



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20543

THIS IS THE END OF TMR # 1254

Date Filmed 3-25-81 Camera No. --- 2

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Anderson for President Committee
321 W. State Street
Rockford, Illinois 61101

RE: MUR 1254

Dear Sir or Madam:

This letter is to notify the Anderson for President Committee that the Commission has determined to take no further action with respect to post-dated checks issued in 1978 and held in escrow under a formal declaration of trust for the purpose of determining whether Congressman Anderson's candidacy could receive adequate financial support. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
Charles N. Steele
General Counsel

31010234557

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) <input type="checkbox"/> Show to whom and date delivered. <input type="checkbox"/> Show to whom, date, and address of delivery. <input checked="" type="checkbox"/> RESTRICTED DELIVERY <input type="checkbox"/> Show to whom and date delivered. <input type="checkbox"/> RESTRICTED DELIVERY. <input type="checkbox"/> Show to whom, date, and address of delivery \$ _____ (CONSULT POSTMASTER FOR FEES)	
2. ARTICLE ADDRESSED TO: <i>Anderson for Pres Comm</i>	
3. ARTICLE DESCRIPTION: REGISTERED NO. <i>946052</i> INSURED NO.	4. I have received the article described above. SIGNATURE <i>D. Javer</i> Address <input type="checkbox"/> Authorized agent <input type="checkbox"/> DATE OF DELIVERY <i>8-28-80</i>
5. ADDRESS (Complete only if registered)	
6. UNABLE TO DELIVER BECAUSE:	
1254 - <i>Boyer</i>	

PS Form 3811, Aug. 1978 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Anderson for President Committee
321 W. State Street
Rockford, Illinois 61101

RE: MUR 1254

Dear Sir or Madam:

This letter is to notify the Anderson for President Committee that the Commission has determined to take no further action with respect to post-dated checks issued in 1978 and held in escrow under a formal declaration of trust for the purpose of determining whether Congressman Anderson's candidacy could receive adequate financial support. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

cc: Daniel Swillinger

RB
8/20/80

310100271569

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Friends of John Anderson

)
)
)

MUR 1254

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on August 19, 1980, the Commission decided by a vote 5-0 to take the following actions regarding MUR 1254:

1. Take no further action in this matter and close the file.
2. Send the letter as attached to the First General Counsel's Report dated August 8, 1980.

Commissioners Aikens, Friedersdorf, Harris, McGarry, and Reiche voted affirmatively for the actions.

Attest:

8/19/80
Date

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

Received in Office of the Commission Secretary: 8-8-80, 11:53
Circulated on a tally vote basis: 8-11-80, 11:00

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FEDERAL ELECTION COMMISSION

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

MEMORANDUM

TO: CHARLES STEELE
GENERAL COUNSEL *MWE*

FROM: MARJORIE W. EMMONS/LENA STAFFORD *LF*

DATE: AUGUST 20, 1980

SUBJECT: MUR No. 1254

Attached herewith is the certification for MUR
No. 1254 and a copy of Commissioner Reiche's vote sheet
with comment regarding the same subject.

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KOD

48 HOUR TALLY SHEET



FEDERAL ELECTION COMMISSION

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

Date and Time Transmitted: MONDAY, 8-11-80

80
11:00
15
3:50
2:00
RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

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

RETURN TO OFFICE OF COMMISSION SECRETARY BY: TUESDAY, AUGUST 19, 1980

MUR No. 1254 - First General Counsel's Report dated 8-8-80

I approve the recommendation

I object to the recommendation

COMMENTS: We must be alert to the precedent-setting possibilities of this situation.

Date: 8/15/80 Signature: Frank P. Reiche

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



145103157

August 8, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1254

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

31010231572

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 8-8-80

80 AUG 8 11:52
MUR # 1254
STAFF MEMBER(S) Bojin

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

RESPONDENT'S NAME: Friends of John Anderson

RELEVANT STATUTE: former 2 U.S.C. §§ 432 - 434

INTERNAL REPORTS CHECKED: A.O.R. 1978-70

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

Receipt of post-dated checks held in escrow account triggered candidate status and reporting requirements under the Act.

FACTUAL AND LEGAL ANALYSIS

On September 5, 1978, the Commission received a request for an advisory opinion from counsel for John B. Anderson, A.O.R. 1978-70 (attached). The request presented three questions. Question one asked whether contingent pledges in the form of post-dated checks held in escrow under a formal declaration of trust for the purpose of determining whether Mr. Anderson's candidacy could receive adequate financial support are deemed "contributions," as that term is defined in former 2 U.S.C. § 431(e), at the time the checks were issued.

Under the Declaration of Trust, the trustee during the calendar year 1978 could receive checks dated on or after January 1, 1979, payable to the John B. Anderson Committee. All such checks so received by the trustee were to be held by the trustee as escrow agent for both the contributors and the Anderson Committee, if and when such a committee formed, subject to the declaration of trust, and no checks were to be deposited or in any manner negotiated. The trust was to terminate if John B. Anderson declared in writing to the trustee that he was not going to be a candidate for the Republican party's nomination for President in 1980, in which event the trustee was to promptly return each check being held to the drafter of the check.

The request for an advisory opinion was withdrawn on December 13, 1978, before a final draft of the response was ready to be presented to the Commission. On December 26, 1978, the trust referred to in the request was terminated pursuant to its terms, and all checks then held in escrow by the trustee were returned to the makers. Counsel for Congressman Anderson stated in a letter dated January 25, 1979, that "since no committee was ever formed and since all checks were returned uncashed, we believe that no registration or report is required by the Act." However, counsel voluntarily furnished the names and addresses of all the individuals who drafted checks as well as the amount of the checks and the date the checks were received in escrow by the trustee. The letter and listing enclosed therein were placed in the public advisory opinion file. The Anderson for President Exploratory Committee commenced filing reports with the Commission on April 11, 1979. Mr. Anderson filed his statement of candidacy on May 29, 1979.

During the audit of the Anderson for President Committee, the audit staff in the ordinary course of conducting their responsibilities came across correspondence which raised the question whether the checks held in escrow under the declaration of trust triggered a reporting obligation under the Act. Thus, this matter was referred to the Office of General Counsel for its consideration.

Former 2 U.S.C. § 431(e) defined contribution, in part, to mean a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing the nomination for election, or election of any person to federal office. It also means "a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution for such purposes." Post dated checks fall within this definition of contribution, thus triggering candidate status under former 2 U.S.C. § 431(b)(2), 1/

1/ In the situation where post dated checks are held in escrow and were not used to cover any of the expenses incurred by Mr. Anderson prior to a determination of whether to be a candidate, these checks do not fall within the "testing the waters" exception to the definition of contribution. See former 11 C.F.R. § 100.4(b)(1).

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at the time they are delivered to the trustee/escrow agent. Candidate status in turn triggers recordkeeping, registration and reporting obligations under the Act. 2 U.S.C. §§ 432, 433 and 434.

It appears that the failure by the trustee/escrow agent to file reports with the Commission is in violation of the Act; nevertheless, it is the recommendation of this Office that the Commission take no further action in this matter and close the file. Congressman Anderson and his supporters made a good faith attempt to comply with the Act. By requesting an advisory opinion, they disclosed the trust and escrow account arrangements. The trust only existed for a period of three months. In addition, counsel submitted a list of all contributors, including the contributors addresses and amounts contributed. Moreover, all contributions were refunded. Thus, where there has already been substantial disclosure with respect to the contributions, there seems little utility by pursuing this matter further.

Recommendations

1. Take no further action in this matter and close the file.
2. Send the attached letter.

Attachments

A.O.R. 1978-70
Letter to respondent
Audit Report

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GPC
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Kess

ROGOVIN, STERN & HUGE

MITCHELL ROGOVIN
GERALD M. STERN
HARRY HUGE
GEORGE T. FRAMPTON, JR.
JOEL I. KLEIN
JONATHAN D. SCHILLER
DAVID R. BOYD
RONNA LEE BECK
DAVID A. MARTIN
EUGENE J. COMEY
JANE C. BERGNER

1730 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 466-6464

JAMES F. NEAL
OF COUNSEL

September 5, 1978

N. Bradley Litchfield, Esquire
Assistant General Counsel
Advisory Opinion Section
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

AOR 1978-70

Dear Mr. Litchfield:

Our client, Congressman John B. Anderson, seeks an Advisory Opinion in accordance with the provisions of 11 C.F.R. § 112.1 with respect to the application of the Federal Election Campaign Act of 1971, as amended, and of the provisions of Chapter 96 of the Internal Revenue Code to the facts set forth below.

FACTS:

Congressman John B. Anderson is currently considering whether he should become a candidate for the Republican nomination to the office of President of the United States. To date he has neither (1) taken the action necessary under the law of a State to qualify himself for nomination, nor (2) received contributions or made expenditures, or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination to the office of President.

Among the many factors involved in making such a determination is the question whether his candidacy can receive adequate financial support. In an effort to make such a determination, Mr. Anderson intends, during the next four and one half months, to secure pledges of financial support from a number of supporters in various parts of the country in an effort to determine the extent of financial support that can be expected should he decide to seek the Presidential nomination.

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The pledges will take the form of post-dated personal checks (dated January 1, 1979) which will be held by a trustee as escrow agent under a formal declaration of trust. The Congressman intends to make his decision as to whether or not he will seek his party's nomination sometime after January 1, 1979. If he decides not to seek his party's nomination for the Presidency (or if he has made no announcement of his candidacy by January 15, 1979), the checks will be returned by the trustee to those who made the pledges. If he decides to seek the nomination, the checks will be deposited in an appropriate account for use by the candidate in 1979 for his campaign for the Republican nomination, and such amounts will then be reported with the first report filed by the candidate or his principal campaign committee.

None of the expenses incurred by Congressman Anderson, prior to his determining whether to become a candidate, will be paid from such funds.

A discrete number of supporters will also be asked to contribute funds to a separate exploratory committee. The funds collected by this committee will be used between now and the end of 1978 to defray the expenses incurred by Congressman Anderson in determining whether he will seek the nomination of his party.

QUESTIONS PRESENTED:

1. Will pledges solicited in accordance with the facts set forth above be deemed "contributions," as that term is defined in 2 U.S.C. § 431(e), at any point prior to Congressman Anderson's decision whether to become a candidate?
2. If the Congressman determines in 1979 to become a candidate for the nomination of his political party for election to the office of President of the United States, will the amounts solicited in accordance with the facts set forth above be eligible for the Presidential Primary Matching Payment Account provided for in Chapter 96, Internal Revenue Code of 1954?
3. Will amounts paid over to an "exploratory committee" formed for the purpose of paying expenses incurred by Congressman Anderson in determining whether he should become a candidate be deemed "contributions" as that term is defined in 2 U.S.C. § 431(e)?

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LEGAL ANALYSIS:

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Question 1. Our review of the Act, the Commission's regulations, and the legislative history indicates that these pledges are not "contributions" unless and until Congressman Anderson decides to seek his party's nomination for President. The statutory term "contribution" means any "gift, subscription, loan, advance, or deposit of money or anything of value" and includes "a written contract, promise or agreement, whether or not legally enforceable, to make a contribution" if such is "made for the purpose of influencing the nomination for election, or election, of any person to federal office . . ." 2 U.S.C. § 431(e) (emphasis added). Although post-dated checks appear in some circumstances to fall within the broad reach of the definition, these checks are not "contributions" because they are not given with the requisite purpose to "influenc[e] the nomination for election" of Congressman Anderson to the office of President.

The donor's purpose in making a pledge in this form is only to give tangible evidence of his willingness to provide financial support, thereby aiding in Congressman Anderson's decision whether to run for President. The donor has no "purpose of influencing the nomination" for President unless and until a contingency is fulfilled--i.e., Congressman Anderson decides to seek his party's nomination. Only at that point would the sums represented by the post-dated checks actually become available for use in the campaign, and only at that point can a purpose to influence the nomination be said to exist. When and if that contingency takes place, Congressman Anderson will take all proper steps to establish a principal campaign committee and to report these sums to the Commission as contributions. If, however, he decides not to run, the checks will be returned to the donors by the trustee and no purpose to influence the nomination for President will ever have attached to these sums.

The Commission's regulations point to the same conclusion. Title 11 C.F.R. § 100.4(b)(1) provides that payments made for the purpose of "testing the waters," i.e., determining whether an individual should become a candidate, are not to be counted as contributions at the

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Page Four

time of payment. The regulation uses as an example funds given to an individual to conduct public opinion polls, but the regulation obviously contemplates that polling is not the exclusive means of "testing the waters." The sums here squarely meet the express language of the regulation, for their purpose is solely "determining whether an individual should become a candidate." *Id.* The regulation also indicates that such sums may later become contributions and are to be reported with the first report of the candidate or his principal campaign committee "[i]f the individual subsequently becomes a candidate." *Id.* (emphasis added). This is exactly the course Congressman Anderson will follow should he decide to run.

If attention is directed to Congressman Anderson's purpose in soliciting these pledges, as opposed to the donors' purpose in giving them, such an examination likewise reveals that the pledges are not "contributions." The Congressman too seeks these pledges solely to test the waters and determine the extent of his potential financial support, and not at this point to influence the nomination or election. There will be no such purpose unless he expressly decides in early 1979 to become a candidate, and again, at that point there will be full registration and reporting.

The language of Section 431(b) defining "candidate" furnishes additional support for this conclusion. The Act provides that a candidate is an individual who "seeks nomination for election, or election, to federal office" (emphasis added), a word which clearly imports active pursuit of the nomination or election. Congressman Anderson does not fit this definition. He will not decide whether to seek the nomination until early next year, and that decision will be based in part on whether the pledges demonstrate adequate financial support.

Not treating these pledges as contributions is wholly in accord with the overall purpose of the reporting provisions of the Federal Election Campaign Act. As the Supreme Court has stated, that purpose is to inform the electorate of "where political campaign money comes from," both so that the voters may evaluate candidates for public office and in

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order to deter corruption and avoid the appearance of corruption. Buckley v. Valeo, 96 S.Ct. 612, 657-658 (1976). In light of this Congressional intent, there is no need for disclosure here where there is no access to the money until a specified contingency takes place. If Congressman Anderson decides not to run, the checks go back to the donors. There would then be no "political campaign money" to be disclosed, and no candidate to evaluate on the basis of such disclosure. If instead he does decide to run, then full registration and reporting as of that time completely fulfill the intent of the Act.

Thus, under the language of the Act and the Commission's regulations, 11 C.F.R. § 100.4(b)(1), this solicitation of pledges by or for Congressman Anderson for the purpose of determining whether he has national support sufficient to seek his party's nomination for the office of President of the United States is not within the obligation to register and report imposed by the Federal Election Campaign Act.

Question 2. The second question is whether these pledges would be eligible under Chapter 96 of the Internal Revenue Code for the Presidential Primary Matching Payment Account--if Congressman Anderson decides to seek his party's nomination for President. Here the crucial issue is the time when a "contribution" occurs, for the Act provides for matching only of contributions made "on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election" Internal Revenue Code of 1954, § 9032(4)(A). That is, only contributions made on or after January 1, 1979, are eligible for matching.

Except for this time limitation, the relevant portion of the definition of "contribution" for Chapter 96 of the Internal Revenue Code is identical to the definition of "contribution" contained in 2 U.S.C. § 431; a payment or advance is not a "contribution" unless it is "made for the purpose of influencing" the result of a presidential primary election. As demonstrated above, no such purpose can be

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said to attach to these pledges until the specified contingency occurs--namely Congressman Anderson's decision to seek his party's nomination for President. If that contingency occurs after January 1, 1979, then the pledges become "contributions" at that point, and are then eligible for matching, if the other provisions of §§ 9033 and 9034 are met.

Section 9034(a) also supports this interpretation. That section provides that for purposes of the matching payment scheme, "contribution" includes only a "gift of money made by a written instrument which identifies the person making the contribution." The term expressly does not include the items described in Section 9032(4)(B), i.e., a "contract, promise, or agreement, whether or not legally enforceable, to make a contribution." Id., § 9034(a). Unless and until Congressman Anderson decides to seek his party's nomination, these pledges, in the form of post-dated checks, are not gifts of money. They are at most promises or agreements (which themselves are significantly limited by an important contingent provision). If and when the contingency occurs, however--and this cannot take place until 1979--the checks will then in every respect meet the description of qualifying contributions set forth in Section 9034(a).

In sum, in our view the same conclusion is to be reached both under 2 U.S.C. § 431 and under Chapter 96 of the Internal Revenue Code. The pledges described above are not "contributions" unless and until the express contingency to be set forth in the trust declaration is fulfilled--that is, unless and until Congressman Anderson decides to seek his party's nomination for President. Only at that point would he become a "candidate" subject to the registration and reporting provisions of the Act; only at that point would these pledges become "contributions" for purposes of reporting under 2 U.S.C. § 434; and only at that point would they become "contributions" for purposes of determining eligibility for matching payments under Chapter 96.

Question 3: The third question appears to be answered by 11 C.F.R. § 100.4(b)(1) and the discussion of the word "contribution" found in Question 1, supra. The sums received

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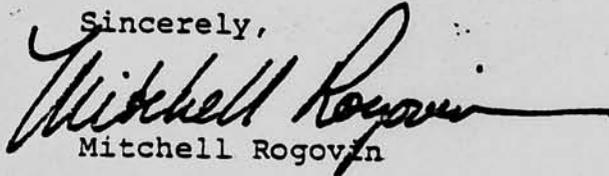
ROGOVIN, STERN & HUGE

N. Bradley Litchfield, Esquire
September 5, 1978
Page Seven

by the exploratory committee are not "contributions" because they lack the required "purpose" and will be used solely to determine whether Congressman Anderson should seek his party's nomination.

We appreciate your attention to this request. If you have any questions or believe a conference would be helpful, please contact me directly.

Sincerely,

A handwritten signature in cursive script that reads "Mitchell Rogovin". The signature is written in dark ink and is positioned above the printed name.

Mitchell Rogovin

cc: Congressman John Anderson
Thomas S. Johnson, Esquire

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ROGOVIN, STERN & HUGÉ

MITCHELL ROGOVIN
GERALD M. STERN
HARRY HUGÉ
GEORGE T. FRAMPTON, JR.
JOEL I. KLEIN
JONATHAN D. SCHILLER
DAVID R. BOYD
RONNA LEE BECK
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1730 RHODE ISLAND AVENUE, N. W.
WASHINGTON, D. C. 20036
TELEPHONE (202) 466-6464

NOV 8 AIG JAMES F. NEAL
OF COUNSEL

November 6, 1978

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AOR 1978-70
SUPPLEMENT

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

Re: Request for Advisory Opinion;
Congressman John B. Anderson

Dear Mr. Oldaker:

At our conference on October 27, 1978, you asked that we obtain some additional information about the trust agreement involved in this matter and about the identity of the payee to whom the post-dated checks involved are made out.

We have now obtained a copy of the trust agreement (a copy of which is attached) under which the trustee, Thomas S. Johnson, an attorney with the firm of Williams, McCarthy, Kinley, Rudy & Picha of Rockville, Illinois, is receiving the post-dated checks. As we understand it, Mr. Johnson himself has done much of the actual solicitation of checks; the remainder of the work is carried on by a group of Anderson supporters and friends with whom Mr. Johnson meets weekly. Mr. Johnson and his group discuss the terms of the trust agreement with contributors, and he is operating under the assumption that, having done so, he is bound by its terms.

The terms of the trust strongly support the arguments we have made to you at our meeting and advanced in my letter of September 5, 1978, to Mr. Litchfield. A review of these arguments may be helpful.

The first question raised by our request for an Advisory Opinion is whether the post-dated checks received by the trustee

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under this trust agreement should be deemed "contributions" within the meaning of 2 U.S.C. 431(e). As we argued in our initial submission, the delivery of such checks to a trustee does not constitute a "written contract, promise or agreement . . . to make a contribution" within the meaning of the statute, but rather constitutes a conditional pledge or promise that does not become a promise to make a contribution unless Congressman Anderson decides on or after January 1, 1979, to become a candidate. We believe the trust agreement strengthens that argument, since it makes clear that certain specific contingencies must occur before the checks are permitted to be drawn. Specifically, these include Anderson's signifying in writing to the trustee after January 1, 1979, that he has decided to become a candidate; creation of a campaign committee; determination by the trustee that payments made by drawing upon the checks will be considered contributions made in 1979 and therefore fall within the matchability provisions of the law (this feature is discussed below in more detail); and transmission of the checks by the trustee to the new Anderson campaign committee.

However, even if for policy reasons the FEC is not prepared to accept this argument, the more important issues are whether any "contributions" are (1) made for the purpose of influencing Congressman Anderson's election, and (2) not covered by the "testing-the-waters" exception in your regulations. We have argued, and we think the trust agreement makes clear, that the entire arrangement involved here is one designed to influence Congressman Anderson to make the decision to run, not to influence his nomination for the presidency. Only if and when he makes such a decision will the checks be transmitted to the campaign committee and drawn upon to fund a campaign for the nomination. Obviously, then, in spirit and intent the arrangement falls squarely within the testing-the-waters exception.

One view expressed at our conference was that the testing-the-waters exception should be viewed narrowly to include casting about for political support, but not for financial support. The testing-the-waters exception for polling is, of course, not the sole factual exception provided for in 11 CFR § 100.4(b)(1). The regulation merely uses polling as an example of payments made for the purpose of determining whether an individual should become a candidate. In our view, determining whether political and financial support exist are analogous. What Congressman

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Anderson's supporters are doing is casting around for financial support -- to be specific, for expressions of future support -- in order to show Anderson that a campaign is actually feasible. As we pointed out in our conference, demonstrated financial support is every bit as significant as political support, particularly in a Presidential race. This is especially true in making the initial decision whether to run at all. As a matter of policy the law ought to be interpreted in a way that encourages potential candidates to do whatever they can to make a rational decision whether to commit energy and money to such an effort. The trust arrangement involved here was designed with 11 CFR § 100.4(b)(1) in mind and an unnecessarily narrow interpretation of the testing-the-waters exception to exclude it -- especially considering the very detailed provisions of the trust agreement -- would in our view not only be irrational but contrary to the spirit of the regulations. Particularly when it can be demonstrated that there was good faith reliance upon the published regulations of the FEC.

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The second issue involved in our request for an Advisory Opinion is whether, if Congressman Anderson does decide to become a candidate on or after January 1, 1979, and the post-dated checks are thereafter cashed, the amounts thereby contributed are subject to the matchability provisions of the Act. At our conference, we were questioned as to whether the timing of receipt of the post-dated checks is such that the contribution should be construed to have taken place in 1978. In our view, both the characteristics of the post-dated checks and, more important, the provisions of the particular trust agreement involved here, compel a conclusion that any "contributions" could only take place in 1979, and would thus be matchable.

First, of course, the checks are only payable after January 1, 1979. Drawers can stop payment at any time before the checks are due to be cashed. Section 9032(4)(A) defines "contribution" to mean a gift, loan, or deposit, etc., "the payment of which was made on or after the beginning of the calendar year of the Presidential election." (Emphasis added) Similarly, according to the regulations, a contribution is matchable if it is "received and deposited by the candidate or authorized committee on or after the first day of the calendar year preceding the calendar year of the Presidential election." Section 130.8(a)(3). No "payment" can be made, nor can these post-dated checks be "deposited" by the candidate or any authorized committee supporting him, until on or after January 1, 1979.

ROGOVIN, STERN & HUGO

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Page -4-

Second, under the trust agreement the trustee -- who is explicitly designated as an escrow agent for both the contributors and the ultimate possible beneficiary of the checks -- is forbidden to transfer the checks to Congressman Anderson, or any committee supporting him, until after January 1, 1979, and until another contingency also occurs: namely, Congressman Anderson signifies in writing that he had determined to become a candidate. In this connection, it is worth noting in light of our conversation about whether post-dated checks are "negotiable" instruments that Article II of the trust agreement specifies that until these contingencies occur "no such checks shall be deposited or in any manner negotiated."

Third, the symbolic nature of the arrangement -- the soliciting of signed, post-dated checks rather than letters of financial support or post-dated contingent pledges -- is emphasized by the fact that under the trust agreement the post-dated checks are made out to a non-existent entity. In other words, the checks could only be cashed if and when a formal committee capable of "receiving and depositing" the checks is brought into being. No such committee now exists.

Finally, Article VI of the trust agreement provides that should Anderson signify after January 1, 1979, that he is a candidate, and should a committee be set up, but should the trustee then conclude that the payments made by drawing on the checks would not be considered matchable contributions, the trustee must (at Anderson's request) return the checks to the makers. Not only does this provision emphasize even further the contingent and symbolic nature of the arrangement, it manifests the clear intent of the trust that any expressions of financial support elicited by this arrangement will result only in contributions that actually do not occur until 1979. The fact that friends and potential supporters of Congressman Anderson have in fact been proceeding with this trust arrangement in good faith, under the belief and intent that contributions resulting from their actions will not actually be made until 1979 and will be matchable, is a factor we think should be weighed strongly together with the very specific provisions of this particular trust agreement in reaching an Advisory Opinion.

At our conference, one question that was raised pertained to whether the arrangement involved here might tend to undercut the policy or spirit of the "preceding year" time limit for matchability established by Congress. We think the trust agreement makes it clear that this is neither the intent nor the purpose of the arrangement.

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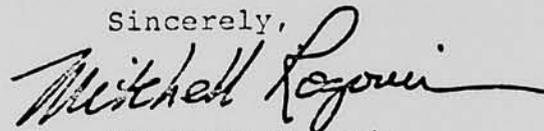
ROGOVIN, STERN & HUGO

William C. Oldaker, Esquire
November 6, 1978
Page -5-

Nothing in the spirit or purpose of the law is intended to discourage even avowed candidates from looking into the existence of financial support prior to the initial date of the matchability period, as long as the actual contributions are made during the matchability period. What Mr. Anderson's friends are doing here on his behalf is, however, one step removed from that: Anderson's supporters are trying to determine whether enough solid indications of financial support will be forthcoming in 1979 to trigger a decision by Anderson to go ahead and get into the race. The method chosen to procure meaningful expressions of support takes the place of post-dated checks, rather than letters telling Anderson that "if you get into the race, I will definitely contribute in 1979," or "if you get into the race, I will contribute at least \$1,000 in 1979." But the purpose of using such a device is not to avoid the matchability period in any way, but simply to increase the credibility of these offers of financial help. The trust agreement makes it clear that the use of checks still makes the triggering of any payment contingent on a number of events occurring, and in addition the "contingent pledges" cannot be "called" until the matchability period, and can be cancelled before the onset of that period. Thus the use of checks, rather than letters or other promises of future support, is mainly symbolic and is certainly consistent with the spirit of the law.

In sum, what is involved here is a good faith, ongoing effort by supporters of an individual to convince him of the availability of substantial financial support in order to entice him to enter the 1980 Presidential campaign. Given the detailed provisions of the particular trust agreement governing this effort, the endeavor falls well within the spirit as well as the letter of the Commission's testing-the-waters exception, and is designed to permit a rational decision by Anderson as to the wisdom of getting into the race. As such, it should be encouraged, not discouraged by an unnecessarily narrow reading of that exception. Similarly, the entire design of the trust, and the assumption under which it has been proceeding, is that while support is evidenced in 1978, contributions would not actually be made until 1979 and thus would be matchable. We think the language of the statute and regulations favors such an interpretation, and no policy interests are offended by such a result.

Sincerely,



Mitchell Rogovin

Attachment

3 1 0 1 0 2 3 1 5 3 3

DECLARATION OF TRUST

This declaration of trust is made at Rockford, Illinois, this ____ day of September, 1978. The undersigned, as trustee, acknowledges that the trust property received from time to time as herein described shall be held and disposed of as follows:

ARTICLE I

This declaration of trust is irrevocable and unamendable, except that it may be amended by the trustee solely for the purpose of satisfying the requirements of laws of the United States or the State of Illinois, specifically including all requirements of the Federal Election Campaign Act of 1971, as amended, and any proper regulations or rulings issued pursuant thereto.

ARTICLE II

During the calendar year 1978 the trustee may receive checks dated on or after January 1, 1979, payable to the John B. Anderson for President Committee. All such checks so received by the trustee shall be held by the trustee as escrow agent for both the contributors and the Anderson Committee, if and when such a committee is formed, subject to this declaration of trust, and no such checks shall be deposited or in any manner negotiated. The trustee shall furnish an accounting of all such checks to such person or agencies as John B. Anderson may request in writing or as may be required by law.

ARTICLE III

The trust shall terminate if John B. Anderson declares in writing to the trustee that he will not become a candidate for the Republican party's nomination for President in 1980, or if he dies, in which event the trustee shall promptly return each check being held to the drafter thereof.

ARTICLE IV

If prior to January 1, 1979, the trust has not already terminated as provided herein, the trustee shall inquire in writing of John B. Anderson concerning his intentions to seek the 1980 Republican Presidential nomination. If he responds in writing that he is then a candidate or that he has authorized the creation of a committee for his election the trustee shall at the earliest feasible time subsequent to January 1, 1979, deliver all checks to the principal Anderson for President Committee, and promptly thereafter the trust shall terminate. If the trustee has received no response to his inquiry of January 1, 1979, by January 15, 1979, or if John B. Anderson advises the trustee in writing that he will not become a candidate for the 1980 Republican Presidential nomination, or if he requests in writing that the checks be returned, the trustee shall promptly return each check being held to the drafter thereof and promptly thereafter the trust shall terminate.

ARTICLE V

1. If at any time the trustee resigns, dies, or becomes incapable of serving, American National Bank and Trust Co., of Rockford, Illinois, or if it fails or declines to act, First National Bank and Trust Company of Rockford, Illinois, shall become trustee.

2. No successor trustee shall be personally liable for any act or omission of any predecessor trustee. Any successor trustee shall accept without examination or review the accounts rendered and the property delivered by or for a predecessor trustee without incurring any liability or responsibility. Any successor trustee shall have all the title, powers and discretion of the trustee succeeded.

3. Any trustee shall have all powers and discretion as may be granted by the law of Illinois

ARTICLE VI

Notwithstanding any contrary provision herein, the trust shall be interpreted in such fashion as to eventually qualify any checks held hereunder for the Presidential Primary Matching Payment Account pursuant to Chapter 96, Internal Revenue Code of 1954 as amended. If the trustee concludes that such checks are ineligible for federal matching grants provided in said Chapter 96, and if John B. Anderson so requests in writing at any time, each check being held shall be returned promptly to the drafter thereof and promptly thereafter the trust shall terminate.

Thomas S. Johnson, as trustee



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Anderson for President Committee
321 W. State Street
Rockford, Illinois 61101

RE: MUR 1254

Dear Sir or Madam:

This letter is to notify the Anderson for President Committee that the Commission has determined to take no further action with respect to post-dated checks issued in 1978 and held in escrow under a formal declaration of trust for the purpose of determining whether Congressman Anderson's candidacy could receive adequate financial support. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

cc: Daniel Swillinger

31040234591

THRESHOLD AUDIT FINDINGS

ON

THE ANDERSON FOR PRESIDENT COMMITTEE

I. Background

A. Overview

This is to advise you of the findings and recommendations pertaining to the audit fieldwork conducted in March and April, 1980, which covered the period January 1, 1979 to December 31, 1979. The audit was conducted pursuant to Section 9039(b) of Title 26 of the United States Code which states, in part, that the Commission is authorized to prescribe rules and regulations in accordance with the provisions of subsection (c), to conduct examinations and audits (in addition to examinations and audits required by Section 9038(a)), to conduct investigations, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out the responsibilities under this chapter.

In addition, Section 9038.1(b) of Title 11 of the Code of Federal Regulations states that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

B. Key Personnel

The principal officers of the Committee during the period audited were Mr. Frank P. Maggio, Chairman, and Mr. Hugh D. Hammerslag, Treasurer.

C. Scope

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

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II. Audit Findings and Recommendations

A. Contributions and Transfers

1. Itemization of Receipts

During the period covered by the audit, Section 434(b)(2) of Title 2 of the United States Code stated, in part, that each report under this section shall disclose the full name and mailing address (occupation and principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate within the calendar year in an aggregate amount or value in excess of \$100, together with the amount and date of such contributions.

During the course of the audit fieldwork, the Audit staff examined the Committee's contribution records, FEC reports, and discussed and reviewed with the Committee officials their policy for itemizing and reporting contributions. The Audit staff found that during 1979 the Committee used two (2) criteria for determining which receipts required itemization. During the first and second quarters of 1979, the Committee itemized only individual receipts in excess of \$100.00 and not those aggregating in excess of \$100. During the third and fourth quarters of 1979, the Committee computerized their system and itemized only individual receipts greater than \$100.00 or aggregating in excess of \$100 per reporting period.

Committee officials stated that the receipts were itemized incorrectly due to a misunderstanding of the itemization requirements in the Act; however, based on the Audit staff's advice, the Committee stated that their computer program was corrected in time for filing the 1980 reports.

Recommendation

The Audit staff does not recommend a report amendment for the period of the audit since the dollar amount involved is not significant.

31010234593

2. Transfers between Presidential and Congressional Principal Campaign Committees

Section 110.3(a)(2)(v) of Title 11 Code of Federal Regulations states, in part, that transfers shall not be limited between the principal campaign committees of a candidate seeking nomination or election to more than one Federal office, as long as the transfer is made when the candidate is not actively seeking nomination or election to more than one office and the limitations on contributions by persons are not exceeded by the transfer. To assure this, the contributions making up the funds transferred shall be reviewed, beginning with the last received and working back until the amount transferred is reached. A person's contribution or any portion thereof, shall be excluded if, when added to contributions already made to the transferees' principal campaign committee, it causes the contributor to exceed his or her limitation; and the candidate has not received funds under 26 U.S.C. Sections 9006 or 9037.

On February 4, 1980, the candidate was certified by the Commission to be eligible to receive primary matching funds. Between the period from June 6, 1979 through July 3, 1979 the Committee reported receiving three transfers totaling \$13,117.00, from the Anderson for Congress Finance Committee, the principal campaign committee for the candidate's 1978 Congressional Campaign.

These transfers comprised the balance of funds remaining in the Anderson for Congress Finance Committee. At the time of the transfers, the Congressional Committee neither provided nor did the Presidential Committee request the identity of the contributors comprising the funds transferred.

Recommendation

The Audit staff recommends that the Committee obtain from the Anderson for Congress Finance Committee the identity of the contributors whose contributions comprised the funds transferred. It is also recommended that the Committee file an amended report disclosing the contributors in a memo entry on a first in first out basis. Furthermore, if any contributor's contribution limitation has been exceeded when the contributions comprising the transfers are combined with contributions made to the Committee, the value of the excessive contributions must be refunded to the contributor. The excessive portion of any contribution that has been matched with Federal Funds should be repaid to the U.S. Treasury.

31700234574

B. Receipts Received Prior to Candidate's Authorization of a Committee

During the period covered by the audit, Section 431(e)(1)(B)(2) of Title 2 of the United States Code stated, in part, that a contribution means a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of President of the United States. A contribution also means a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution for such purposes.

During the period covered by the audit, Section 100.7(b)(2) of Title 11, Code of Federal Regulations stated that the term "expenditure" does not include payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, if the individual does not otherwise subsequently become a candidate. If the individual becomes a candidate, the payments are expenditures, and must be reported with the first report filed by the candidate or the principal campaign committee of the candidate, as appropriate, regardless of the date the payments were used.

Prior to the candidate authorizing a committee to collect and disburse funds on his behalf, funds were collected to show to the candidate that he had substantial financial support to seek the Republican Presidential nomination.

On August 24, 1978, with Mr. Anderson's knowledge and presence, an organization of supporters under the name of "Friends of John Anderson," conducted a meeting in Rockford, Ill. ^{1/} Between August 19, 1978 and December 22, 1978, this organization collected and held in trust 217 individual contributions totaling \$128,005.00. All contributions received were in the form of written instruments. Thirty-nine (39) of the instruments were dated in 1978 and the remaining 178 were post-dated for the period of January 1st through 7th, 1979. The organization held the instruments in a trust, however; it did not at any time deposit them into a savings or checking account.

The Commission's Office of General Counsel received from the candidate's legal counsel an Advisory Opinion Request dated September 5, 1978, (AOR-1978-70) asking whether contingent pledges in the form of post-dated checks were deemed contributions under the terms of 2 U.S.C. 431(e).

^{1/} The Exploratory Committee registered with the Commission on January 29, 1979 and the Candidate authorized the Committee on May 10, 1979.

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The Committee on December 13, 1978, withdrew the AOR and subsequently, on December 26, 1978, returned the original contributor checks to the contributors. At that time the Committee requested that each contributor resubmit a new check so that those contributions could be eligible for primary matching funds.

Recommendation

The Audit staff recommends that this matter be referred to the Commission's Office of General Counsel for their legal analysis and comment.

C. Itemization of Expenditures

During the period covered by the audit, Section 434(b) (9) of Title 2, United States Code stated, in part, that each report shall disclose the identification of each person to whom expenditures have been made by the committee within the calendar year in an aggregate amount or value in excess of \$100, along with the amount, date and purpose of each such expenditure.

The Committee controller stated that the criteria used for selection of expenditures for itemization was whether each expenditure was in excess of \$100. This procedure was followed due to a misunderstanding of the reporting requirements.

A sample of expenditures was randomly selected and tested for proper itemization. With the exception of the first quarter report for 1979, where all items tested were properly itemized, no expenditure of \$100 or less but aggregating in excess of \$100 was itemized, while all expenditures greater than \$100 were properly itemized. The sample indicated that at a 95% confidence level between 18.76% and 25.5% of the expenditures requiring itemization were not itemized. This represents (an estimated amount) between \$11,557.16 and \$16,382.70 of Committee expenditures which were not itemized.

Recommendation

The Audit staff recommends that the Committee file an amendment for the second through the fourth quarters of 1979 itemizing the expenditures which are in excess of, or aggregate in excess of \$100. It is further recommended that the Committee develop a system for aggregating expenditures in accordance with the current regulations.

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D. Allocation of Expenditures to States

Section 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code states, in part, that no candidate for the Office of President of the United States who is eligible under Section 9033 of the Internal Revenue Code of 1954 to receive payments from the Secretary of the Treasury may make expenditures in excess of \$10,000,000, in the case of a campaign for nomination for election to such office except the aggregate of expenditures under this subparagraph in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the State, or \$200,000 adjusted by the Consumer Price Index.

During the examination of the Committee's expenditure records, for the period January 1 thru December 31, 1979, the following matters were noted:

1. Headquarters Costs

Section 106.2(b) of Title 11 of the Code of Federal Regulations states, that expenditures for administrative, staff, and overhead costs directly relating to the national campaign headquarters shall be reported but need not be attributed to individual States. Expenditures for staff, media, printing, and other goods and services used in a campaign in a specific State shall be attributed to that State.

The Audit staff was informed by a Committee accountant that the Committee's 1979 expenditures were retroactively allocated to States during the early part of 1980.

The Committee maintains two national campaign headquarters offices, one in Rockford, Illinois and one in Washington, D.C. 2/ In addition to the national campaign headquarters office in Rockford the Committee also maintains a Illinois state office in Chicago.

The Committee did not attribute any costs to the national campaign headquarters office located in Washington, D.C. The total 1979 costs incurred in Washington, D.C. were attributed to the Washington, D.C. expenditure limitation. Because of the incorrect method of allocation used by the Committee, the spending limitation for the District of Columbia would have been exceeded.

2/ The Washington, D.C. office, handled all political functions, and the Rockford, Illinois office handled all financial functions.

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In addition, when the 1979 expenditures were retroactively allocated to States, 15% of all Illinois expenditures were attributed to the Illinois expenditure limitation (Chicago) and 85% were attributed to the Rockford national campaign headquarters. The Committee could not provide an objective basis for the percentages used for this headquarters and state allocation method.

Recommendation

The Audit staff recommends that the Committee adopt a procedure for attributing costs directly relating to the national campaign headquarters to the non-allocable category and not to the individual state where the office is located or by use of an arbitrary percentage. No amendment is recommended for 1979 because the state allocations did not closely approach the state limitations.

2. Travel Allocations

Section 106.2(c)(2) of Title 11 of the Code of Federal Regulations states that expenditures for travel within a State shall be attributed to that State. Expenditures for travel between States need not be attributed to any individual State.

A review of the Committee's expense reimbursement request files indicated that the total amount of each travel reimbursement check was allocated to the State in which the traveler's office was located or the national campaign headquarters office. The Committee did not consistently attribute inter state travel costs to the national campaign headquarters office nor did they attribute the intra state travel cost to the state in which the individual traveled.

Recommendation

The Audit staff recommends that the Committee adopt a procedure for allocating travel expenses, including the proportionate payroll expenses, to the appropriate State(s). No amendment is recommended for 1979 because the state allocations did not closely approach the state limitations.

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3. Allocation of Payroll Withholding Taxes and Related Expenses

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a candidate's authorized committee which seek to influence the nomination of a candidate for the office of President of the United States in a particular State shall be attributed to that state.

It was determined during the review of the Committee's payroll and related records that net salaries for employees were properly allocated, however, the taxes withheld and employee benefit costs were not attributed to the State to which the employee's salary was allocated but to the non-allocable category.

Recommendation

The Audit staff recommends that the Committee adopt a procedure for allocating payroll withholding taxes and employee benefit expenses to the State to which each employee's salary is attributed. No amendment is recommended for 1979 because the state allocations did not closely approach the state limitations.

31010234599



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 27, 1980

MEMORANDUM

TO: Robert J. Costa

THROUGH: Orlando B. Potter
Staff Director

FROM: Charles N. Steele *KNB for CWS*
General Counsel

SUBJECT: Letter of Threshold Audit Findings - John Anderson
A-773

The Office of General Counsel has reviewed the letter and threshold audit findings for the Anderson for President Committee and has comments as follows:

II. A. 2. Transfers between Presidential and Congressional Principal Campaign Committees

The audit staff cites 11 C.F.R. § 110.3(a)(2)(v) as the relevant section of the Code which regulates a transfer of funds between Congressman Anderson's 1978 principal campaign committee, Anderson for Congress Finance Committee, to candidate Anderson's principal campaign committee, the 1980 Anderson for President Committee. Accordingly, the audit staff recommends that the Committee comply with subsections (A), (B) and (C) of paragraph (v).

It is the opinion of the Office of General Counsel that 11 C.F.R. § 110.3(a)(2)(iv) regulates the above-mentioned transfer. Paragraph (iv) states that "a candidate's previous campaign committee and his or her currently registered principal campaign committee or other authorized committee" are permitted, "as long as none of the funds transferred contain contributions which would be in violation of the Act." If none of the transferred funds contain contributions which would be in violation of the Act, then the transfer seems to have been properly made and reported.

31010234500

Memorandum to Robert J. Costa

Page 2

Letter of Threshold Audit Findings - John Anderson - A-773

Recommendation

Delete Section II. A. 2 of the audit report.

II. B. Receipts Received Prior to Candidate's Authorization of
A Committee

The Office of General Counsel agrees with the Audit Division
that this matter should be referred to this Office.

As to all other matters, the Office of General Counsel
agrees with the Audit Division's recommendations.

31010234601



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 13, 1980

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: ORLANDO B. POTTER ^{AL for O.B.P.}
STAFF DIRECTOR

FROM: BOB COSTA *RC*

SUBJECT: LETTER OF THRESHOLD AUDIT FINDINGS

Attached is the letter of threshold audit findings of the Anderson For President Committee for legal analysis. It should be noted that based on the Commission's approval on June 5, 1980, of Alternative 1.B contained in Agenda Document #80-195 relating to the \$50,000.00 limitation (see 26 U.S.C. 9004(d)), the Audit staff has not included as a finding a matter involving a \$50,000 contribution from the Candidate and additional contributions from members of the Candidate's immediate family. There appeared no evidence that the Candidate had control over the funds of the immediate family members, therefore no violation occurred.

If you have any questions regarding this matter, please do not hesitate to contact Ray Lisi or Ron West on extension 3-4155.

Attachment as stated

31010231502



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Mr. Hugh Hammerslag, Treasurer
The Anderson For President Committee
321 W. State Street
Rockford, Illinois 61101

Dear Mr. Hammerslag:

This is to advise you of the findings and recommendations pertaining to the audit fieldwork conducted in March and April, 1980, which covered the period from inception to December 31, 1979. As you are aware, this audit was conducted pursuant to 26 U.S.C. 9039(b) and 11 C.F.R. 9038.1(b). Matters noted herein may also be addressed in the audit report prepared at the conclusion of the audit fieldwork conducted pursuant to 26 U.S.C. 9038(a), 9039(b), and 11 C.F.R. 9038.1(a) and (b).

The matters noted below were discussed with Mr. Harry Koplin of your staff on April 10, 1980. These matters fall into two categories. Those which require amendments to disclosure reports or other specific action and those which contain observations concerning your accounting system(s) which are presented for your information.

Any amendments or documentation presented in response to these findings will be acknowledged in the Audit report resulting from audit work which began on June 2, 1980. If no response or an inadequate response is received, the above mentioned audit report will contain a recommendation(s) that the Committee take appropriate action within a specific period of time.

If you have any questions regarding these matters, please do not hesitate to contact Mr. Ronald West or Mr. Raymond Lisi by calling (202) 523-4155 or toll free (800) 424-9520.

Sincerely,

Robert J. Costa
Assistant Staff Director
for the Audit Division

Attachment

cc: Honorable John Anderson

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

3101031503



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 27, 1980

MEMORANDUM

TO: Robert J. Costa

THROUGH: Orlando B. Potter
Staff Director

FROM: Charles N. Steele *KNB for CAS*
General Counsel

SUBJECT: Letter of Threshold Audit Findings - John Anderson
A-773

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31040234604

Memorandum to Robert J. Costa
Page 2
Letter of Threshold Audit Findings - John Anderson - A-773

Recommendation

Delete Section II. A. 2 of the audit report.

II. B. Receipts Received Prior to Candidate's Authorization of
A Committee

The Office of General Counsel agrees with the Audit Division
that this matter should be referred to this Office.

As to all other matters, the Office of General Counsel
agrees with the Audit Division's recommendations.

31710234605

THRESHOLD AUDIT FINDINGSONTHE ANDERSON FOR PRESIDENT COMMITTEEI. BackgroundA. Overview

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In addition, Section 9038.1(b) of Title 11 of the Code of Federal Regulations states that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

B. Key Personnel

The principal officers of the Committee during the period audited were Mr. Frank P. Maggio, Chairman, and Mr. Hugh D. Hammerslag, Treasurer.

C. Scope

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

31040234505

II. Audit Findings and Recommendations

A. Contributions and Transfers

1. Itemization of Receipts

During the period covered by the audit, Section 434(b)(2) of Title 2 of the United States Code stated, in part, that each report under this section shall disclose the full name and mailing address (occupation and principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate within the calendar year in an aggregate amount or value in excess of \$100, together with the amount and date of such contributions.

During the course of the audit fieldwork, the Audit staff examined the Committee's contribution records, FEC reports, and discussed and reviewed with the Committee officials their policy for itemizing and reporting contributions. The Audit staff found that during 1979 the Committee used two (2) criteria for determining which receipts required itemization. During the first and second quarters of 1979, the Committee itemized only individual receipts in excess of \$100.00 and not those aggregating in excess of \$100. During the third and fourth quarters of 1979, the Committee computerized their system and itemized only individual receipts greater than \$100.00 or aggregating in excess of \$100 per reporting period.

Committee officials stated that the receipts were itemized incorrectly due to a misunderstanding of the itemization requirements in the Act; however, based on the Audit staff's advice, the Committee stated that their computer program was corrected in time for filing the 1980 reports.

Recommendation

The Audit staff does not recommend a report amendment for the period of the audit since the dollar amount involved is not significant.

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2. Transfers between Presidential and Congressional Principal Campaign Committees

Section 110.3(a)(2)(v) of Title 11 Code of Federal Regulations states, in part, that transfers shall not be limited between the principal campaign committees of a candidate seeking nomination or election to more than one Federal office, as long as the transfer is made when the candidate is not actively seeking nomination or election to more than one office and the limitations on contributions by persons are not exceeded by the transfer. To assure this, the contributions making up the funds transferred shall be reviewed, beginning with the last received and working back until the amount transferred is reached. A person's contribution or any portion thereof, shall be excluded if, when added to contributions already made to the transferees' principal campaign committee, it causes the contributor to exceed his or her limitation; and the candidate has not received funds under 26 U.S.C. Sections 9006 or 9037.

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These transfers comprised the balance of funds remaining in the Anderson for Congress Finance Committee. At the time of the transfers, the Congressional Committee neither provided nor did the Presidential Committee request the identity of the contributors comprising the funds transferred.

Recommendation

The Audit staff recommends that the Committee obtain from the Anderson for Congress Finance Committee the identity of the contributors whose contributions comprised the funds transferred. It is also recommended that the Committee file an amended report disclosing the contributors in a memo entry on a first in first out basis. Furthermore, if any contributor's contribution limitation has been exceeded when the contributions comprising the transfers are combined with contributions made to the Committee, the value of the excessive contributions must be refunded to the contributor. The excessive portion of any contribution that has been matched with Federal Funds should be repaid to the U.S. Treasury.

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B. Receipts Received Prior to Candidate's
Authorization of a Committee

During the period covered by the audit, Section 431(e) (1) (B) (2) of Title 2 of the United States Code stated, in part, that a contribution means a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of President of the United States. A contribution also means a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution for such purposes.

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The Commission's Office of General Counsel received from the candidate's legal counsel an Advisory Opinion Request dated September 5, 1978, (AOR-1978-70) asking whether contingent pledges in the form of post-dated checks were deemed contributions under the terms of 2 U.S.C. 431(e).

^{1/} The Exploratory Committee registered with the Commission on January 29, 1979 and the Candidate authorized the Committee on May 10, 1979.

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The Committee on December 13, 1978, withdrew the AOR and subsequently, on December 26, 1978, returned the original contributor checks to the contributors. At that time the Committee requested that each contributor resubmit a new check so that those contributions could be eligible for primary matching funds.

Recommendation

The Audit staff recommends that this matter be referred to the Commission's Office of General Counsel for their legal analysis and comment.

C. Itemization of Expenditures

During the period covered by the audit, Section 434(b)(9) of Title 2, United States Code stated, in part, that each report shall disclose the identification of each person to whom expenditures have been made by the committee within the calendar year in an aggregate amount or value in excess of \$100, along with the amount, date and purpose of each such expenditure.

The Committee controller stated that the criteria used for selection of expenditures for itemization was whether each expenditure was in excess of \$100. This procedure was followed due to a misunderstanding of the reporting requirements.

A sample of expenditures was randomly selected and tested for proper itemization. With the exception of the first quarter report for 1979, where all items tested were properly itemized, no expenditure of \$100 or less but aggregating in excess of \$100 was itemized, while all expenditures greater than \$100 were properly itemized. The sample indicated that at a 95% confidence level between 18.76% and 25.5% of the expenditures requiring itemization were not itemized. This represents (an estimated amount) between \$11,557.16 and \$16,382.70 of Committee expenditures which were not itemized.

Recommendation

The Audit staff recommends that the Committee file an amendment for the second through the fourth quarters of 1979 itemizing the expenditures which are in excess of, or aggregate in excess of \$100. It is further recommended that the Committee develop a system for aggregating expenditures in accordance with the current regulations.

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D. Allocation of Expenditures to States

Section 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code states, in part, that no candidate for the Office of President of the United States who is eligible under Section 9033 of the Internal Revenue Code of 1954 to receive payments from the Secretary of the Treasury may make expenditures in excess of \$10,000,000, in the case of a campaign for nomination for election to such office except the aggregate of expenditures under this subparagraph in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the State, or \$200,000 adjusted by the Consumer Price Index.

During the examination of the Committee's expenditure records, for the period January 1 thru December 31, 1979, the following matters were noted:

1. Headquarters Costs

Section 106.2(b) of Title 11 of the Code of Federal Regulations states, that expenditures for administrative, staff, and overhead costs directly relating to the national campaign headquarters shall be reported but need not be attributed to individual States. Expenditures for staff, media, printing, and other goods and services used in a campaign in a specific State shall be attributed to that State.

The Audit staff was informed by a Committee accountant that the Committee's 1979 expenditures were retroactively allocated to States during the early part of 1980.

The Committee maintains two national campaign headquarters offices, one in Rockford, Illinois and one in Washington, D.C. 2/ In addition to the national campaign headquarters office in Rockford the Committee also maintains a Illinois state office in Chicago.

The Committee did not attribute any costs to the national campaign headquarters office located in Washington, D.C. The total 1979 costs incurred in Washington, D.C. were attributed to the Washington, D.C. expenditure limitation. Because of the incorrect method of allocation used by the Committee, the spending limitation for the District of Columbia would have been exceeded.

2/ The Washington, D.C. office, handled all political functions, and the Rockford, Illinois office handled all financial functions.

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In addition, when the 1979 expenditures were retroactively allocated to States, 15% of all Illinois expenditures were attributed to the Illinois expenditure limitation (Chicago) and 85% were attributed to the Rockford national campaign headquarters. The Committee could not provide an objective basis for the percentages used for this headquarters and state allocation method.

Recommendation

The Audit staff recommends that the Committee adopt a procedure for attributing costs directly relating to the national campaign headquarters to the non-allocable category and not to the individual state where the office is located or by use of an arbitrary percentage. No amendment is recommended for 1979 because the state allocations did not closely approach the state limitations.

2. Travel Allocations

Section 106.2(c)(2) of Title 11 of the Code of Federal Regulations states that expenditures for travel within a State shall be attributed to that State. Expenditures for travel between States need not be attributed to any individual State.

A review of the Committee's expense reimbursement request files indicated that the total amount of each travel reimbursement check was allocated to the State in which the traveler's office was located or the national campaign headquarters office. The Committee did not consistently attribute inter state travel costs to the national campaign headquarters office nor did they attribute the intra state travel cost to the state in which the individual traveled.

Recommendation

The Audit staff recommends that the Committee adopt a procedure for allocating travel expenses, including the proportionate payroll expenses, to the appropriate State(s). No amendment is recommended for 1979 because the state allocations did not closely approach the state limitations.

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3. Allocation of Payroll Withholding
Taxes and Related Expenses

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a candidate's authorized committee which seek to influence the nomination of a candidate for the office of President of the United States in a particular State shall be attributed to that state.

It was determined during the review of the Committee's payroll and related records that net salaries for employees were properly allocated, however, the taxes withheld and employee benefit costs were not attributed to the State to which the employee's salary was allocated but to the non-allocable category.

Recommendation

The Audit staff recommends that the Committee adopt a procedure for allocating payroll withholding taxes and employee benefit expenses to the State to which each employee's salary is attributed. No amendment is recommended for 1979 because the state allocations did not closely approach the state limitations.

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