



FEDERAL ELECTION COMMISSION

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 21, 1980

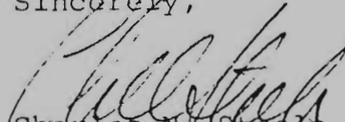
Joanne McSorley
Assistant Treasurer
Dole for President Committee, Inc.
104 N. St. Asaph Street
Alexandria, Virginia 22314

Re: MUR 1168

Dear Ms. McSorley:

The Commission considered the above-referenced complaint on an expedited basis and on the basis of information received from the respondent, Telegraph Publishing Company, determined to take no further action in this matter and close the file.

Sincerely,


Charles N. Steele
General Counsel

0010181832



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 21, 1980

TELEGRAM

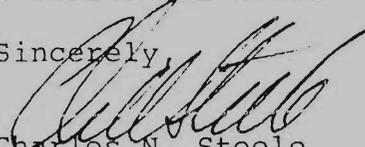
David C. Hamblett
President
Telegraph Publishing Company
60 Main Street
Nashua, New Hampshire 03060

Re: MURs 1167, 1168, 1170

Dear Mr. Hamblett:

On the basis of the information you provided to the Commission by telephone to be confirmed by telegram on February 21, 1980, the Commission has determined to take no further action in the above-referenced matters and has closed the files.

Sincerely,


Charles N. Steele
General Counsel

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PMS DAVID C HAYBLETT DLR
PRESIDENT
TELEGRAPH PUBLISHING COMPANY
60 MAIN STREET
NASHUA NH 03303

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FEB 22 1953

RE: MURS 1157, 1162, 1163

DEAR MR. HAYBLETT:

ON THE BASIS OF THE INFORMATION YOU PROVIDED TO THE COMMISSION BY TELEPHONE TO BE CONFIRMED BY TELEFRAY ON FEBRUARY 21, 1953, THE COMMISSION HAS DETERMINED TO TAKE NO FURTHER ACTION IN THE ABOVE-REFERENCED MATTERS AND HAS CLOSED THE FILES.

SINCERELY,

CHARLES N. STEELE
GENERAL COUNSEL

(FED/NA/NA/WU/CWAT/153/147/DC/STEELE).

ACCEPTED
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Telegraph Publishing Company)
Nashua Telegraph)

MURS 1167, 1168, 1170

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on February 21, 1980, do hereby certify that the Commission decided by a vote of 4-0 to take no further action and close the file on the above-captioned matter on the basis of information received from the respondent.

Commissioners Aikers, Friedersdorf, Reiche, and Tiernan voted affirmatively for the decision; Commissioners Harris and McGarry abstained in the vote.

Attest:

2/21/80

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

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NYC FEDERAL ELECTION COMMITTEE ATTY ROBERT C TIERMAN, DLR, DLR

1305 N ST

WASHINGTON DC 20463

DEAR CHAIRMAN TIERMAN:

THE TELEGRAPH PUBLISHING COMPANY REPLIES AS FOLLOWS TO YOUR TELEGRAM OF FEBRUARY 20 1980:

1. THE NASHUA TELEGRAPH HAS INVITED AMBASSADOR GEORGE BUSH AND

SF-1201 (R5-69)



Telegram

GOVERNOR RONALD REAGAN TO PARTICIPATE IN A CANDIDATE DEBATE TO BE SPONSORED, BUT NOT FINANCED BY IT ON FEBRUARY 23, 1980 IN NASHUA, NEW HAMPSHIRE AND EACH SUCH CANDIDATE HAS ACCEPTED THE INVITATION.

2. THE NASHUA TELEGRAPH HAS EITHER DIRECTLY OR INDIRECTLY RECEIVED REQUESTS FOR ALL OF THE OTHER REPUBLICAN PRIMARY CANDIDATES ON THE BALLOT FOR THE NEW HAMPSHIRE REPUBLICAN PRESIDENTIAL PRIMARY TO BE CONDUCTED ON FEBRUARY 25, 1980 TO PARTICIPATE IN SUCH DEBATES. SUCH REQUESTS HAVE NOT BEEN GRANTED.

3. THE TELEGRAPH PUBLISHING COMPANY AND/OR THE NASHUA TELEGRAPH HAS NOT EXTENDED, NOR DOES IT PLAN TO EXTEND, ANY OF ITS FUNDS IN SPONSORING AND CONDUCTING THE DEBATE FOR WHICH IT WILL NOT BE FULLY REIMBURSED. REPRESENTATIVES FROM GOVERNOR RONALD REAGAN HAS AGREED TO

SF-1201 (R5-69)



Telegram



Telegram

ADVANCE TO THE TELEGRAPH PUBLISHING COMPANY THE SUM OF \$3,500 TO BE
 USED TOWARDS SUCH EXPENSES AS MAY BE INCURRED BY THE COMPANY IN
 SPONSORING AND CONDUCTING THE DEBATE. IN CONCLUSION BOTH CASH
 DISPERSEMENTS BY THE COMPANY AS WELL AS TIME EXTENDED BY EMPLOYEES OF
 THE COMPANY DIRECTLY ON THE DEBATE. THE COMPANY ESTIMATES THAT SUCH
 EXPENSES WILL NOT EXCEED SUCH AMOUNTS THE COMPANY CONSIDERED THAT THE
 CONDITIONS OF THIS DEBATE IN THE ABOVE MANNER IS IN FULL COMPLIANCE
 WITH THE APPLICABLE LAWS, RULES, AND REGULATIONS. PLEASE ADVISE
 VERY TRILY YOURS

DAVID P HAMBLETT PRESIDENT NASHUA TELEGRAPH PUBLISHING CO

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RECEIVED
 GENERAL C. H. HILL
 FEB 22 1961



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 20, 1980

TELEGRAM TO:

Telegraph Publishing Company
60 Main Street
Nashua, New Hampshire 03060

Re: MURs 1167, 1168, 1170

Dear Sir or Madam:

The Federal Election Commission notified you by Federal Express on February 19, 1980, of three complaints which allege that the Telegraph Publishing Company and the Nashua Telegraph are about to commit a violation of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of these complaints were forwarded to you at that time. The Commission has considered these complaints together and all three complaints requested that the Commission expedite its enforcement procedures and seek immediate injunctive relief to prevent a violation of the Act.

Upon review of the allegations contained in the complaints, the Commission, on February 20, 1980, determined that there is reason to believe that the Telegraph Publishing Company and the Nashua Telegraph are about to violate 2 U.S.C. § 441b and authorized the General Counsel to seek immediate injunctive relief in court to prevent the violation. Specifically, it appears that the Telegraph Publishing Company and the Nashua Telegraph are sponsoring and conducting a debate between George Bush and Ronald Reagan, two candidates for the Republican Presidential nomination and have specifically refused to allow other Republican candidates to participate. 2 U.S.C. § 441b prohibits a corporation from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 431(9)(B)(i) exempts from the definitions of contribution and expenditure only those payments by a news media corporation related to the printing or broadcast of news stories, commentaries and editorials. Expenditures by news media corporations related to the staging of candidate debates are, thus, prohibited by

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BECAUSE OF THE SHORTNESS OF TIME INVOLVED, THE COMMISSION ASKS THAT YOU IMMEDIATELY PREPARE ANSWERS TO THE FOLLOWING:

- (1) IS THE DEBATE STILL SCHEDULED TO PROCEED AS ALLEGED IN THE COMPLAINTS FILED WITH THE COMMISSION?
- (2) THE NAMES OF ANY PERSONS WHO REQUESTED THAT THEY BE ALLOWED TO PARTICIPATE IN THE DEBATES AND WHOSE REQUESTS WERE REJECTED.
- (3) THE TOTAL AMOUNT OF MONEY THE TELEGRAPH PUBLISHING COMPANY AND/OR THE NASHUA TELEGRAPH HAVE EXPENDED AND/OR PLAN TO EXPEND IN SPONSORING AND CONDUCTING THE DEBATE.

IN ORDER TO AVOID DELAY, WE ASK THAT YOU TELEPHONE YOUR RESPONSES TO MS. LYN OLIPHANT, THE ATTORNEY ASSIGNED TO THIS MATTER, AS SOON AS POSSIBLE, BUT NO LATER THAN 2:00 P.M. FEBRUARY 21, 1960. MS. OLIPHANT MAY BE REACHED AT (202) 523-4175. YOU MAY, OF COURSE, SUBMIT ANY ADDITIONAL INFORMATION YOU BELIEVE RELEVANT TO THIS MATTER.

FINALLY, WE WISH TO ASSURE YOU THAT THE COMMISSION HAS NOT DETERMINED THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF THE ACT HAS OCCURRED AND THAT YOU WILL BE GIVEN A FULL OPPORTUNITY TO RESPOND TO THE COMPLAINTS. THE COMMISSION WOULD NOT PURSUE ITS FINDING OF REASON TO BELIEVE IF THE NASHUA TELEGRAPH WERE TO SATISFY THE REQUIREMENT FOR NONPARTISANSHIP OF DEBATES STAGED BY NEWS MEDIA CORPORATIONS BY EXTENDING INVITATIONS TO ADDITIONAL CANDIDATES, INCLUDING THOSE WHO ARE QUALIFIED TO BE ON THE BALLOT FOR THE REPUBLICAN PRIMARY, ARE ELIGIBLE TO RECEIVE FEDERAL MATCHING FUNDS AND ARE ACTIVELY CAMPAIGNING IN THE STATE. HOWEVER, BECAUSE THE DEBATE IS SCHEDULED FOR THIS SATURDAY, THE COMMISSION WAS FELT IT NECESSARY TO PROCEED IN THIS EXPEDITED MANNER AND TO AUTHORIZE THE GENERAL COUNSEL TO ASK THE COURT, IF NECESSARY, FOR INJUNCTIVE RELIEF TO PREVENT A VIOLATION FROM OCCURRING.

SINCERELY,

ROBERT O. ILLERMAN, CHAIRMAN

(CS/110/X).

ACCEPTED
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2 U.S.C. § 441b. As the debate is scheduled for February 23, 1980, the Commission has determined that the matter warrants expedited treatment.

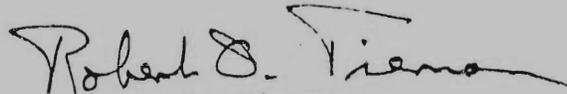
Because of the shortness of time involved, the Commission asks that you immediately prepare answers to the following:

- (1) Is the debate still scheduled to proceed as alleged in the complaints filed with the Commission?
- (2) The names of any persons who requested that they be allowed to participate in the debates and whose requests were rejected.
- (3) The total amount of money the Telegraph Publishing Company and/or the Nashua Telegraph have expended and/or plan to expend in sponsoring and conducting the debate.

In order to avoid delay, we ask that you telephone your responses to Ms. Lyn Oliphant, the attorney assigned to this matter, as soon as possible, but no later than 2:00 p.m. February 21, 1980. Ms. Oliphant may be reached at (202) 523-4175. You may, of course, submit any additional information you believe relevant to this matter.

Finally, we wish to assure you that the Commission has not determined that there is probable cause to believe a violation of the Act has occurred and that you will be given a full opportunity to respond to the complaints. The Commission would not pursue its finding of reason to believe if the Nashua Telegraph were to satisfy the requirement for nonpartisanship of debates staged by news media corporations by extending invitations to additional candidates, including those who are qualified to be on the ballot for the Republican primary, are eligible to receive federal matching funds and are actively campaigning in the State. However, because the debate is scheduled for this Saturday, the Commission has felt it necessary to proceed in this expedited manner and to authorize the General Counsel to ask the court, if necessary, for injunctive relief to prevent a violation from occurring.

Sincerely,


Robert O. Tiernan
Chairman

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FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 1:50 P.M. 1980

MUR # 1167, 1168, 1170
DATE COMPLAINT RECEIVED
BY OGC 2/19/80

STAFF MEMBER Oliphant

COMPLAINANT'S NAME: #1167 - Arthur B. Culvahouse, Gen. Counsel, The Baker Comm.
#1168 - Joann McSorley, Asst. Treas., Dole for Pres. Comm.
#1170 - Daniel V. Swillinger, Gen. Counsel, Anderson for
Pres. Comm.

RESPONDENT'S NAME: Telegraph Publishing Company
Nashua Telegraph
Nashua, New Hampshire

RELEVANT STATUTE: 2 U.S.C. § 441b

INTERNAL REPORTS CHECKED: Presidential candidate allocations to New Hampshire

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On February 19, 1980, complaints were filed by the Baker Committee (MUR 1167), the Dole for President Committee (MUR 1168), and the Anderson for President Committee (MUR 1170) against the Telegraph Publishing Company which publishes the Nashua Telegraph, Nashua, New Hampshire. All three complaints allege that the Nashua Telegraph is staging a debate between Ronald Reagan and George Bush on February 23, 1980, that the debate will be partisan in that it will promote the candidacies of those two candidates over other major Republican contenders, and that expenditures in connection with the debate are, therefore, prohibited corporate contributions under 2 U.S.C. § 441b. The Baker and Dole complaints allege that

the respective candidates requested inclusion in the Nashua Telegraph debate and were refused.

The Baker Committee requests that the Commission immediately seek injunctive relief to prevent a violation of the Act. The Dole for President Committee requests that the Commission immediately find probable cause to believe a violation is about to occur and file a civil action for injunctive and declaratory relief, without following the enforcement procedures set forth in 2 U.S.C. § 437g, on the grounds that irreparable harm will occur if the Commission does not act immediately. The Anderson for President Committee asks that an expedited proceeding be held and that the Commission seek an injunction under 2 U.S.C. § 437g to bar the debate if the Commission concludes that staging of the debate violates 2 U.S.C. § 441b.

FACTUAL AND LEGAL ANALYSIS

- 1. 2 U.S.C. § 441b prohibits the corporate press from making expenditures to stage candidate debates.

The initial question presented by the complaints is whether the expenditure of funds by a newspaper to stage a debate violates 2 U.S.C. § 441b.

In 1974, section 102(c) of H.R. 16090 (the House version of the FECA amendments) included an amendment to 18 U.S.C. § 591(f) relating to the definition of expenditure, adding several exceptions to that definition, including the news story exemption as it currently reads in 2 U.S.C. § 431(f)(4)(A). The House Report, No. 93-943, 93d Cong., 2d Sess. at 4 (1974) stated:

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Clauses (A), (B) and (C) of subparagraph (4) underscore and reaffirm the principles stated in the amendment to section 610 of title 18, United States Code, proposed by Representative Orval Hansen, and passed by the Congress as part of the Act. Those clauses make it plain that it is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association. Thus, clause (A) assures the unlettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns. (emphasis added)

The exemption itself refers specifically to news stories, commentaries and editorials, and as the explanation contained in the House Report makes clear, it is the right of the media to cover and comment on election campaigns which is protected. Thus, although expenditures incidental to carrying on the ordinary functions of the media are not "expenditures" within the meaning of the Act, the exemption does not exclude the media itself wholly from the provisions of the Act, including those prohibitions contained in 2 U.S.C. § 441b. Accordingly 2 U.S.C. § 431(f)(4)(A) and 2 U.S.C. § 441b, read in conjunction, permit the media to expend funds to cover stories concerning an election, publish a newspaper or make a broadcast concerning an election, publish or broadcast commentaries on the election or on specific candidates, and editorialize about or endorse candidates for election without violating 2 U.S.C. § 441b.

Review of the legislative history of the predecessor statutes to 2 U.S.C. § 441b makes clear that the general prohibition on corporate political contributions and expenditures was intended to apply to the corporate press, except insofar as their activities were protected from governmental regulation by the first amendment (and as codified in 2 U.S.C. § 431(f)(4)(A)).

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The legislative history of the Taft Hartley Act (Labor Management Relations Act of 1947 (61 Stat. 159), which amended Section 313 of the Federal Corrupt Practices Act adding prohibitions on labor union political activity to parallel the corporate prohibitions originally enacted in the Tillman Act of 1907, sheds some light on the extent of the news story exemption of § 431(f)(4)(A). During the Senate debates on the amendment, there was discussion concerning the scope of its applicability and its effect on freedom of the press. It is clear from the debate that Congress believed that § 441b (then § 313 of the Federal Corrupt Practices Act, and later 18 U.S.C. § 610) did not prohibit the institutional press only insofar as they were operating normally as newspapers. ^{1/}

"If the paper...is operated independently, if it derives its money from its subscribers, then of course there would be no violation.. They could not publish a special newspaper [in support of one candidate over another]...None of us have ever assumed that the Corrupt Practices Act prevented a newspaper from writing editorials for or against any candidate....If they are sold to subscribers and if the newspaper is supported by subscriptions, then I would not say that constituted such an expenditures. But if the newspaper were given away--even an ordinary newspaper--I think that would violate the Corrupt Practices Act. That act would be violated, it seems to me, if such a newspaper were given away as a political document in favor of a certain candidate." 93 Cong. Rec. 6436, 6437, 6438. (remarks of Sens. Taft and Barkley) (June 5, 1947).

Thus, it is the ordinary "operation of the newspaper itself" (93 Cong. Rec. 6437) which is outside the prohibition now contained in 2 U.S.C. § 441b.

The first amendment protects the media from governmental restrictions on those functions crucial to a free press. The news

1/ There was no comparable news story exemption at that time.

story exemption in 2 U.S.C. § 431(1)(4)(A), itself very narrowly drawn, refers only to news stories, commentaries and editorials. It provides that funds incidental to the publishing of news stories, commentaries or editorials are not "expenditures" within the meaning of the Act.

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However, to the extent that broadcasters, newspapers and periodicals function as do other business corporations, they are subject to the provisions of § 441b. In labor relations, anti-trust activities, etc., they are subject to the same restrictions as any corporation.^{2/} For example, § 441b prohibits a newspaper from taking general treasury funds and making contributions to a campaign -- even though the newspaper may endorse that same candidate. Nor may a newspaper rent a billboard to display its editorial endorsement or charter an airplane to fly over the city displaying a message notifying the city of its endorsement. There is no absolute constitutional protection for press corporations to be freed from all government regulation.

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Even where political activity is nonpartisan in nature, Congress has determined that the danger of undue corporate or labor influence in the political process is sufficient to warrant restrictions on such activity. For example, although corporations and labor organizations may sponsor nonpartisan registration and get-out-the-vote

2/ The corporate press has been found subject, inter alia, to the jurisdiction of the NLRB (Associated Press v. NLRB, 301 U.S. 103 (1937)), to ordinary forms of taxation (Grosjean v. American Press Co., 297 U.S. 233, 250 (1936)), to antitrust regulation (Associated Press v. U.S., 326 U.S. 1 (1945)), and to certain restrictions on presentation of paid advertising (Pittsburgh Press Co. v. Human Relations Commission, 413 U.S. 376 (1973)).

drives, they may only direct those efforts at the general public if the drive is jointly sponsored with a civic or nonprofit organization which does not support or endorse candidates. 2 U.S.C. § 431(f)(4)(B); 11 CFR § 114.4(d). Thus, while recognizing the educational and civic value of such nonpartisan activities, Congress did not intend to give corporations and labor organizations free reign to engage therein without the additional protection of sponsorship by a bona fide nonpartisan group.

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It is, therefore, clear that the expenditure of funds by a news media corporation to stage a candidate debate is a corporate contribution prohibited by 2 U.S.C. § 441b. All three complaints allege that the Nashua Telegraph will expend funds to stage a debate and, therefore, without regulations in effect governing the conduct of candidate debates, both complaints set forth facts which give reason to believe a violation of 2 U.S.C. § 441b is about to be committed.

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The prohibition of 2 U.S.C. § 441b is against the expenditure of funds in connection with an election. None of the complaints allege how much money the Nashua Telegraph is expending to stage the debate, but the figure would at least include any sums spent organizing and planning, including staff time, direct expenditures for the purpose of hiring the hall, publicity costs to advertise the debate, and any payments for costs incurred by persons participating therein, including candidates and questioners. If the Commission finds reason to believe or otherwise intends to seek relief, the notifica-

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matching funds in the State of New Hampshire, are actively campaigning in the State of New Hampshire, and desire to participate in the February 23 debate. The exclusion of at least these three candidates is evidence that the newspaper is not providing fair and impartial treatment of candidates, and that the debate will result in the promotion or advancement of the included candidates over Senators Baker and Dole, and Representative Anderson. Thus, even if the regulations were applicable, and news media corporations could stage candidate debates, all three complaints give the Commission reason to believe that the February 23 debate as planned by the Nashua Telegraph would not be nonpartisan and would be in violation of 2 U.S.C. § 441b.

3. Relief Sought.

All three complaints seek to have the Commission expedite its enforcement procedures and to file suit for injunctive relief. Thus, the Commission must consider whether or not, consistent with the Act, its compliance procedures can be expedited in a case immediately prior to an election where irreparable harm will occur absent Commission action. In addition, the Commission must consider whether or not it should seek injunctive relief, either after a finding of reason to believe or under its 437d powers without such a finding.

A. Expedited Compliance Procedures.

Since the Amendments of P.L. 96-187, the Commission has not adopted revised expedited enforcement procedures. One 1979 amend-

ment to the enforcement procedures makes a substantial change from the former version of the statute--i.e., the provision requiring that a respondent be afforded a fifteen day opportunity to demonstrate that no action should be taken. These complaints raise the question of whether or not the Commission is thereby precluded from taking any action prior to the expiration of fifteen days--even in the event that extraordinary circumstances exist.

There is no illuminating legislative history on the question. The Commission has always followed expedited compliance procedures prior to elections and there is no indication that Congress sought to eliminate such handling of complaints. Rather, it seems that the ramifications of requiring the fifteen day period were not fully thought out, particularly in cases such as this where the putative respondent is not a candidate and the persons allegedly harmed are candidates participating in an imminent election.

It is unclear whether or not the mandatory requirement that the Commission wait fifteen days prior to taking action on the basis of a complaint was intended to cover requests for injunctive relief against future violations. 2 U.S.C. § 437g(a)(1) which governs the filing of a complaint and includes the fifteen day period does not refer to allegations that the Act is about to be violated, but rather speaks only of past violations. Section 437g(a)(2) provides that the Commission may find reason to believe a violation has been committed or is about to be committed. In many instances such as this one, insufficient advance warning that a violation is about to occur may make it impossible to follow the time strictures.

Thus, it is reasonable to interpret the strict fifteen day deadline as not applicable to violations about to occur, but rather as applicable only to past violations. This is certainly so in instances where the Commission (and/or a complainant) could not attempt to correct a violation if the time requirements were strictly adhered to, and where it was impossible for a complainant or the Commission to discover in time that such a violation is about to occur. This interpretation is buttressed by the Commission's powers set forth in 2 U.S.C. § 437d(a)(6) to seek injunctive relief to prevent a violation.

It would seem that the Commission could shorten the fifteen day opportunity where compelling reasons exist, provided that the standard for such shortening was sufficiently high to limit it to only the most extraordinary circumstances. Of course, any such deviation from ordinary procedures is subject to challenge by a respondent. Thus, we recommend that the Commission, if it wishes to expedite its compliance procedures in such extraordinary circumstances, adopt a standard such as that required in order to obtain a temporary restraining order from a court. By this standard the Commission would shorten the time for response only when:

- (1) There is a substantial likelihood that the complaint sets forth a violation of the Act;
- (2) Failure of the Commission to act expeditiously will result in irreparable harm to the complainant or some other party;

- (3) Expeditious action will not result in undue harm or prejudice to the interests of other persons;
- (4) The public interest would be served by such expeditious handling of the matter.

Under this standard, this case would be one in which expedited procedures would be permissible. (1) The complaints give reason to believe that the Act will be violated. (2) The remedy sought by Senators Baker and Dole and Representative Anderson will be impossible to achieve and they will be irreparably harmed if the Commission does not obtain compliance with the Act prior to the commission of a violation. Inclusion in the debate is the only remedy which will prevent a violation. (3) Obviously, the Nashua Telegraph may suffer some disadvantage from a shortened response time. However, the newspaper is aware that other candidates have requested participation in the debate, and, it is likely that the newspaper was specifically advised of the Federal Election Commission regulations on the subject. Thus the newspaper has, in all likelihood, received notice of the possibility of a violation. No other persons are likely to be harmed by the Commission's expedition of its procedures. (4) Clearly, the balance is in favor of the public interest in handling these matters expeditiously. The public interest, as expressed by the Commission in the explanation and justification of the proposed debate regulations, is in insuring that fair and impartial treatment be accorded to candidates while permitting candidates to communicate their

views to the public. A debate which does not provide such fair and impartial treatment would harm the public interest in addition to specifically disadvantaging the complainant-candidates.

Thus, the circumstances of this case would meet the criteria of such a test, should the Commission decide to expedite its consideration.

B. Injunctive Relief

Whether or not the Commission finds reason to believe, the Commission's powers to seek injunctive relief would permit it to file suit to seek a temporary restraining order and an injunction. As to immediate injunctive relief, there are two major alternatives available, provided that at least four Commissioners reach agreement that the debate as currently planned would be in violation of 2 U.S.C. § 441b:

- (1) Find reason to believe and authorize seeking injunctive relief.
- (2) Make no finding prior to the fifteen days, but authorize seeking injunctive relief, pending Commission determination of reason to believe.

In any event, if the Commission wishes to seek an injunction, it should be specifically authorized, separate and apart from any finding of reason to believe.

(1) If the Commission expedites its enforcement procedures and makes a finding of reason to believe, we recommend that the Commission grant authorization to file an action seeking a mandatory injunction that the newspaper permit the participation of the

other candidates who are qualified to be on the ballot as Republicans, are receiving and expending matching funds in the State of New Hampshire, are actively campaigning in the State of New Hampshire and who wish to participate in the debate.

Such action will in all likelihood be challenged on the grounds that the Commission did not comply with its enforcement procedures, so it is important that the authorization to seek an injunction not be tied to the finding of reason to believe. Rather, the injunction would be sought to preserve the Commission's ability to seek meaningful relief.

Although finding reason to believe and seeking an injunction would be subject to the challenge concerning enforcement procedures set forth above, it may increase the chances of the Commission obtaining an injunction, since the likelihood of existence of a violation will weigh heavily in a court's decision to grant the injunction.

(2) The Commission need not find reason to believe and may still seek an injunction pursuant to its powers to prevent violations of the Act. One possible advantage of this alternative would be to minimize a challenge to improper enforcement procedures. On the other hand, the Commission's powers to seek relief absent any finding may also be subject to challenge. Again, an injunction would be sought in order to preserve the Commission's ability to meaningfully address the complaints filed by the candidates involved.

RECOMMENDATION

Provided that the Commission, upon agreement of at least four members, determines that the February 23 debate as allegedly planned would violate 2 U.S.C. § 441b if it proceeds, there seem to be the following alternatives available, since the Commission has specifically been requested by all three complainants to take some action immediately:

1. Deny the requests for expedited consideration and handle the MURs in the ordinary course. If this alternative is adopted, the complainants should be notified immediately that their requests for expedited handling were denied.^{4/}
2. Find reason to believe immediately and authorize filing of a suit seeking injunctive relief (either mandatory to include the other candidates or, prohibitory against the conduct of the debate).
3. Make no finding, but authorize filing a suit for injunctive relief as in (2).

If the Commission proceeds in any manner, information concerning the details of the funding of the debate should be sought immediately.

4/ The complainants, or any one of them, may seek injunctive relief on their own initiative. If so, the Commission should intervene on the grounds that it has exclusive jurisdiction over civil enforcement of the Act. In that event, the Commission will in all likelihood have to take a position on the propriety of injunctive relief, even if the Commission did not originally seek it.

In addition, any further notification to the respondent should be by telegram in order to provide the fullest opportunity possible for a response. Even if the Commission determines to seek immediate court relief without finding reason to believe, the respondent should be so notified, in order to make certain that there is an opportunity to settle the matter prior to filing in court.

cc
to
x
Attachments: 3 complaints
Telegram to Respondent

BAKER

February 18, 1980

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1525 K Street, NW
Washington, D. C. 20463

Dear Mr. Steele:

Enclosed herewith, for your information, is a duplicate original of a complaint against the Telegraph Publishing Company, of Nashua, New Hampshire, which the Baker Committee mailed for filing on Monday, February 18, 1980. In its complaint, the Baker Committee asserts that the Telegraph Publishing Company is violating the Federal Election Campaign Act by utilizing corporate funds to finance and sponsor a debate between George Bush and Ronald Reagan on February 25, 1980, while denying Senator Howard Baker the opportunity to participate in said debate.

As is stated in its prayer for relief, the Committee respectfully requests that the Federal Election Commission initiate civil suit prior to February 25, 1980, and seek to enjoin the Telegraph Publishing Company from further violating the Act.

Please feel free to call the undersigned if you have any questions regarding this complaint.

Yours very truly,

Arthur B. Culvahouse, Jr.
General Counsel

ABC:mrk

Enclosure

cc Members of the Federal Election
Commission

72:6 v 61 100
19 89:24

Tough. Honest. Right for the 80's.

THE FEDERAL ELECTION COMMISSION

THE BAKER COMMITTEE
25 K Street, N.E.
Washington, D.C. 20002
202/789-7900,

Complainant

v.

TELEGRAPH PUBLISHING COMPANY
60 Main Street
Nashua, New Hampshire 03060
(603) 882-2741,

Respondent.

060
COMPLAINT FOR VIOLATION OF SECTION 316 OF THE
FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED

Arthur B. Culvahouse, Jr.
25 K Street, N.E.
Washington, D.C. 20002

Counsel for Complainant

JURISDICTION

This complaint is filed pursuant to § 309(a) of the Federal Election Campaign Act, as amended, ("the Act"), 2 U.S.C. § 437g (1977) (amended 1980).

FACTS

1. Complainant, The Baker Committee (the "Committee"), is a principal campaign committee organized under the Act. The Committee is authorized by, and files this complaint on behalf of, Howard H. Baker, Jr., a candidate for the Republican Party nomination for President of the United States of America. Senator Baker, is one of seven candidates for the Republican Presidential nomination who has qualified to be placed on the ballot for the New Hampshire Republican Presidential Preference Primary to be conducted on February 26, 1980 (the "New Hampshire Republican Primary"). The other candidates who have qualified for the New Hampshire Republican Primary are John Anderson, George Bush, John Connally, Philip Crane, Robert Dole and Ronald Reagan.

3. The New Hampshire Republican Primary will be the first Presidential Preference Primary conducted by a state in connection with the 1980 Republican Presidential nomination.

4. Twenty-two (22) delegates to the 1980 Republican National Convention will be allocated to candidates receiving votes in the New Hampshire Republican Primary in proportion to the votes received by each candidate, provided that a candidate must receive 10 percent or more of the votes cast in order to be allocated delegates.

5. Based upon information and belief, the results of the New Hampshire Republican Primary will receive substantial nationwide media attention and thereafter will significantly influence the respective political prospects and fundraising capacity of all Republican Presidential candidates, including Senator Baker.

6. Based upon information and belief, the Telegraph Publishing Company ("TPC") is a corporation organized and doing business under the laws of the State of New Hampshire and is the owner of the Nashua Telegraph, a newspaper published in Nashua, New Hampshire.

7. Based upon information and belief, the Nashua Telegraph has invited Ambassador Bush and Governor Reagan to participate in a candidate debate sponsored and financed by it to be conducted on February 25, 1980 in Nashua, New Hampshire and each such candidate has accepted the invitation. A newspaper article providing additional details relating to the debate is attached hereto as Exhibit "A."

8. As of the date hereof, Senator Baker has not received an invitation from the Nashua Telegraph to participate in the debate which it is sponsoring. Agents of the Committee and of Senator Baker have requested that he be allowed to participate in the Nashua Telegraph debate; and such request has been rejected by agents of the Nashua Telegraph.

9. Based upon information and belief, New Hampshire Republican Primary candidates other than Senator Baker have requested that they be allowed to participate in the Nashua Telegraph debate and have been refused by the Nashua Telegraph.

10. Based upon information and belief, national and local media are planning to attend and report the Nashua Telegraph debate.

11. Based upon information and belief, on February 20, 1980, in Manchester, New Hampshire, the League of Women Voters

will sponsor a debate among all candidates in the New Hampshire Republican Primary; and all seven candidates have agreed to participate in such debate.

12. Based upon information and belief, the results of the 1980 Republican nomination "contests" held to date are inconclusive. In the poll of those persons attending the January 21, 1980 Iowa Republican precinct caucuses, Ambassador Bush received the support of 31 percent of those polled, Governor Reagan received the support of 29 percent and Senator Baker received the support of 16 percent. In Arkansas Congressional District and State Conventions, held on February 2 and 16, 1980, respectively, a total of 19 delegates to the Republican National Convention were elected, with 7 such delegates informally pledged to Governor Reagan, 6 delegates informally pledged to Senator Baker and 2 delegates informally pledged to Ambassador Bush. In the Republican primary conducted in Puerto Rico on February 17, 1980, Ambassador Bush received approximately 60 percent of the votes cast, and Senator Baker received approximately 37 percent.

THE VIOLATION

Based upon information and belief, the expenditure of corporate funds by TFC and the Nashua Telegraph, as described above, would tend to influence positively the candidacies of

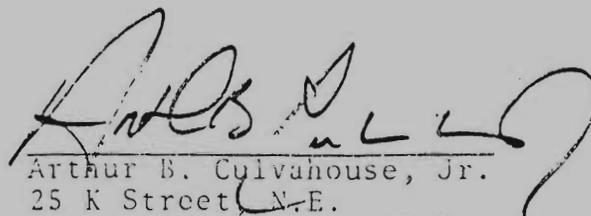
Ambassador Bush and Governor Reagan; would tend to influence negatively the candidacy of Senator Baker; would not provide fair and impartial treatment of all substantial candidates in the New Hampshire Republican Primary; and would tend to promote and advance the candidacies of Ambassador Bush and Governor Reagan over the candidacies of other substantial Republican Presidential candidates, including Senator Baker. (See Exhibit "B" attached hereto for a reporter's observation that Senator Baker has been "damaged" by his exclusion from the Nashua Telegraph debate). The staging of this debate in the above described fashion will have a predictable partisan effect. TPC either knows or should know that the structure of this debate is partisan and clearly promotes specific candidates over all others. (See Exhibit "C" attached hereto for the reported reaction of a public interest group as to these proposed debates). The disbursement of corporate funds in such a manner constitutes an expenditure in connection with an election for federal office in violation of Section 316 of the Act. 2 U.S.C. Section 441b (1977) (amended 1980). See also Proposed FEC Regulations, CCH Fed. Elec. Camp. Fin. Guide para. 9104 (December 20, 1979).

PRAYER FOR RELIEF

The Committee requests that the Federal Election Commission investigate this matter as it is obligated to do under Section 306(b)(1) and Section 309 of the Act.

Furthermore, in view of the circumstance that the unlawful expenditure of TPC corporate funds will continue until and culminate on February 23, 1980, and in view of the irreparable harm to Senator Baker which will occur as a result thereof, the Committee requests that the Commission initiate civil suit under Section 307(a)(6) prior to February 23, 1980 and seek to enjoin TPC from further violating the Act.

Signed this 18th day of February, 1980 by



Arthur B. Culvahouse, Jr.
25 K Street N.E.
Washington, D. C. 20002

STATEWIDE COVERAGE

MANCHESTER



UNION LEADER

FRC

Wednesday, February 13, 1980

Reagan, Bush To Debate in Nashua

By MAUREEN BOYLE

Union Leader Correspondent

NASHUA — GOP presidential candidates George Bush and Ronald Reagan will meet face to face just days before the state's first-in-the-nation primary in a public forum here.

The two will answer questions posed by state and national newsmen as well as questions from the public Feb. 23 at Nashua High School gymnasium at 7:30 p.m. The forum is sponsored by the Nashua Telegraph, the city's daily newspaper.

Details of the forum were worked out this week by former Gov. Hugh Gregg, state chairman for the Bush campaign and Gerald Carmen, senior northeast re-

gion consultant for the Reagan campaign.

"It's a good chance for people to view their performance," said Judd Gregg, representing the Bush campaign.

The New Hampshire primary is being seen as a test of the two candidates' ability to move firmly into the forefront of the nomination process. Some blamed Reagan's loss in the Iowa caucus on his failure to participate in a debate with other GOP candidates.

Gregg said the former California governor had to meet challenger Bush one on one.

"He really didn't have much choice," Gregg said.

But Carmen called the forum, "healthy" and said he expected it to increase Reagan's vote-getting appeal in the state.

Calling Bush a "well advertised product," Carmen said the former CIA director was "untried and it's still unknown what he'll do."

"We're very anxious to do it," Carmen said of the forum.

While the Telegraph labels the one-on-one meeting a forum, Carmen says, "I'm going to use the word debate."

The two-part program will provide a 40-minute question-and-answer period with state and national news media, and 40 minutes for the public, Carmen said.



RONALD REAGAN



GEORGE BUSH

Front-Runners Set Fast Pace as Baker Strives to Catch Up

By Lou Cannon

Special to The Star Writer

CONCORD, N.H., Feb. 16—When

George Bush and Howard H. Baker Jr. (R-Tenn.) appeared back-to-back one night last week before a high school mock convention in North Sutton, a large majority of the reporters left before Baker began to speak.

The exodus was not a sign of personal disrespect for Baker. But it was a reflection of the far greater attention paid to Bush, the presumed Republican front-runner in New Hampshire, than is given to Baker, who is supposed to be a distant third-place candidate.

"That's a good measure of our problem," said a Baker supporter, sadly, as he watched Bush and his traveling press entourage leave the building. "Too many people think this is a two-way race."

Baker faces many obstacles in his effort to demonstrate that the New Hampshire primary and the larger Republican presidential race is more than a contest between Bush and Ronald Reagan.

Baker's crowds have been as scarce as the snow, which today began falling for the first time this winter in New Hampshire. His late-starting organization is believed to be much weaker than the organizations of his major rivals. He lacks the solid conservative base that provides enthusiasm and workers for Reagan. And

Baker is second to Bush as a hand-shaker and backslider in the plant tours and street walks that are staples of New Hampshire campaigning.

In this context, Baker appears to have been damaged by his exclusion from a Bush-Reagan debate Feb. 13, the Saturday before the primary. Sponsored by The Nashua Telegraph, the state's largest afternoon daily newspaper, the debate has captured the interest of the political community and reinforced the idea that the primary is a two-man race.

"It's arrogant and manipulative for an important newspaper to decide arbitrarily that there are only two candidates before even a single primary has been held," says former New Hampshire governor Walter P. Peterson, the Baker campaign chairman. "But I'm realistic enough to know that an action like this can become a self-fulfilling prophesy."

While being barred from this debate, Baker is being squeezed on his left by the outspoken candidacy of Rep. John B. Anderson (R-III), who claims to have climbed into third place.

Anderson pollster Dick Bennett said that a new survey of 388 "likely voters" taken Feb. 11 showed Anderson with 11 percentage points to Baker's 8. The other figures, rounded off, were Bush 30, Reagan 29, John B. Connally 3, Phillip Crane 1, Bob Dole 1 and undecided 18.

These figures were disputed by Baker cochairman John Michaels, who said Bennett's polls have proved "unreliable" in the past. Without benefit of his own survey, Michaels expressed the conventional political wisdom that Baker is running third in New Hampshire, as he did in the Iowa GOP caucuses.

On the stump, Baker is trying to be the thoughtful voter's candidate with a speech more intellectual and discursive than the campaign speeches of Bush or Reagan. His speeches are less partisan and far more charitable to President Carter than the speeches of his rivals.

Last week, Baker tried to sharpen the campaign dialogue by criticizing Bush for opposing revenue-sharing and by making veiled references to Bush's statement in a recent Los Angeles Times interview, that there could be a winner in a nuclear war.

"No American president should

Counterattacks His Veracity

the abuse of federal grants to purchase votes in the primaries."

On the hostage question which had set the charges flying, Kennedy called Carter's implication that the senator blamed the United States rather than the Arabs "ridiculous and 'untrue.'"

Kennedy said he had only pointed out that there had been ample warning of the dangers in Iran but that the administration had established "no effective contingency plan to protect our diplomats."

At the White House, presidential press secretary Jody Powell said "common sense" supported Carter's allegation that Kennedy's criticism has been "very damaging" to the efforts to free the hostages.

But under intensive questioning, Powell could not cite specific evidence of the damage.

"It seems to me, on the face of it that for a high, well-known public official to misstate, with full knowledge that he was misstating foreign policy is not helpful," he said.

Powell added:

"It is hardly helpful to have a high public official state that the continued holding of the hostages is the result of American intransigence. This is not a question of dissent. Dissent is one thing. Misstating the actions of this government is something else."

Kennedy's campaign organizers were "delighted" by Carter's harsh attack, according to Kennedy aide Tom Southwick.

The president "completely destroyed the image he was trying to create of being presidential and above the political fray," Southwick said.

Kennedy spent much of the day trading pleasantries and valentines with plant workers at a shoe factory, senior citizens, students and others in several small picture postcard communities.

Many citizens seemed more concerned about the price of home heating oil and other closer-to-home problems than with the blossoming war between the Democratic candidates—until Kennedy, with relish, brought it up.

Staff writer Edward Walsh contributed to this report.

CAMPAIGN NOTES

California Gov. Edmund G. Brown Jr.'s presidential campaign is so strapped financially that he will be hard-pressed to stay in the Democratic race unless he runs better than expected in the Feb. 23 New Hampshire primary.

Brown announced that his campaign staff was being pared to "the bare bones" and his top aides, including campaign manager Tom Quinn, were working without pay.

"We're cutting back on the operating, making it a leaner operation," Brown said in Boston yesterday. "It's the tortoise and the hare strategy. I'm the tortoise."

Both President Carter and Sen. Edward M. Kennedy (D-Mass.) are far ahead of Brown in New Hampshire polls.

When he arrived in New York late Wednesday, Brown intimated to reporters that his campaign was virtually broke. He later modified his statement, saying he only wanted to stretch his resources as far as they would go.

Perhaps in keeping with his campaign's new austerity, Brown traveled alone to begin a weekend of intensive campaigning in the Northeast.

Describing himself as "a Pope John of the Democratic Party," Vice President Mondale has promised to treat Chicago Mayor Jane Byrne's hostility to President Carter with love and forgiveness.

The vice president followed the conciliatory tone toward Chicago set by Chip Carter, the president's son, on his arrival there Tuesday. The Carter campaign apparently is following a Valentine strategy in courting the mayor.

"I'm an ecumenist," said Mon-

dale when asked about Byrne's description of Carter as a loser to any Republican candidate. "I believe in love, evangelism and forgiveness and working together for all the people of the country and I will do my part when the time comes."

Ronald Reagan celebrated Valentine's Day yesterday by buying three valentines costing \$4.95 for his wife, Nancy, who join him campaigning in New Hampshire today. He also received, from the press corps traveling with him, a valentine in the form of a brown wooden plaque which said "I'm not hard of hearing—I'm just ignoring you."

Reagan acknowledged the "gift" in good humor, telling reporters who accompanied him on a flight from Manchester, N.H., to Burlington, Vt., "I want to thank you for my wonderful wooden valentine. It's so meaningful."

A two-man presidential debate between George Bush and Ronald Reagan should be canceled unless all Republican contenders are allowed to participate, Common Cause said yesterday.

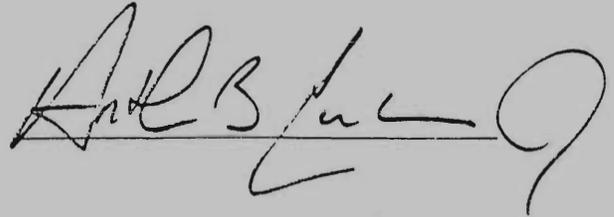
It was the latest criticism of the two-man format, which has been attacked by several of the GOP White House aspirants who were not invited.

In letters to Bush, Reagan and the Nashua Telegraph, sponsor of the Feb. 23 New Hampshire forum, Richard Mark, New Hampshire state chairman of the citizens lobby called the present two-man event "inherently unfair" because it does not include five other Republicans entered in the state's Feb. 26 presidential primary.

V E R I F I C A T I O N

DISTRICT OF COLUMBIA)
) ss:
CITY OF WASHINGTON)

Arthur B. Culvahouse, Jr., being duly sworn,
deposes and says that he is the General Counsel of The Baker
Committee, complainant herein, that he is authorized to sign
and verify the foregoing complaint, that he has read the
complaint and knows the contents thereof and that same are
true and correct.



Subscribed and Sworn to before me,
this 15th day of April, 1980.



NOTARY PUBLIC

NOTARY PUBLIC
DISTRICT OF COLUMBIA
My Commission Expires: _____

MY COMMISSION EXPIRES APRIL 30, 1982

0 3 7 0

Bob Dole President.

4/5
MUR 1168

10 FEB 19 1980
February 18, 1980
4:40

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

Dear Members of the Commission:

This letter constitutes a complaint, filed with you by Dole for President Committee, Inc., the principal campaign committee of Senator Robert J. Dole, a candidate for the Republican nomination for election to the office of President, in accordance with Section 309 of the Federal Election Campaign Act of 1971, as last amended, P.L. 96-187, Act of January 8, 1980, effective January 8, 1980 (hereinafter "the Act"). All citations and references herein are to the Act as amended.

Upon information and belief, Telegraph Publishing Company, Inc., is a corporation having its offices in Nashua, New Hampshire (hereinafter "the Corporation"), which among other things, owns and publishes a newspaper of general circulation in New Hampshire known as Nashua Telegraph. Furthermore, upon information and belief, the corporation proposes to sponsor, conduct and stage a debate on or about February 23, 1980, by and between two candidates for the Republican nomination for election to the office of President, George Bush and Ronald Reagan. The Corporation has expressly limited participation in the debate to those two candidates, to the exclusion of all other candidates for the Republican nomination for election to the office of President.

Upon information and belief, the Corporation shall be required to expend its funds in order to sponsor, conduct and stage the subject debate. As such, it is the belief of Dole for President Committee, Inc., that such expenditures would be regarded as being made for the purpose of influencing an election under Sections 301(8) and 301(9) of the Act; and as being made in connection with a federal election under Section 316(a) of the Act.

Under the Act, the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election to Federal office...", Section 301(3)(A)(i) of the Act. The term "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value made by any person for the purpose of influencing any election to Federal office...", Section 301(9)(A)(i) of the Act.

Section 301(9)(B)(i) of the Act, read in conjunction with Section 316(a), exempts from the prohibitions of Section 316(a) expenditures relating to particular functions of the news media, to wit: news stories, commentaries and editorials. It is submitted, however, that the foregoing exemption was not

104 N. St. Asaph St., Alexandria, Virginia 22314

703/836-8681

~~FOR OFFICIAL USE ONLY~~

intended to permit the staging of candidate debates by newspapers, but rather was designed to be a limited exemption designed to insure the right of the media to cover and comment on election campaigns. H.R. Rep. No. 93-943, 93rd Cong., 2d Sess., at 4 (1/74).

The Federal Election Commission has submitted regulations to the Congress to govern the funding and sponsorship of nonpartisan federal candidate debates. These proposed regulations were published on December 27, 1979, at 44 F.R. 76724. Upon information and belief, neither House of Congress has disapproved those regulations, although there have not been 30 legislative days since the date the regulations were transmitted to Congress.

In the explanation and justification of the proposed regulations, the Federal Election Commission stated:

"The main purpose of these regulations is to create a narrow exemption from the provisions of the Federal Election Campaign Act to permit certain non-profit organizations and news media organizations to stage non-partisan Federal candidate debates....With this exemption, expenditures for staging such debates will be regarded as neither made for the purpose of influencing an election...nor in connection with a Federal election...."

As a consequence, the Federal Election Commission appears to be of the view that the Act and current regulations do not permit news media organizations to make expenditures to stage federal candidate debates. As such, payments made by the Corporation to sponsor, conduct and stage the subject debate would appear to be unlawful contributions and expenditures made in connection with a federal election, in violation of Section 316(a) of the Act.

Even if the proposed regulations governing candidate debates were in effect, it is submitted that the subject debate would not be properly staged. The proposed regulations provide that such debates must be nonpartisan in nature and must provide fair and impartial treatment of candidates. In the explanation and justification of the proposed regulations, the Commission stated:

"For debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party....However, any debate held for primary, caucus or convention candidates may not promote one candidate over another.

"A debate is non-partisan if it is for the purpose of educating and informing the voters, provides fair and impartial treatment of candidates, and does not promote or advance one candidate over another."

This position is reflected in the proposed regulations, 11 CFR 110.13(b), which provides that such debates may not promote or advance one candidate over another. In connection with the subject debate, the Corporation has invited only two

100-872

...ates for the Republican nomination for election to the office of President and has excluded all the other such candidates. That action will promote or advance the candidacies of the invited candidates to the detriment of the excluded candidates.

By reason of the fact that the subject debate is scheduled to be held on or about February 23, 1980, the attention of the Commission is called to the fact that irreparable harm may occur if this complaint is processed in accordance with the procedures set forth in Section 309(a)(4) of the Act. Therefore, it is respectfully requested that the Commission consider this complaint in emergency session, and if it determines that there is a probable cause to believe that the Corporation is about to commit a violation of the Act, authorize its General Counsel to immediately institute a civil action for relief, including a temporary injunction, under Section 307(a)(b) of the Act.

Respectfully submitted,

Sincerely,

DOLE FOR PRESIDENT COMMITTEE, INC.

By: John W. McQuinn
Assistant Treasurer

State of Virginia, City of Alexandria,
Sworn to before me this 19 52 day of
February, 1980.

John W. McQuinn
NOTARY PUBLIC

My Commission expires 3-11-81

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ANDERSON
for PRESIDENT

10 19 23:29

The Anderson for President Committee 719 8th St. S.E., Washington, D.C. 20003 202/544-1090

William C. Bradford
Campaign Manager

February 19, 1980

Hon. Robert Tiernan, Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman,

I am filing this complaint on behalf of the Anderson for President Committee, which I serve as General Counsel.

I. Factual Background

The Nashua Publishing Co., Inc., a corporation doing business in New Hampshire, is the owner and publisher of the Nashua Telegraph, a newspaper of general circulation in New Hampshire.

The Nashua Publishing Co., Inc., is sponsoring and conducting a debate between George Bush and Ronald Reagan, two candidates for the Republican Presidential nomination. The debate is to be held on February 23, 1980. No other Republican candidates have been invited to appear.

II. Violation

The sponsoring and conducting of this debate has, and will, require the expenditure of funds of the Telegraph Publishing Co., Inc. These expenditures are being made from the corporate treasury funds of the Telegraph Publishing Co., in violation of 2 U.S.C. § 441b.

III. Argument

Corporations are prohibited by 2 U.S.C. § 441b(a) from making "a contribution or expenditure ... in connection with any primary election ... (for President)."

Asst. Robert Tiernan, Chairman
February 19, 1980
Page Two

In 1976 the Commission concluded that a non-profit, non-
political organization, the League of Women Voters, could
sponsor and conduct debates in the general election between
Presidential candidates, and could use donations from corpora-
tions to pay the costs of the sponsorship and conduct, see
Earlier Statement on Presidential Debates, Sept. 1, 1977. The
Commission reached this conclusion because the League provided
a barrier between the corporate funds and the election. No
such barrier exists in the present situation.

The Commission also concluded in 1976 that the League of
Women Voters could sponsor debates among candidates for a
party's nomination, see OC 1975-82. Again, the League, not
a corporation, sponsored and conducted the debate.

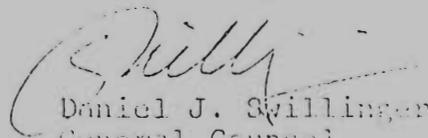
The Commission has consistently given to the phrase "in
connection with an election" a broad sweep. The present situa-
tion is a narrow one -- direct use of corporate treasury funds
to stage a debate between two leading candidates three days
before a primary election.

IV. Remedy

Because of the short time between the filing of this com-
plaint and the date of the proposed debate, the Committee urges
the Commission to conduct an expedited proceeding.

Should it conclude that the sponsorship of the debate vio-
lates 2 U.S.C. § 441b, we urge the Commission to seek an
injunction under its authority in 2 U.S.C. § 437g to bar the
occurrence of the debate.

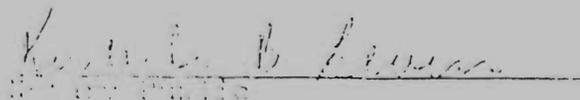
Respectfully submitted,



Daniel J. Swilling
General Counsel
Anderson for President Committee

District of Columbia, ss:

Sworn to me this 19th day of February, 1980.


Robert Tiernan

1 8 3 7

LAW OFFICES OF
DAVIS AND GOOCH
920 PENNSYLVANIA AVENUE, S. E.
WASHINGTON, D. C. 20003

Hon. Robert Tiernan, Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

TELEGRAM TO:

Telegraph Publishing Company
60 Main Street
Nashua, New Hampshire 03060

Re: MURS 1167, 1168, 1170

Dear Sir or Madam:

377
The Federal Election Commission notified you by Federal Express on February 19 and 20, 1980, of three complaints which allege that the Telegraph Publishing Company and the Nashua Telegraph are about to violate certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of these complaints were forwarded to you at that time. The Commission has considered these complaints together and all three complaints requested that the Commission expedite its enforcement procedures and seek immediate injunctive relief to prevent a violation of the Act.

Upon review of the allegations contained in the complaints, the Commission, on February 20, 1980, [determined that there is reason to believe that the Telegraph Publishing Company and the Nashua Telegraph are about to violate 2 U.S.C. § 441b] [and] [authorized the General Counsel to seek immediate injunctive relief in court to prevent the violation.] Specifically, it appears that the Telegraph Publishing Company and the Nashua Telegraph are sponsoring and conducting a debate between George Bush and Ronald Reagan, two candidates for the Republican Presidential nomination and have specifically refused to allow other Republican candidates to participate. 2 U.S.C. § 441b prohibits a corporation from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 431(f)(4)(A) exempts from the definitions of contribution and expenditure only those payments by a news media corporation related to the printing or broadcast of news stories, commentaries and editorials. Expenditures by news media corporations related to the staging of candidate debates are thus, prohibited by 2 U.S.C. § 441b. As the debate is scheduled for February 23, 1980, the Commission has determined that the matter warrants expedited treatment.

Because of the shortness of time involved, the Commission asks that you immediately prepare answers to the following:

- (1) Is the debate still scheduled to proceed as alleged in the complaints filed with the Commission?
- (2) The names of any persons who requested that they be allowed to participate in the debates and whose requests were rejected.
- (3) The total amount of money the Telegraph Publishing Company and/or the Nashua Telegraph have expended and/or plan to expend in sponsoring and conducting the debate.
- (4) List each specific expenditure the Telegraph Publishing Company and/or the Nashua Telegraph have made and/or plan to make in sponsoring and conducting the debate and state what each expenditure is for. This list should include any sums spent organizing and planning, including staff time, direct expenditures for the purpose of hiring the hall, publicity costs to advertise the debate, and any payments for costs incurred by persons participating therein, including candidates and questioners.

In order to avoid delay, we ask that you telephone your responses to Ms. Lyn Oliphant, the attorney assigned to this matter, as soon as possible, but no later than 2:00 P.M. February 21, 1980. Ms. Oliphant may be reached at (202) 523-4175. You may, of course, submit any additional information you believe relevant to this matter.

Finally, we wish to assure you that the Commission has not determined that there is probable cause to believe a violation of the Act has occurred and that you will be given a full opportunity to respond to the complaints. However, because the debate is scheduled for this Saturday, the Commission has felt it necessary to proceed in this expedited manner [and to authorize the General Counsel to ask the court, if necessary, for injunctive relief to prevent a violation from occurring.]

Sincerely,

379



FEDERAL ELECTION COMMISSION

1325 K STREET NW
WASHINGTON DC 20463

February 20, 1980

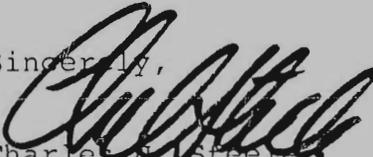
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joann M. McSorley
Assistant Treasurer
Dole for President
104 North St. Asaph Street
Alexandria, Virginia 22314

Dear Ms. McSorley:

This letter is to acknowledge receipt of your complaint of February 18, 1980, against Telegraph Publishing Company, Inc. which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within 5 days and a recommendation to the Federal Election Commission as to how this matter should be initially handled will be made 15 days after the respondent's notification. You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,


Charles N. Steele
General Counsel

Enclosure



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 19, 1980

FEDERAL EXPRESS

Telegraph Publishing Company, Inc.
60 Main Street
Nashua, New Hampshire 03060

Re: MUR 1168

Dear Sirs:

This letter is to notify you that on February 19, 1980, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of the complaint is enclosed. We have numbered this matter MUR 1168. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

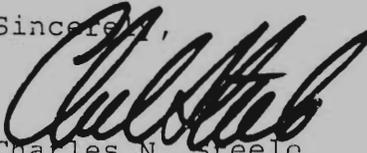
Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

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

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

If you have any questions, please contact Lyn Oliphant, the attorney assigned to this matter at (202) 523-4175. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,



Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

1 8 8 1

Bob Dole. President.

11/41 # 4/03

MUR 1168

February 18, 1980
40

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

Dear Members of the Commission:

This letter constitutes a complaint, filed with you by Dole for President Committee, Inc., the principal campaign committee of Senator Robert J. Dole, a candidate for the Republican nomination for election to the office of President, in accordance with Section 309 of the Federal Election Campaign Act of 1971, as last amended, P.L. 96-187, Act of January 8, 1980, effective January 8, 1980 (hereinafter "the Act"). All citations and references herein are to the Act as amended.

Upon information and belief, Telegraph Publishing Company, Inc., is a corporation having its offices in Nashua, New Hampshire (hereinafter "the Corporation"), which among other things, owns and publishes a newspaper of general circulation in New Hampshire known as Nashua Telegraph. Furthermore, upon information and belief, the corporation proposes to sponsor, conduct and stage a debate on or about February 23, 1980, by and between two candidates for the Republican nomination for election to the office of President, George Bush and Ronald Reagan. The Corporation has expressly limited participation in the debate to those two candidates, to the exclusion of all other candidates for the Republican nomination for election to the office of President.

Upon information and belief, the Corporation shall be required to expend its funds in order to sponsor, conduct and stage the subject debate. As such, it is the belief of Dole for President Committee, Inc., that such expenditures would be regarded as being made for the purpose of influencing an election under Sections 301(8) and 301(9) of the Act; and as being made in connection with a federal election under Section 316(a) of the Act.

Under the Act, the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election to Federal office...", Section 301(8)(A)(i) of the Act. The term "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value made by any person for the purpose of influencing any election to Federal office...", Section 301(9)(A)(i) of the Act.

Section 301(9)(B)(i) of the Act, read in conjunction with Section 316(a), exempts from the prohibitions of Section 316(a) expenditures relating to particular functions of the news media, to wit: news stories, commentaries and editorials. It is submitted, however, that the foregoing exemption was not

124 N. St. Asaph St., Alexandria, Virginia 22314

703/836-8681

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intended to permit the staging of candidate debates by newspapers, but rather was designed to be a limited exemption designed to insure the right of the media to cover and comment on election campaigns. H.R. Rep. No. 93-943, 93rd Cong., 2d Sess., at 4 (1974).

The Federal Election Commission has submitted regulations to the Congress to govern the funding and sponsorship of nonpartisan Federal candidate debates. Those proposed regulations were published on December 27, 1979, at 44 F.R. 76734. Upon information and belief, neither house of Congress has disapproved those regulations, although there have not been 30 legislative days since the date the regulations were transmitted to Congress.

In the explanation and justification of the proposed regulations, the Federal Election Commission stated:

"The main purpose of these regulations is to create a narrow exemption from the provisions of the Federal Election Campaign Act to permit certain non-profit organizations and news media organizations to stage non-partisan Federal candidate debates....With this exemption, expenditures for staging such debates will be regarded as neither made for the purpose of influencing an election...nor in connection with a Federal election...."

As a consequence, the Federal Election Commission appears to be of the view that the Act and current regulations do not permit news media organizations to make expenditures to stage Federal candidate debates. As such, pay-outs made by the Corporation to sponsor, conduct and stage the subject debate would appear to be unlawful contributions and expenditures made in connection with a Federal election, in violation of Section 316(a) of the Act.

Even if the proposed regulations governing candidate debates were in effect, it is submitted that the subject debate would not be properly staged. The proposed regulations provide that such debates must be nonpartisan in nature and must provide fair and impartial treatment of candidates. In the explanation and justification of the proposed regulations, the Commission stated:

"For debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party....However, any debate held for primary, caucus or convention candidates may not promote one candidate over another.

"A debate is non-partisan if it is for the purpose of educating and informing the voters, provides fair and impartial treatment of candidates, and does not promote or advance one candidate over another."

This position is reflected in the proposed regulations, 11 CFR 110.13(b), which provides that such debates may not promote or advance one candidate over another. In connection with the subject debate, the Corporation has invited only two

candidates for the Republican nomination for election to the office of President and has excluded all the other such candidates. That action will promote or advance the candidacies of the invited candidates to the detriment of the excluded candidates.

By reason of the fact that the subject debate is scheduled to be held on or about February 23, 1980, the attention of the Commission is called to the fact that irreparable harm may occur if this complaint is processed in accordance with the procedures set forth in Section 309(a)(4) of the Act. Therefore, it is respectfully requested that the Commission consider this complaint in emergency session, and if it determines that there is a probable cause to believe that the Corporation is about to commit a violation of the Act, authorize its General Counsel to immediately institute a civil action for relief, including a temporary injunction, under Section 307(a)(6) of the Act.

Respectfully submitted.

Sincerely,

DOLE FOR PRESIDENT COMMITTEE, INC.

By:

Wm. M. [Signature]
Assistant Treasurer

State of Virginia, City of Alexandria,
Sworn to before me this _____ day of
February, 1980.

NOTARY PUBLIC

My Commission expires _____

81884



FEDERAL ELECTION COMMISSION

1125 K STREET NW
WASHINGTON, DC 20463

THIS IS THE BEGINNING OF MUR # 1168

Date Filmed 2/26/80 Camera No. --- 2

Cameraman G.P.C

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1980 FEB 26 11 26 AM '80



FEDERAL ELECTION COMMISSION

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

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MURS 1167, 1168, 1170

30040192238



PS Form 3811, Aug. 1978

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

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

2. ARTICLE ADDRESSED TO:

*Daniel S. Swilling
Anderson for Rec.*

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<i>H10246</i>	

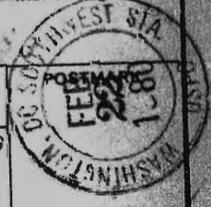
(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

Mrs. Wipony

4. DATE OF DELIVERY *2-27-80*



5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS *[Signature]*

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

30047182239

☆ GPO: 1978-272-382

1170 Elephant

80040182240

PS Form 3871, 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:
Arthur V. Culvahouse, Jr.
35 K Street, N.E.
Washington, DC 20013

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | *9420D* | |

1 (Always obtain signature of addressee or agent)

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

4. DATE OF DELIVERY *2-22-80* | POSTMARK *08*

5. ADDRESS (Complete only if requested)
WASHINGTON
NOV 13 11 44 AM '79

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

1167

elephant

☆ GPO: 1979-272-242

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 *LEGAL ELECTION COMMISSION*
 RESTRICTED DELIVERY
 Show to whom, date, and address of delivery. \$
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Jo Ann M. McSorley
Treasurer
1847 St. Augustin St.
Alexandria, VA 22314

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
C10246

1 (Always obtain signature of addressee or agent)

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

DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS



1168 *Elephant*

9 0 0 4 2 1 8 2 2 4 2

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 (LEGAL ELECTION)
 Show to whom and date delivered
 RESTRICTED DELIVERY (COMMUNICATIONS)
 Show to whom, date, and address of delivery
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Ann M. McSorley
 Ass't Treasurer
 Dept for Res. Accept SE
 Alexandria, VA 22314

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | C102HB |

1 (Always obtain signature of addressee or agent)

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

DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS



GPO: 1978-272-342

1168 Elephant

25 FEB 1980

DBL

1167, 1168, 1170

ACC#

516

TELEGRAPH PUBLISHING COMPANY
PUBLISHERS OF THE

60 MAIN STREET
NASHUA, N. H.
03061
TEL. 682-2741

Nashua Telegraph

ESTABLISHED 1832

MEMBER OF
AUDIT BUREAU OF
CIRCULATIONS AND
ASSOCIATED PRESS
UNITED PRESS INTERNATIONAL

February 21, 1980.

118871

30 FEB 26 AM 11:05

GENERAL COUNSEL

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



ATTENTION: Robert O. Tiernan, Chairman.

Dear Chairman Tiernan:

The Telegraph Publishing Company replies as follows to your telegram of February 20, 1980:

(1) The Nashua Telegraph has invited Ambassador George Bush and Governor Ronald Reagan to participate in a candidate debate to be sponsored, but not financed by it on February 23, 1980, in Nashua, New Hampshire, and each such candidate has accepted the invitation.

(2) The Nashua Telegraph has either directly or indirectly received requests from all of the other Republican Primary candidates on the ballot for the New Hampshire Republican Presidential Preference Primary to be conducted on February 26, 1980 to participate in such debate. Such requests have not been granted.

(3) The Telegraph Publishing Company and/or the Nashua Telegraph has not expended, nor does it plan to expend, any of its funds in sponsoring and conducting the debate for which it will not be fully

Federal Election Commission,
February 21, 1980,
Page Two.

reimbursed. Representatives of Governor Ronald Reagan have agreed to advance to the Telegraph Publishing Company the sum of \$3,500.00 to be used toward such expenses as may be incurred by the Company in sponsoring and conducting the debate, including both cash disbursements by the Company as well as time expended by employees of the Company directly on the debate. The Company estimates that such expenses will not exceed such amount.

Accordingly, the Company considers that the conducting of the debate in the above manner is in full compliance with the applicable law, rules and regulations. Please advise.

Very truly yours,



President
Telegraph Publishing Company



FEDERAL ELECTION COMMISSION

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

END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1167, 1168,
1170



25 FEB 1980

OGL

1167, 1168, 1170

ACC# 516

TELEGRAPH PUBLISHING COMPANY
PUBLISHERS OF THE

60 MAIN STREET
NASHUA, N. H.
03061
TEL. 882-2741

Nashua Telegraph

ESTABLISHED 1832

MEMBER OF
AUDIT BUREAU OF
CIRCULATIONS AND
ASSOCIATED PRESS
UNITED PRESS INTERNATIONAL

February 21, 1980.

30 FEB 26 11:05

GENERAL COUNSEL

1188011

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

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Federal Election Commission,
February 21, 1980,
Page Two.

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Very truly yours,



President
Telegraph Publishing Company

30040192244

TELEGRAPH PUBLISHING COMPANY

50 Main St.

NASHUA, N.H. 03061

80040182245

90 FEB 25 AM 11:50



Federal Election Commission

1325 K Street

N. W. Washington, D.C. 20463

ATTENTION: Robert O. Tiernan, Chairman



FEDERAL ELECTION COMMISSION

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

30040182246

END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1167, 1168.
1170

