



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1267

Date Filmed 10/30/80 Camera No. --- 2

Cameraman SPC

3001021252

PS Form 3871, Jan. 1979
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

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

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
John Morgan / Wm. Schindler
Peake & Hottel
 818 CONN. AVE., N.W.
 D.C. 20006

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	446776	

(Always obtain signature of addressee or agent)

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

O. Clark

4. DATE OF DELIVERY: *10/9/50* POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

MAR 12 67 CLEVIN GPO : 1975-288-848

3001022253

PS Form 3811, Jan. 1979

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

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

Show to whom and date delivered.....

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

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

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

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Richard Kay
20800 Ctr. Ridge Rd.
Lacey Linn, Ohio

3. ARTICLE DESCRIPTION: 4116

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	2227hb	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

7 RB Kay

4. DATE OF DELIVERY
590-14-80

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

MUR 1267 (Louin)

ROCKY RIVER R. OHIO
OCT 17 1981
U.S. POSTAL SERVICE

GPO : 1979-268-848



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 8, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

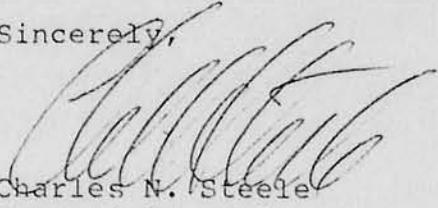
Re: MUR 1267

Dear Messrs. Baran and Schweitzer:

On July 29, 1980, the Commission notified your clients, the Plain Dealer Publishing Company, Thomas V. H. Vail, David L. Hopcraft, Joseph D. Rice, Thomas K. Diemer, and Robert McGruder, of a complaint alleging that they may have violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on October 7, 1980, determined that, on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,


Charles N. Steele
General Counsel

80010102254



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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RETURN RECEIPT REQUESTED

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

Re: MUR 1267

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Sincerely,

Charles N. Steele
General Counsel

3001022055



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 8, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard B. Kay
Attorney at Law
Suburban West Building, Rm. 324
20800 Center Ridge Road
Rocky River, Ohio 44116

Re: MUR 1267

Dear Mr. Kay:

The Federal Election Commission has reviewed the allegations of your complaint dated July 17, 1980 and determined that, on the basis of the information provided in your complaint and information provided by the attorneys for the respondents, there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended, ("the Act") has been committed.

Accordingly, the Commission has decided to close the file in this matter.

Should additional information come to your attention which you believe establishes a violation of the Act, please contact Jonathan Levin, the attorney assigned to this matter at 202/523-4039.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles N. Steele".

Charles N. Steele
General Counsel

877102255



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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Attorney at Law
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Sincerely,

Charles N. Steele
General Counsel

3071001257

CERTIFICATION

Page 2

MUR 1267

First General Counsel's Report

Dated: October 3, 1980

5. Approve the letters as attached to the above-named report.

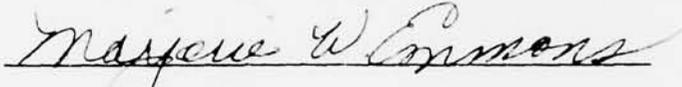
Voting for this determination were Commissioners

Aikens, Friedersdorf, Harris, McGarry, Reiche, and Tiernan.

Attest:

10/7/80

Date


Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary:
Circulated on 48 hour vote basis:

10-3-80, 10:39
10-3-80, 2:00

8001022259

October 3, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1267

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

3001022250

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION

10-3-80 OCT 3 A10: 39

MUR # 1267
DATE COMPLAINT RECEIVED
BY OGC July 24, 1980

STAFF MEMBER J. Levin

COMPLAINANT'S NAME:

Richard B. Kay

RESPONDENT'S NAME:

Plain Dealer Publishing Company; Thomas V. H. Vail;
David L. Hopcraft; Joseph D. Rice; Thomas K. Diemer;
Robert McGruder

RELEVANT STATUTE:

2 U.S.C. § 431(9)(B)(i); 2 U.S.C. § 434(c);
2 U.S.C. § 441a(a)(1)(A); 2 U.S.C. § 441b(a);
11 C.F.R. § 100.7(b)(2); 11 C.F.R. § 100.8(b)(2)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On July 24, 1980, the Federal Election Commission received a complaint filed by Richard B. Kay against a Cleveland newspaper, The Plain Dealer, and five of its employees: (1) Thomas Vail, the publisher; (2) David L. Hopcraft, the managing editor, (3) Joseph D. Rice, a reporter; (4) Thomas K. Diemer, a reporter; and (5) Robert McGruder, a reporter, alleging that they had all violated the Act.

The complainant, who appeared on the Democratic Presidential primary ballot in Ohio, basis his allegation on a full-page chart appearing in The Plain Dealer listing the issue stands of Democratic Presidential primary candidates Jimmy Carter and Edward Kennedy and Republican Presidential primary candidate Ronald Reagan. (See Attachment 1). According to the complainant, this chart, which appeared on May 28, 1980, in anticipation of the Ohio Presidential primary election to be held six days later, is an advertisement, not a news story or editorial, and the provision of "this complete page for the chosen candidates to advertise their views on specific issues" is a contribution.

unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. § 431(9)(B)(i). See also 11 C.F.R. § 100.8(b)(2).

The complainant does not allege that either the Plain Dealer Publishing Company or The Plain Dealer is owned or controlled by any political party, political committee, or candidate, and the attorneys for the respondents, after citing the above sections from the Act and Regulations, specifically state that the newspaper is not so owned or controlled. (See Attachment 2.) Furthermore, there is no other indication that such ownership or control exists. In the absence of such ownership or control, there is no basis for stating that the respondents have made contributions or expenditures within the meaning of the Act. Therefore, the General Counsel recommends that the Commission find that there is no reason to believe that any of the respondents have violated the Act.

Recommendation

1. Find no reason to believe that the Plain Dealer Publishing Company has violated 2 U.S.C. § 441b(a).
2. Find no reason to believe that Thomas V. H. Vail, David L. Hopcraft, Joseph D. Rice, Thomas K. Diemer, and Robert McGruder have violated 2 U.S.C. § 441a(a)(1)(A).
3. Find no reason to believe that Thomas V. H. Vail, David L. Hopcraft, Joseph D. Rice, Thomas K. Diemer, and Robert McGruder have violated 2 U.S.C. § 434(c).
4. Close the file.
5. Approve the attached letters.

Attachments

1. Complaint with issue chart.
2. Reply from respondents' attorneys
3. Proposed letters

807102253

EX-104
205

RECEIVED

800 JUL 24 1980 RES: 216-336-1138 05

Richard B. Kay
ATTORNEY AT LAW
SUBURBAN WEST BUILDING, RM. 324
20800 CENTER RIDGE ROAD
ROCKY RIVER, OHIO 44116

July 17, 1980

General Counsel
Compliance Section
Federal Elections Commission
1325 "K" Street NW
Washington, D.C. 20463

Dear Sir,

The attached affidavit makes up the substance of the complaint that I am this day filing with your Compliance Section. This complaint specifically is directed against the Cleveland Plain Dealer and its employees towit : Thomas Vail- Publisher, David L. Hopcroft- Managing Editor, Joseph D. Rice- Reporter, Thomas K. Diemer- Reporter, and Robert McGruder, Reporter.

The page attached to the affidavit is in my judgment an "Ad" and not a news story nor an Editorial. By providing this complete page for the chosen candidates to advertise their views on specific issues would be in my judgment making a contribution in violation of the law.

The definitions of what a news story is and what an editorial is would eliminate them as an excuse for running this full page ad. I appeared on the Ohio ballot in Ohio on the Democratic Primary Ballot.

If you desire any further information please advise. I would also like to be kept informed on the progress this complaint is making.

Yours sincerely,

RB Kay

RK/lk

30 JUL 24 5:20

RECEIVED
GENERAL COUNSEL

Attachment 1

3000402254

'80 JUL 24 11 12 05

A F F I D A V I T

Richard B. Kay after first being duly sworn according to law deposes and states that the following statements are true :

1. That the attached page Number 15-A was obtained from the Wednesday May 28, 1980 issue of the Cleveland Plain Dealer.
2. That he was never asked by any representative of the Cleveland Plain Dealer for his views on the issues set forth on this page.
3. That to the best of his knowledge and belief his views on these specific issues were never set forth in any edition of the Cleveland Plain Dealer.

Further affiant sayth not.

Richard B. Kay

Sworn to and subscribed in my presence this 21st day of July 1980.

Vincent C. Forges
VINCENT C FORGES
ATTORNEY AT LAW



THE RACE TO THE WHITE HOUSE

WHERE THEY STAND

TODAY'S EVENTS

CARTER
Special assistant Sarah Weddington, CSU University Center, Room 1, 2 p.m.

REAGAN
Rally at 5 p.m. in Cincinnati's Fountain Square

KENNEDY
Arrives at Cleveland Hopkins International Airport at 10:50 p.m. See campaigning tomorrow...

On Tuesday, Ohioans and voters in seven other states will choose between President Jimmy Carter and Sen. Edward M. Kennedy, D-Mass, in the finale to the Democratic primary season. The pair will compete for 696 delegates to the national convention. George Bush stopped campaigning against former California Gov. Ronald Reagan, but Bush's name will still appear on the Ohio ballot. This issues chart lists positions taken by the major candidates still campaigning.

This material was compiled by Plain Dealer reporters Joseph D. Rice and Thomas K. Diemer.



CARTER



KENNEDY



REAGAN



How would you curb INFLATION

Opposes wage and price controls. Believes solution is balanced federal budget. For tighter credit. Blames oil imports for inflation.

Proposed immediate wage and price controls.

Cut personal and corporate income taxes by 30 percent over three years. Would tie tax rates to inflation to keep inflation from pushing taxpayers into higher brackets and would exempt interest on savings accounts from taxes.



How would you curb UNEMPLOYMENT

Believes the solution is tied to combating inflation. Supports federal aid to stumping industries like steel and auto.

Proposed creation of a new corporation to help industry through grants and loan guarantees. Favors federal job programs for unemployed. Supports tax incentives to help businesses modernize to meet foreign competition.

Contends that tax cut, limitations of federal spending and weeding out needless regulations would put people back to work and cut inflation. He would abolish federal minimum wage, if possible, but as back up position would insist on separate, lower wage scale for the young.



What is your ENERGY POLICY

Urges conservation. Wants massive program to develop alternatives to oil as an energy source. Opposes gas rationing. Deregulated gas and oil. Supports nuclear power. Urges use of more coal.

For gas rationing. Against deregulating oil and gas. Urges conservation. Wants moratorium on licensing nuclear plants until Kennedy Commission recommendations adopted. Wants nuclear plants converted to coal as alternative energy sources become available. Wants plants less than 40% completed converted to coal. No relaxation of clean air stand-

Opposed to gas rationing and wants government out of energy industry and eliminate all price controls. Takes dim view of conservation or solar power as significant answers to shortages. Favors expanded use of nuclear power with strict safeguards, and increased use of coal. Avoids anti-environmentalist rhetoric on the coal issue.



ENERGY POLICY

Supports nuclear power. Urges use of more coal.

Options adopted. Wants nuclear plants converted to coal as alternative energy source become available. Wants plants less than 40% completed converted to coal. No relaxation of clean air standards.

Significant answers to shortages. Favors expanded use of nuclear power with strict safeguards, and increased use of coal. Avoids anti-environmentalist rhetoric on the coal issue.



Should we limit the REFUGEE INFLUX

Has not imposed any limits. Says they should be admitted in accordance with U.S. regulations. Top priority is reunifying families.

Has not proposed limits but believes they should be screened. First priority is reunifying families.

Would find it difficult as president to close the door on oppressed peoples, when asked about the Cuban situation. Had no direct comment on Haitians.



How would you free the HOSTAGES IN IRAN

Has tried to secure their release through diplomatic means. Tried unsuccessful rescue mission.

Urged release be pursued through negotiations. Criticized Carter for admitting the shah. Generally has not criticized Carter's handling of hostage situation.

Believes U.S. should have taken some sort of strong action within two or three weeks after take-over of hostages. Blames weak U.S. foreign policy for seizure, but defends Shah as valued ally. Says he doesn't have enough intelligence information to determine how hostages can be freed, given the current circumstances.



Should we increase the DEFENSE BUDGET

For 3% increase for the 1981 fiscal year and a 5% increase annually for the next four years. For MX missile. Against B-1 bomber and nuclear aircraft carrier. Postponed deployment of the neutron bomb.

Voted for 3% increase in the defense budget. Opposed B-1 bomber, neutron bomb, MX missile and the nuclear aircraft carrier.

Says our military strength should be built up to the point "where nobody on this earth will ever dare lay a hand on us."



What is your position on WELFARE

Proposed nationwide minimum benefit equal to 65% of federal poverty level. Wants able-bodied recipients to work. Against state takeover. Wants to help states with big burdens.

Proposed minimum standards nationwide. For greater federal assistance to the states but against giving welfare programs back to the states. Supports work programs for welfare recipients.

Would transfer all welfare programs to the states and believes benefits to worthy poor could be raised if fraud were eliminated.



Do you favor NATIONAL HEALTH INSURANCE

Favors it for those now covered by the Medicare and Medicaid programs. Against covering everyone. Wants insurance provided in case of osteoporotic illness.

Sponsor of comprehensive national health insurance plan covering everyone.

Opposes National Health Insurance and mandated limits on hospital costs. Favors tax credits to ease burden of private health insurance premiums.



Do you favor FEDERAL FUNDS FOR ABORTION

Supports it only when the mother's life is in danger. Against abortion on demand. Personally opposes abortion. Against constitutional amendments banning it.

Voted for federal funding only when the life of the mother is in danger; personally opposes abortion. Against constitutional amendment banning abortion.

Favors constitutional amendment to ban abortion in most circumstances. While it is legal, he would allow Medicaid funding of abortion in cases where the mother's life is in danger.

Levin
BAKER & HOSTETLER

ATTORNEYS AT LAW

818 CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006

(202) 861-1600

TELEX: 197643 BAKHOST

TELECOPIER: (202) 857-0010

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RECEIVED 3425

80 AUG 25

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 228-1541

IN ORLANDO, FLORIDA
850 CNA TOWER
ORLANDO, FLORIDA 32802
(305) 841-1111

IN CLEVELAND, OHIO
1956 UNION COMMERCE BUILDING
CLEVELAND, OHIO 44115
(216) 821-0200
TWX 810 421 8375

WRITER'S DIRECT DIAL NO.:

(202) 861-

August 22, 1980

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

Re: MUR 1267

Dear Mr. Steele:

This office represents the Plain Dealer Publishing Co., Thomas V. H. Vail, David L. Hopcraft, Joseph D. Rice, Thomas K. Diemer and Robert McGruder in Federal Election Commission ("FEC") Matter Under Review ("MUR") 1267. We hereby respond to your letter of notification dated July 29, 1980, pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6. For the reasons stated below, the FEC should take no action in MUR 1267, except to find no reason to believe that any violation has occurred and to dismiss the complaint.

FACTS

On July 24, 1980, the FEC received a notarized complaint dated July 21, 1980 and signed and sworn to by Mr. Richard B. Kay, a candidate for the 1980 Democratic presidential nomination. Mr. Kay alleges that the respondents (the publisher of the Plain Dealer newspaper, and the managing editor and three reporters) published an item in the Plain Dealer newspaper that constitutes a "contribution in violation of the law." The item to which Mr. Kay refers is a full page "issues chart." The "issues chart" was prepared by reporters Rice and Diemer, and presents the positions of three presidential candidates (President Jimmy Carter, Senator Edward M. Kennedy, and Governor Ronald Reagan) on various issues of public concern, including economic, social and foreign affairs issues. Mr. Kay alleges that the "issues chart" constitutes an "'Ad' and not a news story nor an Editorial."

25 : 01A 8290V 00

RECEIVED
GENERAL COUNSEL
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

Attachment 2

Charles N. Steele, Esquire
August 22, 1980
Page 2

The "issues chart" was not paid for by any political party, political committee, candidate or any other party. The Plain Dealer newspaper is not owned or controlled by any political party, political committee or candidate.

DISCUSSION

The Federal Election Campaign Act, as amended ("Act") specifically exempts from the definition of "expenditure"

any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 431(9)(B)(i).

The FEC has expressly stated in its regulations that all news stories, commentaries and editorials are exempt from the definition of "contribution" as well as the definition of "expenditure." 11 C.F.R. § 100.7(b)(2) and 100.8(b)(2). Consequently, the costs of any exempt publication or broadcast are not prohibited, limited or reportable under the Act.

The FEC has applied this exemption broadly in numerous investigations over the past four years. The FEC has dismissed complaints on the basis of the above cited exemption in instances in which a newspaper published columns written by candidates (MUR 486, In the Matter of Charles Percy and Alex Seith (1977)); a broadcaster endorsed a specific candidate (MUR 657, In the Matter of CBS, Inc., et al. (1978)); a broadcaster telecast a documentary "portrait" of a candidate (MUR 819, In the Matter of House Speaker Thomas P. O'Neil, et al. (1978)); and a newspaper endorsed a specifically named candidate (MUR 852, In the Matter of Houston Chronicle Publishing Company (1978)).

Furthermore, the FEC has dismissed a complaint very similar to that filed by Mr. Kay. The FEC found no reason to believe that The Honolulu Star-Bulletin had violated any provision of the Act by conducting a "Candidate

Charles N. Steele, Esquire
August 22, 1980
Page 3

Quiz." MUR 294, In the Matter of Honolulu Starr-Bulletin, Inc., et al. (1976). The "Candidate Quiz" consisted of the printed responses of certain "major" candidates selected by the newspaper and questions asked of these candidates by the newspaper's subscribers. The complainant in MUR 294, like Mr. Kay, erroneously stated that his exclusion from participating in the "Candidate Quiz" with other candidates constituted a contribution under the Act. It is clear from the Act and from FEC past actions that the "news story/commentary/editorial" exemption protects both the "Candidate Quiz" of the Honolulu Star-Bulletin and the "issues chart" of the Plain Dealer.

A different result might occur under the exemption, but only if the facilities of the newspaper are owned or controlled by a political party, committee or candidate. The Plain Dealer, however, is not owned or controlled by any political party, committee or candidate.

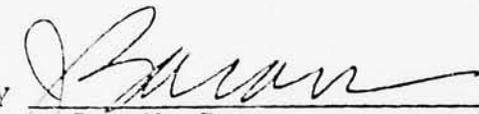
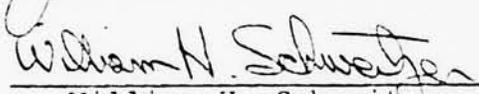
The "issues chart" prepared and printed by the Plain Dealer is not a "contribution" or an "expenditure" under the Act because it is an exempt news story or commentary. Such exempt publications are per se not a contribution or expenditure. The exclusion of Mr. Kay or any other candidate in such an exempt publication is irrelevant and in no way alters the blanket protection afforded to the press under the Act.

CONCLUSION

For the reasons stated above, the complaint by Mr. Kay should be dismissed, the FEC should take no further action except to find no reason to believe that respondents have violated any provision of the Act.

Respectfully submitted,

BAKER & HOSTETLER

By 
Jan W. Earan

William H. Schweitzer

cc: James P. Garner
David L. Hopcraft

300102270



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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Jan W. Baran, Esquire
William H. Schweitzer, Esquire
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Sincerely,

Charles N. Steele
General Counsel

Attachment 3

3001022271



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard B. Kay
Attorney at Law
Suburban West Building, Rm. 324
20800 Center Ridge Road
Rocky River, Ohio 44116

Re: MUR 1267

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Accordingly, the Commission has decided to close the file in this matter.

Should additional information come to your attention which you believe establishes a violation of the Act, please contact Jonathan Levin, the attorney assigned to this matter at 202/523-4039.

Sincerely,

Charles N. Steele
General Counsel

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Charles N. Steele, Esquire
August 22, 1980
Page 2

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Charles N. Steele, Esquire
August 22, 1980
Page 3

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A different result might occur under the exemption, but only if the facilities of the newspaper are owned or controlled by a political party, committee or candidate. The Plain Dealer, however, is not owned or controlled by any political party, committee or candidate.

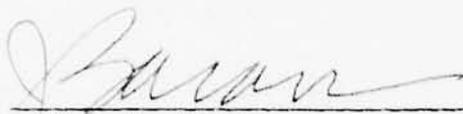
The "issues chart" prepared and printed by the Plain Dealer is not a "contribution" or an "expenditure" under the Act because it is an exempt news story or commentary. Such exempt publications are per se not a contribution or expenditure. The exclusion of Mr. Kay or any other candidate in such an exempt publication is irrelevant and in no way alters the blanket protection afforded to the press under the Act.

CONCLUSION

For the reasons stated above, the complaint by Mr. Kay should be dismissed, the FEC should take no further action except to find no reason to believe that respondents have violated any provision of the Act.

Respectfully submitted,

BAKER & HOSTETLER

BY 
Jan W. Baran

William H. Schweitzer

cc: James P. Garner
David L. Hopcraft

300402275

6
BAKER & HOSTETLER
818 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20006

RECEIVED

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

80 AUG 25 9:33

8
ATTENTION: Jonathan Levin, Esq.

909574
ACC#
2249

THE PLAIN DEALER

OHIO'S LARGEST NEWSPAPER

1801 SUPERIOR AVE.

CLEVELAND, OHIO 44114

344-4124

OFFICE OF
DAVID L. HOPCRAFT
MANAGING EDITOR

August 5, 1980

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

Re: Matter Under Review 1267

Dear Mr. Steele:

I hereby notify the Federal Election Commission pursuant to 11 C.F.R. Sec. 111.23 that Jan W. Baran and William H. Schweitzer of the law firm of Baker & Hostetler, 818 Connecticut Avenue N.W., Washington, D.C. 20006, will represent The Plain Dealer Publishing Co. in Matter Under Review ("MUR") 1267. These two attorneys will also represent Thomas V.H. Vail, David L. Hopcraft, Joseph D. Rice, Thomas K. Diemer and Robert McGruder, against all of whom the complaint was also directed.

On behalf of The Plain Dealer Publishing Co. and the individuals named, I authorize Jan W. Baran to receive all notifications and/or communications from the Federal Election Commission to The Plain Dealer regarding MUR 1267.

Yours very truly,

David L. Hopcraft

DLH/mjk

cc: Jan W. Baran, Esq.
James P. Garner, Esq.

3004032277

10 AUG 7 2:24

GENERAL COUNSEL
RECEIVED

David L. Hopcraft

THE PLAIN DEALER

OHIO'S LARGEST NEWSPAPER

1801 SUPERIOR AVE.

CLEVELAND, OHIO 44114



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

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BAKER & HOSTETLER

ATTORNEYS AT LAW

818 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

202 861-1500

TELEX: 197643 BAKHOST

TELECOPIER: (202) 857-0010

IN CLEVELAND, OHIO
1956 UNION COMMERCE BUILDING
CLEVELAND, OHIO 44115
(216) 621-0200
TWX 810 421 8375

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

IN DENVER, COLORADO
500 CAPITOL LIFE CENTER
DENVER, COLORADO 80203
(303) 861-0600

IN ORLANDO, FLORIDA
850 CNA TOWER
ORLANDO, FLORIDA 32802
(305) 841-1111

August 1, 1980

WRITER'S DIRECT DIAL NO.:

(202) 861- 1572

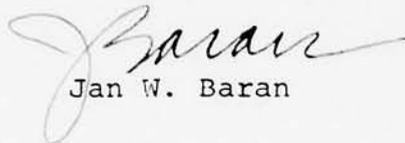
Jonathan Levin, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

Re: Matter Under Review 1267

Dear Mr. Levin:

This letter confirms our telephone conversation of yesterday at which time I notified you that this office will represent respondents in Matter Under Review 1267. The Plain Dealer Publishing Company will confirm in writing our representation. After we have reviewed the complaint filed in this matter I shall notify you as to when a response shall be filed by us.

Sincerely,


Jan W. Baran

JWB:gh

cc: James P. Garner
William H. Schweitzer

80 JUL 1 11:09

RECEIVED
GENERAL COUNSEL

3000101277

BAKER & HOSTETLER

318 CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006

RECEIVED

1980 AUG 1 AM 11

Jonathan Levin, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

HAND DELIVERED

30710220



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 29, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert McGruder
c/o The Cleveland Plain Dealer
1801 Superior Avenue
Cleveland, Ohio 44114

Re: MUR 1267

Dear Mr. McGruder:

This letter is to notify you that on July 24, 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 this complaint is enclosed. We have numbered this matter MUR 1267. 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 Jonathan Levin, the staff member assigned to this matter at (202) 523-4039. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Enclosure

- 1. Complaint
- 2. Procedures

3004022232

● 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 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>Robert Mc Studer</i>	
3. ARTICLE DESCRIPTION: REGISTERED NO. <i>94563</i>	CERTIFIED NO. _____ INSURED NO. _____
I have received the article described above. SIGNATURE <input checked="" type="checkbox"/> Address <input type="checkbox"/> Authorized agent <i>[Signature]</i>	
4. DATE OF DELIVERY <i>7-31-80</i>	
5. ADDRESS (Complete only if requested)	
6. UNABLE TO DELIVER BECAUSE: <i>1267 Fern</i>	
CLERK'S INITIALS _____	

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 29, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Thomas K. Diemer
c/o Cleveland Plain Dealer
1801 Superior Avenue
Cleveland, Ohio 44114

Re: MUR 1267

Dear Mr. Diemer:

This letter is to notify you that on July 24, 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 this complaint is enclosed. We have numbered this matter MUR 1267. 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.

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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.

30710221233

If you have any questions, please contact Jonathan Levin, the staff member assigned to this matter at (202) 523-4039. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Enclosure

- 1. Complaint
- 2. Procedures

3 0 0 1 0 2 2 2 2 3 4

● 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 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>Thomas H. Dumer</i>	
3. ARTICLE DESCRIPTION: REGISTERED NO. <i>945652</i>	INSURED NO.
I have received the article described above. SIGNATURE <input type="checkbox"/> Addressee <input checked="" type="checkbox"/> Agent <i>[Signature]</i>	
4. DATE OF DELIVERY <i>9-31-80</i>	5. ADDRESS (Complete only if requested)
6. UNABLE TO DELIVER BECAUSE:	
CLERK'S INITIALS <i>1267 Return</i>	



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 29, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joseph D. Rice
c/o The Cleveland Plain Dealer
1801 Superior Avenue
Cleveland, Ohio 44114

Re: MUR 1267

Dear Mr. Rice:

This letter is to notify you that on July 24, 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 this complaint is enclosed. We have numbered this matter MUR 1267. 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.

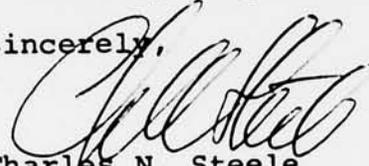
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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.

30010022235

If you have any questions, please contact Jonathan Levin, the staff member assigned to this matter at (202) 523-4039. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,



Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

3004022236



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 29, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David L. Hopcroft, Managing Editor
The Cleveland Plain Dealer
1801 Superior Avenue
Cleveland, Ohio 44114

Re: MUR 1267

Dear Mr. Hopcroft:

This letter is to notify you that on July 24, 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 this complaint is enclosed. We have numbered this matter MUR 1267. Please refer to this number in all future correspondence.

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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.

3771022137



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 29, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Vail, Publisher
The Cleveland Plain Dealer
1801 Superior Avenue
Cleveland, Ohio 44114

Re: MUR 1267

Dear Mr. Vail:

This letter is to notify you that on July 24, 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 this complaint is enclosed. We have numbered this matter MUR 1267. 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.

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If you have any questions, please contact Jonathan Levin, the staff member assigned to this matter at (202) 523-4039. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Charles N. Steele
Charles N. Steele
General Counsel

Enclosure

- 1. Complaint
- 2. Procedures

8001022290

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 type="checkbox"/> RESTRICTED DELIVERY Show to whom and date delivered..... <input type="checkbox"/> RESTRICTED DELIVERY. Show to whom, date, and address of delivery.....	
(CONSULT POSTMASTER FOR FEES)	
2. ARTICLE ADDRESSED TO: <i>Thomas Vail, Sub. Cleveland Plain Dealer</i>	
3. ARTICLE DESCRIPTION: REGISTERED NO. CERTIFIED NO. INSURED NO.	(Always obtain signature of addressee or agent) I have received the article described above. SIGNATURE <input checked="" type="checkbox"/> Addressee <input type="checkbox"/> Authorized agent <i>K. Bute</i> DATE OF DELIVERY <i>2-31-80</i>
5. ADDRESS (Complete only if required)	
6. UNABLE TO DELIVER BECAUSE: <i>1267 Fern</i>	





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 29, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Plain Dealer Publishing Company
1801 Superior Avenue
Cleveland, Ohio 44114

Re: MUR 1267

Dear Sir or Madam:

This letter is to notify you that on July 24, 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 this complaint is enclosed. We have numbered this matter MUR 1267. 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.

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If you have any questions, please contact Jonathan Levin, the staff member assigned to this matter at (202) 523-4039. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

300402222222

PS Form 3811, Apr. 1977

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:
*Eigen Dealer
 Pub Co.*

3. ARTICLE DESCRIPTION:
 REGISTERED NO. *945747* | CERTIFIED NO. | INSURED NO.

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent
X K. Bute

4. DAY OF DELIVERY *7-31-80*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:
1267 Fern

RECEIVED
 JUL 31 1980
 U.S. MAIL
 OCSN
 SENDER'S INITIALS



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 29, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard B. Kay
Attorney at Law
Suburban West Building, Room 324
20800 Center Ridge Road
Rocky River, Ohio 44116

Dear Mr. Kay:

This letter is to acknowledge receipt of your complaint of July 17, 1980, against the Plain Dealer Publishing Company, Thomas Vail, David Hopcroft, the Cleveland Plain Dealer, Joseph D. Rice, Thomas K. Diemer and Robert McGruder which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents 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 respondents' 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

● 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. <i>TH</i> <input type="checkbox"/> RESTRICTED DELIVERY <input type="checkbox"/> Show to whom and date delivered. <i>S</i> <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>Richard B Kay</i>	
3. ARTICLE DESCRIPTION: REGISTERED NO. <i>945649</i>	INSURED NO.
I have received the article described above. SIGNATURE <input type="checkbox"/> Addressee <input type="checkbox"/> Authorized agent <i>Richard B Kay</i>	
4. ADDRESS (Complete only if requested) <i>Rocky River, Ohio</i>	
5. ADDRESS (Complete only if requested) <i>AC</i>	
6. UNABLE TO DELIVER BECAUSE: <i>1267 Fern</i>	
CLERK'S INITIALS	



EX-114
305

Richard B. Kay
ATTORNEY AT LAW
SUBURBAN WEST BUILDING, RM. 324
20800 CENTER RIDGE ROAD
ROCKY RIVER, OHIO 44116

July 17, 1980

General Counsel
Compliance Section
Federal Elections Commission
1325 "K" Street NW
Washington, D.C. 20463

Dear Sir,

The attached affidavit makes up the substance of the complaint that I am this day filing with your Compliance Section. This complaint specifically is directed against the Cleveland Plain Dealer and its employees towit : Thomas Vail- Publisher, David L. Hopcroft- Managing Editor, Joseph D. Rice- Reporter, Thomas K. Diemer- Reporter, and Robert McGruder, Reporter.

The page attached to the affidavit is in my judgment an "Ad" and not a news story nor an Editorial. By providing this complete page for the chosen candidates to advertise their views on specific issues would be in my judgment making a contribution in violation of the law.

The definitions of what a news story is and what an editorial is would eliminate them as an excuse for running this full page ad. I appeared on the Ohio ballot in Ohio on the Democratic Primary Ballot.

If you desire any further information please advise. I would also like to be kept informed on the progress this complaint is making.

Yours sincerely,

RB Kay

RK/lk

30 JUL 24 5:20

RECEIVED
GENERAL COUNSEL

30071022294

1980 JUL 24 PM 12 06

A F F I D A V I T

Richard B. Kay after first being duly sworn according to law deposes and states that the following statements are true :

1. That the attached page Number 15-A was obtained from the Wednesday May 28, 1980 issue of the Cleveland Plain Dealer.
2. That he was never asked by any representative of the Cleveland Plain Dealer for his views on the issues set forth on this page.
3. That to the best of his knowledge and belief his views on these specific issues were never set forth in any edition of the Cleveland Plain Dealer.

Further affiant sayth not.

Richard B. Kay

Sworn to and subscribed in my presence this 21st day of July 1980.

Vincent C. Jones
VINCENT C. JONES
ATTORNEY AT LAW

30010221205

Richard B. Kay
ATTORNEY AT LAW
SUBURBAN WEST BUILDING, RM. 324
20800 CENTER RIDGE ROAD
ROCKY RIVER, OHIO 44116

July 17, 1980

General Counsel
Compliance Section
Federal Elections Commission
1325 "K" Street NW
Washington, D.C. 20463

Dear Sir,

30010122306
The attached affidavit makes up the substance of the complaint that I am this day filing with your Compliance Section. This complaint specifically is directed against the Cleveland Plain Dealer and its employees to wit : Thomas Vail- Publisher, David L. Hopcroft- Managing Editor, Joseph D. Rice- Reporter, Thomas K. Diemer- Reporter, and Robert McGruder, Reporter.

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If you desire any further information please advise. I would also like to be kept informed on the progress this complaint is making.

Yours sincerely,

RB Kay

RK/ik

A F F I D A V I T

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Further affiant sayth not.

Richard B. Kay

Sworn to and subscribed in my presence this 21st day of July 1980.

Vincent C. Fornes
VINCENT C. FORNES
ATTORNEY AT LAW

Richard B. Kay
ATTORNEY AT LAW
SUBURBAN WEST BUILDING, RM. 324
20800 CENTER RIDGE ROAD
ROCKY RIVER, OHIO 44116

July 17, 1980

General Counsel
Compliance Section
Federal Elections Commission
1325 "K" Street NW
Washington, D.C. 20463

Dear Sir,

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The definitions of what a news story is and what an editorial is would eliminate them as an excuse for running this full page ad. I appeared on the Ohio ballot in Ohio on the Democratic Primary Ballot.

If you desire any further information please advise. I would also like to be kept informed on the progress this complaint is making.

Yours sincerely,

RB Kay

RK/lk

Richard B. Kay

Attorney at Law

Suburban West Building, Rm. 324

20800 Center Ridge Road

Rocky River, Ohio 44116

Address Correction Requested



OGC

General Counsel
Compliance Section
Federal Elections Commission
1325 "K" Street NW
Washington, D.C. 20463

CERTIFIED

No. 515043

MAIL

RETURN RECEIPT REQUESTED

800 40 30 21

CEIVED



FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1267

Date Filmed 10/30/80 Camera No. --- 2

Cameraman SPC



FEDERAL ELECTION COMMISSION

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

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THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MUR 1267.





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 7, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard B. Kay
Attorney at Law
Suburban West Building, Rm. 324
20800 Center Ridge Road
Rocky River, Ohio 44116

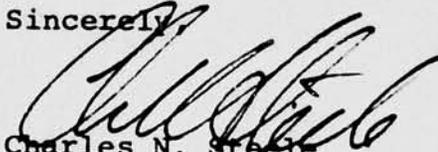
Re: MUR 1267

Dear Mr. Kay:

In response to your letter of October 15, 1980, we are enclosing a copy of the General Counsel's Report to the Commission in this matter.

As to your request for advice as to the proper procedure for appealing the Commission's decision, we refer you to 2 U.S.C. § 437g(a)(8).

Sincerely,


Charles N. Steacie
General Counsel

Enclosure

General Counsel's Report in MUR 1267

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Richard B. Kay
ATTORNEY AT LAW
SUBURBAN WEST BUILDING, R.M. 124
30889 CENTER RIDGE ROAD
ROCKY RIVER, OHIO 44116

October 15, 1980

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

Re: MUR 1267

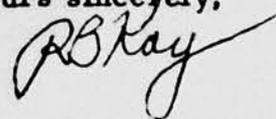
Dear Mr Steele,

Have your letter of October 8, 1980 in which you state that the complaint I filed dated July 17, 1980 has been filed away after a determination had been made that no violation of the Federal Election Campaign Act of 1971 had been committed.

When I filed the complaint I did so after having received a copy of your Advisory Opinion dated January 11, 1980 in which you found that if the same identical action I complained about was done by LTV it would be a violation. I can see no difference and would appreciate an explanation from you as to why this Advisory Opinion I have enclosed was not applicable to the Cleveland Plain Dealer. I feel that an Advisory Opinion Should be drafted by the Commission to set forth what difference there is.

If you feel that nothing further should be done in this matter please advise the proper procedure to appeal your decision to the courts.

Yours sincerely,



RK/lk

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GENERAL COUNSEL
OCT 20 1980

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FEDERAL ELECTION COMMISSION

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

January 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-70

Mr. Charles L. Bucy
Assistant General Counsel
The LTV Corporation
P.O. Box 225003
Dallas, Texas 75265

Dear Mr. Bucy:

This responds to your letter of November 27, 1979, and supplement of January 3, 1980, requesting an advisory opinion on behalf of the LTV Corporation Active Citizenship Campaign ("LTV/ACC"), a registered political committee, regarding application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to financing publication of the views of presidential candidates.

According to your request, LTV/ACC proposes to send identical letters to each presidential candidate who, at the time the letter is sent, is qualified for Federal matching funds. You state that the letter will ask each candidate to express his or her views, in a designated number of words or less, on issues of general interest to the public at large and to the business community, LTV, its employees, and shareholders in particular. LTV/ACC then proposes to make the responses public by purchasing space in print media of general circulation and reprinting, without comment, its letter along with the exact text of the candidates' replies.

You ask the following questions:

1. Whether by paying for publication without comment of a compilation of candidates' responses to a letter which LTV/ACC proposes to send to all presidential candidates who qualify for matching funds, in print media of general circulation, LTV/ACC makes a campaign contribution to those candidates; and

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2. Whether the LTV Corporation may reimburse LTV/ACC for costs of publishing the compilation of candidates' responses or, alternatively, whether LTV may pay those costs directly.

Section 114.5(i) of the Commission's regulations provides that a separate segregated fund may, using voluntary contributions, communicate with the general public. However, 2 U.S.C. §431(e)(A)(i)* defines a contribution to mean, in part, "any gift... of money or anything of value made by any person for the purpose of influencing any election for Federal office...." Section 100.4(a)(1)(iii) of Commission regulations includes advertising without charge within the meaning of "anything of value." The participation by the candidates knowing that the responses are to be published is one means of advertising or having their views on issues made known to the public. Thus, the Commission concludes that for each candidate who responds to the letter sent by LTV/ACC and whose response is published by LTV/ACC, LTV/ACC will be deemed to have made a contribution. The amount of the contribution to each candidate would be equal to the cost of publishing the letter and responses, divided by the number of responses printed. See 11 CFR 106.1(a).

The Commission answers your second question in the negative, that is, although LTV/ACC may communicate with the general public, the LTV Corporation may neither reimburse LTV/ACC nor pay directly the costs of publishing the communication. The response to your first question concluded that the proposal would result in a contribution by LTV/ACC. By paying the costs of publication either by reimbursement or directly the LTV Corporation rather than LTV/ACC would be making that contribution. 2 U.S.C. §441b provides, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any Federal election. Subsection 441b(b)(2) defines "contribution or expenditure" to include "any direct or indirect payment... or gift of money, or any services, or anything of value to

*/The Federal Election Campaign Act Amendments of 1979 have modified the definition of "contribution" as presently codified at 2 U.S.C. §431(e). The newly amended definition is quoted, in part, herein. All of the new definitional provisions are contained in section 101 of the 1979 Amendments. Public Law No. 96-187 (1980).

any candidate" in connection with a Federal election.

Both the statute and Commission regulations do, however, contain specific exemptions from the definition set forth in §441b(b)(2). One exemption permits communications by a corporation to its stockholders, executive or administrative personnel and their families on any subject. The expenses of nonpartisan registration and get-out-the-vote campaigns aimed at those same persons are also exempt. Section 114.4 of Commission regulations addresses nonpartisan communications by corporations and allows a corporation to engage in limited nonpartisan activity, which is not restricted to its stockholders and administrative or executive personnel, regarding Federal elections provided certain specific conditions are met.

Commission regulation §114.4(c) specifically addresses nonpartisan voting information. That regulation permits a corporation to distribute voter guides or other types of brochures describing the candidates and their positions if: (i) the materials do not favor one candidate or political party over another; and (ii) the materials are obtained from a civic or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party.

The subject proposal concerns a communication which relates candidate positions to the general public. However, the materials which constitute the communication, that is the original letters to the candidate and their responses, are not provided by a civic or other nonprofit organization as required by §114.4(c). Rather, the letters are written by LTV/ACC. Thus, the proposed communication would not comport with the regulation permitting corporations to finance distribution of nonpartisan voting information to the general public. Therefore, the Commission concludes that the LTV Corporation may not pay the costs of publishing the candidates' responses. Moreover, the LTV Corporation may not reimburse LTV/ACC for the publishing costs since the Act prohibits indirect payments which, if paid directly, would be unlawful under 2 U.S.C. §441b. See Advisory Opinion 1979-48, copy enclosed.

AO 1979-70
Page 4

This response constitutes an advisory opinion concerning application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

Robert O. Tiernan

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosure

RECEIVED

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Richard B. Kay

Attorney at Law

Suburban West Building, Rm. 324

20800 Center Ridge Road

Rocky River, Ohio 44116

Address Correction Requested



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



FEDERAL ELECTION COMMISSION

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

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END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1267.

