be made. During the internal investigation by the Association, Mr. MacLeod further stated that, in response to this call, John Nicholson verbally advised him that the Anderson For President Committee would prefer individual contributions of \$250.00 rather than a lump sum honorarium. Mr. MacLeod has further stated that John Nicholson suggested that Mr. MacLeod obtain five individual contributions from individuals who would then be reimbursed from the funds advanced to Mr. MacLeod by the Association. Other officers of NAREIT did not have any knowledge of this transaction and, accordingly, no reason to assume that payment was being made in any form other than that of an honorarium. Mr. Nicholson did not refer this matter to Counsel for advice, notwithstanding that Counsel was readily available and generally involved specifically for such purposes as a matter of policy and practice of the Association, or to any other member of the Association staff.

4) September 21, 1979:

Letter to Pyle from Anderson expressing thanks for contributions to be arranged. Letter delivered to John Nicholson's office but not revealed to other officers of the Association until inadvertently discovered on October 16, 1979.

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5) September 29, 1979:

Checks issued to the Anderson For President Committee by Donald MacLeod and his associates Betty MacLeod, J.A. Mitchell and Mary Thomas. Mr. MacLeod has stated that subsequent to this date he spoke with John Nicholson in the office of the latter and stated that he (MacLeod) could not arrange for a fifth contribution, suggested that Nicholson make the fifth contribution and that he be reimbursed from the remainder of Association funds held by MacLeod. Mr. MacLeod has further stated that five checks (from MacLeod, B. J. MacLeod, Mitchell, Thomas and Nicholson) each in the amount of \$250.00 were transmitted by Nicholson to the Anderson For President Committee.

6) October 4, 1979:

Congressman Anderson appears as guest luncheon speaker.

7) October 11, 1979:

New Counsel, David Bernabucci, joins the Association staff. Former General Counsel Walter B. Laessig, having left the Association staff on July 31, 1979, now serves as Special Counsel to the Association.

8) October 12, 1979:

Completely unrelated to the transactions now in question, John B. Nicholson officially terminates as Executive Vice President of the Association. The subject of the checks earlier issued by the Association in connection with Congressman Anderson's appearance on October 4, is brought to the attention of Mr. Bernabucci and Mr. Laessig by other Association staff at this time. The question of whether the amounts paid as honoraria may have been excessive under the House of Representatives Ethics Code (unless expense reimbursement is involved) arises. Accordingly, the decision is made to investigate the handling of the two transactions. At this point current officers, Directors and staff of the Association do not have any knowledge of any other direct or indirect transactions.

9) October 16, 1979:

Anderson letter of September 21, 1979 (see above) referring to contributions is discovered during routine cleaning of John Nicholson's vacated office. Association Counsel, Special Counsel and Acting Executive Vice President confer to discuss ramifications of this letter.

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10) October 17, 1979:

Conference call by Association President, Acting Executive Vice President and Counsel to Donald W. MacLeod to determine what his understanding of the arrangements concerning the payment of funds and reimbursement of expenses had been. His response was essentially as indicated in paragraphs 2, 3 and 5 above. Subsequently, Counsel advises the President and the Acting Executive Vice President that, on the basis of the facts as they have been revealed, it seems possible that a violation of the Federal Election Campaign Act may have occurred, however advertently or inadvertently, and that it would be prudent to consider steps to determine additional facts and reverse the transaction or transactions, subject to the advise and counsel of the F.E.C. It is also determined to meet the next day with former Association General Counsels Walter B. Laessig and Nicholas G. Buffington.

11) October 18, 1979:

Afternoon meeting with Association President Joseph D. Riviere, Acting Executive Vice President Ronald Utt, Counsel David Bernabucci, Former General Counsel Walter B. Laessig, and Former Executive Vice President and General Counsel Nicholas G. Buffington. It is determined that the staff of the Association must proceed to ascertain what, if any, additional facts may be known to the staff of the Congressman and, if necessary, mitigate any possible violation of the law by correcting or reversing the transactions after notifying the F.E.C.

12) October 18-19, 1979:

Association Counsel contacts Daniel J. Swillinger, Counsel to the Anderson For President Committee to advise him of the possible receipt by the Committee of illegal contributions, to inquire if certain contributions were in fact received, and to confer on possible courses of action to reverse any such illegal transactions. Swillinger agrees to research the contributor lists and recommends and arranges for an immediate meeting with Michael F. MacLeod of Congressman Anderson's office.

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13) October 22, 1979:

Meeting with Association President Joseph Riviere, Acting Executive Vice President Ronald Utt, Counsel David Bernabucci, on behalf of the Association, and Michael F. MacLeod, on behalf of the Congressman Anderson's Office, to determine the latter's understanding with regard to the arrangements for the Congressman's appearance, the manner and method of anticipated compensation and what arrangements, if any, would be acceptable if it became legally necessary to reverse or refund any improper payments. Michael MacLeod referred to his meeting with Robert Pyle. Representatives of the Association could make no determination that the representatives of the Congressman expected any payments or honoraria other than a number of bona fide individual contributions properly arranged from interested third parties. It was tacitly agreed that a refund procedure would be arranged and confirmed by Association and Committee Counsel, subject to the prior approval of the F.E.C.

14) October 24, 1979:

Daniel Swillinger contacted Association Counsel, at the request of Association Counsel as relayed by Michael MacLeod, to confirm receipt of payments from five NAREIT affiliated individuals, the tentative refund arrangements, and indicate that he had, with the concurrence of the Association, arranged for a meeting with the staff of the General Counsel's Office at the F.E.C. on October 31, 1979.

15) October 31, 1979:

Meeting with Ken Gross and Robert Bogin of the Office of General Counsel of the F.E.C. and Daniel J. Swillinger of the Anderson For President Committee, Donald W. MacLeod, and Joseph Riviere, President, Ronald Utt, Acting Executive Vice President, David Bernabucci, Counsel and Walter Laessig, Special Counsel, to present the facts as understood by the parties. The parties proposed to reverse the transaction by instituting refunds from the Anderson For President Committee to the five known individual contributors. It was understood that refunds from the contributors to the Association cannot be guaranteed. The F.E.C. staff gives its tacit approval to the proposal and advises the parties that the facts of the case will be submitted to the Commission.

16) November 5, 1979:

Refunds totalling \$1,250.00 are mailed to the five known individual contributors by the Committee.

17) November 9-15, 1979:

Funds received by the five individuals are returned to the Association.

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In conclusion, the factual information presented hereinabove is offered in a further attempt by the Association to achieve an expeditious and mutually satisfactory conclusion to the procedures initiated after the Association first revealed the transaction in question to the Anderson For President Committee and the Commission. The Association believes that the facts speak for themselves in this matter and that those facts adequately demonstrate: (1) any violation of the Federal Election Campaign Act of 1971, as amended, is such a violation did occur, did not arise out of any policy or practice of the Association; (2) the Association, upon ascertaining that the transaction may have given rise to a technical violation of the law, immediately sought to determine the facts, reverse the transaction notify the staff of the Commission and provide other proper relief; and (3) the Association, its elected Officers and Directors, were unaware of the circumstances and nature of the transactions, had no prior knowledge of and did not give approval to such transactions.

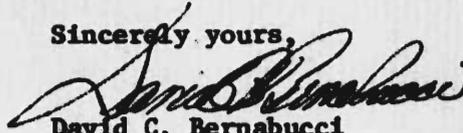
The Association cannot express any conclusions with regard to the intentions or actions of any other party to the transaction in question. We do believe, however, that one isolated transaction of an individual or individuals should not be attributed to the Association or any of its elected Officers or Directors who may have been innocently and inadvertently involved.

Accordingly, and in view of the action of the Association in disclosing the matter, the Association respectfully submits that there is no factual basis upon which to conclude that any action against it would be warranted and believes that no enforcement action should be taken against the Association with regard to the above-referenced matter now or in the future.

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The Conclusions stated above are not necessarily intended to present a full legal brief or memorandum on the legal issues raised and the Association would respectfully wish to reserve the right to expand the foregoing remarks in response to specific statements received, or further inquiry made, by the Federal Election Commission. Of course, if you or any member of the Commission's staff wish to discuss this matter further, representatives of the Association will be most happy to meet with you at your convenience. In the meantime, the Association does request that this matter remain confidential pursuant to the provisions of 2 U.S.C. §437g(a)(3)(B).

Sincerely yours,



David C. Bernabucci

Counsel

DCB:ar

CC: Robert Bogin, Attorney, Federal Election Commission
Joseph D. Riviere, President, NAREIT
Mercer L. Jackson, Executive Vice President, NAREIT

81040293829

JOHN B NICHOLSON
Executive Vice President

August 14, 1975

Mr. Donald W. MacLeod
IRT Property Company, Inc.
6540 Powers Ferry Road #160
Atlanta, Ga. 30339

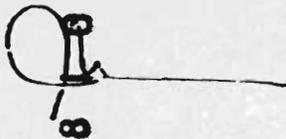
Dear Don:

Pursuant to our conversations yesterday, enclosed is a check for \$1,250.00 to cover the speaker's expense fee that you incurred. I've had the check made out to you since I'm not exactly sure to whom the check should be drawn.

I have also had a check for \$750.00 sent to Robert N. Pyle, with whom you made the arrangements and who will handle all details regarding the speaker. I believe this covers his fee and all expenses associated with Rep. Andersen's appearance, including drafting the speech, ferrying him to and from the Sheraton, etc.

I appreciate the extra trouble and time you've devoted to getting us a to-flight speaker. I especially appreciate your willingness to commit for the speaker's fee so as to nail down the engagement -- we've had several back out of the verbal commitment already.

Sincerely,



JBN:me



NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS
1101 Seventeenth St., N.W.
Washington, D.C. 20036

RECEIVED
FEDERAL ELECTION
COMMISSION

'80 JAN 18 PM 12:03

81040293831



Mr. Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS
1101 17th St., N.W. • Washington, D. C. 20036

6CC#80

JOHN BERRYHILL NICHOLSON

RECEIVED
FEDERAL ELECTION
COMMISSION
1429 44th St. N.W.
Washington, D.C. 20007
'80 JAN 15 1AM 1980 52

Robert Bogin, Esq.
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

RE: MUR 1094(79)

Dear Mr. Bogin:

005841

In response to Mr. Steele's letter of December 26, 1979, offering the opportunity to present my views regarding an alleged violation of the Campaign Act of 1971, please be advised that I believed at the time that my involvement in the alleged activities was proper. I would not have agreed to having myself become one of the five persons did I believe otherwise.

81040193832

The re-examination of the transactions, and subsequent decision to bring the matter before the Commission in recognition that a different interpretation of law might be possible, occurred after my association with the National Association of Real Estate Investment Trusts terminated. Once more fully aware of the different interpretations possible, I concur with the Association's decision to voluntarily reverse the transactions so as to remove doubt about the differing legal interpretations. I did not, and do not, concur with activities leading anyone to believe that an intentional violation of law was undertaken by the Association, its members, the Congressional staff involved, or myself.

I believe the Association, Mr. MacLeod and others have received similar opportunities to present their views. I trust their recitation of the circumstances will be accurate and complete. I shall be glad to assist the Commission further if desired. I appreciate this opportunity to present my views.

Sincerely,



JBN:me

8 0 4 0 1 9 3 8 3 3



00 JAN 15 AM 11:52

Robert Bogin, Esq.
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

500 # 43

RECEIVED
FEDERAL ELECTION
COMMISSION

January 3, 1980

'80 JAN 10 PM 1:17

Certified Mail
Return Receipt Requested

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

SC0773

Re: MUR 1094(79)

Dear Mr. Steele:

This will acknowledge receipt of your letter to me of December 26, 1979 relating to a possible violation of 2 U.S.C. Sec. 441f of the Federal Election Campaign Act of 1971, as amended, which matter you have numbered MUR 1094(79).

A similar letter was delivered to my husband Mr. Donald W. MacLeod, who has provided me with a copy of his response to you dated January 2, 1980, a copy of which is attached. I have reviewed the contents of his letter and agree that his response, as it relates to my involvement in this matter, completely and accurately reflects such involvement.

Sincerely,

Betty Jean MacLeod

Betty Jean MacLeod
6250 Weatherly Drive
Atlanta, Georgia 30328

:d

Attachment

81040293834

80 JAN 10 P 3:11

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

PROPERTY COMPANY

6540 Powers Ferry Road, Suite 160
Atlanta, Georgia 30339
(404) 955-4406

January 2, 1980

Certified Mail
Return Receipt Requested

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

Re: MUR 1094(79)

Dear Mr. Steele:

This will acknowledge receipt of your letter to me of December 26, 1979 relating to a possible violation of 2 U.S.C. Sec. 441f of the Federal Election Campaign Act of 1971, as amended, which matter you have numbered MUR 1094(79). Similar letters have been received by my wife, Betty Jean MacLeod, and by Mr. J. A. Mitchell and Ms. Mary M. Thomas, each of whom will be responding directly.

After our meeting with the Federal Election Commission on October 31, 1979, I had assumed (obviously incorrectly) that the entire matter had been fully reported and settled to the satisfaction of the Federal Election Commission. Since this is apparently not the case I will again state the facts and circumstances as they relate to my involvement and the involvements of my wife, Ms. Thomas and Mr. Mitchell in this matter.

1. I am President of IRT Property Company, a real estate investment corporation based in Atlanta, Georgia.
2. Ms. Mary M. Thomas is the Treasurer of IRT Property Company and Mr. J. Addison Mitchell has been associated with me in the mortgage banking business in Atlanta.
3. IRT Property Company is the successor corporation to Investors Realty Trust.
4. IRT Property Company and/or Investors Realty Trust have, since 1971, been dues-paying members of the National Association of Real Estate Investment Trusts ("NAREIT"), an industry trade association based in Washington, D. C.

81040293835

5. I am not an officer of NAREIT but am a member of the Board of Governors of NAREIT.
6. In 1979 I was chairman of the Program Committee of NAREIT. One of the responsibilities of the Program Committee is arranging a program for NAREIT's annual conference, which in 1979 was held in Washington on October 3 - 5. The Committee's responsibilities included the selection of topics and speakers for the conference.
7. For the Washington conference, it was determined that the featured speakers would include a humorist (Mark Russell), an economist (Anthony Downs of Brookings Institute) and a political speaker. The honorarium for each of these featured speakers was budgeted by NAREIT at \$2,000.
8. After several unsuccessful attempts to obtain a political speaker, it was suggested that Congressman Anderson might be considered. As a result, the then Executive Director of NAREIT contacted Mr. Anderson's office through an intermediary, and we were advised that Congressman Anderson would agree to speak at this conference. My understanding was that he would receive \$1,250 for his appearance.
9. Subsequently in August 1979, I was advised by the Executive Director of NAREIT that the Anderson for President Committee would prefer individual contributions of \$250 rather than a lump sum speaking fee.
10. To accomplish this, it was proposed by the Executive Director of NAREIT that I obtain five individual contributions (\$250 each) and that the five contributors in turn would be reimbursed out of a check which was sent to me by NAREIT. I specifically inquired about the propriety of such actions and was assured by the Executive Director of NAREIT that there was nothing improper in these transactions. Since NAREIT was served by an Executive Director with several years of Washington experience, as well as by both in-house and outside legal counsel of considerable experience, I felt that I could rely

81040293836

10. Continued.
on the assurances of NAREIT as communicated by
its Executive Director.
11. Based on these assurances, I delivered to the
Executive Director of NAREIT four checks for
\$250 each payable to the Anderson for
President Committee from me, my wife, Ms.
Thomas and Mr. Mitchell. I also gave the
Executive Director my check for \$250 payable
to him, representing the balance of the
NAREIT check to me for \$1,250.
12. My understanding is that the four checks
given by me to the Executive Director of
NAREIT together with his personal check for
\$250 payable to the Anderson for President
Committee were delivered to that Committee.
13. Subsequent to the NAREIT conference and the
resignation of the Executive Director of
NAREIT (which occurred shortly thereafter),
a routine review of the files of this
ex-Executive Director apparently disclosed
the transactions outlined above. As a result,
several discussions were held between various
NAREIT representatives, representatives of the
Anderson for President Committee and the
Federal Election Commission. On October 31, 1979,
I attended a meeting at your offices at
which all of these matters were reviewed.
14. At this meeting, the Anderson for President
Committee agreed to return the \$250
contributions to the various individuals involved,
with the understanding that these individuals
would in turn forward individual checks to
NAREIT payable to that Association. To the
best of my knowledge this was accomplished.

After this meeting with the Federal Election Commission,
I assumed that the entire matter had been fully reported and
settled to the satisfaction of the Federal Election Commission,
particularly in view of the fact that:

- a) the matter was voluntarily brought
to the attention of the Federal
Election Commission, an action which,
according to your office, is probably
without precedent;

81040293837

January 2, 1980
Charles N. Steele, Esquire
Page Four

- b) As soon as any suggestion of impropriety was made, full restitution was made by the contributors and by the Anderson for President Committee;
- c) no personal advantage was received or intended by any of the contributors involved, the sole intent being to obtain a satisfactory speaker for a NAREIT conference.

I trust that the foregoing is the information that you were requesting. Copies of this letter have been delivered to Ms. Thomas, Mr. Mitchell and my wife, who will be responding directly to you.

Sincerely,



Donald W. MacLeod
President

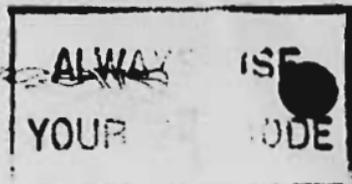
:d

cc: Mrs. Betty Jean MacLeod
Mr. J. A. Mitchell
Ms. Mary M. Thomas

81040293838

Betty Jean MacLeod
6250 Weatherly Drive
Atlanta, Georgia 30328

9
3
8
3
1



21 1 01 NVP 00

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

CERTIFIED
No. 902987 NGL
MAIL

000-56

RECEIVED
FEDERAL ELECTION
COMMISSION

January 3, 1980

'80 JAN 8 PM 12:16

Certified Mail
Return Receipt Requested

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

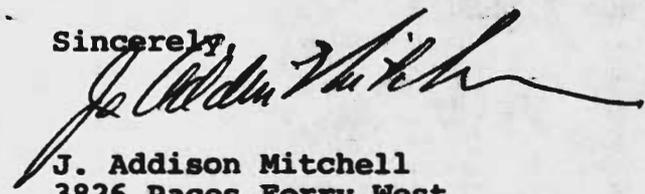
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Sincerely,



J. Addison Mitchell
3826 Paces Ferry West
Atlanta, Georgia

:d

Attachment

81040293840

PROPERTY COMPANY

6540 Powers Ferry Road, Suite 160
Atlanta, Georgia 30339
(404)955-4408

January 2, 1980

**Certified Mail
Return Receipt Requested**

**Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463**

Re: MUR 1094(79)

Dear Mr. Steele:

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After our meeting with the Federal Election Commission on October 31, 1979, I had assumed (obviously incorrectly) that the entire matter had been fully reported and settled to the satisfaction of the Federal Election Commission. Since this is apparently not the case I will again state the facts and circumstances as they relate to my involvement and the involvements of my wife, Ms. Thomas and Mr. Mitchell in this matter.

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4. IRT Property Company and/or Investors Realty Trust have, since 1971, been dues-paying members of the National Association of Real Estate Investment Trusts ("NAREIT"), an industry trade association based in Washington, D. C.

81040293841

5. I am not an officer of NAREIT but am a member of the Board of Governors of NAREIT.
6. In 1979 I was chairman of the Program Committee of NAREIT. One of the responsibilities of the Program Committee is arranging a program for NAREIT's annual conference, which in 1979 was held in Washington on October 3 - 5. The Committee's responsibilities included the selection of topics and speakers for the conference.
7. For the Washington conference, it was determined that the featured speakers would include a humorist (Mark Russell), an economist (Anthony Downs of Brookings Institute) and a political speaker. The honorarium for each of these featured speakers was budgeted by NAREIT at \$2,000.
8. After several unsuccessful attempts to obtain a political speaker, it was suggested that Congressman Anderson might be considered. As a result, the then Executive Director of NAREIT contacted Mr. Anderson's office through an intermediary, and we were advised that Congressman Anderson would agree to speak at this conference. My understanding was that he would receive \$1,250 for his appearance.
9. Subsequently in August 1979, I was advised by the Executive Director of NAREIT that the Anderson for President Committee would prefer individual contributions of \$250 rather than a lump sum speaking fee.
10. To accomplish this, it was proposed by the Executive Director of NAREIT that I obtain five individual contributions (\$250 each) and that the five contributors in turn would be reimbursed out of a check which was sent to me by NAREIT. I specifically inquired about the propriety of such actions and was assured by the Executive Director of NAREIT that there was nothing improper in these transactions. Since NAREIT was served by an Executive Director with several years of Washington experience, as well as by both in-house and outside legal counsel of considerable experience, I felt that I could rely

81040293842

81040293843

10. Continued.
on the assurances of NAREIT as communicated by its Executive Director.
11. Based on these assurances, I delivered to the Executive Director of NAREIT four checks for \$250 each payable to the Anderson for President Committee from me, my wife, Ms. Thomas and Mr. Mitchell. I also gave the Executive Director my check for \$250 payable to him, representing the balance of the NAREIT check to me for \$1,250.
12. My understanding is that the four checks given by me to the Executive Director of NAREIT together with his personal check for \$250 payable to the Anderson for President Committee were delivered to that Committee.
13. Subsequent to the NAREIT conference and the resignation of the Executive Director of NAREIT (which occurred shortly thereafter), a routine review of the files of this ex-Executive Director apparently disclosed the transactions outlined above. As a result, several discussions were held between various NAREIT representatives, representatives of the Anderson for President Committee and the Federal Election Commission. On October 31, 1979, I attended a meeting at your offices at which all of these matters were reviewed.
14. At this meeting, the Anderson for President Committee agreed to return the \$250 contributions to the various individuals involved, with the understanding that these individuals would in turn forward individual checks to NAREIT payable to that Association. To the best of my knowledge this was accomplished.

After this meeting with the Federal Election Commission, I assumed that the entire matter had been fully reported and settled to the satisfaction of the Federal Election Commission, particularly in view of the fact that:

- a) the matter was voluntarily brought to the attention of the Federal Election Commission, an action which, according to your office, is probably without precedent;

January 2, 1980
Charles N. Steele, Esquire
Page Four

- b) As soon as any suggestion of impropriety was made, full restitution was made by the contributors and by the Anderson for President Committee;
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I trust that the foregoing is the information that you were requesting. Copies of this letter have been delivered to Ms. Thomas, Mr. Mitchell and my wife, who will be responding directly to you.

Sincerely,



Donald W. MacLeod
President

:d

cc: Mrs. Betty Jean MacLeod
Mr. J. A. Mitchell
Ms. Mary M. Thomas

81040293844

J. Addison Mitchell
3826 Paces Ferry West
Atlanta, Georgia 30339

1 1 3 8 4

FEDERAL ELECTION COMMISSION
JUL 8 1980

'80 JUL 8 12:16

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

CERTIFIED
No. 902988
MAIL

600#
03

RECEIVED
FEDERAL ELECTION
COMMISSION

January 3, 1980

'80 JAN 8 PM 12:16

Certified Mail
Return Receipt Requested

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463



Re: MUR 1094(79)

Dear Mr. Steele:

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Sincerely,

Mary M. Thomas

Mary M. Thomas
3011 Greenwood Trail
Marietta, Georgia 30067

:d

Attachment

81040293846

PROPERTY COMPANY

6540 Powers Ferry Road, Suite 160
Atlanta, Georgia 30339
(404) 955-4406

January 2, 1980

Certified Mail
Return Receipt Requested

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

Re: MUR 1094(79)

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81040293847

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6. In 1979 I was chairman of the Program Committee of NAREIT. One of the responsibilities of the Program Committee is arranging a program for NAREIT's annual conference, which in 1979 was held in Washington on October 3 - 5. The Committee's responsibilities included the selection of topics and speakers for the conference.
7. For the Washington conference, it was determined that the featured speakers would include a humorist (Mark Russell), an economist (Anthony Downs of Brookings Institute) and a political speaker. The honorarium for each of these featured speakers was budgeted by NAREIT at \$2,000.
8. After several unsuccessful attempts to obtain a political speaker, it was suggested that Congressman Anderson might be considered. As a result, the then Executive Director of NAREIT contacted Mr. Anderson's office through an intermediary, and we were advised that Congressman Anderson would agree to speak at this conference. My understanding was that he would receive \$1,250 for his appearance.
9. Subsequently in August 1979, I was advised by the Executive Director of NAREIT that the Anderson for President Committee would prefer individual contributions of \$250 rather than a lump sum speaking fee.
10. To accomplish this, it was proposed by the Executive Director of NAREIT that I obtain five individual contributions (\$250 each) and that the five contributors in turn would be reimbursed out of a check which was sent to me by NAREIT. I specifically inquired about the propriety of such actions and was assured by the Executive Director of NAREIT that there was nothing improper in these transactions. Since NAREIT was served by an Executive Director with several years of Washington experience, as well as by both in-house and outside legal counsel of considerable experience, I felt that I could rely

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- 81040293849
10. Continued.
on the assurances of NAREIT as communicated by its Executive Director.
 11. Based on these assurances, I delivered to the Executive Director of NAREIT four checks for \$250 each payable to the Anderson for President Committee from me, my wife, Ms. Thomas and Mr. Mitchell. I also gave the Executive Director my check for \$250 payable to him, representing the balance of the NAREIT check to me for \$1,250.
 12. My understanding is that the four checks given by me to the Executive Director of NAREIT together with his personal check for \$250 payable to the Anderson for President Committee were delivered to that Committee.
 13. Subsequent to the NAREIT conference and the resignation of the Executive Director of NAREIT (which occurred shortly thereafter), a routine review of the files of this ex-Executive Director apparently disclosed the transactions outlined above. As a result, several discussions were held between various NAREIT representatives, representatives of the Anderson for President Committee and the Federal Election Commission. On October 31, 1979, I attended a meeting at your offices at which all of these matters were reviewed.
 14. At this meeting, the Anderson for President Committee agreed to return the \$250 contributions to the various individuals involved, with the understanding that these individuals would in turn forward individual checks to NAREIT payable to that Association. To the best of my knowledge this was accomplished.

After this meeting with the Federal Election Commission, I assumed that the entire matter had been fully reported and settled to the satisfaction of the Federal Election Commission, particularly in view of the fact that:

- a) the matter was voluntarily brought to the attention of the Federal Election Commission, an action which, according to your office, is probably without precedent;

January 2, 1980
Charles N. Steele, Esquire
Page Four

- b) As soon as any suggestion of impropriety was made, full restitution was made by the contributors and by the Anderson for President Committee;
- c) no personal advantage was received or intended by any of the contributors involved, the sole intent being to obtain a satisfactory speaker for a NAREIT conference.

I trust that the foregoing is the information that you were requesting. Copies of this letter have been delivered to Ms. Thomas, Mr. Mitchell and my wife, who will be responding directly to you.

Sincerely,



Donald W. MacLeod
President

:d

cc: Mrs. Betty Jean MacLeod
Mr. J. A. Mitchell
Ms. Mary M. Thomas

81040293850

Mary M. Thomas
3011 Greenwood Trail
Milledgeville, Georgia 30067

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Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K. Street Northwest
Washington, D. C. 20463

CERTIFIED
No. 902986
MAIL

ACC#
22

PROPERTY COMPANY
6540 Powers Ferry Road, Suite 160
Atlanta, Georgia 30339
(404)965-4406

RECEIVED
FEDERAL ELECTION
COMMISSION

'80 JAN 8 PM 12:16

January 2, 1980

Certified Mail
Return Receipt Requested

965719

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

Re: MUR 1094(79)

Dear Mr. Steele:

This will acknowledge receipt of your letter to me of December 26, 1979 relating to a possible violation of 2 U.S.C. Sec. 441f of the Federal Election Campaign Act of 1971, as amended, which matter you have numbered MUR 1094(79). Similar letters have been received by my wife, Betty Jean MacLeod, and by Mr. J. A. Mitchell and Ms. Mary M. Thomas, each of whom will be responding directly.

After our meeting with the Federal Election Commission on October 31, 1979, I had assumed (obviously incorrectly) that the entire matter had been fully reported and settled to the satisfaction of the Federal Election Commission. Since this is apparently not the case I will again state the facts and circumstances as they relate to my involvement and the involvements of my wife, Ms. Thomas and Mr. Mitchell in this matter.

1. I am President of IRT Property Company, a real estate investment corporation based in Atlanta, Georgia.
2. Ms. Mary M. Thomas is the Treasurer of IRT Property Company and Mr. J. Addison Mitchell has been associated with me in the mortgage banking business in Atlanta.
3. IRT Property Company is the successor corporation to Investors Realty Trust.
4. IRT Property Company and/or Investors Realty Trust have, since 1971, been dues-paying members of the National Association of Real Estate Investment Trusts ("NAREIT"), an industry trade association based in Washington, D. C.

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5. I am not an officer of NAREIT but am a member of the Board of Governors of NAREIT.
6. In 1979 I was chairman of the Program Committee of NAREIT. One of the responsibilities of the Program Committee is arranging a program for NAREIT's annual conference, which in 1979 was held in Washington on October 3 - 5. The Committee's responsibilities included the selection of topics and speakers for the conference.
7. For the Washington conference, it was determined that the featured speakers would include a humorist (Mark Russell), an economist (Anthony Downs of Brookings Institute) and a political speaker. The honorarium for each of these featured speakers was budgeted by NAREIT at \$2,000.
8. After several unsuccessful attempts to obtain a political speaker, it was suggested that Congressman Anderson might be considered. As a result, the then Executive Director of NAREIT contacted Mr. Anderson's office through an intermediary, and we were advised that Congressman Anderson would agree to speak at this conference. My understanding was that he would receive \$1,250 for his appearance.
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10. Continued.
on the assurances of NAREIT as communicated by its Executive Director.
11. Based on these assurances, I delivered to the Executive Director of NAREIT four checks for \$250 each payable to the Anderson for President Committee from me, my wife, Ms. Thomas and Mr. Mitchell. I also gave the Executive Director my check for \$250 payable to him, representing the balance of the NAREIT check to me for \$1,250.
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- a) the matter was voluntarily brought to the attention of the Federal Election Commission, an action which, according to your office, is probably without precedent;

January 2, 1980
Charles N. Steele, Esquire
Page Four

- b) As soon as any suggestion of impropriety was made, full restitution was made by the contributors and by the Anderson for President Committee;
- c) no personal advantage was received or intended by any of the contributors involved, the sole intent being to obtain a satisfactory speaker for a NAREIT conference.

I trust that the foregoing is the information that you were requesting. Copies of this letter have been delivered to Ms. Thomas, Mr. Mitchell and my wife, who will be responding directly to you.

Sincerely,



Donald W. MacLeod
President

:d

cc: Mrs. Betty Jean MacLeod
Mr. J. A. Mitchell
Ms. Mary M. Thomas

81040293855

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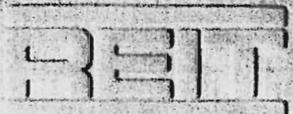
PROPERTY COMPANY

6540 Powers Ferry Road, Suite 160
Atlanta, Georgia 30339

CERTIFIED
No. 902985
MAIL

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

GOC# 1079
11979



NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS, INC.

December 31, 1979

Mr. Robert Bogin, Attorney
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1094 (79)

Dear Mr. Bogin:

In response to your letter of December 26, 1979 (received December 31, 1979) giving NAREIT an opportunity to demonstrate that no action should be taken against the Association in regard to a possible violation of the Federal Election Campaign Act of 1971, I hereby request that our response period be extended from ten (10) working days after the receipt of your letter to fifteen (15) working days after receipt of the letter because of the absence of our Counsel from the office during the week of December 31, 1979 to January 7, 1980.

This letter also confirms your verbal extension to the time period requested above that you granted the Association in a telephone conversation with me on December 31, 1979.

Sincerely,

Ronald D. Utt
Acting Executive Vice President

cc: David C. Bernabucci/w. copy of FEC letter
Walter B. Laessig/w. copy of FEC letter
Joseph Riviere/w. copy of FEC letter
Charles W. Steele/w. copy of FEC letter

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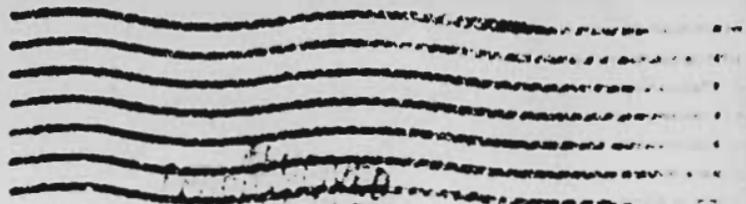
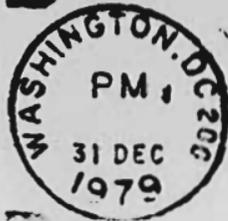
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National Association of Real Estate Investment Trusts, Inc.
1701 Seventeenth Street, N.W.
Washington, D.C.
20036



Mr. Robert Bogin, Attorney
Federal Election Commission
1325 K Street, NW
Washington, DC 20463

DEC 31 11 00 AM '79
FEDERAL ELECTION COMMISSION
WASHINGTON, DC



FEDERAL ELECTION COMMISSION

1979 JAN 2 AM 11 14

National Association of Real Estate Investment Trusts, Inc.
1101 Seventeenth Street, N.W.
Washington, D.C.
20036

Mr. Charles W. Steele, General Counsel
Federal Election Commission
1325 K Street, NW
Washington, DC 20463

104000

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PS Form 3811, Aug. 1978

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1 The following service is requested (check one):

- Show to whom and date delivered. _____
- Show to whom, date, and address of delivery. _____
- RESTRICTED DELIVERY Show to whom and date delivered. _____
- RESTRICTED DELIVERY Show to whom, date, and address of delivery. _____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
David C. Bernabucci

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	155EH6	

(Always obtain receipt of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

Joyce N. Davis

4. DATE OF DELIVERY: *DEC 31 1978* POSTMARK: *DEC 31 1978*

5. ADDRESS (Complete only if requested):

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

mur 1094 Bogin

PS Form 3811, Aug. 1978

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1 The following service is requested (check one):

- Show to whom and date delivered. _____
- Show to whom, date, and address of delivery. _____
- RESTRICTED DELIVERY Show to whom and date delivered. _____
- RESTRICTED DELIVERY Show to whom, date, and address of delivery. _____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
John B. Nicholson

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	155EH6	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

John B. Nicholson

4. DATE OF DELIVERY: *Jan 28 1980* POSTMARK: _____

5. ADDRESS (Complete only if requested):

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

mur 1094 Bogin



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 26, 1979

David C. Bernabucci, Counsel
National Association of Real Estate
Investments Trusts, Inc., (NAREIT)
1101 Seventeenth Street, N.W.
Suite 700
Washington, D.C.

Re: MUR 1094 (79)

Dear Mr. Bernabucci:

On December 21, 1979, the Commission found reason to believe that your client may have violated 2 U.S.C. § 441b and § 441f of the Federal Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. § 441b makes it unlawful for a corporation to make a contribution in connection with a federal election. 2 U.S.C. § 441f makes it unlawful for a person to make a contribution in the name of another person. Specifically, it appears that NAREIT made five contributions to the Anderson for President Committee in the name of other persons. We have numbered this matter MUR 1094(79).

Under the Act, NAREIT has an opportunity to demonstrate that no action should be taken against it. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. In this connection, the Commission appreciates the fact that NAREIT voluntarily brought this matter to the Commission's attention. However, in order to properly pursue this investigation, it is important that we have a written statement for the record.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

81040293861



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David C. Bernabucci, Counsel
National Association of Real Estate
Investments Trusts, Inc., (NAREIT)
1101 Seventeenth Street, N.W.
Suite 700
Washington, D.C.

Re: MUR 1094 (79)

Dear Mr. Bernabucci:

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Sincerely,

Charles N. Steele
General Counsel

RB
12/26

81040293862



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

December 26, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John B. Nicholson
1429 44th Street, N.W.
Washington, D.C.

Re: MUR 1094(79)

Dear Mr. Nicholson:

On December 21, 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441b(a) and § 441f of the Federal Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. § 441b(a) makes it unlawful for any officer of a corporation to consent to contributions made by said corporation in connection with a federal election. 2 U.S.C. § 441f makes it unlawful for a person to make a contribution in the name of another person and to knowingly permit one's name to be used to effect such a contribution. Specifically, it appears that in your capacity as executive director of the National Association of Real Estate Investment Trusts, Inc., you consented to NAREIT's making of five contributions to the Anderson for President Committee in the name of other persons, one of those persons being yourself. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

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Sincerely,

Charles N. Steele
General Counsel

81040293863



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John B. Nicholson
1429 44th Street, N.W.
Washington, D.C.

Re: MUR 1094(79)

Dear Mr. Nicholson:

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Sincerely,

RB
12/26

Charles N. Steele
General Counsel

81040293864

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PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Donald W. MacLeod

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 _____ *2543000* _____
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
A. Book

4. DATE OF DELIVERED *12-31-79* POSTMARK *S*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: _____ CLERK'S INITIALS _____

MUR 1094 Bogm - ☆ GPO: 1979-272-382

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Jay Addison Mitchell

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 _____ *ESSEHO* _____
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
A. Book

4. DATE OF DELIVERY *1-3-80* POSTMARK *JAN 3 1980*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: _____ CLERK'S INITIALS _____

MUR 1094 Bogm ☆ GPO: 1979-272-382



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

December 26, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Donald W. MacLeod
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Mr. MacLeod:

On December 21, 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. In this connection, the Commission appreciates the fact that you voluntarily brought this matter to the Commission's attention. However, in order to properly pursue this investigation, it is important that we have your written statement for the record.

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Sincerely,

Charles N. Steele
General Counsel

81040293866



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Donald W. MacLeod
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

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Sincerely,

Charles N. Steele
General Counsel

BB
12/26

040293867



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

December 26, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Addison Mitchell
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

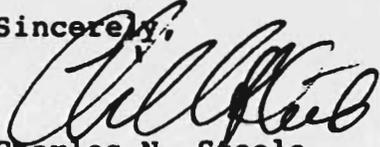
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Sincerely,


Charles N. Steele
General Counsel

81040293868



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Addison Mitchell
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Mr. Mitchell:

On December , 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

12/26
RB

81040293869

01804701010

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1 The following service is requested (check one).
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mary Ann Thomas

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 015 55543

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
A. Roach

4. DATE OF DELIVERY
12-31-79

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

GA 30020
 DEC 31 1979

Begin mar 1094

GPO: 1978-272-342

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1 The following service is requested (check one).
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Betty Jean MacLeod

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 055846

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
C. Roach

4. DATE OF DELIVERY POSTMARK
1-2-80

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

GA 30020
 JAN 2 1980

RB

mar 1094

GPO: 1978-272-342



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

December 26, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Mary Ann Thomas
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Ms. Thomas:

On December 21, 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,


Charles N. Steele
General Counsel

1040293871



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Mary Ann Thomas
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Ms. Thomas:

On December , 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

RB
12/26

81040293872



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

December 26, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Betty Jean MacLeod
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Ms. MacLeod:

On December 21, 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,


Charles N. Steere
General Counsel

81040293873



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Betty Jean MacLeod
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Ms. MacLeod:

On December , 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

RB
12/26

81040293874

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Association of Real) MUR 1094
Estate Investment Trusts,)
Inc. (NAREIT))
John Nicholson)
Donald MacLeod)
Betty Jean MacLeod)
Mary Ann Thomas)
Jay Addison Mitchell)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on December 21, 1979, the Commission decided by a vote of 5-0 to take the following actions regarding the above-captioned matter:

1. Find REASON TO BELIEVE that NAREIT violated 2 U.S.C. § 441f by making contributions in the name of others.
2. Find REASON TO BELIEVE that John Nicholson, Donald MacLeod, Betty Jean MacLeod, Mary Ann Thomas and Jay Addison Mitchell violated 2 U.S.C. §441f by knowingly permitting their names to be used to effect contributions made by NAREIT and/or John Nicholson.
3. Find REASON TO BELIEVE that NAREIT and John Nicholson violated 2 U.S.C. § 441b(a) by making a contribution in connection with a federal election.

(Continued)

81040293875

CERTIFICATION
First General Counsel's Report
Dated December 18, 1979
MUR 1094

Page 2

4. Approve and send the letters of notification attached to the above-named report.

Voting for this determination were Commissioners
Aikens, Friedersdorf, McGarry, Reiche, and Tiernan.

Attest:

12/21/79

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

81040293876

Received in Office of the Commission Secretary: 12-18-79, 2:22
Circulated on 48 hour vote basis: 12-19-79, 11:00

December 18, 1979

MEMORANDUM TO: Marjorie W. Hanson
FROM: Elissa T. Garr
SUBJECT: MUR 1094

Please have the attached First GC Report on MUR 1094 distributed to the Commission on a 48 hour tally basis.

Thank you.

81040293877

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

79 DEC 18 P 2: 22

DATE AND TIME OF TRANSMITTAL
BY OGC TO COMMISSION 12-18-79

MUR NO. 1094
STAFF MEMBER(S) _____

Bogin

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS NAMES: National Association of Real Estate Investment
Trusts, Inc. (NAREIT), John Nicholson, Donald
MacLeod, Betty Jean MacLeod, Mary Ann Thomas,
Jay Addison Mitchell

RELEVANT STATUTE: 2 U.S.C. §§ 441f and 441b

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

GENERATION OF MATTER

On October 31, 1979, members of the Office of General Counsel met with representatives from the Anderson for President Committee (Committee), the National Association of Real Estate Investment Trusts, Inc. (NAREIT), and Donald W. MacLeod, President of IRT Property Company. At this meeting, initiated by the Committee, it was revealed that five \$250 contributions reported as having been made by five individuals were allegedly made with funds supplied by NAREIT. The details of this meeting were reported to the Commission in a memorandum dated November 23, 1979, (attached).

Based on the information supplied by the Committee, NAREIT and Mr. MacLeod, the five contributions give rise to possible violations of 2 U.S.C. § 441f and § 441b.

2 U.S.C. § 441f states that "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." (Emphasis supplied). Based on information supplied by representatives of NAREIT, there does not appear to be any dispute that the money for the five \$250 contributions was drawn by John Nicholson, then executive director of NAREIT, from the general treasury of NAREIT and distributed to others for the purpose of making contributions to the Committee. If this allegation is true, then NAREIT violated 2 U.S.C. § 441f by making contributions in the name of others. Additionally, if any of the five individuals

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knowingly permitted their name to be used to effect such a contribution, then they would be in violation of 2 U.S.C. § 441f.

2 U.S.C. § 441b makes it unlawful for a corporation to make a contribution in connection with any federal election or for an officer of the corporation to consent to the making of such contributions. In addition, it is unlawful for any candidate or political committee to knowingly accept such a contribution. If NAREIT funds were used to make contributions to the Committee and John Nicholson consented to their being made, then NAREIT and John Nicholson would have violated 2 U.S.C. § 441b(a).

With regard to the Committee, any violation of 2 U.S.C. § 441f and 441b would have to be made knowingly. Based on the October 31, 1979, meeting it seems clear that the Committee did not know and had no reason to know that the contributions ostensibly made by the five individuals were drawn from corporate funds or were made in the name of another.

Recommendations

1. Find reason to believe that NAREIT violated 2 U.S.C. § 441f by making contributions in the name of others.
2. Find reason to believe that John Nicholson, Donald MacLeod, Betty Jean MacLeod, Mary Ann Thomas and Jay Addison Mitchell violated 2 U.S.C. § 441f by knowingly permitting their names to be used to effect contributions made by NAREIT and/or John Nicholson.
3. Find reason to believe that NAREIT and John Nicholson violated 2 U.S.C. § 441b(a) by making a contribution in connection with a federal election.
4. Approve and send the attached letters of notification.

Attachments:

Memorandum to Commission dated November 23, 1979
Letters of Notifications (6)

81040293879



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

November 23, 1979

MEMORANDUM

TO: The Commission
FROM: Charles N. Steele *CNS*
Acting General Counsel
SUBJECT: Anderson for President Committee -
Pre-MUR 46

The staff members of the Office of General Counsel met with representatives from the Anderson for President Committee ("Committee") and the National Association of Real Estate Investment Trusts, Inc., (NAREIT). The representatives of the Committee and NAREIT voluntarily came forth to admit a violation of the Federal Election Campaign Act.

The representatives explained the facts as follows: NAREIT invited Representative John Anderson to speak at an association function. Representative Anderson was offered an honoraria, although he agreed to speak, he refused to accept the honoraria because he had reached his limitation. Instead it was agreed that the Representative would speak without receiving a fee but would accept contributions to his campaign.

On September 21, 1979, five checks, each in the amount of \$250, were hand delivered to Representative Anderson's administrative assistant. At a later date, the Committee discovered that the money for these contributions came from NAREIT's treasury and not from voluntary funds. NAREIT does not have a registered political action committee. Upon discovery that the source of the contributions was from NAREIT's treasury, the Committee initiated contact with the Commission.

The five individuals whom the contributions were made in the name of are John Nicholson, who at the time of the contribution was the executive director of NAREIT, Donald MacLeod

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(President of IRT Property Company of Atlanta, Georgia), his wife, Betty Jean MacLeod, and two employees of Mr. MacLeod's, Mary Ann Thomas and Jay Addison Mitchell. According to Donald MacLeod, John Nicholson handed Mr. MacLeod a NAREIT check for \$1,250 and told him that the Committee would prefer contributions from individuals rather than the association. After seeking and receiving assurance from Mr. Nicholson that this was a proper procedure, Mr. MacLeod cashed the NAREIT check, gave \$250 to his wife and two employees, and asked them to write out a check to the Committee for \$250. Thereupon, Mr. MacLeod delivered to Mr. Nicholson four checks, including one of his own for \$250, and the remaining \$250. Mr. Nicholson wrote out the fifth check and sent them all on to the Committee. Mr. MacLeod told us that he had no idea that the manner in which these contributions were made was illegal. Mr. MacLeod further reports that Mr. Nicholson, who was not present at the meeting, saw nothing wrong in making contributions in this manner. The Committee clearly did not know the story behind the five contributions. The Committee has now refunded the contributions. (See attachments).

2 U.S.C. §441f states that "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." (Emphasis added).

The possibility exists that these contributions resulted in a violation of 2 U.S.C. §441f. Additionally, there may be a violation of 2 U.S.C. §441b in that trade association treasury funds were contributed. Inasmuch as John Nicholson did not attend the meeting and we do not have his first-hand account of what happened, it is the recommendation of the Office of General Counsel that an investigation should be opened in this matter. We gave our assurances to those attending the meeting that the Commission would be apprised of the voluntary manner in which they disclosed their involvement with these contributions.

Recommendation

Open a Matter under Review.

Attachments

81040293881



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Betty Jean MacLeod
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Ms. MacLeod:

On December , 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

81040293882



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Mary Ann Thomas
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Ms. Thomas:

On December , 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

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Sincerely,

Charles N. Steele
General Counsel

81040293883



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Addison Mitchell
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Mr. Mitchell:

On December , 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

81040293884



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Donald W. MacLeod
c/o IRT Property Company
6540 Powers Ferry Road
Atlanta, Georgia 30339

Re: MUR 1094(79)

Dear Mr. MacLeod:

On December , 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act"). This section of the Act makes it unlawful for a person to "knowingly permit his name to be used to effect" a contribution made in the name of another. Specifically, it appears that you knowingly permitted your name to be used to effect a contribution to the Anderson for President Committee that was in actuality being made by some other person. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. In this connection, the Commission appreciates the fact that you voluntarily brought this matter to the Commission's attention. However, in order to properly pursue this investigation, it is important that we have your written statement for the record.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

81040293885



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John B. Nicholson
1429 44th Street, N.W.
Washington, D.C.

Re: MUR 1094(79)

Dear Mr. Nicholson:

On December , 1979, the Commission found reason to believe that you may have violated 2 U.S.C. § 441b(a) and § 441f of the Federal Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. § 441b(a) makes it unlawful for any officer of a corporation to consent to contributions made by said corporation in connection with a federal election. 2 U.S.C. § 441f makes it unlawful for a person to make a contribution in the name of another person and to knowingly permit one's name to be used to effect such a contribution. Specifically, it appears that in your capacity as executive director of the National Association of Real Estate Investment Trusts, Inc., you consented to NAREIT's making of five contributions to the Anderson for President Committee in the name of other persons, one of those persons being yourself. We have numbered this matter MUR 1094(79).

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

810402938866



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David C. Bernabucci, Counsel
National Association of Real Estate
Investments Trusts, Inc., (NAREIT)
1101 Seventeenth Street, N.W.
Suite 700
Washington, D.C.

Re: MUR 1094 (79)

Dear Mr. Bernabucci:

On December , 1979, the Commission found reason to believe that your client may have violated 2 U.S.C. § 441b and § 441f of the Federal Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. § 441b makes it unlawful for a corporation to make a contribution in connection with a federal election. 2 U.S.C. § 441f makes it unlawful for a person to make a contribution in the name of another person. Specifically, it appears that NAREIT made five contributions to the Anderson for President Committee in the name of other persons. We have numbered this matter MUR 1094(79).

Under the Act, NAREIT has an opportunity to demonstrate that no action should be taken against it. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. In this connection, the Commission appreciates the fact that NAREIT voluntarily brought this matter to the Commission's attention. However, in order to properly pursue this investigation, it is important that we have a written statement for the record.

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Robert Bogin, the attorney assigned to this matter, at (202) 523-4073. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

Charles N. Steele
General Counsel

81040;93887

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	Pre-MUR 46
Anderson for President Committee)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on November 29, 1979, the Commission decided by a vote of 5-0 to open a Matter Under Review to investigate the above-captioned matter.

Voting for this determination were Commissioners Aikens, Friedersdorf, Harris, McGarry, and Reiche.

Attest:

11/29/79
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

81040293888

Received in Office of the Commission Secretary: 11-26-79, 2:30
Circulated on 48 hour vote basis: 11-27-79, 11:00

November 24, 1979

Mr. Richard S. [unclear]
Miss [unclear]
[unclear]

Please have the attached [unclear] distributed to the
Commission on a 48-hour tally basis.

Thankyou.

81040293009



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 23, 1979

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
Acting General Counsel *CS*

SUBJECT: Anderson for President Committee -
Pre-MUR 46

The staff members of the Office of General Counsel met with representatives from the Anderson for President Committee ("Committee") and the National Association of Real Estate Investment Trusts, Inc., (NAREIT). The representatives of the Committee and NAREIT voluntarily came forth to admit a violation of the Federal Election Campaign Act.

The representatives explained the facts as follows: NAREIT invited Representative John Anderson to speak at an association function. Representative Anderson was offered an honoraria, although he agreed to speak, he refused to accept the honoraria because he had reached his limitation. Instead it was agreed that the Representative would speak without receiving a fee but would accept contributions to his campaign.

On September 21, 1979, five checks, each in the amount of \$250, were hand delivered to Representative Anderson's administrative assistant. At a later date, the Committee discovered that the money for these contributions came from NAREIT's treasury and not from voluntary funds. NAREIT does not have a registered political action committee. Upon discovery that the source of the contributions was from NAREIT's treasury, the Committee initiated contact with the Commission.

The five individuals whom the contributions were made in the name of are John Nicholson, who at the time of the contribution was the executive director of NAREIT, Donald MacLeod

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(President of IRT Property Company of Atlanta, Georgia), his wife, Betty Jean MacLeod, and two employees of Mr. MacLeod's, Mary Ann Thomas and Jay Addison Mitchell. According to Donald MacLeod, John Nicholson handed Mr. MacLeod a NAREIT check for \$1,250 and told him that the Committee would prefer contributions from individuals rather than the association. After seeking and receiving assurance from Mr. Nicholson that this was a proper procedure, Mr. MacLeod cashed the NAREIT check, gave \$250 to his wife and two employees, and asked them to write out a check to the Committee for \$250. Thereupon, Mr. MacLeod delivered to Mr. Nicholson four checks, including one of his own for \$250, and the remaining \$250. Mr. Nicholson wrote out the fifth check and sent them all on to the Committee. Mr. MacLeod told us that he had no idea that the manner in which these contributions were made was illegal. Mr. MacLeod further reports that Mr. Nicholson, who was not present at the meeting, saw nothing wrong in making contributions in this manner. The Committee clearly did not know the story behind the five contributions. The Committee has now refunded the contributions. (See attachments).

2 U.S.C. §441f states that "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." (Emphasis added).

The possibility exists that these contributions resulted in a violation of 2 U.S.C. §441f. Additionally, there may be a violation of 2 U.S.C. §441b in that trade association treasury funds were contributed. Inasmuch as John Nicholson did not attend the meeting and we do not have his first-hand account of what happened, it is the recommendation of the Office of General Counsel that an investigation should be opened in this matter. We gave our assurances to those attending the meeting that the Commission would be apprised of the voluntary manner in which they disclosed their involvement with these contributions.

Recommendation

Open a Matter under Review.

Attachments

GROSS
11-5-75



R. Boyer

K. GROSS

The Anderson for President Committee 719 8th St. S.E., Washington, D.C. 20003 202/544-1090

William G. Bradford
Campaign Manager

November 5, 1979

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Kenneth Gross, Esq
Assistant General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Ken,

Enclosed are copies of the letters sent to each of the persons who contributed to the Anderson campaign as part of the National Association of Real Estate Investment Trusts arrangement.

Thanks again for your cooperation in this unpleasant matter.

Sincerely,

Daniel J. Swillinger
Campaign Director

DJS/mh

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OFFICE OF THE
GENERAL COUNSEL

The Anderson for President Committee 719 8th St. S.E., Washington, D.C. 20003 202/544-1090

William G. Bradford
Campaign Manager

November 5, 1979

Mr. John B. Nicholson
1429 44th Street, N.W.
Washington, D.C. 20007

Dear Mr. Nicholson:

Enclosed is a check payable to you in the amount of \$250.00, in full refund of the contribution which you made to the Anderson for President Committee in September.

Based on information supplied to the Committee by officers and staff of the National Association of Real Estate Investment Trusts, we have concluded that your contribution was improper under the Federal Election Campaign Act of 1971, as amended. The information regarding your contribution has been brought to the attention of the Federal Election Commission.

Sincerely,

Daniel J. Swillinger
Campaign Director

DJS:mh

cc: Kenneth Gross, Esq., FEC
David Bernabucci, Esq., NAREIT

The Anderson for President Committee 719 8th St. S.E., Washington, D.C. 20003 202/544-1090

**William G. Bradford
Campaign Manager**

November 5, 1979

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**Mr. J. Addison Mitchell
3826 Paces Ferry, W.
Atlanta, Georgia 30339**

Dear Mr. Mitchell:

Enclosed is a check payable to you in the amount of \$250.00, in full refund of the contribution which you made to the Anderson for President Committee in September.

Based on information supplied to the Committee by officers and staff of the National Association of Real Estate Investment Trusts, we have concluded that your contribution was improper under the Federal Election Campaign Act of 1971, as amended. The information regarding your contribution has been brought to the attention of the Federal Election Commission.

Sincerely,

**Daniel J. Swillinger
Campaign Director**

DJS:mh

cc: **Kenneth Gross, Esq., FEC
David Bernabucci, Esq., NAREIT**



The Anderson for President Committee 719 8th St. S.E., Washington, D.C. 20003 202/544-1090

**William G. Bradford
Campaign Manager**

November 5, 1979

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**Mr. Donald W. MacLeod
6250 Weatherly Dr, N.W.
Atlanta, Georgia 30328**

Dear Mr. MacLeod:

Enclosed is a check payable to you in the amount of \$250.00, in full refund of the contribution which you made to the Anderson for President Committee in September.

Based on information supplied to the Committee by officers and staff of the National Association of Real Estate Investment Trusts, we have concluded that your contribution was improper under the Federal Election Campaign Act of 1971, as amended. The information regarding your contribution has been brought to the attention of the Federal Election Commission.

Sincerely,

**Daniel J. Swillinger
Campaign Director**

**cc: Kenneth Gross, Esq., FEC
David Bernabucci, Esq., NAREIT**

The Anderson for President Committee 719 8th St. S.E., Washington, D.C. 20003 202/544-1090

William G. Bradford
Campaign Manager

November 5, 1979

8 1 0 4 0 2 9 3 8 9 6
Mrs. Mary M. Thomas
3011 Greenwood Terrace
Marietta, Georgia 30067

Dear Mrs. Thomas:

Enclosed is a check payable to you in the amount of \$250.00, in full refund of the contribution which you made to the Anderson for President Committee in September

Based on information supplied to the Committee by officers and staff of the National Association of Real Estate Investment Trusts, we have concluded that your contribution was improper under the Federal Election Campaign Act of 1971, as amended. The information regarding your contribution has been brought to the attention of the Federal Election Commission.

Sincerely,

Daniel J. Swillinger
Campaign Director

DJS:mh

cc: Kenneth Gross, Esq., FEC
David Bernabucci, Esq., NAREIT



The Anderson for President Committee
William G. Bradford, Campaign Manager

November 5, 1979

Mrs. Betty Jean MacLeod
6250 Weatherly Drive, N.W.
Atlanta, Georgia 30328

Dear Mrs. MacLeod:

Enclosed is a check payable to you in the amount of \$250.00, in full refund of the contribution which you made to the Anderson for President Committee in September.

Based on information supplied to the Committee by officers and staff of the National Association of Real Estate Investment Trusts, we have concluded that your contribution was improper under the Federal Election Campaign Act of 1971, as amended. The information regarding your contribution has been brought to the attention of the Federal Election Commission.

Sincerely,

Daniel J. Swillinger
Campaign Director

DJS:bwp

cc: Kenneth Gross, Esq., FEC
David Bernabucci, Esq., NAREIT

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FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1094

Date Filmed 9/22/81 Camera No. --- 2

Cameraman LPC