FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1166

Date Filmed 9/29/82 Camera No. --- 2

Cameraman SDC

FEDERAL ELECTION COMMISSION

437g (a)(4)(B)

materials

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):

____	(1) Classified Information	____	(6) Personal privacy
____	(2) Internal rules and practices	____	(7) Investigatory files
X	(3) Exempted by other statute	____	(8) Banking Information
____	(4) Trade secrets and commercial or financial information	____	(9) Well Information (geographic or geophysical)
X	(5) Internal Documents		

Signed Thomas J. Whitehead

date 9/1/82

FEC 9-21-77

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 16, 1982

E. Mark Braden, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1166/1180

Dear Mr. Braden:

On August 12, 1982, the Commission accepted the conciliation agreement signed by you and a civil penalty in settlement of violations of 2 U.S.C. § 441b and § 441a(d), 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

Enclosure
Conciliation Agreement

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

E. Mark Braden, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1166/1180

Dear Mr. Braden:

On , 1982, the Commission accepted the conciliation agreement signed by you and a civil penalty in settlement of violations of 2 U.S.C. § 441b and § 441a(d), 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

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1180
Republican National	)	
Committee	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that the Republican National Committee ("Respondent") violated 2 U.S.C. § 441b and 2 U.S.C. § 441a(d) by receiving corporate contributions and making an excessive party expenditure.

NOW, THEREFORE, the Commission and Respondent, 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.

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

1. On October 27, 1976, it deposited in its account a check in the amount of $20,000 it received from a corporation, namely, the Franklin Mint.

2. In July of 1979, it deposited in its account a check in the amount of $8,705.00 it received from a corporation, namely, the Franklin Mint.

3. On July 22, 1976, it deposited in its account a check in the amount of $1,050.25 it received from a corporation, namely, Acropolis Books, Ltd.

4. On October 23, 1976, it deposited in its operating account a check in the amount of $2,145.00 it received from a corporation, namely, Acropolis Books, Ltd.

5. From January of 1976 through March 31, 1979, it deposited in its operating account $2,032.98 it received from 58 corporations and one labor union.

6. In the 1976 general election, the Respondent made an expenditure in the amount of $14,890.00 on behalf of one David Serotkin, a candidate for Congress in the 12th Congressional district of Michigan, that exceeded by $3,908 the limitations imposed by 2 U.S.C. § 441a(d) on such expenditures.

V. Respondent contends that it accepted the above-mentioned checks in the context of a bona fide commercial transaction believing such action was permissible under the Act. It is the position of the Commission that the acceptance of the referenced checks constitutes a violation of 2 U.S.C. § 441b(a).

VI. Respondent violated 2 U.S.C. § 441a(d)(3)(B) in making the expenditures on behalf of David Serotkin.

VII. Respondent will pay a civil penalty in the amount of Five Hundred Dollars ($500.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII. Respondent agrees that it 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.

IX. The Commission, on 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.

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

Aug 13, 1982
Date

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

August 4, 1982
Date

REPUBLICAN NATIONAL COMMITTEE
Respondent's Name

BY: E. Mark Braden
E. Mark Braden

ITS: House Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 16, 1982

Lynda S. Mounts, Esquire
Cadwalader, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1166/1180

Dear Ms. Mounts:

On August 12, 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(a), a provision 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

Enclosure
Conciliation Agreement

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lynda S. Mounts, Esquire
Cadwalader, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1166/1180

Dear Ms. Mounts:

On , 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(a), a provision 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

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1166
The Democratic National Committee	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that the Democratic National Committee violated 2 U.S.C. § 441b(a) by accepting a corporate contribution from the Franklin Mint Corporation.

NOW, THEREFORE, the Commission and Respondent, 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.

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

1. The respondent is a political committee;

2. On September 8, 1976, it deposited in its account a check in the amount of $20,000 it received from a corporation, namely, the Franklin Mint; and

3. On October 3, 1976, it deposited in its account a check in the amount of $10,000 it received from a corporation, namely, the Franklin Mint.

V. Respondent contends that it accepted the above-mentioned checks in the context of a bona fide commercial transaction believing such action was permissible under the Act. It is the position of the Commission that the acceptance of the referenced checks constitutes a violation of 2 U.S.C. § 441b(a).

VI. Respondent agrees that it 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.

VII. The Commission, on 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.

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

August 13, 1982
Date

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

8/4/82
Date

Democratic National Committee
Respondent's Name

BY: Lynda S. Mounts
Lynda S. Mounts
ITS: Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 16, 1982

James P. Mercurio, Esquire
Arent, Fox, Kintner, Plotkin
and Kahn
1815 H Street, N.W.
Washington, D.C. 20006

RE: MUR 1166/1180

Dear Mr. Mercurio:

On August 12, 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b, a provision 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

Enclosure
Conciliation Agreement

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James P. Mercurio, Esquire
Arent, Fox, Kintner, Plotkin
and Kahn
1815 H Street, N.W.
Washington, D.C. 20006

RE: MUR 1166/1180

Dear Mr. Mercurio:

On , 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b, a provision 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

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1166
Franklin Mint Corporation	)	MUR 1180

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

On January 28, 1982, the Commission advised Franklin Mint Corporation (hereinafter "Respondent") that the Office of General Counsel was prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

On March 1, 1982, Respondent filed its response to the General Counsel's recommendation in which it stated its position that payments made by it to the Democratic National Committee and the Republican National Committee pursuant to contractual arrangements with these committees under which Respondent had agreed to pay each committee for the use of certain party symbols did not constitute "contributions or expenditures" under 2 U.S.C. § 441b.

On April 20, 1982, the Commission determined that there is probable cause to believe that these payments were "contributions or expenditures" under 2 U.S.C. § 441b, which are defined in that section to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money to any candidate, campaign committee, or political party or organization, in

connection with any election to any of the offices referred to in [the] section."

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(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.

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

(a) Respondent corporation has for years, as an important part of its business, minted coins and medallions commemorating historical figures, important events, and the like. Such coins and medallions are marketed as collectibles.

(b) In 1972, Respondent had entered into agreements with the national committees of the two major political parties, allowing use of the committees' symbols for commemorative medals depicting the candidates of the two parties in the 1972 Presidential campaign. At Respondent's request for an opinion, the General Accounting Office ruled, in a letter dated August 23, 1972, that advertisements for such commemorative medals did not require certification under Section 104 of the

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Federal Election Campaign Act; the GAO found that "the over-riding purpose of the advertisement is transparently commercial aimed at selling the medals rather than either of the candidacies" and that "we do not consider that the law was intended to restrict established commercial activities such as this."

(c) In 1976, Respondent similarly entered into identical agreements with the Republican and Democratic National Committees allowing Respondent to use a symbol representing those parties' Presidential campaigns and to represent its commemorative medallions as the official campaign medals. In consideration of Respondent's use of the committees' symbols, Respondent agreed to pay each committee a royalty equal to 15% of sales, with a minimum royalty of $30,000, and to provide a quantity of medals equivalent in retail value to $5,000.

(d) In accordance with the terms of such agreements, Respondent tendered to the Republican National Committee, on October 27, 1976, and in July of 1979, payments in an aggregate amount of $28,705.00, and to the Democratic National Committee, on September 8, 1976 and October 29, 1976, payments in the aggregate amount of $30,000.

V. Pursuant to its statutory and regulatory authority, and in accordance with certain of its previous advisory opinions on

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other matters, the Commission has interpreted said payments by Respondent, a corporation, to constitute "contributions or expenditures" to a political committee. Respondent has taken exception to the Commission's interpretation, asserting that such payments constituted consideration pursuant to contracts for Respondent's purchase of property interests of both the Republican and Democratic National Committees for purely commercial purposes.

VI. For purposes of conciliation only, Respondent agrees that it shall not make any payments to any candidate, campaign committee, or political party or organization in connection with any election to any of the offices referred to in 2 U.S.C. § 441b, including, but not limited to payments for the right to use any symbols of the political parties.

VII. This agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding pursuant to 2 U.S.C. § 437g(a)(6)(A), respecting the alleged violation for which probable cause to believe has been found. The Commission may review compliance with this agreement on its own motion, or on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein. 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.

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

Aug 13, 1982
Date

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

8/4/82
Date

FRANKLIN MINT CORPORATION

BY: James P Mercuri

ITS: Attorney

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1166/1180
Franklin Mint	)	
Democratic National Committee	)	
Republican National Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 12, 1982, the Commission decided by a vote of 5-0 to take the following actions in MUR 1166/1180:

1. Accept the conciliation agreements as submitted with the August 9, 1982 Memorandum to the Commission.

2. Close the File.

Commissioners Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively in this matter; Commissioner Aikens did not cast a vote.

Attest:

8-12-82
Date

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

Received in Office of Commission Secretary: 8-9-82, 2:24
Circulated on 48 hour tally basis: 8-10-82, 11:00

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August 9, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1166/1180

Please have the attached Memo to the Commission distributed to the Commission on a 48 hour tally basis. Thank you.

Attachment

cc: Callahan

12704033233

SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

82 AUG 9 P2: 24

August 9, 1982

MEMORANDUM

TO : The Commission

FROM : Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

SUBJECT: MUR 1166/1180 - Conciliation Agreements

Attached are conciliation agreements which have each been signed by the attorneys representing the Franklin Mint, the Democratic National Committee, and the Republican National Committee.

The attached agreements contain no changes from the agreements approved by the Commission on July 27, 1982, and a check for the civil penalty imposed by the Commission against the Republican National Committee has been received.

The Office of General Counsel recommends the acceptance of these agreements and the closing of the file.

Attachments

Conciliation Agreements - Three
Notification letters - Three
Photocopy of civil penalty check
(16 pages attached)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1166
Franklin Mint Corporation	)	MUR 1180

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

On January 28, 1982, the Commission advised Franklin Mint Corporation (hereinafter "Respondent") that the Office of General Counsel was prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

On March 1, 1982, Respondent filed its response to the General Counsel's recommendation in which it stated its position that payments made by it to the Democratic National Committee and the Republican National Committee pursuant to contractual arrangements with these committees under which Respondent had agreed to pay each committee for the use of certain party symbols did not constitute "contributions or expenditures" under 2 U.S.C. § 441b.

On April 20, 1982, the Commission determined that there is probable cause to believe that these payments were "contributions or expenditures" under 2 U.S.C. § 441b, which are defined in that section to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money to any candidate, campaign committee, or political party or organization, in

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connection with any election to any of the offices referred to in [the] section."

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(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.

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

(a) Respondent corporation has for years, as an important part of its business, minted coins and medallions commemorating historical figures, important events, and the like. Such coins and medallions are marketed as collectibles.

(b) In 1972, Respondent had entered into agreements with the national committees of the two major political parties, allowing use of the committees' symbols for commemorative medals depicting the candidates of the two parties in the 1972 Presidential campaign. At Respondent's request for an opinion, the General Accounting Office ruled, in a letter dated August 23, 1972, that advertisements for such commemorative medals did not require certification under Section 104 of the

Federal Election Campaign Act; the GAO found that "the over-riding purpose of the advertisement is transparently commercial aimed at selling the medals rather than either of the candidacies" and that "we do not consider that the law was intended to restrict established commercial activities such as this."

(c) In 1976, Respondent similarly entered into identical agreements with the Republican and Democratic National Committees allowing Respondent to use a symbol representing those parties' Presidential campaigns and to represent its commemorative medallions as the official campaign medals. In consideration of Respondent's use of the committees' symbols, Respondent agreed to pay each committee a royalty equal to 15% of sales, with a minimum royalty of $30,000, and to provide a quantity of medals equivalent in retail value to $5,000.

(d) In accordance with the terms of such agreements, Respondent tendered to the Republican National Committee, on October 27, 1976, and in July of 1979, payments in an aggregate amount of $28,705.00, and to the Democratic National Committee, on September 8, 1976 and October 29, 1976, payments in the aggregate amount of $30,000.

V. Pursuant to its statutory and regulatory authority, and in accordance with certain of its previous advisory opinions on

other matters, the Commission has interpreted said payments by Respondent, a corporation, to constitute "contributions or expenditures" to a political committee. Respondent has taken exception to the Commission's interpretation, asserting that such payments constituted consideration pursuant to contracts for Respondent's purchase of property interests of both the Republican and Democratic National Committees for purely commercial purposes.

VI. For purposes of conciliation only, Respondent agrees that it shall not make any payments to any candidate, campaign committee, or political party or organization in connection with any election to any of the offices referred to in 2 U.S.C. § 441b, including, but not limited to payments for the right to use any symbols of the political parties.

VII. This agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding pursuant to 2 U.S.C. § 437g(a)(6)(A), respecting the alleged violation for which probable cause to believe has been found. The Commission may review compliance with this agreement on its own motion, or on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein. 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.

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

_____ Date	_____ Charles N. Steele General Counsel
_____ Date	BY: _____ Kenneth A. Gross Associate General Counsel
8/4/82 Date	FRANKLIN MINT CORPORATION BY: James P Mercuri ITS: Attorney

RECEIVED

BEFORE THE FEDERAL ELECTION COMMISSION

82 AUG 4 P3:23

In the Matter of	)	
	)	MUR 1166
The Democratic National Committee	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that the Democratic National Committee violated 2 U.S.C. § 441b(a) by accepting a corporate contribution from the Franklin Mint Corporation.

NOW, THEREFORE, the Commission and Respondent, 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.

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

1. The respondent is a political committee;

2. On September 8, 1976, it deposited in its account a check in the amount of $20,000 it received from a corporation, namely, the Franklin Mint; and

3. On October 3, 1976, it deposited in its account a check in the amount of $10,000 it received from a corporation, namely, the Franklin Mint.

6

V. Respondent contends that it accepted the above-mentioned checks in the context of a bona fide commercial transaction believing such action was permissible under the Act. It is the position of the Commission that the acceptance of the referenced checks constitutes a violation of 2 U.S.C. § 441b(a).

VI. Respondent agrees that it 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.

VII. The Commission, on 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.

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

Date	Charles N. Steele General Counsel
Date	BY: Kenneth A. Gross Associate General Counsel
8/4/82 Date	Democratic National Committee Respondent's Name
	BY: Lynda S. Mounts Lynda S. Mounts
	ITS: Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1166
The Democratic National Committee	)	
	)	

CONCILIATION AGREEMENT

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3. On October 3, 1976, it deposited in its account a check in the amount of $10,000 it received from a corporation, namely, the Franklin Mint.

8

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VI. Respondent agrees that it 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.

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

Date	Charles N. Steele General Counsel
Date	BY: Kenneth A. Gross Associate General Counsel
8/4/82 Date	Democratic National Committee Respondent's Name
	BY: Lynda S. Mounts
	ITS: Lynda S. Mounts Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1180
Republican National Committee	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that the Republican National Committee ("Respondent") violated 2 U.S.C. § 441b and 2 U.S.C. § 441a(d) by receiving corporate contributions and making an excessive party expenditure.

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

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1. On October 27, 1976, it deposited in its account a check in the amount of $20,000 it received from a corporation, namely, the Franklin Mint.

10

2. In July of 1979, it deposited in its account a check in the amount of $8,705.00 it received from a corporation, namely, the Franklin Mint.

3. On July 22, 1976, it deposited in its account a check in the amount of $1,050.25 it received from a corporation, namely, Acropolis Books, Ltd.

4. On October 23, 1976, it deposited in its operating account a check in the amount of $2,145.00 it received from a corporation, namely, Acropolis Books, Ltd.

5. From January of 1976 through March 31, 1979, it deposited in its operating account $2,032.98 it received from 58 corporations and one labor union.

6. In the 1976 general election, the Respondent made an expenditure in the amount of $14,890.00 on behalf of one David Serotkin, a candidate for Congress in the 12th Congressional district of Michigan, that exceeded by $3,908 the limitations imposed by 2 U.S.C. § 441a(d) on such expenditures.

V. Respondent contends that it accepted the above-mentioned checks in the context of a bona fide commercial transaction believing such action was permissible under the Act. It is the position of the Commission that the acceptance of the referenced checks constitutes a violation of 2 U.S.C. § 441b(a).

VI. Respondent violated 2 U.S.C. § 441a(d)(3)(B) in making the expenditures on behalf of David Serotkin.

VII. Respondent will pay a civil penalty in the amount of Five Hundred Dollars ($500.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII. Respondent agrees that it 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.

IX. The Commission, on 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.

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

Date	Charles N. Steele General Counsel
Date	BY: Kenneth A. Gross Associate General Counsel
August 4, 1982 Date	REPUBLICAN NATIONAL COMMITTEE Respondent's Name
	BY: E. Mark Braden E. Mark Braden
	ITS: House Counsel

12

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

E. Mark Braden, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1166/1180

Dear Mr. Braden:

On , 1982, the Commission accepted the conciliation agreement signed by you and a civil penalty in settlement of violations of 2 U.S.C. § 441b and § 441a(d), 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

Enclosure
Conciliation Agreement

8204035245

13

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James P. Mercurio, Esquire
Arent, Fox, Kintner, Plotkin
and Kahn
1815 H Street, N.W.
Washington, D.C. 20006

RE: MUR 1166/1180

Dear Mr. Mercurio:

On , 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b, a provision 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

Enclosure
Conciliation Agreement

14

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lynda S. Mounts, Esquire
Cadwalader, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1166/1180

Dear Ms. Mounts:

On , 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(a), a provision 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

Enclosure
Conciliation Agreement

3 2 0 4 0 3 5 2 3 5 2

VENDOR NUMBER	VENDOR NAME				CHECK DATE	CHECK NO
001206	Federal Election Commission				8/4/82	46615
INVOICE NO.	INVOICE AMOUNT	ADJUSTMENT	NET AMOUNT	EXPLANATION		
FE 08 82	500.00		500.00	Civil penalty fee MUR 1180		

Republican National Committee.

310 First Street Southeast, Washington, D.C. 20003.

CHECK NO 46615

68-408
560

BANK OF VIRGINIA - POTOMAC
5205 LEESBURG PIKE
FALLS CHURCH, VA. 22041

DATE	CHECK NUMBER
8/4/82	46615

Pay Exactly 500 Dollars and no cents

AMOUNT
$ ***500.00****

PAY TO THE ORDER OF:

Federal Election Commission
1325 K Street, NW
Washington, DC 20463

AUTHORIZED SIGNATURE

⑈046615⑈ ⑆056004089⑆ 651⑈7307499⑈

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
The Democratic National Committee	)	MUR 1166(79)
	)	

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on April 21, 1982, do hereby certify that the Commission took the following actions in MUR 1166:

1. Decided by a vote of 4-2 to find probable cause to believe that the DNC violated 2 U.S.C. §441b for accepting corporate funds from the Franklin Mint.

   Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioners Aikens and Elliott dissented.

2. Decided by a vote of 5-0 to find no probable cause to believe that the DNC violated 2 U.S.C. §441b for accepting a discount from ABC.

   Commissioners Aikens, Elliott, Harris, McDonald, and McGarry voted affirmatively for the decision. Commissioner Reiche abstained on the vote.

3. Decided by a vote of 5-1 to find no probable cause to believe that the DNC violated 2 U.S.C. §441b for accepting corporate and labor funds for the sale of excess campaign seminar manuals.

   Commissioners Aikens, Elliott, Harris, McDonald, and McGarry voted affirmatively for the decision. Commissioner Reiche dissented.

(Continued)

4. Decided by a vote of 4-2 to find probable cause to believe the Franklin Mint violated 2 U.S.C. §441b for making a corporate contribution to the DNC.

   Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioners Aikens and Elliott dissented.

5. Decided by a vote of 5-0 to find no probable cause to believe ABC is in violation of the FECA for giving a discount to the DNC.

   Commissioners Aikens, Elliott, Harris, McDonald, and McGarry voted affirmatively for the decision. Commissioner Reiche abstained on the vote.

6. Decided by a vote of 5-0 to direct the Office of General Counsel to write appropriate letters reflecting the above actions taken by the Commission, with the names of the respondent firms to be included in the letters.

   Commissioners Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively and Commissioner Aikens abstained on the vote.

7. Decided by a vote of 4-0 to delete the civil penalties from the proposed conciliation agreements attached to the General Counsel's April 2, 1982 report in this matter.

   Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioners Aikens and Elliott abstained.

Attest:

4-22-82
Date

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

3 2 0 4 0 3 5 2 3 5

2-00630

RECEIVED
Gcc# 7266
82 MAR 1 P4:

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

Gary S. Marx
(202) 857-6383

82 MAR 2 P3:19

March 1, 1982

HAND DELIVERED

Ms. Marjorie W. Emmons
Secretary
Federal Election Commission
1325 K Street, N.W., 5th Floor
Washington, D. C. 20463

Re: Franklin Mint Corporation
MUR 1166 and 1180

Dear Ms. Emmons:

Please find enclosed Franklin Mint's Reponse To General Counsel's Recommendation That The Commission Find Probable Cause That A Violation Occurred. In accordance with the General Counsel's request 3 copies of the enclosed memorandum have been forwarded to the Office of General Counsel.

Sincerely,

Gary S. Marx

Gary S. Marx

Enclosures

8204035275

RECEIVED

82 MAR 1 P4:25

BEFORE THE
FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 1166
	)	
Franklin Mint Corporation	)	MUR 1180

FRANKLIN MINT'S RESPONSE TO GENERAL COUNSEL'S RECOMMENDATION THAT THE COMMISSION FIND PROBABLE CAUSE THAT A VIOLATION OCCURRED

The General Counsel's office has advised Franklin Mint, by letter and memorandum dated January 29, 1982, that the General Counsel will recommend that the Federal Election Commission ("FEC") find probable cause that Franklin Mint has violated 2 U.S.C. §441b. At issue is whether Franklin Mint's purchase of property interests, for commercial purposes, from the national committees of the major political parties in the 1976 presidential campaign, constitutes a "contribution or other expenditure" to those committees. Although Franklin Mint set forth its position in a letter to the Commission on April 13, 1981, Franklin Mint reiterates herein the reasons why the General Counsel's office should not proceed with its recommendation.

BACKGROUND

Franklin Mint is the world's largest private mint. Since its inception, an important part of Franklin Mint's business has been

the minting of coins and medallions commemorating significant events in the nation's history. Over the years, Franklin Mint has minted coins and medallions honoring historical figures, important events and the like, which are marketed as collectibles. Franklin Mint's intent is to have its coined products depict an event which has intellectual, sentimental, historical or other legitimate appeal to collectors. Although the raw material used in making the coins and medallions has intrinsic value, their real value stems from the purchaser's interest in the subject matter depicted (i.e., former presidents, ships, aeronautics, etc.).

In the 1970s, Franklin Mint determined that the national interest in presidential campaigns was such that the coining of medallions depicting the major participants in the presidential elections would be a successful commercial venture. Unlike symbols in the public domain (i.e., a state seal or a ship's design), however, the national committees of the major political parties claim a property right in any symbol represented as being the official symbol of the party. In order to avoid possible liability arising from the unauthorized use of these claimed property rights, Franklin Mint contacted the major political parties of each presidential campaign to negotiate an agreement which would allow Franklin Mint to use the committees' symbols.

In 1972 in order to assure compliance with applicable law, if required, Franklin Mint submitted to the General Accounting Office a proposed advertisement for commemorative medals to be marketed

depicting the candidates of the two major political parties in the 1972 campaign. The GAO was requested to advise whether a certification was required to be furnished to newspapers under Section 104 of the Federal Election Campaign Act, and the Comptroller General's Regulations issued thereunder, before a charge could be made for its advertisements. Certification would have been required if the advertisements were for the benefit of the candidate.

In accordance with Franklin Mint's position that its program was apolitical, the GAO ruled in an August 23, 1972 letter to Franklin Mint that:

> [W]e do not view this particular proposed advertisement as requiring a certification from the candidates of their authorized representatives. It seems to us that the overriding purpose of the advertisement is transparently commercial aimed to selling the medals rather than either of the candidacies of the two candidates. In this circumstance, we do not consider that the law was intended to restrict established commercial activities such as this. We understand that the striking of commemorative medals of this type is a part of the business customarily engaged in by the Franklin Mint.

A copy of the GAO's opinion issued by Deputy Director Thompson is attached hereto.

As a result of negotiations with the Republican National Committee and the Democratic National Committee in 1976, identical agreements were entered into allowing Franklin Mint to use a symbol representing these parties' campaigns. As part of the

agreement, Franklin Mint was permitted to represent the medallions as the official campaign medals. In return for allowing Franklin Mint to use the committees' claimed property right (i.e., the symbols), Franklin Mint agreed to pay each committee, as the owner of the symbol, a royalty equal to 15% of sales, with a minimum royalty of $30,000. The committees were additionally provided a limited quantity of the medals.

ARGUMENT

I.

THE TWO ADVISORY OPINIONS RELIED UPON BY THE GENERAL COUNSEL CONTAIN A CENTRAL ELEMENT LACKING HERE, THE PURPOSEFUL USE OF CORPORATE ASSETS TO PROMOTE THE POLITICAL INTEREST OF ONE MAJOR CANDIDATE OR PARTY.

In Franklin Mint's letter of April 13, 1981, to the FEC, Franklin Mint explained that its program was wholly apolitical. As the affidavit of Franklin Mint's chairman stated:

> Franklin Mint's purpose in entering these arrangements was to earn a profit from the sale of the medals in question. It was not the purpose of Franklin Mint to influence any political election or to contribute to the success of any political party.

The term "contribution or expenditure" is defined in 2 U.S.C. §441b to include:

> ... any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value ... to any candidate, campaign committee, or political party or organization, in connection with any election to ... [Federal] office ...

A literal reading of the prohibition against "direct or indirect payment [or] distribution ... of anything of value" would make it impossible for political committees to enter into any commercial transaction. Whenever a corporation sells to a political committee office supplies or leases its headquarters, the corporation can be said to be providing the political committee with something of value. Thus, if political committees are to function, commercial transactions cannot be deemed "contributions or expenditures." A sensible construction of Section 441b requires the accommodation of commercial transactions entered into by political committees.

This accommodation requires a construction of the statutory language so that, unless a corporation's business arrangement with a political committee has as its purpose the influencing of a campaign and in fact results in a benefit being given one significant party or candidate, no "contribution" has been made. See Comments of Mr. Hansen, p. 43379 (Nov. 30, 1971) (definition of "contribution" in 441b is aimed at prohibiting "active electioneering directed at general public" by corporations); FEC v. Weinstein, 462 F.Supp. 243 (S.D. N.Y. 1978) (describing narrow purpose for limiting contributions by corporations).

Primarily relying upon two FEC advisory opinions, Advisory Opinion 1979-17 (the "credit card program") and Advisory Opinion

1976-50 (the "tee-shirt program") the General Counsel appears to have rejected this sensible construction of the statute. These opinions, however, are inapposite. In different ways the programs at issue in these opinions had, at least as one of their substantial purposes, the use of corporate assets to promote the political interest of one candidate or major political party to the resulting detriment of another candidate or party. This was not the case in Franklin Mint's program.

In the credit card program the corporation intended expressly to allow the Republican National Committee to use the corporation's mailings as a conduit for the committee's political material. The recipient of the mailing received only the Republican message. Other parties' material was not to be included. The end result was that the recipient of the corporate mailing would have received only material promoting the Republican party. Included in the mailed material could have been not only political messages but requests for contributions. Thus, the corporation was to affirmatively participate in a promotion of one party over another.

Similarly in the tee-shirt program, the "message" which was conveyed was the popular support of Senator Richard Lugar's candidacy for election to the Senate. The visibility of Lugar tee-shirts provided public recognition similar to any advertisement. There is no indication that the corporation in the tee-shirt program manufactured shirts for other candidates. The impression

conveyed in the request for an advisory opinion was that the corporation desired to benefit the Lugar campaign by making the shirts available for sale by Lugar volunteers. In fact, order forms were distributed by Lugar volunteers who clearly did not provide prospective purchasers an opportunity to purchase shirts for other candidates. As was the case in the credit card program, the whole purpose of the program was the giving of a political advantage to one candidate or party over another.

In contrast to these two programs is Franklin Mint's sale of medallions. The symbols on the Franklin Mint coins were not intended to convey a political message or show support for a candidate. The symbols were -- in Franklin Mint's view and undoubtedly in the view of most Franklin Mint collectors -- regarded in much the same way as the many other symbols depicted on Franklin Mint collectibles. More importantly, the advertisements of the coins, unlike the political material in the card program or the order forms carried by the Lugar volunteers, depicted all major participants in the 1976 presidential campaign.

The marketing of the medals certainly was apolitical. The Franklin Mint advertised the coins as collectibles not as political material. As stated in the letter to prior Franklin Mint custsomers attached to Franklin Mint's April 12, 1981 submission to the FEC:

> As you know, many past Presidential Campaign commemoratives are today highly valued by collectors. And, since the 1976 Presidential

> Campaign promises to be one of the most exciting in years, it seems quite likely that the official medals of this campaign will be widely sought after by collectors in the future.

Thus, unlike the card program or the tee-shirt program, no political message was ever conveyed.

In sum, unless there are circumstances which indicate that a payment was made to a political committee for the purpose of influencing an election, there can be no reason to believe that a payment made pursuant to a commercial arrangement is a prohibited contribution.

II.

THE INTERPRETATION OF SECTION 441b URGED BY THE GENERAL COUNSEL WILL UNCONSTITUTIONALLY DEPRIVE POLITICAL COMMITTEES OF VALUABLE PROPERTY RIGHTS AND IMPERMISSIBILITY INFRINGE UPON FRANKLIN MINT'S RIGHT TO PURSUE ITS LINE OF BUSINESS

The value to Franklin Mint customers of the medals involved in the campaign program was derived in part from the designation of the medals as the "Official Presidential Campaign Medal." The major party's political committees have taken the position that the right to designate memorabilia as "Official" is a property right of the committees. Franklin Mint would not have agreed to pay a royalty to these committees absent an insistence by the committees of payment for the use of such a property interest. Similarly, had Franklin Mint not obtained an agreement from the committees but simply used the "Official" designation, Franklin

Mint could have anticipated that litigation would have ensued. The position of the General Counsel, if adopted by the FEC, would effectively deprive the Committees of all value derived from a valuable property right. There is no statutory or constitutional support for the General Counsel's position.

The General Counsel has not cited any statutory authority for the proposition that Congress intended to deprive political committees of the right to sell assets. The General Counsel's attempt to distinguish between tangible and intangible assets (General Counsel's Brief at p. 6) is without support in the statute, court decisions, or the legislative history. It is an attempt to have the FEC go well beyond the powers it was delegated.

Under the General Counsel's approach to the Franklin Mint program, no major political party can receive payment for use by another of intangible property rights owned by the party, although presumably the committee could sue for unauthorized use. Likewise, the collectors' item industry, of which Franklin Mint is a part, could not utilize a symbol of a political campaign without running the risk of litigation from a political committee (if no payment is made for use of the property interest) or from the FEC (if royalties are paid).

The General Counsel's recommendation, if adopted by the FEC, thus will unconstitutionally deprive the political committees of a

property right and impermissibly interfere with Franklin Mint's right to pursue its line of business.

CONCLUSION

For the reasons stated above Franklin Mint respectfully submits that its payments to the Democratic and Republican National Committees pursuant to the Presidential Campaign Medal Program in 1976 did not violate 2 U.S.C. §441b.

Respectfully submitted,

James P. Mercurio
Gary S. Marx
Arent, Fox, Kintner, Plotkin
& Kahn
1815 H Street, N. W.
Washington, D. C. 20006

By James P. Mercurio
Attorneys for Franklin
Mint Corporation

Dated: March 1, 1982

Precedential

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF FEDERAL ELECTIONS

August 23, 1972

Mr. Charles Andes, President
The Franklin Mint
Franklin Center, Pennsylvania 19063

Dear Mr. Andes:

Your firm has submitted to this Office a copy of a proposed advertisement for commemorative medals to be marketed depicting the candidates of the two major political parties in the 1972 Campaign. One medal will bear the image of President Richard M. Nixon and the other Senator George S. McGovern. Our advice was requested whether a certification would be required to be furnished to newspapers under Section 104 of the Federal Election Campaign Act and the Comptroller General's regulations issued thereunder before a charge could be made for the advertisement.

The proposed ad contains a picture of both medals and separate coupons for ordering each from the Mint. A copy of the ad is attached.

Based on our review of the copy and conversations with representatives of your firm, we do not view this particular proposed advertisement as requiring a certification from the candidates or their authorized representatives. It seems to us that the overriding purpose of the advertisement is transparently commercial aimed at selling the medals rather than either of the candidacies of the two candidates. In this circumstance, we do not consider that the law was intended to restrict established commercial activities such as this. We understand that the striking of commemorative medals of this type is a part of the business customarily engaged in by the Franklin Mint.

Sincerely yours,

L. F. Thompson

L. Fred Thompson
Deputy Director

Attachment

8 2 0 4 0 3 5 2 7 6 6

Announcing

THE OFFICIAL 1972 PRESIDENTIAL CAMPAIGN MEDALS

Available only during the 1972 Presidential campaign

REPUBLICAN

Illustration
Nixon
Medal

The Official Presidential Campaign Medal of the Republican National Committee

ORDER FORM

DEMOCRATIC

Illustration
McGovern
Medal

The Official Presidential Campaign Medal of the Democratic National Committee

ORDER FORM

8 2 0 4 0 3 5 2 3 6 8

RECEIVED

82 MAR 1 P4:

ARENT, FOX, KINTNER, PLOTKIN & KAHN

1815 H STREET, N.W.

WASHINGTON, D. C. 20006

General Counsel's Office
Federal Election Commission
1325 K Street, N.W., 5th Floor
Washington, D. C. 20463

Hand Delivered

Ccc# 7189

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

(202) 861-2600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TARTICH
NORMAN P. LEVENTHAL
STEVEN A. LERMAN
R. MICHAEL SENKOWSKI
RANDOLPH J. MAY
VIRGINIA S. CARSON
LAWRENCE J. MOVSHIN
JAMES S. BLASZAK
WILLIAM K. KEANE
DENNIS P. CORBETT
JAMES H. DeGRAFFENREIDT, JR.
JILL ABESHOUSE STERN

DIRECT DIAL NO.
861-2622

February 17, 1982

82 FEB 17 P4:16

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1166

Dear Sir:

On behalf of American Broadcasting Companies, Inc., I am transmitting herewith ten copies of its "Brief" in MUR 1166.

In addition, pursuant to Mr. Steele's suggestion, I am transmitting three additional copies of ABC's "Brief" to the Office of General Counsel.

If there are any questions concerning this matter, kindly communicate with the undersigned.

Very truly yours,

Carl R. Ramey

Carl R. Ramey

Enclosures

cc: Charles N. Steele, Esq.

82040352369

Before The
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

In the Matter of	)	
	)	
THE ABC TELEVISION NETWORK	)	MUR No. 1166
	)	

To: Honorable Members of the
Federal Election Commission

BRIEF OF AMERICAN BROADCASTING COMPANIES, INC.

By Everett H. Erlick
Robert J. Kaufman
1330 Avenue of the Americas
New York, New York 10019

James A. McKenna, Jr.
Carl R. Ramey
McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

February 17, 1982

Its Attorneys

Before The
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

In the Matter of	)	
	)	
THE ABC TELEVISION NETWORK	)	MUR No. 1166
	)	

To: Honorable Members of the
Federal Election Commission

BRIEF OF
AMERICAN BROADCASTING COMPANIES, INC.

By Everett H. Erlick
Robert J. Kaufman
1330 Avenue of the Americas
New York, New York 10019

James A. McKenna, Jr.
Carl R. Ramey
McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

February 17, 1982

Its Attorneys

Before The
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

In the Matter of	)	
	)	
THE ABC TELEVISION NETWORK	)	MUR No. 1166
	)	

BRIEF OF
AMERICAN BROADCASTING COMPANIES, INC.

American Broadcasting Companies, Inc. ("ABC"), by its attorneys, hereby submits the following "Brief" stating its position in the above-captioned proceeding.

I.
Preliminary Statement

By letter dated January 8, 1981, ABC was initially advised[1/] that the Commission had found reason to believe that ABC may have made a corporate political "contribution" in violation of 18 U.S.C. §610 (currently 2 U.S.C. §441b(a)). The stated basis for this alleged violation was ABC's decision to afford a political discount to the Democratic National Committee (DNC) in connection with the DNC's 1975 Telethon on the ABC Television Network.

According to the accompanying Commission Report, this matter was referred to the Office of General Counsel

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1/ The letter and accompanying Report were directed to the ABC Television Network, an operational division of American Broadcasting Companies, Inc.

by the Audit Division, based on an audit of the DNC covering the period January 1, 1976 through September 30, 1978. Apparently, during the course of that audit, the Commission staff reviewed a letter dated February 13, 1976 from ABC to the Chairman of the Democratic National Committee. In that letter, ABC indicated it was extending its then customary one-third political discount to the DNC in connection with the DNC's 1975 Telethon broadcast on the ABC Television Network between July 26-27, 1975.[1/]

Based on the foregoing, the Report stated that the Commission had found reason to believe that ABC's offer of a reduced rate in connection with the DNC's purchase of time on the ABC Television Network represented an impermissible political "contribution."

ABC responded to the Commission's "Notification of Reason To Believe" letter on March 11, 1981. Subsequently, on February 2, 1982, ABC received a copy of the General Counsel's Brief in this matter, recommending that the Commission "find no probable cause that the ABC Television Network violated 2 U.S.C. §441b by making a contribution to the DNC." This "Brief" is submitted by ABC to reiterate its previously

---

1/ ABC's then applicable one-third political discount was uniformly applied to all bona fide political purchases, whether such purchases were made by an authorized national political party such as the DNC or by individual political candidates. Although ABC's one-third political discount policy is no longer in effect, ABC continues to abide by the "lowest unit rate" (or "statutory discount") requirement of federal communications law. See pp. 17-19 infra.

stated position, as well as to support the brief and recommendation of the Commission's General Counsel.

As set forth hereinafter, ABC does not believe that the offer of broadcast time to political candidates or political parties -- on either a free or special discount basis -- constitutes a political "contribution" prohibited by federal law. On the contrary, in our view, such offers of time -- extended uniformily to all similarly situated candidates and major political parties -- represent a unique public service by federally licensed broadcast entities plainly outside the scope of 2 U.S.C. §441b and demonstrably compatible with the public interest. Moreover, we respectfully submit that important provisions and policies of federal communications law, affirmatively encourage broadcast licensees to afford political candidates favorable treatment in terms of both the availability and the cost of radio and television facilities for political uses. Indeed, a finding by this agency that the provision of free time or reduced rates to political parties or candidates represents an illegal political "contribution," would be at odds with public policy and significantly disserve the overall public interest. By effectively foreclosing such offers in the future,[1/] the cost of political

---

1/ Presumably, and somewhat anomolously, such a ruling would not extend to those many radio and television licensees who are not incorporated but operate, instead, as partnerships, unincorporated associations, joint ventures or single proprietorships.

campaigning would dramatically escalate and, because of such increased costs, the use of the broadcast media by political candidates would significantly decrease.

Finally, a ruling that effectively precluded broadcast stations from offering free time or reduced rates to political candidates would necessarily intrude upon the long-established discretion and, we submit, First Amendment prerogatives of radio and television licensees to afford candidates broadcast time to discuss issues in a manner not limited to regular news coverage.

II.
The Applicable
Federal Elections Law

According to the Commission's January 8, 1981 Report, a political discount by a broadcast corporation raises the specific issue of the applicability of 2 U.S.C. §441b(a), which provides that:

> "It is unlawful . . . for any corporation . . . to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever . . . to make a contribution or expenditure in connection with any election at which presidential or vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or

> for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section . . . ."

The term "contribution or expenditure" is defined in 2 U.S.C. §441(b)(2) to include:

> ". . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section."1/

Utilizing the foregoing definitional framework, the Report concludes that a political discount of broadcast time represents the type of impermissible corporate contribution covered by 2 U.S.C. §441b. Thus, it appears that broadcast time is being construed as an ordinary commodity that must be offered to political candidates and political parties on the same basis as it is offered to all other persons or entities that purchase broadcast time. For instance, the Report indicates that even if ABC gave uniform political discounts to all political committees (and presumably all political candidates) it still could not avoid the impact of 2 U.S.C. §441b unless a "political discount" was offered to ABC's non-political (i.e., regular commercial) clients.

1/ See also 2 U.S.C. §431(e) which defines a contribution as a "gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing" an election. The Commission's Rules and Regulations incorporate like provisions and definitions. See, e.g., 11 C.F.R. §§100.(7)(1), 114.1(a)(1) and 114.2.

Other than bare statutory language, the Report is conspicuously silent as to any other provisions of law or applicable precedent directly bearing upon this matter. The one exception is a brief reference to a 1978 Advisory Opinion in a non-broadcast case where the Commission indicated that "a discount below the 'usual and normal' charge [should be viewed as] a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients." See, AO 1978-45, August 28, 1978.

In AO 1978-45, a development company that owned an outdoor billboard proposed to provide space on the billboard to a particular campaign committee at a rate below the normal commercial rate. The Commission found that the proposal would constitute a discount below the "usual and normal charge" not routinely offered in the vendor's ordinary course of business to non-political candidates. Since the development company did not, in the ordinary course of its business, offer the same reduced rate to commercial advertisers, the Commission concluded that it "would view the net difference between the two rates as an in-kind contribution from the development company to Citizens" ["Citizens for Coleman," the named political committee] -- i.e., a corporate contribution prohibited by 2 U.S.C. §441b.

In essence, therefore, the Report relies exclusively upon the superficial thrust of the cited statutory language. In our view, this is patently insufficient to conclude that

the mere provision of broadcast time, on a free or reduced-rate basis, constitutes an impermissible political contribution (as distinguished from a third party corporate purchase or sponsorship of broadcast time for a partisan political purpose). A brief review of the underlying purposes of 2 U.S.C. §441b confirms this view.

The origin, legislative history and purpose of what is now 2 U.S.C. §441b is discussed in detail in United States v. C.I.O., 335 U.S. 106 (1948) and in United States v. International Union United Auto Aircraft and Agr. Implement Workers, 352 U.S. 567 (1957). With respect to corporations, the Supreme Court in United States v. C.I.O. states:

> "This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders." 335 U.S. 106, 113. 1/

1/ See also United States v. International Union where the Court observed that the "evil at which Congress has struck . . . is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." 352 U.S. at 589. Significantly, U.S. v. International Union involved a situation where a union had utilized its dues to sponsor commercial television broadcasts designed to influence the electorate to select certain candidates for Congress. The Court's extensive discussion of that situation, including elaborate citations to pertinent legislative history, focused on the purchase of broadcast time by a union or corporation without indicating that the provision of broadcast time by a broadcast licensee was even remotely analogous.

The essential elements of an offense under 2 U.S.C. §441b have been summarized as follows: "(1) a contribution or expenditure, (2) by a [corporation or] labor organization, (3) for the purpose of active electioneering (4) in connection with an election for named federal offices described in the statute." United States v. Pipefitters Local Union No. 562, 434 F.2d 1116, 1121 (8th Cir. 1970). In other words, the activity Congress sought to restrict by 2 U.S.C. §441b was of a highly partisan nature -- "active electioneering" in connection with specific federal elections.[1/]

This construction, defining the kind of restricted activity by the nature (as well as the fact) of the "contribution," is also reflected in pertinent provisions of the Commission's rules and regulations designed to implement Section 441b and other federal election laws. For instance, Section 100.7(1) of the Commission's Rules, paralleling Section 431(e) of the statute, defines a "contribution" as including payments, services or other things of value which are made "for the purpose of influencing any election for Federal office. . . ." 11 C.F.R. §100.7(1) (emphasis added). Similarly, "a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee . . . of a political

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1/ As the court emphasized in United States v. Boyle, 338 F. Supp. 1028, 1033 (D. D.C. 1972), it is only when a corporation or union is engaged in "active electioneering" on behalf of particular Federal candidates "with the idea of reaching the public at large. . .that the statute's proscription. . .becomes applicable."

party is not a contribution if it is specifically designated to defray any cost incurred for construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office." 11 C.F.R. §100.7(b)(12) (emphasis added).

It may be especially noteworthy that separate Commission regulations specifically recognize the inherent journalistic function that is being performed when broadcast facilities are used for certain forms of political discussion -- a regulatory acknowledgment, we submit, that further supports the conclusion that Section 441b is only intended to prohibit corporate contributions undertaken with a clear partisan purpose. Thus, the Commission's regulations also provide that "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station . . . is not a contribution. . . ." 11 C.F.R § 100.7(b)(2). Furthermore, even if the broadcasting station is owned or controlled by a political party, committee or candidate, the editorial and broadcast function still do not fall into the category of a proscribed contribution so long as the "news story" is a "bona fide news account" that takes place as "part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area. . . ." 11 C.F.R. 100.7(b)(2).

In our judgment, the foregoing section of the Commission's rules not only acknowledges the journalistic aspect of broadcasting, but plainly indicates that news coverage, and other types of broadcaster treatment of political candidates and committees on an evenhanded basis, fall outside the restrictions on corporate contributions. In other words, Section 100.7(b) seems to be saying that the dangers of a contribution being made to influence an election are removed when conditions exist that effectively insure that candidates are treated in a non-partisan fashion. In short, this Commission regulation has elements that are roughly analogous to the "equal opportunities" concept that is the cornerstone of political broadcast statutory law. (see pp. 13-14 infra).

Finally, we should also mention that the Commission has adopted regulations that specifically provide that broadcasters may stage debates between political candidates -- which may involve the provision of free broadcast time -- if such debates include at least two candidates and the debates are non-partisan, in the sense that they do not promote or advance one candidate over another. See 11 C.F.R. §110.7(b)(21) and §110.13. Again, the Commission's regulations recognize that a non-partisan approach to providing broadcast time takes the activity outside the statutory prohibition.

Based on the foregoing, it is fair to conclude that two principal assumptions must underlie any determination that the offer of free or reduced-rate broadcast time to

political candidates represents an illegal contribution. First, it would have to be assumed that a non-discriminatory offer of free or reduced-rate time represented a "contribution" or "expenditure" specifically "in connection with" a federal election, as that phrase is used in 2 U.S.C. 441b. Second, and perhaps more important from the broadcaster's standpoint, it would have to be assumed that such "contributions" or "expenditures" of broadcast time are "made for the purpose of influencing" the nomination or election of a particular Federal candidate or candidates.

We do not believe, however, that either 2 U.S.C. §441b or the Commission's regulations were intended to cover and should be interpreted to presume that the provision of free time or reduced rates by broadcast stations represents either a contribution "in connection with" a specific election or an attempt "to influence" such election. On the contrary, the explicit language of the statute and its legislative history, as construed by the courts and as reflected in the Commission's own regulations, demonstrate that the prohibition on corporate contributions was intended to restrict a highly partisan form of corporate activity -- what has been characterized by the courts as "active electioneering." Broadcaster policies that provide free time or reduced rates to political candidates and political parties are simply not the form of partisan electioneering contemplated by the statute. Rather, such policies and practices represent a natural exten-

sion of a broadcast licensee's fundamental "public trustee" role.[1/] Moreover, as we now show, even if this were not the case, important provisions of federal communications law add specific substance to a broadcaster's public trustee role in the area of political broadcasting. These provisions not only provide a legal framework to insure that broadcast time is extended to political candidates on a non-partisan, non-discriminatory basis, but, in certain circumstances, to affirmatively require broadcast stations to provide time to political candidates on a favorable basis.

III.
The Applicable
Federal Communications Law

The Federal Communications Commission (FCC) recently reminded broadcast licensees of the importance attached to political broadcasting:

> "Political broadcasting is recognized by the Commission, the Congress and the U.S. Supreme Court as one of the most important services a station can provide to the public. The Commission has stated that it is one of the major elements of a station's service 'because of the contribution broadcasting can make to an informed electorate -- in turn so

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1/ See Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

vital to the proper functioning of our Republic.'" 1/

A decision by the FEC effectively prohibiting broadcast licensees from offering reduced rates or free time to political candidates -- by construing such offers as illegal corporate contributions -- would run directly counter to the entire history and tradition of federal communications law. Thus, almost from the beginning of broadcast regulation, Congress has expressed a desire, and the courts and the FCC have interpreted the applicable communications law, to encourage the widespread use of broadcast facilities by political candidates.

The principal statutory provision governing the use of broadcast facilities by candidates for elective public office is contained in Section 315 of the Communications Act (47 U.S.C. §315). The "equal opportunities" concept embodied in Section 315 provides that when a broadcaster allows one legally qualified candidate to use his facilities he must afford the same or "equal opportunities"2/ to all

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1/ The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36382 (August 16, 1978); See also Licensee Responsibility As To Political Broadcasts, 15 FCC 2d 94 (1968); Red Lion Broadcasting Company, Inc. v. FCC, 395 U.S. 367-94 (1969).

2/ In essence, "equal opportunities" is interpreted to mean the same basic treatment -- i.e., the same rates, similar audience potential, the same production conditions, etc. See The Law of Political Broadcasting and Cablecasting, supra., 43 Fed. Reg. at 36369-72. The FCC's rules and

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other legally qualified candidates for the same office. This "equal opportunities" concept has been extended by the FCC to cover major political parties and the supporters of political candidates. See Nicholas Zapple, 23 FCC 2d 707 (1970); First Fairness Report, 36 FCC 2d 40, 47-50 (1972).[1/]

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regulations confirm this statutory requirement. See, e.g., Section 73.1940(c) of the FCC's rules (47 C.F.R. §73.1940(c)) which states that:

> "In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office." (emphasis added)

1/ Although the General Counsel (Brief pp. 8-9) correctly points out that the facts in the instant case involved a national political party, rather than a "legally qualified candidate," the FCC's "Zapple Doctrine" makes it clear that a broadcaster is obligated to treat the major political parties in the same fashion as political candidates. See Nicholas Zapple, 23 FCC 2d 707 (1970); First Fairness Report, 36 FCC 2d 40, 47-50 (1972). Thus, if a broadcast station gives free time to one major political party, it must give free time to other major political parties; and, if it sells time at a particular rate to one political party, it must afford other parties the same rate. This is referred to as the "quasi-equal opportunities" doctrine, an FCC regulatory extension of the statutory "equal opportunities" requirement that only refers to legally qualified political candidates. See The Law of Political Broadcasting and Cablecasting, 43 Fed. Reg. 36342, 36391 (1978).

Moreover, pursuant to longstanding FCC policy, broadcast licensees are required, under their public trustee responsibilities, to provide time generally to political candidates -- either on a free or paid basis. See, e.g., Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 113-14 n. 12 (1973); Farmers Educational and Cooperative Union v. WDAY, 360 U.S. 525, 534 (1959); FCC Memorandum on Second Sentence of Section 315(a) in Political Broadcasts -- Equal Time, Hearings Before the Subcomm. of the House Comm. on Interstate and Foreign Commerce, 88th Cong., 1st Sess., on H.J. Res. 247, pp. 84-90. Indeed, in a particularly pertinent manifestation of this policy, the FCC has held that a licensee may, if he elects, fulfill his political broadcasting obligations entirely through offers of free time to candidates. See Rockefeller for Governor Campaign, 59 FCC 2d 649 (1976); Charles O. Porter, Esq., 35 FCC 2d 664 (1972).[1/]

It is also significant that at the time Congress amended the federal election laws to, inter alia, institute a system of public financing and establish the Federal Election

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1/ In this respect, it should be noted that the offer of free broadcast time is, in some situations, not only encouraged but required. Thus, certain educational and public broadcasting stations (some of which may be incorporated) are precluded from accepting compensation for broadcast time, and must therefore fulfill their political broadcasting obligations through the offer of free broadcast time. See, e.g., In Re Complaint by Senator James L. Buckley, 63 FCC 2d 952 (1976).

Commission, it also amended the federal communications law in certain key respects. Thus, in a further reflection of its basic policy to promote political broadcasting,[1/] Congress, in the Federal Election Campaign Act of 1971 (FECA), enacted Section 312(a)(7) of the Communications Act requiring broadcast licensees to grant "reasonable access to or to permit purchase of reasonable amounts of time" for the use of their stations' facilities by legally qualified candidates for federal elective office. The plain language of the statute makes it clear that, in requiring broadcasters to make time available to federal elective candidates, licensees were given the choice of making such time available on either a free or paid basis.[2/]

1/ The Senate Report explaining the FECA amendments to the Communications Act is literally peppered with references to the general view that one of the principal means to combat the escalating costs of campaigning is to encourage the availability of free time and reduced advertising rates for political candidates. See Senate Report No. 92-96, May 6, 1971, pp. 20-26, 27-33. For example, at one point the Report states that "Congress, the Federal Communications Commission, candidates, political scientists, broadcasters, and the public all agree that . . . the 1960 suspension [of 315(a) of the Communications Act which resulted in "substantial amounts of free time to the candidates of the major parties" Id. at p. 21] . . . served the public interest." Id. at 22. Also, the partial suspension of 47 U.S.C. §315(a) favored by the Senate (but ultimately rejected) was accompanied by the following summation: "Your Committee has been assured by the networks that in addition to the time made available to major party candidates, free time will also be made available on a fair basis to the candidate of any significant third party . . . ." Id. at 27. (emphasis added)

2/ As the FCC has observed, "if a station [under this provision] gives away enough time to a candidate to amount to 'reasonable access' . . . it is not required to sell time to the candidate

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The Federal Election Campaign Act of 1971 also amended the Communications Act in regard to the rates political candidates can be charged for broadcast time. Under preexisting law, a broadcast station was not permitted to charge a political candidate any more than it would charge a regular commercial advertiser. See Rates for Political Broadcasts, 11 RR 1501 (1954). This concept of establishing protective rates for political candidates purchasing broadcast time was, however, significantly expanded in the communications law amendments flowing from the FECA of 1971.[1/] Thus, during specified periods -- 45 days prior to a primary election

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. . ." The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36383 (August 16, 1978). See also, Dennis J. Morrisseau (WCAX-TV), 48 FCC 2d 436 (1974). This interpretation was recently confirmed by a decision of the United States Court of Appeals for the District of Columbia Circuit. See Kennedy for President Committee v. FCC, Case No. 80-1549 (D.C. Cir., May 31, 1980, opinion filed, August 6, 1980).

1/ As the legislative reports reflect, however, discounts and free time for political purposes were frequently offered by broadcast stations well before enactment of the FECA of 1971. Indeed, the hearings on that measure demonstrate that not only were members of Congress cognizant of such voluntary broadcaster policies, they were pointedly concerned that such policies were not being followed on a sufficiently widespread basis. For instance, Senator Mike Gravel remarked that while Congress must "not overlook . . . the fact that many broadcasters do, to a lesser or greater degree, grant candidates certain periods of free time . . . the amount is on the whole rather severely circumscribed." See Hearings Before the Subcommittee on Communications of the Committee on Commerce, U.S. Senate, on the Federal Election Campaign Act of 1971, 92nd Cong., 1st Sess., Serial No. 92-6, p. 168 (1971). See also pp. 193 and 412 where Senator Pastore, then Chairman of the Communications

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and 60 days prior to a general election -- broadcast stations must, at a minimum, now give candidates the benefit of volume discounts that a regular commercial advertiser might not be able to obtain. See 47 U.S.C. §315(b).[1/]

In pertinent part, Section 315(b) of the Communications Act now states that during the specified 45- and 60-day periods the "charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed . . . the lowest unit charge of the station for the same class and amount of time for the same period."[2/]

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Subcommittee, specifically and favorably acknowledged the policy of ABC and other broadcasters to offer voluntary political discounts. In fact, Senator Pastore complained that the difficulty with such voluntary discounts was that they were "unenforceable." Id. at p. 412.

1/ Senator Mathias, in reviewing the bill that ultimately passed the Senate (S.382), summarized the question of rates as follows: "A candidate for Federal office running under the purview of S.382 could have three possible charges given to him by a licensee within the stated 105-day period prior to election [a combination of the 45-day and 60-day periods]: [a] The station can give the candidate free time, [b] charge lower than lowest unit cost, or [c] the lowest unit cost." 117 Cong. Rec. S26107 (July, 1971). (emphasis added).

2/ Rather than selecting an "arbitrary discount rate applicable to all stations," (Senate Report No. 92-96, p. 27) Congress choose the lowest unit rate type of discount because it would be better pegged to the commercial practices of individual stations, taking into account their differences. 2d.

This language has been interpreted to require broadcast stations to afford political candidates the benefit of volume discounts not typically available to regular commercial advertisers. To illustrate, the FCC offers the following example:

> A station sells a single fixed position 1-minute announcement in prime time to regular commercial advertisers for $15. If, however, an advertiser buys 500 spots, he receives a discounted per-spot rate amounting to $10 for each spot (his total purchase price for the 500 spots being $5,000). If a political candidate buys time in the same time period he is entitled to buy a single spot for only $10. 1/

In effect, under this statutory requirement a political candidate is entitled to the most favorable rate available on a station -- but without purchasing the volume that a commercial advertiser would have to purchase to receive the same rate.2/

1/ See The Law of Political Broadcasting and Cablecasting, 43 Fed. Reg. 36342, 36377 (August 16, 1978).

2/ Senator Baker, who opposed the "lowest unit rate" provision, characterized the concept as "establish[ing] a public subsidy in favor of the political advertiser" (Senate Report No. 92-96, supra, at p. 95); commenting further that the provision established "a discount for volume advertising for those who do not advertise in volume [thereby] creating a discriminatory preference in favor of political candidates." (Id). Implicitly acknowledging the nature of Senator Baker's dissent to this provision, the full Senate report elsewhere refers to the lowest unit rate concept as "requiring preferential advertising rates." Id. at 28.

IV.
Conclusions

The pertinent Federal election law is intended to prohibit corporate contributions made in connection with a specific election for the presumed purpose of influencing that election. It is not intended to cover non-partisan activities by federal broadcast licensees.

The pertinent Federal communications law has, from the beginning, recognized the special status of political candidates -- requiring, inter alia, that the use of broadcast facilities by such candidates be carried out on a non-partisan, non-discriminatory, evenhanded basis. Thus, Section 315(a) of the Communications Act provides that if any licensee permits a legally qualified candidate to use a broadcasting station, "he shall afford equal opportunities to all other such candidates . . ." 47 U.S.C. §315(a). As such, Section 315(a) specifically forbids favored treatment of competing political candidates. If a broadcaster affords free time to one candidate, he must afford free time to all opposing candidates; and, if he affords a particular reduced rate to one candidate, he must afford the same rate for the same time to all opposing candidates. Furthermore, this "equal opportunities" concept has been extended by the FCC to cover major political parties and the supporters of political candidates. See p. 14 supra.

In short, the broadcaster is, by law, forbidden to favor one candidate (or major political party) over another

in terms of the time afforded and the rate (if any) paid. This, we submit, insures that time provided -- even if it is construed to be a commercial commodity of value made available to candidates by corporate broadcast licensees -- cannot be construed to be "given" in connection with the election of a particular candidate or with the purpose of influencing a particular election.

Moreover, as we have noted, Congress, the Courts and the FCC have all affirmatively encouraged or sanctioned broadcaster efforts to make their facilities available to political candidates -- on a paid or free basis. This tradition has recently been further expanded by legislation requiring broadcast stations to afford federal candidates "reasonable access" to paid or free broadcast time, and a new amendment to the Communications Act mandating that, during certain periods prior to an election, broadcast stations must extend to all legally qualified candidates the "lowest unit rate" when they sell broadcast time to such candidates -- a provision that, in practice, amounts to a statutory discount.

Against the foregoing legal background, supplemented by a long journalistic and public interest tradition of affording political candidates broadcast time on a fair and nondiscriminatory basis, it would be especially inappropriate to so fundamentally uproot that process by declaring broadcaster policies of offering reduced rates or free political time to be illegal under federal election laws. In this context, it is worth

recalling the recent comments of the FCC (on the occasion of the FEC's consideration of its debate regulations):

> "We believe that to read Section 441(b) as prohibiting broadcaster gifts of time to candidates would place that provision into direct conflict with Section 312(a)(7) of the Communications Act to give the Commission authority to revoke a station license for:
>
> > ...willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of the broadcasting station by a legally qualified candidate for Federal Elective office on behalf of his candidacy.
>
> The amendment is part of Title I of the FECA, P.L. 92.225. We do not believe that Congress would, in the same Act, require broadcasters to give time to Federal candidates, and simultaneously declare those gifts to be crimes."

Accordingly, for the reasons herein stated, ABC urges the Commission to follow the recommendation of its Office of General Counsel by finding no probable cause that ABC violated 2 U.S.C. §441b.

Respectfully submitted,

AMERICAN BROADCASTING COMPANIES, INC.

By Everett H. Erlick
Robert J. Kaufman
1330 Avenue of the Americas
New York, New York 10019

James A. McKenna, Jr.
Carl R. Ramey
McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

February 17, 1982

Its Attorneys

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BEFORE THE FEDERAL ELECTION COMMISSION

January 15, 1982

In the Matter of	)	
	)	MUR 1166
Franklin Mint Corporation	)	

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

On September 8, 1976, the DNC deposited in its operating account a check for $20,000 from the Franklin Mint Corporation (see Attachment I), and on October 29, 1976, deposited in its operating account a second check for $10,000 from the Franklin Mint Corporation (See Attachment I). When the Audit staff inquired about the checks, the committee explained that these were royalty payments resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Democratic Party's campaign symbol: The Committee provided the Audit staff with a copy of the agreement (See Attachment II), which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Democratic Presidential

candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. 1/ Any increase in this advertising budget would be subject to the Committee's approval.

d) The DNC would agree to designate the medals as the official Presidential Campaign Medals of the Democratic National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the DNC's agreement, the Corporation would:

1/ On approximately the same date, the corporation entered into an identical agreement with the Republican National Committee.

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1) Pay the DNC royalty of 15% of the net sales of the Campaign Medals with a minimum guarangeed royalty of $30,000.

2) Provide to the DNC at no charge a quantity of medals with a retail value of $5,000. 2/

f) The DNC would grant the Corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee, and would further provide for certifications to the media concerning the Corporation's advertising of the medals as required under applicable Federal law.

g) The DNC agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

II. Legal Analysis

A. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1978). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

2/ The DNC was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the DNC's records that the medals were received.

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal] office . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (Advisory Opinion 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B).

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The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration but rather would be considered contributions from the banks and violative of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that

the plan would result in a violationof the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise". AO 1979-17, pg. 5-6.

In the present transaction, the DNC granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the Corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee" in advertising materials. In so doing, the Committee sold, in essence, its good will and the reputation of its national leadership to the Corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program", supra, cannot be viewed simply as bargained for consideration, but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing the candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of

the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transactions, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes. See also AO 1981-3.

RECOMMENDATION

Therefore, in light of the facts presented above, the Office of General Counsel recommends that the Commission find probable cause that the Franklin Mint violated 2 U.S.C. § 441b by making a contribution to the DNC.

28 January 1982
Date

Charles N. Steele
General Counsel

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

HAND DELIVER - 7th floor

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

82 JAN 29 A10: 50

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1982

MEMORANDUM

TO : The Commission

FROM : Charles N. Steele
General Counsel

SUBJECT: MUR 1166

Attached for the Commission's review are briefs (3) stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. Copies of these briefs and letters notifying the respondents of the General Counsel's intent to recommend to the Commission findings of probable cause to believe and no probable cause to believe were mailed on January 29, 1982. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments

1. Briefs (3)
2. Letters to Respondents

Attachment 2
Page 1 of 2

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19508

Pay
to the order of Democratic National Committee

Date September 3, 1976

Twenty thousand and ---------- $20,000.00
00/100

Morgan Guaranty Trust Company
of New York

⑈19508⑈ ⑆021000023⑆ 022 00 4831

CONTRIBUTIONS TO POLITICAL PARTIES AND CAUSES
$50 AND UNDER

3204035210 5

Attachment I

Attachment 3
Page 1 of 2

10/28

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19608

Date October 8, 1976

1-23
210

Pay
to the order of Democratic National Committee $10,000.00

Ten thousand and ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

COUNTERSIGNATURE REQUIRED FOR AMOUNTS
$10,000.00 AND UNDER

⑁10019609⑁ ⑆0210⑈0023⑆ 022 06 483⑈

3204035210 6

19609

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

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Attachment I

(12)

19508

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

This check represents an advance against the $30,000 minimum guaranteed royalty provided for in the contract between the Democratic National Committee and The Franklin Mint dated August 27, 1976.

(Attachment I)

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

August 25, 1976

File

Democratic National Committee
1625 Massachusetts Avenue, NW
Washington, D.C.

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Democratic Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Democratic Presidential candidate on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Democratic and Republican Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

Attachment II
II C-51

(14)

Your organization agrees to designate the above-described Democratic Presidential Campaign medals as the Official Presidential Campaign Medals of the Democratic National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Democratic National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: [signature]
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

27th day of August, 1975

Democratic National Committee

(attachment II)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1982

James P. Mercurio, Esq.
Arent Fox, Kintner, Piolkin and Kahn
Washington, D.C. 20006

RE: MUR 1166

Dear Dr. Mercurio:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by your client, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b and instituted an investigation in this matter.

After considering all 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 if possible) 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, if possible). 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.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Thomas J. Whitehead at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

January 15, 1982

In the Matter of	)	
	)	MUR 1166
The ABC Television Network	)	

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

A. American Broadcasting Company

Among the records reviewed by the Audit Division is a letter of February 13, 1976 from ABC Television Network, an operational division of the American Broadcasting Companies, Inc. ("ABC"), addressed to Mr. Robert Strauss, Chairman of the DNC. (Attachment I). This letter details the billing procedure used by ABC in determining the DNC's bill for services provided by ABC in the production and broadcasting of the DNC's July 26th and 17th, 1976 telethon. In addition, this letter states that ABC is allowing the DNC a one-third political discount off a gross billing figure of $48,990.69, thus reducing the DNC's obligation to $32,660.46. The Commission found Reason to Believe that the giving of this discount was in violation of 18 U.S.C. § 601 (currently 2 U.S.C. § 441b).

ABC responded, through its attorneys, to the Commission's Notification of Reason to Believe by letter and attached

memorandum dated March 11, 1981. It is ABC's contention that the offer of free or discounted broadcast time - extended uniformly to all similarly situated candidates and major political parties - is not a political contribution, but " . . . represents a unique public service by federally licensed broadcast entities plainly outside the scope of 2 U.S.C. § 441b and demonsrably compatible with the public interest." In addition, ABC contends that federal communications law " . . . affirmatively encourages broadcast licensees to afford political candidates favorable treatment in terms of both the availability and the cost of radio and television facilities for political uses."

The granting of a one-third political discount by ABC to the DNC for the DNC's telethon raises the specific issue of the applicability of 2 U.S.C. § 441b(a) (formerly 18 U.S.C. § 610) which provides that:

> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing officers or for any candidate, political committee, or other

> person to accept or receive any contribution prohibited by this section. 1/

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b(b)(2) (formerly 18 U.S.C. § 610) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office]

In giving a political discount, ABC provided a service to the DNC for a fee not routinely offered in the ordinary course of business by ABC to its non-political customers. This discount resulted in the DNC receiving a service - broadcast time - for a fee that was below ABC's normal commercial rate. See Advisory Opinion 1978-45. The difference between that normally charged and that actually charged - the political discount - is something of value, because the DNC is required to pay less for the broadcast time it received than it would have paid as a commercial or non-political customer. Thus, utilizing the foregoing definitional framework, it is apparent that the "political discount" given by ABC to the DNC constituted the

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1/ The DNC telethon took place on July 26 and 27, 1975. At that time, 18 U.S.C. § 610 was the controlling statute; 18 U.S.C. § 610 was carried over, almost verbatim, into the Federal Election Campaign Act Amendments of 1976 and redesignated 2 U.S.C. § 441b(a).

giving of something of value by a corporation to a political committee.

Broadcast frequencies constitute a scarce resource that by their very nature require government control. Red Lion Broadcast Co., Inc. v. FCC, 395 U.S. 367, 376 (1969). Consequently, unlike the printed media, a broadcaster is required to be licensed (See Communications Act of 1934, Title III, 48 Stat. 1081, as amended, 47 U.S.C. § 301 et seq.), and must balance what it might prefer to do as a private entrepreneur with what it is required to do as a "public trustee". See Columbia Broadcasting Systems, Inc. v. Democratic National Committee, 412 U.S. 94, 118 (1973). See also Petrick "Equal Opportunities" and "Fairness" in Broadcast Coverage of Politics Annals, AAPSS, 427, September 1976, 73 at p. 82.

As a public trustee, a broadcaster can meet its obligations to the public by providing a balanced coverage of issues and events. A broadcaster has broad discretion in deciding how the obligation can be met; see Columbia Broadcasting Systems, Inc. v. Democratic National Committee, 412 U.S. 94, 118; 93 S. Ct. 2080; see also, CBS, Inc. v. FCC, 101 S. Ct. 2813 (1981). For example, the Fairness Doctrine applies to issues rather than persons but applies to political broadcasts in that a broadcaster must provide "reasonable opportunity" for presenting conflicting views on controversial public issues. On the other hand, Section 315(a) of the Communications Act (47 U.S.C. § 315(a)) requires that equal opportunities be provided to all other political candidates

for a public office if one candidate for that office uses the broadcast station (emphasis added; use of a broadcasting station does not include appearance on bona fide newscast, news interview, news documentary or on-the-spot coverage of bona fide news event). Section 315(b) requires the lowest unit charge to the candidate within the 45 day period preceding a primary election and within the 60 day period preceding a general election; Section 312(a)(7) of the Communications Act (47 U.S.C. § 312(a)(7)) makes a broadcaster liable for revocation of his license for "willful or repeated failure" to allow reasonable access to or purchase of reasonable amounts of time to a legally qualified Federal candidate. Unlike § 315(a) and (b), § 312(a)(7) refers only to federal campaigns. Thus, a broadcaster can partially meet its public trustee obligations by providing time, either on a free or paid basis, to a legally qualified candidate for federal office, see, e.g., Columbia Broadcasting Systems, Inc. v. Democratic National Committee, ibid., pp 112-113 n.12 (1973). Should a broadcaster fail repeatedly, however, to meet its obligations by not allowing reasonable access by a legally qualified candidate for federal office, the Federal Communications Commission may revoke its broadcast license. See Section 312(a)(7) of The Communications Act (47 U.S.C. § 312(a)(7)).

Once a broadcater permits a candidate for any public office the use of the broadcasting station, that broadcaster must allow all other candidates for that office "equal opportunities" to use

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the broadcast facilities. See Section 315 of The Communications Act (47 U.S.C. § 315). "Equal opportunities" require the broadcaster to charge the same rates to all candidates for the same office. Moreover, it requires that all candidates for the same office have the right to purchase an equal amount of broadcast time, and that broadcast time must have the potential of reaching an audience of approximately the same size. Thus, if one candidate places a number of two minute advertisements at $X per minute on prime time television with ABC, then other candidates for the same office must also be able to obtain an equivalent number of two minute advertisements on prime time television from ABC at the same rate. The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36369-36372 (August 16, 1978).

In addition to the broadcasters' obligation of reasonable access and "equal opportunities", Section 315(b) of the Communications Act (47 U.S.C. § 315(b)), regulates what broadcasters can charge a legally qualified candidate for federal office within 45 days of a primary election or within 60 days of a general election. (Emphasis added). Thus, for example:

> [i]f [ABC] charges $1,000 for a single prime-time 60-second spot on Saturday nights, but reduces this rate for commercial advertisers to $750 a spot if they buy at least 100 spots, then it must sell a candidate a prime-time Saturday night 60-second spot for $750, even if he buys only one.

The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36376 (August 16, 1978).

This has been called the "lowest unit rate charge" and does not preclude a broadcaster from charging a rate below the unit rate available or from charging the lowest unit rate - a political discount - prior to 45 days before a primary election or 60 days before a general election. In addition, Section 315(b) precludes a station from charging higher than its regular commercial rates for political broadcasts that are "uses" outside of the respective 45 and 60 day periods. 2/ Section 315(b) does not prohibit, however, a station from charging higher than its regular commercial rates for political broadcasts that are not a "use". Nevertheless, such higher charges could raise serious questions of whether the station was serving the public interest and would be a factor considered in renewal of the station's license. The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36380 (August 16, 1978).

Indisputably, television is the single most efficient means of reaching the general public in either a national or state election. See A Study of Access to Television for Political Candidates Institute of Politics, John F. Kennedy School of

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2/ In general, any broadcast or cablecast of a candidate's voice of picture is a "use" of a station or cable system by the candidate if the candidate's participation in the program or announcement is such that he or [she] will be identified by members of the audience. The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36359 (August 16, 1978).

Government, Harvard University, May 1978 at p. 1. There can be no doubt that Congress is aware of and deeply concerned over the ever increasing costs of campaigning caused by the increased use of television. In no place has this concern been more fully expressed than in the Senate floor debate of the Federal Election Campaign Act of 1971. Here, Senator Pastore discussed both the equal opportunities requirement of Section 315(a) of the Communications Act (47 U.S.C. § 315(a)) and what is now known as the lowest unit rate rule, currently codified in 47 U.S.C. § 315(b). Senator Pastore spoke of the spiraling costs of campaigning for elective office and "the threat these costs pose to the integrity of our democratic system." 92 cong. Rec. 28792 (1971). Although the granting of a "political discount" by ABC to the DNC is not the type of political activity contemplated by Congress during its discussion of the Federal Election Campaign act of 1971, there can be no doubt Congress was concerned by the high cost of campaigning. Senator Pastore made this point quite clear when he said:

> The overwhelming preponderance of the testimony before the [Subcommittee on Communications of the Commerce Committee] indicates that the rapidly escalating costs of campaigning for public office poses a real and imminent threat to the integrity of the electoral process.

92 Cong. Rec. 28795 (1977).

Admittedly, the facts presented in the matter at hand do not present a situation where there was "a legally qualified

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candidate" running for federal office. The DNC's telethon of July 26th and 27th, 1975 was not run for the purpose of advocating the election of any one individual to federal office but to retire the debts of the DNC. In turn, these debts were incurred by two Democratic candidates for the presidency in the 1968 election - Hubert Humphrey and Robert Kennedy - and assumed by the DNC after that election. Though ABC was neither obliged to sell the DNC time for the airing of its telethon nor was it obliged to grant "a political discount", it appears that ABC was attempting to fulfill its legally mandated obligation of public trustee - an obligation that ABC has a broad discretion in deciding how to meet. Failure to meet this obligation could cost ABC its license to broadcast. See Columbia Broadcasting systems, Inc. v. Democratic National Committee, 412 U.S. 94, 118 (1973). See also CBS, Inc. v. FCC, 101 S. Ct. 2813 (1981). See also, e.g., Section 312(a)(7) of the Communciations Act (47 U.S.C. § 312(a)(7)). 3/

Against this background, ABC gave the DNC what it labelled as "a political discount" in the rate it charged the DNC for the

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3/ In A Study of Access to Television for Political Candidates Institute of Politics, John F. Kennedy School of Government, Harvard University, May 1978, p. 87, 88, ABC and NBC are lauded for their "public spirited attitude" for having a long-standing policy of selling time to a political candidate at discounts of 33 percent and 50 percent, respectively. Although ABC is not, strictly speaking, a licensee, as the Supreme Court noted in CBS, Inc. v. FCC, 101 S. Ct. 2813 n.14 (1981), "each [network] is 'a multi-station license fully reachable [as to its licenses] by [the express] revocation authority' granted under § 312(a)(7)." 74 FCC 2d at 640 n.10.

time the DNC purchased; this discount amounted to a savings of $16,330.23. It is this Office's opinion that given ABC's responsibilities as a public trustee and given the requirements of equal opportunities, reasonable access, and the lowest unit rate charge, this discount should not be considered a corporate contribution. This Office believes that there are sufficient safeguards provided by the Federal Communications Act and the regulations promulgated by the Federal Communications Commission to prevent undue corporate influence in the political process. This opinion is based on the fact that ABC, as a broadcaster, is prevented by this body of law from exercising its considerable influence in a partisan manner to favor one candidate or political party over another candidate or political party. Thus, we recommend that the Commission find that ABC's political discount should not be considered a corporate contribution in contravention of 2 U.S.C. § 441b. The Office of General Counsel is of the opinion, however, that the major purpose behind ABC's granting of this political discount was not to make a contribution in connection with or to influence a federal election, but to fulfill ABC's obligations as a public trustee. See Advisory Opinions 1980-128, 1980-30, 1980-20, 1980-95 and 1978-18. Indeed, should ABC fail to fulfill its obligations of public trustee, particularly in this sensitive area, it could face the loss of its rights to brodcase. Moreover, the Office of General Counsel is of the opinion that because of the fact that a broadcaster has a unique position and role as a public trustee, a position not

shared by its brethren in the printed media, the Office of General Counsel is of the opinion that this fact alone requires that the matter at hand be distinguished from the facts presented in Advisory Opinion 1978-45 and that granting of the political discount by ABC should not be considered to be a corporate contribution.

Recommendation

Therefore, in light of the facts presented above, the Office of General Counsel recommends that the Commission find no probable cause that the ABC Television Network violated 2 U.S.C. § 441b by making a contribution to the DNC.

28 Jan 1982
Date

Charles N. Steele
General Counsel

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ABC Television Network 1330 Avenue of the Americas New York, New York 10019 Telephone 212 LT1-7777

Charles C. Allen
Vice President Sales Administration

February 13, 1976

Mr. Robert S. Strauss
Chairman
Democratic National Committee
1625 Massachusetts Ave., N.W.
Washington, D. C. 20036

Dear Bob:

Although the outside possibility remains that some billing may straggle in for super slide use by stations, we feel that this is improbable. Therefore, this letter will serve to settle accounts for the July 26-27, 1975 DNC Telethon with the understanding that future billing, if any, will be quickly settled.

In a letter October 31, 1975, we attached a check for $110,000 on account for an indicated rebate of $116,443. We withheld the $6,443 as a contingency for additional billing for super slides. Consequently, the $19,250 rebate attributable to super slides as indicated in that letter was, in effect, reduced to $12,807 in order to preserve the contingency for additional billing. The gross billing figure, which we now hope will be final for super slides, is $48,990.69, which becomes $32,660.46 after granting the one-third political discount. The gross billing for super slides known last fall and used as a basis for the rebate listed in October was $44,624.41, which nets out to a rounded $29,750 after political discount. This leaves a net difference in cost to you of $2,910, which, when subtracted from the aforementioned contingency reserve of $6,443, leaves a rebate due the DNC of $3,533, check attached.

Bob, our very best wishes go to you and Kitty. If we can be of any further service, please let us know.

Very truly yours,

(Attachment I)

Charles C. Allen

Att. II C 22

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1982

Carl R. Ramey, Esq.
McKenna, Wilkinson and Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. Ramey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

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 (ten copies if possible) 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, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact Thomas S. Whitehead at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

January 15, 1982

In the Matter of	)	
	)	MUR 1166
The Democratic National Committee	)	
	)	

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

On September 8, 1976, the DNC deposited in its operating account a check for $20,000 from the Franklin mint Corporation (see Attachment I), and on October 29, 1976, deposited in its operating account a second check for $10,000 from the Franklin Mint Corporation (See Attachment I). When the Audit staff inquired about the checks, the committee explained that these were royalty payments resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Democratic Party's campaign symbol: The Committee provided the Audit staff with a copy of the agreement (See Attachment II), which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Democratic Presidential

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candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. 1/ Any increase in this advertising budget would be subject to the Committee's approval.

d) The DNC would agree to designate the medals as the official Presidential Campaign Medals of the Democratic National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the DNC's agreement, the Corporation would:

1/ On approximately the same date, the corporation entered into an identical agreement with the Republican National Committee.

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1) Pay the DNC royalty of 15% of the net sales of the Campaign Medals with a minimum guarangeed royalty of $30,000.

2) Provide to the DNC at no charge a quantity of medals with a retail value of $5,000. 2/

f) The DNC would grant the Corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee, and would further provide for certifications to the media concerning the Corporation's advertising of the medals as required under applicable Federal law.

g) The DNC agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

DNC records show a letter dated February 13, 1976, from the American Broadcasting Company ("ABC") addressed to Mr. Robert Strauss, chairman of the Democratic National Committee, detailing the billing procedure used by ABC in determining the DNC's bill for services provided by ABC in the production and broadcasting of the DNC's 1975 telethon. This letter states that ABC is allowing the DNC a one-third political discount off a gross billing figure of $48,990.69, thus reducing the DNC's obligation to $32,660.46 (See Attachment III).

2/ The DNC was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the DNC's records that the medals were received.

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The final matter disclosed in the audit review was the acceptance by the DNC of twenty corporate and labor union checks totaling $660.95 received from the sale of books and campaign seminars. The DNC contends that the $660.95 represents the sale of goods created by it in the normal course of carrying out its business as a national political party.

On December 2, 1980, the Commission found reason to believe that the DNC violated Section 441b(a) of the Federal Election Campaign Act ("the Act") by: (1) accepting a corporate contribution from the Franklin Mint Corporation (Franklin Mint) in the amount of $30,000; (2) accepting a corporate contribution from ABC Television Network ("ABC") in the amount of $16,330.23; and (3) accepting twenty corporate and labor union contributions in the amount of $660.95. In addition, the Commission found reason to believe that the DNC violated 2 U.S.C. § 434(b) for failing to list the receipt of these funds as contributions. The DNC was so notified of the Commission's finding and responded to these findings.

II. Legal Analysis

A. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal] office . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (Advisory Opinion 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration but rather would be considered contributions from the banks and violative of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation

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of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise". AO 1979-17, pg. 5-6.

In the present transaction, the DNC granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the Corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee" in advertising materials. In so doing, the Committee sold, in essence, its good will and the reputation of its national leadership to the Corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program", supra, cannot be viewed simply as bargained for consideration, but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing the candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded

that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transactions, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes. See also AO 1981-3.

B. American Broadcasting Company

Among the records reviewed by the Audit Division is a letter of February 13, 1976 from ABC Television Network, an

operational division of the American Broadcasting Companies, Inc. ("ABC"), addressed to Mr. Robert Strauss, Chairman of the DNC. (Attachment III). This letter details the billing procedure used by ABC in determining the DNC's bill for services provided by ABC in the production and broadcasting of the DNC's July 26th and 17th, 1976 telethon. In addition, this letter states that ABC is allowing the DNC a one-third political discount off a gross billing figure of $48,990.69, thus reducing the DNC's obligation to $32,660.46. The Commission found Reason to Believe that the giving of this discount was in violation of 18 U.S.C. § 601 (currently 2 U.S.C. § 441b).

ABC responded, through its attorneys, to the Commission's Notification of Reason to Believe by letter and attached memorandum dated March 11, 1981. It is ABC's contention that the offer of free or discounted broadcast time - extended uniformly to all similarly situated candidates and major political parties - is not a political contribution, but " . . . represents a unique public service by federally licensed broadcast entities plainly outside the scope of 2 U.S.C. § 441b and demonsrably compatible with the public interest." In addition, ABC contends that federal communications law " . . . affirmatively encourages broadcast licensees to afford political candidates favorable treatment in terms of both the availability and the cost of radio and television facilities for political uses."

The granting of a one-third political discount by ABC to the DNC for the DNC's telethon raises the specific issue of the

applicability of 2 U.S.C. § 441b(a) (formerly 18 U.S.C. § 610) which provides that:

> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing officers or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. 3/

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b(b)(2) (formerly 18 U.S.C. § 610) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office]

In giving a political discount, ABC provided a service to the DNC for a fee not routinely offered in the ordinary course of business by ABC to its non-political customers. This discount

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3/ The DNC telethon took place on July 26 and 27, 1975. At that time, 18 U.S.C. § 610 was the controlling statute; 18 U.S.C. § 610 was carried over, almost verbatim, into the Federal Election Campaign Act Amendments of 1976 and redesignated 2 U.S.C. § 441b(a).

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resulted in the DNC receiving a service - broadcast time - for a fee that was below ABC's normal commercial rate. See Advisory Opinion 1978-45. The difference between that normally charged and that actually charged - the political discount - is something of value, because the DNC is required to pay less for the broadcast time it received than it would have paid as a commercial or non-political customer. Thus, utilizing the foregoing definitional framework, it is apparent that the "political discount" given by ABC to the DNC constituted the giving of something of value by a corporation to a political committee.

Broadcast frequencies constitute a scarce resource that by their very nature require government control. Red Lion Broadcast Co., Inc. v. FCC, 395 U.S. 367, 376 (1969). Consequently, unlike the printed media, a broadcaster is required to be licensed (See Communications Act of 1934, Title III, 48 Stat. 1081, as amended, 47 U.S.C. § 301 et seq.), and must balance what it might prefer to do as a private entrepreneur with what it is required to do as a "public trustee". See Columbia Broadcasting Systems, Inc. v. Democratic National Committee, 412 U.S. 94, 118 (1973). See also Petrick "Equal Opportunities" and "Fairness" in Broadcast Coverage of Politics Annals, AAPSS, 427, September 1976, 73 at p. 82.

As a public trustee, a broadcaster can meet its obligations to the public by providing a balanced coverage of issues and events. A broadcaster has broad discretion in deciding how the

obligation can be met; see Columbia Broadcasting Systems, Inc. v. Democratic National Committee, 412 U.S. 94, 118; 93 S. Ct. 2080; see also, CBS, Inc. v. FCC, 101 S. Ct. 2813 (1981). For example, although the Fairness Doctrine applies to issues rather than persons, it applies to political broadcasts in that a broadcaster must provide "reasonable opportunity" for presenting conflicting views on controversial public issues. On the other hand, Section 315(a) of the Communications Act (47 U.S.C. § 315(a)) requires that equal opportunities be provided to all other political candidates for a public office if one candidate for that office uses the broadcast station (emphasis added; use of a broadcasting station does not include appearance on bona fide newscast, news interview, news documentary or on-the-spot coverage of bona fide news event). Section 315(b) requires the lowest unit charge to the candidate within the 45 day period preceding a primary election and within the 60 day period preceding a general election; Section 312(a)(7) of the Communications Act (47 U.S.C. § 312(a)(7)) makes a broadcaster liable for revocation of his license for "willful or repeated failure" to allow reasonable access to or purchase of reasonable amounts of time to a legally qualified Federal candidate. Unlike § 315(a) and (b), § 312(a)(7) refers only to federal campaigns. Thus, a broadcaster can partially meet its public trustee obligations by providing time, either on a free or paid basis, to a legally qualified candidate for federal office, see, e.g., Columbia Broadcasting Systems, Inc. v. Democratic National Committee, ibid., pp 112-113 n.12 (1973). Should a

broadcaster fail repeatedly, however, to meet its obligations by not allowing reasonable access by a legally qualified candidate for federal office, the Federal Communications Commission may revoke its broadcast license. See Section 312(a)(7) of The Communications Act (47 U.S.C. § 312(a)(7)).

Once a broadcater permits a candidate for any public office the use of the broadcasting station, that broadcaster must allow all other candidates for that office "equal opportunities" to use the broadcast facilities. See Section 315 of The Communications Act (47 U.S.C. § 315). "Equal opportunities" require the broadcaster to charge the same rates to all candidates for the same office. Moreover, it requires that all candidates for the same office have the right to purchase an equal amount of broadcast time, and that broadcast time must have the potential of reaching an audience of approximately the same size. Thus, if one candidate places a number of two minute advertisements at $X per minute on prime time television with ABC, then other candidates for the same office must also be able to obtain an equivalent number of two minute advertisements on prime time television from ABC at the same rate. The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36369-36372 (August 16, 1978).

In addition to the broadcasters' obligation of reasonable access and "equal opportunities", Section 315(b) of the Communications Act (47 U.S.C. § 315(b)), regulates what broadcasters can charge a legally qualified candidate for federal

office within 45 days of a primary election or within 60 days of a general election. (Emphasis added). Thus, for example:

> [i]f [ABC] charges $1,000 for a single prime-time 60-second spot on Saturday nights, but reduces this rate for commercial advertisers to $750 a spot if they buy at least 100 spots, then it must sell a candidate a prime-time Saturday night 60-second spot for $750, even if he buys only one.

The Law of Political Broadcasting and Cablecasting: A political Primer, 43 Fed. Reg. 36342, 36376 (August 16, 1978).

This has been called the "lowest unit rate charge" and does not preclude a broadcaster from charging a rate below the unit rate available or from charging the lowest unit rate - a political discount - prior to 45 days before a primary election or 60 days before a general election. In addition, Section 315(b) precludes a station from charging higher than its regular commercial rates for political broadcasts that are "uses" outside of the respective 45 and 60 day periods. 4/ Section 315(b) does not prohibit, however, a station from charging higher than its regular commercial rates for political broadcasts that are not a "use". Nevertheless, such higher charges could raise serious questions

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4/ In general, any broadcast or cablecast of a candidate's voice of picture is a "use" of a station or cable system by the candidate if the candidate's participation in the program or announcement is such that he or [she] will be identified by members of the audience. The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36359 (August 16, 1978).

of whether the station was serving the public interest and would be a factor considered in renewal of the station's license. the Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36380 (August 16, 1978).

Indisputably, television is the single most efficient means of reaching the general public in either a national or state election. See A Study of Access to Television for Political Candidates Institute of Politics, John F. Kennedy School of Government, Harvard University, May 1978 at p. 1. There can be no doubt that Congress is aware of and deeply concerned over the ever increasing costs of campaigning caused by the increased use of television. In no place has this concern been more fully expressed than in the Senate floor debate of the Federal Election Campaign Act of 1971. Here, Senator Pastore discussed both the equal opportunities requirement of Section 315(a) of the Communications Act (47 U.S.C. § 315(a)) and what is now known as the lowest unit rate rule, currently codified in 47 U.S.C. § 315(b). Senator Pastore spoke of the spiraling costs of campaigning for elective office and "the threat these costs pose to the integrity of our democratic system." 92 cong. Rec. 28792 (1971). Although the granting of a "political discount" by ABC to the DNC is not the type of political activity contemplated by Congress during its discussion of the Federal Election Campaign act of 1971, there can be no doubt Congress was concerned by the high cost of campaigning. Senator Pastore made this point quite clear when he said:

> The overwhelming preponderance of the testimony before the [Subcommittee on Communications of the Commerce Committee] indicates that the rapidly escalating costs of campaigning for public office poses a real and imminent threat to the integrity of the electoral process.

92 Cong. Rec. 28795 (1977).

Admittedly, the facts presented in the matter at hand do not present a situation where there was "a legally qualified candidate" running for federal office. The DNC's telethon of July 26th and 27th, 1975 was not run for the purpose of advocating the election of any one individual to federal office but to retire the debts of the DNC. In turn, these debts were incurred by two Democratic candidates for the presidency in the 1968 election - Hubert Humphrey and Robert Kennedy - and assumed by the DNC after that election. Though ABC was neither obliged to sell the DNC time for the airing of its telethon nor was it obliged to grant "a political discount", it appears that ABC was attempting to fulfill its legally mandated obligation of public trustee - an obligation that ABC has a broad discretion in deciding how to meet. Failure to meet this obligation could cost ABC its license to broadcast. See Columbia Broadcasting systems, Inc. v. Democratic National Committee, 412 U.S. 94, 118 (1973). See also CBS, Inc. v. FCC, 101 S. Ct. 2813 (1981). See also, e.g.,

Section 312(a)(7) of the Communciations Act (47 U.S.C. § 312(a)(7)). 5/

Against this background, ABC gave the DNC what it labelled as "a political discount" in the rate it charged the DNC for the time the DNC purchased; this discount amounted to a savings of $16,330.23. It is this Office's opinion that given ABC's responsibilities as a public trustee and given the requirements of equal opportunities, reasonable access, and the lowest unit rate charge, this discount should not be considered a corporate contribution. This Office believes that there are sufficient safeguards provided by the Federal Communications Act and the regulations promulgated by the Federal Communications Commission to prevent undue corporate influence in the political process. This opinion is based on the fact that ABC, as a broadcaster, is prevented by this body of law from exercising its considerable influence in a partisan manner to favor one candidate or

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5/ In A Study of Access to Television for Political Candidates Institute of Politics, John F. Kennedy School of Government, Harvard University, May 1978, p. 87, 88, ABC and NBC are lauded for their "public spirited attitude" for having a long-standing policy of selling time to a political candidate at discounts of 33 percent and 50 percent, respectively. Although ABC is not, strictly speaking, a licensee, as the Supreme Court noted in CBS, Inc. v. FCC, 101 S. Ct. 2813 n.14 (1981), "each [network] is 'a multi-station license fully reachable [as to its licenses] by [the express] revocation authority' granted under § 312(a)(7)." 74 FCC 2d at 640 n.10.

political party over another candidate or political party. Thus, we recommend that the Commission find that ABC's political discount should not be considered a corporate contribution in contravention of 2 U.S.C. § 441b.

C. The Receipt of Twenty Corporate Checks and One Labor Union Check

The final matter disclosed in the audit review was the acceptance by the DNC of 20 corporate checks and one labor union check totalling $660.95 received from the sale of books and campaign seminars.

These corporate and labor union receipts also raise the specific issue of the applicability of 2 U.S.C. § 441b.

The Commission has previously stated that the mere fact a person receives something of value in return does not render, in and of itself, a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the DNC in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the DNC, since the DNC is receiving funds that will be available for its political purpose. See Advisory Opinions 1976-76, 1979-17, 1978-46, 1975-87 and 1975-15.

The DNC has presented evidence, however, that indicates that the sale of the goods in question was the sale of excess campaign manuals created by the DNC in the ordinary course of its operations as the party committee of a national party, and thus

within the category of commercial activity permitted by the Commission. See Advisory Opinions 1979-18, 1979-24, and 1979-76. According to the DNC, the goods in question were campaign manuals used by the DNC in conducting campaign seminars run by it to train Democratic candidates and party activists in the art of campaigning. These manuals covered "fundraising media, in-house polling, targeting and democraphic research, building a volunteer organization, get-out-the-vote activities, and campaign planning and budgeting." After conducting these seminars, the DNC contends it had extra copies of these manuals remaining and numerous requests from parties not in attendance at the seminars to purchase copies of these manuals.

It is the opinion of the Office of General Counsel that the conducting of campaign seminars by the DNC, or any other political party, is a function that is part of the normal course of operations for a party committee or a political party, and that these manuals were developed primarily for the DNC's own purpose of educating others. Moreover, there is no evidence to indicate that the purchase price of these manuals exceeded the usual and normal charge for such a manual. An additional issue raised by the facts in this transaction is basically: what can a national political party, as defined by 2 U.S.C. § 431(14), that is vested with the capacity of continued existence, do with excess or obsolete equipment without violating § 441b of the Act? The Commission has addressed the issue of the disposal of excess and obsolete equipment on two prior occasions in Commission Advisory

Opinions 1979-24 and 1979-76. The former opinion was given by the Commission to Mr. Ronald Hein, an unsuccessful candidate for Congress in 1978, who in addition to maintaining an open campaign committee under the Act, also maintained an active state campaign committee that under applicable state law could receive corporate contributions. Mr. Hein asked the Commission if his congressional committee could sell excess house signs and a typewriter to his state political committee, which had co-mingled corporate and labor monies, or to a state-registered political action committee, which otherwise did not qualify under federal law for contributions to a federal campaign. The Commission answered that a non-qualified PAC or the state political committee could purchase the excess campaign equipment, the house signs and a typewriter, from Mr. Hein's federal committee so long as the price paid for the excess equipment is no greater than the usual and normal charge of those specific materials. The latter Advisory Opinion, 1979-76, was issued by the Commission at the request of Mr. Richard B. Dingman, Treasurer of the RSC Campaign Fund ("RSC"). Mr. Dingman sought to determine whether RSC could sell a book which it intended to publish to individuals for a profit and to corporations, not at a profit, but to recover its costs, if RSC should be unable to find sufficient individual purchasers of its book. The Commission determined that when a person transmits money to a political committee - any portion of which is available to be spent for the purpose of influencing a federal election - that person has made a contribution in the full

amount of the funds transmitted, regardless of whether RSC made or did not make a profit on the transaction. The Commission then went on to distinguish the situation presented by RSC's request and the situation presented in Advisory Opinion 1979-24, mentioned supra. The Commission did so by holding that Advisory Opinion 1979-24 presented a factual situation where the campaign equipment was originally purchased for and used during the campaign by the campaign committee and, when sold, the proceeds were applied to satisfy the debts of the committee so that it could terminate.

The facts relating to this situation - the sale of campaign seminar manuals to twenty corporations and one labor union - are similar to the facts before the Commission in Advisory Opinion 1979-24. The campaign committee of Mr. Hein had excess campaign equipment - house signs and a typewriter - to sell. In the instant case, the DNC had excess campaign manuals to sell, which the evidence indicates it sold to twenty corporations and one labor union at fair market value. Where the instant case differs from the situation presented to the Commission in Advisory Opinion 1979-24 is in one important area, and that is that the DNC, unlike the Hein's committee, was not selling its excess equipment to pay off its debts and then terminate.

A principal campaign committee of a candidate by its very nature contemplates becoming inactive and eventually terminating, either by the candidate deciding to terminate one committee and forming a new political committee or by simply terminating the

single political committee. Except for reporting requirements, pursuant to Section 104.11 of the regulations (11 C.F.R. § 104.11), its principal function ceases upon the death or the political inactivity of the candidate. On the other hand, a party committee of a national party, like the Democratic party, has a function quite different from the function of a principal campaign committee, for it is established, not for the purpose of electing one individual to political office, but for the purpose of promoting the aims of the Democratic Party, which includes the election of Democrats to public office. Unlike a principal campaign committee, a party committee of a national party, such as the DNC, does not by its very nature contemplate becoming inactive and, unlike a candidate, a national party is vested with the capacity for indefinite continuance. Moreover, because of this capacity for indefinite continuance, it is highly unlikely that the DNC will terminate in the near future. Nonetheless, it is highly probable that a party committee of a national party will have obsolete equipment or supplies that, though no longer of use to it, will have some fair market value.

D. Failure of The DNC to List Contributions on Its Reports

In addition to the Commission's finding of reason to believe for the receipt of corporate contributions by the DNC, the Commission cited the DNC for violating 2 U.S.C. § 434(b) - failure to list the contributions in question as contributions on the DNC's reports pursuant to 2 U.S.C. § 434(b). For the reasons

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mentioned, supra, the Office of General Counsel recommends that the Commission find no probable cause that the DNC violated 2 U.S.C. § 441b for the receipt of a "political discount" from ABC or for the sale of excess campaign manuals. Because it is the opinion of the Office of General Counsel that there was no receipt of a corporate contribution in either of these transactions, it follows that there can be no violation of 2 U.S.C. § 434(b). As to the receipt of a corporate contribution from the Franklin Mint, it is the opinion of the Office of General Counsel that the Commission find probable cause that the DNC violated 2 U.S.C. § 434(b) for failing to list the receipt of this contribution on its reports as a contribution; however, because of the fact that the violation is of such a technical nature and because of the fact that the receipt of funds from Franklin Mint was reported as other income, the Office General Counsel recommends that no further action be taken.

Recommendations

Therefore, in light of the facts presented above, the Office of General Counsel recommends:

1) that the Commission find probable cause that the DNC violated 2 U.S.C. § 441b by accepting a contribution from the Franklin Mint;

2) that the Commission find no probable cause that the DNC violated 2 U.S.C. § 441b (formerly 18 U.S.C. § 610) by accepting a discount from ABC;

3) that the Commission find no probable cause that the DNC violated 2 U.S.C. § 441b by accepting corporate contributions for the sale of excess campaign manuals to twenty separate corporations and labor unions; and

4) that the Commission find no probable cause that the DNC violated 2 U.S.C. § 434(b) except for the receipt of a contribution from Franklin Mint and then take no further action in regard to the failure of the DNC to list the receipt of a contribution from the Franklin Mint.

28 Dec 1982
Date

Charles N. Steele
General Counsel

Attachments
1. Checks - I
2. Agreement - II
3. ABC letter - III

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January 29, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1166

Please have the attached Memo and Briefs distributed to the Commission on an informational basis. Thank you.

Attachments

cc: Taylor

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1982

Lynda Mounts, Esq.
Cadwalader, Wickensham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1166

Dear Ms. Mounts:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by your client, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of 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 if possible) 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, if possible). 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.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Thomas J. Whitehead at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1982

Carl R. Ramey, Esq.
McKenna, Wilkinson and Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. Ramey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

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 (ten copies if possible) 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, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact Thomas S. Whitehead at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1982

James P. Mercurio, Esq.
Arent Fox, Kintner, Piolkin and Kahn
Washington, D.C. 20006

RE: MUR 1166

Dear Dr. Mercurio:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by your client, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b and instituted an investigation in this matter.

After considering all 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 if possible) 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, if possible). 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.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Thomas J. Whitehead at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

Attachment 2
Page 1 of 2

(25)

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19508

Date September 3, 1976

Pay
to the order of Democratic National Committee

Twenty thousand and ---------- $20,000.00
00/100

Morgan Guaranty Trust Company
OF NEW YORK

⑈19508⑈ ⑆021000023⑆ 022 00 483⑈

COUNTERSIGNATURE REQUIRED
SUBJECT TO AUDIT AND LATER

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Attachment I

Attachment 3
Page 1 of 2

10/28

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19608

Date October 8, 1976

1-23
210

Pay
to the order of Democratic National Committee $10,000.00

Ten thousand and ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

COUNTERSIGNATURE REQUIRED FOR AMOUNTS $10,000.00 AND LARGER

⑈10019609⑈ ⑆0210⑈0023⑆ 022 06 483⑈

3204055215 7

9/21-213-39-
10/27/76

(27)

19609

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

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Attachment I
P3

(28)

19508

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

This check represents an advance against the $30,000 minimum guaranteed royalty provided for in the contract between the Democratic National Committee and The Franklin Mint dated August 27, 1976.

(Attachment I
P7)

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

August 25, 1976

File

Democratic National Committee
1625 Massachusetts Avenue, NW
Washington, D.C.

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Democratic Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Democratic Presidential candidate on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Democratic and Republican Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

Attachment II
II C-51
P1

(30)

Your organization agrees to designate the above-described Democratic Presidential Campaign medals as the Official Presidential Campaign Medals of the Democratic National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Democratic National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

27th day of August, 1975

Democratic National Committee

(attachment II)

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ABC Television Network 1330 Avenue of the Americas New York, New York 10019 Telephone 212 LT1-7777

Charles C. Allen
Vice President Sales Administration

February 13, 1976

Mr. Robert S. Strauss
Chairman
Democratic National Committee
1625 Massachusetts Ave., N.W.
Washington, D. C. 20036

Dear Bob:

Although the outside possibility remains that some billing may straggle in for super slide use by stations, we feel that this is improbable. Therefore, this letter will serve to settle accounts for the July 26-27, 1975 DNC Telethon with the understanding that future billing, if any, will be quickly settled.

In a letter October 31, 1975, we attached a check for $110,000 on account for an indicated rebate of $116,443. We withheld the $6,443 as a contingency for additional billing for super slides. Consequently, the $19,250 rebate attributable to super slides as indicated in that letter was, in effect, reduced to $12,807 in order to preserve the contingency for additional billing. The gross billing figure, which we now hope will be final for super slides, is $48,990.69, which becomes $32,660.46 after granting the one-third political discount. The gross billing for super slides known last fall and used as a basis for the rebate listed in October was $44,624.41, which nets out to a rounded $29,750 after political discount. This leaves a net difference in cost to you of $2,910, which, when subtracted from the aforementioned contingency reserve of $6,443, leaves a rebate due the DNC of $3,533, check attached.

Bob, our very best wishes go to you and Kitty. If we can be of any further service, please let us know.

Very truly yours,

Charles C. Allen

Charles C. Allen

Attachment III
cc:
Att. II C 22

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1982

Lynda Mounts, Esq.
Cadwalader, Wickensham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1166

Dear Ms. Mounts:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by your client, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of 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 if possible) 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, if possible). 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.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Thomas J. Whitehead at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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Cadwalader, Wickersham & Taft

1333 New Hampshire Avenue, N.W. Washington, D.C. 20036

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter Of The Democratic National Committee	MUR 1166

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BRIEF OF THE DEMOCRATIC
NATIONAL COMMITTEE

Ronald D. Eastman
Lynda S. Mounts
CADWALADER, WICKERSHAM & TAFT
Suite 700
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Counsel for the Democratic
National Committee

February 17, 1982

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of The Democratic National Committee	)	MUR 1166

BRIEF OF THE DEMOCRATIC NATIONAL COMMITTEE

I. Introduction

On January 8, 1981, the Federal Election Commission ("Commission") advised the Democratic National Committee ("DNC") that it had found reason to believe that the DNC may have violated Section 441b(a) of the Federal Election Campaign Act ("FECA") by: (1) accepting a corporate contribution from the Franklin Mint Corporation ("Franklin Mint"); (2) accepting a corporate contribution from the ABC Television Network ("ABC"); (3) accepting twenty corporate and labor union contributions; and (4) failing to list the receipt of such funds as contributions. According to the General Counsel's report accompanying the letter, these allegations arose out of the Commission's audit of the Democratic National Committee covering the period from January 1, 1976 through September 30, 1978.

On May 11, 1981, the DNC submitted its response urging the Commission to take no further action with respect to these transactions because none of them constituted making or receiving

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a prohibited contribution. None of the transactions was made for the purpose of influencing a federal election in violation of the FECA. Rather, each involved a nonpartisan, arms length business arrangement.

Briefly stated:

> (1) The DNC's 1976 agreement with the Franklin Mint was a commercially reasonable, arms length bargain; in fact the DNC took considerable care to ensure the arrangement was consistent with applicable law and regulations.
>
> (2) The ABC transaction was outside the scope of Section 441b and, moreover, was lawful under applicable provisions of federal communications law.
>
> (3) Finally, the corporate and labor union receipts at issue involved the sale of excess campaign manuals produced by the DNC and sold in arms length transactions. These sales were similar to those that the Commission has held do not constitute contributions.

On February 2, 1982, the DNC received the General Counsel's Brief, which agrees with the DNC's position regarding the ABC transaction and the sale of excess campaign manuals and recommends that the Commission find no probable cause with respect to those transactions. However, the General Counsel's Brief also recommends that the Commission find probable cause to believe that the Franklin Mint transaction violated 2 U.S.C. § 441b.

Pursuant to § 111.16(c) of the Commission's regulations, the Democratic National Committee hereby files its Brief to the Commission. Because the DNC did not accept unlawful

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contributions, the Commission should take no further action on these matters.

II. The DNC did not accept a contribution from the Franklin Mint Corporation.

A. The General Counsel's Brief.

According to the General Counsel's Brief, on September 8 and October 29, 1976, the DNC deposited in its operating account checks from Franklin Mint for $20,000 and $10,000, respectively. These constituted royalty payments resulting from an agreement between the DNC and Franklin Mint in August of 1976 for use of the Democratic Party's campaign symbol. (Attachment A) The General Counsel's Brief characterizes the transaction as a sale by the DNC of "its goodwill and the reputation of its national leadership to the Corporation in exchange for a share of the income realized or anticipated." (p.7) Relying on A.O. 1979-17 -- an advisory opinion issued three years after the DNC-Franklin Mint transaction, which disapproved a proposal by the Republican National Committee to sell its goodwill -- the General Counsel concludes that the arrangement constituted a contribution in violation of the FECA.

B. The Facts.

In August, 1976, Franklin Mint proposed and the DNC agreed to an arrangement whereby the DNC gave Franklin Mint the exclusive right to sell to collectors commemorative coins bearing the Democratic Party's campaign symbol. (Attachment A) The DNC agreed to designate the coins as the "Official Presidential Campaign Medals of the Democratic National Committee." In

return, Franklin Mint agreed to pay royalties to the DNC on the sale of the medals.

The parties negotiated the terms of the agreement at arms length. Its terms were substantially the same as those governing the many similar agreements that Franklin Mint had with non-political organizations, such as the National Audubon Society, the Royal Shakespeare Theatre, and the 41st International Eucharistic Congress.1/ In addition, the terms are identical to the ones Franlin Mint agreed to with the Republican National Committee ("RNC"). Moreover, Franklin Mint expressly contemplated a commercial, not political, venture.2/

C. Discussion.

Neither the FECA nor the Commission's past or present regulations directly address whether royalty payments for the use of a national party's campaign symbol would have constituted contributions in the fall of 1976.3/ Rather, the conclusion in

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1/ See Attachment B, a letter dated September 23, 1976 from Richard J. Kradjel, Associate Corporate Counsel to the Franklin Mint, to Ralph J. Gerson, then Counsel for the DNC.

2/ See Attachment C, a letter dated November 2, 1976 from Mr. Kradjel to Mr. Gerson.

3/ The FECA prohibits a corporation from making ". . . a contribution or expenditure in connection with any election to any political office." 2 U.S.C. § 441b(a). Section 441b(b)(2) defines "contribution or expenditure" to include

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value. . . to any candidate, campaign committee, or political party or organization, in connection with any election to Federal office. . .

the General Counsel's Brief rests primarily on A.O. 1979-17, issued on July 16, 1979. In that advisory opinion, the Commission concluded that the RNC's proposed use of its goodwill to promote a commercial transaction with a bank in exchange for a share of the income generated by the bank's use of the RNC's name would be a prohibited contribution under the Act. The General Counsel's Brief contends that the DNC-Franklin Mint transaction is similar to the one described in A.O. 1979-17, and, therefore, that Franklin Mint royalty payments to the DNC constitute contributions in violation of the Act. Nonetheless, regardless of the merits of A.O. 1977-17, it should not and may not be applied to the Franklin Mint transaction.

1. The DNC engaged in the Franklin Mint transaction reasonably believing it would not result in prohibited corporate contributions.

In 1976, during the period of the Franklin Mint transaction, the Act, the Commission's regulations, and its advisory opinions indicated that the Commission would evaluate a transaction based on whether the sale by a political committee was an arms length bargain carried out in the ordinary course of business for a commercial, rather than political, purpose. The Commission made no distinction based on whether the sale involved tangible or intangible assets until three years later, in A.O. 1979-17.

At the time of the transaction, the FECA defined "contribution" as a payment of anything of value "for the purpose of influencing" a federal election. Section 431(e)(1) (A) (now

section 431(8)(A)). Under the Commission's regulations, a contribution would result from the provision of "anything of value" below the "usual and normal charge for the items." Sections 100.4(a)(1)(iii)(A) and (B) (now sections 100.7(a)(1)(iii)(A) and (B)).[4/] The DNC reasonably read the Act and the regulations in 1976 to permit arms length transactions between corporations and political committees made for commercial, non-political purposes. Neither the Act nor the regulations distinguished between transactions in which a political committee sold tangible assets and those in which it exchanged its name and reputation for value.

An early advisory opinion supported the DNC's view that a commercial transaction would not result in a contribution. In A.O. 1975-15, the Commission held that one who pays money to a political committee for books, watches and other items displaying a candidate's photo or facsimile signature makes a contribution to that campaign. However, the rationale for this decision was not that the political committee was selling its goodwill, but that the sale of the campaign items was essentially a political activity, on the part of the seller and the purchaser. Most critically, while the campaign items involved may have had some intrinsic value, their overriding function, from the standpoint

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[4/] While these sections dealt with purchases by a political committee, not sales, there was no indication that sales were to be governed by any different standards. In fact, in 1979, the Commission applied these regulations to sales by a political committee. See A.O. 1979-18 and A.O. 1979-24.

of both the campaign committee and the purchaser, was to further the campaign. This rendered their purchase a contribution.

Thus, on the basis of existing law the DNC clearly was correct in assuming, in August of 1976, that it could enter into an arms length bargain undertaken in the ordinary course of business. As demonstrated by the correspondence between the parties (Attachments A, B and C), the arrangement was in fact an arms length bargain, and the royalty payments were bargained for consideration. The DNC received express representations that the terms of the agreement were substantially the same as those governing the many similar agreements that Franklin Mint had entered into with nonpolitical organizations. (Attachments B & C) In addition, in response to DNC inquiries, Franklin Mint advised that the terms were identical to the ones agreed to with the Republican National Committee. (Attachment C) Finally, Franklin Mint assured the DNC that in issuing the medals, it had no interest in furthering particular ideas or candidates. (Attachment C) Indeed, this is obvious from the fact that Franklin Mint entered into this arrangement with both national committees.

During the period of the transaction, while Franklin Mint was making royalty payments to the DNC, contemporaneous advisory opinions confirmed the DNC's analysis of the legal standard applicable to commercial transactions between a political committee and a corporation. In A.O. 1976-56 (issued September 8, 1976), for example, the Commission determined that an incorporated hotel could offer free accommodations to political

candidates for the purpose of increasing the prestige of the hotel and thereby attracting future business, where such complimentary services were offered in a non-political manner to non-candidates as well as candidates. The Commission found that since the complimentary services were based upon commercial considerations only, they were "neither in connection with a Federal election, nor offered to influence a Federal candidate's election." This advisory opinion is directly on point, because it involved a corporation providing something of value to obtain goodwill. The candidate's staying at the hotel was akin to his endorsement, and the free accommodations were, of course, payment for it. The Commission could not have concluded that a contribution did not occur here, yet did in A.O. 1979-17, without significantly changing its standards with respect to such transactions.

And in A.O. 1976-86 (issued October 6, 1976), the Commission held that an advertising company which continued to display a political committee's advertisement on its billboard after the contract period had run had not made a contribution to the committee since (1) no other advertiser had purchased the same board, and (2) it was normal business practice to continue a display until one did. In reaching its conclusion, the Commission again focused on the purpose underlying the benefit conferred upon the political committee. If services or money were offered in the ordinary course of business, or as part of a legitimate commercial pursuit, there was no contribution. The

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Commission did not even note whether the bargained for consideration was tangible or intangible.

Moreover, at the time the Commission provided no indication that it would change the standards governing the transaction. None of the advisory opinions cited by the Commission in A.O. 1979-17 was decided on grounds that had anything to do with a distinction between goodwill and tangible assets. A.O. 1976-50 held that a corporation which marketed shirts bearing a candidate's likeness and contributed $1 to the candidate's campaign committee for each shirt sold would be making an illegal contribution -- both in bearing the costs of manufacture and in offering a royalty. A.O. 1975-15 is discussed above. Both turned on the fact that political, not commercial considerations were the primary concern. Neither transaction appeared to be an arms length bargain.[5/]

In the third opinion cited by the Commission in A.O. 1979-17, A.O. 1978-46 (which was issued after the Franklin Mint transaction), the Commission held that a corporation's purchase of an advertisement in a political party's monthly newspaper or in a printed program for a party convention was a contribution. But A.O. 1978-46 contained no suggestion that the Commission would change its standard for determining whether a contribution would result. There, the political committee was not selling an

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5/ The General Counsel's Brief suggests that A.O. 1976-50 provides an alternate rational for finding a violation. However, as described in the text above, that transaction is distinguishable from the Franklin Mint transaction, which was a commercial, arms length bargain.

intangible asset, but advertising space. Nor did the party committee endorse the advertiser's product. In contrast, it was the RNC's endorsement of the bank credit cards -- the use of its goodwill -- that the Commission found would not constitute bargained for consideration.

In short, at the time the DNC agreed to the Franklin Mint proposal, there was no authority whatsoever in the FECA, the Commission's regulations, or its advisory opinions even suggesting that the Commission would consider royalty payments from an arms length commercial transaction to be a contribution because the payments involved a political party's sale of intangible, rather than tangible, assets. On the contrary, in the fall of 1976 the DNC relied on ample authority in concluding that its arrangement with Franklin Mint was lawful. The transaction was consistent with existing law from the time of planning through execution. Nothing in the General Counsel's Brief counters this contention.

2. The Commission may not apply a new legal principle retroactively to a transaction undertaken in good faith reliance on existing law.

Regardless of the merits of A.O. 1979-17, the Commission may not lawfully apply a legal principle enunciated for the first time three years after the transaction, where the DNC complied in good faith with the law as it existed in 1976. Notably, although the DNC raised this argument in its May 11, 1981 response, the General Counsel's Brief fails to address this critical legal issue.

a. The FECA precludes the Commission from penalizing the DNC's good faith reliance on contemporaneous opinions similar in material respects to the transaction with Franklin Mint.

As noted, the DNC went to some lengths to ensure that the agreement with Franklin Mint was, in fact, an arms length bargain entered into in the ordinary course of business and for commercial purposes only. The arrangement fully accorded with the law during the period. Moreover, during that period the Commission gave no indication that it would change the legal standards that governed the transaction. Under these circumstances, the Commission may not, consistent with 2 U.S.C. § 437(c)(2), hold the DNC to the principle first enunciated three years later.

Section 437(c)(2) of the FECA provides that:

> any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of [437(c)(1)] and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act. . .

Section 437f(c)(1) establishes who may lawfully rely on an advisory opinion:

> any advisory opinion rendered by the Commission may be relied upon by . . . (b) any person involved in any specific transaction or activity with respect to which such advisory opinion is rendered.

As discussed above, the DNC justifiably relied on advisory opinions similar in material respects to the Franklin Mint transaction. In both A.O. 1976-56 and A.O. 1976-86, the FEC

held that no contributions resulted because commercial, not political, considerations were at the heart of the transactions. Opinions where the Commission had concluded that a prohibited contribution would occur were based squarely on the political nature of the transaction. (See A.O. 1976-50, A.O. 1975-15)

As the correspondence between the DNC and Franklin Mint appended to this Brief shows (Attachments B and C), the parties made every effort to ensure that: (1) the purpose of the transaction was commercial, not political; (2) the transaction was undertaken in the ordinary course of business; and (3) it was nonpartisan. In all material respects, therefore, the holdings were directly relevant to the DNC-Franklin Mint transaction, and the Commission cannot penalize the DNC for relying on them in good faith.

b. Retroactive application would be unlawful.

Aside from the operation of 2 U.S.C. § 437f, well-established legal doctrine precludes the Commission from applying A.O. 1979-17 to the DNC-Franklin Mint transaction. The courts consistently have held such retroactive application impermissible when there had been good faith reliance on prior holdings and prospective application would produce adverse consequences, such as fines. In NLRB v. Bell Aerospace Co., Div. of Textron, Inc., 416 U.S. 267 (1974), for example, the Supreme Court held that, while retroactive application of agency rules would be permitted under some circumstances, a party could not be penalized for good faith reliance on prior agency holdings by virtue of a retroactive change in standards.

This basic principle has been followed in numerous other cases. In Drug Package, Inc. v. NLRB, 570 F.2d 1340 (8th Cir. 1978), for example, the court stated,

> We entertain no doubt now that the Board does have the power to announce new principles of law in an adjudicatory proceeding. See, NLRB v. Bell Aerospace Co., supra, 416 U.S. at 294, 94 S. Ct. 1957. In deciding whether to exercise that power, however, the Board must weigh the benefits to be achieved by the new interpretation of the law against the detrimental effects of retroactive application of the new rule.

Id. at 1346, n.5. The Court found that the application of a policy making bargaining orders effective retroactively was unfair to a company which had rejected settlement offers under the assumption that bargaining orders could be prospective only. Accord, Ruangswang v. Immigration and Naturalization Service, 591 F.2d 39 (9th Cir. 1978); Natural Gas Pipeline Co. of America v. FERC, 590 F.2d 664 (7th Cir. 1979).

With respect to retroactivity of advisory opinions, the approach of the Internal Revenue Service is also instructive. While the Code leaves it to the Commissioner's discretion to determine whether new rulings or regulations will be retroactively applied, (See § 7805(b) of the Internal Revenue Code, Automobile Club of Michigan v. Commissioner, 353 U.S. 180 (1957)), it is the Service's stated general policy that:

> [W]here Revenue Rulings revoke or modify previously published rulings the authority of § 7805(b) of the Code ordinarily is invoked to provide that the new rulings will not be applied retroactively to the extent they have adverse consequences to taxpayers.

104-5th TAX MNGM'T (BNA), A-27. Significantly, in a few of the rare instances in which the Service has departed from this policy, its action has been deemed an abuse of discretion. See International Business Machines Corp. v. United States, 343 F.2d 914 (Ct.Cl. 1968); LeSavoy Foundation v. Commissioner of Internal Revenue, 238 F.2d 589 (3rd Cir. 1956).

Here, the DNC justifiably relied upon prior pronouncements, and penalties from retroactive application would be substantial. The DNC could not have anticipated A.O. 1979-17 in 1976, when the Commission was applying different standards to transactions between political committees and corporations. Penalizing the DNC on the basis of a retroactive application of A.O. 1979-17 would be an abuse of the Commission's discretion.

3. The DNC - Franklin Mint transaction differs from the transaction disapproved in A.O. 1979-17.

In any event, A.O. 1979-17 is inapposite. It involved a plan by the Republican National Committee to endorse a bank credit card and encourage the card's use by party members in exchange for compensation by the bank for the party's assistance in increasing the bank's card holder base. In addition, the RNC would have the exclusive right to include "educational/ promotional" materials in monthly statements sent by the bank to the Republican credit card holders.

Although the RNC described its program as a strictly commercial enterprise based on an arms length agreement, this characterization ignored the serious potential for abuse. The credit card transaction involved (a) a financial arrangement

between a political committee and a regulated bank (b) that would produce very substantial revenues (c) over a long time period. There is, of course, substantial government regulation of the banking industry. Both the Republican National Committee and whatever bank it affiliated with could have expected significant revenues from their association in the program.[6/] The originator of the idea, Edward Shelton, believed that the program would have "a profound impact in terms of fundraising."[7/] Hence, as political committees developed substantial financial ventures with banks, the possibility of true arms length bargaining would become more remote.

In a letter to the Commission commenting on A.O. 1979-17, Senator Proxmire, Chairman of the Committee on Banking, Housing, and Urban Affairs, expressed this concern:

> It would be hard to imagine a more conspicuous case of conflict of interest on a massive scale than the scheme presented to the Commission by this request . . . The obvious danger lies in the fact that as the parties grow more and and more dependent upon the credit card contributions, the stronger will evolve the bond of common interests between the parties and the bank card corporations. It is impossible to honestly assume that the bank card firms will be able to negotiate at arms length with political elements that may now, or in the future,

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6/ Plans Recently Announced By the Republican and Democratic Parties to Solicit Their Members for Visa Credit Cards; Hearing Before the Senate Comm. on Banking, Housing and Urban Affairs, 95th Cong., 2d Sess. 32 (January 9, 1979).

7/ Id. Senator William Proxmire called it "potentially one of the greatest fundraising windfall schemes ever devised." (Letter from Senator Proxmire to the Federal Election Commission, Office of General Counsel, dated May 9, 1979).

control the profitability of the entire bank card industry.

Given that the spectre of undue influence is the very evil sought to be avoided by the prohibition against corporate contributions, U.S. v. C.I.O., 335 U.S. 106 (1948), the Commission could not see the possibility of "characterizing" the compensation to be received by the RNC "as bargained for consideration rather than political contributions."

The DNC arrangement with Franklin Mint, on the other hand, does not give rise to this concern. First, the amounts involved were relatively insubstantial. While the credit card program could have produced millions of dollars in revenues, the DNC derived $30,000 from the Franklin Mint contract. Second, unlike the banks with which the RNC proposed to deal, Franklin Mint is not engaged in a highly regulated industry. Thus, there was neither reason nor opportunity for Democratic regulators, future or present, to be influenced by the DNC's association with Franklin Mint. Moreover, the DNC did not have the right to include "educational/promotional" materials in periodic mailings. Therefore, the Franklin Mint transaction did not provide the opportunity for ongoing political fundraising, as did the RNC proposal. Finally, the DNC's association with Franklin Mint was limited to a brief period, while the RNC proposed a continuing relationship with particular banks. In short, A.O. 1979-17 is inapposite here.

III. The DNC did not accept a contribution from the ABC Television Network.

According to the General Counsel's Brief, the alleged contribution involves a one-third "political discount" amounting to $16,330.23 granted by ABC in February 1976 for the DNC's telethon of July 26-27, 1975. The Commission does not consider a discount below the usual and normal charge to be a contribution if it is offered in "the vendor's ordinary course of business to non-political clients." (A.O. 1978-45) However, in its "reason to believe" finding it questioned the DNC-ABC transaction because ABC labeled it a "political discount" in a February 13, 1976 letter to the DNC.

ABC has made available to the DNC the memorandum it filed with the Commission on March 11, 1981. The DNC believes ABC convincingly shows why the Commission should take no further action in this matter. First, offers of discounted time extended on a nonpartisan basis are outside the scope of § 441b. Moreover, as ABC correctly notes, if the Commission concludes that the ABC discount constitutes an impermissible contribution under the FECA, the holding would be directly at odds with applicable federal communications law. Further, sound public policy considerations argue against treating nonpartisan political discounts as contributions. Precluding such discounts probably would limit the amount of political discussion so critical to our system of government. For these reasons, more fully set out in ABC's memorandum, and adopted by the DNC, the

Commission should take no further action in this matter. The General Counsel's Brief agrees with this conclusion.

IV. The DNC did not accept corporate or labor union contributions.

In the Commission's "reason to believe" finding it raised the question whether the DNC's receipt of twenty corporate and labor union checks totalling $660.95 for the sale of books and seminars was prohibited by the FECA.[8/] The General Counsel's Brief takes the position, based on evidence presented by the DNC and several advisory opinions, that 2 U.S.C. § 441b does not apply to a commercial sale of excess campaign manuals.

The DNC received these payments for the arms length sale of excess campaign manuals that were valuable to the purchasers. In 1976, the DNC reprinted 5,000 copies of a nine volume DNC "Campaign Consultation" program, at a cost of $10,653.30. (Attachment E) It first produced the program, with the assistance of consultants, in 1974. The DNC used the manuals in 1976 in campaign seminars it ran to train Democratic candidates, potential Democratic candidates and state and local Democratic party activists in various campaign skills. The program was part of the DNC's efforts to make technical assistance available to Democratic candidates at all levels. The manuals covered

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8/ The Commission staff provided a list of twenty entities that purchased manuals in 1976. (Attachment D) The organizations included educational institutions such as Ohio Wesleyn University and Blue Mountain Community College as well as business corporations and labor unions. The $660.95 total is comprised of checks ranging in amount from $5.00 to $115.00.

fundraising, media, in-house polling, targetting and demographic research, building a volunteer organization, get-out-the vote activities, and campaign planning and budgeting. The DNC originally included the cost of the manual in the price it charged for the seminar.

Because the manual provided expert information on how to be effective politically, it was valuable not only to candidates and political committees, but to many others.[9/] The DNC therefore received numerous requests for the manual. Since the DNC had extra copies that were not used in the training seminars, the DNC supplied them upon request, to the extent they were available. If the organization requesting the material was unrelated to the DNC, the DNC generally charged a small amount for the manual to defray production costs.

Because the DNC's records are not complete for events occurring over five years ago, the DNC cannot at this time produce documentation as to the nature of the requests or the exact costs of production. The printing costs ($10,653.30 -- Attachment E) do not include fees for writing and drafting, art work, typeset, postage or DNC staff time. However, based on the documented printing costs and the small amounts of the checks the DNC received, the DNC's comptroller believes that the amounts received in no event exceeded actual costs to the DNC.

9/ A review of the manual amply demonstrates its value. Because the DNC has retained only one copy, we cannot submit it with this document. However, the manual is available for your review upon request to counsel.

The DNC sales of excess campaign manuals fall within the category of sales the Commission has permitted in the past without characterizing them as contributions. In A.O. 1979-18, the Commission permitted a committee to sell to corporations a contributor list it had created in the ordinary course of its operations, primarily for its own use. The Commission said that the sale would constitute a contribution if the purchase price exceeded the usual and normal charge. And in A.O. 1979-24, the Commission permitted a political committee to sell excess yard stakes and a typewriter purchased during the campaign as long as the buyer paid the usual and normal charge for the items.

Here, the DNC created and produced the campaign manuals in the ordinary course of its operations to provide technical campaign assistance to Democratic candidates. It sold excess manuals, as a commercial venture, to recoup production costs. To the extent that the Commission's concern was that the receipts exceeded production costs, the DNC believes it has provided the best information available to demonstrate that that concern is groundless. The DNC printed 5,000 sets of manuals, at a cost of $10,653,30. While this is the only documented figure, it does not include other costs of production. The amounts of the checks received -- ranging in amount from $5 to $115 -- support a former DNC Comptroller's view that the receipts could not have exceeded production costs. Although no one presently at the DNC can recall, it is likely that the charge was based on an estimate made at the time of a reasonable amount necessary to defray

production costs. In any event, there is no indication that the receipts exceeded production costs.

The DNC's sale of excess manuals clearly is different from those transactions that the Commission has found resulted in a prohibited contribution. For example, in both A.O. 1979-76 and A.O. 1975-15, the dispositive fact was that the items were ". . . specifically acquired or developed for general fundraising purposes . . ." (A.O. 1979-76). That simply is not a factor here. There is no indication whatsoever that the DNC developed the manuals for general fundraising purposes.

The sales of excess campaign manuals is similar in all material respects to the sales approved in A.O. 1979-18 and A.O. 1979-24. Accordingly, the DNC's receipts at issue here did not constitute a prohibited contribution.

V. Conclusion.

For the foregoing reasons, the DNC urges the commission to take no further action on MUR 1166.

Respectfully submitted,

Lynda S. Mounts

Ronald D. Eastman
Lynda S. Mounts
CADWALADER, WICKERSHAM & TAFT
Suite 700
1333 New Hampshire Avenue, N.W.
Washington, DC 20036

Counsel for the Democratic
National Committee

February 17, 1982

Attachment A

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

August 25, 1976

File

Democratic National Committee
1625 Massachusetts Avenue, NW
Washington, D.C.

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Democratic Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Democratic Presidential candidate on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Democratic and Republican Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

Your organization agrees to designate the above-described Democratic Presidential Campaign medals as the Official Presidential Campaign Medals of the Democratic National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Democratic National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: _____
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

27th day of August, 1976

Democratic National Committee

By: _____

Attachment B

September 23, 1976

Democratic National Committee
310 First Street, S.E.
Washington, D.C. 20003

Attention: Ralph Gerson, Esq.

Gentlemen:

As I indicated in our telephone conversation yesterday, collectors value highly the sponsorship of prestigious organizations and find special merit in a commemorative medal that is an official issue of such a society. For that reason, the medals which are the Official Presidential Campaign Medals of the Democratic National Committee and the Republican National Committee are prized by our collectors.

It is also noteworthy that our commemoratives in the past have been sponsored by such renowned organizations as La Scala, Royal Shakespeare Theatre, National Audubon Society, The United Nations, National Governors Conference, American Revolution Bicentennail Administration, The 41st International Eucharistic Congress, The International Olympic Committee, World Wildlife Fund, National Society of the Daughters of the American Revolution, The Royal Horticultural Society and many others.

It has been customary to pay these sponsoring organizations royalties based on sales, the percentage ranging from 5% to 20% based upon commercial negotiations. In most cases, an advance is paid.

Please do not hesitate to contact me if you require any further information about our commemorative programs.

Very truly yours,

FRANKLIN MINT CORPORATION

Richard J. Fradjel

file

Attachment C

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

November 2, 1976

Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Attention: Ralph J. Gerson, Counsel

Gentlemen:

This letter is to clarify the nature of the agreement by which the Democratic National Committee has granted to the Franklin Mint Corporation the exclusive rights to reproduce and sell the official Presidential Campaign Medals of the Democratic National Committee.

As you may know, collectors value highly the sponsorship of prestigious organizations and find special merit in a commemorative medal that is an official issue of such a society. The Franklin Mint Corporation has obtained exclusive rights to mint and sell medals certified by such organizations as La Scala, Royal Shakespeare Theatre, National Audubon Society, the United Nations, National Governors Conference, American Revolution Bicentennial Administration, The 41st International Eucharistic Congress, The International Olympic Committee, World Wildlife Fund, National Society of the Daughters of the American Revolution, The Royal Horticultural Society and the Republican National Committee. Our agreement with your organization is identical to our agreement with the Republican National Committee. Further, our agreement with your organization is substantially the same as our agreement with the above-mentioned non-political organizations with respect to all essential contract terms.

Our purpose in issuing and selling these medals is to commemorate historical events and renowned organizations by means of gold and silver medals of lasting value. In advertising and selling our medals we stress their value as collector's items

and feel no duty to further particular ideas or a particular candidate. Indeed, the Democratic and Republican Presidential Campaign medals are being advertised together.

We can assure you that our contractual relationship with your organization is on a purely commercial basis. We customarily pay sponsoring organizations royalties based on sales. The amount of such royalties is based solely on the commercial value of the exclusive endorsement of each organization as determined through commercial negotiations. The 15% royalty offered to the Democratic National Committee is well within the 5% to 25% range of royalties normally offered to sponsoring organizations, and it is identical to the royalty being paid to the Republican National Committee.

In addition, an advance is customarily paid to sponsoring organizations. The amount of the advance payment suggested to the Democratic National Committee and the Republican National Committee is comparable to advances previously offered to nonpolitical sponsors.

In conclusion, we believe that this transaction is a commercial transaction quite comparable to our dealings with nonpolitical organizations. Please do not hesitate to contact us if you desire any further information about our commemorative program.

Very truly yours,

FRANKLIN MINT CORPORATION

Richard J. Kradjel

Richard J. Kradjel
Associate Corporate Counsel

RJK/bb

(8/77) DNC

Attachment D

Schedule of Commercial Entities Who Transferred Monies to DNC In Payment of Books + Services

	1 Amount	2 Date	3 Date Incorp.
Campaign Associates Inc.	1500	1/12/76	3/24/70
Arizona Education ASSN	11500	1/30/76	12/1/39
Construction, Production + Maintenance Laborers Union	6500	1/30/76	
Harris, Lee, Elliott Communications	500	1/30/76	2/20/75
Bri Dart, Inc.	30000	1/30/76	9/19/67
Student Book Corporation	1500	1/28/76	3/23/75
Epley Associates, Inc	1500	1/30/76	12/23/75
Ohio Wesleyan University	100	3/12/76	3/7/42
Arizona State AFL CIO	6500	2/12/76	
Lodldard Purcell + Brown Inc	6500	1/-9/76	12/24/75
Maurer, Fleisher, Zoe + Anderson, Inc	11500	4/30/76	10/31/75
Blue Mountain Community College	7000	2/24/76	5/28/63
Ohio Right To Life Inc	1300	3/12/76	6/30/67
Indiana Right To Life Inc	650	3/31/76	Inc on ck
Allen-Russell Ford Inc	1500	5/14/76	12/14/70
Praeger Publishers Inc	2145	5/24/76	4/28/66
Weston Associates Inc	4500	6/24/76	3/29/55
Emery Pratt Company	1500	6/30/76	2/19/24
Products of Technology	1500	6/30/76	10/18/72
Monsanto Company	500	5/27/76	10/5/61
Total	66095		

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Attachment E

INVOICE

KAUFMANN/GRAPHICS INC.

A SUBSIDIARY OF PUBLISHERS COMPANY, INC.

the mark of Washington's quality lithographers

TELEPHONE 526-2666

1110 Okie Street N.E., Washington, D.C. 20002

SOLD TO:

Democratic National Committee
Attention: Mr. Eric Jaffe
1625 Massachusetts Avenue N. W.
Washington, D. C.

TERMS: NET 30 DAYS

CUSTOMER ORDER NUMBER	OUR JOB NUMBER	INVOICE DATE
2660	69119	January 19, 1976

Campaign Consultation Programs consisting of nine (9) booklets, 8 1/2 x 11, two 40 pages, two 36 pages, two 20 pages, one 32 pages, one 28 pages and one 16 pages. 5,000 copies each of above nine booklets to be shot from existing printed books, three hole drilled and delivered in convenient cartons as specified in estimate on Purchase Order No. 2660.	$ 9,900.00
Additional art for cover as covered in my letter of November 20, 1975.	180.00
Alterations in blueprint	66.00
	$10,146.00
5% D. C. Sales Tax	507.30
	$10,653.30

SALESMAN Rupli (02)

RESALE OR EXEMPTION NUMBER 5270 (bam) 20

17998

Cadwalader, Wickersham & Taft

1333 New Hampshire Avenue, N.W. Washington, D.C. 20036

Bill Taylor
Office of the General Counsel
Federal Election Commission
1325 K Street, NW
Washington, D.C. 20463

TAFT
E. N.W.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 14, 1981

MEMORANDUM

TO : Charles N. Steele
General Counsel

THROUGH: Kenneth A. Gross
Associate General Counsel

FROM : William Taylor

SUBJECT: MUR 1166 - Democratic National Committee and in Particular the American Broadcasting Company

As requested, that portion of this Office's brief which pertains to the issues surrounding ABC's granting of a political discount to the DNC was changed to reflect a different emphasis. If these changes are acceptable, please let me know so that I may make the appropriate changes in our briefs and then send them to the respondents.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: JUNE 10, 1981

SUBJECT: MURs 1166 and 1180 Interim Investigative Report #1, dated 6-8-81; Received in OCS, 6-8-81, 3:54

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, June 9, 1981.

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

June 8, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MURs 1166 and 1180

Please have the attached Interim Investigative Report distributed to the Commission on a 24 hour no-objection basis. Thank you.

Attachment

pakayson:6-8-81

cc: Taylor

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

June 8 , 1981

81 JUN 8 P3: 54

In the Matter of	)	
	)	MURs 1166 and 1180
The Democratic National Committee and	)	
The Republican National Committee	)	

INTERIM INVESTIGATIVE REPORT #1

Because of the similarity of issues presented in MURs 1166 and 1180 the Office of General Counsel plans to forward both matters simultaneously. Combined, these matters have a total of twelve (12) respondents, all of whom have filed responses to the Commission's reason to believe findings. These responses vary in length and content up to twenty-two pages. All of the responses have been analyzed and briefs are in the process of being written. The Office of General Counsel plans to submit these briefs to the Commission for its consideration within thirty (30) days.

6/8/81
Date

Charles N. Steele by KHG
Charles N. Steele
General Counsel

2204035219

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 13, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Anthony S. Harrington, Esq.
General Counsel to the
Democratic National Committee
Hogan and Hartsen
815 Connecticut Ave., 7th Floor
Washington, D.C. 20006

Re: MUR 1166

Dear Mr. Harrington:

This is in reference to your letter of March 5, 1981, requesting an extention of time in which to respond to the Commission's Notification of Reason to Believe.

The Commission has decided, after considering your request, to approve an extention of time in which to respond to the Commission's Notification of Reason to Believe. As requested, your client has until the close of business on April 8, 1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A. Gross
Associate General Counsel

9 2 0 4 0 3 5 2 3 0 0

MUR 1166 Taylor 3-13-81

PS Form 3811, Jan. 1979

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:
Anthony S. Harrington
Hogan + Hartson
815 Conn. Ave. 7th Floor
Wash. D.C. 20006

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	116646	

(Always obtain signature of addressee or agent)

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

4. DATE OF DELIVERY
3-16-81

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO : 1979-289-[illegible]

3 2 2 4 0 3 5 2 5 0 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Anthony S. Harrington, Esq.
General Counsel to the
Democratic National Committee
Hogan and Hartsen
815 Connecticut Ave., 7th Floor
Washington, D.C. 20006

Re: MUR 1166

Dear Mr. Harrington:

This is in reference to your letter of March 5, 1981, requesting an extention of time in which to respond to the Commission's Notification of Reason to Believe.

The Commission has decided, after considering your request, to approve an extention of time in which to respond to the Commission's Notification of Reason to Believe. As requested, your client has until the close of business on April 8, 1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1166
Democratic National Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on March 12, 1981, the Commission decided by a vote of 5-0 to take the following actions regarding MUR 1166:

1. Approve the request of the Democratic National Committee that they be allowed until April 8, 1981, in which to respond.

2. Send the letter as attached to the General Counsel's March 9, 1981 memorandum.

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

Attest:

3/12/81
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 3-10-81, 9:59
Circulated on 48 hour vote basis: 3-10-81, 4:00

March 10, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1166

Please have the attached Memo distributed to the Commission on a 48 hour tally basis. Thank you.

9204035250 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 MAR 10 A 9: 59

March 9, 1981

MEMORANDUM

TO: THE COMMISSION

FROM: CHARLES N. STEELE
GENERAL COUNSEL

SUBJECT: MUR 1166 - DEMOCRATIC NATIONAL COMMITTEE

3 2 0 4 0 3 5 2 5 0 5

The Democratic National Committee (DNC) has requested by letter dated March 5, 1981, that they be granted an extension of time in which to respond to the Commission's Notification of Reason to Believe (Attachment I).

This is the third request made by the DNC for an extension of time (the last extension was given through March 6, 1981), and normally, the Office of General Counsel would recommend that an extension should not be given. Nevertheless, the circumstances presented in this case warrant that the request of the DNC be granted. On February 27, 1981, new officers of the DNC were elected and a new general counsel, one Anthony S. Harrington, retained. Mr. Harrington contends that it would be extremely difficult for him to give a satisfactory response to the Commission's notification without this extension. This contention is not without merit; the facts involved in this matter took place as early as 1974, and the legal questions involved are complex. Therefore, it is the Office of General Counsel's recommendation that the Commission approve the respondent's request.

RECOMMENDATION

1. Approve the request of the Democratic National Committee that they be allowed until April 8, 1981, in which to respond.
2. Send attached letter.

Attachments
1. letter of respondent
2. letter to respondent

March 5, 1981

HAND DELIVERY

Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Attention: William Taylor
~~Frances Hagen~~

Re: MUR 1166 and 1206

Gentlemen:

On behalf of the Democratic National Committee, and in accordance with telephone conversations with William Taylor and Frances Hagen, I hereby request an extension of time in which to respond to the Commission's Notification of Reason to Believe in MUR 1166 and 1206 until April 8, 1981.

As you are doubtless aware, new officers of the DNC were just elected last Friday, February 27, and I have subsequently been asked to undertake responsibilities as general counsel to the DNC. As you can imagine, because of the departure of some DNC personnel and the process of selection of replacements, it would be extremely difficult to become sufficiently familiar with these matters to immediately formulate a proper response. We believe that the requested extension would serve the interests of both the Commission and the DNC in a prompt and satisfactory resolution of these matters. It would help to avoid an inadequately informed and analyzed response which would likely require later supplementation.

I realize that extensions have already been granted until March 6 for MUR 1166 and March 13 for MUR 1206, but I believe that the change of circumstances described above makes a further extension reasonable and necessary. I would appreciate notification of action on this request by telephone at 331-4646.

Yours truly,
DEMOCRATIC NATIONAL COMMITTEE

Anthony S. Harrington
General Counsel

ASH/clh

1 MAR 5 P12:49
GENERAL COUNSEL
1 MAR 5 P12:40
GENERAL COUNSEL
RECEIVED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Anthony S. Harrington, Esq.
General Counsel to the
Democratic National Committee
Hogan and Hartsen
815 Connecticut Ave., 7th Floor
Washington, D.C. 20006

Re: MUR 1166

Dear Mr. Harrington:

This is in reference to your letter of March 5, 1981, requesting an extention of time in which to respond to the Commission's Notification of Reason to Believe.

The Commission has decided, after considering your request, to approve an extention of time in which to respond to the Commission's Notification of Reason to Believe. As requested, your client has until the close of business on April 8, 1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

GCC#4655

Cadwalader, Wickersham & Taft

1333 New Hampshire Ave., N.W.

Washington, D.C. 20036

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JOHN J. WALSH
MALCOLM P. WATTMAN
RICHARD J. WIENER
ARNOLD J. ZURCHER, JR.

SPECIAL COUNSEL
DUDLEY J. CLAPP, JR.
(NOT ADMITTED D.C. BAR)

COUNSEL
HAROLD W. CONROY
RICHARD N. CROCKETT
HENRY ALLEN MARK
HORACE R. MOULTON
JOHN A. SULLIVAN

ONE WALL STREET
NEW YORK, N. Y. 10005
(212) 785-1000
CABLE: LABELLUM
TELEX: 126146/667485

249 ROYAL PALM WAY
PALM BEACH, FLA. 33480
(305) 655-8500
TWX: 510-952-7626

ROY ALBERT POVELL
RESIDENT PARTNER

May 11, 1981

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

Re: MUR 1166

Dear Mr. Steele:

I. Introduction.

On January 8, 1981, the Federal Election Commission ("Commission") advised the Democratic National Committee ("DNC") that it had found reason to believe that the DNC may have violated Section 441b(a) of the Federal Election Campaign Act ("FECA") by: (1) accepting a corporate contribution from the Franklin Mint Corporation ("Franklin Mint"); (2) accepting a corporate contribution from the ABC Television Network ("ABC"); (3) accepting twenty corporate and labor union contributions; and (4) failing to list the receipt of such funds as contributions. According to the General Counsel's report accompanying the letter, these allegations arose out of the Commission's audit of the Democratic National Committee covering the period from January 1, 1976 through September 30, 1978.

In the DNC's view, none of these transactions constitutes making or receiving a prohibited contribution. As discussed more fully below, each involved a nonpartisan, arms length business arrangement. None of the corporations

81 MAY 11 P5:30

or labor unions intended to make, nor did the DNC intend to receive, contributions in violation of the FECA.

Briefly stated:

(1) The DNC's 1976 agreement with the Franklin Mint was a commercially reasonable, arms length bargain; in fact the DNC took considerable care to ensure the arrangement was consistent with applicable law and regulations.

(2) The ABC transaction was outside the scope of Section 441b and, moreover, was lawful under applicable provisions of federal communications law.

(3) Finally, the corporate and labor union receipts at issue involved the sale of excess campaign manuals produced by the DNC and sold in arms length transactions. These sales were similar to those that the Commission has held do not constitute contributions.

Because the DNC did not accept unlawful contributions, the Commission should take no further action on this matter.

II. The DNC did not accept a contribution from the Franklin Mint Corporation.

A. The General Counsel's Report.

According to the General Counsel's Report, on September 3 and October 29, 1976, the DNC deposited in its operating account checks from Franklin Mint for $20,000 and $10,000, respectively. These constituted royalty payments resulting from an agreement between the DNC and Franklin Mint in August of 1976 for use of the Democratic Party's campaign symbol. (Attachment A) The General Counsel's report characterizes the transaction as a sale by the DNC of "its goodwill and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated." The General Counsel, relying on A.O. 1979-17-- an advisory opinion issued three years after the DNC-Franklin Mint transaction, which disapproved a proposal by the Republican National Committee to sell its goodwill-- concluded that the arrangement constituted a contribution in violation of the FECA.

B. The Facts.

In August, 1976, Franklin Mint proposed and the DNC agreed to an arrangement whereby the DNC gave Franklin Mint the exclusive right to sell to collectors commemorative coins bearing the Democratic Party's campaign symbol. (Attachment A) The DNC agreed to designate the coins as the "Official Presidential Campaign Medals of the Democratic National Committee." In return, Franklin Mint agreed to pay royalties to the DNC on the sale of the medals.

The parties negotiated the terms of the agreement at arms length. Its terms were substantially the same as those governing the many similar agreements that Franklin Mint had with non-political organizations, such as the National Audubon Society, the Royal Shakespeare Theatre, and the 41st International Eucharistic Congress.[1] In addition, the terms are identical to the ones Franklin Mint agreed to with the Republican National Committee. Moreover, Franklin Mint expressly contemplated a commercial, not political, venture.[2]

C. Discussion.

Neither the FECA nor the Commission's past or present regulations directly address whether royalty payments for the use of a national party's campaign symbol would have constituted contributions in the fall of 1976.[3] Rather,

---

1/ See Attachment B, a letter dated September 23, 1976 from Richard J. Kradjel, Associate Corporate Counsel to the Franklin Mint, to Ralph J. Gerson, then Counsel for the DNC.

2/ See Attachment C, a letter dated November 2, 1976 from Mr. Kradjel to Mr. Gerson.

3/ The FECA prohibits a corporation from making ". . . a contribution or expenditure in connection with any election to any political office." 2 U.S.C. § 441b(a). Section 441b(2) defines "contribution or expenditure" to include

> ". . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to Federal office. . .

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the conclusion in the General Counsel's report rests entirely on A.O. 1979-17, issued on July 16, 1979. In that advisory opinion, the Commission concluded that the RNC's proposed use of its goodwill to promote a commercial transaction with a bank in exchange for a share of the income generated by the bank's use of the RNC's name would be a prohibited contribution under the Act. The General Counsel's report contends that the DNC-Franklin Mint transaction is similar to the one described in A.O. 1979-17, and, therefore, that Franklin Mint royalty payments to the DNC constitute contributions in violation of the Act. Nonetheless, regardless of the merit of A.O. 1977-17, it should not and may not be applied to the Franklin Mint transaction.

1. The DNC engaged in the Franklin Mint transaction reasonably believing it would not result in prohibited corporate contributions.

In 1976, during the period of the Franklin Mint transaction, the Act, the Commission's regulations, and its advisory opinions indicated that the Commission would evaluate a transaction based on whether the sale by a political committee was an arms length bargain carried out in the ordinary course of business for a commercial, rather than political, purpose. The Commisssion made no distinction based on whether the sale involved tangible or intangible assets until three years later, in A.O. 1979-17.

At the time of the transaction, the FECA defined "contribution" as a payment of anything of value "for the purpose of influencing" a federal election. Section 431(e)(1)(A) (now section 431(8)(A)). Under the Commisssion's regulations, a contribution would result from the provision of "anything of value" below the "usual and normal charge for the items." Sections 100.4(a)(1)(iii)(A) and (B) (now sections 100.7(a)(1)(iii)(A) and (B)).[4] The DNC reasonably read the Act and the regulations in 1976 to permit arms length transactions between corporations and political committees made for commercial, non-political purposes. Neither the Act nor the regulations distinguished

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4/ While these sections dealt with purchases by a political committee, not sales, there was no indication that sales were to be governed by any different standards. In fact, in 1979, the Commisssion applied these regulations to sales by a political committee. See A.O. 1979-18 and A.O. 1979-24.

between transactions in which a political committee sold tangible assets and those in which it exchanged its name and reputation for value.

An early advisory opinion supported the DNC's view that a commercial transaction would not result in a contribution. In A.O. 1975-15, the Commission held that one who pays money to a political committee for books, watches and other items displaying a candidate's photo or facsimile signature makes a contribution to that campaign. However, the rationale for this decision was not that the political committee was selling its goodwill, but that the sale of the campaign items was essentially a political activity, on the part of the seller and the purchaser. Most critically, while the campaign items involved may have had some intrinsic value, their overriding function, both from the standpoint of the campaign committee and the purchaser, was to further the campaign. This rendered their purchase a contribution.

Thus, based on existing law it was reasonable for the DNC to assume, in August of 1976, that it could enter into an arms length bargain undertaken in the ordinary course of business. As demonstrated by the correspondence between the parties (Attachments A, B and C), the arrangement was in fact an arms length bargain, and the royalty payments were bargained for consideration. The DNC received express representation that the terms of the agreement were substantially the same as those governing the many similar agreements that Franklin Mint had entered into with nonpolitical organizations. (Attachments B & C) In addition, in response to DNC inquiries, Franklin Mint advised that the terms were identical to the ones agreed to with the Republican National Committee. (Attachment C) Finally, Franklin Mint assured the DNC that in issuing the medals, it had no interest in furthering particular ideas or candidates. (Attachment C)

During the period of the transaction, while Franklin Mint was making royalty payments to the DNC, contemporaneous advisory opinions confirmed the DNC's analysis of the legal standard applicable to commercial transactions between a political committee and a corporation. In A.O. 1976-56 (issued September 8, 1976), for example, the Commission determined that an incorporated hotel could offer free accommodations to political candidates for the purpose of increasing the prestige of the hotel and thereby attracting future business, where such complimentary services were offered in a non-political manner and to non-candidates as well as candidates. The Commission found that since the

complimentary services were based upon commercial considerations only, they were "neither in connection with a Federal election, nor offered to influence a federal candidate's election." This case is especially significant, because it was the goodwill of the candidate that the hotel sought and paid for. The candidate's staying at the hotel was akin to his endorsement, and the free accommodations were, of course, payment for it.

And in A.O. 1976-86 (issued October 6, 1976), the Commissison held that an advertising company which continued to display a political committees's advertisement on its billboard after the contract period had run had not made a contribution to the committee since (1) no other advertiser had purchased the same board, and (2) it was normal business practice to continue a display until one did. In reaching its conclusion, the Commission again focused on the purpose underlying the benefit conferred upon the political committee. If services or money were offered in the ordinary course of business, or as part of a legitimate commercial pursuit, there was no contribution. The Commission did not even note whether the bargained for consideration was tangible or intangible.

Moreover, at the time the Commission provided no indication that it would change the standards governing the transaction. None of the advisory opinions cited by the Commission in A.O. 1979-17 was decided on grounds that had anything to do with a distinction between goodwill and tangible assets. A.O. 1976-50 held that a corporation which marketed shirts bearing a candidate's likeness and contributed $1 to the candidate's campaign committee for each shirt sold would be making an illegal contribution -- both in bearing the costs of manufacture and in offering a royalty. A.O. 1975-15 is discussed above. Both turned on the fact that political, not commercial considerations were the primary concern. Neither transaction appeared to be an arms length bargain.

In the third opinion cited by the Commission in A.O. 1979-17, A.O. 1978-46 (which was issued after the Franklin Mint transaction), the Commission held that a corporation's purchase of an advertisement in a political party's monthly newspaper or in a printed program for a party convention was a contribution. But A.O. 1978-46 contained no suggestion that the Commission would change its standard for determining whether a contribution would result. There, the political committee was not selling an intangible asset, but advertising space. Nor did the party committee endorse the

advertiser's product. In contrast, it was the RNC's endorsement of the bank credit cards -- the use of its goodwill -- that the Commission found would not constitute bargained for consideration.

In short, at the time the DNC agreed to the Franklin Mint proposal, there was no authority whatsoever in the FECA, the Commission's regulations, or its advisory opinions even suggesting that the Commission would consider royalty payments from an arms length commercial transaction to be a contribution because they involved a political party's sale of intangible, rather than tangible, assets. On the contrary the DNC relied on ample authority, in the fall of 1976, in concluding that its arrangement with Franklin Mint was lawful. The transaction was consistent with existing law from the time of planning through execution.

2. The Commission may not apply a new legal principle retroactively to a transaction undertaken in good faith reliance on existing law.

Regardless of the merits of AO 1979-17, the Commission may not lawfully apply a legal principle enunciated for the first time three after the transaction, where the DNC complied in good faith with the law as it existed in 1976.

a. The FECA precludes the Commission from penalizing the DNC's good faith reliance on contemporaneous opinions similar in material respects to the transaction with Franklin Mint.

As noted, the DNC went to some lengths to insure the agreement with Franklin Mint was, in fact, an arms length bargain entered into in the ordinary course of business and for commercial purposes only. The arrangement fully accorded with the law during the period. Moreover, during that period the Commission gave no indication that it would change the legal standards that governed the transaction. Under these circumstances, the Commission may not, consistent with 2 U.S.C. § 437(c)(2), hold the DNC to the principle first enunciated three years later.

Section 437f(c)(2) of the FECA provides that:

> "any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of [437(c) (1)] and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act . . ."

Section 437f(c)(1) establishes who may lawfully rely on an advisory opinion:

> "any advisory opinion rendered by the Commission may be relied upon by . . . (b) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered."

As discussed above, the DNC justifiably relied on advisory opinions similar in material respects to the Franklin Mint transaction. In both A.O. 1976-56 and A.O. 1976-86, the FEC held that no contributions resulted because commercial, not political, considerations were at the heart of the transactions. Opinions where the Commission had concluded that a prohibited contribution would occur were based squarely on the political nature of the transaction. (See A.O. 1976-50, A.O. 1975-15).

As the correspondence between the DNC and Franklin Mint appended to this letter (Attachments B and C) shows, the parties made every effort to insure that: (1) the purpose of the transaction was commercial, not political; (2) the transaction was undertaken in the ordinary course of business; and (3) it was nonpartisan. In all material respects, therefore, the holdings were directly relevant to the DNC-Franklin Mint transaction, and the Commission cannot penalize the DNC for relying on them in good faith.

b. Retroactive application would be unlawful.

Aside from the operation of 2 U.S.C. § 437f, well established legal doctrine precludes the Commission from applying A.O. 1979-17 to the DNC-Franklin Mint transaction. The courts consistently have held such retroactive

application impermissible when there had been good faith reliance on prior holdings and prospective application would produce adverse consequences, such as fines. In NLRB v. Bell Aerospace Co., Div. of Textron, Inc., 416 U.S. 267 (1974), for example, the Supreme Court held that, while retroactive application of agency rules would be permitted under some circumstances, a party could not be penalized for good faith reliance on prior agency holdings by virtue of a retroactive change in standards.

This basic principle has been followed in numerous other cases. In Drug Package, Inc. v. NLRB, 70 F. 2d 1340 (8th Cir. 1978), for example, the Court stated,

> "We entertain no doubt now that the Board does have the power to announce new principles of law in an adjudicatory proceeding. See, NLRB v. Bell Aerospace Co., supra, 416 U.S. at 294, 94 S. Ct. 1957. In deciding whether to exercise that power, however, the Board must weigh the benefits to be achieved by the new interpretation of the law against the detrimental effects of retroactive application of the new rule." Id. at 1346, n. 5.

The Court found that the retroactive application of a policy making bargaining orders effective retroactively was unfair to a company which had rejected settlement offers under the assumption that bargaining orders could be prospective only. Accord, Ruangswang v. Immigration and Naturalization Service, 591 F. 2d 39 (9th Cir. 1978); Natural Gas Pipeline Co. of America v. FERC, 590 F. 2d 664 (7th Cir. 1979).

With respect to retroactivity of advisory opinions, the approach of the Internal Revenue Service is also instructive. While the Code leaves it to the Commissioner's discretion to determine whether new rulings or regulations will be retroactively applied, (See § 7805(b) of the Internal Revenue Code, Automobile Club of Michigan v. Commissioner, 353 U.S. 180 (1957)), it is the Service's stated general policy that:

> "(W)here Revenue Rulings revoke or modify previously published rulings the authority of § 7805(b) of the Code ordinarily is invoked to provide that the new rulings will not be applied retroactively to the extent they have adverse consequences to taxpayers."

104-5th TAX MNGM'T (BNA), A-27. Significantly in a few of the rare instances in which the Service has departed from this policy, its action has been deemed an abuse of discretion. See International Business Machines Corp. v. United States, 343 F.2d 914 (Ct.Cl. 1968); LeSavoy Foundation v. Commissioner of Internal Revenue, 238 F.2d 589 (3rd Cir. 1956).

Here, the DNC justifiably relied upon prior pronouncements, and penalties from retroactive application would be substantial. The DNC could not have anticipated A.O. 1979-17 in 1976, when the Commission was applying different standards to transactions between political committees and corporations. Penalizing the DNC on the basis of a retroactive application of A.O. 1979-17 would be an abuse of the Commission's discretion.

3. The DNC - Franklin Mint transaction differs from the transaction disapproved in A.O. 1979-17.

In any event, A.O.1979-17 is inopposite. It involved a plan by the Republican National Committee to endorse a bank credit card and encourage the card's use by party members in exchange for compensation by the bank for the party's assistance in increasing the bank's card holder base. In addition, the RNC would have the exclusive right to include "educational/promotional" materials in monthly statements sent by the bank to the Republican credit card holders.

Although the RNC described its program as a strictly commercial enterprise based on an arms length agreement, this characterization ignored the serious potential for abuse. The credit card transaction involved (a) a financial arrangement between a political committee and a regulated bank (b) that would produce very substantial revenues (c) over a long time period. There is, of course, substantial government regulation of the banking industry. Both the Republican National Committee and whatever bank it affiliated with could have expected significant revenues from their association in the program.[5/] The originator of the idea, Edward Shelton, believed that the program would

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5/ Plans Recently Announced By the Republican and Democratic Parties to Solicit Their Members for Visa Credit Cards; Hearing before the Sendate Comm. on Banking, Housing and Urban Affairs, 95th Cong., 2d Sess. 32 (January 9, 1979).

have "a profound impact in terms of fundraising."[6/] Hence, as political committees developed substantial financial ventures with banks, the possibility of true arms length bargaining would become more remote.

In a letter to the Commission commenting on AO 1979-17, Senator Proxmire, Chairman of the Committee on Banking, Housing, and Urban Affairs, expressed this concern:

> "it would be hard to imagine a more conspicuous case of conflict of interest on a massive scale than the scheme presented to the Commission by this request . . . The obvious danger lies in the fact that as the parties grow more and more dependent upon the credit card contributions, the stronger will evolve the bond of common interests between the parties and the bank card corporations. It is impossible to honestly assume that the Bank card firms will be able to negotiate at arms length with political elements that may now, or in the future, control the profitability of the entire bank card industry."

Given that the spectre of undue influence is the very evil sought to be avoided by the prohibition against corporate contributions, U.S. v. C.I.O., 335 U.S. 106 (1948), the Commission could not see the possibility of "characterizing" the compensation to be received by the RNC "as bargained for consideration rather than political contributions."

The DNC arrangement with Franklin Mint, on the other hand, does not give rise to this concern. First, the amounts involved were relatively insubstantial. While the credit card program could have produced millions of dollars in revenues, the DNC derived $30,000 from the Franklin Mint contract. Second, unlike the banks with which the RNC proposed to deal, Franklin Mint is not engaged in a highly regulated industry. Thus, there was neither reason nor opportunity for Democratic regulators, future or present, to be influenced by the DNC's association with Franklin Mint. Moreover, the DNC's association with Franklin Mint was

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6/ Id. Senator William Proxmire called it "potentially one of the greatest fundraising windfall schemes ever devised." (Letter from Senator Proxmire to the Federal Election Commission, Office of General Counsel, dated May 9, 1979).

limited to a brief period, while the RNC proposed an ongoing relationship with particular banks. In short, A.O. 1979-17 is inopposite here.

III. The DNC did not accept a contribution from the ABC Television Network.

According to the General Counsel's report, the alleged contribution involves a one-third "political discount" amounting to $16,330.23 granted by in February 1976 for the DNC's telethon of July 26-27, 1975. While the Commission does not consider a discount below the usual and normal charge to be a contribution if it is offered in "the vendor's ordinary course of business to non-political clients", (A.O. 1978-45), it questions the DNC-ABC transaction because ABC labeled it a "political discount" in a February 13, 1976 letter to the DNC.

ABC has made available to the DNC the memorandum it filed with the Commission on March 11, 1981. The DNC believes ABC convincingly shows why the Commission should take no further action in this matter. First, offers of discounted time extended on a nonpartisan basis are outside the scope of § 441b. Moreover, as ABC correctly notes, if the Commission concludes that the ABC discount constitutes an impermissible contribution under the FECA, the holding would be directly at odds with applicable federal communications law. Further, sound public policy considerations argue against treating nonpartisan political discounts as contributions. Precluding such discounts probably would limit the amount of political discussion so critical to our system of government. For these reasons, more fully set out in ABC's memorandum, and adopted by the DNC, the Commission should take no further action in this matter.

IV. The DNC did not accept corporate or labor union contributions.

The General Counsel's report asserts that the DNC received prohibited contributions by accepting twenty corporate and labor union checks totalling $660.95 for the sale of books and seminars. The General Counsel believes there may have been a contribution because, in the alternative: (1) if the payments were to defray production expenses, they are contributions because the DNC is receiving funds to be used for political purposes; or (2) if these payments were not a contribution but rather a commercial transaction, they are contributions to the extent

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the amount charged exceeds the cost to the DNC.[7] Neither rationale justifies pursuing this matter further.

The DNC received these payments for the arms length sale of excess campaign manuals that were valuable to the purchasers. In 1976, the DNC reprinted 5,000 copies of a nine volume DNC "Campaign Consultation" program , at a cost of $10,653.30. (Attachment E) It first produced the program, with the assistance of consultants, in 1974. The DNC used the manuals in 1976 in campaign seminars it ran to train Democratic candidates, potential Democratic candidates and state and local Democratic party activists in various campaign skills. The program was part of the DNC's efforts to make technical assistance available to Democratic candidates at all levels. The manuals covered fundraising, media, in-house polling, targetting and demographic research, building a volunteer organization, get-out-the-vote activities and campaign planning and budgeting. The DNC originally included the cost of the manual in the price it charged for the seminar.

Because the manual provided expert information on how to be effective politically, it was valuable not only to candidates and political committees, but to many others.[8] The DNC therefore received numerous requests for the manual. Since the DNC had extra copies that were not used in the training seminars, the DNC supplied them upon request, to the extent they were available. If the organization requesting the material was unrelated to the DNC, the DNC generally charged a small amount for the manual to defray production costs.

Because the DNC's records are not complete for events occurring over four years ago, the DNC cannot at this time

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7/ The Commission staff provided a list of twenty entities that purchased manuals in 1976. (Attachment D) The organizations included educational institutions such as Ohio Wesleyn University and Blue Mountain Community College as well as business corporations and labor unions. The $660.95 total is comprised of checks ranging in amount from $5.00 to $115.00.

8/ A review of the manual amply demonstrates its value. Because the DNC has retained only one copy, we cannot submit it with this document. However, the manual is available for your review.

produce documentation as to the nature of the requests or the exact costs of production. The printing costs ($10,653.30 -- Attachment E) do not include fees for writing and drafting, art work, typeset, postage or DNC staff time. However, based on the documented printing costs and the small amounts of the checks the DNC received, the DNC's Comptroller believes that the amounts received in no event exceeded actual costs to the DNC.

The DNC sales of excess campaign manuals fall within the category of sales the Commission has permitted in the past without characterizing them as contributions. In A.O. 1979-18, the Commission permitted a committee to sell to corporations a contributor list it had created in the ordinary course of its operations, primarily for its own use. The Commission said that the sale would constitute a contribution if the purchase price exceeded the usual and normal charge. And A.O. 1979-24, the Commission permitted a political committee to sell excess yard stakes and a typewriter purchased during the campaign as long as the buyer paid the usual and normal charge for the items.

Here, the DNC created and produced the campaign manuals in the ordinary course of its operations to provide technical campaign assistance to Democratic candidates. It sold excess manuals, as a commercial venture, to recoup production costs. To the extent that the General Counsel's concern (and the Commission's) is that the receipts exceeded production costs, the DNC believes it has provided the best information available to demonstrate that that concern is groundless. The DNC printed 5,000 sets of manuals, at a cost of $10,653.30. While this is the only documented figure, it does not include other costs of production. The amounts of the checks received -- ranging in amount from $5 to $115 -- support the DNC Comptroller's view that the receipts could not have exceeded production costs. Although no one presently at the DNC can recall, it is likely that the charge was based on an estimate made at the time of a reasonable amount necessary to defray production costs. In any event, there is no indication that the receipts exceeded production costs.

The DNC's sale of excess manuals clearly is different from those transactions that the Commission has found resulted in a prohibited contribution. For example, in both A.O. 1979-76 and A.O. 1975-15, cited by the General Counsel to support the contention that the DNC's receipts were contributions, the dispositive fact was that the items were " . . . specifically acquired or developed for general

fundraising purposes . . . ." (A.O. 1979-76). That simply is not a factor here. There is no indication whatsoever that the DNC developed the manuals for general fundraising purposes.

The sale of excess campaign manuals is similar in all material respects to the sales approved in A.O. 1979-18 and A.O. 1979-24. Accordingly, the DNC's receipts at issue here did not constitute a prohibited contribution.

V. Conclusion.

For the reasons detailed in this letter, the DNC urges the Commission to take no further action on MUR 1166.

Respectfully submitted,

Lynda S. Mounts

Ronald D. Eastman
Lynda S. Mounts
Counsel for the Democratic
National Committee

cc: William Taylor, Esq.

Attachments

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Attachment A

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

August 25, 1976

File

Democratic National Committee
1625 Massachusetts Avenue, NW
Washington, D.C.

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Democratic Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Democratic Presidential candidate on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Democratic and Republican Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

Your organization agrees to designate the above-described Democratic Presidential Campaign medals as the Official Presidential Campaign Medals of the Democratic National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Democratic National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: _____
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

27th day of August, 1976

Democratic National Committee

By: _____

Attachment B

September 23, 1976

Democratic National Committee
310 First Street, S.E.
Washington, D.C. 20003

Attention: Ralph Gerson, Esq.

Gentlemen:

As I indicated in our telephone conversation yesterday, collectors value highly the sponsorship of prestigious organizations and find special merit in a commemorative medal that is an official issue of such a society. For that reason, the medals which are the Official Presidential Campaign Medals of the Democratic National Committee and the Republican National Committee are prized by our collectors.

It is also noteworthy that our commemoratives in the past have been sponsored by such renowned organizations as La Scala, Royal Shakespeare Theatre, National Audubon Society, The United Nations, National Governors Conference, American Revolution Bicentennail Administration, The 41st International Eucharistic Congress, The International Olympic Committee, World Wildlife Fund, National Society of the Daughters of the American Revolution, The Royal Horticultural Society and many others.

It has been customary to pay these sponsoring organizations royalties based on sales, the percentage ranging from 5% to 20% based upon commercial negotiations. In most cases, an advance is paid.

Please do not hesitate to contact me if you require any further information about our commemorative programs.

Very truly yours,

FRANKLIN MINT CORPORATION

Richard J. Fredjel

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file

Attachment C

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

November 2, 1976

Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Attention: Ralph J. Gerson, Counsel

Gentlemen:

This letter is to clarify the nature of the agreement by which the Democratic National Committee has granted to the Franklin Mint Corporation the exclusive rights to reproduce and sell the official Presidential Campaign Medals of the Democratic National Committee.

As you may know, collectors value highly the sponsorship of prestigious organizations and find special merit in a commemorative medal that is an official issue of such a society. The Franklin Mint Corporation has obtained exclusive rights to mint and sell medals certified by such organizations as La Scala, Royal Shakespeare Theatre, National Audubon Society, the United Nations, National Governors Conference, American Revolution Bicentennial Administration, The 41st International Eucharistic Congress, The International Olympic Committee, World Wildlife Fund, National Society of the Daughters of the American Revolution, The Royal Horticultural Society and the Republican National Committee. Our agreement with your organization is identical to our agreement with the Republican National Committee. Further, our agreement with your organization is substantially the same as our agreement with the above-mentioned non-political organizations with respect to all essential contract terms.

Our purpose in issuing and selling these medals is to commemorate historical events and renowned organizations by means of gold and silver medals of lasting value. In advertising and selling our medals we stress their value as collector's items

and feel no duty to further particular ideas or a particular candidate. Indeed, the Democratic and Republican Presidential Campaign medals are being advertised together.

We can assure you that our contractual relationship with your organization is on a purely commercial basis. We customarily pay sponsoring organizations royalties based on sales. The amount of such royalties is based solely on the commercial value of the exclusive endorsement of each organization as determined through commercial negotiations. The 15% royalty offered to the Democratic National Committee is well within the 5% to 25% range of royalties normally offered to sponsoring organizations, and it is identical to the royalty being paid to the Republican National Committee.

In addition, an advance is customarily paid to sponsoring organizations. The amount of the advance payment suggested to the Democratic National Committee and the Republican National Committee is comparable to advances previously offered to nonpolitical sponsors.

In conclusion, we believe that this transaction is a commercial transaction quite comparable to our dealings with nonpolitical organizations. Please do not hesitate to contact us if you desire any further information about our commemorative program.

Very truly yours,

FRANKLIN MINT CORPORATION

Richard J. Kradjel

Richard J. Kradjel
Associate Corporate Counsel

RJK/bb

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Federal Election Commission
(8/77)

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DNC

Attachment D

Schedule of Confirmed Entities Who Transferred Monies to DNC In Payment of Goods + Services

	1	2	3	4
	Amount	Date	Date Incorp.	
Campaign Associates Inc.	1500	1/12/76	3/24/70	
Arizona Education ASSN	11500	1/30/76	12/11/39	
Construction, Production + Maintenance Laborers Union	6500	1/30/76		
Harris, Lee, Elliott Communications Inc	500	1/30/76	2/20/75	
Bee Dart, Inc.	3000	1/30/76	4/19/67	
Student Book Corporation	1500	1/28/76	3/23/75	
Epley Associates, Inc	1500	1/30/76	12/23/75	
Ohio Wesleyan University	100	2/12/76	8/7/42	
Arizona State AFL CIO	6500	2/12/76		
Goddard Purcell + Brown Inc	6500	1/29/76	12/24/75	
Maurer, Fleisher, Zon + Anderson, Inc	11500	1/30/76	10/31/75	
Blue Mountain Community College	1000	2/24/76	5/28/63	
Ohio Right To Life Inc	1300	3/2/76	6/30/67	
Indiana Right To Life Inc	60	3/3/76	Inc on ck	
Allen-Russell Ford Inc	1500	5/14/76	12/14/70	
Praeger Publishers Inc	2145	5/14/76	4/28/66	
Weston Associates Inc	4500	6/24/76	3/29/55	
Emery Pratt Company	1500	6/30/76	2/19/74	
Products of Technology	1500	6/30/76	10/18/72	
Monsanto Company	500	9/27/76	10/5/61	
Total 20	40495			

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Attachment E

INVOICE

KAUFMANN/GRAPHICS INC.

A SUBSIDIARY OF PUBLISHERS COMPANY, INC.

the mark of Washington's quality lithographers

TELEPHONE 526-2666

1110 Okie Street N.E., Washington, D.C. 20002

SOLD TO:

Democratic National Committee
Attention: Mr. Eric Jaffe
1625 Massachusetts Avenue N. W.
Washington, D. C.

TERMS: NET 30 DAYS

CUSTOMER ORDER NUMBER	OUR JOB NUMBER	INVOICE DATE
2660	69119	January 19, 1976

Campaign Consultation Programs consisting of nine (9) booklets, 8 1/2 x 11, two 40 pages, two 36 pages, two 20 pages, one 32 pages, one 28 pages and one 16 pages. 5,000 copies each of above nine booklets to be shot from existing printed books, three hole drilled and delivered in convenient cartons as specified in estimate on Purchase Order No. 2660.	$ 9,900.00
Additional art for cover as covered in my letter of November 20, 1975.	180.00
Alterations in blueprint	66.00
	$10,146.00
5% D. C. Sales Tax	507.30
	$10,653.30

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SALESMAN

RESALE OR EXEMPTION NUMBER 5270 (bam) 20

17998

GCC #4655

Cadwalader, Wickersham & Taft

1333 New Hampshire Ave., N.W.

Washington, D.C. 20036

Telephone: (202) 293-6300
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Fax: (202) 387-1417

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SPECIAL COUNSEL
DUDLEY J. CLAPP, JR.
(NOT ADMITTED D.C. BAR)

COUNSEL
HAROLD W. CONROY
RICHARD N. CROCKETT
HENRY ALLEN MARK
HORACE P. MOULTON
JOHN A. SULLIVAN

ONE WALL STREET
NEW YORK, N.Y. 10005
(212) 785-1000
CABLE: LABELLUM
TELEX: 129146/667468

240 ROYAL PALM WAY
PALM BEACH, FLA. 33480
(305) 655-9500
TWX: 510-952-7628

ROY ALBERT POVELL
RESIDENT PARTNER

May 11, 1981

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

Re: MUR 1166

Dear Mr. Steele:

I. Introduction.

On January 8, 1981, the Federal Election Commission ("Commission") advised the Democratic National Committee ("DNC") that it had found reason to believe that the DNC may have violated Section 441b(a) of the Federal Election Campaign Act ("FECA") by: (1) accepting a corporate contribution from the Franklin Mint Corporation ("Franklin Mint"); (2) accepting a corporate contribution from the ABC Television Network ("ABC"); (3) accepting twenty corporate and labor union contributions; and (4) failing to list the receipt of such funds as contributions. According to the General Counsel's report accompanying the letter, these allegations arose out of the Commission's audit of the Democratic National Committee covering the period from January 1, 1976 through September 30, 1978.

In the DNC's view, none of these transactions constitutes making or receiving a prohibited contribution. As discussed more fully below, each involved a nonpartisan, arms length business arrangement. None of the corporations

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GENERAL COUNSEL

or labor unions intended to make, nor did the DNC intend to receive, contributions in violation of the FECA.

Briefly stated:

(1) The DNC's 1976 agreement with the Franklin Mint was a commercially reasonable, arms length bargain; in fact the DNC took considerable care to ensure the arrangement was consistent with applicable law and regulations.

(2) The ABC transaction was outside the scope of Section 441b and, moreover, was lawful under applicable provisions of federal communications law.

(3) Finally, the corporate and labor union receipts at issue involved the sale of excess campaign manuals produced by the DNC and sold in arms length transactions. These sales were similar to those that the Commission has held do not constitute contributions.

Because the DNC did not accept unlawful contributions, the Commission should take no further action on this matter.

II. The DNC did not accept a contribution from the Franklin Mint Corporation.

A. The General Counsel's Report.

According to the General Counsel's Report, on September 3 and October 29, 1976, the DNC deposited in its operating account checks from Franklin Mint for $20,000 and $10,000, respectively. These constituted royalty payments resulting from an agreement between the DNC and Franklin Mint in August of 1976 for use of the Democratic Party's campaign symbol. (Attachment A) The General Counsel's report characterizes the transaction as a sale by the DNC of "its goodwill and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated." The General Counsel, relying on A.O. 1979-17-- an advisory opinion issued three years after the DNC-Franklin Mint transaction, which disapproved a proposal by the Republican National Committee to sell its goodwill-- concluded that the arrangement constituted a contribution in violation of the FECA.

B. The Facts.

In August, 1976, Franklin Mint proposed and the DNC agreed to an arrangement whereby the DNC gave Franklin Mint the exclusive right to sell to collectors commemorative coins bearing the Democratic Party's campaign symbol. (Attachment A) The DNC agreed to designate the coins as the "Official Presidential Campaign Medals of the Democratic National Committee." In return, Franklin Mint agreed to pay royalties to the DNC on the sale of the medals.

The parties negotiated the terms of the agreement at arms length. Its terms were substantially the same as those governing the many similar agreements that Franklin Mint had with non-political organizations, such as the National Audubon Society, the Royal Shakespeare Theatre, and the 41st International Eucharistic Congress.[1] In addition, the terms are identical to the ones Franklin Mint agreed to with the Republican National Committee. Moreover, Franklin Mint expressly contemplated a commercial, not political, venture.[2]

C. Discussion.

Neither the FECA nor the Commission's past or present regulations directly address whether royalty payments for the use of a national party's campaign symbol would have constituted contributions in the fall of 1976.[3] Rather,

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1/ See Attachment B, a letter dated September 23, 1976 from Richard J. Kradjel, Associate Corporate Counsel to the Franklin Mint, to Ralph J. Gerson, then Counsel for the DNC.

2/ See Attachment C, a letter dated November 2, 1976 from Mr. Kradjel to Mr. Gerson.

3/ The FECA prohibits a corporation from making ". . . a contribution or expenditure in connection with any election to any political office." 2 U.S.C. § 441b(a). Section 441b(2) defines "contribution or expenditure" to include

> ". . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to Federal office. . .

the conclusion in the General Counsel's report rests entirely on A.O. 1979-17, issued on July 16, 1979. In that advisory opinion, the Commission concluded that the RNC's proposed use of its goodwill to promote a commercial transaction with a bank in exchange for a share of the income generated by the bank's use of the RNC's name would be a prohibited contribution under the Act. The General Counsel's report contends that the DNC-Franklin Mint transaction is similar to the one described in A.O. 1979-17, and, therefore, that Franklin Mint royalty payments to the DNC constitute contributions in violation of the Act. Nonetheless, regardless of the merit of A.O. 1977-17, it should not and may not be applied to the Franklin Mint transaction.

1. The DNC engaged in the Franklin Mint transaction reasonably believing it would not result in <u>prohibited corporate contributions.</u>

In 1976, during the period of the Franklin Mint transaction, the Act, the Commission's regulations, and its advisory opinions indicated that the Commission would evaluate a transaction based on whether the sale by a political committee was an arms length bargain carried out in the ordinary course of business for a commercial, rather than political, purpose. The Commisssion made no distinction based on whether the sale involved tangible or intangible assets until three years later, in A.O. 1979-17.

At the time of the transaction, the FECA defined "contribution" as a payment of anything of value "for the purpose of influencing" a federal election. Section 431(e)(1)(A) (now section 431(8)(A)). Under the Commisssion's regulations, a contribution would result from the provision of "anything of value" below the "usual and normal charge for the items." Sections 100.4(a)(1)(iii)(A) and (B) (now sections 100.7(a)(1)(iii)(A) and (B)).[4] The DNC reasonably read the Act and the regulations in 1976 to permit arms length transactions between corporations and political committees made for commercial, non-political purposes. Neither the Act nor the regulations distinguished

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[4] While these sections dealt with <u>purchases</u> by a political committee, not sales, there was no indication that sales were to be governed by any different standards. In fact, in 1979, the Commisssion applied these regulations to sales by a political committee. <u>See</u> A.O. 1979-18 and A.O. 1979-24.

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between transactions in which a political committee sold tangible assets and those in which it exchanged its name and reputation for value.

An early advisory opinion supported the DNC's view that a commercial transaction would not result in a contribution. In A.O. 1975-15, the Commission held that one who pays money to a political committee for books, watches and other items displaying a candidate's photo or facsimile signature makes a contribution to that campaign. However, the rationale for this decision was not that the political committee was selling its goodwill, but that the sale of the campaign items was essentially a political activity, on the part of the seller and the purchaser. Most critically, while the campaign items involved may have had some intrinsic value, their overriding function, both from the standpoint of the campaign committee and the purchaser, was to further the campaign. This rendered their purchase a contribution.

Thus, based on existing law it was reasonable for the DNC to assume, in August of 1976, that it could enter into an arms length bargain undertaken in the ordinary course of business. As demonstrated by the correspondence between the parties (Attachments A, B and C), the arrangement was in fact an arms length bargain, and the royalty payments were bargained for consideration. The DNC received express representation that the terms of the agreement were substantially the same as those governing the many similar agreements that Franklin Mint had entered into with nonpolitical organizations. (Attachments B & C) In addition, in response to DNC inquiries, Franklin Mint advised that the terms were identical to the ones agreed to with the Republican National Committee. (Attachment C) Finally, Franklin Mint assured the DNC that in issuing the medals, it had no interest in furthering particular ideas or candidates. (Attachment C)

During the period of the transaction, while Franklin Mint was making royalty payments to the DNC, contemporaneous advisory opinions confirmed the DNC's analysis of the legal standard applicable to commercial transactions between a political committee and a corporation. In A.O. 1976-56 (issued September 8, 1976), for example, the Commission determined that an incorporated hotel could offer free accommodations to political candidates for the purpose of increasing the prestige of the hotel and thereby attracting future business, where such complimentary services were offered in a non-political manner and to non-candidates as well as candidates. The Commission found that since the

complimentary services were based upon commercial considerations only, they were "neither in connection with a Federal election, nor offered to influence a federal candidate's election." This case is especially significant, because it was the goodwill of the candidate that the hotel sought and paid for. The candidate's staying at the hotel was akin to his endorsement, and the free accommodations were, of course, payment for it.

And in A.O. 1976-86 (issued October 6, 1976), the Commissison held that an advertising company which continued to display a political committees's advertisement on its billboard after the contract period had run had not made a contribution to the committee since (1) no other advertiser had purchased the same board, and (2) it was normal business practice to continue a display until one did. In reaching its conclusion, the Commission again focused on the purpose underlying the benefit conferred upon the political committee. If services or money were offered in the ordinary course of business, or as part of a legitimate commercial pursuit, there was no contribution. The Commission did not even note whether the bargained for consideration was tangible or intangible.

Moreover, at the time the Commission provided no indication that it would change the standards governing the transaction. None of the advisory opinions cited by the Commission in A.O. 1979-17 was decided on grounds that had anything to do with a distinction between goodwill and tangible assets. A.O. 1976-50 held that a corporation which marketed shirts bearing a candidate's likeness and contributed $1 to the candidate's campaign committee for each shirt sold would be making an illegal contribution -- both in bearing the costs of manufacture and in offering a royalty. A.O. 1975-15 is discussed above. Both turned on the fact that political, not commercial considerations were the primary concern. Neither transaction appeared to be an arms length bargain.

In the third opinion cited by the Commission in A.O. 1979-17, A.O. 1978-46 (which was issued after the Franklin Mint transaction), the Commission held that a corporation's purchase of an advertisement in a political party's monthly newspaper or in a printed program for a party convention was a contribution. But A.O. 1978-46 contained no suggestion that the Commission would change its standard for determining whether a contribution would result. There, the political committee was not selling an intangible asset, but advertising space. Nor did the party committee endorse the

advertiser's product. In contrast, it was the RNC's endorsement of the bank credit cards -- the use of its goodwill -- that the Commission found would not constitute bargained for consideration.

In short, at the time the DNC agreed to the Franklin Mint proposal, there was no authority whatsoever in the FECA, the Commission's regulations, or its advisory opinions even suggesting that the Commission would consider royalty payments from an arms length commercial transaction to be a contribution because they involved a political party's sale of intangible, rather than tangible, assets. On the contrary the DNC relied on ample authority, in the fall of 1976, in concluding that its arrangement with Franklin Mint was lawful. The transaction was consistent with existing law from the time of planning through execution.

2. The Commission may not apply a new legal principle retroactively to a transaction undertaken in good faith reliance on existing law.

Regardless of the merits of AO 1979-17, the Commission may not lawfully apply a legal principle enunciated for the first time three after the transaction, where the DNC complied in good faith with the law as it existed in 1976.

a. The FECA precludes the Commission from penalizing the DNC's good faith reliance on contemporaneous opinions similar in material respects to the transaction with Franklin Mint.

As noted, the DNC went to some lengths to insure the agreement with Franklin Mint was, in fact, an arms length bargain entered into in the ordinary course of business and for commercial purposes only. The arrangement fully accorded with the law during the period. Moreover, during that period the Commission gave no indication that it would change the legal standards that governed the transaction. Under these circumstances, the Commission may not, consistent with 2 U.S.C. § 437(c)(2), hold the DNC to the principle first enunciated three years later.

Section 437f(c)(2) of the FECA provides that:

> "any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of [437(c) (1)] and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act . . ."

Section 437f(c)(1) establishes who may lawfully rely on an advisory opinion:

> "any advisory opinion rendered by the Commission may be relied upon by . . . (b) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered."

As discussed above, the DNC justifiably relied on advisory opinions similar in material respects to the Franklin Mint transaction. In both A.O. 1976-56 and A.O. 1976-86, the FEC held that no contributions resulted because commercial, not political, considerations were at the heart of the transactions. Opinions where the Commission had concluded that a prohibited contribution would occur were based squarely on the political nature of the transaction. (See A.O. 1976-50, A.O. 1975-15).

As the correspondence between the DNC and Franklin Mint appended to this letter (Attachments B and C) shows, the parties made every effort to insure that: (1) the purpose of the transaction was commercial, not political; (2) the transaction was undertaken in the ordinary course of business; and (3) it was nonpartisan. In all material respects, therefore, the holdings were directly relevant to the DNC-Franklin Mint transaction, and the Commission cannot penalize the DNC for relying on them in good faith.

b. Retroactive application would be unlawful.

Aside from the operation of 2 U.S.C. § 437f, well established legal doctrine precludes the Commission from applying A.O. 1979-17 to the DNC-Franklin Mint transaction. The courts consistently have held such retroactive

application impermissible when there had been good faith reliance on prior holdings and prospective application would produce adverse consequences, such as fines. In NLRB v. Bell Aerospace Co., Div. of Textron, Inc., 416 U.S. 267 (1974), for example, the Supreme Court held that, while retroactive application of agency rules would be permitted under some circumstances, a party could not be penalized for good faith reliance on prior agency holdings by virtue of a retroactive change in standards.

This basic principle has been followed in numerous other cases. In Drug Package, Inc. v. NLRB, 70 F. 2d 1340 (8th Cir. 1978), for example, the Court stated,

> "We entertain no doubt now that the Board does have the power to announce new principles of law in an adjudicatory proceeding. See, NLRB v. Bell Aerospace Co., supra, 416 U.S. at 294, 94 S. Ct. 1957. In deciding whether to exercise that power, however, the Board must weigh the benefits to be achieved by the new interpretation of the law against the detrimental effects of retroactive application of the new rule." Id. at 1346, n. 5.

The Court found that the retroactive application of a policy making bargaining orders effective retroactively was unfair to a company which had rejected settlement offers under the assumption that bargaining orders could be prospective only. Accord, Ruangswang v. Immigration and Naturalization Service, 591 F. 2d 39 (9th Cir. 1978); Natural Gas Pipeline Co. of America v. FERC, 590 F. 2d 664 (7th Cir. 1979).

With respect to retroactivity of advisory opinions, the approach of the Internal Revenue Service is also instructive. While the Code leaves it to the Commissioner's discretion to determine whether new rulings or regulations will be retroactively applied, (See § 7805(b) of the Internal Revenue Code, Automobile Club of Michigan v. Commissioner, 353 U.S. 180 (1957)), it is the Service's stated general policy that:

> "(W)here Revenue Rulings revoke or modify previously published rulings the authority of § 7805(b) of the Code ordinarily is invoked to provide that the new rulings will not be applied retroactively to the extent they have adverse consequences to taxpayers."

104-5th TAX MNGM'T (BNA), A-27. Significantly in a few of the rare instances in which the Service has departed from this policy, its action has been deemed an abuse of discretion. See International Business Machines Corp. v. United States, 343 F.2d 914 (Ct.Cl. 1968); LeSavoy Foundation v. Commissioner of Internal Revenue, 238 F.2d 589 (3rd Cir. 1956).

Here, the DNC justifiably relied upon prior pronouncements, and penalties from retroactive application would be substantial. The DNC could not have anticipated A.O. 1979-17 in 1976, when the Commission was applying different standards to transactions between political committees and corporations. Penalizing the DNC on the basis of a retroactive application of A.O. 1979-17 would be an abuse of the Commission's discretion.

3. The DNC - Franklin Mint transaction differs from the transaction disapproved in A.O. 1979-17.

In any event, A.O.1979-17 is inopposite. It involved a plan by the Republican National Committee to endorse a bank credit card and encourage the card's use by party members in exchange for compensation by the bank for the party's assistance in increasing the bank's card holder base. In addition, the RNC would have the exclusive right to include "educational/promotional" materials in monthly statements sent by the bank to the Republican credit card holders.

Although the RNC described its program as a strictly commercial enterprise based on an arms length agreement, this characterization ignored the serious potential for abuse. The credit card transaction involved (a) a financial arrangement between a political committee and a regulated bank (b) that would produce very substantial revenues (c) over a long time period. There is, of course, substantial government regulation of the banking industry. Both the Republican National Committee and whatever bank it affiliated with could have expected significant revenues from their association in the program.[5/] The originator of the idea, Edward Shelton, believed that the program would

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5/ Plans Recently Announced By the Republican and Democratic Parties to Solicit Their Members for Visa Credit Cards; Hearing before the Sendate Comm. on Banking, Housing and Urban Affairs, 95th Cong., 2d Sess. 32 (January 9, 1979).

have "a profound impact in terms of fundraising."[6] Hence, as political committees developed substantial financial ventures with banks, the possibility of true arms length bargaining would become more remote.

In a letter to the Commission commenting on AO 1979-17, Senator Proxmire, Chairman of the Committee on Banking, Housing, and Urban Affairs, expressed this concern:

> "it would be hard to imagine a more conspicuous case of conflict of interest on a massive scale than the scheme presented to the Commission by this request . . . The obvious danger lies in the fact that as the parties grow more and more dependent upon the credit card contributions, the stronger will evolve the bond of common interests between the parties and the bank card corporations. It is impossible to honestly assume that the Bank card firms will be able to negotiate at arms length with political elements that may now, or in the future, control the profitability of the entire bank card industry."

Given that the spectre of undue influence is the very evil sought to be avoided by the prohibition against corporate contributions, U.S. v. C.I.O., 335 U.S. 106 (1948), the Commission could not see the possibility of "characterizing" the compensation to be received by the RNC "as bargained for consideration rather than political contributions."

The DNC arrangement with Franklin Mint, on the other hand, does not give rise to this concern. First, the amounts involved were relatively insubstantial. While the credit card program could have produced millions of dollars in revenues, the DNC derived $30,000 from the Franklin Mint contract. Second, unlike the banks with which the RNC proposed to deal, Franklin Mint is not engaged in a highly regulated industry. Thus, there was neither reason nor opportunity for Democratic regulators, future or present, to be influenced by the DNC's association with Franklin Mint. Moreover, the DNC's association with Franklin Mint was

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[6] Id. Senator William Proxmire called it "potentially one of the greatest fundraising windfall schemes ever devised." (Letter from Senator Proxmire to the Federal Election Commission, Office of General Counsel, dated May 9, 1979).

limited to a brief period, while the RNC proposed an ongoing relationship with particular banks. In short, A.O. 1979-17 is inopposite here.

III. The DNC did not accept a contribution from the ABC Television Network.

According to the General Counsel's report, the alleged contribution involves a one-third "political discount" amounting to $16,330.23 granted by in February 1976 for the DNC's telethon of July 26-27, 1975. While the Commission does not consider a discount below the usual and normal charge to be a contribution if it is offered in "the vendor's ordinary course of business to non-political clients", (A.O. 1978-45), it questions the DNC-ABC transaction because ABC labeled it a "political discount" in a February 13, 1976 letter to the DNC.

ABC has made available to the DNC the memorandum it filed with the Commission on March 11, 1981. The DNC believes ABC convincingly shows why the Commission should take no further action in this matter. First, offers of discounted time extended on a nonpartisan basis are outside the scope of § 441b. Moreover, as ABC correctly notes, if the Commission concludes that the ABC discount constitutes an impermissible contribution under the FECA, the holding would be directly at odds with applicable federal communications law. Further, sound public policy considerations argue against treating nonpartisan political discounts as contributions. Precluding such discounts probably would limit the amount of political discussion so critical to our system of government. For these reasons, more fully set out in ABC's memorandum, and adopted by the DNC, the Commission should take no further action in this matter.

IV. The DNC did not accept corporate or labor union contributions.

The General Counsel's report asserts that the DNC received prohibited contributions by accepting twenty corporate and labor union checks totalling $660.95 for the sale of books and seminars. The General Counsel believes there may have been a contribution because, in the alternative: (1) if the payments were to defray production expenses, they are contributions because the DNC is receiving funds to be used for political purposes; or (2) if these payments were not a contribution but rather a commercial transaction, they are contributions to the extent

the amount charged exceeds the cost to the DNC. Neither rationale justifies pursuing this matter further.[7]

The DNC received these payments for the arms length sale of excess campaign manuals that were valuable to the purchasers. In 1976, the DNC reprinted 5,000 copies of a nine volume DNC "Campaign Consultation" program , at a cost of $10,653.30. (Attachment E) It first produced the program, with the assistance of consultants, in 1974. The DNC used the manuals in 1976 in campaign seminars it ran to train Democratic candidates, potential Democratic candidates and state and local Democratic party activists in various campaign skills. The program was part of the DNC's efforts to make technical assistance available to Democratic candidates at all levels. The manuals covered fundraising, media, in-house polling, targetting and demographic research, building a volunteer organization, get-out-the-vote activities and campaign planning and budgeting. The DNC originally included the cost of the manual in the price it charged for the seminar.

Because the manual provided expert information on how to be effective politically, it was valuable not only to candidates and political committees, but to many others.[8] The DNC therefore received numerous requests for the manual. Since the DNC had extra copies that were not used in the training seminars, the DNC supplied them upon request, to the extent they were available. If the organization requesting the material was unrelated to the DNC, the DNC generally charged a small amount for the manual to defray production costs.

Because the DNC's records are not complete for events occurring over four years ago, the DNC cannot at this time

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7/ The Commission staff provided a list of twenty entities that purchased manuals in 1976. (Attachment D) The organizations included educational institutions such as Ohio Wesleyn University and Blue Mountain Community College as well as business corporations and labor unions. The $660.95 total is comprised of checks ranging in amount from $5.00 to $115.00.

8/ A review of the manual amply demonstrates its value. Because the DNC has retained only one copy, we cannot submit it with this document. However, the manual is available for your review.

produce documentation as to the nature of the requests or the exact costs of production. The printing costs ($10,653.30 -- Attachment E) do not include fees for writing and drafting, art work, typeset, postage or DNC staff time. However, based on the documented printing costs and the small amounts of the checks the DNC received, the DNC's Comptroller believes that the amounts received in no event exceeded actual costs to the DNC.

The DNC sales of excess campaign manuals fall within the category of sales the Commission has permitted in the past without characterizing them as contributions. In A.O. 1979-18, the Commission permitted a committee to sell to corporations a contributor list it had created in the ordinary course of its operations, primarily for its own use. The Commission said that the sale would constitute a contribution if the purchase price exceeded the usual and normal charge. And A.O. 1979-24, the Commission permitted a political committee to sell excess yard stakes and a typewriter purchased during the campaign as long as the buyer paid the usual and normal charge for the items.

Here, the DNC created and produced the campaign manuals in the ordinary course of its operations to provide technical campaign assistance to Democratic candidates. It sold excess manuals, as a commercial venture, to recoup production costs. To the extent that the General Counsel's concern (and the Commission's) is that the receipts exceeded production costs, the DNC believes it has provided the best information available to demonstrate that that concern is groundless. The DNC printed 5,000 sets of manuals, at a cost of $10,653.30. While this is the only documented figure, it does not include other costs of production. The amounts of the checks received -- ranging in amount from $5 to $115 -- support the DNC Comptroller's view that the receipts could not have exceeded production costs. Although no one presently at the DNC can recall, it is likely that the charge was based on an estimate made at the time of a reasonable amount necessary to defray production costs. In any event, there is no indication that the receipts exceeded production costs.

The DNC's sale of excess manuals clearly is different from those transactions that the Commission has found resulted in a prohibited contribution. For example, in both A.O. 1979-76 and A.O. 1975-15, cited by the General Counsel to support the contention that the DNC's receipts were contributions, the dispositive fact was that the items were ". . . specifically acquired or developed for general

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fundraising purposes . . . ." (A.O. 1979-76). That simply is not a factor here. There is no indication whatsoever that the DNC developed the manuals for general fundraising purposes.

The sale of excess campaign manuals is similar in all material respects to the sales approved in A.O. 1979-18 and A.O. 1979-24. Accordingly, the DNC's receipts at issue here did not constitute a prohibited contribution.

V. Conclusion.

For the reasons detailed in this letter, the DNC urges the Commission to take no further action on MUR 1166.

Respectfully submitted,

Lynda S. Mounts

Ronald D. Eastman
Lynda S. Mounts
Counsel for the Democratic
National Committee

cc: William Taylor, Esq.

Attachments

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Attachment A

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

August 25, 1976

File

Democratic National Committee
1625 Massachusetts Avenue, NW
Washington, D.C.

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Democratic Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Democratic Presidential candidate on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Democratic and Republican Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

Your organization agrees to designate the above-described Democratic Presidential Campaign medals as the Official Presidential Campaign Medals of the Democratic National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Democratic National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: _____
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

27th day of August, 1976

Democratic National Committee

By: _____

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Attachment B

September 23, 1976

Democratic National Committee
310 First Street, S.E.
Washington, D.C. 20003

Attention: Ralph Gerson, Esq.

Gentlemen:

As I indicated in our telephone conversation yesterday, collectors value highly the sponsorship of prestigious organizations and find special merit in a commemorative medal that is an official issue of such a society. For that reason, the medals which are the Official Presidential Campaign Medals of the Democratic National Committee and the Republican National Committee are prized by our collectors.

It is also noteworthy that our commemoratives in the past have been sponsored by such renowned organizations as La Scala, Royal Shakespeare Theatre, National Audubon Society, The United Nations, National Governors Conference, American Revolution Bicentennail Administration, The 41st International Eucharistic Congress, The International Olympic Committee, World Wildlife Fund, National Society of the Daughters of the American Revolution, The Royal Horticultural Society and many others.

It has been customary to pay these sponsoring organizations royalties based on sales, the percentage ranging from 5% to 20% based upon commercial negotiations. In most cases, an advance is paid.

Please do not hesitate to contact me if you require any further information about our commemorative programs.

Very truly yours,

FRANKLIN MINT CORPORATION

Richard J. Stadjel

file

Attachment C

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

November 2, 1976

Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Attention: Ralph J. Gerson, Counsel

Gentlemen:

This letter is to clarify the nature of the agreement by which the Democratic National Committee has granted to the Franklin Mint Corporation the exclusive rights to reproduce and sell the official Presidential Campaign Medals of the Democratic National Committee.

As you may know, collectors value highly the sponsorship of prestigious organizations and find special merit in a commemorative medal that is an official issue of such a society. The Franklin Mint Corporation has obtained exclusive rights to mint and sell medals certified by such organizations as La Scala, Royal Shakespeare Theatre, National Audubon Society, the United Nations, National Governors Conference, American Revolution Bicentennial Administration, The 41st International Eucharistic Congress, The International Olympic Committee, World Wildlife Fund, National Society of the Daughters of the American Revolution, The Royal Horticultural Society and the Republican National Committee. Our agreement with your organization is identical to our agreement with the Republican National Committee. Further, our agreement with your organization is substantially the same as our agreement with the above-mentioned non-political organizations with respect to all essential contract terms.

Our purpose in issuing and selling these medals is to commemorate historical events and renowned organizations by means of gold and silver medals of lasting value. In advertising and selling our medals we stress their value as collector's items

and feel no duty to further particular ideas or a particular candidate. Indeed, the Democratic and Republican Presidential Campaign medals are being advertised together.

We can assure you that our contractual relationship with your organization is on a purely commercial basis. We customarily pay sponsoring organizations royalties based on sales. The amount of such royalties is based solely on the commercial value of the exclusive endorsement of each organization as determined through commercial negotiations. The 15% royalty offered to the Democratic National Committee is well within the 5% to 25% range of royalties normally offered to sponsoring organizations, and it is identical to the royalty being paid to the Republican National Committee.

In addition, an advance is customarily paid to sponsoring organizations. The amount of the advance payment suggested to the Democratic National Committee and the Republican National Committee is comparable to advances previously offered to nonpolitical sponsors.

In conclusion, we believe that this transaction is a commercial transaction quite comparable to our dealings with nonpolitical organizations. Please do not hesitate to contact us if you desire any further information about our commemorative program.

Very truly yours,

FRANKLIN MINT CORPORATION

Richard J. Kradjel

Richard J. Kradjel
Associate Corporate Counsel

RJK/bb

Attachment E

INVOICE

KAUFMANN/GRAPHICS INC.

A SUBSIDIARY OF PUBLISHERS COMPANY, INC.

the mark of Washington's quality lithographers

1110 Okie Street N.E., Washington, D.C. 20002

TELEPHONE
526-2666

SOLD TO:

Democratic National Committee
Attention: Mr. Eric Jaffe
1625 Massachusetts Avenue N. W.
Washington, D. C.

TERMS:
NET 30 DAYS

CUSTOMER ORDER NUMBER	OUR JOB NUMBER	INVOICE DATE
2660	69119	January 19, 1976

Campaign Consultation Programs consisting of nine (9) booklets, 8 1/2 x 11, two 40 pages, two 36 pages, two 20 pages, one 32 pages, one 28 pages and one 16 pages. 5,000 copies each of above nine booklets to be shot from existing printed books, three hole drilled and delivered in convenient cartons as specified in estimate on Purchase Order No. 2660.	$ 9,900.00
Additional art for cover as covered in my letter of November 20, 1975.	180.00
Alterations in blueprint	66.00
	$10,146.00
5% D. C. Sales Tax	507.30
	$10,653.30

SALESMAN Rupli (02)

RESALE OR EXEMPTION NUMBER 5270 (bam) 20

17998

Federal Election Commission
(8/77)

DNC

Attachment D

Schedule of Confirmed Entities who transferred Monies to DNC In Payment of Goods + Services

	1	2	3	4
	Amount	Date	Date Incorp.	
Campaign Associates Inc.	1500	1/12/76	3/24/70	
Arizona Education ASSN	11500	1/30/76	12/1/39	
Construction, Production + Maintenance Laborers Union	6500	1/30/76		
Harris, Lee, Elliott Communications	500	1/30/76	2/20/75	
Bee Dart, Inc.	3000	1/30/76	4/19/67	
Student Book Corporation	1500	1/28/76	3/23/75	
Epley Associates, Inc	1500	1/30/76	12/23/75	
Ohio Wesleyan University	100	2/12/76	3/12/42	0·A
Arizona State AFL CIO	6500	2/12/76		0·*
Hodsdon Purcell + Brown Inc	650	1/29/76	12/24/75	·00+
Maurer, Fleisher, Zoe + Anderson, Inc	11500	1/30/76	10/31/75	·00+
Blue Mountain Community College	1000	2/24/76	5/28/63	·00+
Ohio Right To Life Inc	1300	3/12/76	6/30/67	·00+
Indiana Right To Life Inc	60	3/31/76	Inc on ck	50+
Allen-Russell Ford Inc	1500	5/14/76	12/14/70	45+
Praeger Publishers Inc	2145	5/14/76	4/28/66	00+
Weston Associates Inc	4500	6/24/76	3/29/55	95*+
Emery Pratt Company	1500	6/30/76	2/19/24	
Products of Technology	1500	6/30/76	10/18/72	
Monsanto Company	500	9/27/76	10/8/61	
Total 20	40095			

3 3 0 4 0 3 5 2 6 5 2

ARENT, FOX, KINTNER, PLOTKIN & KAHN

1815 H STREET, N.W.

WASHINGTON, D. C. 20006

BY HAND

Honorable John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

4489

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: APRIL 14, 1981

SUBJECT: REFERRAL OF LETTER REGARDING MUR 1166 and MUR 1180

The attached letter regarding MUR 1166 and MUR 1180 was received in the Chairman's Office and then presented to the Secretary of the Commission. It is provided for your action.

Attachment:
Letter from James P. Mercurio, dated April 13, 1981

1 APR 14 P12:42
GENERAL COUNSEL

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

James P. Mercurio
(202) 857-6092

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 APR 14 P12: 10

April 13, 1981

81 APR 14 P12: 42
GENERAL COUNSEL

BY HAND

Honorable John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: Franklin Mint Corporation
MUR 1166 and MUR 1180

Dear Mr. McGarry:

We are counsel for Franklin Mint Corporation in the above matters.

Franklin Mint recently has been advised that the Commission has found reason to believe that it violated 2 U.S.C. §441b(a) by making certain payments to the Republican National Committee and the Democratic National Committee in 1976. The payments in question -- which amounted to approximately $30,000 for each committee -- were made pursuant to contractual arrangements under which medals that were designed, minted and sold by Franklin Mint were designated by each committee as its Official Presidential Campaign Medal and Franklin Mint was authorized to refer to such designation in its advertising of the medals. The contract with each committee also provided that Franklin Mint would pay a royalty equal to 15 per cent of its sales, with a minimum guaranteed royalty of $30,000, and provide a quantity of medals equivalent in retail value to $5,000.

In the Notification of Reason to Believe Finding, the Commission states the following conclusion with respect to these arrangements:

> In the present transaction, the [committee] granted the Corporation the exclusive right to mint and market commemorative medals

> bearing the likeness of the candidates as the [committee's] campaign symbol and authorized the corporation to make reference to the committee's designation of the medals as the "Official Presidential Campaign Medals of the Republican [or Democratic] National Committee" in advertising materials. In so doing, the [committee], in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of §441b of the Act.

The "credit card program" to which the above-quoted passage refers is a program that was proposed in 1979 by the Republican National Committee under which it would enter an arrangement with a credit card issuing bank that contained the following essential elements:

> (1) The committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership list, all of which would enable the card issuer to increase the number of persons holding its cards.
>
> (2) The committee would have been compensated by the credit card issuer in accordance with one of three options, all of which would have permitted the committee to make periodic use of the credit card issuer's monthly billing statement as a vehicle for sending political messages to the credit card holders.

The Republican National Committee in that case admitted that among the benefits expected to flow from the credit card program were that the program would "increase its identity with its members" and increase its "fund raising" potential. On these facts, the Commission concluded in Advisory Opinion 1979-17 that payments made by the credit card issuers to the

Republican National Committee and inclusion of political materials in mailings of credit card statements, as contemplated by the program, would be "contributions or expenditures" prohibited by 2 U.S.C. §411b.

The contractual arrangements under which Franklin Mint made royalty payments to the Republican and Democratic National Committees differ from the credit card program considered in AO 1979-17 in several important respects. Franklin Mint's purpose in proposing its official campaign medal program and in selling its medals was not to benefit the political committees that designated the medals as their official campaign medals, and unlike the credit card program, the campaign medal offer did not provide a vehicle whereby the committees could advance their political objectives. As stated in the affidavit of Franklin Mint's Chairman, which is submitted herewith, Franklin Mint had no purpose to influence any election or to contribute to the success of any political candidate or party. Its purpose was the commercial purpose of making a profit from the sale of its medals. Nothing in the program is inconsistent with that purpose.

Unless there are circumstances which indicate that a payment was made to a political committee for the purpose of influencing an election, there can be no reason to believe that a payment made pursuant to a commercial arrangement is a prohibited contribution. The Commission's opinion in the credit card program proposal addresses a joint arrangement between a political committee and a bank in which the bank not only would have made payments to the committee in return for commercial benefits, it also would have permitted the committee, as part of the commercial arrangement, to use mailings as a means by which the committee could promote its political aims. Under these circumstances, a purpose on the part of the bank to influence political elections might be inferred. By contrast, it is difficult to discern how Franklin Mint's promotion of official campaign medals of both the Republican and Democratic presidential candidates could have been intended to influence the presidential election. There is nothing in the promotional material that urges anyone to vote for any candidate or to support any party. The presidential election is merely the occasion for which these medals were created. And, while the election may have been the event that made the medal program appear to be an attractive commercial venture for Franklin

Mint, there is no evidence that the program was intended to influence the election.

Accordingly, we respectfully submit that payments by Franklin Mint to the Democratic and Republican National Committees pursuant to the presidential campaign medal programs in 1976 do not violate 2 U.S.C. §441b.

Sincerely,

James P. Mercurio

JPM:kcm
Enclosure
cc: Charles N. Steele, Esquire
William Taylor, Esquire
Thomas Whitehead, Esquire

FRANKLIN MINT CORPORATION

FRANKLIN CENTER, PENNSYLVANIA 19091

AFFIDAVIT

I, Charles L. Andes, being first duly sworn, depose and say as follows:

1. I am the Chairman of Franklin Mint Corporation, Franklin Center, Pennsylvania.

2. In 1976 the Franklin Mint entered into contractual arrangements under which it agreed with the Republican National Committee and the Democratic National Committee to pay royalties and other compensation in consideration of the committees' agreements to designate medals designed and minted by Franklin Mint as their official campaign medals. I am familiar with the circumstances under which these contractual arrangements were entered.

3. Franklin Mint's purpose in entering these arrangements was to earn a profit from the sale of the medals in question. It was not the purpose of Franklin Mint to influence any political election or to contribute to the success of any political party or candidate.

4. The terms of these arrangements are not more favorable to the Republican and Democratic National Committees than terms to which Franklin Mint agrees with others in similar programs.

5. Exhibit 1 and Exhibit 2 exemplify the promotional materials employed by Franklin Mint to promote the sale of these medals in 1976.

IN WITNESS WHEREOF, I hereby set my hand this 10th day of April, 1981.

Charles L. Andes

Charles L. Andes

County of Delaware)
Commonwealth of Pennsylvania) ss:

Subscribed and sworn to before me this 10th day of April, 1981.

Helen A. Harty

Notary Public

HELEN A. HARTY, NOTARY PUBLIC
MIDDLETOWN TWP., DELAWARE COUNTY
MY COMMISSION EXPIRES DEC. 17, 1981
Member, Pennsylvania Association of Notaries

Exhibit 1

THE FRANKLIN MINT

FRANKLIN CENTER, PENNSYLVANIA 19091

Dear Collector:

The Franklin Mint has been appointed to produce the official 1976 Presidential Campaign Medals of both the Republican National Committee and the Democratic National Committee.

These official campaign medals will be announced to the public soon in newspapers throughout the United States. But, as official minter for the medals, we have been given special permission to send this advance notice to our collectors.

Accordingly, we are enclosing a copy of the public announcement, which includes illustrations of the Republican and Democratic campaign medals. The portraits which appear on these medals are new and original works of art which were created especially for the 1976 Presidential campaign by two of America's leading medallic sculptors. The portrait of Gerald R. Ford is by Gilroy Roberts, and the portrait of Jimmy Carter is by Julian Harris. These official campaign portraits will be used only on these medals; they will never appear anywhere else.

Please note that you may acquire these official campaign commemoratives as solid sterling silver medals, or in pendant form. The pendants, each with an appropriate neckchain, will be produced in sterling silver, gold on sterling and in 18 karat gold. The medals and pendants alike will be issued in limited edition, exclusively for those who place orders by Election Day -- November 2, 1976. After that date, these medals and pendants will never be made available again.

As you may know, many past Presidential campaign commemoratives are today highly valued by collectors. And, since the 1976 Presidential campaign promises to be one of the most exciting in years, it seems quite likely that the official medals of this campaign will be widely sought after by collectors in the future.

To obtain the medals and pendants of your choice, enter your order on the accompanying form -- and be sure to mail it no later than Election Day, November 2nd.

Sincerely,

Brian G. Harrison

Brian G. Harrison
President

BGH:rw

The Franklin Mint is the world's largest private mint. It is not affiliated with the U.S. Mint or any other government agency.

Exhibit 2

Announcing

THE OFFICIAL 1976 PRESIDENTIAL CAMPAIGN MEDALS

Available only until Election Day, November 2, 1976

REPUBLICAN

SHOWN ACTUAL SIZE.

The Official Presidential Campaign Medal of the Republican National Committee

© 1976 FM

ORDER FORM

OFFICIAL REPUBLICAN NATIONAL COMMITTEE
1976 PRESIDENTIAL CAMPAIGN MEDAL

The Franklin Mint
Franklin Center, Pennsylvania 19091

Please send me the following:

____ Solid Sterling Silver medal (1½" diam.) in Lucite display stand @ $22.50 each ..... $_____

____ Solid Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $22.50 each ..... $_____

____ 24KT Gold electroplate on Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $27.50 each ..... $_____

____ 18KT Gold pendant (1¼" diam.), with appropriate chain, @ $250. each ..... $_____

Total of Order: $_____

Plus my state sales tax: $_____

Remittance Enclosed: $_____

Mr.
Mrs.
Miss _____

Address _____

City, State, Zip _____

ALL ORDERS ARE SUBJECT TO ACCEPTANCE 11

DEMOCRATIC

SHOWN ACTUAL SIZE.

The Official Presidential Campaign Medal of the Democratic National Committee

ORDER FORM

OFFICIAL DEMOCRATIC NATIONAL COMMITTEE
1976 PRESIDENTIAL CAMPAIGN MEDAL

The Franklin Mint
Franklin Center, Pennsylvania 19091

Please send me the following:

____ Solid Sterling Silver medal (1½" diam.) in Lucite display stand @ $22.50 each ..... $_____

____ Solid Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $22.50 each ..... $_____

____ 24KT Gold electroplate on Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $27.50 each ..... $_____

____ 18KT Gold pendant (1¼" diam.), with appropriate chain, @ $250. each ..... $_____

Total of Order: $_____

Plus my state sales tax: $_____

Remittance Enclosed: $_____

Mr.
Mrs.
Miss _____

Address _____

City, State, Zip _____

ALL ORDERS ARE SUBJECT TO ACCEPTANCE 11

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32040392361

Cadwalader, Wickersham & Taft
1333 New Hampshire Avenue, N.W. Washington, D.C. 20036

Mr. Charles N. Steele
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
7th Floor

CADWALADER, WICKERSHAM & TAFT
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036

RECEIVED
CCC#4486
81 APR 14 A8:37

Cadwalader, Wickersham & Taft

1333 New Hampshire Ave., N.W.
Washington, D.C. 20036

MUR 1166

WASHINGTON PARTNERS
...OOK, JR.
...ASTMAN
...LASKY
...MOORMAN
JAMES A. ROSSI
THOMAS A. RUSSO
STEPHEN N. SHULMAN
FRANK WILLE

NEW YORK PARTNERS
...HARD A. ASORN
...K ADELMAN
...ENDELL S. ALCORN, JR.
STEPHEN G. AUSTIN
JOHN BOYER
PETER MEGARGEE BROWN
WILLIAM N. CLARKE
RODNEY S. DAYAN
DANIEL C. DRAPER
STEVE C. DUNE
DAVID W. FEENEY
P. JAY FLOCKEN
JOHN F. FRITTS
TERENCE F. GILHEANY
DONALD G. GLASCOFF, JR.
STEPHEN P. GOTTLIEB
ALAN WINSTON GRANWELL
GRANT G. HERING
LEONARD E. KUST
ROBERT C. LAWRENCE III
JAY H. MCDOWELL
WILLIAM J. MOSS
EARL H. NEMSER
JOHN J. O'GRADY III
ROY ALBERT POVELL
GEORGE D. REYCRAFT
EDWIN DAVID ROBERTSON
HADLEY S. ROE
HAVEN C. ROOSEVELT
STEVEN A. RUSKIN
JEROME SHELBY
GERALD T. SLEVIN
RICHARD T. TAYLOR
COURTLAND W. TROUTMAN
THEODORE A. ULRICH
JONATHAN M. WAINWRIGHT
JOHN J. WALSH
MALCOLM P. WATTMAN
RICHARD J. WIENER
ARNOLD J. ZURCHER, JR.

Telephone: (202) 293-6300
Telex: 710-822-1934
Telephone: (202) 293-6290
Telecopier: (202) 387-1417

SPECIAL COUNSEL
DUDLEY J. CLAPP, JR.
(NOT ADMITTED D.C. BAR)

COUNSEL
HAROLD W. CONROY
RICHARD N. CROCKETT
HENRY ALLEN MARK
HORACE P. MOULTON
JOHN A. SULLIVAN

ONE WALL STREET
NEW YORK, N. Y. 10005
(212) 785-1000
CABLE: LABELLUM
TELEX: 125146/667465

249 ROYAL PALM WAY
PALM BEACH, FLA. 33480
(305) 655-9500
TWX: 510-952-7626

ROY ALBERT POVELL
RESIDENT PARTNER

April 13, 1981

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

Re: MUR 1166 and MUR 1206

81 APR 14 P2:25

Dear Mr. Steele:

This is to advise you that counsel for the Democratic National Committee in MURs 1166 and 1206 are:

Ronald D. Eastman
Lynda S. Mounts
CADWALADER, WICKERSHAM & TAFT
Suite 700
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 293-6300

Please send all notifications and other communications concerning these matters to counsel stated above.

We are aware of Mr. Harrington's letter dated March 5, 1981; however, he no longer is responsible for MURs 1166 and 1206. We regret the delay, and do not anticipate another change of counsel for these matters.

Sincerely,

Ronald D. Eastman

Ronald D. Eastman
Lynda S. Mounts

cc: William Taylor, Esq.
Frances B. Hagan

100162

RECEIVED
CCC 4485
81 APR 14 A8:41

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

James P. Mercurio
(202) 857-6092

April 13, 1981

BY HAND

Honorable John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

81 APR 14 P2:28

Re: Franklin Mint Corporation
MUR 1166 and MUR 1180

Dear Mr. McGarry:

We are counsel for Franklin Mint Corporation in the above matters.

Franklin Mint recently has been advised that the Commission has found reason to believe that it violated 2 U.S.C. §441b(a) by making certain payments to the Republican National Committee and the Democratic National Committee in 1976. The payments in question -- which amounted to approximately $30,000 for each committee -- were made pursuant to contractual arrangements under which medals that were designed, minted and sold by Franklin Mint were designated by each committee as its Official Presidential Campaign Medal and Franklin Mint was authorized to refer to such designation in its advertising of the medals. The contract with each committee also provided that Franklin Mint would pay a royalty equal to 15 per cent of its sales, with a minimum guaranteed royalty of $30,000, and provide a quantity of medals equivalent in retail value to $5,000.

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> In the present transaction, the [committee] granted the Corporation the exclusive right to mint and market commemorative medals

9 2 0 4 0 3 5 2 5 6 5

> bearing the likeness of the candidates as the [committee's] campaign symbol and authorized the corporation to make reference to the committee's designation of the medals as the "Official Presidential Campaign Medals of the Republican [or Democratic] National Committee" in advertising materials. In so doing, the [committee], in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of §441b of the Act.

The "credit card program" to which the above-quoted passage refers is a program that was proposed in 1979 by the Republican National Committee under which it would enter an arrangement with a credit card issuing bank that contained the following essential elements:

> (1) The committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership list, all of which would enable the card issuer to increase the number of persons holding its cards.
>
> (2) The committee would have been compensated by the credit card issuer in accordance with one of three options, all of which would have permitted the committee to make periodic use of the credit card issuer's monthly billing statement as a vehicle for sending political messages to the credit card holders.

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3 2 0 4 0 3 5 2 5 6 4

Republican National Committee and inclusion of political materials in mailings of credit card statements, as contemplated by the program, would be "contributions or expenditures" prohibited by 2 U.S.C. §411b.

The contractual arrangements under which Franklin Mint made royalty payments to the Republican and Democratic National Committees differ from the credit card program considered in AO 1979-17 in several important respects. Franklin Mint's purpose in proposing its official campaign medal program and in selling its medals was not to benefit the political committees that designated the medals as their official campaign medals, and unlike the credit card program, the campaign medal offer did not provide a vehicle whereby the committees could advance their political objectives. As stated in the affidavit of Franklin Mint's Chairman, which is submitted herewith, Franklin Mint had no purpose to influence any election or to contribute to the success of any political candidate or party. Its purpose was the commercial purpose of making a profit from the sale of its medals. Nothing in the program is inconsistent with that purpose.

Unless there are circumstances which indicate that a payment was made to a political committee for the purpose of influencing an election, there can be no reason to believe that a payment made pursuant to a commercial arrangement is a prohibited contribution. The Commission's opinion in the credit card program proposal addresses a joint arrangement between a political committee and a bank in which the bank not only would have made payments to the committee in return for commercial benefits, it also would have permitted the committee, as part of the commercial arrangement, to use mailings as a means by which the committee could promote its political aims. Under these circumstances, a purpose on the part of the bank to influence political elections might be inferred. By contrast, it is difficult to discern how Franklin Mint's promotion of official campaign medals of both the Republican and Democratic presidential candidates could have been intended to influence the presidential election. There is nothing in the promotional material that urges anyone to vote for any candidate or to support any party. The presidential election is merely the occasion for which these medals were created. And, while the election may have been the event that made the medal program appear to be an attractive commercial venture for Franklin

Mint, there is no evidence that the program was intended to influence the election.

Accordingly, we respectfully submit that payments by Franklin Mint to the Democratic and Republican National Committees pursuant to the presidential campaign medal programs in 1976 do not violate 2 U.S.C. §441b.

Sincerely,

James P. Mercurio

JPM:kcm
Enclosure
cc: Charles N. Steele, Esquire
William Taylor, Esquire
Thomas Whitehead, Esquire

RECEIVED

81 APR 14 A8: 48

FRANKLIN MINT CORPORATION

FRANKLIN CENTER, PENNSYLVANIA 19091

AFFIDAVIT

I, Charles L. Andes, being first duly sworn, depose and say as follows:

1. I am the Chairman of Franklin Mint Corporation, Franklin Center, Pennsylvania.

2. In 1976 the Franklin Mint entered into contractual arrangements under which it agreed with the Republican National Committee and the Democratic National Committee to pay royalties and other compensation in consideration of the committees' agreements to designate medals designed and minted by Franklin Mint as their official campaign medals. I am familiar with the circumstances under which these contractual arrangements were entered.

3. Franklin Mint's purpose in entering these arrangements was to earn a profit from the sale of the medals in question. It was not the purpose of Franklin Mint to influence any political election or to contribute to the success of any political party or candidate.

4. The terms of these arrangements are not more favorable to the Republican and Democratic National Committees than terms to which Franklin Mint agrees with others in similar programs.

5. Exhibit 1 and Exhibit 2 exemplify the promotional materials employed by Franklin Mint to promote the sale of these medals in 1976.

IN WITNESS WHEREOF, I hereby set my hand this 10th day of April, 1981.

Charles L. Andes

Charles L. Andes

County of Delaware)
Commonwealth of Pennsylvania) ss:

Subscribed and sworn to before me this 10th day of April, 1981.

Helen A. Harty

Notary Public

HELEN A. HARTY, NOTARY PUBLIC
MIDDLETOWN TWP., DELAWARE COUNTY
MY COMMISSION EXPIRES DEC. 17, 1981
Member, Pennsylvania Association of Notaries

82049352567

Exhibit 1

THE FRANKLIN MINT

FRANKLIN CENTER, PENNSYLVANIA 19091

Dear Collector:

The Franklin Mint has been appointed to produce the official 1976 Presidential Campaign Medals of both the Republican National Committee and the Democratic National Committee.

These official campaign medals will be announced to the public soon in newspapers throughout the United States. But, as official minter for the medals, we have been given special permission to send this advance notice to our collectors.

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Please note that you may acquire these official campaign commemoratives as solid sterling silver medals, or in pendant form. The pendants, each with an appropriate neckchain, will be produced in sterling silver, gold on sterling and in 18 karat gold. The medals and pendants alike will be issued in limited edition, exclusively for those who place orders by Election Day -- November 2, 1976. After that date, these medals and pendants will never be made available again.

As you may know, many past Presidential campaign commemoratives are today highly valued by collectors. And, since the 1976 Presidential campaign promises to be one of the most exciting in years, it seems quite likely that the official medals of this campaign will be widely sought after by collectors in the future.

To obtain the medals and pendants of your choice, enter your order on the accompanying form -- and be sure to mail it no later than Election Day, November 2nd.

Sincerely,

Brian G. Harrison

Brian G. Harrison
President

BGH:rw

The Franklin Mint is the world's largest private mint. It is not affiliated with the U.S. Mint or any other government agency.

Exhibit 2

Announcing

THE OFFICIAL 1976 PRESIDENTIAL CAMPAIGN MEDALS

Available only until Election Day, November 2, 1976

REPUBLICAN

SHOWN ACTUAL SIZE.

The Official Presidential Campaign Medal of the Republican National Committee

ORDER FORM

OFFICIAL REPUBLICAN NATIONAL COMMITTEE
1976 PRESIDENTIAL CAMPAIGN MEDAL

The Franklin Mint
Franklin Center, Pennsylvania 19091

Please send me the following:

_____ Solid Sterling Silver medal (1½" diam.) in Lucite display stand @ $22.50 each ..... $_____

_____ Solid Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $22.50 each ..... $_____

_____ 24KT Gold electroplate on Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $27.50 each ..... $_____

_____ 18KT Gold pendant (1¼" diam.), with appropriate chain, @ $250. each ..... $_____

Total of Order: $_____

Plus my state sales tax: $_____

Remittance Enclosed: $_____

Mr.
Mrs.
Miss _____

Address _____

City, State, Zip _____

ALL ORDERS ARE SUBJECT TO ACCEPTANCE 11

DEMOCRATIC

SHOWN ACTUAL SIZE.

The Official Presidential Campaign Medal of the Democratic National Committee

ORDER FORM

OFFICIAL DEMOCRATIC NATIONAL COMMITTEE
1976 PRESIDENTIAL CAMPAIGN MEDAL

The Franklin Mint
Franklin Center, Pennsylvania 19091

Please send me the following:

_____ Solid Sterling Silver medal (1½" diam.) in Lucite display stand @ $22.50 each ..... $_____

_____ Solid Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $22.50 each ..... $_____

_____ 24KT Gold electroplate on Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $27.50 each ..... $_____

_____ 18KT Gold pendant (1¼" diam.), with appropriate chain, @ $250. each ..... $_____

Total of Order: $_____

Plus my state sales tax: $_____

Remittance Enclosed: $_____

Mr.
Mrs.
Miss _____

Address _____

City, State, Zip _____

ALL ORDERS ARE SUBJECT TO ACCEPTANCE 11

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RECEIVED

81 APR 13 A8:41

ARENT, FOX, KINTNER, PLOTKIN & KAHN

1815 H STREET, N.W.

WASHINGTON, D. C. 20006

By Hand

Thomas Whitehead, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

8 2 0 4 0 3 5 2 5 7 1

RECEIVED

81 APR 15 AM 8: 41

ARENT, FOX, KINTNER, PLOTKIN & KAHN

1815 H STREET, N.W.

WASHINGTON, D. C. 20006

BY HAND

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

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RECEIVED

81 APR 14 A8:48

ARENT, FOX, KINTNER, PLOTKIN & KAHN

1815 H STREET, N.W.

WASHINGTON, D. C. 20006

BY HAND

William Taylor, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1981

Mr. James Mercurio
Arent, Fox, Kintner,
Plotkin and Kahn
Federal Bar Building
1815 H Street, N.W.
Washington, D.C. 20006

Re: MURs 1166 and 1180
The Franklin Mint

Dear Mr. Mercurio:

This is in response to your letter of March 6, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe. The Office of General Counsel has decided, after considering your request, to approve a 30-day extension of time in which to respond to the Commission's notification. Furthermore, as to your contention that the Commission's letter of January 13, 1981 did not receive the attention it otherwise would have received because of a typographical error, the Office of General Counsel would like to remind you that the Commission's four (4) page Notification of Reason to Believe, a copy of which was attached to that letter, in addition to disclosing, in detail, the facts and issues involved in this matter, clearly cites the Franklin Mint as the respondent in this matter. Nonetheless, your client has until the close of business April 13, 1981 to respond.

Should you have any questions, please call William Taylor, the attorney assigned to this matter, at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2204035257 3

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 861-2600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
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LAWRENCE J. MOVSHIN
JAMES S. BLASZAK
W. KENNEDY KEANE
DENNIS P. CORBETT
JAMES H. DeGRAFFENREIDT, JR.

DIRECT DIAL NO.
861-2622

March 11, 1981

RECEIVED
FEDERAL ELECTION COMMISSION
GENERAL COUNSEL
1 MAR 11 P5:12

9204035274

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

Re: MUR 1166

Dear Mr. Steele:

On behalf of American Broadcasting Companies, Inc., I am transmitting herewith an original and three copies of ABC's response to the Commission's letter of January 8, 1981 with respect to the above-referenced matter.

If there are any questions concerning this matter, kindly communicate with the undersigned.

Very truly yours,

Carl R. Ramey

Carl R. Ramey

Attachments

cc: William E. Taylor, Esq.

ORIGINAL

Before The
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

In the Matter of	)	
	)	
Notification of "Reason To Believe Finding" Directed Against The ABC Television Network	)))	MUR No. 1166

MEMORANDUM OF
AMERICAN BROADCASTING COMPANIES, INC.

American Broadcasting Companies, Inc. ("ABC"), by its attorneys, and pursuant to Section 111.6 of the Commission's Rules and Regulations, hereby submits the following Memorandum in response to the above-referenced "Notice of Reason to Believe" and in support of its position that this matter should be dismissed and/or terminated without further Commission action.

Preliminary Statement

By letter dated January 8, 1981, ABC was advised[1/] that the Commission had found reason to believe that ABC may have made a corporate political "contribution" in violation

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1/ The letter and accompanying Report were directed to the ABC Television Network, an operational division of American Broadcasting Companies, Inc.

of 18 U.S.C. §610 (currently 2 U.S.C. §441b(a)).[1/] The basis for this alleged violation stems from ABC's decision to afford a political discount to the Democratic National Committee (DNC) in connection with the DNC's 1975 Telethon on the ABC Television Network.

According to the accompanying Commission Report, this matter was referred to the Office of General Counsel by the Audit Division, based on an audit of the DNC covering the period January 1, 1976 through September 30, 1978. Apparently, during the course of that audit, the Commission staff reviewed a letter dated February 13, 1976 from ABC to the Chairman of the Democratic National Committee. In that letter, ABC indicated it was extending its customary one-third political discount to the DNC in connection with the DNC's 1975 Telethon broadcast on the ABC Television Network between July 26-27, 1975.[2/]

Based on the foregoing, the Report states that the Commission has found reason to believe that ABC's offer of a reduced rate in connection with the DNC's purchase of time on the ABC Television Network represented an impermissible

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1/ The letter received by ABC actually referred to an alleged violation having been made by the "Republican National Committee" under "2 U.S.C. §41a(f)." We assume, however, based on the accompanying Report, that these references are simply inaccurate.

2/ ABC's one-third political discount is uniformly applied to all bona fide political purchases, whether such purchases are made by an authorized national political party such as the DNC or by individual political candidates.

political "contribution." The reasoning appears to proceed as follows: (1) ABC is a corporation; (2) a corporate contribution in connection with a federal election[1/] is prohibited by 2 U.S.C. §441b; and (3) a discount offered by an incorporated broadcast licensee in connection with the sale of air time to a political candidate or political party constitutes a contribution under 2 U.S.C. §441b.

As set forth hereinafter, ABC does not believe that the offer of broadcast time to political candidates or political parties -- on either a free or special discount basis -- constitutes a political "contribution" prohibited by federal law. On the contrary, in our view, such offers of time -- extended uniformily to all similarly situated candidates and major political parties -- represent a unique public service by federally licensed broadcast entities plainly outside the scope of 2 U.S.C. §441b and demonstrably compatible with the public interest. Moreover, we respectfully submit that important provisions and policies of federal communications law, <u>affirmatively</u> <u>encourage</u> broadcast licensees to afford political candidates favorable treatment in terms of both the availability and the cost of radio and television facilities for political uses. Indeed, a finding by this agency that the provision of free time or reduced rates to political parties or candidates represents an illegal political

---

1/ The Report notes that the DNC Telethon was intended to assist the DNC to retire past election campaign debts.

"contribution," would be at odds with public policy and significantly disserve the overall public interest. By effectively foreclosing such offers in the future,[1/] the cost of political campaigning would dramatically escalate and, because of such increased costs, the use of the broadcast media by political candidates would significantly decrease.

Finally, a ruling that effectively precluded broadcast stations from offering free time or reduced rates to political candidates would necessarily intrude upon the long-established discretion and, we submit, First Amendment prerogatives of radio and television licensees to afford candidates broadcast time to discuss issues in a manner not limited to regular news coverage.

The Applicable Federal Elections Law

According to the Commission's January 8, 1981 Report, a political discount by a broadcast corporation raises the specific issue of the applicability of 2 U.S.C. §441b(a), which provides that:

> "It is unlawful . . . for any corporation . . . to make a contribution or expenditure in connection with any election to any political office, or in connection with

---

1/ Presumably, and somewhat anomolously, such a ruling would not extend to those many radio and television licensees who are not incorporated but operate, instead, as partnerships, unincorporated associations, joint ventures or single proprietorships.

> any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever . . . to make a contribution or expenditure in connection with any election at which presidential or vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section . . . ."

The term "contribution or expenditure" is defined in 2 U.S.C. §441(b)(2) to include:

> ". . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section."1/

Utilizing the foregoing definitional framework, the Report concludes that a political discount of broadcast time represents the type of impermissible corporate contribution covered by 2 U.S.C. §441b. Thus, it appears that broadcast time is being construed as an ordinary commodity that must be offered to political candidates and political parties

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1/ See also 2 U.S.C. §431(e) which defines a contribution as a "gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing" an election. The Commission's Rules and Regulations incorporate like provisions and definitions. See, e.g., 11 C.F.R. §§100.(7)(1), 114.1(a)(1) and 114.2.

on the same basis as it is offered to all other persons or entities that purchase broadcast time. For instance, the Report indicates that even if ABC gave uniform political discounts to all political committees (and presumably all political candidates) it still could not avoid the impact of 2 U.S.C. §441b unless a "political discount" was offered to ABC's non-political (i.e., regular commercial) clients.

Other than bare statutory language, the Report is conspicuously silent as to any other provisions of law or applicable precedent directly bearing upon this matter. The one exception is a brief reference to a 1978 Advisory Opinion in a non-broadcast case where the Commission indicated that "a discount below the 'usual and normal' charge [should be viewed as] a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients." See, AO 1978-45, August 28, 1978.

In AO 1978-45, a development company that owned an outdoor billboard proposed to provide space on the billboard to a particular campaign committee at a rate below the normal commercial rate. The Commission found that the proposal would constitute a discount below the "usual and normal charge" not routinely offered in the vendor's ordinary course of business to non-political candidates. Since the development company did not, in the ordinary course of its business, offer the same reduced rate to commercial advertisers, the Commission concluded that it "would view the net difference

between the two rates as an in-kind contribution from the development company to Citizens" ["Citizens for Coleman," the named political committee] -- i.e., a corporate contribution prohibited by 2 U.S.C. §441b.

In essence, therefore, the Report relies exclusively upon the superficial thrust of the cited statutory language. In our view, this is patently insufficient to conclude that the mere provision of broadcast time, on a free or reduced-rate basis, constitutes an impermissible political contribution (as distinguished from a third party corporate purchase or sponsorship of broadcast time for a partisan political purpose). A brief review of the underlying purposes of 2 U.S.C. §441b confirms this view.

The origin, legislative history and purpose of what is now 2 U.S.C. §441b is discussed in detail in United States v. C.I.O., 335 U.S. 106 (1948) and in United States v. International Union United Auto Aircraft and Agr. Implement Workers, 352 U.S. 567 (1957). With respect to corporations, the Supreme Court in United States v. C.I.O. states:

> "This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties

without the consent of the stockholders." 335 U.S. 106, 113. 1/

The essential elements of an offense under 2 U.S.C. §441b have been summarized as follows: "(1) a contribution or expenditure, (2) by a [corporation or] labor organization, (3) for the purpose of active electioneering (4) in connection with an election for named federal offices described in the statute." United States v. Pipefitters Local Union No. 562, 434 F.2d 1116, 1121 (8th Cir. 1970). In other words, the activity Congress sought to restrict by 2 U.S.C. §441b was of a highly partisan nature -- "active electioneering" in connection with specific federal elections.2/

This construction, defining the kind of restricted activity by the nature (as well as the fact) of the "contribution," is also reflected in pertinent provisions of the Commission's

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1/ See also United States v. International Union where the Court observed that the "evil at which Congress has struck . . . is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." 352 U.S. at 589. Significantly, U.S. v. International Union involved a situation where a union had utilized its dues to sponsor commercial television broadcasts designed to influence the electorate to select certain candidates for Congress. The Court's extensive discussion of that situation, including elaborate citations to pertinent legislative history, focused on the purchase of broadcast time by a union or corporation without indicating that the provision of broadcast time by a broadcast licensee was even remotely analogous.

2/ As the court emphasized in United States v. Boyle, 338 F. Supp. 1028, 1033 (D. D.C. 1972), it is only when a corporation or union is engaged in "active electioneering" on behalf of particular Federal candidates "with the idea of reaching the public at large. . .that the statute's proscription. . .becomes applicable."

rules and regulations designed to implement Section 441b and other federal election laws. For instance, Section 100.7(1) of the Commission's Rules, paralleling Section 431(e) of the statute, defines a "contribution" as including payments, services or other things of value which are made "for the purpose of influencing any election for Federal office. . . ." 11 C.F.R. §100.7(1) (emphasis added). Similarly, "a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee . . . of a political party is not a contribution if it is specifically designated to defray any cost incurred for construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office." 11 C.F.R. §100.7(b)(12) (emphasis added).

It may be especially noteworthy that separate Commission regulations specifically recognize the inherent journalistic function that is being performed when broadcast facilities are used for certain forms of political discussion -- a regulatory acknowledgment, we submit, that further supports the conclusion that Section 441b is only intended to prohibit corporate contributions undertaken with a clear partisan purpose. Thus, the Commission's regulations also provide that "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station . . . is not a contribution. . . ." 11 C.F.R § 100.7(b)(2). Further-

more, even if the broadcasting station is owned or controlled by a political party, committee or candidate, the editorial and broadcast function still do not fall into the category of a proscribed contribution so long as the "news story" is a "bona fide news account" that takes place as "part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area. . . ." 11 C.F.R. 100.7(b)(2).

In our judgment, the foregoing section of the Commission's rules not only acknowledges the journalistic aspect of broadcasting, but plainly indicates that news coverage, and other types of broadcaster treatment of political candidates and committees on an evenhanded basis, fall outside the restrictions on corporate contributions. In other words, Section 100.7(b) seems to be saying that the dangers of a contribution being made to influence an election are removed when conditions exist that effectively insure that candidates are treated in a non-partisan fashion. In short, this Commission rule has elements that are roughly analogous to the "equal opportunities" concept that is the cornerstone of political broadcast statutory law. (see p. 14 infra).

Finally, we should also mention that the Commission has adopted regulations that specifically provide that broad-

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casters may stage debates between political candidates -- which may involve the provision of free broadcast time -- if such debates include at least two candidates and the debates are non-partisan, in the sense that they do not promote or advance one candidate over another. See 11 C.F.R. §110.7(b)(21) and §110.13. Again, the Commission's regulations recognize that a non-partisan approach to providing broadcast time takes the activity outside the statutory prohibition.

Based on the foregoing, it is fair to conclude that two principal assumptions must underlie any determination that the offer of free or reduced-rate broadcast time to political candidates represents an illegal contribution. First, it would have to be assumed that a non-discriminatory offer of free or reduced-rate time represented a "contribution" or "expenditure" specifically "in connection with" a federal election, as that phrase is used in 2 U.S.C. 441b. Second, and perhaps more important from the broadcaster's standpoint, it would have to be assumed that such "contributions" or "expenditures" of broadcast time are "made for the purpose of influencing" the nomination or election of a particular Federal candidate or candidates.

We do not believe, however, that either 2 U.S.C. §441b or the Commission's regulations were intended to cover and should be interpreted to presume that the provision of free time or reduced rates by broadcast stations represents either a contribution "in connection with" a specific election

or an attempt "to influence" such election. On the contrary, the explicit language of the statute and its legislative history, as construed by the courts and as reflected in the Commission's own regulations, demonstrate that the prohibition on corporate contributions was intended to restrict a highly partisan form of corporate activity -- what has been characterized by the courts as "active electioneering." Broadcaster policies that provide free time or reduced rates to political candidates and political parties are simply not the form of partisan electioneering contemplated by the statute. Rather, such policies and practices represent a natural extension of a broadcast licensee's fundamental "public trustee" role.[1/] Moreover, as we now show, even if this were not the case, important provisions of federal communications law add specific substance to a broadcaster's public trustee role in the area of political broadcasting. These provisions not only provide a legal framework to insure that broadcast time is extended to political candidates on a non-partisan, non-discriminatory basis, but, in certain circumstances, to affirmatively require broadcast stations to provide time to political candidates on a favorable basis.

1/ See Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

The Applicable Federal Communications Law

The Federal Communications Commission (FCC) recently reminded broadcast licensees of the importance attached to political broadcasting:

> "Political broadcasting is recognized by the Commission, the Congress and the U.S. Supreme Court as one of the most important services a station can provide to the public. The Commission has stated that it is one of the major elements of a station's service 'because of the contribution broadcasting can make to an informed electorate -- in turn so vital to the proper functioning of our Republic.'" 1/

A decision by the FEC effectively prohibiting broadcast licensees from offering reduced rates or free time to political candidates -- by construing such offers as illegal corporate contributions -- would run directly counter to the entire history and tradition of federal communications law. Thus, almost from the beginning of broadcast regulation, Congress has expressed a desire, and the courts and the FCC have interpreted the applicable communications law, to encourage the widespread use of broadcast facilities by political candidates.

1/ The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36382 (August 16, 1978); See also Licensee Responsibility As To Political Broadcasts, 15 FCC 2d 94 (1968); Red Lion Broadcasting Company, Inc. v. FCC, 395 U.S. 367-94 (1969).

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The principal statutory provision governing the use of broadcast facilities by candidates for elective public office is contained in Section 315 of the Communications Act (47 U.S.C. §315). The "equal opportunities" concept embodied in Section 315 provides that when a broadcaster allows one legally qualified candidate to use his facilities he must afford the same or "equal opportunities"[1/] to all other legally qualified candidates for the same office. This "equal opportunities" concept has been extended by the FCC to cover major political parties and the supporters of political candidates. See Nicholas Zapple, 23 FCC 2d 707 (1970); First Fairness Report, 36 FCC 2d 40, 47-50 (1972).

1/ In essence, "equal opportunities" is interpreted to mean the same basic treatment -- i.e., the same rates, similar audience potential, the same production conditions, etc. See The Law of Political Broadcasting and Cablecasting, supra., 43 Fed. Reg. at 36369-72. The FCC's rules and regulations confirm this statutory requirement. See, e.g., Section 73.1940(c) of the FCC's rules (47 C.F.R. §73.1940(c)) which states that:

> "In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office." (emphasis added)

Moreover, pursuant to longstanding FCC policy, broadcast licensees are required, under their public trustee responsibilities, to provide time generally to political candidates -- either on a free or paid basis. See, e.g., Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 113-14 n. 12 (1973); Farmers Educational and Cooperative Union v. WDAY, 360 U.S. 525, 534 (1959); FCC Memorandum on Second Sentence of Section 315(a) in Political Broadcasts -- Equal Time, Hearings Before the Subcomm. of the House Comm. on Interstate and Foreign Commerce, 88th Cong., 1st Sess., on H.J. Res. 247, pp. 84-90. Indeed, in a particularly pertinent manifestation of this policy, the FCC has held that a licensee may, if he elects, fulfill his political broadcasting obligations entirely through offers of free time to candidates. See Rockefeller for Governor Campaign, 59 FCC 2d 649 (1976); Charles O. Porter, Esq., 35 FCC 2d 664 (1972).[1/]

It is also significant that at the time Congress amended the federal election laws to, inter alia, institute a system of public financing and establish the Federal Election

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1/ In this respect, it should be noted that the offer of free broadcast time is, in some situations, not only encouraged but required. Thus, certain educational and public broadcasting stations (some of which may be incorporated) are precluded from accepting compensation for broadcast time, and must therefore fulfill their political broadcasting obligations through the offer of free broadcast time. See, e.g., In Re Complaint by Senator James L. Buckley, 63 FCC 2d 952 (1976).

Commission, it also amended the federal communications law in certain key respects. Thus, in a further reflection of its basic policy to promote political broadcasting,[1/] Congress, in the Federal Election Campaign Act of 1971 (FECA), enacted Section 312(a)(7) of the Communications Act requiring broadcast licensees to grant "reasonable access to or to permit purchase of reasonable amounts of time" for the use of their stations' facilities by legally qualified candidates for federal elective office. The plain language of the statute makes it clear that, in requiring broadcasters to make time available to federal elective candidates, licensees were given the choice of making such time available on either a free or paid basis.[2/]

1/ The Senate Report explaining the FECA amendments to the Communications Act is literally peppered with references to the general view that one of the principal means to combat the escalating costs of campaigning is to encourage the availability of free time and reduced advertising rates for political candidates. See Senate Report No. 92-96, May 6, 1971, pp. 20-26, 27-33. For example, at one point the Report states that "Congress, the Federal Communications Commission, candidates, political scientists, broadcasters, and the public all agree that . . . the 1960 suspension [of 315(a) of the Communications Act which resulted in "substantial amounts of free time to the candidates of the major parties" Id. at p. 21] . . . served the public interest." Id. at 22. Also, the partial suspension of 47 U.S.C. §315(a) favored by the Senate (but ultimately rejected) was accompanied by the following summation: "Your Committee has been assured by the networks that in addition to the time made available to major party candidates, free time will also be made available on a fair basis to the candidate of any significant third party . . . ." Id. at 27. (emphasis added)

2/ As the FCC has observed, "if a station [under this provision] gives away enough time to a candidate to amount to 'reasonable access' . . . it is not required to sell time to the

(footnote continued on next page)

The Federal Election Campaign Act of 1971 also amended the Communications Act in regard to the rates political candidates can be charged for broadcast time. Under preexisting law, a broadcast station was not permitted to charge a political candidate any more than it would charge a regular commercial advertiser. See Rates for Political Broadcasts, 11 RR 1501 (1954). This concept of establishing protective rates for political candidates purchasing broadcast time was, however, significantly expanded in the communications law amendments flowing from the FECA of 1971. Thus, during specified periods -- 45 days prior to a primary election and 60 days prior to a general election -- broadcast stations must, at a minimum, now give candidates the benefit of volume discounts that a regular commercial advertiser might not be able to obtain. See 47 U.S.C. §315(b).[1/]

(footnote continued from previous page)

candidate. . ." The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36383 (August 16, 1978). See also, Dennis J. Morrisseau (WCAX-TV), 48 FCC 2d 436 (1974). This interpretation was recently confirmed by a decision of the United States Court of Appeals for the District of Columbia Circuit. See Kennedy for President Committee v. FCC, Case No. 80-1549 (D.C. Cir., May 31, 1980, opinion filed, August 6, 1980).

1/ Senator Mathias, in reviewing the bill that ultimately passed the Senate (S.382), summarized the question of rates as follows: "A candidate for Federal office running under the purview of S.382 could have three possible charges given to him by a licensee within the stated 105-day period prior to election [a combination of the 45-day and 60-day periods]: [a] The station can give the candidate free time, [b] charge lower than lowest unit cost, or [c] the lowest unit cost." 117 Cong. Rec. S26107 (July, 1971). (emphasis added).

In pertinent part, Section 315(b) of the Communications Act now states that during the specified 45- and 60-day periods the "charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed . . . the lowest unit charge of the station for the same class and amount of time for the same period."[1/] This language has been interpreted to require broadcast stations to afford political candidates the benefit of volume discounts not typically available to regular commercial advertisers. To illustrate, the FCC offers the following example:

> A station sells a single fixed position 1-minute announcement in prime time to regular commercial advertisers for $15. If, however, an advertiser buys 500 spots, he receives a discounted per-spot rate amounting to $10 for each spot (his total purchase price for the 500 spots being $5,000). If a political candidate buys time in the same time period he is entitled to buy a single spot for only $10. 2/

In effect, under this statutory requirement a political candidate is entitled to the most favorable rate available on a station -- but without purchasing the volume that a commer-

---

1/ Rather than selecting an "arbitrary discount rate applicable to all stations," (Senate Report No. 92-96, p. 27) Congress choose the lowest unit rate type of discount because it would be better pegged to the commercial practices of individual stations, taking into account their differences. 2d.

2/ See The Law of Political Broadcasting and Cablecasting, 43 Fed. Reg. 36342, 36377 (August 16, 1978).

cial advertiser would have to purchase to receive the same rate.[1/]

Conclusions

The pertinent Federal election law is intended to prohibit corporate contributions made in connection with a specific election for the presumed purpose of influencing that election. It is not intended to cover non-partisan activities by federal broadcast licensees.

The pertinent Federal communications law has, from the beginning, recognized the special status of political candidates -- requiring, inter alia, that the use of broadcast facilities by such candidates be carried out on a non-partisan, non-discriminatory, evenhanded basis. Thus, Section 315(a) of the Communications Act provides that if any licensee permits a legally qualified candidate to use a broadcasting station, "he shall afford equal opportunities to all other such candidates . . ." 47 U.S.C. §315(a). As such, Section 315(a)

1/ Senator Baker, who opposed the "lowest unit rate" provision, characterized the concept as "establish[ing] a public subsidy in favor of the political advertiser" (Senate Report No. 92-96, supra, at p. 95); commenting further that the provision established "a discount for volume advertising for those who do not advertise in volume [thereby] creating a discriminatory preference in favor of political candidates." (Id). Implicitly acknowledging the nature of Senator Baker's dissent to this provision, the full Senate report elsewhere refers to the lowest unit rate concept as "requiring preferential advertising rates." Id. at 28.

specifically forbids favored treatment of competing political candidates. If a broadcaster affords free time to one candidate, he must afford free time to all opposing candidates; and, if he affords a particular reduced rate to one candidate, he must afford the same rate for the same time to all opposing candidates. In short, the broadcaster is, by law, forbidden to favor one candidate over another in terms of the time afforded and the rate (if any) paid. This, we submit, insures that time provided -- even if it is construed to be a commercial commodity of value made available to candidates by corporate broadcast licensees -- cannot be construed to be "given" in connection with the election of a particular candidate or with the purpose of influencing a particular election.

Moreover, as we have noted, Congress, the Courts and the FCC have all affirmatively encouraged or sanctioned broadcaster efforts to make their facilities available to political candidates -- on a paid or free basis. This tradition has recently been further expanded by legislation requiring broadcast stations to afford federal candidates "reasonable access" to paid or free broadcast time, and a new amendment to the Communications Act mandating that, during certain periods prior to an election, broadcast stations must extend to all legally qualified candidates the "lowest unit rate" when they sell broadcast time to such candidates -- a provision that, in practice, amounts to a statutory discount.

Against the foregoing legal background, supplemented by a long journalistic and public interest tradition of affording political candidates broadcast time on a fair and nondiscriminatory basis, it would be especially inappropriate to so fundamentally uproot that process by declaring broadcaster policies of offering reduced rates or free political time to be illegal under federal election laws. Unquestionably, the overall public interest consequences would be devestating, effectively precluding the kind of unfettered political discussion that has long been encouraged on the broadcast media. In our view, such a result is not only unintended by key provisions of federal election law, it is in direct conflict with key provisions of federal communications law.

In conclusion, we believe it is well to emphasize, in this context, the urgings of the FCC (on the occasion of the FEC's consideration of its debate regulations):

> "We believe that to read Section 441(b) as prohibiting broadcaster gifts of time to candidates would place that provision into direct conflict with Section 312(a)(7) of the Communications Act to give the Commission authority to revoke a station license for:
>
> > ...willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of the broadcasting station by a legally qualified candidate for Federal Elective office on behalf of his candidacy.
>
> The amendment is part of Title I of the FECA, P.L. 92.225. We do not believe that Congress would, in the same Act, require broadcasters to give time to Federal candidates, and simultaneously declare those gifts to be crimes."

Accordingly, for the reasons herein stated, ABC urges the Commission to dismiss and/or terminate this matter without further action.

Respectfully submitted,

AMERICAN BROADCASTING COMPANIES, INC.

By Everett H. Erlick
Robert J. Kaufman
Mark D. Roth
Sam Antar
1330 Avenue of the Americas
New York, New York 10019

James A. McKenna, Jr.
Carl R. Ramey
McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

March 11, 1981

Its Attorneys

Before The
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

In the Matter of	)	
	)	
Notification of "Reason To Believe Finding" Directed Against The ABC Television Network	)	MUR No. 1166

MEMORANDUM OF
AMERICAN BROADCASTING COMPANIES, INC.

American Broadcasting Companies, Inc. ("ABC"), by its attorneys, and pursuant to Section 111.6 of the Commission's Rules and Regulations, hereby submits the following Memorandum in response to the above-referenced "Notice of Reason to Believe" and in support of its position that this matter should be dismissed and/or terminated without further Commission action.

Preliminary Statement

By letter dated January 8, 1981, ABC was advised[1/] that the Commission had found reason to believe that ABC may have made a corporate political "contribution" in violation

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1/ The letter and accompanying Report were directed to the ABC Television Network, an operational division of American Broadcasting Companies, Inc.

of 18 U.S.C. §610 (currently 2 U.S.C. §441b(a)).[1/] The basis for this alleged violation stems from ABC's decision to afford a political discount to the Democratic National Committee (DNC) in connection with the DNC's 1975 Telethon on the ABC Television Network.

According to the accompanying Commission Report, this matter was referred to the Office of General Counsel by the Audit Division, based on an audit of the DNC covering the period January 1, 1976 through September 30, 1978. Apparently, during the course of that audit, the Commission staff reviewed a letter dated February 13, 1976 from ABC to the Chairman of the Democratic National Committee. In that letter, ABC indicated it was extending its customary one-third political discount to the DNC in connection with the DNC's 1975 Telethon broadcast on the ABC Television Network between July 26-27, 1975.[2/]

Based on the foregoing, the Report states that the Commission has found reason to believe that ABC's offer of a reduced rate in connection with the DNC's purchase of time on the ABC Television Network represented an impermissible

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1/ The letter received by ABC actually referred to an alleged violation having been made by the "Republican National Committee" under "2 U.S.C. §41a(f)." We assume, however, based on the accompanying Report, that these references are simply inaccurate.

2/ ABC's one-third political discount is uniformly applied to all bona fide political purchases, whether such purchases are made by an authorized national political party such as the DNC or by individual political candidates.

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political "contribution." The reasoning appears to proceed as follows: (1) ABC is a corporation; (2) a corporate contribution in connection with a federal election[1/] is prohibited by 2 U.S.C. §441b; and (3) a discount offered by an incorporated broadcast licensee in connection with the sale of air time to a political candidate or political party constitutes a contribution under 2 U.S.C. §441b.

As set forth hereinafter, ABC does not believe that the offer of broadcast time to political candidates or political parties -- on either a free or special discount basis -- constitutes a political "contribution" prohibited by federal law. On the contrary, in our view, such offers of time -- extended uniformily to all similarly situated candidates and major political parties -- represent a unique public service by federally licensed broadcast entities plainly outside the scope of 2 U.S.C. §441b and demonstrably compatible with the public interest. Moreover, we respectfully submit that important provisions and policies of federal communications law, <u>affirmatively</u> <u>encourage</u> broadcast licensees to afford political candidates favorable treatment in terms of both the availability and the cost of radio and television facilities for political uses. Indeed, a finding by this agency that the provision of free time or reduced rates to political parties or candidates represents an illegal political

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1/ The Report notes that the DNC Telethon was intended to assist the DNC to retire past election campaign debts.

"contribution," would be at odds with public policy and significantly disserve the overall public interest. By effectively foreclosing such offers in the future,[1/] the cost of political campaigning would dramatically escalate and, because of such increased costs, the use of the broadcast media by political candidates would significantly decrease.

Finally, a ruling that effectively precluded broadcast stations from offering free time or reduced rates to political candidates would necessarily intrude upon the long-established discretion and, we submit, First Amendment prerogatives of radio and television licensees to afford candidates broadcast time to discuss issues in a manner not limited to regular news coverage.

The Applicable Federal Elections Law

According to the Commission's January 8, 1981 Report, a political discount by a broadcast corporation raises the specific issue of the applicability of 2 U.S.C. §441b(a), which provides that:

> "It is unlawful . . . for any corporation . . . to make a contribution or expenditure in connection with any election to any political office, or in connection with

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1/ Presumably, and somewhat anomolously, such a ruling would not extend to those many radio and television licensees who are not incorporated but operate, instead, as partnerships, unincorporated associations, joint ventures or single proprietorships.

> any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever . . . to make a contribution or expenditure in connection with any election at which presidential or vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section . . . ."

The term "contribution or expenditure" is defined in 2 U.S.C. §441(b)(2) to include:

> ". . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section."1/

Utilizing the foregoing definitional framework, the Report concludes that a political discount of broadcast time represents the type of impermissible corporate contribution covered by 2 U.S.C. §441b. Thus, it appears that broadcast time is being construed as an ordinary commodity that <u>must</u> be offered to political candidates and political parties

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1/ See also 2 U.S.C. §431(e) which defines a contribution as a "gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing" an election. The Commission's Rules and Regulations incorporate like provisions and definitions. See, e.g., 11 C.F.R. §§100.(7)(1), 114.1(a)(1) and 114.2.

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on the same basis as it is offered to all other persons or entities that purchase broadcast time. For instance, the Report indicates that even if ABC gave uniform political discounts to all political committees (and presumably all political candidates) it still could not avoid the impact of 2 U.S.C. §441b unless a "political discount" was offered to ABC's non-political (i.e., regular commercial) clients.

Other than bare statutory language, the Report is conspicuously silent as to any other provisions of law or applicable precedent directly bearing upon this matter. The one exception is a brief reference to a 1978 Advisory Opinion in a non-broadcast case where the Commission indicated that "a discount below the 'usual and normal' charge [should be viewed as] a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients." See, AO 1978-45, August 28, 1978.

In AO 1978-45, a development company that owned an outdoor billboard proposed to provide space on the billboard to a particular campaign committee at a rate below the normal commercial rate. The Commission found that the proposal would constitute a discount below the "usual and normal charge" not routinely offered in the vendor's ordinary course of business to non-political candidates. Since the development company did not, in the ordinary course of its business, offer the same reduced rate to commercial advertisers, the Commission concluded that it "would view the net difference

between the two rates as an in-kind contribution from the development company to Citizens" ["Citizens for Coleman," the named political committee] -- i.e., a corporate contribution prohibited by 2 U.S.C. §441b.

In essence, therefore, the Report relies exclusively upon the superficial thrust of the cited statutory language. In our view, this is patently insufficient to conclude that the mere provision of broadcast time, on a free or reduced-rate basis, constitutes an impermissible political contribution (as distinguished from a third party corporate purchase or sponsorship of broadcast time for a partisan political purpose). A brief review of the underlying purposes of 2 U.S.C. §441b confirms this view.

The origin, legislative history and purpose of what is now 2 U.S.C. §441b is discussed in detail in United States v. C.I.O., 335 U.S. 106 (1948) and in United States v. International Union United Auto Aircraft and Agr. Implement Workers, 352 U.S. 567 (1957). With respect to corporations, the Supreme Court in United States v. C.I.O. states:

> "This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties

without the consent of the stockholders." 335 U.S. 106, 113. 1/

The essential elements of an offense under 2 U.S.C. §441b have been summarized as follows: "(1) a contribution or expenditure, (2) by a [corporation or] labor organization, (3) for the purpose of active electioneering (4) in connection with an election for named federal offices described in the statute." United States v. Pipefitters Local Union No. 562, 434 F.2d 1116, 1121 (8th Cir. 1970). In other words, the activity Congress sought to restrict by 2 U.S.C. §441b was of a highly partisan nature -- "active electioneering" in connection with specific federal elections.2/

This construction, defining the kind of restricted activity by the nature (as well as the fact) of the "contribution," is also reflected in pertinent provisions of the Commission's

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1/ See also United States v. International Union where the Court observed that the "evil at which Congress has struck . . . is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." 352 U.S. at 589. Significantly, U.S. v. International Union involved a situation where a union had utilized its dues to sponsor commercial television broadcasts designed to influence the electorate to select certain candidates for Congress. The Court's extensive discussion of that situation, including elaborate citations to pertinent legislative history, focused on the purchase of broadcast time by a union or corporation without indicating that the provision of broadcast time by a broadcast licensee was even remotely analogous.

2/ As the court emphasized in United States v. Boyle, 338 F. Supp. 1028, 1033 (D. D.C. 1972), it is only when a corporation or union is engaged in "active electioneering" on behalf of particular Federal candidates "with the idea of reaching the public at large. . .that the statute's proscription. . .becomes applicable."

rules and regulations designed to implement Section 441b and other federal election laws. For instance, Section 100.7(1) of the Commission's Rules, paralleling Section 431(e) of the statute, defines a "contribution" as including payments, services or other things of value which are made "for the purpose of influencing any election for Federal office. . . ." 11 C.F.R. §100.7(1) (emphasis added). Similarly, "a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee . . . of a political party is not a contribution if it is specifically designated to defray any cost incurred for construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office." 11 C.F.R. §100.7(b)(12) (emphasis added).

It may be especially noteworthy that separate Commission regulations specifically recognize the inherent journalistic function that is being performed when broadcast facilities are used for certain forms of political discussion -- a regulatory acknowledgment, we submit, that further supports the conclusion that Section 441b is only intended to prohibit corporate contributions undertaken with a clear partisan purpose. Thus, the Commission's regulations also provide that "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station . . . is not a contribution. . . ." 11 C.F.R § 100.7(b)(2). Further-

more, even if the broadcasting station is owned or controlled by a political party, committee or candidate, the editorial and broadcast function still do not fall into the category of a proscribed contribution so long as the "news story" is a "bona fide news account" that takes place as "part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area. . . ." 11 C.F.R. 100.7(b)(2).

In our judgment, the foregoing section of the Commission's rules not only acknowledges the journalistic aspect of broadcasting, but plainly indicates that news coverage, and other types of broadcaster treatment of political candidates and committees on an evenhanded basis, fall outside the restrictions on corporate contributions. In other words, Section 100.7(b) seems to be saying that the dangers of a contribution being made to influence an election are removed when conditions exist that effectively insure that candidates are treated in a non-partisan fashion. In short, this Commission rule has elements that are roughly analogous to the "equal opportunities" concept that is the cornerstone of political broadcast statutory law. (see p. 14 infra).

Finally, we should also mention that the Commission has adopted regulations that specifically provide that broad-

casters may stage debates between political candidates -- which may involve the provision of free broadcast time -- if such debates include at least two candidates and the debates are non-partisan, in the sense that they do not promote or advance one candidate over another. See 11 C.F.R. §110.7(b)(21) and §110.13. Again, the Commission's regulations recognize that a non-partisan approach to providing broadcast time takes the activity outside the statutory prohibition.

Based on the foregoing, it is fair to conclude that two principal assumptions must underlie any determination that the offer of free or reduced-rate broadcast time to political candidates represents an illegal contribution. First, it would have to be assumed that a non-discriminatory offer of free or reduced-rate time represented a "contribution" or "expenditure" specifically "in connection with" a federal election, as that phrase is used in 2 U.S.C. 441b. Second, and perhaps more important from the broadcaster's standpoint, it would have to be assumed that such "contributions" or "expenditures" of broadcast time are "made for the purpose of influencing" the nomination or election of a particular Federal candidate or candidates.

We do not believe, however, that either 2 U.S.C. §441b or the Commission's regulations were intended to cover and should be interpreted to presume that the provision of free time or reduced rates by broadcast stations represents either a contribution "in connection with" a specific election

or an attempt "to influence" such election. On the contrary, the explicit language of the statute and its legislative history, as construed by the courts and as reflected in the Commission's own regulations, demonstrate that the prohibition on corporate contributions was intended to restrict a highly partisan form of corporate activity -- what has been characterized by the courts as "active electioneering." Broadcaster policies that provide free time or reduced rates to political candidates and political parties are simply not the form of partisan electioneering contemplated by the statute. Rather, such policies and practices represent a natural extension of a broadcast licensee's fundamental "public trustee" role.[1/] Moreover, as we now show, even if this were not the case, important provisions of federal communications law add specific substance to a broadcaster's public trustee role in the area of political broadcasting. These provisions not only provide a legal framework to insure that broadcast time is extended to political candidates on a non-partisan, non-discriminatory basis, but, in certain circumstances, to affirmatively require broadcast stations to provide time to political candidates on a favorable basis.

1/ See Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

The Applicable Federal Communications Law

The Federal Communications Commission (FCC) recently reminded broadcast licensees of the importance attached to political broadcasting:

> "Political broadcasting is recognized by the Commission, the Congress and the U.S. Supreme Court as one of the most important services a station can provide to the public. The Commission has stated that it is one of the major elements of a station's service 'because of the contribution broadcasting can make to an informed electorate -- in turn so vital to the proper functioning of our Republic.'" 1/

A decision by the FEC effectively prohibiting broadcast licensees from offering reduced rates or free time to political candidates -- by construing such offers as illegal corporate contributions -- would run directly counter to the entire history and tradition of federal communications law. Thus, almost from the beginning of broadcast regulation, Congress has expressed a desire, and the courts and the FCC have interpreted the applicable communications law, to encourage the widespread use of broadcast facilities by political candidates.

1/ The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36382 (August 16, 1978); See also Licensee Responsibility As To Political Broadcasts, 15 FCC 2d 94 (1968); Red Lion Broadcasting Company, Inc. v. FCC, 395 U.S. 367-94 (1969).

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The principal statutory provision governing the use of broadcast facilities by candidates for elective public office is contained in Section 315 of the Communications Act (47 U.S.C. §315). The "equal opportunities" concept embodied in Section 315 provides that when a broadcaster allows one legally qualified candidate to use his facilities he must afford the same or "equal opportunities"[1/] to all other legally qualified candidates for the same office. This "equal opportunities" concept has been extended by the FCC to cover major political parties and the supporters of political candidates. See Nicholas Zapple, 23 FCC 2d 707 (1970); First Fairness Report, 36 FCC 2d 40, 47-50 (1972).

1/ In essence, "equal opportunities" is interpreted to mean the same basic treatment -- i.e., the same rates, similar audience potential, the same production conditions, etc. See The Law of Political Broadcasting and Cablecasting, supra., 43 Fed. Reg. at 36369-72. The FCC's rules and regulations confirm this statutory requirement. See, e.g., Section 73.1940(c) of the FCC's rules (47 C.F.R. §73.1940(c)) which states that:

> "In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office." (emphasis added)

Moreover, pursuant to longstanding FCC policy, broadcast licensees are required, under their public trustee responsibilities, to provide time generally to political candidates -- either on a free or paid basis. See, e.g., Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 113-14 n. 12 (1973); Farmers Educational and Cooperative Union v. WDAY, 360 U.S. 525, 534 (1959); FCC Memorandum on Second Sentence of Section 315(a) in Political Broadcasts -- Equal Time, Hearings Before the Subcomm. of the House Comm. on Interstate and Foreign Commerce, 88th Cong., 1st Sess., on H.J. Res. 247, pp. 84-90. Indeed, in a particularly pertinent manifestation of this policy, the FCC has held that a licensee may, if he elects, fulfill his political broadcasting obligations entirely through offers of free time to candidates. See Rockefeller for Governor Campaign, 59 FCC 2d 649 (1976); Charles O. Porter, Esq., 35 FCC 2d 664 (1972).[1/]

It is also significant that at the time Congress amended the federal election laws to, inter alia, institute a system of public financing and establish the Federal Election

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1/ In this respect, it should be noted that the offer of free broadcast time is, in some situations, not only encouraged but required. Thus, certain educational and public broadcasting stations (some of which may be incorporated) are precluded from accepting compensation for broadcast time, and must therefore fulfill their political broadcasting obligations through the offer of free broadcast time. See, e.g., In Re Complaint by Senator James L. Buckley, 63 FCC 2d 952 (1976).

Commission, it also amended the federal communications law in certain key respects. Thus, in a further reflection of its basic policy to promote political broadcasting,[1/] Congress, in the Federal Election Campaign Act of 1971 (FECA), enacted Section 312(a)(7) of the Communications Act requiring broadcast licensees to grant "reasonable access to or to permit purchase of reasonable amounts of time" for the use of their stations' facilities by legally qualified candidates for federal elective office. The plain language of the statute makes it clear that, in requiring broadcasters to make time available to federal elective candidates, licensees were given the choice of making such time available on either a free or paid basis.[2/]

1/ The Senate Report explaining the FECA amendments to the Communications Act is literally peppered with references to the general view that one of the principal means to combat the escalating costs of campaigning is to encourage the availability of free time and reduced advertising rates for political candidates. See Senate Report No. 92-96, May 6, 1971, pp. 20-26, 27-33. For example, at one point the Report states that "Congress, the Federal Communications Commission, candidates, political scientists, broadcasters, and the public all agree that . . . the 1960 suspension [of 315(a) of the Communications Act which resulted in "substantial amounts of free time to the candidates of the major parties" Id. at p. 21] . . . served the public interest." Id. at 22. Also, the partial suspension of 47 U.S.C. §315(a) favored by the Senate (but ultimately rejected) was accompanied by the following summation: "Your Committee has been assured by the networks that in addition to the time made available to major party candidates, free time will also be made available on a fair basis to the candidate of any significant third party . . . ." Id. at 27. (emphasis added)

2/ As the FCC has observed, "if a station [under this provision] gives away enough time to a candidate to amount to 'reasonable access' . . . it is not required to sell time to the

(footnote continued on next page)

The Federal Election Campaign Act of 1971 also amended the Communications Act in regard to the rates political candidates can be charged for broadcast time. Under preexisting law, a broadcast station was not permitted to charge a political candidate any more than it would charge a regular commercial advertiser. See Rates for Political Broadcasts, 11 RR 1501 (1954). This concept of establishing protective rates for political candidates purchasing broadcast time was, however, significantly expanded in the communications law amendments flowing from the FECA of 1971. Thus, during specified periods -- 45 days prior to a primary election and 60 days prior to a general election -- broadcast stations must, at a minimum, now give candidates the benefit of volume discounts that a regular commercial advertiser might not be able to obtain. See 47 U.S.C. §315(b).[1/]

(footnote continued from previous page)

candidate. . ." The Law of Political Broadcasting and Cablecasting: A Political Primer, 43 Fed. Reg. 36342, 36383 (August 16, 1978). See also, Dennis J. Morrisseau (WCAX-TV), 48 FCC 2d 436 (1974). This interpretation was recently confirmed by a decision of the United States Court of Appeals for the District of Columbia Circuit. See Kennedy for President Committee v. FCC, Case No. 80-1549 (D.C. Cir., May 31, 1980, opinion filed, August 6, 1980).

1/ Senator Mathias, in reviewing the bill that ultimately passed the Senate (S.382), summarized the question of rates as follows: "A candidate for Federal office running under the purview of S.382 could have three possible charges given to him by a licensee within the stated 105-day period prior to election [a combination of the 45-day and 60-day periods]: [a] The station can give the candidate free time, [b] charge lower than lowest unit cost, or [c] the lowest unit cost." 117 Cong. Rec. S26107 (July, 1971). (emphasis added).

In pertinent part, Section 315(b) of the Communications Act now states that during the specified 45- and 60-day periods the "charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed . . . the lowest unit charge of the station for the same class and amount of time for the same period."[1/] This language has been interpreted to require broadcast stations to afford political candidates the benefit of volume discounts not typically available to regular commercial advertisers. To illustrate, the FCC offers the following example:

> A station sells a single fixed position 1-minute announcement in prime time to regular commercial advertisers for $15. If, however, an advertiser buys 500 spots, he receives a discounted per-spot rate amounting to $10 for each spot (his total purchase price for the 500 spots being $5,000). If a political candidate buys time in the same time period he is entitled to buy a single spot for only $10. 2/

In effect, under this statutory requirement a political candidate is entitled to the most favorable rate available on a station -- but without purchasing the volume that a commer-

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1/ Rather than selecting an "arbitrary discount rate applicable to all stations," (Senate Report No. 92-96, p. 27) Congress choose the lowest unit rate type of discount because it would be better pegged to the commercial practices of individual stations, taking into account their differences. 2d.

2/ See The Law of Political Broadcasting and Cablecasting, 43 Fed. Reg. 36342, 36377 (August 16, 1978).

cial advertiser would have to purchase to receive the same rate.[1/]

Conclusions

The pertinent Federal election law is intended to prohibit corporate contributions made in connection with a specific election for the presumed purpose of influencing that election. It is not intended to cover non-partisan activities by federal broadcast licensees.

The pertinent Federal communications law has, from the beginning, recognized the special status of political candidates -- requiring, inter alia, that the use of broadcast facilities by such candidates be carried out on a non-partisan, non-discriminatory, evenhanded basis. Thus, Section 315(a) of the Communications Act provides that if any licensee permits a legally qualified candidate to use a broadcasting station, "he shall afford equal opportunities to all other such candidates . . ." 47 U.S.C. §315(a). As such, Section 315(a)

1/ Senator Baker, who opposed the "lowest unit rate" provision, characterized the concept as "establish[ing] a public subsidy in favor of the political advertiser" (Senate Report No. 92-96, supra, at p. 95); commenting further that the provision established "a discount for volume advertising for those who do not advertise in volume [thereby] creating a discriminatory preference in favor of political candidates." (Id). Implicitly acknowledging the nature of Senator Baker's dissent to this provision, the full Senate report elsewhere refers to the lowest unit rate concept as "requiring preferential advertising rates." Id. at 28.

specifically forbids favored treatment of competing political candidates. If a broadcaster affords free time to one candidate, he must afford free time to all opposing candidates; and, if he affords a particular reduced rate to one candidate, he must afford the same rate for the same time to all opposing candidates. In short, the broadcaster is, by law, forbidden to favor one candidate over another in terms of the time afforded and the rate (if any) paid. This, we submit, insures that time provided -- even if it is construed to be a commercial commodity of value made available to candidates by corporate broadcast licensees -- cannot be construed to be "given" in connection with the election of a particular candidate or with the purpose of influencing a particular election.

Moreover, as we have noted, Congress, the Courts and the FCC have all affirmatively encouraged or sanctioned broadcaster efforts to make their facilities available to political candidates -- on a paid or free basis. This tradition has recently been further expanded by legislation requiring broadcast stations to afford federal candidates "reasonable access" to paid or free broadcast time, and a new amendment to the Communications Act mandating that, during certain periods prior to an election, broadcast stations must extend to all legally qualified candidates the "lowest unit rate" when they sell broadcast time to such candidates -- a provision that, in practice, amounts to a statutory discount.

Against the foregoing legal background, supplemented by a long journalistic and public interest tradition of affording political candidates broadcast time on a fair and nondiscriminatory basis, it would be especially inappropriate to so fundamentally uproot that process by declaring broadcaster policies of offering reduced rates or free political time to be illegal under federal election laws. Unquestionably, the overall public interest consequences would be devestating, effectively precluding the kind of unfettered political discussion that has long been encouraged on the broadcast media. In our view, such a result is not only unintended by key provisions of federal election law, it is in direct conflict with key provisions of federal communications law.

In conclusion, we believe it is well to emphasize, in this context, the urgings of the FCC (on the occasion of the FEC's consideration of its debate regulations):

> "We believe that to read Section 441(b) as prohibiting broadcaster gifts of time to candidates would place that provision into direct conflict with Section 312(a)(7) of the Communications Act to give the Commission authority to revoke a station license for:
>
> > ...willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of the broadcasting station by a legally qualified candidate for Federal Elective office on behalf of his candidacy.
>
> The amendment is part of Title I of the FECA, P.L. 92.225. We do not believe that Congress would, in the same Act, require broadcasters to give time to Federal candidates, and simultaneously declare those gifts to be crimes."

Accordingly, for the reasons herein stated, ABC urges the Commission to dismiss and/or terminate this matter without further action.

Respectfully submitted,

AMERICAN BROADCASTING COMPANIES, INC.

By Everett H. Erlick
Robert J. Kaufman
Mark D. Roth
Sam Antar
1330 Avenue of the Americas
New York, New York 10019

James A. McKenna, Jr.
Carl R. Ramey
McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

March 11, 1981

Its Attorneys

LAW OFFICES
McKENNA, WILKINSON, & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036

8204035261 9

FIRST CLASS MAIL

William E. Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.

HAND DELIVER

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes
Franklin Mint
Franklin Center, PA 19091

Re: MUR 1166

Dear Mr. Andes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

Should [illegible] this matter, [illegible] assigned to this [illegible]

Garry [illegible]

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

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. Charles L. Andes Franklin Mint Franklin Center, PA 19091
3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. 649705 INSURED NO.

1. (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)

POSTMARK

CLERK'S INITIALS

UNCLAIMED UNDELIVERABLE BECAUSE

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

Re: MUR-1166 Taylor

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

8204035521

William E. Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.
7th Floor

HAND DELIVER

912445 CC 4120

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

James P. Mercurio
(202) 857-6092

March 6, 1981

RECEIVED
GENERAL COUNSEL
1981 MAR 9 P12:49

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

Re: Franklin Mint Corporation
MUR 1166 and MUR 1180

Dear Mr. Steele:

We are counsel for Franklin Mint Corporation in the above matters. The company's letter of representation pursuant to 11 CFR §111.23 will follow.

On March 3, 1981, Franklin Mint Corporation received a letter in MUR 1180 which stated that the Federal Election Commission on December 2, 1980 had found reason to believe that the company had violated 2 USC §441b(a) by making certain payments to the Republican National Committee. The letter requests that the company submit any factual or legal material that it believes relevant within ten (10) days.

On January 13, 1981, the company received a letter in MUR 1166 which stated that the Federal Election Commission on December 2, 1980 found reason to believe that "the Republican National Committee had violated 2 USC §41a(f)." A copy of this letter is enclosed. On March 4, 1981 the counsel for the Commission advised us that, although it did not so state, the enclosed letter was intended to notify Franklin Mint Corporation that the Commission had found reason to believe that it had violated 2 USC §441b(a) by making certain payments to the Democratic National Committee. Apparently, a memorandum that accompanied this letter did discuss a possible violation by Franklin Mint, but since the covering letter itself did not allege a violation by Franklin Mint Corporation the matter did not receive the attention it otherwise would have received, and legal counsel was consulted in this matter only after the company received the letter in MUR 1180 on March 3, 1981.

8 2 0 4 0 3 5 2 6 2 2

As I advised Messrs. Whitehead and Taylor during a conference with them on March 5, 1981, we have not had an opportunity to look into this matter with our client or to consider whether any factual or legal material should be submitted on behalf of Franklin Mint Corporation, or whether the possibility of informal conciliation should be pursued. In addition, previous commitments would make it very difficult to adhere to the deadline set forth in the Commission's letter in MUR 1180. We respectfully request, therefore, that the deadline for submission of any factual or legal materials and any discussion of informal conciliation in both MUR 1166 and 1180 be extended to April 13, 1981.

Thank you for your consideration in these matters.

Sincerely,

James P. Mercurio

JPM:kcm
Enclosure
cc: Thomas Whitehead
William Taylor

2 2 4 0 5 5 2 6 2 3

Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building, 1815 H Street, N. W.
Washington, D. C. 20006

William Taylor, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

BD471

4147

FRANKLIN MINT CORPORATION

FRANKLIN CENTER, PENNSYLVANIA 19091

9 March 1981

81 MAR 11 PM 2:25

Federal Election Commission
1325 "K" Street, NW
Washington, DC 20463

RE: Franklin Mint Corporation
MUR 1166 and MUR 1180

Dear Sirs:

Pursuant to 11 CFR §111.23, Franklin Mint Corporation hereby advises that it wishes to be represented by counsel with regard to the above matters.

The name, address and telephone number of our counsel is as follows:

James P. Mercurio
Arent, Fox, Kintner, Plotkin & Kahn
1815 "H" Street, NW
Washington, DC 20006
202/857-6092

The foregoing counsel is authorized to receive any and all notifications and all communications from the Commission on behalf of Franklin Mint Corporation in these matters.

Sincerely,

FRANKLIN MINT CORPORATION

Donald S. Winograd
Secretary

DSW:cm

cc: J. P. Mercurio

3 2 0 4 0 3 5 2 6 2 5

8 2 0 4 0 3 0 1 6 2 6

Federal Election Commission
1325 "K" Street, NW
Washington, DC 20463

March 5, 1981

HAND DELIVERY

Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Attention: William Taylor
Frances Hagen

Re: MUR 1166 and 1206

Gentlemen:

On behalf of the Democratic National Committee, and in accordance with telephone conversations with William Taylor and Frances Hagen, I hereby request an extension of time in which to respond to the Commission's Notification of Reason to Believe in MUR 1166 and 1206 until April 8, 1981.

As you are doubtless aware, new officers of the DNC were just elected last Friday, February 27, and I have subsequently been asked to undertake responsibilities as general counsel to the DNC. As you can imagine, because of the departure of some DNC personnel and the process of selection of replacements, it would be extremely difficult to become sufficiently familiar with these matters to immediately formulate a proper response. We believe that the requested extension would serve the interests of both the Commission and the DNC in a prompt and satisfactory resolution of these matters. It would help to avoid an inadequately informed and analyzed response which would likely require later supplementation.

I realize that extensions have already been granted until March 6 for MUR 1166 and March 13 for MUR 1206, but I believe that the change of circumstances described above makes a further extension reasonable and necessary. I would appreciate notification of action on this request by telephone at 331-4646.

Yours truly,
DEMOCRATIC NATIONAL COMMITTEE

Anthony S. Harrington
General Counsel

ASH/clh

MAR 5 P12:41
GENERAL COUNSEL
RECEIVED

3 2 0 4 0 3 5 0 5 2 8

HAND DELIVERY

Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Attention: William Taylor

CCM 4073

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036

(202) 861-2600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TAPTICH
NORMAN P. LEVENTHAL
STEVEN A. LERMAN
R. MICHAEL SENKOWSKI
VIRGINIA S. CARSON
LAWRENCE J. MOVSHIN
JAMES S. BLASZAK
W. KENNEDY KEANE
DENNIS P. CORBETT
JAMES H. DeGRAFFENREIDT, JR.

DIRECT DIAL NO.
861-2622

March 3, 1981

RECEIVED
GENERAL COUNSEL
1981 MAR 3 P4:17

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1166

Dear Sir:

This letter is written on behalf of American Broadcasting Companies, Inc. to respectfully request a further, brief, one-week extension of time in which to respond to the Commission's January 8, 1981 letter concerning the above-referenced matter.

By letter dated February 27, 1981, the Commission approved an extension of time to and including March 4, 1981 in which to file ABC's response. Although major progress has been made in completing ABC's response, one additional week -- to and including Wednesday, March 11, 1981 -- is needed to circulate the present draft response among key personnel in New York City (some of whom are available on highly restricted schedules); and to, thereupon, make any changes and additions resulting from this necessary review process.

As previously noted, ABC is highly desirous of presenting a full explanation of what we regard as important principles of both federal election and communications law involved in this case. The additional brief extension requested herein will help insure that objective.

0 2 0 4 0 3 5 2 6 2 9

Accordingly, for the foregoing reasons, ABC respectfully requests that the time for submitting its initial response in this matter be extended by one additional week -- i.e., to and including March 11, 1981.

Very truly yours,

Carl R. Ramey
Counsel for American Broadcasting Companies, Inc.

cc: William E. Taylor, Esq.

82040352530

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 27, 1981

CERTIFIED MAIL
RETURN RECEIPPT REQUESTED

Lynda S. Mounts, Esquire
Cadwalder, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Ms. Mounts:

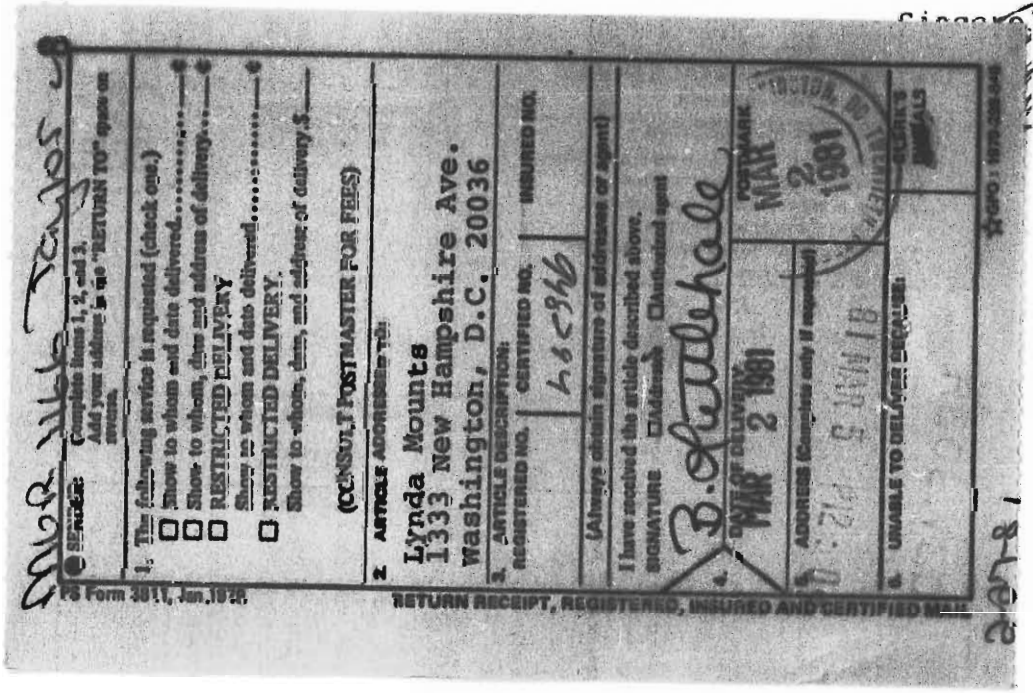
This is in reference to your letter of February 6, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe.

The Commission has decided, after considering your request, to approve an extension of time in which to respond to the Commission's Notification of Reason to Believe. As requested, your client has until the close of business on March 6,1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

N. Steele
Counsel



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPPT REQUESTED

Lynda S. Mounts, Esquire
Cadwalder, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Ms. Mounts:

This is in reference to your letter of February 6, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe.

The Commission has decided, after considering your request, to approve an extension of time in which to respond to the Commission's Notification of Reason to Believe. As requested, your client has until the close of business on March 6,1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 27, 1981

CERTIFIED MAIL
RETURN RECEIPPT REQUESTED

Carl R. Ramey, Esquire
McKenna, Wilkinson and Kettner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. Ramey:

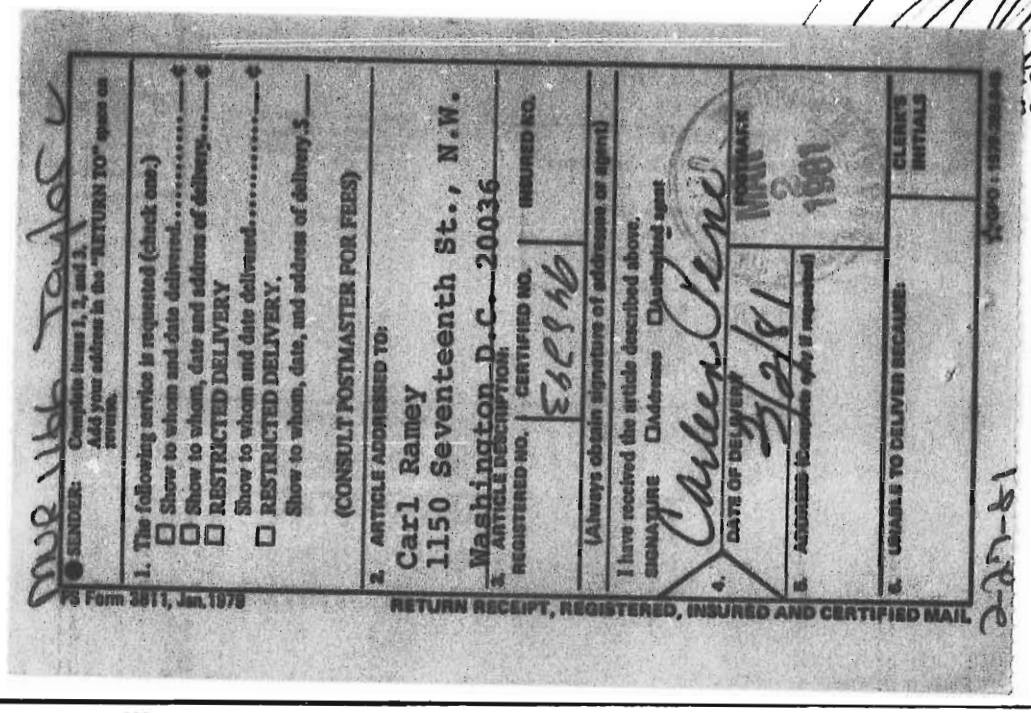
This is in reference to your letter of February 6,1981, requesting an extension of time in which to respond to the Commission's Notification of Reason To Believe.

The Commission has decided, after considering your request, to approve an extension of time in which to respond to the Commission's Notification of Reason To Believe. As requested, your client has until the close of business on March 4,1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPPT REQUESTED

Carl R. Ramey, Esquire
McKenna, Wilkinson and Kettner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. Ramey:

This is in reference to your letter of February 6,1981, requesting an extension of time in which to respond to the Commission's Notification of Reason To Believe.

The Commission has decided, after considering your request, to approve an extension of time in which to respond to the Commission's Notification of Reason To Believe. As requested, your client has until the close of business on March 4,1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2204035253 4

BEFORE THE FEDERAL ELECITON COMMISSION

In the Matter of	)	
	)	MUR 1166
American Broadcasting Companies	)	
Democratic National Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 25, 1981, the Commission decided by a vote of 4-0 to take the following actions regarding MUR 1166:

1. Approve the request of the American Broadcasting Companies, Inc., for an extension of time until the close of business on March 4, 1981, in which to respond to the Commission's Notification of Reason to Believe.

2. Approve the request of the Democratic National Committee for an extension of time until the close of business on March 6, 1981, in which to respond to the Commission's Notification of Reason to Believe.

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

Attest:

2/25/81
Date

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

Received in Office of the Commission Secretary: 2-20-81, 3:09
Circulated on a 48 hour vote basis: 2-23-81, 11:00

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY mc

DATE: FEBRUARY 25, 1981

SUBJECT: MUR 1166 - COMMENTS

Attached is a copy of Commissioner Reiche's vote sheet with comments regarding needed correction in proposed letter.

ATTACHMENT:
Copy of Vote Sheet

8 2 0 4 0 3 5 2 6 3 6

KOO

48 HOUR TALLY SHEET

FEDERAL ELECTION COMMISSION

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

Date and Time Transmitted Monday, February 23, 19
11:00

81 FEB 23 P12:43

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

Commissioner McGARRY, AIKENS, TIERNAN, THOMSON, REICHER, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY Wednesday, February 25, 1981
11:00

MUR No. 1166 - Memorandum to the Commission - 02/20/81

(✓) I approve the recommendation

DRR ( ) I object to the recommendation

COMMENTS: Date is incorrect in proposed letter to DNC. Forget objection - I understand the correction will be made. DRR

Date: 2/23/81 Signature: Frank P. Reiche

A DEFINITE VOTE IS REQUIRED AND ALL SHEETS SIGNED AND DATED. PLEASE RETURN ONLY THE VOTE SHEETS TO THE OFFICE OF THE COMMISSION SECRETARY NO LATER THAN THE DATE AND TIME SHOWN ABOVE.

February 20, 1981

MEMORANDUM TO: Marjorie w. Emmons

FROM: Elissa T. Garr

SUBJECT: : MUR 1166

Please have the attached Memo distributed tothe Commission on a 48 hour tally basis. Thank you.

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 FEB20 P3:09

February 20, 1981

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1166 Democratic National Committee

The respondents, the American Broadcasting Companies, Inc., ("ABC"), and the Democratic National Committee, ("DNC"), have requested in writing that they be given to March 4th and March 6th, 1981, respectively, in which to respond to the Commission's Notification of Reason to Believe, (Attachments I and II).

The attorney for ABC, Carl Ramey, requests a continuance to March 4, 1981, on the grounds that one of the matters he is handling for ABC has been set down before the Supreme Court for oral argument at the end of February. Moreover, Mr. Ramey contends that this additional time will enable him to present a full explanation of the important communications issues involved in this matter.

The respondent, the DNC, has requested, through its attorney, a continuance to March 6, 1981. The DNC points to the fact that the Commission has raised several complex matters, virtually all of which occurred in 1976, and the fact that it has had difficulty in locating the people involved and the documents relating to this matter as the reason for its request.

After considering the requests of ABC and the DNC, the Office of General Counsel recommends that the Commission approve their requests and allow ABC until the close of business on March 4, 1981, and the DNC until the close of business on March 6, 1981, in which to respond to the Commission's finding of reason to believe.

RECOMMENDATIONS

1. Approve the request of the American Broadcasting Companies, Inc., for an extension of time until the close of business on March 4, 1981, in which to respond to the Commission's Notification of Reason to Believe.

2. Approve the request of the Democratic National Committee for an extension of time until the close of business on March 6, 1981, in which to respond to the Commission's Notification of Reason to Believe.

Attachments:

I - Letter of Respondent ABC
II - Letter of Respondent DNC
III - Letter to Carl R. Ramey
IV - Letter to Lynda Mounts

3 2 0 4 0 3 5 2 6 4 0

3926

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 861-2600

JAMES A. McKENNA, JR.
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VIRGINIA S. CARSON
LAWRENCE J. MOVSHIN
JAMES S. BLASZAK
W. KENNEDY KEANE
DENNIS P. CORBETT
JAMES H. DeGRAFFENREIDT, JR.

DIRECT DIAL NO.
861-2622

February 6, 1981

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
81 FEB 6 P3:24

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1166

Dear Sir:

This letter is written on behalf of American Broadcasting Companies, Inc. to respectfully request a further three-week extension of time in which to respond to the Commission's January 8, 1981 letter concerning the above-referenced matter.

By a letter dated January 21, 1981, ABC requested that the time for responding be extended to February 11, 1981. In the meantime, however, other ABC matters being handled by undersigned counsel have intervened to greatly complicate the orderly completion of this matter. In particular, a Supreme Court case underway since last summer has, within the last week, been set for oral argument at the end of this month. The setting of argument also means, under new Supreme Court rules, that ABC's reply brief in that case now has a specific deadline of one week in advance of the argument date. As a result, an otherwise reasonably routine February schedule has suddenly become quite complicated.

As previously noted, the Commission's inquiry raises a number of matters that require thorough examination. Moreover, ABC earnestly wishes to present a full explanation

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of the important communications issues involved in this case and the additional time herein requested will greatly facilitate that objective.

Accordingly, for the foregoing reasons, ABC respectfully requests that the time for submitting its initial response in this matter be extended to and including March 4, 1981.

Very truly yours,

Carl R. Ramey

Carl R. Ramey
Counsel for American Broadcasting Companies, Inc.

cc: William E. Taylor, Esq.

GCC # 3925

Cadwalader, Wickersham & Taft

1333 New Hampshire Ave., N.W.

Washington, D.C. 20036

WASHINGTON PARTNERS
H. CLAYTON COOK, JR.
RONALD D. EASTMAN
ROBERT T. LASKY
JAMES W. MOORMAN
JAMES A. ROSSI
THOMAS A. RUSSO
STEPHEN N. SHULMAN
FRANK WILLE

NEW YORK PARTNERS
RICHARD A. ABORN
JACK ADELMAN
WENDELL B. ALCORN, JR.
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JOHN BOYER
PETER MEGARGEE BROWN
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DANIEL C. DRAPER
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DAVID W. FEENEY
P. JAY FLOCKEN
JOHN F. FRITTS
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DONALD G. GLASCOFF, JR.
STEPHEN P. GOTTLIEB
ALAN WINSTON GRANWELL
GRANT B. HERING
LEONARD E. KUST
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WILLIAM J. MOSS
EARL H. NEMSER
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ROY ALBERT POVELL
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EDWIN DAVID ROBERTSON
HADLEY S. ROE
HAVEN C. ROOSEVELT
STEVEN A. RUSKIN
JEROME SHELBY
GERALD T. SLEVIN
RICHARD T. TAYLOR
COURTLAND W. TROUTMAN
THEODORE A. ULRICH
JONATHAN M. WAINWRIGHT
JOHN J. WALSH
MALCOLM P. WATTMAN
RICHARD J. WIENER
ARNOLD J. ZURCHER, JR.

Telephone: (202) 293-6300
Telex: 710-822-1934
Rapifax: (202) 293-6290
Xerox: (202) 387-1417

SPECIAL COUNSEL
DUDLEY J. CLAPP, JR.
(NOT ADMITTED D.C. BAR)

COUNSEL
HAROLD W. CONROY
RICHARD N. CROCKETT
HENRY ALLEN MARK
HORACE P. MOULTON
JOHN A. SULLIVAN

ONE WALL STREET
NEW YORK, N.Y. 10005
(212) 785-1000
CABLE: LABELLUM
TELEX: 129146/667465

249 ROYAL PALM WAY
PALM BEACH, FLA. 33480
(305) 655-9500
TWX: 510-952-7628

ROY ALBERT POVELL
RESIDENT PARTNER

February 6, 1981

William E. Taylor, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 1166

Dear Mr. Taylor:

On behalf of the Democratic National Committee (DNC), we would like to request an extension of time until March 11, 1981 to respond to the Commission's "reason to believe" notification in the above referenced matter. Although we have been diligent in our efforts to gather the information necessary to respond, we will not be able to complete our inquiries by February 15, 1981. As you know, the Commission raised questions about several complex matters, virtually all of which occurred in 1976. Because personnel at the DNC has changed over the past four years, we have not been able to locate all of the people involved and documents related to these matters.

Because of the complexity of the issues, and the difficulty in gathering information, we request an extension of time until March 6, 1981.

Very truly yours,

Lynda S. Mounts

Ronald D. Eastman
Lynda S. Mounts

Counsel for the Democratic National Committee

RDE/LSM/dw

81 FEB 6 P3:05
GENERAL COUNSEL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPPT REQUESTED

Carl R. Ramey, Esquire
McKenna, Wilkinson and Kettner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. Ramey:

This is in reference to your letter of February 6,1981, requesting an extension of time in which to respond to the Commission's Notification of Reason To Believe.

The Commission has decided, after considering your request, to approve an extension of time in which to respond to the Commission's Notification of Reason To Believe. As requested, your client has until the close of business on March 4,1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

3 2 0 4 0 3 5 2 5 4 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPPT REQUESTED

Lynda S. Mounts, Esquire
Cadwalder, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Ms. Mounts:

This is in reference to your letter of February 6, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe.

The Commission has decided, after considering your request, to approve an extension of time in which to respond to the Commission's Notification of Reason to Believe. As requested, your client has until the close of business on March 4,1981, to respond.

If you have any questions, please contact William Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 10, 1981

Lynda S. Mounts, Esquire
Counsel for the Democratic
National Committee
Cadwalader, Wickershaw and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Ms. Mounts:

Pursuant to your letter of February 2, 1981, addressed to William E. Taylor, Esq. of this office, please find the enclosed additional material. We hope this information will be satisfactory but, should you have any questions, please call Mr. Taylor at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

Enclosure

Federal Election Commission
(8/77)

P 1 4 0 3 5 2 4 0

C33
5

DNC

Schedule of Confirmed Entities who Transferred Monies to DNC In Payment of Books + Service

	1	2	3	4
	Amount	Date	Date Incorp.	
Campaign Associates Inc.	1500	1/12/76	3/24/70	
Arizona Education ASSN	11500	1/30/76	12/1/39	
Construction, Production + Maintenance Laborers Union	6500	1/30/76		
Harris, Lee, Elliott Communications Inc	500	1/30/76	2/20/75	
Fire Dart, Inc.	3000	1/30/76	4/19/67	
Student Book Corporation	1500	1/28/76	3/23/75	
Epley Associates, Inc	1500	1/30/76	12/23/75	
Ohio Wesleyan University	1000	2/12/76	8/7/42	
Arizona State AFL CIO	6500	2/12/76		
Goddard Purcell + Brown Inc	6500	1/29/76	12/24/75	
Maurer, Fleisher, Zoss + Anderson, Inc	11500	4/30/76	10/31/75	
Blue Mountain Community College	1000	2/24/76	5/28/63	
Ohio Right To Life Inc	1300	3/2/76	6/30/67	
Indiana Right To Life Inc	650	3/3/76	Inc on ck	
Allen-Russell Ford Inc	1500	5/14/76	12/14/70	
Praeger Publishers Inc	2145	5/14/76	4/28/66	
Weston Associates Inc	4500	6/24/76	3/29/55	
Emery Pratt Company	1500	6/30/76	2/19/24	
Products of Technology	1500	6/30/76	10/18/72	
Monsanto Company	500	9/27/76	10/5/61	
Total 20	40095			

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GCC # 3925

Cadwalader, Wickersham & Taft

1333 New Hampshire Ave., N.W.

Washington, D.C. 20036

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MALCOLM P. WATTMAN
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ARNOLD J. ZURCHER, JR.

Telephone: (202) 293-6300
Telex: 710-822-1934
Replifax: (202) 293-6290
Xerox: (202) 387-1417

SPECIAL COUNSEL
DUDLEY J. CLAPP, JR.
(NOT ADMITTED D.C. BAR)

COUNSEL
HAROLD W. CONROY
RICHARD N. CROCKETT
HENRY ALLEN MARK
HORACE P. MOULTON
JOHN A. SULLIVAN

ONE WALL STREET
NEW YORK, N. Y. 10005
(212) 785-1000
CABLE: LABELLUM
TELEX: 129146/667468

249 ROYAL PALM WAY
PALM BEACH, FLA. 33480
(305) 655-9500
TWX: 510-952-7828

ROY ALBERT POVELL
RESIDENT PARTNER

February 6, 1981

William E. Taylor, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 1166

Dear Mr. Taylor:

On behalf of the Democratic National Committee (DNC), we would like to request an extension of time until March 11, 1981 to respond to the Commission's "reason to believe" notification in the above referenced matter. Although we have been diligent in our efforts to gather the information necessary to respond, we will not be able to complete our inquiries by February 15, 1981. As you know, the Commission raised questions about several complex matters, virtually all of which occurred in 1976. Because personnel at the DNC has changed over the past four years, we have not been able to locate all of the people involved and documents related to these matters.

Because of the complexity of the issues, and the difficulty in gathering information, we request an extension of time until March 6, 1981.

Very truly yours,

Lynda S. Mounts

Ronald D. Eastman
Lynda S. Mounts

Counsel for the Democratic National Committee

RDE/LSM/dw

81 FEB 6 P3:05

8 2 0 4 0 3 5 2 5 4 3

Cadwalader, Wickersham & Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

8204035264 9

William E. Taylor, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

ABC# 392

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036

(202) 861-2600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
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W. KENNEDY KEANE
DENNIS P. CORBETT
JAMES H. DeGRAFFENREIDT, JR.

DIRECT DIAL NO.
861-2622

February 6, 1981

FEB 6 P3:24

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1166

Dear Sir:

This letter is written on behalf of American Broadcasting Companies, Inc. to respectfully request a further three-week extension of time in which to respond to the Commission's January 8, 1981 letter concerning the above-referenced matter.

By a letter dated January 21, 1981, ABC requested that the time for responding be extended to February 11, 1981. In the meantime, however, other ABC matters being handled by undersigned counsel have intervened to greatly complicate the orderly completion of this matter. In particular, a Supreme Court case underway since last summer has, within the last week, been set for oral argument at the end of this month. The setting of argument also means, under new Supreme Court rules, that ABC's reply brief in that case now has a specific deadline of one week in advance of the argument date. As a result, an otherwise reasonably routine February schedule has suddenly become quite complicated.

As previously noted, the Commission's inquiry raises a number of matters that require thorough examination. Moreover, ABC earnestly wishes to present a full explanation

of the important communications issues involved in this case and the additional time herein requested will greatly facilitate that objective.

Accordingly, for the foregoing reasons, ABC respectfully requests that the time for submitting its initial response in this matter be extended to and including March 4, 1981.

Very truly yours,

Carl R. Ramey

Carl R. Ramey
Counsel for American Broadcasting Companies, Inc.

cc: William E. Taylor, Esq.

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 861-2800

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
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CARL R. RAMEY
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W. KENNEDY KEANE
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JAMES H. DeGRAFFENREIDT, JR.

DIRECT DIAL NO.
861-2622

February 6, 1981

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1166

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Very truly yours,

Carl R. Ramey

Carl R. Ramey
Counsel for American Broadcasting Companies, Inc.

cc: William E. Taylor, Esq.

OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

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William E. Taylor, Esq.
Federal Election Commission
7th Floor
1325 K Street, N.W.
Washington, D.C. 20463

Hand Deliver

Gcc# 7014

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

82 FEB 5 P2: 50

James P. Mercurio
(202) 857-6092

February 5, 1982

82 FEB 5 P3: 54

BY HAND

Ms. Marjorie W. Emmons
Secretary
Federal Election Commission
1325 K Street, N.W., 5th Floor
Washington, D. C. 20463

Re: Franklin Mint Corporation
MUR 1166 and 1180

Dear Ms. Emmons:

We are counsel for Franklin Mint Corporation in the above matters.

We have been advised by letters dated January 28, 1982 (in MUR 1180) and January 29, 1982 (in MUR 1166) that the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. §441b has occurred in each of these matters. Under 11 C.F.R. §111.6 a responsive brief would be due on or before February 15, 1982 in each of these matters.

I respectfully request that the time in which a brief may be filed on behalf of Franklin Mint Corporation in both of these matters be extended to and including March 1, 1982. We are unable to file a responsive brief prior to that date because the member of Franklin Mint's Law Department who has responsibility for this matter within the company must be outside of the United States on other business from February 8 through February 22, 1982.

Thank you for your consideration in this matter.

Sincerely,

James P. Mercurio

JPM:kcm
cc: Charles N. Steele, Esquire
William Taylor, Esquire
Thomas Whitehead, Esquire

82040355255

783

RECEIVED
Acc # 7104
82 FEB 5 P12:58

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

James P. Mercurio
(202) 857-6092

February 5, 1982

BY HAND

Ms. Marjorie W. Emmons
Secretary
Federal Election Commission
1325 K Street, N.W., 5th Floor
Washington, D. C. 20463

RECEIVED 82 FEB 5 P3:24

Re: Franklin Mint Corporation
MUR 1166 and 1180

Dear Ms. Emmons:

We are counsel for Franklin Mint Corporation in the above matters.

We have been advised by letters dated January 28, 1982 (in MUR 1180) and January 29, 1982 (in MUR 1166) that the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. §441b has occurred in each of these matters. Under 11 C.F.R. §111.6 a responsive brief would be due on or before February 15, 1982 in each of these matters.

I respectfully request that the time in which a brief may be filed on behalf of Franklin Mint Corporation in both of these matters be extended to and including March 1, 1982. We are unable to file a responsive brief prior to that date because the member of Franklin Mint's Law Department who has responsibility for this matter within the company must be outside of the United States on other business from February 8 through February 22, 1982.

Thank you for your consideration in this matter.

Sincerely,

James P. Mercurio

JPM:kcm
cc: Charles N. Steele, Esquire
William Taylor, Esquire
Thomas Whitehead, Esquire

82040352356

12040352037

Cadwalader, Wickersham & Taft

1333 New Hampshire Avenue, N.W. Washington, D.C. 20036

Ms. Francis Hagan
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
7th Floor

CADWALADER, WICKERSHAM & TAFT
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036

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Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006

RECEIVED

02 FEB 5 P12:58

William Taylor, Esquire
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D. C. 20463

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GCC#3873

Cadwalader, Wickersham & Taft

1333 New Hampshire Ave., N.W.

Washington, D.C. 20036

Telephone: (202) 293-6300
Telex: 710-822-1934
Replifax: (202) 293-6290
Xerox: (202) 387-1417

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SPECIAL COUNSEL
DUDLEY J. CLAPP, JR.
(NOT ADMITTED D.C. BAR)

COUNSEL
HAROLD W. CONROY
RICHARD N. CROCKETT
HENRY ALLEN MARK
HORACE P. MOULTON

ONE WALL STREET
NEW YORK, N.Y. 10005
(212) 785-1000
CABLE: LABELLUM
TELEX: 129146/667465

249 ROYAL PALM WAY
PALM BEACH, FLA. 33480
(305) 655-9500
TWX: 510-952-7628

ROY ALBERT POVELL
RESIDENT PARTNER

February 2, 1981

William E. Taylor, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20036

Re: MUR 1166

Dear Mr. Taylor:

In the "Notification of Reason to Believe Finding" accompanying the Commission's June 8, 1980 letter to the Democratic National Committee (DNC), the Commission alleges that "20 corporate and labor union checks totalling $660.95 received from the sale of books and campaign seminars" are contributions to the DNC. However, we do not believe this constitutes adequate notification of the alleged factual basis supporting the funding, as required by § 111.9 of the Commission's regulations. Without more detail, the DNC cannot identify these checks. Therefore, in order that it may fully respond to the Commission's request for information, the DNC requests an itemization of the payor, the date of each check and the amount of each check.

Very truly yours,

Lynda Mounts

Lynda S. Mounts

Counsel for the Democratic National Committee

LSM/dw

FEB 2 P2:57

Cadwalader, Wickersham & Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

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William E. Taylor, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20036

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Telephone: (202) 293-6300
Telex: 710-822-1934
Rapifax: (202) 293-6290
Xerox: (202) 387-1417

SPECIAL COUNSEL
DUDLEY J. CLAPP, JR.
(NOT ADMITTED D.C. BAR)

COUNSEL
HAROLD W. CONROY
RICHARD N. CROCKETT
HENRY ALLEN MARK
HORACE P. MOULTON

ONE WALL STREET
NEW YORK, N.Y. 10005
(212) 785-1000
CABLE: LABELLUM
TELEX: 129148/667468

249 ROYAL PALM WAY
PALM BEACH, FLA. 33480
(305) 655-9500
TWX: 510-952-7628

ROY ALBERT POVELL
RESIDENT PARTNER

January 27, 1981

Mr. John McGarry
Chairman
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR 1166

Dear Mr. McGarry:

On behalf of the Democratic National Committee (DNC), we would like to request an extension of time to respond to the Commission's letter, dated January 8, 1981, in the above-referenced matter. In its letter, the Commission (1) advised the DNC that the Commission has found reason to believe that the DNC violated 2 U.S.C. § 4416(a) and 2 U.S.C. § 434(b) and (2) provided the DNC 10 days to respond.

Due to the press of other matters, the DNC did not refer your letter to counsel until January 26. Because of the complexity of this matter, we request an extension of time until February 15, 1981 to respond.

Sincerely,

Lynda S. Mounts

Ronald D. Eastman
Lynda S. Mounts
Counsel for the Democratic National Committee

RDE/LSM/dw
cc: William E. Taylor
Office of General Counsel

81 JAN 29 AM 10:46

Cadwalader, Wickersham & Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

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27 JAN 1981
200
MENTAL HEALTH

Mr. John McGarry
Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Attention: Mr. William E. Taylor

CCC#
3785

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 861-2600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
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THOMAS N. FROHOCK
CARL R. RAMEY
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DENNIS P. CORBETT
JAMES H. DeGRAFFENREIDT, JR.

DIRECT DIAL NO.
861-2622

January 21, 1981

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1166

Dear Sir:

This letter is written on behalf of American Broadcasting Companies, Inc. to respectfully request an extension of time in which to respond to the Commission's January 8, 1981 letter concerning the above-referenced proceeding.

The Commission's letter was received and first reviewed by ABC officials in New York during the first part of the week of January 12. It was thereupon forwarded to this office. As best we can determine, a response is presently due on or about January 22, 1981.

Because the Commission's inquiry raises a number of matters which should be thoroughly examined before an initial response is formulated, more time beyond the ten days specified is needed. In this regard, it is also ABC's view that the additional time requested will result in a submission that is more beneficial to the Commission.

Accordingly, ABC respectfully requests that the time for submitting any material responsive to the Commission's January 8, 1981 letter be extended to and including February 11, 1981.

Very truly yours,

Carl R. Ramey

Carl R. Ramey
Counsel for American
Broadcasting Companies, Inc.

cc: William E. Taylor, Esq.

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

William E. Taylor, Esq.
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

hand deliver

HCC 3786

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE MWE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY mc

DATE: JANUARY 21, 1981

SUBJECT: LETTER IN RELATION TO MUR 1166 REQUESTING EXTENSION OF RESPONSE TIME

The attached letter from McKenna, Wilkinson & Kittner dated January 21, 1981, requesting an extension of response time in relation to MUR 1166 was addressed to this office by mistake.

It is herewith transferred to your office for appropriate action.

81 JAN 21 P5:12

ATTACHMENT:
Letter

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036

(202) 861-2600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
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W. KENNEDY KEANE
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JAMES H. DeGRAFFENREIDT, JR.

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
81 JAN21 P4:30

DIRECT DIAL NO.
861-2622

January 21, 1981

81 JAN21 P5:12
RECEIVED
GENERAL COUNSEL

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1166

Dear Sir:

This letter is written on behalf of American Broadcasting Companies, Inc. to respectfully request an extension of time in which to respond to the Commission's January 8, 1981 letter concerning the above-referenced proceeding.

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Very truly yours,

Carl R. Ramey

Carl R. Ramey
Counsel for American
Broadcasting Companies, Inc.

cc: William E. Taylor, Esq.

9204035265

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

8 0 0 4 0 5 3 2 5 6 7

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Hand Deliver

81 JAN 21 P4: 30

SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Peter Brooks, President
Brooks Bus Lines Incorporated
421 Washington Street
Paducah, Kentucky 42001

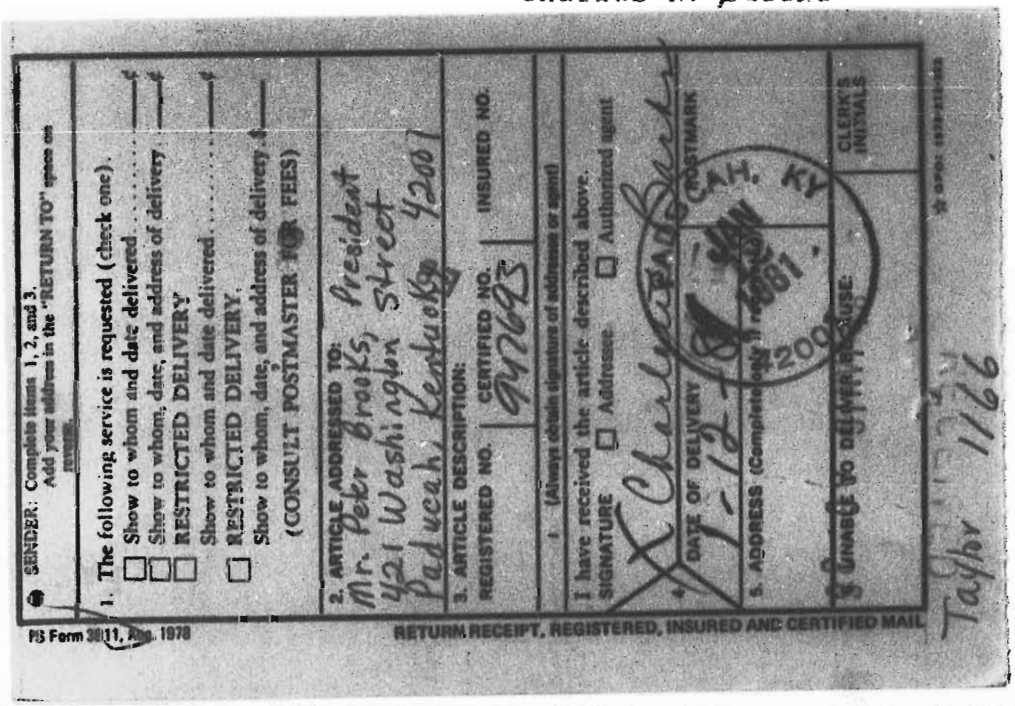
Dear Mr. Brooks:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele


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. Peter Brooks, President
421 Washington Street
Paducah, Kentucky 42001
3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 97693 | INSURED NO.
(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
X Charles Steele
4. DATE OF DELIVERY
1-12-81
POSTMARK
PADUCAH KY JAN 12 1981 42001
5. ADDRESS (Completed only if requested)
6. UNABLE TO DELIVER BECAUSE:
CLERK'S INITIALS
Taylor 1166
PS Form 3811, Aug. 1978
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles V. Lockyer
Merkel Press Inc.
11200 Prospect Hill Road
Glenn Dale, Md. 20769

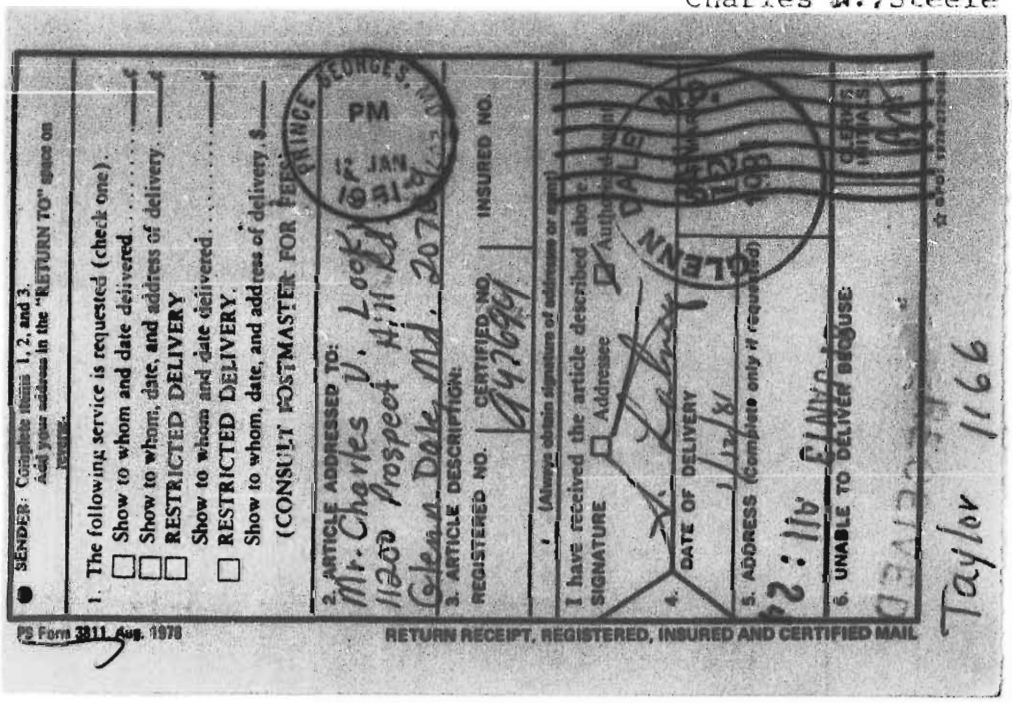
Dear Mr. Lockyer:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele


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. Charles V. Lockyer 11200 Prospect Hill Rd Glenn Dale, Md. 20769
3. ARTICLE DESCRIPTION: REGISTERED NO. CERTIFIED NO. 947696 INSURED NO.
I have received the article described above
SIGNATURE Addressee Authorized agent
4. DATE OF DELIVERY 1/12/81
5. ADDRESS (Complete only if requested)
6. UNABLE TO DELIVER BECAUSE:
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL
PS Form 3811, Aug. 1978
PRINCE GEORGES, MD. PM JAN 15 1981
GLENN DALE MD 20769 JAN 12 1981
CLERK
Taylor 1166

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Baer and McGoldrick
460 Park Avenue
New York, NY 10022

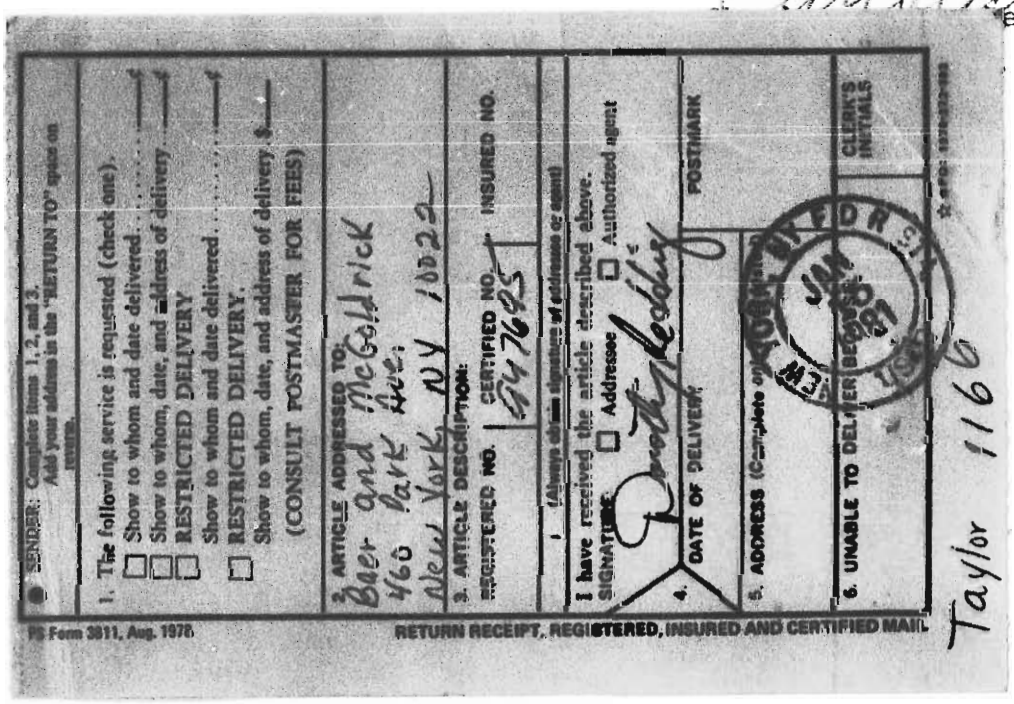
Re: The Estate of Robert W. Dowling

Dear Sirs:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,


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:
Baer and McGoldrick
460 Park Ave.
New York, NY 10022
3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. 947695 INSURED NO.
(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE: Addressee Authorized agent
4. DATE OF DELIVERY POSTMARK
5. ADDRESS (Complete only if requested)
6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS
PS Form 3811, Aug. 1978
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL
Taylor 1166

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. D.J. MacDonald
Emery Air Freight Corporation
P.O. Box 7
Scranton, PA 18501

Dear Mr. MacDonald:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Exhibition Contractors Co.
c/o James A. Brow, Esq.
11 South LaSalle Street
Chicago, Illinois 60603

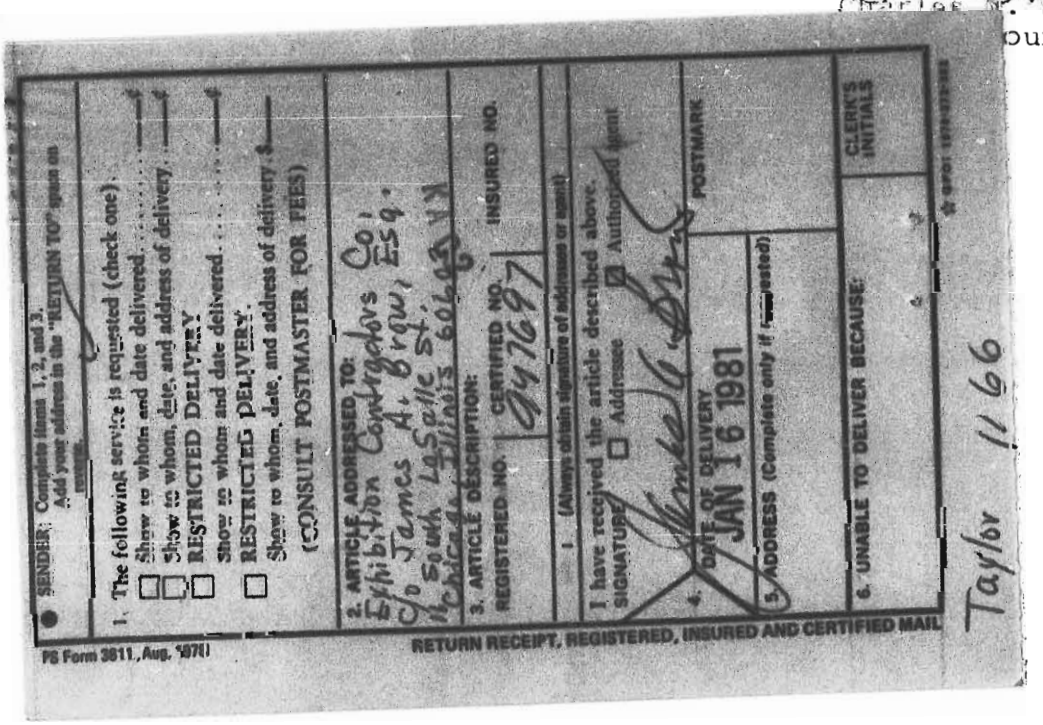
Dear Mr. Brow:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
Counsel


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:
Exhibition Contractors Co.
c/o James A. Brow, Esq.
11 South LaSalle St.
Chicago, Illinois 60603
3. ARTICLE DESCRIPTION:
REGISTERED NO.
CERTIFIED NO. 94697
INSURED NO.
I. (Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE ☐ Addressee ☒ Authorized agent
4. DATE OF DELIVERY JAN 16 1981
POSTMARK
5. ADDRESS (Complete only if requested)
6. UNABLE TO DELIVER BECAUSE:
CLERK'S INITIALS
Taylor 1166
PS Form 3811, Aug. 1976
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Katz
United Exposition Service Co. Inc.
2328 Pacific Avenue
Atlantic City, New Jersey 08401

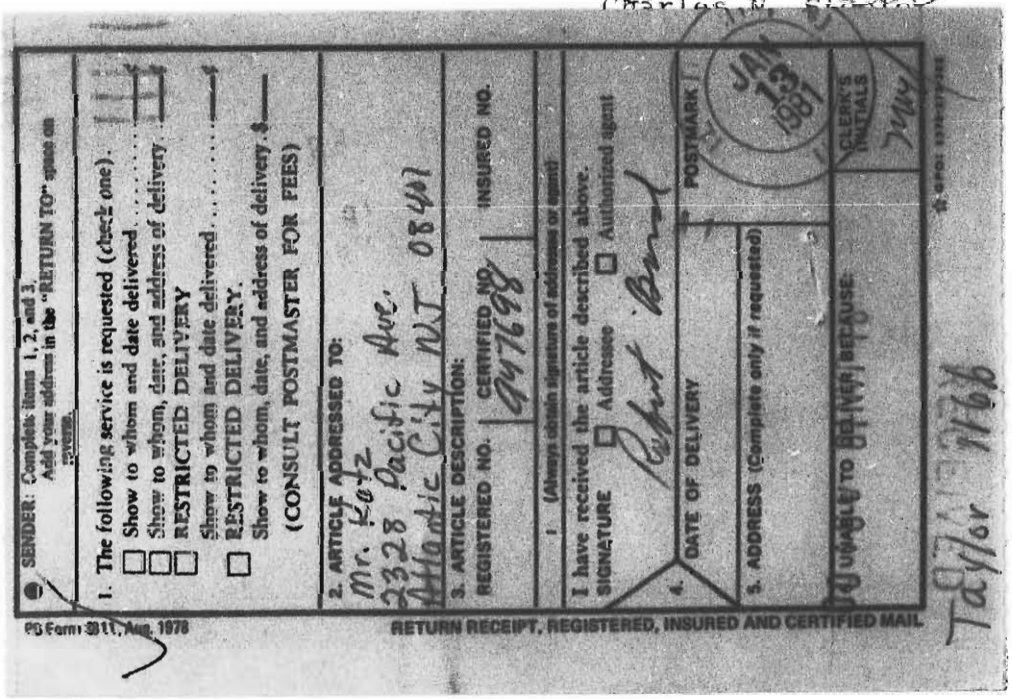
Dear Mr. Katz:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frederick S. Pierce
ABC Television Network
New York, New York 10019

Re: MUR 1166

Dear Mr. Pierce:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

John Warren McGarry
Chairman

8204055257 4

3 2 0 4 0 3 5 2 6 7 5

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:
Mr. Frederick S. Pierce
ABC Television Network
New York, New York 10019

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	947711	

(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)

JAN 19 P12:52

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

NY RADIO GRP

MUR-1166 Taylor

☆GPO : 1978-288-848

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frederick S. Pierce
ABC Television Network
New York, New York 10019

Re: MUR 1166

Dear Mr. Pierce:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

3 2 0 4 0 3 5 2 6 7 6

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE January 8, 1981

MUR NO. 1166
STAFF MEMBER(S) & TEL. NO.
Taylor

RESPONDENT ABC Television Network

SOURCE OF MUR: INTERNALLY GENERATED

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

D.N.C. records show a letter dated February 13, 1976 from the American Broadcasting Company ("ABC") addressed to Mr. Robert Strauss, chairman of the Democratic National Committee, detailing the billing procedure used by ABC in determining the D.N.C.'s bill for service's provided by ABC in the production and broadcasting of the D.N.C.'s 1975 telethon. This letter states that ABC is allowing the D.N.C. a one-third political discount off a gross billing figure of $48,990.69 thus reducing the D.N.C.'s obligation to $32,660.46.

FACTUAL BASIS AND LEGAL ANALYSIS

The ABC Television Networks ("ABC"), a corporation, granted the D.N.C. a one-third "political discount" in February of 1976 for the D.N.C.'s telethon of July 26-27, 1975. 1/ The granting of a political discount raises the specific issue of the applicabilty of 18 U.S.C. § 610 (currently 2 U.S.C. § 441b(a)), which provides that:

> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential election or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for

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1/ The telethon was run by the D.N.C. to help raise money to pay off the 1968 presidential campaign debt.

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> any of the foregoing officers or for any candidate political committee, or other person to accept or receive any contribution prohibited by this section.

The term "contribution or expenditure" is defined in 18 U.S.C. § 610 (currently 2 U.S.C. § 441b) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission has made it clear that: "[it] views a discount below the 'usual and normal' charge to be a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients" (AO 1978-45).2/ Even if ABC gave political discount to all political parties, there would be a corporate contribution unless a "political discount" was offered to ABC's non-political clients. Given the fact that the discount is labeled a "political discount" by ABC, this possibility seems highly unlikely.

It is for the reasons mentioned, supra, that the Commission found reason to believe that ABC violated 18 U.S.C. § 610 for making a corporate contribution in the amount of $16,330.23 to the D.N.C.

2/ 11 CFR § 100.4(a)(iii)(B)(1) defines "usual and normal charge" for goods to mean "the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution."

8 2 0 4 0 5 5 2 6 7 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes
Franklin Mint
Franklin Center, PA 19091

Re: MUR 1166

Dear Mr. Andes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

John Warren McGarry
Chairman

3 2 0 4 0 5 5 2 5 7 0

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. Charles L. Andes
Franklin Mint
Franklin Center, PA 19091

3. ARTICLE DESCRIPTION

REGISTERED NO	CERTIFIED NO	INSURED NO
-	147705	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized Agent

4. DATE OF DELIVERY
11/3/81

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

Re: MUR-1166 Taylor

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes
Franklin Mint
Franklin Center, PA 19091

Re: MUR 1166

Dear Mr. Andes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

3 2 2 4 0 3 5 2 5 8 1

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE January 8, 1981

MUR NO. 1166

RESPONDENT The Franklin Mint

STAFF MEMBER(S) & TEL. NO. Taylor

SOURCE OF MUR: INTERNALLY GENERATED

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

On September 3, 1976, the DNC deposited in its operating account one check for $20,000 from the Franklin Mint Corporation and on October 3, 1976 deposited in its operting account another check for $10,000 from the Franklin Mint Corporation. When the Audit staff inquired about the check, the committee explained that it was a royalty payment resulting from an agrement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Democratic party's campaign symbol: The Committee provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Democratic Presidential and Vice Presidential candidates on the observe and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subject to the Committee's approval.

d) The DNC would agree to designate the medals as the official Presidential Campaign Medals of the Democratic National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the D.N.C.'s agreements, the corporation would:

1) pay the D.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) provide to the D.N.C. at no charge a quantity of medals with a retail value of $5,000.

f) The D.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as reuired under applicable Federal law.

g) The D.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

FACTUAL BASIS AND LEGAL ANALYSIS

Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(a) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the D.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee' in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income ralized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corportion was authorized to produce and market a shirt bearing a candidate's name. The corportion would pay all expenses to produce and sell the shirts and would remit $1 of the $7.95 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign

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materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

It is for the reasons mentioned, above, that the Commission found reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the D.N.C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John White
Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. White:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Democratic National Committee violated 2 U.S.C. § 441b(a) and 2 U.S.C. § 434(b). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

In addition, the Commission found no reason to believe that the D.N.C. violated:

a) 18 U.S.C. § 610 by accepting a corporate contribution from the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, and Exhibition Contractors Co.;

b) 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling;

c) 11 CFR § 114.10(c)(3) for failing to file a statement of settlement with the Commission;

d) 18 U.S.C. § 610 by accepting a corporate contribution from the Emery Air Freight Corporation;

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e) 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Press Inc.;

f) 18 U.S.C. § 610 by receiving a corporate contribution from the Lincoln Telephone and Telegraph Co.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

John Warren McGarry
Chairman

9 2 0 4 0 3 5 2 5 8 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John White
Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. White:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Democratic National Committee violated 2 U.S.C. § 441b(a) and 2 U.S.C. § 434(b). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

In addition, the Commission found no reason to believe that the D.N.C. violated:

a) 18 U.S.C. § 610 by accepting a corporate contribution from the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, and Exhibition Contractors Co.;

b) 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling;

c) 11 CFR § 114.10(c)(3) for failing to file a statement of settlement with the Commission;

d) 18 U.S.C. § 610 by accepting a corporate contribution from the Emery Air Freight Corporation;

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e) 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Press Inc.;

f) 18 U.S.C. § 610 by receiving a corporate contribution from the Lincoln Telephone and Telegraph Co.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

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FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE January 8, 1981

MUR NO. 1166

STAFF MEMBER(S) & TEL. NO. Taylor

RESPONDENT Democratic National Committee

SOURCE OF MUR: INTERNALLY GENERATED

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

On September 3, 1976, the DNC deposited in its operating account one check for $20,000 from the Franklin Mint Corporation (See attachment I), and on October 29, 1976 deposited in its operating account another check for $10,000 from the Franklin Mint Corporation (See attachment I). When the Audit staff inquired about the check, the Committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Democratic party's campaign symbol.

D.N.C. records show a letter dated February 13, 1976 from the American Broadcasing Company ("ABC") addressed to Mr. Robert Strauss, chairman of the Democratic National Committee, detailing the billing procedure used by ABC in determining the D.N.C.'s bill for services provided by ABC in the production and broadcasting of the D.N.C.'s 1975 telethon. This letter states that ABC is allowing the D.N.C. a one-third political discount off a gross billing figure of $48,990.69 thus, reducing the D.N.C.'s obligation to $32,660.46.

The records of the D.N.C. show five debts totaling $194,648.39 incurred by the 1968 Humphrey Campaign for President and assumed by the D.N.C. in 1972. The D.N.C. paid off these debts at less than face value in the following manner:

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b) Brooks Bus Lines Incorporated was owed $1,505.00 and was paid $376.25 on May 21, 1976 ($1,128.75 forgiven).

c) Exhibition Contractors Co. was owed $28,529.28 and was paid $15,000 on March 22, 1976 ($13,529.28 forgiven).

d) Mr. Sol Kitty was owed $77,179.69 and was paid $19,294,29 on June 13, 1977 ($57,884.75 forgiven).

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e) The Estate of Robert Dowling was owed $28,427.98 on August 24, 1978 ($18,762.467 forgiven).

The records of the D.N.C. show that the D.N.C. wrote off their books the following debts they assumed in 1972:

a) Mr. Rufus Harley was owed $350.00 from the Humphrey campaign (debt written off in early 1976).

b) Lincoln Telephone and Telegraph Co. was owed $2,794.69 from the 1968 campaign of Robert Kennedy (debt written off in early 1977).

c) Mr. Richard Neustadt was owed $2,343.56 from the 1972 convention (debt written off in 1977).

In addition, there are two bills arising from the Humphrey campaign of 1968 that are the subject of a dispute between the D.N.C. and the individual creditor. The first is with Merkle Press Inc. who maintains it is owed $128,652.70 from the 1968 presidential campaign. The D.N.C. contends that a debt settlement was reached with Merkle Press in September of 1972 and that the payment of $33,041.44 was accepted in full satisfaction of $128,652.70 debt ($95,611.24 forgiven). The second bill dispute is with the Emery Air Freight Corporation which maintains that it is owed $34,345.06, as opposed to the $31,328.43 the D.N.C. contends is still outstanding. Moreover, no payments have been made to satisfy this debt since August of 1974.

The final matter disclosed in the audit review was the acceptance by the D.N.C. of twenty corporate labor union checks totaling $660.95 received from the sale of books and campaign seminars. The D.N.C. contends that the $660.95 represents a recapture of production costs, but is unable to document its actual production costs.

FACTUAL BASIS AND LEGAL ANALYSIS

I. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

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> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (ao 1979-24), provided that corporate purchaser or lessees pay the usual and normal chrage for the goods or services provided by the committee. See also 11 C.F.R. § 100.7 (a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/ promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks as bargained in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and

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the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the D.N.C. granted the corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee" in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

It is for the reasons mentioned above, that the Commission found reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint.

II. ABC "Political Discount"

The ABC Television Networks ("ABC"), a corporation, granted the D.N.C. a one-third "political discount" in February of 1976 for the D.N.C.'s telethon of July 26-27, 1975. The granting of a political discount raises the specific issue of the applicability of 18 U.S.C. § 610 (currently 2 U.S.C. § 441b(a)), which provides that:

> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential election or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

The term "contribution or expenditure" is defined in 18 U.S.C. § 610 (currently 2 U.S.C. § 441b) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

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The Commission has made it clear that: "[it] views a discount below the 'usual and normal charge' to be a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients" (AO 1978-45).1/ Even if ABC gave political discount to all political parties, there would be a corporate contribution unless a "political discount" was offered to ABC's non-political clients. Given the fact that the discount is labeled a "political discount" by ABC, this possibility seems highly unlikely.

It is for the reasons mentioned, above that the Commission found reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from ABC in the amount of $16,330.23.

III. Debt Settlement and Debts Still Outstanding

The D.N.C. records show that certain corporate and non-corporate debts, arising from the 1968 presidential campaign, were paid off at less than face value or still remain outstanding. The amounts forgiven or still outstanding are as follows:

a) the United Exposition Service Co. Inc. (debt forgiven $28,424.26 on August 3, 1976).

b) Brooks Bus Line Incorporated (debt forgiven $1,128.75 on May 21, 1976).

c) Exhibition Contractors Co. (debt forgiven $13,529.28 on March 22, 1976).

d) Mr. Sol Kitty (debt forgiven $57,884.75 on June 13, 1977).

e) the estate of Robert Dowling (debt forgiven $11,489.76 on August 24, 1978).

f) Merkle Press Inc., (This debt is disputed; D.N.C. contends that $95,611.24 debt was forgiven in September of 1972).

g) Emery Air Frieght Corporation (This debt is disputed, D.N.C. claims it owes $31,328.43; Emery contends $34,345.06 is owed.)

1/ 11 CFR § 100.4(a)(1)(iii)(B)(1) defines "usual and normal charge" for goods to mean "the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution."

(A) Debts Forgiven

The forgiveness of a debt or the failure to satisfy a debt is a contribution by the creditor to the debtor unless the creditor used commercially reasonable efforts, similar to that it would have used in collecting a debt from a non-political debtor. (See 11 CFR § 114.10). Thus, whether the forgiven or unsatisfied debts listed, supra, are contributions depends upon whether the creditor attempted to collect the debt owed by the D.N.C. in a commercially reasonable manner.

The debts in question were from the 1968 presidential campaign of Hubert Humphrey and were assumed by the D.N.C. in 1972. In 1976, eight years after the debts were incurred, the D.N.C. made offers to many of the creditors to settle the debts at less than face value. It would appear that under the circumstances the debt settlements were conducted in a commercially reasonable manner. The debts had been made unenforceable by the statute of limitations (three years in the District of Columbia (See D.C. Ann. § 12-301(7)). Moreover, it is highly unlikely that any creditor's action against the D.N.C. or the Humphrey Campaign, prior to the running of the statute of limitations, would have resulted in the creditors receiving a greater portion of the debt owed them than they received pursuant to the debt settlement agreements. Since the debts appear to have been settled in a commercially reasonable manner, the forgiveness of the outstanding part of the debt would not have resulted in a contribution by each of the creditors of the D.N.C. involved in the debt settlement procedure.

In addition to the fact that the debt in question appear to have been settled in a commercially reasonable manner, two of the creditors were individuals and forgiveness of their debts could not result in a violation of the Act. The debts were incurred in 1968, prior to the enactment of any campaign contribution limitation on individuals. Forgiveness of these debts by the creditors would be a valid contribution to the D.N.C. for the retirement of a debt arising from an election held prior to January 1, 1975 and therefore not subject to any contribution limitations, (11 CFR § 110.1(g)(1) also see AO 1977-52).

Thus, for the reasons mentioned, supra, the Commission found:

a) find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from the United Exposition Service Co. Inc., Brooks Bus Line Incorporated, Exhibition Contractors Co., or Merkle Press Inc.;

b) find no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling;

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11 CFR § 114.10(c)(3) requires a corporation and a debtor to file a statement of settlement with the Commission as part of the debt settlement procedure. Neither the D.N.C., nor any of the creditors filed a statement of settlement with the Commission. However, all of the corporate debts in question were forgiven prior to the effective date of the regulations (April 1977), thus, neither the D.N.C., nor the corporate creditors can be held accountable for failing to file a statement of debt settlement with the Commission, pursuant to 11 CFR § 114.10(c)(3). Therefore, the Commission found no reason to believe that the D.N.C. violated 11 CFR § 114.10(c)(3) for failing to file a statement o settlement with the Commission.

(B) Debts Still Outstanding or Disputed

The debt of Emery Air Freight Corporation ("Emery") and the Merkle Press Inc., ("Merkle") were incurred by the Humphrey Presidential Campaign of 1968 and assumed by the D.N.C. in 1972. The Merkle bill is disputed, for the D.N.C. contends that a settlement of the debt was reached in 1972. The Emery debt is still outstanding; there has been no effort at reaching a debt settlement, no payments have been made on the debt by the D.N.C. since 1974, and Emery has made no effort since November of 1977 to collect the debt. Both debts are unenforceable due to the statute of limitations and were unenforceable when the debts were assumed by the D.N.C. (statute of limitations is three years in the District of Columbia. (See D.C. Ann. § 12-31(7)). Thus, there is no effective commercially reasonable means that Merkle or Emery currently could use, or could have used, at the time the D.N.C. assumed the debt, to collect what are legally unenforceable debts owed by the D.N.C. Therefore, the Commission found, for the reasons mentioned above, no reason to believe the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Press Inc. on the Emery Air Freight Corporation.

(C) Debts Written Off

The records of the D.N.C. show that the D.N.C. wrote off their books debts owed to Mr. Rufus Hartley ($350.00), Mr. Richard Neustadt ($2,343.56), and the Lincoln Telephone and Telegraph Co. ($2,794.69).

Two of the creditors are individuals, and based on the analysis set forth in Section III.A of this report concerning the forgiveness of debts owed to an individual, the Commission found there is no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) or that Mr. Rufus Harley or Mr. Richard Neustadt violated 2 U.S.C. § 441a(a)(1)(A). The third creditor, Lincoln Telephone and Telegraph Co. is a corporation and based on the analysis set forth in Section III.B of this report and the Commission found there is no reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution or that the Lincoln Telephone and Telegraph Co. violated 18 U.S.C. § 610 for making a corporate contribution.

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The final matter disclosed in the audit review was the acceptance by the D.N.C. of 20 corporate and labor union checks totalling $660.95 received from the sale of books and campaign seminars. The D.N.C. contends that the $660.95 represents a recapture of production costs, but is unable to document its actual production costs.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

It appears tht the above payments to the D.N.C. even if to defray the expenses of production incurred by the D.N.C. are contributions to the D.N.C. under the Act. The Commission has previously stated that the mere fact a person receives something of value in return does not render, in and of itself, a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the D.N.C. in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the D.N.C., since the D.N.C. is receiving funds that will be available for its political purpose. See AO's 1976-76, 1979-17, 1978-46, 1975-15. Even if the Commission views these payments as a commercial transaction because of the fact something was received in return for the payment of money to a political committee, to the extent the amount charged exceeds actual costs of the D.N.C., it is a contribution. See 11 C.F.R. § 100.4(a)(1)(iii)(A) and AO's 1979-18, 1976-22.

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

1. reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint.

2. reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the ABC Television Network.

3. no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, and Exhibition Contractors Co.

4. no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling.

5. no reason to believe that the D.N.C. violated 11 CFR § 114.10(c)(3) for failing to file a statement of settlement with the Commission.

6. no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from the Emery Air Freight Corporation or from Merkle Press Inc.

7. no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) by receiving an excess contribution from Mr. Rufus Harley or Mr. Richard Neustadt.

8. no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by receiving a corporate contribution from the Lincoln Telephone and Telegraph Co.

9. reason to believe that the D.N.C. violated 2 U.S.C. § 441b by accepting twenty corporate and labor contributions.

10. reason to believe that the D.N.C. violated 2 U.S.C. § 434(b) for failing to list the receipt of the funds as contributions.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: JANUARY 7, 1981

SUBJECT: MUR 1166 - Memorandum to the Commission, dated 1-2-81; Received in OCS 1-5-81, 10:16

The above-named document was circulated to the Commission on a no-objection basis at 4:00, January 5, 1981.

There were no objections to the letters and notifications, as attached to the Memorandum to the Commission dated January 2, 1981, at the time of the deadline; however, Commissioner Aikens wishes to be recorded as abstaining on this matter.

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RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 JAN 5 A10: 16

January 2, 1981

MEMORANDUM TO: Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1166
The Democratic National Committee

On December 2, 1980, the Commission found reason to believe against the following respondents:

a) The Democratic National Committee;

b) The Franklin Mint; and

c) ABC Television Network

This finding of reason to believe necessitated changing the attached letters and notifications of reason to believe. They are being circulated for your approval on a twenty-four (24) hour no objection basis.

Recommendation:

1. Approve attached letters & notifications

Attachments

1. Letters with accompanying notification.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John White
Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. White:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December , 1980, found reason to believe that the Democratic National Committee violated 2 U.S.C. § 441b(a) and 2 U.S.C. § 434(b). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

In addition, the Commission found no reason to believe that the D.N.C. violated:

a) 18 U.S.C. § 610 by accepting a corporate contribution from the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, and Exhibition Contractors Co.;

b) 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty on the estate of Mr. Robert Dowling;

c) 11 CFR § 114.10(c)(3) for failing to file a statement of settlement with the Commission;

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e) 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Press Inc.;

f) 18 U.S.C. § 610 by receiving a corporate contribution from the Lincoln Telephone and Telegraph Co.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1166

STAFF MEMBER(S) & TEL. NO. Taylor

RESPONDENT Democratic National Committee

SOURCE OF MUR: INTERNALLY GENERATED

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

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Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (ao 1979-24), provided that corporate purchaser or lessees pay the usual and normal chrage for the goods or services provided by the committee. See also 11 C.F.R. § 100.7 (a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/ promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks as bargained in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and

the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the D.N.C. granted the corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee" in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

It is for the reasons mentioned above, that the Commission found reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint.

II. ABC "Political Discount"

The ABC Television Networks ("ABC"), a corporation, granted the D.N.C. a one-third "political discount" in February of 1976 for the D.N.C.'s telethon of July 26-27, 1975. The granting of a political discount raises the specific issue of the applicability of 18 U.S.C. § 610 (currently 2 U.S.C. § 441b(a)), which provides that:

> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential election or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

The term "contribution or expenditure" is defined in 18 U.S.C. § 610 (currently 2 U.S.C. § 441b) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission has made it clear that: "[it] views a discount below the 'usual and normal charge' to be a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients" (AO 1978-45).1/ Even if ABC gave political discount to all political parties, there would be a corporate contribution unless a "political discount" was offered to ABC's non-political clients. Given the fact that the discount is labeled a "political discount" by ABC, this possibility seems highly unlikely.

It is for the reasons mentioned, above that the Commission found reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from ABC in the amount of $16,300.23.

III. Debt Settlement and Debts Still Outstanding

The D.N.C. records show that certain corporate and non-corporate debts, arising from the 1968 presidential campaign, were paid off at less than face value or still remain outstanding. The amounts forgiven or still outstanding are as follows:

a) the United Exposition Service Co. Inc. (debt forgiven $28,417.80 on August 3, 1976).

b) Brooks Bus Line Incorporated (debt forgiven $1,128.75 on May 21, 1976).

c) Exhibition Contractors Co. (debt forgiven $13,529.28 on March 22, 1976).

d) Mr. Sol Kitty (debt forgiven $57,884.75 on June 13, 1977).

e) the estate of Robert Dowling (debt forgiven $11,489.76 on August 24, 1978).

f) Merkle Press Inc., (This debt is disputed; D.N.C. contends that $99,124.28 debt was forgiven in September of 1972).

g) Emery Air Frieght Corporation (This debt is disputed, D.N.C. claims it owes $31,328.43; Emery contends $34,345.06 is owed.)

1/ 11 CFR § 100.4(a)(1)(iii)(B)(1) defines "usual and normal charge" for goods to mean "the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution."

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(A) Debts Forgiven

The forgiveness of a debt or the failure to satisfy a debt is a contribution by the creditor to the debtor unless the creditor used commercially reasonable efforts, similar to that it would have used in collecting a debt from a non-political debtor. (See 11 CFR § 114.10). Thus, whether the forgiven or unsatisfied debts listed, supra, are contributions depends upon whether the creditor attempted to collect the debt owed by the D.N.C. in a commercially reasonable manner.

The debts in question were from the 1968 presidential campaign of Hubert Humphrey and were assumed by the D.N.C. in 1972. In 1976, eight years after the debts were incurred, the D.N.C. made offers to many of the creditors to settle the debts at less than face value. It would appear that under the circumstances the debt settlements were conducted in a commercially reasonable manner. The debts had been made unenforceable by the statute of limitations (three years in the District of Columbia (See D.C. Ann. § 12-301(7)). Moreover, it is highly unlikely that any creditor's action against the D.N.C. or the Humphrey Campaign, prior to the running of the statute of limitations, would have resulted in the creditors receiving a greater portion of the debt owed them than they received pursuant to the debt settlement agreements. Since the debts appear to have been settled in a commercially reasonable manner, the forgiveness of the outstanding part of the debt would not have resulted in a contribution by each of the creditors of the D.N.C. involved in the debt settlement procedure.

In addition to the fact that the debt in question appear to have been settled in a commercially reasonable manner, two of the creditors were individuals and forgiveness of their debts could not result in a violation of the Act. The debts were incurred in 1968, prior to the enactment of any campaign contribution limitation on individuals. Forgiveness of these debts by the creditors would be a valid contribution to the D.N.C. for the retirement of a debt arising from an election held prior to January 1, 1975 and therefore not subject to any contribution limitations, (11 CFR § 110.1(g)(1) also see AO 1977-52).

Thus, for the reasons mentioned, supra, the Commission found:

a) find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from the United Exposition Service Co. Inc., Brooks Bus Line Incorporated, Exhibition Contractors Co., or Merkle Press Inc.;

b) find no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling;

11 CFR § 114.10(c)(3) requires a corporation and a debtor to file a statement of settlement with the Commission as part of the debt settlement procedure. Neither the D.N.C., nor any of the creditors filed a statement of settlement with the Commission. However, all of the corporate debts in question were forgiven prior to the effective date of the regulations (April 1977), thus, neither the D.N.C., nor the corporate creditors can be held accountable for failing to file a statement of debt settlement with the Commission, pursuant to 11 CFR § 114.10(c)(3). Therefore, the Commission found no reason to believe that the D.N.C. violated 11 CFR § 114.10(c)(3) for failing to file a statement o settlement with the Commission.

(B) Debts Still Outstanding or Disputed

The debt of Emery Air Freight Corporation ("Emery") and the Merkle Press Inc., ("Merkle") were incurred by the Humphrey Presidential Campaign of 1968 and assumed by the D.N.C. in 1972. The Merkle bill is disputed, for the D.N.C. contends that a settlement of the debt was reached in 1972. The Emery debt is still outstanding; there has been no effort at reaching a debt settlement, no payments have been made on the debt by the D.N.C. since 1974, and Emery has made no effort since November of 1977 to collect the debt. Both debts are unenforceable due to the statute of limitations and were unenforceable when the debts were assumed by the D.N.C. (statute of limitations is three years in the District of Columbia. (See D.C. Ann. § 12-31(7)). Thus, there is no effective commercially reasonable means that Merkle or Emery currently could use, or could have used, at the time the D.N.C. assumed the debt, to collect what are legally unenforceable debts owed by the D.N.C. Therefore, the Commission found, for the reasons mentioned above, no reason to believe the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Press Inc. on the Emery Air Freight Corporation.

(C) Debts Written Off

The records of the D.N.C. show that the D.N.C. wrote off their books debts owed to Mr. Rufus Hartley ($350.00), Mr. Richard Neustadt ($2,343.56), and the Lincoln Telephone and Telegraph Co. ($3,794.69).

Two of the creditors are individuals, and based on the analysis set forth in Section III.A of this report concerning the forgiveness of debts owed to an individual, the Commission found there is no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) or that Mr. Rufus Harley or Mr. Richard Neustadt violated 2 U.S.C. § 441a(a)(1)(A). The third creditor, Lincoln Telephone and Telegraph Co. is a corporation and based on the analysis set forth in Section III.B of this report and the Commission found there is no reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution or that the Lincoln Telephone and Telegraph Co. violated 18 U.S.C. § 610 for making a corporate contribution.

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The final matter disclosed in the audit review was the acceptance by the D.N.C. of 20 corporate and labor union checks totalling $660.95 received from the sale of books and campaign seminars. The D.N.C. contends that the $660.95 represents a recapture of production costs, but is unable to document its actual production costs.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

It appears tht the above payments to the D.N.C. even if to defray the expenses of production incurred by the R.N.C. are contributions to the D.N.C. under the Act. The Commission has previously stated that the mere fact a person receives something of value in return does not render, in and of itself, a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the D.N.C. in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the D.N.C., since the D.N.C. is receiving funds that will be available for its political purpose. See AO's 1976-76, 1979-17, 1978-46, 1975-15. Even if the Commission views these payments as a commercial transaction because of the fact something was received in return for the payment of money to a political committee, to the extent the amount charged exceeds actual costs of the D.N.C., it is a contribution. See 11 C.F.R. § 100.4(a)(1)(iii)(A) and AO's 1979-18, 1976-22.

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

1. reson to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint.

2. reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the ABC Television Network.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes
Franklin Mint
Franklin Center, PA 19091

Re: MUR 1166

Dear Mr. Andes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on October , 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE_____

MUR NO. 1166

RESPONDENT The Franklin Mint

STAFF MEMBER(S) & TEL. NO. Taylor

SOURCE OF MUR: INTERNALLY GENERATED

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

On September 3, 1976, the DNC deposited in its operating account one check for $20,000 from the Franklin Mint Corporation and on October 3, 1976 deposited in its operting account another check for $10,000 from the Franklin Mint Corporation. When the Audit staff inquired about the check, the committee explained that it was a royalty payment resulting from an agrement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Democratic party's campaign symbol: The Committee provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Democratic Presidential and Vice Presidential candidates on the observe and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subject to the Committee's approval.

d) The DNC would agree to designate the medals as the official Presidential Campaign Medals of the Democratic National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the D.N.C.'s agreements, the corporation would:

1) pay the D.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) provide to the D.N.C. at no charge a quantity of medals with a retail value of $5,000.

f) The D.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as reuired under applicable Federal law.

g) The D.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

FACTUAL BASIS AND LEGAL ANALYSIS

Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(a) and (B) (1980 regulations).

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The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the D.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee' in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income ralized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corportion was authorized to produce and market a shirt bearing a candidate's name. The corportion would pay all expenses to produce and sell the shirts and would remit $1 of the $7.95 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign

materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

It is for the reasons mentioned, above, that the Commission found reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the D.N.C.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frederick S. Pierce
ABC Television Network
New York, New York 10019

Re: MUR 1166

Dear Mr. Pierce:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on October , 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. 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.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1166
STAFF MEMBER(S) & TEL. NO.
Taylor

RESPONDENT ABC Television Network

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

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

D.N.C. records show a letter dated February 13, 1976 from the American Broadcasting Company ("ABC") addressed to Mr. Robert Strauss, chairman of the Democratic National Committee, detailing the billing procedure used by ABC in determining the D.N.C.'s bill for service's provided by ABC in the production and broadcasting of the D.N.C.'s 1975 telethon. This letter states that ABC is allowing the D.N.C. a one-third political discount off a gross billing figure of $48,990.69 thus reducing the D.N.C.'s obligation to $32,660.46.

FACTUAL BASIS AND LEGAL ANALYSIS

The ABC Television Networks ("ABC"), a corporation, granted the D.N.C. a one-third "political discount" in February of 1976 for the D.N.C.'s telethon of July 26-27, 1975. 1/ The granting of a political discount raises the specific issue of the applicabilty of 18 U.S.C. § 610 (currently 2 U.S.C. § 441b(a)), which provides that:

> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential election or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for

---

1/ The telethon was run by the D.N.C. to help raise money to pay off the 1968 presidential campaign debt.

> any of the foregoing officers or for any candidate political committee, or other person to accept or receive any contribution prohibited by this section.

The term "contribution or expenditure" is defined in 18 U.S.C. § 610 (currently 2 U.S.C. § 441b) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission has made it clear that: "[it] views a discount below the 'usual and normal' charge to be a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients" (AO 1978-45).2/ Even if ABC gave political discount to all political parties, there would be a corporate contribution unless a "political discount" was offered to ABC's non-political clients. Given the fact that the discount is labeled a "political discount" by ABC, this possibility seems highly unlikely.

It is for the reasons mentioned, supra, that the Commission found reason to believe that ABC violated 18 U.S.C. § 610 for making a corporate contribution in the amount of $16,330.23 to the D.N.C.

2/ 11 CFR § 100.4(a)(iii)(B)(1) defines "usual and normal charge" for goods to mean "the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution."

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Peter Brooks, President
Brooks Bus Lines Incorporated
421 Washington Street
Paducah, Kentucky 42001

Dear Mr. Brooks:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Katz
United Exposition Service Co. Inc.
2328 Pacific Avenue
Atlantic City, New Jersey 08401

Dear Mr. Katz:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles V. Lockyer
Merkel Press Inc.
11200 Prospect Hill Road
Glenn Dale, Md. 20769

Dear Mr. Lockyer:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Baer and McGoldrick
460 Park Avenue
New York, NY 10022

Re: The Estate of Robert W. Dowling

Dear Sirs:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. D.J. MacDonald
Emery Air Freight Corporation
P.O. Box 7
Scranton, PA 18501

Dear Mr. MacDonald:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Exhibition Contractors Co.
c/o James A. Brow, Esq.
11 South LaSalle Street
Chicago, Illinois 60603

Dear Mr. Brow:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Democratic National Committee,	)	MUR 1166
et al.	)	

CERTIFICATIONS

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on December 2, 1980, do hereby certify that the Commission took the following actions in MUR 1166:

1. Decided by votes of 4-2 to -

   a) Find reason to believe that the D.N.C. violated 2 U.S.C. §441b(a) for accepting a corporate contribution from the Franklin Mint.

   b) Find reason to believe that the Franklin Mint violated 2 U.S.C. §441b(a) for making a corporate contribution to the D.N.C.

   c) Find reason to believe that the D.N.C. violated 18 U.S.C. §610 for accepting a corporate contribution from the A.B.C. Television Network.

   d) Find reason to believe that the A.B.C. Television Network violated 18 U.S.C. §610 for making a corporate contribution.

   Commissioners Harris, McGarry, Reiche, and Tiernan voted affirmatively for the decisions; Commissioners Aikens and Friedersdorf dissented.

2. Decided by a vote of 6-0 to -

   a) Find no reason to believe that the D.N.C. violated 18 U.S.C. §610 by accepting a corporate contribution from the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, and Exhibition Contractors Co.

b) Find no reason to believe that the United Exposition Service Co., Inc. violated 18 U.S.C. §610 by making a corporate contribution to the D.N.C.

c) Find no reason to believe that the Brooks Bus Lines Incorporated violated 18 U.S.C. §610 by making a corporate contribution to the D.N.C.

d) Find no reason to believe that the Exhibition Contractors Co. violated 18 U.S.C. §610 by making a corporate contribution to the D.N.C.

e) Find no reason to believe that the D.N.C. violated 2 U.S.C. §441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling.

f) Find no reason to believe that Mr. Sol Kitty or the estate of Mr. Robert Dowling violated 2 U.S.C. §441a(a)(1)(A) for making an excess contribution to the D.N.C.

g) Find no reason to believe that the D.N.C., the United Exposition Services Co. Inc, Brooks Bus Lines Incorporated, Exhibition Contractors Co. or Merkle Press Inc. violated 11 CFR §114.10(c)(3) for failing to file a statement of settlement with the Commission.

h) Find no reason to believe that the D.N.C. violated 18 U.S.C. §610 by accepting a corporate contribution from the Emery Air Freight Corporation.

i) Find no reason to believe that the D.N.C. violated 18 U.S.C. §610 by accepting a corporate contribution from Merkle Press Inc.

j) Find no reason to believe that the Emery Air Freight Corporation violated 18 U.S.C. §610 by making a corporate contribution to the D.N.C.

k) Find no reason to believe that Merkle Press Inc. violated 18 U.S.C. §610 by making a corporate contribution to the D.N.C.

l) Find no reason to believe that the D.N.C. violated 2 U.S.C. §441a(f) for receiving an excess contribution from Mr. Rufus Harley or Mr. Richard Neustadt.

m) Find no reason to believe that Mr. Rufus Harley or Mr. Richard Neustadt violated 2 U.S.C. §441a(a)(1)(A) by an excess contribution to the D.N.C.

n) Find no reason to believe that the D.N.C. violated 2 U.S.C. §610 by receiving a corporate contribution from the Lincoln Telephone and Telegraph Co.

o) Find no reason to believe that the Lincoln Telephone and Telegraph Co. violated 18 U.S.C. §610 by making a corporate contribution to the D.N.C.

3. Decided by a vote of 4-2 to find reason to believe that the D.N.C. violated 2 U.S.C. §441b(a) for receipt of corporate and labor contributions.

   Commissioners Harris, McGarry, Reiche, and Tiernan voted affirmatively; Commissioners Aikens and Friedersdorf dissented.

4. Decided by a vote of 4-2 to find reason to believe that the D.N.C. violated 2 U.S.C. §434(b) for failing to list the receipt of the funds as contributions.

   Commissioners Harris, McGarry, Reiche, and Tiernan voted affirmatively; Commissioners Aikens and Friedersdorf dissented.

5. Decided by a vote of 6-0 to send appropriate letters consistent with the above findings, and keep the file open.

Attest:

12/4/80
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

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January 5, 1986

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1166

Please have the attached Memo distributed to the Commission on a 24 hour no-objection basis. Thank you.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE MWE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY mc
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: NOVEMBER 20, 1980

SUBJECT: ADDITIONAL OBJECTION TO MUR 1166 - First General Counsel's Report dated 11-18-80.

You were notified previously of objections by Commissioners Tiernan, Harris, Aikens, and Reiche to the above-named document.

Commissioner Friedersdorf submitted his objection at 1:35, November 20, 1980. Commissioner McGarry objected at 3:59.

This matter is already scheduled for executive session on Tuesday, December 2, 1980.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MWE

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: NOVEMBER 20, 1980

SUBJECT: ADDITIONAL OBJECTIONS TO MUR 1166 - First General Counsel's Report dated 11-18-80

You were notified previously of an objection by Commissioner Harris and later by Commissioner Tiernan.

Commissioners Reiche and Aikens have also submitted objections to MUR 1166.

This matter will be discussed in executive session on Tuesday, December 2, 1980.

A copy of Commissioner Reiche's vote sheet is attached for your information.

ATTACHMENT:
Copy of Vote Sheet

48 HOUR TALLY SHEET

KOD

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

80 NOV 20 A10: 56

Date and Time Transmitted: NOV. 19,1980 AT 11:00 A

Commissioner FRIEDERSDORF, AIKENS, TIERNAN, McGARRY, REICHE, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY: FRIDAY, NOV. 21, 1980 AT 11:00A

MUR No. 1166 - First General Counsel's Report dated 11-18-80

( ) I approve the recommendation

(✓) I object to the recommendation

COMMENTS: We must discuss the timing of this matter.

Date: 11/19/80 Signature: Frank P. Reiche

A DEFINITE VOTE IS REQUIRED AND ALL SHEETS SIGNED AND DATED. PLEASE RETURN ONLY THE VOTE SHEETS TO THE OFFICE OF THE COMMISSION SECRETARY NO LATER THAN THE DATE AND TIME SHOWN ABOVE.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY mc
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: NOVEMBER 19, 1980

SUBJECT: ADDITIONAL OBJECTION TO MUR 1166 - First General Counsel's Report dated 11-18-80

You were notified previously of an objection by Commissioner Harris to the above-named document.

Commissioner Tiernan submitted his objection at 2:46, November 19, 1980.

This matter will be discussed in executive session on Tuesday, December 2, 1980.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY

DATE: NOVEMBER 19, 1980

SUBJECT: MUR 1166 - First General Counsel's Report, dated 11-18-80; Received in OCS 11-18-80, 2:39

The above-named document was circulated on a 48 hour vote basis at 11:00, November 19, 1980.

Commissioner Harris submitted an objection at 12:29, November 19, 1980.

This matter will be placed on the Executive Session Agenda for Tuesday, December 2, 1980.

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November 18, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1166

Please have the attached First GC Report distributed to the Commission on a 48 hour tally basis. Thank you.

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FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

80 NOV 18 P2:39

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION 11-18-80

MUR # 1166
STAFF MEMBER(S) Taylor

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENT'S NAME: Democratic National Committee, the Franklin Mint Corporation, ABC Television Network, Merkle Press Inc., Emory Air Freight Corporation, Estate of Robert W. Dowling, Exhibition Contractors Co., United Exposition Service Co., Inc., Brooks Bus Lines Incorporated, Mr. Sol Kitty, Mr. Rufus Harley, Lincoln Telephone and Telegraph Co., and Mr. Richard Neustadt

RELEVANT STATUTE: 18 U.S.C. § 610, 2 U.S.C. § 441b, 2 U.S.C. § 441a (a)(1)(A), 2 U.S.C. § 441a(f), 11 CFR § 114.10, 11 CFR § 100.4 (a)(1)(iii)(B)(1),

INTERNAL REPORTS CHECKED: Audit Reports

FEDERAL AGENCIES CHECKED: None

STATEMENT OF FACTS

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

On September 3, 1976, the DNC deposited in its operating account one check for $20,000 from the Franklin Mint Corporation (See attachment I), and on October 3, 1976 deposited in its operating account another check for $10,000 from the Franklin Mint Corporation (See attachment I). When the Audit staff inquired about the checks, the committee explained that these were royalty payments resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Democratic party's campaign symbol: The Committee provided the Audit staff with a copy of the agreement, (See attachment II), which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Democratic Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. 1/ Any increase in this advertising budget would be subject to the Committee's approval.

d) The DNC would agree to designate the medals as the official Presidential Campaign Medals of the Democratic National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the D.N.C's agreement, the corporation would:

1) Pay the D.N.C royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the D.N.C. at no charge a quantity of medals with a retail value of $5,000. 2/

f) The D.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as required under applicable Federal law.

g) The D.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

D.N.C. records show a letter dated February 13, 1976 from the American Broadcasting Company ("ABC") addressed to Mr. Robert Strauss, chairman of the Democratic National Committee, detailing the billing procedure used by ABC in determining the D.N.C.'s bill for service's provided by ABC in the production and broadcasting of the D.N.C.'s 1975 telethon. This letter states that ABC is allowing the D.N.C. a one-third political discount off a gross billing figure of $48,990.69 thus, reducing the D.N.C.'s obligation to $32,660.46 (See attachment III).

The records of the D.N.C. show five debts totaling $194,048.39 incurred by the 1968 Humphrey Campaign for President and assumed by

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1/ On approximately the same date, the corporation entered into an identical agreement with the Republican National Committee.

2/ The D.N.C. was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the D.N.C.'s records that the medals were received.

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the D.N.C. in 1972. The D.N.C. paid off these debts at less than face value in the following manner

a) the United Exposition Service Co. Inc. was owed $59,000 and was paid $30,582.20 on August 3, 1976 ($28,417.80 forgiven).

b) Brooks Bus Lines Incorporated was owed $1,505.00 and was paid $376.25 on May 21, 1976 ($1,128.75 forgiven).

c) Exhibition Contractors Co. was owed $28,529.28 and was paid $15,000 on March 22, 1976 ($13,529.28 forgiven).

d) Mr. Sol Kitty was owed $77,179.69 and was paid $19,294.29 on June 13, 1977 ($57,884.75 forgiven).

e) The Estate of Robert Dowling was owed $9,665.51 on August 24, 1978 ($11,489.76 forgiven).

The records of the D.N.C. show that the D.N.C. wrote off their books the following debts they assumed in 1972:

a) Mr. Rufus Harley was owed $350.00 from the Humphrey campaign (debt written off in early 1976).

b) Lincoln Telephone and Telegraph Co. was owed $2,794.69 from the 1968 campaign of Robert Kennedy (debt written off in early 1977).

c) Mr. Richard Neustadt was owed $2,343.56 from the 1972 convention (debt written off in 1977).

In addition, there are two bills arising from the Humphrey campaign of 1968 that are the subject of a dispute between the D.N.C. and the individual creditor. The first is with Merkle Press Inc. who maintains it is owed $132,165.76 from the 1968 presidential campaign. The D.N.C. contends that a debt settlement was reached with Merkle Press in September of 1972 and that the payment of $32,041.44 was accepted in full satisfaction of $132,165.76 debt ($99,124.28 forgiven). The second bill in dispute is with the Emery Air Freight Corporation which maintains that it is owed $34,345.06, as opposed to the $31,328.43 the D.N.C. contends is still outstanding. Moreover, no payments have been made to satisfy this debt since August of 1974.

The audit staff's review of the contribution records of the D.N.C. disclosed that the D.N.C. accepted six corporate contributions totaling $725.00. At the request of the audit staff, the D.N.C. refunded five of the contributions and provided the audit staff with copies of the refund checks. In addition, the D.N.C. submitted a statement from the sixth contributor to the audit staff which showed that this contribution was made from personal and not corporate funds. Since the D.N.C. has resolved this problem by returning the corporate contributions in question, the audit staff recommended that no further action should be taken in regard to this matter; the Office of General Counsel concurs with this recommendation.

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The final matter disclosed in the audit review was the acceptance by the D.N.C. of 20 corporate and labor union checks totaling $660.95 received from the sale of books and campaign seminars. The D.N.C. contends that the $660.95 represents a partial recapture of production costs, but is unable to document its actual production costs.

FACTUAL AND LEGAL ANALYSIS

I. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value. . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the

Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the D.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee" in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing a candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.95 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

Though the D.N.C. is in violation of 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, and the Franklin Mint is in violation of 2 U.S.C. § 441b(a) for making a corporate contribution, it must be added, not as a defense, but in mitigation of the D.N.C.'s actions, that at the time of the making of the contract (August 27, 1976) between the Franklin Mint and the D.N.C., the Commission had not determined that a royalty paid by a corporation to a political committee constitutes a corporate contribution. In fact, at the time of the making of the contract, the only advisory opinion issued concerning the receipt of a contribution by a political committee from the sale of goods and services was AO 1975-15 that allowed a political committee (the Wallace Committee) to raise contributions through the sale of campaign items. It was not until AO 1976-50, decided on September 2, 1976, that the Commission ever questioned the propriety of a contribution raised through the sale of goods and services, and it was not until AO 1979-17 that the Commission finally decided that the sale of a political organization's goodwill and reputation to a corporation resulted in a contribution in contravention of 2 U.S.C. § 441b(b)(2).

It is for the reasons mentioned, supra, that the Office of General Counsel recommends that the Commission find reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action. In addition, the Office of General Counsel recommends that the Commission find reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the D.N.C., but take no further action.

II. ABC "Political Discount"

The ABC Television Networks ("ABC"), a corporation, granted the D.N.C. a one-third "political discount" in February of 1976 for the D.N.C.'s telethon of July 26-27, 1975. 3/ The granting of a political discount raises the specific issue of the applicability of 18 U.S.C. § 610 (currently 2 U.S.C. § 441b(a)), which provides that:

3/ The telethon was run by the D.N.C. to help raise money to pay off the 1968 presidential campaign debt.

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> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential election or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing officers or for any candidate political committee, or other person to accept or receive any contribution prohibited by this section.

The term "contribution or expenditure" is defined in 18 U.S.C. § 610 (currently 2 U.S.C. § 441b) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission has made it clear that: "[it] views a discount below the "usual and normal charge to be a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients" (AO 1978-45). 4/ Even if ABC gave political discount to all political parties, there would be a corporate contribution unless a "political discount" was offered to ABC's non-political clients. Given the fact that the discount is labeled a "political discount" by ABC, this possibility seems highly unlikely.

The D.N.C. did receive something of value, namely, the receipt of television production services provided by ABC at a price below what ABC normally charged its non-political customers. 5/ It must be added, however, that in February of 1976 there were no interpretations, through case law, advisory opinion, or regulation, which specifically stated that a "discount below the usual and normal charge" is a contribution, if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients. Moreover, unlike the transfer of money or goods and services to a political committee, the giving of a discount does not involve such a clear cut transfer of possession and ownership from the contributor to the political committee, but involves an indirect benefit to the committee due to the fact that a political committee receives something of value at a discounted price.

4/ 11 CFR § 100.4(a)(1)(iii)(B)(1) defines "usual and normal charge" for goods to mean "the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution."

5/ There is no evidence that ABC's fee was less than the costs of producing the telethon.

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It is for the reasons mentioned, supra, that the Office of General Counsel recommends that the Commission find reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from ABC in the amount of $16,330.23 and that A.B.C. violated 18 U.S.C. § 610 for making a corporate contribution in the amount of $16,330.23. However, the Office of General Counsel recommends that no further action be taken.

III. Debt Settlement and Debts Still Outstanding

THE D.N.C. records show that certain corporate and non-corporate debts, arising from the 1968 presidential campaign, were paid off at less than face value or still remain outstanding. The amounts forgiven or still outstanding are as follows:

a) the United Exposition Service Co. Inc. (debt forgiven $28,417.80 on August 3, 1976).

b) Brooks Bus Line Incorporated (debt forgiven $1,128.75 on May 21, 1976).

c) Exhibition Contractors Co. (debt forgiven $13,529.28 on March 22, 1976).

d) Mr. Sol Kitty (debt forgiven $57,884.75 on June 13, 1977).

e) the estate of Robert Dowling (debt forgiven $11,489.76 on August 24, 1978).

f) Merkle Press Inc., (This debt is disputed; D.N.C. contends that $99,124.28 debt was forgiven in September of 1972).

g) Emery Air Freight Corporation (This debt is disputed, D.N.C. claims it owes $31,328.43; Emery contends $34,345.06 is owed.)

(A) Debts Forgiven

The forgiveness of a debt or the failure to satisfy a debt is a contribution by the creditor to the debtor unless the creditor used commercially reasonable efforts, similar to that it would have used in collecting a debt from a non-political debtor. (See 11 CFR § 114.10). Thus, whether the forgiven or unsatisfied debts listed, supra, are contributions depends upon whether the creditor attempted to collect the debt owed by the D.N.C. in a commercially reasonable manner.

The debts in question were from the 1968 presidential campaign of Hubert Humphrey and were assumed by the D.N.C. in 1972. In 1976, eight years after the debts were incurred, the D.N.C. made offers to many of the creditors to settle the debts at less than face value. It would appear that under the circumstances the debt settlements were conducted in a commercially reasonable manner.

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The debts had been made unenforceable by the statute of limitations (three years in the District of Columbia (See D.C. Code Ann. § 12-301(7)). Moreover, it is highly unlikely that any creditor's action against the D.N.C. or the Humphrey Campaign, prior to the running of the statute of limitations, would have resulted in the creditors receiving a greater portion of the debt owed them than they received pursuant to the debt settlement agreements. Since the debts appear to have been settled in a commercially reasonable manner, the forgiveness of the outstanding part of the debt would not have resulted in a contribution by each of the creditors of the D.N.C. involved in the debt settlement procedure.

In addition to the fact that the debt in question appear to have been settled in a commercially reasonable manner, two of the creditors were individuals and forgiveness of their debts could not result in a violation of the Act. The debts were incurred in 1968, prior to the enactment of any campaign contribution limitation on individuals. Forgiveness of these debts by the creditors would be a valid contribution to the D.N.C. for the retirement of a debt arising from an election held prior to January 1, 1975 and therefore not subject to any contribution limitations, (11 CFR § 110.1(g)(1) also see AO 1977-52).

Thus, for the reasons mentioned, supra, the Office of General Counsel recommends the following:

a) find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from the United Exposition Service Co. Inc., Brooks Bus Line Incorporated, Exhibition Contractors Co., or Merkle Press Inc.;

b) find no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling;

c) find no reason to believe that Mr. Sol Kitty or the estate of Mr. Robert Dowling violated 2 U.S.C. § 441a(a)(1)(A) for making an excess contribution to the D.N.C.;

d) find no reason to believe that the United Exposition Services Co. Inc., Exhibition Contractors Co. and Merkle Press Inc. violated 18 U.S.C. § 610 for making a corporate contribution.

11 CFR § 114.10(c)(3) requires a corporation and a debtor to file a statement of settlement with the Commission, as part of the debt settlement procedure. Neither the D.N.C., nor any of the creditors filed a statement of settlement with the Commission. However, all of the corporate debts in question were forgiven prior to the effective date of the regulations (April 1977); thus, neither the D.N.C., nor the corporate creditors can be held accountable

for failing to file a statement of debt settlement with the Commission, pursuant to 11 CFR § 114.10(c)(3). Therefore, the Office of General Counsel recommends that no reason to believe be found that the D.N.C., The United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, Exhibition Contractors Co., or Merkle Press Inc.,violated 11 CFR § 114.10(c)(3) for failing to file a statement of settlement with the Commission.

(B) Debts Still Outstanding or Disputed

The debt of Emery Air Freight Corporation ("Emery") and the Merkle Press Inc., ("Merle") were incurred by the Humphrey Presidential Campaign of 1968 and assumed by the D.N.C. in 1972. The Merkle bill is disputed, for the D.N.C. contends that a settlement of the debt was reached in 1972. (attachment IV) The Emery debt is still outstanding; there has been no effort at reaching a debt settlement, no payments have been made on the debt by the D.N.C. since 1974, and Emery has made no effort since November of 1977 to collect the debt (attachment V). Both debts are unenforceable due to the statute of limitations 6/ and were unenforceable when the debts were assumed by the D.N.C. (statute of limitations is three years in the District of Columbia. (See D.C. Ann. § 12-31(7)). 7/ Thus, there is no effective commercially reasonable means that Merkle or Emery currently could use, or could have used, at the time the D.N.C. assumed the debt, to collect what are legally unenforceable debts owed by the D.N.C.

The Office of General Counsel recommends, for the reasons mentioned above, that the Commission find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Pres Inc., or from Emery Air Freight Corporation. In addition, the Office of General Counsel recommends that the Commission find no reason to believe that the Merkle Press Inc., or Emery Air Freight Corporation violated 18 U.S.C. § 610 for making a corporate contribution to the D.N.C.

(C) Debts Written Off

The records of the D.N.C. show that the D.N.C. wrote off their books debts owed to Mr. Rufus Harley ($350.00), Mr. Richard Neustadt ($2,343.56), and the Lincoln Telephone and Telegraph Co. ($3,794.69). 8/

6/ This is assuming, arguendo, that the Merkle debt has not been satisfied.

7/ The evidence indicates that the contracts between the Humphrey campaign and the two creditors - Merkle and Emery - were made in the District of Columbia.

8/ There are five additional debts arising from the 1968 campaign written off by the D.N.C. The D.N.C.'s records of these debts are inadequate for us to determine whether a corporate contribution was made. Moreover, the records preservation section of the Act, 2 U.S.C. § 432(d), requires records to be kept only three years and the records in question are well over three years old.

Two of the creditors are individuals, and based on the analysis set forth in Section III.A of this report concerning the forgiveness of debts owed to an individual, we conclude there is no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) or that Mr. Rufus Harley or Mr. Richard Neustadt violated 2 U.S.C. § 441a(a)(1)(A). The third creditor, Lincoln Telephone and Telegraph Co. is a corporation and based on the analysis set forth in Section III.B of this report, we conclude that there is no reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution or that the Lincoln Telephone and Telegraph Co. violated 18 U.S.C. § 610 for making a corporate contribution.

The final matter disclosed in the audit review was the acceptance by the D.N.C. of 20 corporate and labor union checks totaling $660.95 received from the sale of books and campaign seminars. The D.N.C. contends that the $660.95 represents a partial recapture of production costs, but is unable to document its actual production costs.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure' is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

It appears that the above payments to the D.N.C. even if to defray the expenses of production incurred by the R.N.C. are contributions to the D.N.C. under the Act. The Commission has previously stated that the mere fact a person receives something of value in return does not render, in and of itself, a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the D.N.C. in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the D.N.C., since the D.N.C. is receiving funds that will be available for its political purpose. (See AO's 1979-76, 1979-17, 1978-46, 1975-15). Even if the Commission views these payments as a commercial transaction because of the fact something was received in return for the payment of money to a political committee, to the extent the amount charged exceeds actual costs of the D.N.C., it is a contribution. See 11 C.F.R. § 100.4(a)(1)(iii)(A) and AO's 1979-18, 1976-22.

Though the funds the D.N.C. received from the corporations and the labor union are, for the reasons mentioned above prohibited corporate and labor contributions, it should be added, not as a defense, but in mitigation of the D.N.C.'s acceptance of these prohibited contributions, that a majority of these contributions are under $50.00. Moreover, it does not appear that the D.N.C. was deliberately attempting to avoid the provisions of 2 U.S.C. § 441b, but simply attempting to recoup its out of pocket costs it incurred in producing the goods and services in question. It is the Office of General Counsel's recommendation that the Commission find reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for receipt of the corporate and labor contributions, but take no further action.

In addition to the D.N.C.'s receipt of prohibited contributions from the corporations and the labor union, the D.N.C. failed to list the receipt of the funds in question as contributions on its reports pursuant to 2 U.S.C. § 434(b)(2) and § U.S.C. § 434(b)(3). Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the D.N.C. violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(3), but take no further action. 9/

RECOMMENDATIONS

1. Find reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action.

2. Find reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the D.N.C., but take no further action.

3. Find reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from the A.B.C. Television Network, but take no further action.

4. Find reason to believe that the A.B.C. Television Network violated 18 U.S.C. § 610 for making a corporate contribution to the D.N.C., but take no further action.

5. Find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, and Exhibition Contractors Co.

6. Find no reason to believe that the United Exposition Service Co., Inc. violated 18 U.S.C. § 610 by making a corporate contribution to the D.N.C.

9/ It is the Office of General Counsel's opinion that the amount of money involved is insufficient to warrant further investigation of the twenty corporations and labor unions that purchased the goods and services in question.

7. Find no reason to believe that the Brooks Bus Lines Incorporated violated 18 U.S.C. § 610 by making a corporate contribution to the D.N.C.

8. Find no reason to believe that the Exhibition Contractors Co. violated 18 U.S.C. § 610 by making a corporate contribution to the D.N.C.

9. Find no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dawling.

10. Find no reason to believe that Mr. Sol Kitty or the estate of Mr. Robert Dowling violated 2 U.S.C. § 441a(a)(1)(A) for making an excess contribution to the D.N.C.

11. Find no reason to believe that the D.N.C., the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, Exhibition Contractors Co. or Merkle Press Inc. violated 11 CFR §114.10(c)(3) for failing to file a statement of settlement with the Commission.

12. Find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from the Emery Air Freight Corporation.

13. Find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Press Inc.

14. Find no reason to believe that the Emery Air Freight Corporation violated 18 U.S.C. § 610 by making a corporate contribution to the D.N.C.

15. Find no reason to believe that Merkle Press Inc. violated 18 U.S.C. § 610 by making a corporate contribution to the D.N.C.

16. Find no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) for receiving an excess contribution from Mr. Rufus Harley or Mr. Richard Neustadt.

17. Find no reason to believe that Mr. Rufus Harley or Mr. Richard Neustadt violated 2 U.S.C. § 441a(a)(1)(A) by an excess contribution to the D.N.C.

18. Find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by receiving a corporate contribution from the Lincoln Telephone and Telegraph Co.

19. Find no reason to believe that the Lincoln Telephone and Telegraph Co. violated 18 U.S.C. § 610 by making a corporate contribution to the D.N.C.

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20. Find reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for receipt of corporate and labor contributions, but take no further action.

21. Find reason to beleive that the D.N.C. violated 2 U.S.C. § 434(b) for failing to list the receipt of the funds as contributions, but take no further action.

22. Close file.

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Attachments

I. Franklin Mint checks
II. Franklin Mint letter
III. A.B.C. Television Network letter
IV. D.N.C. letter to Merkle Pres
V. Emery letter

Attachment 2
Page 1 of 2

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19508

Pay
to the order of Democratic National Committee

Date September 3, 1976

Twenty thousand and ---------- $20,000.00 ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

⑈10019508⑈ ⑆0210⑈0023⑆ 022 00 220 ⑈EB7 30 220

COUNTERSIGNATURE REQUIRED FOR AMOUNTS $5,000.00 AND UNDER

0204035274 9

Attachment 1
II-51

Attachment 3
Page 1 of 2

10/28

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19608

Date October 8, 1976 1-23/210

Pay
to the order of Democratic National Committee $10,000.00

Ten thousand and ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

COUNTERSIGNATURE REQUIRED FOR PAYMENTS $10,000.00 AND UNDER

⑈10019609⑈ ⑆0210⑈0023⑆ 02 06 483⑈

3 2 0 4 0 3 5 2 7 5 0

Attachment I
EC51

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19508

This check represents an advance against the $30,000 minimum guaranteed royalty provided for in the contract between the Democratic National Committee and The Franklin Mint dated August 27, 1976.

(Attachment I)

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19609

(Attachment I)

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

August 25, 1976

File

Democratic National Committee
1625 Massachusetts Avenue, NW
Washington, D.C.

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Democratic Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Democratic Presidential candidate on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Democratic and Republican Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

(attachment II)
II C-51

Your organization agrees to designate the above-described Democratic Presidential Campaign medals as the Official Presidential Campaign Medals of the Democratic National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Democratic National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: [signature]
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

27th day of August, 1976

Democratic National Committee

(attachment I)

3204035275 1

ABC Television Network 1330 Avenue of the Americas New York, New York 10019 Telephone 212 LT1-7777

Charles C. Allen
Vice President Sales Administration

February 13, 1976

Mr. Robert S. Strauss
Chairman
Democratic National Committee
1625 Massachusetts Ave., N.W.
Washington, D. C. 20036

Dear Bob:

Although the outside possibility remains that some billing may straggle in for super slide use by stations, we feel that this is improbable. Therefore, this letter will serve to settle accounts for the July 26-27, 1975 DNC Telethon with the understanding that future billing, if any, will be quickly settled.

In a letter October 31, 1975, we attached a check for $110,000 on account for an indicated rebate of $116,443. We withheld the $6,443 as a contingency for additional billing for super slides. Consequently, the $19,250 rebate attributable to super slides as indicated in that letter was, in effect, reduced to $12,807 in order to preserve the contingency for additional billing. The gross billing figure, which we now hope will be final for super slides, is $48,990.69, which becomes $32,660.46 after granting the one-third political discount. The gross billing for super slides known last fall and used as a basis for the rebate listed in October was $44,624.41, which nets out to a rounded $29,750 after political discount. This leaves a net difference in cost to you of $2,910, which, when subtracted from the aforementioned contingency reserve of $6,443, leaves a rebate due the DNC of $3,533, check attached.

Bob, our very best wishes go to you and Kitty. If we can be of any further service, please let us know.

Very truly yours,

Charles C. Allen

Charles C. Allen

(Attachment III)

cm

Att. II C 22

DEMOCRATIC
NATIONAL COMMITTEE 1625 Massachusetts Ave., N.W. Washington, D.C. 20036 (202) 797-5900

July 19, 1979

Mr. Charles N. Lockyer
Pubco Corporation
11200 Prospect Hill Road
Glenn Dale, Maryland 20769

Dear Mr. Lockyer:

We have made a careful review of the account balance owed by the Democratic National Committee to Merkle Press, and must conclude that the current outstanding balance is not $128,652.70 as you state in your letters to us.

Because of our relationship, we regret that this misunderstanding has occurred. Nevertheless, our review confirms that Merkle, along with numerous other corporate creditors, agreed with DNC in September 1972 to accept 25% of the "old debt" owed Merkle. This "old debt" had been incurred originally by the Humphrey campaign in 1968 and then assumed by DNC in 1972. [illegible] in full settlement of its Humphrey related debt.

After this settlement Merkle printed material for the 1972 Convention. The account balance for this work was $29,528.41, and DNC reduced this account balance with a $10,452.59 payment in March 1976. Our balance due Merkle at this time is $19,075.82.

Again, I do regret that we have had a misunderstanding. The DNC has always admired the work of Merkle Press, and would hope that there can be an opportunity in the future for you to do printing work for us.

Sincerely,

John C. White
Chairman
Democratic National Committee

(Attachment IV)

III F1
11

EMERY AIR FREIGHT CORPORATION

P.O. BOX 7 • SCRANTON, PENNSYLVANIA 18501 717-346-4663

ACCOUNTING DIVISION

November 9, 1977

Mr. J. D. Nelson
Administrative Assistant
DEMOCRATIC NATIONAL COMMITTEE
1625 Massachusetts Ave
Washington, DC 20036

Dear Mr. Nelson:

I called to speak to Mr. Curtis and I was told that my correspondence to him had been passed on to you for handling. Since I have not had any response to my previous correspondence, I would like to know the current status of your $34,345.06 debt from the 1968 campaign.

It is my understanding that you will be out of town until November 16, so this letter should arrive around the same time. Would you please give me a call (717-346-4663, ext. 36) so that we may be able to discuss this file.

I really appreciate your cooperation in resolving this very old file.

Thank you.

Very truly yours,

D. J. MacDonald, Manager
Credit & Collections

DJMD/dp

(Attachment II)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John White
Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Re: MUR 1166

Dear Mr. White:

On , 1980, the Commission found reason to believe that the Democratic National Committee (D.N.C.) violated 2 U.S.C. § 441b(a), 2 U.S.C. § 434(b) and 18 U.S.C. § 610 of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter.

The Commission reminds you that the acceptance of a corporate contribution from the Franklin Mint (royalty payment) and the ABC Television Network (political discount) violated 2 U.S.C. § 441b (a) and its predecessor 18 U.S.C. § 610; you should take immediate steps to insure that this activity does not occur in the future.

In addition, the Commission found no reason to believe that the D.N.C. violated:

a) 18 U.S.C. § 610 by accepting a corporate contribution from the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, and Exhibition Contractors Co.;

b) 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty on the estate of Mr. Robert Dowling;

c) 11 CFR § 114.10(c)(3) for failing to file a statement of settlement with the Commission;

d) 18 U.S.C. § 610 by accepting a corporate contribution from the Emery Air Freight Corporation;

e) 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Press Inc.;

f) 18 U.S.C. § 610 by receiving a corporate contribution from the Lincoln Telephone and Telegraph Co.

This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public records please do so within 10 days, and if you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case, at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE_____

MUR NO. 1166

STAFF MEMBER(S) & TEL. NO. Taylor

RESPONDENT Democratic National Committee

SOURCE OF MUR: INTERNALLY GENERATED

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

On September 3, 1976, the DNC deposited in its operating account one check for $20,000 from the Franklin Mint Corporation (See attachment I), and on October 3, 1976 deposited in its operating account another check for $10,000 from the Franklin Mint Corporation (See attachment I). When the Audit staff inquired about the check, the Committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Democratic party's campaign symbol.

D.N.C. records show a letter dated February 13, 1976 from the American Broadcasing Company ("ABC") addressed to Mr. Robert Strauss, chairman of the Democratic National Committee, detailing the billing procedure used by ABC in determining the D.N.C.'s bill for service's provided by abc in the production and broadcasting of the D.N.C.'s 1975 telethon. This letter states that ABC is allowing the D.N.C. a one-third political discount off a gross billing figure of $48,990.69 thus, reducing the D.N.C.'s obligation to $32,660.46.

The records of the D.N.C. show five debts totaling $194,048.39 incurred by the 1968 Humphrey Campaign for President and assumed by the D.N.C. in 1972. The D.N.C. paid off these debts at less than face value in the following manner:

a) the United Exposition Service Co. Inc. was owed $59,000 and was paid $30,582.20 on August 3, 1976 ($28,417.80 figure).

b) Brooks Bus Lines Incorporated was owed $1,505.00 and was paid $376.25 on May 21, 1976 ($1,128.75 figure).

c) Exhibition Contractors Co. was owed $28,529.28 and was paid $15,000 on March 22, 1976 ($13,529.28 figure).

d) Mr. Sol Kitty was owed $77,179.69 and was paid $19,294,29 on June 13, 1977 ($57,884.75 figure).

e) The Estate of Robert Dowling was owed $9,665.51 on August 24, 1978 ($11,489.76 figure).

The records of the D.N.C. show that the D.N.C. wrote off their books the following debts they assumed in 1972:

a) Mr. Rufus Harley was owed $350.00 from the Humphrey campaign (debt written off in early 1976).

b) Lincoln Telephone and Telegraph Co. was owed $2,794.69 from the 1968 campaign of Robert Kennedy (debt written off in early 1977).

c) Mr. Richard Neustadt was owed $2,343.56 from the 1972 convention (debt written off in 1977).

In addition, there are two bills arising from the Humphrey campaign of 1968 that are the subject of a dispute between the D.N.C. and the individual creditor. The first is with Merkle Press Inc. who maintains it is owed $132,165.76 from the 1968 presidential campaign. The D.N.C. contends that a debt settlement was reached with Merkle Press in September of 1972 and that the payment of $32,041.44 was accepted in full satisfaction of $132,165.76 debt ($99,124.28 forgiven). The second bill i dispute is with the Emery Air Freight Corporation which maintains that it is owed $34,345.06, as opposed to the $31,328.43 the D.N.C. contends is still outstanding. Moreover, no payments have been made to satisfy this debt since August of 1974.

The final matter disclosed in the audit review was the acceptnace by the D.N.C. of twenty corporate labor union checks totaling $660.95 received from the sale of books and campaign seminars. The D.N.C. contends that the $660.95 represents a recapture of production costs, but is unable to document its actual production costs.

FACTUAL BASIS AND LEGAL ANALYSIS

I. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (ao 1979-24), provided that corporate purchaser or lessees pay the usual and normal chrage for the goods or services provided by the committee. See also 11 C.F.R. § 100.7 (a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/ promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks as bargained in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and

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the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the D.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee" in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Though the D.N.C. is in violation of 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, and the Franklin Mint is in violation of 2 U.S.C. § 441b(a) for making a corporate contribution, it must be added, not as a defense, but in mitigation of the D.C.N.'s actions, that at the time of the making of the contract (August 27, 1976) between the Franklin Mint and the D.N.C., the Commission had not determined that a royalty paid by a corporation to a political committee is a corporate contribution. In fact, at the time of the making of the contract, the only advisory opinion issued concerning the receipt of a contribution by a political committee from the sale of goods and services was AO 1975-15 that allowed a political committee (the Wallace Committee) to raise contributions through the sale of campaign items. It was not until AO 1976-50, decided on September 2, 1976, that the Commission ever questioned the propriety of a contribution raised through the sale of goods and services, and it was not until AO 1979-17 that the Commission finally decided that the sale of a political organization's goodwill and reputation was a corporate contribution in contravention of 2 U.S.C. § 441b(b)(2).

It is for the reasons mentioned above, that the Commission found reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action.

II. ABC "Political Discount"

The ABC Television Networks ("ABC"), a corporation, granted the D.N.C. a one-third "political discount" in February of 1976 for the D.N.C.'s telethon of July 26-27, 1975. The granting of a political discount raises the specific issue of the applicability of 18 U.S.C. § 610 (currently 1 U.S.C. § 441b(a)), which provides that:

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> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential election or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing officers or for any candidate political committee, or other person to accept or receive any contribution prohibited by this section.

The term "contribution or expenditure" is defined in 18 U.S.C. § 610 (currently 2 U.S.C. § 441b) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission has made it clear that: "[it] views a discount below the "usual and normal charge to be a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients" (AO 1978-45).1/ Even if ABC gave political discount to all political parties, there would be a corporate contribution unless a "political discount" was offered to ABC's non-political clients. Given the fact that the discount is labeled a "political discount" by ABC, this possibility seems highly unlikely.

The D.N.C. did receive something of value, namely, the receipt of television production services provided by ABC at a price below what ABC normally charged its non-political customers. 2/ It must be added, however, that in February of 1976 there were no interpretations, through case law, advisory opinion, or regulation, which specifically stated that a "discount below the usual and normal charge" is a contribution, if the discount is not routinely offered in the vendor's ordinary cause of business to non-political clinets. Moreover, unlike the transfer of money on goods and services to a political committee, the giving of a discount does not involve such a clear cut transfer of possession and ownership

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1/ 11 CFR § 100.4(a)(1)(iii)(B)(1) defines "usual and normal charge" for goods to mean "the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution."

2/ There is no evidence that ABC's fee was less than the costs of producing the telethon.

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from the contributor to the political committee, but involves an indirect benefit to the committee due to the fact that a political committee receives something of value at a discounted price.

It is for the reasons mentioned, above that the Commission found reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from ABC in the amount of $16,300.23, but that no further action should be taken.

III. Debt Settlement and Debts Still Outstanding

The D.N.C. records show that certain corporate and non-corporate debts, arising from the 1968 presidential campaign, were paid off at less than face value or still remain outstanding. The amounts forgiven or still outstanding are as follows:

a) the United Exposition Service Co. Inc. (debt forgiven $28,417.80 on August 3, 1976).

b) Brooks Bus Line Incorporated (debt forgiven $1,128.75 on May 21, 1976).

c) Exhibition Contractors Co. (debt forgiven $13,529.28 on March 22, 1976).

d) Mr. Sol Kitty (debt forgiven $57,884.75 on June 13, 1977).

e) the estate of Robert Dowling (debt forgiven $11,489.76 on August 24, 1978).

f) Merkle Press Inc., (This debt is disputed; D.N.C. contends that $99,124.28 debt was forgiven in September of 1972).

g) Emery Air Frieght Corporation (This debt is disputed, D.N.C. claims it owes $31,328.43; Emery contends $34,345.06 is owed.)

(A) Debts Forgiven

The forgiveness of a debt or the failure to satisfy a debt is a contribution by the creditor to the debtor unless the creditor used commercially reasonable efforts, similar to that it would have used in collecting a debt from a non-political debtor. (See 11 CFR § 114.10). Thus, whether the forgiven or unsatisfied debts listed, supra, are contributions depends upon whether the creditor attempted to collect the debt owed by the D.N.C. in a commercially reasonable manner.

The debts in question were from the 1968 presidential campaign of Hubert Humphrey and were asumed by the D.N.C. in 1972. In 1976,

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eight years after the debts were incurred, the D.N.C. made offers to many of the creditors to settle the debts at less than face value. It would appear that under the circumstances the debt settlements were conducted in a commercially reasonable manner. The debts had been made unenforceable by the statute of limitations (three years in the District of Columbia (See D.C. Ann. § 12-301(7)). Moreover, it is highly unlikely that any creditor's action against the D.N.C. or the Humphrey Campaign, prior to the running of the statute of limitations, would have resulted in the creditors receiving a grater portion of the debt owed them than they received pursuant to the debt settlement agreements. Since the debts appear to have been settled in a commercially reasonable manner, the forgiveness of the outstanding part of the debt would not have resulted in a contribution by each of the creditors of the D.N.C. involved in the debt settlement procedure.

In addition to the fact that the debt in question appear to have been settled in a commercially reasonable manner, two of the creditors were individuals and forgiveness of their debts could not result in a violation of the Act. The debts were incurred in 1968, prior to the enactment of any campaign contribution limitation on individuals. Forgiveness of these debts by the creditors would be a valid contribution to the D.N.C. for the retirement of a debt arising from an election held prior to January 1, 1975 and therefore not subject to any contribution limitations, (11 CFR § 110.1(g)(1) also see AO 1977-52).

Thus, for the reasons mentioned, supra, the Commission found:

a) find no reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution from the United Exposition Service Co. Inc., Brooks Bus Line Incorporated, Exhibition Contractors Co., or Merkle Press Inc.;

b) find no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling;

11 CFR § 114.10(c)(3) requires a corporation and a debtor to file a statement of settlement with the Commission as part of the debt settlement procedure. Neither the D.N.C., nor any of the creditors filed a statement of settlement with the Commission. However, all of the corporate debts in question were forgiven prior to the effective date of the regulations (April 1977); thus, neither the D.N.C., nor the corporate creditors can be held accountable for failing to file a statement of debt settlement with the Commission, pursuant to 11 CFR § 114.10(c)(3). Therefore, the Commission found no reason to believe that the D.N.C. violated 11 CFR § 114.10(c)(3) for failing to file a statement o settlement with the Commission.

(B) Debts Still Outstanding or Disputed

The debt of Emery Air Freight Corporation ("Emery") and the Merkle Press Inc., ("Merkle") were incurred by the Humphrey Presidential Campaign of 1968 and assumed by the D.N.C. in 1972. The Merkle bill is disputed, for the D.N.C. contends that a settlement of the debt was reached in 1972. The Emery debt is still outstanding; there has been no effort at reaching a debt settlement, no payments have been made on the debt by the D.N.C. since 1974, and Emery has made no effort since November of 1977 to collect the debt. Both Debts are unenforceable due to the statute of limitations and were unenforceable when the debts were assumed by the D.N.C. (statute of limitations is three years in the District of Columbia. (See D.C. Ann. § 12-31(7)). Thus, there is no effective commercially reasonable means that Merkle or Emery currently could use, or could have used, at the time the D.N.C. assumed the debt, to collect what are legally unenforceable debts owed by the D.N.C. Therefore, the Commission found, for the reasons mentioned above, no reason to believe the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from Merkle Press Inc. on the Emery Air Freight Corporation.

(C) Debts Written Off

The records of the D.N.C. show that the D.N.C. wrote off their books debts owed to Mr. Rufus Hartley ($350.00), Mr. Richard Neustadt ($2,343.56), and the Lincoln Telephone and Telegraph Co. ($3,794.69).

Two of the creditors are individuals, and based on the analysis set forth in Section III.A of this report concerning the forgiveness of debts owed to an individual, the Commission found there is no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) or that Mr. Rufus Harley or Mr. Richard Neustadt violated 2 U.S.C. § 441a(a)(1)(A). The third creditor, Lincoln Telephone and Telegraph Co. is a corporation and based on the analysis set forth in Section III.B of this report. The Commission found there is no reason to believe that the D.N.C. violated 18 U.S.C. § 610 for accepting a corporate contribution or that the Lincoln Telephone and Telegraph Co. violated 18 U.S.C. § 610 for making a corporate contribution.

The final matter disclosed in the auidit review was the acceptance by the D.N.C. of 20 corporate and labor union checks totalling $660.95 received from the sale of books and campaign seminars. The D.N.C. contends that the $660.95 represents a recapture of production costs, but is unable to document its actual production costs.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

It appears tht the above payments to the D.N.C. even if to defray the expenses of production incurred by the R.N.C. are contributions to the D.N.C. under the Act. The Commission has previously stated that the mere fact a person receives something of value in return does not render, in and of itself, a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the D.N.C. in selling the goods and services in question is cost reocvery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the D.N.C., since the D.N.C. is receiving funds that will be available for its political purpose. See AO's 1976-76, 1979-17, 1978-46, 1975-15. Even if the Commission views these payments as a commercial transaction because of the fact something was received in return for the payment of money to a political committee, to the extent the amount charged exceeds actual costs of the D.N.C., it is a contribution. See 11 C.F.R. § 100.4(a)(1)(iii)(A) and AO's 1979-18, 1976-22.

Though the funds the D.N.C. received from the corporations and the labor union are, for the reasons mentioned above prohibited corporate and labor contributions, it should be added, not as a defense, but in mitigation of the D.N.C.'s acceptance of these prohibited contributions, that a majority of these contributions are under $50.00. Moreover, it does not appear that the D.N.C. was deliberately attempting to avoid the provisions of 2 U.S.C. § 441b, but simply attempting to recoup its out of pocket costs it incurred in producing the goods and services in question.

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

1. reson to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action.

2. reason to believe that the D.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the ABC Television Network, but take no further action.

3. no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from the United Exposition Services Co. Inc., Brooks Bus Lines Incorporated, and Exhibition Contractors Co.

4. no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) for accepting an excess contribution from Mr. Sol Kitty or the estate of Mr. Robert Dowling.

5. no reason to believe that the D.N.C. violated 11 CFR § 114.10(c)(3) for failing to file a statement of settlement with the Commission.

6. no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by accepting a corporate contribution from the Emery Air Freight Corporation or from Merkle Press Inc.

7. no reason to believe that the D.N.C. violated 2 U.S.C. § 441a(f) by receiving an excess contribution from Mr. Rufus Harley or Mr. Richard Neustadt.

8. no reason to believe that the D.N.C. violated 18 U.S.C. § 610 by receiving a corporate contribution from the Lincoln Telephone and Telegraph Co.

9. reason to believe that the D.N.C. violated 2 U.S.C. § 441b by accepting twenty corporate and labor contributions, but take no further action.

10. reason to believe that the D.N.C. violated 2 U.S.C. § 434(b) for failing to list the receipt of the funds as contributions, but take no further action.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes
Franklin Mint
Franklin Center, PA 19091

Re: MUR 1166

Dear Mr. Andes:

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b (a) of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that payment of a royalty to a political committee nevertheless appears to be a violation of 2 U.S.C. § 441b(a) and you should take immediate steps to insure that this activity does not occur in the future.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1166

STAFF MEMBER(S) & TEL. NO. Taylor

RESPONDENT The Franklin Mint

SOURCE OF MUR: INTERNALLY GENERATED

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

On September 3, 1976, the DNC deposited in its operating account one check for $20,000 from the Franklin Mint Corporation and on October 3, 1976 deposited in its operting account another check for $10,000 from the Franklin Mint Corporation. When the Audit staff inquired about the check, the committee explained that it was a royalty payment resulting from an agrement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Democratic party's campaign symbol: The Committee provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Democratic Presidential and Vice Presidential candidates on the observe and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subjecty

d) The DNC would agree to designate the medals as the official Presidential Campaign Medals of the Democratic National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

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e) In consideration of the D.N.C.'s agreements, the corporation would:

1) Pay the D.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the D.N.C. at no charge a quantity of medals with a retail value of $5,000.

f) The D.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as reuired under applicable Federal law.

g) The D.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

FACTUAL BASIS AND LEGAL ANALYSIS

Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(a) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the D.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the Committee's campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Democratic National Committee' in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income ralized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corportion was authorized to produce and market a shirt bearing a caqndidate's name. The corportion would pay all expenses to produce and sell the shirts and would remit $1 of the $7.95 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concuded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign

materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

Though the D.N.D. is in violation of 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, and the Franklin Mint is in violation of 2 U.S.C. § 441b(a) for making a corporate contribution, it must be added, not as a defense, but in mitigation of the D.N.C.'s actions, that at the time of the making of the contract (August 27, 1976) between the Franklin Mint and the D.N.C., the Commission had not determined that a royalty paid by a corportion to a political committee is a corporate contribution. In fact, at the time of the making of the contract, the only advisory opinion issued concerning the receipt of a contribution by a political committee from the sale of goods and services was AO 1975-15 that allowed a political committee (the Wallace Committee) to raise contributions through the sale of campaign items. It was not until AO 1976-50, decided on September 2, 1976, that the Commission ever questioned the propriety of a contribution raised through the sale of goods and services, and it was not until AO 1979-17 that the Commission finally decided that the sale of a political organization's goodwill and reputation was a corporate contribution in contravention of 2 U.S.C. § 441b(b)(2).

It is for the reasons mentioned, above, that the Commission found reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the D.N.C., but determined to take no further action.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frederick S. Pierce
ABC Television Network
New York, New York 10019

Re: MUR 1166

Dear Mr. Pierce:

On , 1980, the Commission found reason to believe that your company violated 18 U.S.C. § 610 of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. 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 granting of a "political discount" nevertheless appears to be a violation of 18 U.S.C. § 610 (currently 2 U.S.C. § 441b) and you should take immediate steps to insure that this activity does not occur in the future.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case, at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1166
STAFF MEMBER(S) & TEL. NO.
Taylor

RESPONDENT ABC Television Network

SOURCE OF MUR: INTERNALLY GENERATED

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Democratic National Committee ("DNC") covering the period of January 1, 1976 through September 30, 1978.

D.N.C. records show a letter dated February 13, 1976 from the American Broadcasting Company ("ABC") addressed to Mr. Robert Strauss, chairman of the Democratic National Committee, detailing the billing procedure used by ABC in determining the D.N.C.'s bill for service's provided by ABC in the production and broadcasting of the D.N.C.'s 1975 telethon. This letter states that ABC is allowing the D.N.C. a one-third political discount off a gross billing figure of $48,990.69 thus, reducing the D.N.C.'s obligation to $32,660.46.

FACTUAL BASIS AND LEGAL ANALYSIS

The ABC Television Networks ("ABC"), a corporation, granted the D.N.C. a one-third "political discount" in February of 1976 for the D.N.C.'s telethon of July 26-27, 1975. 1/ The granting of a political discount raises the specific issue of the applicabilty of 18 U.S.C. § 610 (currently 2 U.S.C. § 441b(a)), which provides that:

> It is unlawful . . . for any corporation whatever, . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential election or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for

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1/ The telethon was run by the D.N.C. to help raise money to pay off the 1968 presidential campaign debt.

> any of the foregoing officers or for any candidate political committee, or other person to accept or receive any contribution prohibited by this section.

The term "contribution or expenditure" is defined in 18 U.S.C. § 610 (currently 2 U.S.C. § 441b) to include:

> . . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The Commission has made it clear that: "[it] views a discount below the "usual and normal charge to be a contribution if the discount is not routinely offered in the vendor's ordinary course of business to non-political clients" (AO 1978-45).2/ Even if ABC gave political discount to all political parties, there would be a corporate contribution unless a "political discount" was offered to ABC's non-political clients. Given the fact that the discount is labeled a "political discount" by ABC, this possibility seems highly unlikely.

The D.N.C. did receive something of value, namely, the receipt of television production services provided by ABC at a price below what ABC normally charged its non-political customers. 3/ It must be added, however, that in February of 1976 there were no interpretations, through case law, advisory opinion, or regulation, which specifically stated that a "discount below the usual and normal charge" is a contribution, if the discount is not routinely offered in the vendor's ordinary cause of business to non-political clients. Moreover, unlike the transfer of money on goods and services to a political committee, the giving of a discount does not involve such a clear cut transfer of possession and ownership from the contributor to the political committee, but involves an indirect benefit to the committee due to the fact that a political committee receives something of value at a discounted price.

It is for the reasons mentioned, supra, that the Commission found reason to believe that ABC violated 18 U.S.C. § 610 for making a corporate contribution in the amount of $16,330.23 to the D.N.C., but determined to take no further action.

2/ 11 CFR § 100.4(a)(iii)(B)(1) defines "usual and normal charge" for goods to mean "the price of those goods in the market from which they ordinarily would have been purchased at the time of their contribution."

3/ There is no evidence that ABC's fee was less than the costs of producing the telethon.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles V. Lockyer
Merkel Press Inc.
11200 Prospect Hill Road
Glenn Dale, Md. 20769

Dear Mr. Lockyer:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. D.J. MacDonald
Emery Air Freight Corporation
P.O. Box 7
Scranton, PA 18501

Dear Mr. MacDonald:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Baer and McGoldrick
460 Park Avenue
New York, NY 10022

Re: The Estate of Robert W. Dowling

Dear Sirs:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Peter Brooks, President
Brooks Bus Lines Incorporated
421 Washington Street
Paducah, Kentucky 42001

Dear Mr. Brooks:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Katz
United Exposition Service Co. Inc.
2328 Pacific Avenue
Atlantic City, New Jersey 08401

Dear Mr. Katz:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

8 2 0 4 0 3 5 2 7 8 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Exhibition Contractors Co.
c/o James A. Brow, Esq.
11 South LaSalle Street
Chicago, Illinois 60603

Dear Mr. Brow:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

32040552793

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Sol Kitty

Dear Mr. Kitty:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard Neustadt

Dear Mr. Neustadt:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

8 2 0 4 0 3 5 2 7 8 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rufus Harley

Dear Mr. Harley:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 26, 1980

MEMORANDUM

TO: Bob Costa

THROUGH: Orlando B. Potter
Staff Director

FROM: Charles N. Steele
General Counsel

SUBJECT: Interim Audit Report of the Democratic National Committee

The Office of General Counsel has reviewed the Interim Audit Report of the Democratic National Committee ("THE DNC") and the attached Addendum containing matters referred to this office for possible further action. Based on the information in this report, we offer the following comment.

We concur with the recommendation in Finding B regarding the DNC's apparent violation of 2 U.S.C. §441b. As to the referred matters, we recommend that the significant issues raised in each matter be investigated further in a Matter Under Review.

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A-696

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1980

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: ORLANDO B. POTTER
STAFF DIRECTOR

FROM: BOB COSTA

SUBJECT: INTERIM AUDIT REPORT OF THE DEMOCRATIC NATIONAL COMMITTEE

Attached please find a copy of the interim audit report of the Democratic National Committee for your review and comment.

Also attached please find Addendum #1 which contains matters noted during the fieldwork which are referred to your office for legal analysis and opinion. Based upon your analysis of these matters, Finding II A, Matters Referred to the Office of General Counsel, may be expanded.

Under the Track B procedures approved by the Commission, we plan to forward this report to the Commission upon return of the legal analysis (approximately two weeks from the date of your receipt of this report).

Should you have any questions, please contact either Charlie Hanshaw or Russell Bruner on extension 3-4155.

Attachment as stated

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

INTERIM REPORT OF THE AUDIT DIVISION ON THE DEMOCRATIC NATIONAL COMMITTEE

I. Background

A. Overview

This report is based upon an Audit of the Democratic National Committee ("the DNC") undertaken by the Audit Division in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(a)(8) of Title 2 of the United States Code which directs the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Act.

The DNC registered with the Clerk of the United States House of Representatives on April 17, 1972 in support of Democratic nominees for Federal elections, and maintained its headquarters in Washington, D.C. All administrative expenses of the DNC were paid by the DNC Services Corporation which serves as the source for disbursements of administrative costs for all affiliates.

The audit covered the period January 1, 1976 through September 30, 1978, the final coverage date of the last report filed by the DNC at the time of its termination. 1/ During the period the DNC reported an opening cash balance of $52,786.01, total receipts of $9,224,917.76, total expenditures of $9,277,703.77, and a closing cash balance of $-0-.

1/ The termination culminated in the DNC merger into the DNC Services Corporation on September 30, 1978. The Audit of that committee shall be addressed in a separate report.

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

B. Key Personnel

The principal officers of the DNC during the period audited were:

Chairman	Treasurer	Dates
Robert S. Strauss	Edward Bennett Williams	1/01/76-1/31/77
Kenneth Curtis	Joel McCleary	2/01/77-5/31/78
John C. White	Evan Dobelle	6/01/78-9/30/78

C. Scope

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

II. Interim Audit Findings and Recommendations

A. Matters Referred to the Office of General Counsel

Presented below are matters referred to the Office of General Counsel for further consideration.

1. Apparent receipt of royalties.

2. Discount on a commercial transaction.

3. Receipts from sales of goods and services.

4. Issues concerning debts.

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B. Receipt of Prohibited Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any Federal election to political office, and unlawful for any political committee to knowingly accept or receive any such contribution.

The Audit staff's review of contribution records, including copies of contributor checks and verification with the appropriate Secretary of State, disclosed that the DNC had accepted six (6) contributions totaling $725.00 in conjunction with a fundraising event. According to the DNC officials, a system was maintained to ensure that no corporate contributions are accepted, but they were unsure why these items had not been detected.

Recommendation

The Audit staff recommends that within 30 days of receipt of Commission notification the DNC refund the contributions and submit to the Audit Division copies of checks (front and back) used for the refunds, or provide evidence demonstrating that the contributions were not funded through prohibited sources.

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Addendum #1

Matters Referred to the Office of General Counsel

Presented below are the matters addressed at Finding II A of the interim audit report which were noted during the fieldwork. These matters are referred to your office for further consideration.

A. Receipt of Corporate and Labor Contributions; Contributions In Excess of Limitations

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation or labor organization to make a contribution in connection with any Federal election to political office; and unlawful for any political committee to knowingly accept or receive any such contribution. Additionally, Section 441a(a)(1)(B) of Title 2 of the United States Code states, in part, that no person shall make contributions to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in the calendar year which, in the aggregate exceed $20,000.00.

1. Royalties Received From a Corporation

The Audit staff noted a contract dated August 27, 1976 between the DNC and a corporation which proposed a royalty of 15% of the net sales proceeds of medals bearing a facsimile of the 1976 Democratic Presidential Candidate. According to the contract, the corporation guaranteed the DNC a minimum royalty of $30,000.00 and a quantity of medals bearing a total retail value of $5,000.00. (See Attachment 1).

The DNC received a $20,000.00 advance payment and a $10,000.00 subsequent payment to satisfy the contractural guarantee (see Attachment 2 & 3). The DNC officials were uncertain whether the medals had ever been received. However, a DNC memorandum (see Attachment 4) contains information which indicates that the medals may have been received by the DNC and sold to its major contributors. Further information concerning the contractural agreement is included for your review (see Attachment 5).

It appears that the activity parallels that which was determined by the Commission in AO 1976-50 (see Attachment 6) to be unlawful under the Act.* In that opinion Friends of Dick Lugar Committee authorized an Indiana corporation to produce and market a shirt bearing the candidate's name. One analogous element with respect to the production and marketing of the medals and the shirts is that the DNC, like Friends of Lugar, was not involved in selling the medals and incurred no expenses in conjunction with the sales. In the Lugar opinion, the Commission stated that "the fact that expenses of producing and marketing the shirt are paid entirely by the corporation results in the Committee receiving something of value from the corporation. The corporation is effectively advancing funds to assist the Committee in a fundraising effort and is also serving as a conduit in providing a contribution to the Committee for every shirt that is sold." Further, the Commission stated "for these reasons this activity is clearly distinguishable from the facts presented in Advisory Opinon 1975-15 wherein the Wallace campaign itself purchased and sold various campaign related items as a fundraising method. Therefore, this type of arrangement would be unlawful under the Act."

A similar situation encountered during an audit of the Republican National Committee - Expenditures is being addressed in a separate referral to your office by the Audit Division.

2. Commercial Discount In Excess of Normal Rate

The Audit staff noted a $16,330.23 discount received by the DNC from a television network which represented 33 1/3% "political discount" on a debt totaling $48,990.69 incurred in conjunction with the 1975 DNC Telethon (see Attachment 7).

The DNC officials stated that the television network considered the discount rate to be consistent for services rendered to other political parties and candidates. However, documentation in support of the rate consistency was not available for the Audit staff's review.

Section 100.4(a)(1)(iii)(B)(1) of Title 11 of the Code of Federal Regulations defines "usual and normal charge" as the rate prevailing at the time the services were rendered. Since the discount seems to be in excess of a regular commercial rate and the Audit staff had no basis to determine whether the discount

* Also refer to AO 1979-76 (not attached) which was recently approved by the Commission.

was commercially reasonable vs. a contribution prohibited by Section 441b of Title 2 of the United States Code, the matter is referred to your office for further consideration.

3. Receipts From Sales of Goods and Services to Corporations and Labor Organizations

The Audit staff noted 20 receipts totaling $660.95 accepted from 20 corporations and labor organizations in exchange for goods and services such as books and campaign seminars. The receipts were deposited into the DNC Federal campaign depository and reported in the disclosure reports with notation that the receipts were for sales of items such as those hereinabove.

The DNC officials stated that the receipts were actually a partial recapture of production costs. However, detailed records in support of the unit costs were unavailable for the Audit staff's review and determination. Finally, the officials stated that the receipts were not given tax consideration.

Parallel situations were addressed in previous referrals of matters noted during audits of Citizens For the Republic ("CFTR") and Young Republican National Federation, as well as a forthcoming referral of Republican National Committee - Expenditures. Your Division's response to the CFTR referral (see Attachment 8) indicated "such payments, at a minimum, would be contributions to the extent they exceed the actual cost."

4. Settlement of Pre 1975 Debts ("Old Debts") Owed to Corporate and Non-Corporate Vendors

The Audit staff noted five (5) debts totaling $194,648.39 incurred in conjunction with the 1968 Democratic Convention and retained as DNC liabilities until they were settled during the period March 22, 1976 through August 24, 1978 through informal agreements with three (3) corporations, one (1) estate, and one (1) individual for an aggregate amount of $74,918.88. No debt settlement statements were filed with the Commission by the vendors and/or the DNC as required by 114.10(c)(3) of Title 11 of the Code of Federal Regulations. Additionally, no documentation was maintained to support the DNC's efforts to extinguish the debts or measures taken by the vendors to collect the amounts outstanding.

The officials stated that it is customary to pay fundraising debts on a priority basis and the remainder as a result of pressure applied by the vendors to whom the debts are owed. Additionally, the officials stated that they were unfamiliar with the debt settlement requirements.

Since the debts were incurred prior to the existence of the Commission but retained as liabilities of the DNC until the period March 22, 1976 through August 24, 1978, this situation presents a question of the permissibility of this activity in light of the prohibitions contained in 2 U.S.C. 441a and 441b.

A separate issue concerning debts is addressed in a referral of matters resulting from an Audit of DNC Services Corp.

5. Debt Balances In Dispute

It was determined through confirmation by a CPA firm in conjunction with its audit of the DNC that a corporate debt of $128,652.70 incurred during 1968 is being reported at an amount totaling $18,295.35. Documentation presented by DNC officials (see Attachment 9) indicates that the difference represents a dispute between the DNC and the corporation concerning whether the balance had been reduced as a result of an informal agreement between the corporation and DNC.

In addition, a review of DNC records and reports revealed another debt owed to a corporate vendor in conjunction with services provided during the 1968 campaign. The DNC has been disclosing a balance of $31,328.43, but the corporation claims the actual balance owed is $34,345.06. The last correspondence from the corporation indicated that the $3,016.63 difference had not been reconciled between the DNC and the corporation. The DNC officials provided no further information concerning the status of the debt which remains outstanding with no payments applied since August, 1974.

There was no indication on the reports filed by DNC that the balances were in dispute.

6. Debts Written Off As a Result of Confirmation

As a result of confirmations by the CPA Firm mentioned above, the DNC charged off eight (8) debts totaling $13,333.75 which had been continuously reported after the pre-1975 incurrence. The DNC officials provided copies of only four (4) of the confirmation letters returned by the vendors indicating that no debts were owed to them by the DNC. However, with respect to one of the vendors confirming a zero (-0-) balance, documentation contained in DNC records indicated that the vendor had attempted to collect the debt approximately nine (9) months before the zero (-0-) balance was confirmed.

Four (4) of the above mentioned vendors are corporations. However, the debt settlement provisions outlined in Section 114.10(c) of Title 11 of the Code of Federal Regulations were not complied with by the corporate vendors and/or DNC. Additionally, the non-corporate debts charged off by DNC were not reported as contributions in-kind.

The DNC officials were unaware of the provisions concerning corporate debt settlement.

7. A separate issue concerning the receipt of contributions in violation of Section 441a is addressed in the Interim Audit Report since the circumstances surrounding the issues are clear cut. Additionally, other issues concerning "old debt" are addressed in a referral of matters noted during an audit of the DNC Services Corporation since the debts were assumed by that Committee upon termination of the DNC.

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FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19011

August 25, 1976

File

Democratic National Committee
1625 Massachusetts Avenue, NW
Washington, D.C.

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Democratic Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Democratic Presidential candidate on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Democratic and Republican Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

8 2 0 4 0 5 5 2 7 9 7

Your organization agrees to designate the above-described Democratic Presidential Campaign medals as the Official Presidential Campaign Medals of the Democratic National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Democratic National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Democratic National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

27th day of August, 1976

Democratic National Committee

9204035279 3

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19508

Date September 3, 1976

Pay
to the order of Democratic National Committee

Twenty thousand and ---------- $20,000.00
00/100

Morgan Guaranty Trust Company
of New York

⑦

II 051 150

19508

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

This check represents an advance against the $30,000 minimum guaranteed royalty provided for in the contract between the Democratic National Committee and The Franklin Mint dated August 27, 1976.

Attachment 3
Page 1 of 2

10/28

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19608

Date October 8, 1976

1-23
210

Pay
to the order of Democratic National Committee $10,000.00

Ten thousand and ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

COUNTERSIGNATURE REQUIRED WHEN WATERMARK IS SEEN ON ALL SIDES

⑈19608⑈ ⑆0210⑈0023⑆ 022 06 483⑈

3 0 1 5 5 2 4 0 1 ⑈

(3)

II C51

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19609

MEMORANDUM

TO: Lee King

FROM: Tom Beard

RE: Franklin Mint Proposal

DATE: August 26, 1976

After discussing the Franklin Mint proposal with Frank Fitzpatrick, (Vice President, Franklin Mint), I feel certain that we should accept their offer.

They will give us at least $15,000 "up-front" (of the agreed $30,000 or 15%), in addition to $5000 in merchandise. We should probably take $5000 of the silver medals in the display stands. The will sell for $20-$25 each, so we could get 200 - 250 of these medals which would serve as nice gifts for our major contributors.

When the time comes to negotiate the inaugural medal, we should seriously consider a mail-order medal in addition to the regular medallion.

II CS1

(5)

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

November 2, 1976

Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Attention: Ralph J. Gerson, Counsel

Gentlemen:

This letter is to clarify the nature of the agreement by which the Democratic National Committee has granted to the Franklin Mint Corporation the exclusive rights to reproduce and sell the official Presidential Campaign Medals of the Democratic National Committee.

As you may know, collectors value highly the sponsorship of prestigious organizations and find special merit in a commemorative medal that is an official issue of such a society. The Franklin Mint Corporation has obtained exclusive rights to mint and sell medals certified by such organizations as La Scala, Royal Shakespeare Theatre, National Audubon Society, the United Nations, National Governors Conference, American Revolution Bicentennial Administration, The 41st International Eucharistic Congress, The International Olympic Committee, World Wildlife Fund, National Society of the Daughters of the American Revolution, The Royal Horticultural Society and the Republican National Committee. Our agreement with your organization is identical to our agreement with the Republican National Committee. Further, our agreement with your organization is substantially the same as our agreement with the above-mentioned non-political organizations with respect to all essential contract terms.

Our purpose in issuing and selling these medals is to commemorate historical events and renowned organizations by means of gold and silver medals of lasting value. In advertising and selling our medals we stress their value as collector's items

8204053301

II CS

Democratic National Committee November 2, 1976

and feel no duty to further particular ideas or a particular candidate. Indeed, the Democratic and Republican Presidential Campaign medals are being advertised together.

We can assure you that our contractual relationship with your organization is on a purely commercial basis. We customarily pay sponsoring organizations royalties based on sales. The amount of such royalties is based solely on the commercial value of the exclusive endorsement of each organization as determined through commercial negotiations. The 15% royalty offered to the Democratic National Committee is well within the 5% to 25% range of royalties normally offered to sponsoring organizations, and it is identical to the royalty being paid to the Republican National Committee.

In addition, an advance is customarily paid to sponsoring organizations. The amount of the advance payment suggested to the Democratic National Committee and the Republican National Committee is comparable to advances previously offered to non-political sponsors.

In conclusion, we believe that this transaction is a commercial transaction quite comparable to our dealings with nonpolitical organizations. Please do not hesitate to contact us if you desire any further information about our commemorative program.

Very truly yours,

FRANKLIN MINT CORPORATION

Richard J. Kradjel

Richard J. Kradjel
Associate Corporate Counsel

RJK/bb

Consequently, ABA or BreadPAC will need the approval of the member corporations prior to the time either may ask the stockholders or executive or administrative personnel of the member corporations to purchase tickets or inform such persons of the fundraising activity.

With regard to the specific questions raised, the activities you mention in questions one through four would be considered solicitations. The prenotification letter could, of course, be sent to the ABA's noncorporate members.

If the attendance at the convention consists of both persons whom ABA or BreadPAC may legally solicit and persons whom BreadPAC may not legally solicit, any solicitation scheme used either prior to or at the convention must be so designed that only the persons who may be legally solicited are in fact solicited. Although the Commission recognized that the statutory restrictions on solicitation may limit the use of fundraisers of this type at conventions attended by persons who may not be legally solicited, the Commission is not empowered to waive the statutory requirements.

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

Dated: September 2, 1976.

[¶5214] AO 1976-50: Providing Tee Shirts for Campaign Committee

[It is illegal for a corporation to produce tee shirts with the candidate's name on them and to provide the campaign committee with a contribution for each shirt sold. Answer to Gordon K. Durnil, Treasurer, Friends of Dick Lugar Committee.]

This letter responds to yours of July 6, 1976, requesting an advisory opinion as to the applicability of certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), to the circumstances described in your letter. You advised that the Friends of Dick Lugar Committee (Committee) has authorized Logo 7, Inc., an Indiana corporation, to produce and market a shirt bearing the candidate's name. You further advised that the committee, apart from distributing order forms to campaign workers who in turn redistribute them to potential contributor/purchasers, is not involved in selling the shirts and will incur no expenses. The corporation will transmit to the Committee a $1.00 contribution, earmarked to the campaign, for the sale of each shirt. You requested an advisory opinion as to whether this type of arrangement with the corporation would be permitted under the Act.

2 U.S.C. §441b(a) states:

> "(a) It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. §441b to include:

> "any direct or indirect payment, distribution loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . ." (Emphasis added.)

The fact that expenses of producing and marketing the shirt are paid entirely by the corporation results in the Committee receiving something of value from the corporation. The corporation is effectively advancing funds to assist the Committee in a fundraising effort and is also serving as a conduit in providing a contribution to the Committee for every shirt that is sold. For these reasons

© 1976, Commerce Clearing House, Inc.

this activity is clearly distinguishable from the facts presented in Advisory Opinion 1975-15 wherein the Wallace campaign itself purchased and sold various campaign related items as a fundraising method. Therefore, this type of arrangement would be unlawful under the Act.

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

Dated: September 2, 1976.

[¶5215] AO 1976-51: Informal Discussion Group

[A group which discusses foreign policy and determines to make contributions to certain candidates is a political committee. Answer to Robert N. Thomson, Esquire.]

This is in response to your letter dated February 9, 1976, requesting an advisory opinion on behalf of the Democratic Senatorial Campaign Committee, a political committee registered pursuant to the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

The request sets out the following facts:

> There are a number of individuals, commonly acquainted, who live in various cities throughout the United States. These individuals share a common concern about a particular aspect of United States foreign policy. From time to time they communicate with one another by telephone to discuss the possibilities of petitioning their elected representatives and other decision-makers in the Federal government. Occasionally, these individuals may meet personally to discuss such matters.
>
> The individuals belong to no organized group. There is no group headquarters nor are there any group employees. The individuals maintain no joint bank account where funds are commingled. The individuals are bound together only by a common concern about a particular aspect of United States foreign policy, by personal friendship, and by a common ethnic heritage.
>
> Incidental to their discussions concerning foreign policy, the individuals may discuss among themselves the advisability of individually supporting one or more Federal candidates with political contributions. If certain of the individuals are so inclined, they may make political contributions on personal checks payable to candidates or political committees. These individuals may also solicit others in their respective communities to make similar contributions. All such contributions are within the limits prescribed by 18 U.S.C. §608(b) [now 2 U.S.C. §441a(a)] and all other applicable Federal laws.
>
> These checks may be collected by one of the individuals for the sake of convenience and delivered in a batch to a Federal candidate or his campaign committee. The candidate or his committee will, of course, disclose the name of the individual contributors, as required by 2 U.S.C. §434. No attempt is made to avoid disclosure of names of individual contributors.
>
> The expenses incurred by these individuals in communicating with one another in the fashion described above are primarily directed toward discussing their common concern with United States foreign policy. When all such individual expenses (as distinguished from contributions) are taken together, they may exceed $1,000 in a calendar year.

ABC Television Network 1330 Avenue of the Americas New York, New York 10019 Telephone 212 LT1-7777

Charles C. Allen
Vice President Sales Administration

February 13, 1976

Mr. Robert S. Strauss
Chairman
Democratic National Committee
1625 Massachusetts Ave., N.W.
Washington, D. C. 20036

Dear Bob:

Although the outside possibility remains that some billing may straggle in for super slide use by stations, we feel that this is improbable. Therefore, this letter will serve to settle accounts for the July 26-27, 1975 DNC Telethon with the understanding that future billing, if any, will be quickly settled.

In a letter October 31, 1975, we attached a check for $110,000 on account for an indicated rebate of $116,443. We withheld the $6,443 as a contingency for additional billing for super slides. Consequently, the $19,250 rebate attributable to super slides as indicated in that letter was, in effect, reduced to $12,807 in order to preserve the contingency for additional billing. The gross billing figure, which we now hope will be final for super slides, is $48,990.69, which becomes $32,660.46 after granting the one-third political discount. The gross billing for super slides known last fall and used as a basis for the rebate listed in October was $44,624.41, which nets out to a rounded $29,750 after political discount. This leaves a net difference in cost to you of $2,910, which, when subtracted from the aforementioned contingency reserve of $6,443, leaves a rebate due the DNC of $3,533, check attached.

Bob, our very best wishes go to you and Kitty. If we can be of any further service, please let us know.

Very truly yours,

Charles C. Allen

Charles C. Allen

cm
Att.

II C22
3

cc: Mr. Malnin - DNC, L. Mackin - ABC

N.Y. 10019
inquiries
invoice amount
,533.00
3,533.00

3 2 0 4 0 3 5 2 3 0 7

American Broadcasting Company
1330 Avenue of the Americas, New York, N.Y. 10019
Please refer to check number when making inquiries

	Vendor name	Check no.
379	Democratic National Committee	294001

Invoice date	Invoice number	Our reference	Gross invoice amount	Discount	Net invoice amount
02116	22-0005		3,533.00		3,533.00

This check in full settlement of listed items.
All applicable discounts have been deducted.
No receipt is required.

Remittance statement

Amount remitted 3,533.00

A-518
Rec'd 8/27/79
Audit Division
RWhitt

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

August 24, 1979

MEMORANDUM TO: Bob Costa/Dan Boyle

THROUGH: Orlando B. Potter
Staff Director

FROM: William C. Oldaker

SUBJECT: Audit of Citizens For The Republic

The Office of General Counsel has reviewed your memorandum of July 11, 1979, concerning certain matters noted during the field work of the audit of the Citizens for the Republic ("CFTR"), and referred to this Office for legal analysis and opinion. The Office of General Counsel is of the opinion that these matters noted by the auditors may involve violations of the FECA and therefore should be referred to this Office for possible compliance action.

The first issue concerns the receipt of a $25 per person charge to defray a "luncheon expense" which was paid by individuals and by corporations for their representatives attending CFTR seminars. (There was no charge for attending the seminars). You state in the memorandum that CFTR did not consider these receipts to be contributions, thus creating a possible reporting problem as well as a possible illegal corporate contribution.

In light of the Commission's determinations in Advisory Opinions 75-15 and 76-22 that payments made to a political committee are contributions even if something of value is

received in return, it would appear that such payments to defray luncheon expenses should have been reported as contributions by CFTR. This is especially true where such payments were made by corporations, as 2 U.S.C. § 441b defines a corporate contribution as "any direct or indirect payment ... to any candidate, campaign committee, ... in connection with any election...", and those funds received by CFTR would be available for use in connection with a federal election. See also, AO 79-17, 79-2, and 78-46. At minimum, such payments would be contributions to the extent they exceed the actual cost of the lunch charged to CFTR. Therefore, this issue should be referred to the Office of General Counsel for possible compliance action.

The second issue noted in the memorandum concerns the relationship of CFTR to the Citizens for the Republic Education Fund (Ed Fund). 1/ Your memorandum states that

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1/ According to a statement of purpose and organization prepared for the auditors by the General Counsel of the Ed Fund (Attachment II of your memorandum), the Ed Fund is "an independent, non-profit research and education institution established to develop and disseminate to the public information on current issues of public policy and on citizen participation in the political ... process." The Ed Fund does not support candidates in state or federal elections. The Ed Fund is in the process of being incorporated under the laws of the State of California.

the Ed Fund does not make any direct solicitations for funds, and that apparently most contributions to the Ed Fund are a result of CFTR solicitations or corporate contributions to CFTR endorsed and deposited to the Ed Fund account. You further state that CFTR receipt and expenditure records indicate that CFTR paid $13,001.66 for expenses categorized as for the use of the Ed Fund, and that in December 1978 the Ed Fund transmitted seven checks for a total of $13,001.66 to CFTR for expenses incurred and services rendered from November 1977 through January 1979. One of these payments made on December 20, 1978, was an advance payment for "Seminar Services" to be provided in January 1979.

The above facts present several problems. First, with reference to the corporate contributions to CFTR that are deposited in the Ed Fund's account, such corporate payments would still appear to be corporate contributions made to CFTR in violation of 2 U.S.C. § 441b(a). Under the Act and the Commission's regulations, a political committee may not accept or receive corporate contributions. 2 U.S.C. § 441b, 11 CFR 114.2(c). To the extent CFTR endorses checks drawn on corporate funds and made payable to the committee, CFTR has "received" such a corporate contribution even if CFTR transfers these funds to another entity such as the Ed Fund.

The payments made in December 1978 by the Ed Fund to CFTR totalling over $13,000 also appear to be unlawful contributions in that they exceed the $5,000 contribution limit of 2 U.S.C. § 441a(a)(C). As stated previously, such payments, even as repayments for goods or services rendered, are considered contributions. See AOs 75-15 and 76-22. At the very least, the $2,000 paid as an advance for future expected services represents a direct contribution, 2 U.S.C. 431(e), and should have been reported as such. Furthermore, as the Ed Fund account contains corporate contributions and funds, payments by the Ed Fund to CFTR may be indirect corporate contributions prohibited by 2 U.S.C. § 441b(a). In light of the foregoing, the matter should be referred to the Office of General Counsel for possible compliance action.

One other point should be noted. Your memorandum states that the auditors informed CFTR's assistant treasurer that the Ed Fund could pay CFTR's expenses and then be reimbursed by CFTR. The assistant treasurer questioned whether such a procedure could result in Ed Fund expenditures to influence federal elections, but the staff replied such a procedure was apppoved by the Commission. However, this Office is not aware of Commission approval of this procedure in a factual situation such as the one presented. Although AO 76-72 sets out such a procedure, that Advisory Opinion Request was made by a state party committee and is not necessarily

applicable beyond that context. The situation presented here can be distinguished in significant aspects. CFTR and the Ed Fund are not party committees, nor do they represent two accounts of one committee. See 11 CFR 102.6. Rather, CFTR and Ed Fund are two separate entities. Thus, the Office of General Counsel does not agree with the advice and assurances given by the audit staff to the assistant treasurer concerning the payment of CFTR operating expenses by the Ed Fund.

8 2 0 4 0 5 5 2 3 1 3

Memorandum

To: Chairman White

From: Cecil M. Cheves

Date: April 9, 1979

Re: Merkle Press - Old Debt

I have spoken with Charles Lockyer twice this past week regarding the DNC debt to Merkle Press. The basic dispute involves $99,124.29 of debt which we have not carried on our DNC books since 1972 when the 72 Telethone receipts were used to settle debts at 25% of their value. Merkle received a check with such a notation on the reverse side of the check, yet, also received a cover letter from a Dusty Cunningham saying the debt was still owed in full.

In talking with Mr. Lockyer, he states he is a long time Democrat; a friend of Bob Strauss; and usually prints the Convention programs.

However, he refuses to talk any settlement with me, nor explain why he would not settle the debt along with other "good Democrats" in 1972.

Can you verify for me the standing of Charles Lockyer as a long time Democrat as well as any other considerations I should keep in mind when negotiating with Mr. Lockyer the payment of the debt - now totalling $128,652.70 as a result of subsequent work done.

See WP III F 1/2

III F 1/2

May 12, 1975

Mr. John Fleishell
Controller
Merkle Press, Inc.
810 Rhode Island Avenue, N. E.
Washington, D.C. 20018

Dear Mr. Fleishell:

Our auditors Arthur Anderson and Co., have shared with me your confirmation of outstanding balance. Needless to say, I was shocked when you included an item of $99,124.29 which you say is the balance from the 1968-70 Debt. In reviewing our correspondence, the letter sent to Merkle Press offered 25% in full settlement. This was accepted and paid by our check #119 for $33,041.44, which was promptly endorsed as a settlement of "full final and complete payment". A copy of the letter and the check is enclosed for your information. Mr. Fleishell, if we did not have the acceptance and acknowledgment of the settlement by your company, we would not have issued the check.

We hope this clears the matter.

Sincerely,

Eric M. Jaffe
Comptroller

Enclosure

3 2 0 4 0 3 5 2 8 1 5

INVOICE

MERKLE PRESS INC.

Printers and Periodical Publishers

810 RHODE ISLAND AVE., N.E. - WASHINGTON, D.C. 20018

TELEPHONE
832-6420

SOLD TO: Democratic National Committee
2600 Virginia Avenue, N. W.
Washington, D. C. 20037

TERMS:
NET CASH

CUSTOMER ORDER NUMBER	MERKLE PRESS JOB NUMBER	INVOICE DATE
	54800	July 31, 1972

Additional Charges for meter postage, air and ground express - Convention Program First Edition (Base Printing Billed on June 20, 1972)	$ 4,354.17

RESALE OR EXEMPTION NUMBER

57028

3 2 0 4 0 3 5 2 8 1 6

INVOICE

MERKLE PRESS INC.

Printers and Periodical Publishers

810 RHODE ISLAND AVE. N.E. - WASHINGTON, D.C. 20018

TELEPHONE
832-6420

Attachment 9
Page 4 of 13

SOLD TO: Democratic National Committee
2600 Virginia Avenue, N. W.
Washington, D. C. 20037

TERMS:
NET CASH

INVOICE

TERMS: NET CASH

CUSTOMER ORDER NUMBER	MERKLE PRESS JOB NUMBER	INVOICE DATE	CUSTOMER ORDER NO.
	60200	July 31, 1972	

Additional charges for meter postage, air and ground express - Florida Edition of Convention Program (Base Printing Pre-billed on June 20, 1972)	$ 2,217.29	
		$ 8,158.00
		1,158.00
		150.00
		610.75
		127.75
		13.50
		13.00
		7.00
		120.00
		2,270.00
		665.00
		16.00
		332.00
		132.00
		80.00
		28.00
		857.25
		$ 15,044.00
		3,[illegible]
		11,[illegible]

RESALE OR EXEMPTION NUMBER

ad 57029

8204035283 17

TELEPHONE: (202) 832-6420

MERKLE PRESS INC.

ESTABLISHED 1920

Printers and Periodical Publishers

810 RHODE ISLAND AVE., N.E. – WASHINGTON, D.C. 20018

Democratic National Committee
2600 Virginia Avenue, N. W.
Washington, D. C. 20037

INVOICE

TERMS: NET CASH

MERKLE JOB NO.	INVOICE DATE	CUSTOMER ORDER NO.
60200	June 20, 1972	

40,000 copies of the Florida Edition of the 1972 Democratic National Convention Program - 48 pages plus cover printed on 60 lb. White coated stock inside (furnished by customer) and 120 lb. Black and White Enamel for cover - printed black ink inside and four color process on cover - fold, perfect Bind, bleed trim flush - Bound with basic 240 page Program for a total of 288 pages and cover	$ 8,150.00
Additional for first page in four color process 8 page form 40,000 copies - 2 forms @ 727.00	1,454.00
4 additional pages in process in same form @ 30.00 each	120.00
111 Halftones @ 5.50 each	610.50
23 Line Strip-ins @ 4.75 each	107.75
3 Screens @ 4.50 each	13.50
2 Reverses @ 6.50 each	13.00
1 Scotch Print	7.00
Art Work	120.00
Additional for four color process separations - per quotation	2,275.00
Additional to create ad for Pompano Raceway including separations and stripping	685.00
Photo Prints	15.00
Alterations - composition	332.00
Alterations - Camera and Stripping	132.50
Index cards for advertisers	80.00
Postage (as of this billing date only)	23.80
1,115 cartons furnished and packed for shipping @ 75¢ each	836.25
	$ 15,048.30
CREDIT for paper purchased by customer and not used 23,538 lbs. @ 14.16/100	- 3,325.91
	$ 11,723.39

B 2 0 4 0 3 5 2 3 1 3

DEMOCRATIC
NATIONAL COMMITTEE 1625 Massachusetts Ave., N.W. Washington, D.C. 20036 (202) 797-5900

July 19, 1979

Mr. Charles N. Lockyer
Puhco Corporation
11200 Prospect Hill Road
Glenn Dale, Maryland 20769

Dear Mr. Lockyer:

We have made a careful review of the account balance owed by the Democratic National Committee to Merkle Press, and must conclude that the current outstanding balance is not $128,652.70 as you state in your letters to us.

Because of our relationship, we regret that this misunderstanding has occurred. Nevertheless, our review confirms that Merkle, along with numerous other corporate creditors, agreed with DNC in September 1972 to accept 25% of the "old debt" owed Merkle. This "old debt" had been incurred originally by the Humphrey campaign in 1968 and then assumed by DNC in 1972. Merkle received the sum of $33,041.44 in full settlement of its Humphrey related debt.

After this settlement Merkle printed material for the 1972 Convention. The account balance for this work was $29,528.41, and DNC reduced this account balance with a $10,452.59 payment in March 1976. Our balance due Merkle at this time is $19,075.82.

Again, I do regret that we have had a misunderstanding. The DNC has always admired the work of Merkle Press, and would hope that there can be an opportunity in the future for you to do printing work for us.

Sincerely,

John C. White
Chairman
Democratic National Committee

III F1/11

MEMORANDUM

TO: FILE

FR: CECIL CHEVES

DATE: April 25, 1979

RE: MERKLE PRESS

I have now established most of the underlying facts regarding the Merkle Press "Old debt" which the DNC thought was settled at 25% out of 1972 Telethon Funds. Apparently $99,124.29 of debt is at issue.

In 1972 it is believed that the DNC owed Merkle $132,165.76 (33,041.44 x 4) for debts incurred in the Humphry campaign. Additionally the DNC owed Merkle $29,528.41 for work done by Merkle for the 1972 Convention program.

A telethon was planned in 1972 to raise funds particularly for the "Old debt". Prior to the telethon, a letter was mailed to all creditors, including Merkle, with a precisely stated proposal offering a settlement at 25¢ on the dollar for each creditor's debt. If the creditor was interested, it should respond to the DNC.

Dusty Cunningham (548-9194) recalls the Merkle Press debt clearly. He said that he had once worked for Merkle and knew the personnel (but does not know Chick Lockyer). When Merkle responded to the proposal, Dusty visited the offices of Merkle Press and met with Bob Baerlin and Sol Kullen. Sol was a family friend.

During the meeting, which occured probably in September 1972, Dusty took "ribbing" from Merkle because he had just left Merkle's payroll and now was embarrassed to return to offer 25¢ on the dollar. Dusty went to Baerlin because he was the guy doing work on accounts. Dusty's approach was "here I am; I am prepared to settle if you are."

It is clear in Dusty's mind that a settlement was reached. First, the terms of the Telethon Trust required payment of funds only for Old debt. Second, Strauss made it clear that settlements at 25% were to be "across the board". It was an "either, or" situation. If a creditor would not accept 25% then no money was given them out of the Telethon Trust. Third, for large amounts, such as the $33,041.44, Dusty made certain the above criteria was met.

The only contingency that Merkle made to Dusty was that the "current" debt for the 1972 program be paid in full.

After the meeting, Dusty went back to his office and drew up the memo and had Bob Straus sign the check. Dusty [illegible]

have let Bob sign it if a settlement had not been reached because Bob was adamant that everyone be treated the same. Dusty's memo reflects that the "current debt" means the 1972 Convention program debt, and does not refer to the Old Debt of 1968.

Apparently the Controller of Merkle, John Fleishell, misinterpreted the memo -- thus his involvement in sending balances due on September 28, 1972 and on one Auditors report dated April 21, 1975.

I will write Merkle to ascertain what was the amount of the Old debt and also the application of a $10,452.59 payment, before I tell Merkle we will not pay the $99,124.29 they claim.

~~One~~ Our denial will be based upon an agreement between DNC and Merkle and if pressed, we can also rely upon the Statute of Limitations.

July 18, 1979

A review of the invoices mailed by Merkle Press to DNC shows that in 1972, after apparently crediting a $33,041.44 payment on September 20, 1972, the balance due Merkle was $99,124.29 for the "old debt" (acknowledged by their Controller John Fleishell to be $99,124.99 as of September 28, 1972.)

This figure - $99,124.29 - is the amount which DNC disputes that it owes to Merkle at this time. Rather the DNC account shows that it currently owes $19,075.82 to Merkle. This latter figure is arrived at in this manner.

Apparently while the settlement was being effected in 1972, DNC and Merkle transacted other business for the 1972 Convention program. The billings represented $29,528.41 according to Merkle's most recent invoices for the 1972 work.

By adding the two sums of $29,528.41 and $99,124.29 one gets the total of $128,652.70. This correlates with the figure of $128,652.70 which is demanded in Merkle letters of July 17, 1978 and March 27, 1979.

This figure of $128,652.70 is incorrect for 2 reasons.

First, it includes the disputed sum of $99,124.29 for which the DNC's position is that an accord and satisfaction was reached in 1972. Simply stated, an agreement was reached in 1972 that DNC should give 25% of the old debt and Merkle would accept that sum in satisfaction of the old debt which Merkle could then enforce. The old debt was then discharged.

Second, the sum does not reflect a payment of $10,452.59 by DNC on March 24, 1976. This payment was made with the intention by DNC to reduce the "current" balance of $29,528.41. The $10,452.59 payment was specifically for three Convention related jobs. These jobs are #55861 for $3,157.71; #57997 for $3,735.79; #61677 for $3,558.99.

However, in speaking with Chick Lockyer by telephone on May 16, 1979, he says that the payment was credited to the old debt and that therefore the balance now due should be $128,652.70 - $10,452.59 = $118,200.11.

Other factors to consider are:

1.) Chick Lockyer spoke with Chairman White last year and claims that White acknowledged the debt. Arguably, a novation could have occurred. However, in fact it could not have for (a) there was no substitution of a new debt for the old one, since in Merkle's mind the old debt amount continued and (b) a novation must be based upon consideration and none existed because Merkle could not forbear to bring litigation on the old debt with the statute of limitations having previously expired.

2.) I have researched the statute of limitations for bringing an action on this debt. The statute is, three years in D.C. (see Mike Grealey's memo in the file); and in Maryland, the statute is four years on contracts for sale of personal property (UCC S.2-725) and is three years for any civil action at law for which no specific period is provided by Code. All contracts which are under seal or for promissory notes have a twelve year statute. This latter category would not include us.

Therefore, after the accord and satisfaction of the old debt in 1972 through payment of $33,041.44, the current debt of $29,528.11 survived because it pertained to the 1972 Convention work. DNC then paid $10,452.59 on account to reduce the $29,528.11 to a new balance of $19,075.82. This is the balance that DNC now owes.

May 12, 1975

Mr. John Fleishell
Controller
Merkle Press, Inc.
810 Rhode Island Avenue, N. E.
Washington, D.C. 20018

Dear Mr. Fleishell:

Our auditors Arthur Andersen and Co., have shared with me your confirmation of outstanding balance. Needless to say, I was shocked when you included an item of $99,124.29 which you say is the balance from the 1968-70 Debt. In reviewing our correspondence, the letter sent to Merkle Press offered 25¢ in full settlement. This was accepted and paid by our check #119 for $33,041.44, which was properly endorsed as a settlement of "full final and complete payment". A copy of the letter and the check is enclosed for your information. Mr. Fleishell, if we did not have the acceptance and acknowledgment of the settlement by your company, we would not have issued the check.

We hope this clears the matter.

Sincerely,

Eric M. Jaffe
Comptroller

Enclosure

L COMMITTEE FOR THE RE-ELECTION OF A DEMOCRATIC CONGRESS
WASHINGTON HILTON HOTEL, SUITE 6200
WASHINGTON, D. C. 20009
(202) 332-6287

AIRMEN:
BERT S. STRAUSS
PETER McCLOUGH
TREASURER:
EDWARD BENNETT WILLIAMS
EXECUTIVE DIRECTOR
AND SECRETARY:
GEORGE LAMBERT BRISTOL

September 20, 1972

MEMORANDUM

TO: Mr. Robert Baeuerlein

FROM: Dusty Cunningham DC

RE: 1968 Debt

Enclosed please find a check in the amount of $33,041.44 which I believe is 25% of the total amount owed Merkle by the DNC from the '68 debt. Even though the check is stamped as it is, the current debt stands as owed, in full, by the DNC. You may address further correspondence on that matter to Mr. Donald A. Petrie, Treasurer.

Thank you very much.

i.e. 1972 work

15-7
540

01 No. 119

DEMOCRATIC NATIONAL COMMITTEE
TELETHON FUND

September 20 1972

Pay to the order of Merkle Press, Inc. ---------- $ 33,041.44

Thirty-three thousand forty one dollars and forty four cents-- Dollars

The National Bank of Washington

1968 Debt

DEMOCRATIC NATIONAL COMMITTEE
TELETHON FUND

Kaper Sal

No. 119

15-7
540

SEP 29 1972

September 20 1972

Pay to the order of Merkle Press, Inc. $ 33,041.44

Thirty-three thousand forty one dollars and forty four cents-- Dollars

The National BANK OF WASHINGTON
Washington, D.C.

1968 Debt

⑆0540⑈0007⑆ 1⑈243 33 0⑈ ⑈0003304 44⑈

Attachment 9
Page 12 of 13

Indorsement hereon constitutes full, final and complete payment of all obligations of the Democratic National Committee to the named payee for supplies, equipment or services provided directly or indirectly to the Committee to this date as listed on the remittance advice portion of this check.

FOR DEPOSIT IN
AMERICAN SECURITY & TRUST CO.
MERKLE PRESS INC.

PAY ANY BANK, B.F.R.B.
SEP 2 5 1972
15-55
AMERICAN SECURITY & TRUST
WASHINGTON, D. C.

FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1166

Date Filmed 9/29/82 Camera No. --- 2

Cameraman JPC

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 1166/1186.

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Gcc# 8386
82 SEP 2 P3: 35

Republican
National
Committee

E. Mark Braden
House Counsel

Catherine E. Gensior
Deputy House Counsel

RECEIVED
GENERAL COUNSEL
82 SEP 2 P3: 35

August 27, 1982

Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: MUR 1166/1180

Dear Mr. Gross:

I am writing in response to your letter of August 16th in regard to MUR 1180. Your letter indicated that the Commission, on the 12th of August, 1982, accepted the conciliation agreement agreed to by the Republican National Committee.

You state in your letter that provisions of the Federal Election Campaign Act prohibit any information derived in connection with a conciliation attempt from becoming public without the written consent of the respondent and the Commission. The Republican National Committee has no objections to any information in relation to this matter becoming part of the public record.

If you have further questions in relation to this matter, please do not hesitate to contact me.

Very truly yours,

E. Mark Braden

E. Mark Braden

EMB:jd

Dwight D. Eisenhower Republican Center: 310 First Street Southeast, Washington, DC 20003 (202) 484-6639

Republican
National
Committee

8 2 0 4 0 1 0 4

WASHINGTON, DC 200
1 AM
1 SEP
1982

RECEIVED AT THE FEC
82 SEP 2

Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

F

FEDERAL ELECTION COMMISSION

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

END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1166/1180.

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