FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1307

Date Filmed 5/12/81 Camera No. --- 2

Cameraman SPC

01032041796

FEDERAL ELECTION COMMISSION

(1) MUR 1307 Comments of Commissioner Frank T. Reiche attached to 48 hour tally sheet submitted December 8, 1980

(2) Routing Slip For RTB Letters

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

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

Signed Beverly Brown Kramer

date 4/10/81

FEC 9-21-77

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 18, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William C. Hamilton, Consultant
Automobile and Truck Dealers Election Action
Committee
8400 Westpark Drive
McLean, VA 22101

RE: MUR 1307

Dear Mr. Hamilton:

On December 16, 1980, the Federal Election Commission found reason to believe that the Automobile and Truck Dealers Election Action Committee violated section 441b(a) of the Federal Election Campaign Act of 1971, as amended by accepting corporate contributions for use in connection with federal elections. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the acceptance of corporate contributions for use in connection with federal elections violates 2 U.S.C. § 441b(a) and you should take immediate steps to ensure that this activity does not occur in the future.

If you have any questions, please direct them to Beverly Brown, the staff member assigned to this matter at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William C. Hamilton, Consultant
Automobile and Truck Dealers Election Action
Committee
8400 Westpark Drive
McLean, VA 22101

RE: MUR 1307

Dear Mr. Hamilton:

On December 16, 1980, the Federal Election Commission found reason to believe that the Automobile and Truck Dealers Election Action Committee violated section 441b(a) of the Federal Election Campaign Act of 1971, as amended by accepting corporate contributions for use in connection with federal elections. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the acceptance of corporate contributions for use in connection with federal elections violates 2 U.S.C. § 441b(a) and you should take immediate steps to ensure that this activity does not occur in the future.

If you have any questions, please direct them to Beverly Brown, the staff member assigned to this matter at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

Prepared by Beverly Brown:ano 2/12/81

bbb 2/12/81
CNS 3/12/81

8103024801

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 18, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William C. Hamilton, Consultant
Automobile and Truck Dealers Election Action
Committee
8400 Westpark Drive
McLean, VA 22101

RE: MUR 1307

Dear Mr. Hamilton:

On December 16, 1980, the Federal Election Commission found reason to believe that the Automobile and Truck Dealers Election Action Committee violated section 441b(a) of the Federal Election Campaign Act of 1971, as amended by accepting corporate contributions for use in connection with federal elections. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the acceptance of corporate contributions for use in connection with federal elections violates 2 U.S.C. § 441b(a) and you should take immediate steps to ensure that this activity does not occur in the future.

If you have any questions, please direct them to Beverly Brown, the staff member assigned to this matter at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

0 0 2 1 3 0 0 1 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1307
Automobile and Truck Dealers	)	
Election Action Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 17, 1981, the Commission decided by a vote of 4-0 to take the following actions regarding MUR 1307:

1. Take no further action against the Automobile and Truck Dealers Election Action Committee regarding a violation of 2 U.S.C. § 441b(a).

2. CLOSE THE FILE in this matter.

3. Approve and send the letter, as attached to the General Counsel's February 12, 1981 memorandum, to Mr. William C. Hamilton, consultant for the Trustees.

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

Attest:

3/17/81
Date

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

Report Signed: 3-12-81
Received in Office of the Commission Secretary: 3-12-81, 5:02
Circulated on 48 hour vote basis: 3-13-81, 2:00

March 12, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1307

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

8 1 0 3 0 2 4 1 8 0 4

BEFORE THE FEDERAL ELECTION COMMISSION
February 12, 1981

In the Matter of	)	
	)	MUR 1307 (80)
	)	
Automobile and Truck Dealers Election Action Committee	)	

MAR 12 P5: 02

GENERAL COUNSEL'S REPORT

I. Background

On 16 December 1980, the Commission found reason to believe that the Automobile and Truck Dealers Election Action Committee (the "Committee") violated 2 U.S.C. § 441a(a)(2)(A) by making excessive contributions to candidates for Federal office and; § 441b(a) by accepting contributions from incorporated business entities. With respect to a violation of 2 U.S.C. § 441a(a)(2)(A), the Commission determined to take no further action.

These determinations were made based upon information ascertained during the audit of the Committee, such audit having been undertaken pursuant to former 2 U.S.C. § 438(a)(8). 1/

1/ At the time of the audit, former 2 U.S.C. § 438(a)(8) directed the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").

II. Legal Analysis

2 U.S.C. § 441b(a) provides, in relevant part, that "[i]t is unlawful. . . for any corporation . . . to make a contribution or expenditure in connection with any . . . [federal election]." The terms "contribution or expenditure" are defined broadly to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value. . . " 2 U.S.C. § 441b (b)(2).

The audit of the Automobile and Truck Dealers Election Action Committee, which covered the period 1/1/77 through 3/31/79, revealed that the Committee had accepted 47 contributions from 31 business entities totaling $3,932.00. Subsequent confirmation with the appropriate Secretaries of State verified that these business entities were incorporated at the time contributions were made.

Upon the recommendation of the Audit Division, the Committee refunded prohibited contributions or provided adequate documentation establishing that contributions were not received from corporate sources. Out of 47 contributions, the Committee produced evidence that one contribution for $60 was not received from a corporate source, but rather an unincorporated partnership. The remaining 46 contributions were disclosed as refunded in subsequent reports filed by the Committee.

On 16 December 1980, the Commission found reason to believe the Committee violated 2 U.S.C. § 441b(a). The

8 1 0 1 0 2 4 1 8 0 6

determination was made based upon evidence that the Committee had accepted the aforementioned 46 contributions from corporate sources totaling $3,872.50.

On Janaury 12, 1981, the Committee responded, in writing, to the Commission's notification of findings in this matter. In reply, the Committee admits the finding of fact, but calls the Commission's attention to additional facts surrounding this matter. See Attachment #1.

The Committee attributes the acceptance of corporate contributions to mistakes made at the contribution processing point. Clerks who process contributions have been instructed not to accept checks from corporations. Regardless, some errors are made. The Committee claims that "this is especially true when the regular clerk is absent and there is a substitute."

In addition, the Committee claims that volume is also a factor. Since its inception, the Committee has raised nearly three million dollars. On a given day, the Committee may process up to 210 checks totaling over $20,000. According to the Committee, clerks may have no way of knowing that some of the checks are drawn on corporate accounts.

Finally, the Committee would call the attention of the Commission to the fact that the subject corporate contributions represent less than one half of a percent (.005%) of the contributions processed during the period covered by the audit.

In view of the measures voluntarily taken by the Committee to refund prohibited contributions which represent a small

percentage of receipts, collected during the period covered by the audit, the Office of General Counsel recommends that the Commission take no further action and close the file in this matter.

Recommendation

1. Take no further action against the Automobile and Truck Dealers Election Action Committee regarding a violation of 2 U.S.C. § 441b(a).

2. Close the file in this matter.

3. Approve and send the attached letter to Mr. William C. Hamilton, consultant for the Trustees.

12 March 1981
Date

Charles N. Steele
General Counsel

Attachments

Letter from Mr. William C. Hamilton
Letter to Mr. William C. Hamilton

ATTACHMENT #1

January 12, 1981

Federal Election Commission
Washington, D.C. 20463

Attention: Mr. Frank P. Reiche MUR 1307

Gentlemen:

This will reply to your letter of January 2nd relative to the findings of the FEC audit of the Automobile and Truck Dealers Election Action Committee.

Before replying specifically to the two Recommendations made by the office of the General Counsel, we would like to express our appreciation for the excellent manner in which this audit was conducted. Your three auditors were painstaking and diligent, and always pleasant and gracious.

When the audit first began, representatives of DEAC assured the auditors that if DEAC had accepted any contributions which should not have been accepted, refunds would be made to those contributors. In every instance the recommendations of the auditors were accepted and refunds made.

In explanation for the first Recommendation of the General Counsel's office relative to DEAC accepting checks from corporations, the following circumstances and procedures are set forth:

> During the period covered by the audit, thousands of contributions and thousands of dollars were processed. Since its inception DEAC has raised nearly three million dollars. Many contributors submit their contributions three or four times a year on a pre-set basis, so this represents a large number of transactions.
>
> A clerk handles the processing along these lines: the clerk opens the mail; matches the checks to a transmittal form which may be a new pledge or a Reminder of an outstanding pledge. This form is used to submit data to Data Processing.
>
> The clerk then microfilms the checks and prepared them for deposit. All clerks handling this function have been instructed not to accept checks from corporations. However, it is natural in processing checks that some mistakes are made. This is especially true when the regular clerk is absent and there is a substitute.

The volume is also a factor. On January 6th, for example, DEAC processed 210 checks for a total of $21,700. Another factor is that the clerk has no way of knowing that some of the checks may be from incorporated businesses. In fact, the auditors had to check with Secretaries of State on several occasions to ascertain whether or not businesses were incorporated.

When you consider the above, it is small wonder that the clerks had less than one-half percent (.005%) errors.

So, the Committee's explanation to the first Recommendation of the General Counsel's office, is that clerical errors were made. The Committee re-emphasizes that the percentage is infinitessimal.

If the General Counsel's office or the Commission desires further information or data, we would welcome the opportunity to furnish it.

Sincerely,

William C. Hamilton

William C. Hamilton, Consultant
For the Trustees

WCH/gm

81030241810

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William C. Hamilton, Consultant
Automobile and Truck Dealers Election Action
Committee
8400 Westpark Drive
McLean, VA 22101

RE: MUR 1307

Dear Mr. Hamilton:

On December 16, 1980, the Federal Election Commission found reason to believe that the Automobile and Truck Dealers Election Action Committee violated section 441b(a) of the Federal Election Campaign Act of 1971, as amended by accepting corporate contributions for use in connection with federal elections. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the acceptance of corporate contributions for use in connection with federal elections violates 2 U.S.C. § 441b(a) and you should take immediate steps to ensure that this activity does not occur in the future.

If you have any questions, please direct them to Beverly Brown, the staff member assigned to this matter at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

percentage of receipts, collected during the period covered by the audit, the Office of General Counsel recommends that the Commission take no further action and close the file in this matter.

Recommendation

1. Take no further action against the Automobile and Truck Dealers Election Action Committee regarding a violation of 2 U.S.C. § 441b(a).

2. Close the file in this matter.

3. Approve and send the attached letter to Mr. William C. Hamilton, consultant for the Trustees.

Date

Charles N. Steele
General Counsel

Attachments

Letter from Mr. William C. Hamilton
Letter to Mr. William C. Hamilton

Prepared by Beverly Brown:ano 2/12/81

BBB 2/12/81

8102024412

GCC 3 71 3

DEAC Dealers Election Action Committee
8400 WESTPARK DRIVE, McLEAN, VIRGINIA 22102 (703) 821-7110

January 12, 1981

Federal Election Commission
Washington, D.C. 20463

Attention: Mr. Frank P. Reiche MUR 1307

Gentlemen:

This will reply to your letter of January 2nd relative to the findings of the FEC audit of the Automobile and Truck Dealers Election Action Committee.

Before replying specifically to the two Recommendations made by the office of the General Counsel, we would like to express our appreciation for the excellent manner in which this audit was conducted. Your three auditors were painstaking and diligent, and always pleasant and gracious.

When the audit first began, representatives of DEAC assured the auditors that if DEAC had accepted any contributions which should not have been accepted, refunds would be made to those contributors. In every instance the recommendations of the auditors were accepted and refunds made.

In explanation for the first Recommendation of the General Counsel's office relative to DEAC accepting checks from corporations, the following circumstances and procedures are set forth:

> During the period covered by the audit, thousands of contributions and thousands of dollars were processed. Since its inception DEAC has raised nearly three million dollars. Many contributors submit their contributions three or four times a year on a pre-set basis, so this represents a large number of transactions.
>
> A clerk handles the processing along these lines: the clerk opens the mail; matches the checks to a transmittal form which may be a new pledge or a Reminder of an outstanding pledge. This form is used to submit data to Data Processing.
>
> The clerk then microfilms the checks and prepared them for deposit. All clerks handling this function have been instructed not to accept checks from corporations. However, it is natural in processing checks that some mistakes are made. This is especially true when the regular clerk is absent and there is a substitute.

The volume is also a factor. On January 6th, for example, DEAC processed 210 checks for a total of $21,700. Another factor is that the clerk has no way of knowing that some of the checks may be from incorporated businesses. In fact, the auditors had to check with Secretaries of State on several occasions to ascertain whether or not businesses were incorporated.

When you consider the above, it is small wonder that the clerks had less than one-half percent (.005%) errors.

So, the Committee's explanation to the first Recommendation of the General Counsel's office, is that clerical errors were made. The Committee re-emphasizes that the percentage is infinitessimal.

If the General Counsel's office or the Commission desires further information or data, we would welcome the opportunity to furnish it.

Sincerely,

William C. Hamilton

William C. Hamilton, Consultant
For the Trustees

WCH/gm

DEAC Dealers Election Action Committee
8400 Westpark Drive, McLean, Virginia 22101

Federal Election Commission
Washington, D.C. 20463

Attention: Mr. Frank P. Reiche

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 2, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Edwin J. Mullane, Treasurer
Automobile & Truck Dealers
Election Action Committee
8400 Westpark Drive
McLean, Virginia 22101

Re: MUR 1307

Dear Mr. Mullane:

On December 16, 1980, the Federal Election Commission determined that there is reason to believe that your committee violated sections 441b(a) and 441a(a)(2)(A) of the Federal Election Campaign Act of 1971, as amended (the "Act") by accepting corporate contributions for use in connection with Federal elections and by making contributions to a Federal candidate which exceeded statutory limitations. With respect to a violation of 2 U.S.C. § 441a(a)(2)(A), the Commission determined to take no further action. The General Counsel's factual and legal analysis, which formed a basis for other Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within ten days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information which demonstrates that no further action should be taken against your committee with regard to a violation of 2 U.S.C. § 441b(a), the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe if you so desire.

The investigation now being conducted will be 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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions please contact Beverly Brown, the staff member assigned to this matter, at (202) 523-4529.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Vice Chairman

Enclosures

General Counsel's Factual and Legal Analysis
Procedures

8103024817

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE January 2, 1981

MUR NO. 1307
STAFF MEMBER(S) & TEL. NO.
Beverly Brown/(202) 523-4529
Hal Ponder/(202) 523-4166

RESPONDENT: Automobile and Truck Dealers Election Action Committee

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

Summary of Allegations

During the audit of the Automobile and Truck Dealers Election Action Committee (the "Committee") the auditors noted violations of certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the auditors determined that the Committee violated 2 U.S.C. § 441b(a) by accepting corporate contributions and 2 U.S.C. § 441a(a)(2)(A) by making contributions in excess of statutory limitations to candidates for federal office.

On June 24, 1980, the Audit Division referred these findings to the Office of General Counsel, noting that the violations occurred during the period covered by the audit (1/1/77-3/31/79), such audit having been conducted pursuant to former 2 U.S.C. § 438(a)(8). 1/

1/ At the time of the audit, 2 U.S.C. § 438(a)(8) directed the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Federal Election Campaign Act of 1971, as amended.

Factual and Legal Analysis

1. Acceptance of Prohibited Contributions

2 U.S.C. § 441b(a) states, inter alia, that it is unlawful for any corporation to make a contribution in connection with any election to federal office, or for any political committee to knowingly accept or receive any contribution prohibited by this section.

During the audit of the Automobile and Truck Dealers Election Action Committee, the auditors determined that the Committee had received 47 contributions from 31 business entities totalling $3,932.50. Subsequent confirmation with respective Secretaries of State verified that these business entities were incorporated at the time contributions were made.

On January 4, 1980, the Audit Division sent a letter of audit findings to the Committee. Therein, the auditors recommended that the Committee refund the corporate contributions and provide documentation of the refunds to the audit staff, or, alternatively, provide adequate documentation establishing that contributions were not received from corporate sources. In addition, the auditors recommended that all refunds be disclosed in subsequent reports pursuant to former 2 U.S.C. § 434(b)(7).

On February 6 and May 6, 1980, the Committee submitted copies of 30 Committee checks (front and back) in evidence of having refunded 46 of the 47 contributions received from incorporated entities. Endorsements appearing on the back of checks confirmed the negotiation of refund checks and subsequent reports filed by the Committee reflected the actual refunds made to incorporated entities.

In addition to providing copies of Committee refund checks, the Committee submitted a letter from one business entity as evidence that one contribution for $60 was not funded from a corporate source but rather an unincorporated partnership.

Based upon the foregoing facts of this matter, the Office of General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 441b(a).

8 1 0 2 0 2 4 1 8 1 5

2. Excessive Contributions to Federal Candidates

2 U.S.C. § 441a(a)(2)(A) prohibits a multicandidate political committee from making contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $5,000.

In the conduct of audit field examinations, auditors noted transfers to two federal candidates made in connection with the 1978 General Election which exceeded the statutory limitations set forth above. Specifically, the auditors determined that the Committee contributed to the following candidates amounts in excess of $5,000:

Candidate	Date of Contribution	Amounts
Roger Jepsen	8/22/78	$5,000
	1/31/79	$2,500
Donald Stewart	10/2/78	$5,000
	2/6/79	$1,000

In addition, the auditors determined that the Committee to Re-Elect Thurmond received a total of $7,000 from the Committee, prior to the candidate's 1978 Primary Election. However, total transfers to the candidate for the 1978 election cycle totalled $10,000.

With respect to the above findings, the auditors, in their letter of January 4, 1980, recommended that the Committee:

1) Obtain refunds from the two federal candidates receiving excessive contributions in connection with the 1978 General Election, and provide documentation of the receipt of those refunds to the audit staff.

2) In the case of the federal candidate who received transfers in excess of the limitation with respect to his Primary Election, obtain a refund of the $2,000 and provide documentation of the refund or, alternatively, submit documentation of the designation of the excess for General Election purposes at the time the transfer was made.

On February 6 and May 6, 1980, the Committee submitted documentation that, in the case of the excessive transfers made in connection with the 1978 General Election, the Committee had received a refund of the excessive portion ($2,500) from the Friends of Roger Jepsen and evidence that candidate Donald Stewart had used the apparent excessive portion to pay debts of a prior election.

Regarding the contributions to the Re-Elect Thurmond Committee which exceeded contribution limitations to the candidate's Primary Election, the Committee provided documentation of its efforts to obtain confirmation of the designation of the excessive portion for General Election purposes. To date, the Committee has received no response despite its efforts to confirm that the apparent excessive portion of its contribution was attributed to the candidate's General Election campaign.

In light of the foregoing facts of this matter, the Office of General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 441a(a)(2)(A) and take no further action in this matter.

Recommendations

1) Find reason to believe the Committee violated 2 U.S.C. § 441b(a).

2) Find reason to believe the Committee violated 2 U.S.C. § 441a(a)(2)(A) and take no further action.

8 1 0 3 0 2 4 1 8 2 1

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Automobile and Truck Dealers	)	MUR 1307
Election Action Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on December 16, 1980, do hereby certify that the Commission took the following actions in MUR 1307:

1. Failed on a vote of 3-3 to pass a motion to -

   a) Find reason to believe the Committee violated 2 U.S.C. §441b(a) and take no further action.

   b) Find reason to believe the Committee violated 2 U.S.C. §441a(a)(2)(A) and take no further action.

   c) Approve and send the letter with the General Counsel's Factual and Legal Analysis attached to the December 4, 1980 General Counsel's report in this matter.

   d) Close the file in this matter.

   Commissioners Aikens Friedersdorf, and McGarry voted affirmatively for the motion. Commissioners Harris, Reiche, and Tiernan dissented.

2. Decided by a vote of 4-2 to take the following actions -

   a) Find reason to believe the Commission violated 2 U.S.C. §441b(a).

(Continued)

b) Find reason to believe the Committee violated 2 U.S.C. §441a(a)(2)(A) and take no further action.

Commissioners Aikens, Harris, Reiche, and Tiernan voted affirmatively for the decision. Commissioners Friedersdorf and McGarry dissented.

Attest:

12-16-80

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

MWE

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY

DATE: DECEMBER 8, 1980

SUBJECT: MUR 1307 - OBJECTION TO FIRST OGC REPORT

The above-named document was circulated on a 48 hour vote basis at 2:00 p.m. on December 5, 1980.

Commissioner Harris submitted an objection at 10:59 a.m. on December 8, 1980, and we are putting this matter on the agenda .

This matter will be placed on the Executive Session Agenda for Tuesday, December 9, 1980. We understand from Ms. Colgan in your docket room that it should follow MUR 1252 on that agenda.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: DECEMBER 8, 1980

SUBJECT: ADDITIONAL OBJECTION RE. MUR 1307

You were notified previously of an objection by Commissioner Harris to MUR 1307 - First General Counsel's Report.

Commissioner Reiche submitted an additional objection at 12:37 p.m. on December 8.

This matter will be discussed in executive session on December 9, 1980.

Attached you will find a copy of Commissioner Reiche's vote sheet on which he has made a comment.

Attachment as noted.

December 4, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1307

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

81030244826

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

First General Counsel's Report 80 DEC 4 P 5: 49

Date and Time of Transmittal by OGC to the Commission	MUR #1307 Staff Member(s) -
12-4-80	Beverly Brown

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: Automobile and Truck Dealers Election Action Committee

RELEVANT STATUTE: 2 U.S.C. § 441b(a)
2 U.S.C. § 441a(a)(2)(A)

INTERNAL REPORTS CHECKED: Final Audit Report - Automobile and Truck Dealers Election Action Committee

FEDERAL AGENCIES CHECKED: None

Summary of Allegations

During the audit of the Automobile and Truck Dealers Election Action Committee (the "Committee") the auditors noted violations of certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the auditors determined that the Committee violated 2 U.S.C. § 441b(a) by accepting corporate contributions and 2 U.S.C. § 441a(a)(2)(A) by making contributions in excess of statutory limitations to candidates for federal office.

On June 24, 1980, the Audit Division referred these findings to the Office of General Counsel, noting that the violations occurred during the period covered by the audit (1/1/77-3/31/79), such audit having been conducted pursuant to former 2 U.S.C. § 438(a)(8). 1/ (See attachment #1.)

1/ At the time of the audit, 2 U.S.C. § 438(a)(8) directed the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Federal Election Campaign Act of 1971, as amended.

Factual and Legal Analysis

1. Acceptance of Prohibited Contributions

2 U.S.C. § 441b(a) states, inter alia, that it is unlawful for any corporation to make a contribution in connection with any election to federal office, or for any political committee to knowingly accept or receive any contribution prohibited by this section.

During the audit of the Automobile and Truck Dealers Election Action Committee, the auditors determined that the Committee had received 47 contributions from 31 business entities totalling $3,932.50. Subsequent confirmation with respective Secretaries of State verified that these business entities were incorporated at the time contributions were made.

On January 4, 1980, the Audit Division sent a letter of audit findings to the Committee. Therein, the auditors recommended that the Committee refund the corporate contributions and provide documentation of the refunds to the audit staff, or, alternatively, provide adequate documentation establishing that contributions were not received from corporate sources. In addition, the auditors recommended that all refunds be disclosed in subsequent reports pursuant to former 2 U.S.C. § 434(b)(7).

On February 6 and May 6, 1980, the Committee submitted copies of 30 Committee checks (front and back) in evidence of having refunded 46 of the 47 contributions received from incorporated entities. Endorsements appearing on the back of checks confirmed the negotiation of refund checks and subsequent reports filed by the Committee reflected the actual refunds made to incorporated entities.

In addition to providing copies of Committee refund checks, the Committee submitted a letter from one business entity as evidence that one contribution for $60 was not funded from a corporate source but rather an unincorporated partnership.

Based upon the foregoing facts of this matter, the Office of General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 441b(a) and take no further action in view of the measures voluntarily taken by the Committee to refund prohibited contributions.

2. Excessive Contributions to Federal Candidates

2 U.S.C. § 441a(a)(2)(A) prohibits a multicandidate political committee from making contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $5,000.

In the conduct of audit field examinations, auditors noted transfers to two federal candidates made in connection with the 1978 General Election which exceeded the statutory limitations set forth above. Specifically, the auditors determined that the Committee contributed to the following candidates amounts in excess of $5,000:

Candidate	Date of Contribution	Amounts
Roger Jepsen	8/22/78	$5,000
	1/31/79	$2,500
Donald Stewart	10/2/78	$5,000
	2/6/79	$1,000

In addition, the auditors determined that the Committee to Re-Elect Thurmond received a total of $7,000 from the Committee, prior to the candidate's 1978 Primary Election. However, total transfers to the candidate for the 1978 election cycle totalled $10,000.

With respect to the above findings, the auditors, in their letter of January 4, 1980, recommended that the Committee:

1) Obtain refunds from the two federal candidates receiving excessive contributions in connection with the 1978 General Election, and provide documentation of the receipt of those refunds to the audit staff.

2) In the case of the federal candidate who received transfers in excess of the limitation with respect to his Primary Election, obtain a refund of the $2,000 and provide documentation of the refund or, alternatively, submit documentation of the designation of the excess for General Election purposes at the time the transfer was made.

On February 6 and May 6, 1980, the Committee submitted documentation that, in the case of the excessive transfers made in connection with the 1978 General Election, the Committee had received a refund of the excessive portion ($2,500) from the Friends of Roger Jepsen and evidence that candidate Donald Stewart had used the apparent excessive portion to pay debts of a prior election.

Regarding the contributions to the Re-Elect Thurmond Committee which exceeded contribution limitations to the candidate's Primary Election, the Committee provided documentation of its efforts to obtain confirmation of the designation of the excessive portion for General Election purposes. To date, the Committee has received no response despite its efforts to confirm that the apparent excessive portion of its contribution was attributed to the candidate's General Election campaign.

In light of the foregoing facts of this matter, the Office of General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 441a(a)(2)(A) and take no further action in this matter.

Recommendations

1) Find reason to believe the Committee violated 2 U.S.C. § 441b(a) and take no further action.

2) Find reason to believe the Committee violated 2 U.S.C. § 441a(a)(2)(A) and take no further action.

3) Approve and send the attached letter with the General Counsel's Factual and Legal Analysis.

4) Close the file in this matter.

Attachments

Attachment #1
Letter to Mr. Edwin J. Mullane with attached General Counsel's Factual and Legal Analysis.

ATTACHMENT #1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 24, 1980

MEMORANDUM

TO: CHARLES STEELE
GENERAL COUNSEL

THROUGH: ORLANDO B. POTTER
STAFF DIRECTOR

FROM: BOB COSTA

SUBJECT: FINAL AUDIT REPORT - AUTOMOBILE AND TRUCK DEALERS ELECTION ACTION COMMITTEE

Attached for your review and legal analysis is the final audit report of the Automobile and Truck Dealers Election Action Committee.

If you have any questions, please contact Craig Russell on extension 3-4155.

Attachment as stated

6 1 0 7 0 4 1 9 3 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON THE
AUTOMOBILE AND TRUCK DEALERS ELECTION ACTION COMMITTEE

I. Background

A. Overview

This report is based on an audit of the Automobile and Truck Dealers Election Action Committee ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(a)(8) of Title 2 of the United States Code which, at the time of the audit, directed the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Act.

The Committee registered with the Secretary of the United States Senate on July 17, 1975, reporting the National Automobile Dealers Association (NADA), a trade association, as its connected organization. The Committee maintains its headquarters in McLean, Virginia.

The audit covered the period from January 1, 1977 through March 31, 1979, the final coverage date of the most recent report filed by the Committee at the time of the audit. The Committee reported a beginning cash balance on January 1, 1977 of $316,146.03, total receipts for the period of $1,568,867.72, total expenditures for the period of $1,601,953.72 and a closing cash balance on March 31, 1979 of $283,060.03.

This audit report is based on documents and working papers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The principal officers of the Committee during the period audited were William E. Hancock, Jr., Chairman, and Edwin J. Mullane, Treasurer.

C. Scope

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

II. Audit Findings and Recommendations

A. Acceptance of Prohibited Contributions

Section 441b(a) of Title 2 of the United States Code, states in relevant part, it is unlawful for any corporation to make a contribution in connection with any election to Federal office, or for any political committee knowingly to accept or receive any contribution prohibited by this section.

During the course of the audit we noted acceptance by the Committee of 47 contributions from 31 business entities, totaling $3,932.50. These businesses were subsequently verified with respective Secretaries of State as being incorporated as of the date of contribution.

When discussing the Committee's procedures for screening out prohibited contributions, Committee officials explained that the Committee's solicitations are basically aimed at the principal owner or owners of various auto and truck dealerships throughout the country, many of whom operate their businesses as corporations. Despite the Committee's efforts to stress in their solicitation material the necessity of contributions being made from personal funds, Committee officials stated some contributions inevitably will come in on corporate checks, which the Committee returns, if noted. Committee officials attributed the acceptance of the contributions noted above to lack of attentiveness at the contribution processing point, and indicated their willingness to refund the corporate contributions, as necessary.

8 1 0 3 0 2 4 1 8 3 3

Regarding the apparent corporate contributions accepted, the Audit staff recommended in a letter of audit findings of January 4, 1980, that the Committee refund the contributions and provide documentation of the refunds to the Audit staff, or, alternatively, provide adequate documentation establishing that contributions were not received from corporate sources. We further recommended that these refunds be disclosed in the Committee's next disclosure report in accordance with 2 U.S.C. 434(b)(7).

On February 6 and May 6, 1980, the Committee submitted acceptable documentation demonstrating refunds of 46 of the 47 apparent prohibited contributions noted above. In one (1) case, the Committee submitted a letter showing the contribution was not funded from an incorporated source. The Committee has also disclosed the refunds in their reports to the Commission.

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

B. Solicitation of Non-Members

Section 114.8(a) of Title 11, Code of Federal Regulations, defines, in part, a trade association as a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce.

Section 114.7(a) of Title 11, Code of Federal Regulations, states in relevant part, that membership organizations, or their separate segregated funds may solicit contributions to the fund from members of the organization.

Section 114.1(e) of Title 11, Code of Federal Regulations, defines "members" as all persons who are currently satisfying the requirements for membership in a membership organization, trade association, co-operative, or corporation without capital stock. Further, Section 114.1(g) of Title 11, Code of Federal Regulations defines "soliciting" as the manner in which the solicitation is undertaken including, but not limited to, mailings, oral requests for contributions, and hand distribution of pamphlets.

We determined that during the audit period, the Committee utilized two (2) major fundraising methods. In February of 1977 and 1978 the Committee held large fundraising dinners (Diamond Dinners) at the conclusion of the annual NADA convention, to which former Committee contributors were invited and urged to purchase tickets at $150 a ticket. The second fundraising method revolved around a formally established pledge system which functions with the assistance of regional and state volunteer Chairpersons. These people are requested by the Committee to hold meetings to which area auto dealers are invited and, after obtaining the required permission form in the case of dealers who operate their businesses as corporations, the solicitation is made on behalf of the Committee. Dealers in attendance are asked to sign a pledge form on which they agree to contribute a certain amount, usually annually or quarterly, to the Committee. The pledge is considered perpetually in effect until revoked by the contributor. The Committee itself supports this system by quarterly pledge reminders and various solicitation mailings. Committee officials have stated that under this method, the solicitations, both personally and by mail, are directed at the NADA "representative" at the particular dealerships which in almost all cases is the dealer/owner himself. They have added that the policy of the Committee regarding solicitation of personnel of corporate members of NADA is to solicit the dealer/owner only and not go beyond him to solicit the dealership's stockholders, executive and administrative personnel, or their families. Under both solicitation methods, contribution checks and pledge forms were and are sent directly to the Committee.

It should be noted, however, that the requirement of membership in NADA was neither implicitly nor explicity stated in any of the Committee's solicitation material viewed by the Audit staff during the course of the audit. When questioned about this issue, an official admitted that the Committee exercised no real control over who attends the pledge solicitation meetings for the Committee. Regarding the Diamond Dinners, the responsible Committee official stated that one of the major reasons why the Committee has decided to discontinue these functions was the lack of control over who was being solicited. When discussing the method of processing contributions made to the Diamond Dinners, the official stated that NADA membership status was not checked.

Durint our review of the Committee's receipts, we noted 13 items that were received from non-members of NADA, indicating apparent solicitation of individuals whose dealerships were not dues-paying member of NADA at the time of solicitation. In 12 instances contributions were actually accepted by the Committee from individuals involved and one (1) instance involved a pledge to contribute only. Total contributions accepted during the audit period from non-member regular pledge/contributors identified amounted to $1,355.00.

Our review of Diamond Dinner contributions disclosed 10 contributions from 10 individuals and organizations, totaling $4,050.00, not related with member dealerships of NADA at the time of the contribution. Included in these totals were three (3) automobile dealer associations operating on a statewide level as political action committees (State Pacs), that contributed a total of $2,100, with no single contribution being in excess of $1,000. 1/

The Audit Division recommended in our letter of audit findings that the Committee:

1) Refund the $1,355 of contributions received from non-member solicitees in connection with the Committee's regular pledge/contribution program, and provide evidence of the refunds to the Audit staff.

2) Refund to the contributors involved the $4,050 of contributions received from non-member solicitees (both individuals and the three (3) State Pacs) in connection with the Diamond Dinner fundraisers and provide evidence of the refunds to the Audit staff.

3) With respect to non-member solicitees who are part of the regular pledge/contribution program, remove all those individuals from the Committee's pledge system files and provide documentation of the deletion or provide documentation of present membership status in NADA.

1/ State Pac officials, acting as volunteer Chairpersons, assist the Committee by holding dealer meetings and soliciting pledges (with contributions under the system sent directly to the Committee) and, in exchange, the State Pac receives 20% of the resulting contributions thus raised for the Committee from dealers in the particular state. Funds are transferred from the Committee to the various participating State Pacs on the conditions that receipt of such monies does not violate any applicable state law and the State Pac agrees to use the funds in connection with State and local campaigns only.

4) Implement procedural changes and revise the Committee's solicitation literature to reduce the incidence of solicitation of non-members, and provide documentation of the Committee's efforts to the Audit staff for review.

5) Disclose all refunds made in the Committee's next disclosure report in accordance with 2 U.S.C. 434(b)(7).

On February 6 and May 6, 1980, the Committee submitted acceptable documentation demonstrating refunds of all the contributions received from non-members noted above. The Committee has also disclosed the refunds in its reports to the Commission. In addition, the Committee submitted evidence of procedural changes and copies of revised solicitation literature aimed at preventing the future solicitation of non-members of NADA.

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

C. Excessive Contributions to Federal Candidates

Section 441a(a)(2)(A) of Title 2, United States Code, states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000.

During our review of Committee expenditures, we noted transfers to two (2) Federal candidates made in connection with the 1978 General Election which exceeded the statutory limitation set forth above. The excessive portion of these contributions to Federal candidates totaled $3,500.00.

We also noted that another candidate received a total of $7,000 from the Committee in connection with and prior to the candidate's 1978 Primary Election. Total transfers to the candidate for the 1978 election cycle totaled $10,000.

When discussing these matters with Committee officials, it was noted that at the time of these tranfers the Committee did not use a written system for aggregating transfers to Federal candidates. Committee officials stated at the time of the audit that they were in the process of establishing one and also expressed a willingness to obtain refunds from the candidates involved, as required.

The Audit staff recommended in our letter of audit findings that the Committee:

1) Obtain refunds from the two (2) Federal candidates receiving excessive contributions in connection with the 1978 General Election, and provide documentation of the receipt of these refunds to the Audit staff for review.

2) In the case of the Federal candidate who received transfers technically in excess of the limitation with respect to his Primary Election, we recommended the Committee obtain a refund of the $2,000 and provide acceptable documentation of the refund or, alternatively, submit documentation of the designation of the excess for General Election purposes at the time the transfer was made.

On February 6 and May 6, 1980, the Committee submitted documentation demonstrating that:

1) in the case of the excessive transfers made in connection with the 1978 General Election, the Committee had received a refund of the excessive portion from one (1) candidate and evidence that the other candidate had used the apparent excessive portion to pay debts of a prior election, and;

2) in the other instance, the Committee had made best efforts to obtain documentation of the designation for General Election purposes.

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

8 1 0 2 4 1 8 3 6

D. Improper Use of Solicitation Guideline

Section 114.8(e)(4) of Title 11, Code of Federal Regulations, states that solicitations made by a trade association and/or its separate segregated fund are subject to the provisions of Section 114.5(a) of the Regulations.

Section 114.5(a)(2) of Title 11, Code of Federal Regulations, states that a guideline for contributions may be suggested (by a trade association or its separate segregated fund), provided that the person soliciting or the solicitation informs the persons being solicited -

(i) that the guidelines are merely suggestions; and

(ii) that an individual is free to contribute more or less than the guidelines suggest and that the (trade association) will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.

During our review of the Committee's solicitation material we noted the contribution pledge form utilized by the Committee suggested a guideline for contributions based on the dealer's number of new car sales during the previous year. In discussions with Committee officials, Auditors were informed that this was patterned after the dues structure established by NADA in computing membership dues for automobile and truck dealers throughout the country.

The pledge form provided for the contributor to indicate whether he wished to contribute on his pledge quarterly or annually, but allowed no flexibility in determining the amount of his contribution which was rigidly geared to the dealer's number of new car sales, as mentioned above.

The Audit staff recommended in our letter of audit findings that the Committee revise its contribution pledge form to comply with the requirements set forth above, and furnish the Audit staff with copies of appropriate documentation for review.

On February 6, 1980, the Committee filed a copy of its revised contribution pledge form which complies with the requirements of 11 C.F.R. 114.5(a)(2).

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

E. Reporting of Interest and Investment Income

During the period of the audit, Section 434(b)(7) of Title 2, United States Code, stated that each report of receipts and expenditures filed with the Commission shall disclose each contribution, rebate, refund, or other receipt in excess of $100 not otherwise listed under Section 434(b), paragraphs (2) through (6).

During the course of the audit we noted that the Committee reported interest and investment income, totaling $47,212.74 for the audit period, on the detailed Summary Schedule line for unitemized contributions, where the total for the reporting period was listed with the notation "Interest Income." Our audit confirmed that each instance of interest receipt, except one (1), was in excess of $100.

The Audit staff recommended in our letter of audit findings that the Committee file comprehensive amendments for the periods 1977, 1978, and the first quarter of 1979, itemizing the interest and investment income receipts as required.

On June 19, 1980, the Committee filed supplements to its comprehensive amendments for 1977, 1978, and 1979, filed on February 6, 1980, which included the required information.

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

F. Reporting of Transfers to Federal Candidates

During the period of the audit, Section 434(b)(4) of Title 2, United States Code, required political committees to disclose in reports filed with the Commission the name and address of each committee or candidate to which the committee made a transfer of funds, together with the amount and dates of all transfers.

6 1 0 3 0 2 4 1 2 4 0

During our review of Committee expenditures, we noted one (1) instance where the Committee failed to itemize a $2,000 transfer to a Federal candidate, and two (2) instances where the Committee misreported the amounts of transfers to Federal candidates by $900 each.

The Audit staff recommended in our letter of audit findings that the Committee include the omitted transaction and correcting entries in its 1978 comprehensive amendment.

The omitted transaction and correcting entries were included in the Committee's comprehensive amendment which was filed with the Commission on February 6, 1980.

Recommendation

Based on the Committee's response as noted above, the Audit staff recomends no further action in this matter.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Edwin J. Mullane, Treasurer
Automobile and Truck Dealers Election
Action Committee
8400 Westpark Drive
McLean, Virginia 22101

Re: MUR 1307

Dear Mr. Mullane:

On, , 1980, the Federal Election Commission determined that there is reason to believe that your committee violated sections 441b(a) and 441a(a)(2)(A) of the Federal Election Campaign Act of 1971, as amended (the "Act") by accepting corporate contributions for use in connection with federal elections, and by making contributions to candidates for federal office in excess of statutory limitations. However, in view of measures voluntarily taken by your committee to refund or request refunds of prohibited contributions, the Commission has determined to take no further action and close its file in this matter.

The General Counsel's factual and legal analysis, which formed a basis for the Commission's determination, is attached for your information. This matter will be made part of the public record within thirty days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to Beverly Brown, the staff member assigned to this matter, at 202/523-4529.

Sincerely,

Enclosure:

General Counsel's Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1307
STAFF MEMBER(S) & TEL. NO.
Beverly Brown/(202) 523-4529
Hal Ponder/(202) 523-4166

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

Summary of Allegations

During the audit of the Automobile and Truck Dealers Election Action Committee (the "Committee") the auditors noted violations of certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the auditors determined that the Committee violated 2 U.S.C. § 441b(a) by accepting corporate contributions and 2 U.S.C. § 441a(a)(2)(A) by making contributions in excess of statutory limitations to candidates for federal office.

On June 24, 1980, the Audit Division referred these findings to the Office of General Counsel, noting that the violations occurred during the period covered by the audit (1/1/77-3/31/79), such audit having been conducted pursuant to former 2 U.S.C. § 438(a)(8). 1/

1/ At the time of the audit, 2 U.S.C. § 438(a)(8) directed the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Federal Election Campaign Act of 1971, as amended.

Factual and Legal Analysis

1. Acceptance of Prohibited Contributions

2 U.S.C. § 441b(a) states, inter alia, that it is unlawful for any corporation to make a contribution in connection with any election to federal office, or for any political committee to knowingly accept or receive any contribution prohibited by this section.

During the audit of the Automobile and Truck Dealers Election Action Committee, the auditors determined that the Committee had received 47 contributions from 31 business entities totalling $3,932.50. Subsequent confirmation with respective Secretaries of State verified that these business entities were incorporated at the time contributions were made.

On January 4, 1980, the Audit Division sent a letter of audit findings to the Committee. Therein, the auditors recommended that the Committee refund the corporate contributions and provide documentation of the refunds to the audit staff, or, alternatively, provide adequate documentation establishing that contributions were not received from corporate sources. In addition, the auditors recommended that all refunds be disclosed in subsequent reports pursuant to former 2 U.S.C. § 434(b)(7).

On February 6 and May 6, 1980, the Committee submitted copies of 30 Committee checks (front and back) in evidence of having refunded 46 of the 47 contributions received from incorporated entities. Endorsements appearing on the back of checks confirmed the negotiation of refund checks and subsequent reports filed by the Committee reflected the actual refunds made to incorporated entities.

In addition to providing copies of Committee refund checks, the Committee submitted a letter from one business entity as evidence that one contribution for $60 was not funded from a corporate source but rather an unincorporated partnership.

Based upon the foregoing facts of this matter, the Office of General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 441b(a) and take no further action in view of the measures voluntarily taken by the Committee to refund prohibited contributions.

2. Excessive Contributions to Federal Candidates

2 U.S.C. § 441a(a)(2)(A) prohibits a multicandidate political committee from making contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $5,000.

In the conduct of audit field examinations, auditors noted transfers to two federal candidates made in connection with the 1978 General Election which exceeded the statutory limitations set forth above. Specifically, the auditors determined that the Committee contributed to the following candidates amounts in excess of $5,000:

Candidate	Date of Contribution	Amounts
Roger Jepsen	8/22/78	$5,000
	1/31/79	$2,500
Donald Stewart	10/2/78	$5,000
	2/6/79	$1,000

In addition, the auditors determined that the Committee to Re-Elect Thurmond received a total of $7,000 from the Committee, prior to the candidate's 1978 Primary Election. However, total transfers to the candidate for the 1978 election cycle totalled $10,000.

With respect to the above findings, the auditors, in their letter of January 4, 1980, recommended that the Committee:

1) Obtain refunds from the two federal candidates receiving excessive contributions in connection with the 1978 General Election, and provide documentation of the receipt of those refunds to the audit staff.

2) In the case of the federal candidate who received transfers in excess of the limitation with respect to his Primary Election, obtain a refund of the $2,000 and provide documentation of the refund or, alternatively, submit documentation of the designation of the excess for General Election purposes at the time the transfer was made.

On February 6 and May 6, 1980, the Committee submitted documentation that, in the case of the excessive transfers made in connection with the 1978 General Election, the Committee had received a refund of the excessive portion ($2,500) from the Friends of Roger Jepsen and evidence that candidate Donald Stewart had used the apparent excessive portion to pay debts of a prior election.

Regarding the contributions to the Re-Elect Thurmond Committee which exceeded contribution limitations to the candidate's Primary Election, the Committee provided documentation of its efforts to obtain confirmation of the designation of the excessive portion for General Election purposes. To date, the Committee has received no response despite its efforts to confirm that the apparent excessive portion of its contribution was attributed to the candidate's General Election campaign.

In light of the foregoing facts of this matter, the Office of General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 441a(a)(2)(A) and take no further action in this matter.

Recommendations

1) Find reason to believe the Committee violated 2 U.S.C. § 441b(a) and take no further action.

2) Find reason to believe the Committee violated 2 U.S.C. § 441a(a)(2)(A) and take no further action.

3) Close the file in this matter.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 22, 1980

MEMORANDUM

TO: Bob Costa/Craig Russell

THROUGH: Staff Director's Office

FROM: Charles N. Steele
General Counsel

SUBJECT: Final Audit Report - Automobile and Truck Dealers Election Action Committee - A-787

The Office of General Counsel has reviewed the final audit report concerning the Automobile and Truck Dealers Election Action Committee. Based on the information presented, we concur with the recommendations in findings B, D, E and F.

With respect to findings A and C, which pertain to corporate and excessive contributions, it is the opinion of this office that these matters warrant further legal consideration. Accordingly, we will address these issues in a Matter Under Review.

A-787

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 24, 1980

MEMORANDUM

TO: CHARLES STEELE
GENERAL COUNSEL

THROUGH: ORLANDO B. POTTER A.L. for O.B.P.
STAFF DIRECTOR

FROM: BOB COSTA RC

SUBJECT: FINAL AUDIT REPORT - AUTOMOBILE AND TRUCK DEALERS ELECTION ACTION COMMITTEE

Attached for your review and legal analysis is the final audit report of the Automobile and Truck Dealers Election Action Committee.

If you have any questions, please contact Craig Russell on extension 3-4155.

Attachment as stated

8 1 0 2 4 1 2 4 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON THE
AUTOMOBILE AND TRUCK DEALERS ELECTION ACTION COMMITTEE

I. Background

A. Overview

This report is based on an audit of the Automobile and Truck Dealers Election Action Committee ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(a)(8) of Title 2 of the United States Code which, at the time of the audit, directed the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Act.

The Committee registered with the Secretary of the United States Senate on July 17, 1975, reporting the National Automobile Dealers Association (NADA), a trade association, as its connected organization. The Committee maintains its headquarters in McLean, Virginia.

The audit covered the period from January 1, 1977 through March 31, 1979, the final coverage date of the most recent report filed by the Committee at the time of the audit. The Committee reported a beginning cash balance on January 1, 1977 of $316,146.03, total receipts for the period of $1,568,867.72, total expenditures for the period of $1,601,953.72 and a closing cash balance on March 31, 1979 of $283,060.03.

This audit report is based on documents and working papers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The principal officers of the Committee during the period audited were William E. Hancock, Jr., Chairman, and Edwin J. Mullane, Treasurer.

C. Scope

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

II. Audit Findings and Recommendations

A. Acceptance of Prohibited Contributions

Section 441b(a) of Title 2 of the United States Code, states in relevant part, it is unlawful for any corporation to make a contribution in connection with any election to Federal office, or for any political committee knowingly to accept or receive any contribution prohibited by this section.

During the course of the audit we noted acceptance by the Committee of 47 contributions from 31 business entities, totaling $3,932.50. These businesses were subsequently verified with respective Secretaries of State as being incorporated as of the date of contribution.

When discussing the Committee's procedures for screening out prohibited contributions, Committee officials explained that the Committee's solicitations are basically aimed at the principal owner or owners of various auto and truck dealerships throughout the country, many of whom operate their businesses as corporations. Despite the Committee's efforts to stress in their solicitation material the necessity of contributions being made from personal funds, Committee officials stated some contributions inevitably will come in on corporate checks, which the Committee returns, if noted. Committee officials attributed the acceptance of the contributions noted above to lack of attentiveness at the contribution processing point, and indicated their willingness to refund the corporate contributions, as necessary.

8 1 0 3 0 4 1 9 5 0

Regarding the apparent corporate contributions accepted, the Audit staff recommended in a letter of audit findings of January 4, 1980, that the Committee refund the contributions and provide documentation of the refunds to the Audit staff, or, alternatively, provide adequate documentation establishing that contributions were not received from corporate sources. We further recommended that these refunds be disclosed in the Committee's next disclosure report in accordance with 2 U.S.C. 434(b)(7).

On February 6 and May 6, 1980, the Committee submitted acceptable documentation demonstrating refunds of 46 of the 47 apparent prohibited contributions noted above. In one (1) case, the Committee submitted a letter showing the contribution was not funded from an incorporated source. The Committee has also disclosed the refunds in their reports to the Commission.

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

B. Solicitation of Non-Members

Section 114.8(a) of Title 11, Code of Federal Regulations, defines, in part, a trade association as a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce.

Section 114.7(a) of Title 11, Code of Federal Regulations, states in relevant part, that membership organizations, or their separate segregated funds may solicit contributions to the fund from members of the organization.

Section 114.1(e) of Title 11, Code of Federal Regulations, defines "members" as all persons who are currently satisfying the requirements for membership in a membership organization, trade association, co-operative, or corporation without capital stock. Further, Section 114.1(g) of Title 11, Code of Federal Regulations defines "soliciting" as the manner in which the solicitation is undertaken including, but not limited to, mailings, oral requests for contributions, and hand distribution of pamphlets.

8 1 0 3 0 2 1 1 8 5 1

We determined that during the audit period, the Committee utilized two (2) major fundraising methods. In February of 1977 and 1978 the Committee held large fundraising dinners (Diamond Dinners) at the conclusion of the annual NADA convention, to which former Committee contributors were invited and urged to purchase tickets at $150 a ticket. The second fundraising method revolved around a formally established pledge system which functions with the assistance of regional and state volunteer Chairpersons. These people are requested by the Committee to hold meetings to which area auto dealers are invited and, after obtaining the required permission form in the case of dealers who operate their businesses as corporations, the solicitation is made on behalf of the Committee. Dealers in attendance are asked to sign a pledge form on which they agree to contribute a certain amount, usually annually or quarterly, to the Committee. The pledge is considered perpetually in effect until revoked by the contributor. The Committee itself supports this system by quarterly pledge reminders and various solicitation mailings. Committee officials have stated that under this method, the solicitations, both personally and by mail, are directed at the NADA "representative" at the particular dealerships which in almost all cases is the dealer/owner himself. They have added that the policy of the Committee regarding solicitation of personnel of corporate members of NADA is to solicit the dealer/owner only and not go beyond him to solicit the dealership's stockholders, executive and administrative personnel, or their families. Under both solicitation methods, contribution checks and pledge forms were and are sent directly to the Committee.

It should be noted, however, that the requirement of membership in NADA was neither implicitly nor explicity stated in any of the Committee's solicitation material viewed by the Audit staff during the course of the audit. When questioned about this issue, an official admitted that the Committee exercised no real control over who attends the pledge solicitation meetings for the Committee. Regarding the Diamond Dinners, the responsible Committee official stated that one of the major reasons why the Committee has decided to discontinue these functions was the lack of control over who was being solicited. When discussing the method of processing contributions made to the Diamond Dinners, the official stated that NADA membership status was not checked.

Durint our review of the Committee's receipts, we noted 13 items that were received from non-members of NADA, indicating apparent solicitation of individuals whose dealerships were not dues-paying member of NADA at the time of solicitation. In 12 instances contributions were actually accepted by the Committee from individuals involved and one (1) instance involved a pledge to contribute only. Total contributions accepted during the audit period from non-member regular pledge/contributors identified amounted to $1,355.00.

Our review of Diamond Dinner contributions disclosed 10 contributions from 10 individuals and organizations, totaling $4,050.00, not related with member dealerships of NADA at the time of the contribution. Included in these totals were three (3) automobile dealer associations operating on a statewide level as political action committees (State Pacs), that contributed a total of $2,100, with no single contribution being in excess of $1,000. 1/

The Audit Division recommended in our letter of audit findings that the Committee:

1) Refund the $1,355 of contributions received from non-member solicitees in connection with the Committee's regular pledge/contribution program, and provide evidence of the refunds to the Audit staff.

2) Refund to the contributors involved the $4,050 of contributions received from non-member solicitees (both individuals and the three (3) State Pacs) in connection with the Diamond Dinner fundraisers and provide evidence of the refunds to the Audit staff.

3) With respect to non-member solicitees who are part of the regular pledge/contribution program, remove all those individuals from the Committee's pledge system files and provide documentation of the deletion or provide documentation of present membership status in NADA.

1/ State Pac officials, acting as volunteer Chairpersons, assist the Committee by holding dealer meetings and soliciting pledges (with contributions under the system sent directly to the Committee) and, in exchange, the State Pac receives 20% of the resulting contributions thus raised for the Committee from dealers in the particular state. Funds are transferred from the Committee to the various participating State Pacs on the conditions that receipt of such monies does not violate any applicable state law and the State Pac agrees to use the funds in connection with State and local campaigns only.

4) Implement procedural changes and revise the Committee's solicitation literature to reduce the incidence of solicitation of non-members, and provide documentation of the Committee's efforts to the Audit staff for review.

5) Disclose all refunds made in the Committee's next disclosure report in accordance with 2 U.S.C. 434(b)(7).

On February 6 and May 6, 1980, the Committee submitted acceptable documentation demonstrating refunds of all the contributions received from non-members noted above. The Committee has also disclosed the refunds in its reports to the Commission. In addition, the Committee submitted evidence of procedural changes and copies of revised solicitation literature aimed at preventing the future solicitation of non-members of NADA.

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

C. Excessive Contributions to Federal Candidates

Section 441a(a)(2)(A) of Title 2, United States Code, states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000.

During our review of Committee expenditures, we noted transfers to two (2) Federal candidates made in connection with the 1978 General Election which exceeded the statutory limitation set forth above. The excessive portion of these contributions to Federal candidates totaled $3,500.00.

We also noted that another candidate received a total of $7,000 from the Committee in connection with and prior to the candidate's 1978 Primary Election. Total transfers to the candidate for the 1978 election cycle totaled $10,000.

When discussing these matters with Committee officials, it was noted that at the time of these tranfers the Committee did not use a written system for aggregating transfers to Federal candidates. Committee officials stated at the time of the audit that they were in the process of establishing one and also expressed a willingness to obtain refunds from the candidates involved, as required.

The Audit staff recommended in our letter of audit findings that the Committee:

1) Obtain refunds from the two (2) Federal candidates receiving excessive contributions in connection with the 1978 General Election, and provide documentation of the receipt of these refunds to the Audit staff for review.

2) In the case of the Federal candidate who received transfers technically in excess of the limitation with respect to his Primary Election, we recommended the Committee obtain a refund of the $2,000 and provide acceptable documentation of the refund or, alternatively, submit documentation of the designation of the excess for General Election purposes at the time the transfer was made.

On February 6 and May 6, 1980, the Committee submitted documentation demonstrating that:

1) in the case of the excessive transfers made in connection with the 1978 General Election, the Committee had received a refund of the excessive portion from one (1) candidate and evidence that the other candidate had used the apparent excessive portion to pay debts of a prior election, and;

2) in the other instance, the Committee had made best efforts to obtain documentation of the designation for General Election purposes.

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

D. Improper Use of Solicitation Guideline

Section 114.8(e)(4) of Title 11, Code of Federal Regulations, states that solicitations made by a trade association and/or its separate segregated fund are subject to the provisions of Section 114.5(a) of the Regulations.

Section 114.5(a)(2) of Title 11, Code of Federal Regulations, states that a guideline for contributions may be suggested (by a trade association or its separate segregated fund), provided that the person soliciting or the solicitation informs the persons being solicited -

(i) that the guidelines are merely suggestions; and

(ii) that an individual is free to contribute more or less than the guidelines suggest and that the (trade association) will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.

During our review of the Committee's solicitation material we noted the contribution pledge form utilized by the Committee suggested a guideline for contributions based on the dealer's number of new car sales during the previous year. In discussions with Committee officials, Auditors were informed that this was patterned after the dues structure established by NADA in computing membership dues for automobile and truck dealers throughout the country.

The pledge form provided for the contributor to indicate whether he wished to contribute on his pledge quarterly or annually, but allowed no flexibility in determining the amount of his contribution which was rigidly geared to the dealer's number of new car sales, as mentioned above.

The Audit staff recommended in our letter of audit findings that the Committee revise its contribution pledge form to comply with the requirements set forth above, and furnish the Audit staff with copies of appropriate documentation for review.

On February 6, 1980, the Committee filed a copy of its revised contribution pledge form which complies with the requirements of 11 C.F.R. 114.5(a)(2).

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

E. Reporting of Interest and Investment Income

During the period of the audit, Section 434(b)(7) of Title 2, United States Code, stated that each report of receipts and expenditures filed with the Commission shall disclose each contribution, rebate, refund, or other receipt in excess of $100 not otherwise listed under Section 434(b), paragraphs (2) through (6).

During the course of the audit we noted that the Committee reported interest and investment income, totaling $47,212.74 for the audit period, on the detailed Summary Schedule line for unitemized contributions, where the total for the reporting period was listed with the notation "Interest Income." Our audit confirmed that each instance of interest receipt, except one (1), was in excess of $100.

The Audit staff recommended in our letter of audit findings that the Committee file comprehensive amendments for the periods 1977, 1978, and the first quarter of 1979, itemizing the interest and investment income receipts as required.

On June 19, 1980, the Committee filed supplements to its comprehensive amendments for 1977, 1978, and 1979, filed on February 6, 1980, which included the required information.

Recommendation

Based on the Committee's response as noted above, the Audit staff recommends no further action in this matter.

F. Reporting of Transfers to Federal Candidates

During the period of the audit, Section 434(b)(4) of Title 2, United States Code, required political committees to disclose in reports filed with the Commission the name and address of each committee or candidate to which the committee made a transfer of funds, together with the amount and dates of all transfers.

During our review of Committee expenditures, we noted one (1) instance where the Committee failed to itemize a $2,000 transfer to a Federal candidate, and two (2) instances where the Committee misreported the amounts of transfers to Federal candidates by $900 each.

The Audit staff recommended in our letter of audit findings that the Committee include the omitted transaction and correcting entries in its 1978 comprehensive amendment.

The omitted transaction and correcting entries were included in the Committee's comprehensive amendment which was filed with the Commission on February 6, 1980.

Recommendation

Based on the Committee's response as noted above, the Audit staff recomends no further action in this matter.

FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1307

Date Filmed 5-12-81 Camera No. --- 2

Cameraman DPC