

FEDERAL ELECTION COMMISSION

See attachment

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

Signed Maura E. White
date May 18, 1982

8 2040321955

The following documents have been removed from the file in MUR 1314:

1. All conciliation documents which are exempt pursuant to 2 U.S.C. § 437g(a) (4) (B) (i)
2. Investigatory files compiled for law enforcement purposes which would constitute an unwarranted invasion of personal privacy, and which are exempt pursuant to 5 U.S.C. § 552(b) (7) (C):
 - a) Portion of the response submitted by Vincent Marotta on November 21, 1980
 - b) Portion of the response submitted by Thomas Marotta on November 21, 1980
 - c) Portions of a memo to the Commission from Charles N. Steele, dated January 5, 1981
 - d) Portions of a letter from Charles N. Steele to James Stanton, dated January 8, 1981
 - e) Portions of the responses submitted by Thomas and Vincent Marotta on January 23, 1981
 - f) Portion of the General Counsel's Brief to Thomas Marotta, mailed April 20, 1981
 - g) Portions of a Request for Confidential Treatment, dated May 8, 1981
 - h) Bank account numbers contained on civil penalty checks

82040321956



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 13, 1982

Edwin F. Huddleston
918 - 16th Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Huddleston:

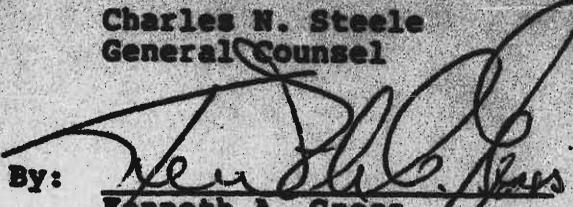
This is to advise you that the file in this matter has been closed. The Commission will make appropriate materials in the file public. As 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission, please advise us in writing if you wish any such information to become public. Should you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By:


Kenneth A. Gross
Associate General Counsel

82040321957



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 13, 1982

Robert T. DeVoy, Jr.
Ragan and Mason
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. DeVoy:

This is to advise you that the entire file in the above-captioned matter has been closed. The Commission will make appropriate materials in the file public. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

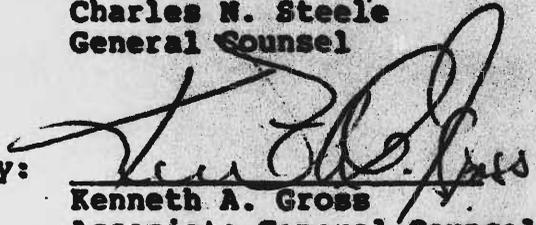
As you know, the Commission's Freedom of Information Officer informed you by letter dated February 9, 1982, that the entire file in this matter will be made public with the exception of the names of the employees of North American Systems, Inc. who were identified in the course of the investigation but who were not subjects of the investigation, and conciliation materials which are exempt pursuant to 2 U.S.C. § 437g(a)(4)(B). You have requested the Commission to review that determination. The Commission's decision on your request will govern whether any additional materials will be withheld from the public record. You will be advised of that decision as soon as it is made.

If you have any questions, please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By:


Kenneth A. Gross
Associate General Counsel

92040321958



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 13, 1982

J. William Petro
United States Attorney
Northern District of Ohio
U.S. Department of Justice
U.S. Courthouse
Cleveland, Ohio 44114

Re: MUR 1314

Dear Mr. Petro:

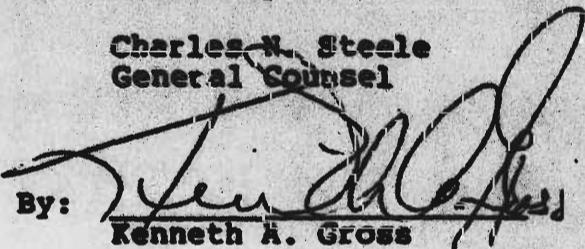
This is in reference to the above-captioned matter involving Vincent Marotta, Thomas Marotta, North American Systems, Inc., and the Carter-Mondale Presidential Committee which your office referred to the Commission on August 18, 1980.

After conducting an investigation of this matter, the Commission determined that there is probable cause to believe that Vincent Marotta, North American Systems, Inc., and the Carter-Mondale Presidential Committee violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and has now entered into conciliation agreements with them. Copies of these agreements are enclosed for your information.

We appreciate your cooperation in helping the Commission meet its enforcement responsibilities under the Act. If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By: 
Kenneth A. Gross
Associate General Counsel

Enclosures
Conciliation Agreements (2)

82040321959

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1314
Carter-Mondale Presidential)
Committee, Inc.)

RECEIVED
GENERAL COUNSEL
APR 11 1976

CONCILIATION AGREEMENT

This matter having been initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities, and after reason to believe having been found that the Carter-Mondale Presidential Committee, Inc. ("Respondent") violated 2 U.S.C. § 441b(a) by accepting an in-kind corporate contribution from North American Systems, Inc.

32040321960

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

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

1. Respondent is the principal campaign committee of Jimmy Carter for the 1980 primary elections.

2. On May 29, 1980, Respondent conducted a fundraising event in Cleveland, Ohio.

3. The fundraising dinner was chaired by Vincent Marotta, President of North American Systems, Inc., an incorporated entity.

4. During the month of May, 1980, employees of North American Systems, Inc., engaged in preparation activity for the fundraiser during their normal working hours on the premises of North American Systems, Inc. Preparation activity included labeling and stuffing envelopes, mailing invitations, constructing, maintaining, and running computer lists, making telephone calls, recording responses, and keeping records.

5. North American Systems, Inc., paid its employees for the time they conducted preparation activity for the fundraiser in an amount equal to the employees' normal hourly wages.

6. At least 54 employees of North American Systems, Inc., spent a total of 468.75 work hours on preparation

82040321961

activity for the fundraiser. In addition, Vincent Marotta and Thomas Marotta, the Vice-President of North American Systems, Inc., spent a substantial amount of time during the three-week period prior to the fundraiser conducting preparation activity.

7. Employees of North American Systems, Inc., who conducted preparation activity for the fundraiser utilized the office space, office furniture, telephones, typewriters, and computer of North American Systems, Inc., to conduct such preparation activity.

8. North American Systems, Inc., submitted an invoice to the Carter-Mondale Presidential Committee on June 9, 1980, in the amount of \$2,646.05 for the cost of postage, and in the amount of \$3,494.12 for the cost of the wages it paid its employees while the employees engaged in preparation activity for the fundraiser.

9. North American Systems, Inc., did not bill, and Respondent did not pay, for the use of the facilities of North American Systems, Inc.

10. The usual and normal rental charge in the commercial market of the facilities of North American Systems, Inc., which were utilized to conduct preparation activity is, as estimated by North American Systems, Inc., \$3,090.

WHEREFORE, Respondent further agrees:

V. 1. That 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(a) require a political committee to reimburse a corporation for the use of its facilities when more than "occasional, isolated

82040321962

or incidental use" is made of such facilities by staff and employees to conduct individual volunteer activities on behalf of the political committee; and

2. To conduct any future fundraising activities in accordance with the provision of 11 C.F.R. § 114.9(a).

VI. To settle this matter without the necessity of further protracted proceedings, Respondent agrees to pay a civil penalty of Seven Hundred and Fifty Dollars (\$750) to the Treasurer of the United States pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. Respondent will reimburse North American Systems, Inc., in the amount of Three Thousand Ninety Dollars (\$3,090) for the use of the corporation's facilities.

VIII. Respondent shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. § 431, et seq.

IX. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

82040321963

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

XI. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to pay the civil penalty provided for in Paragraph VI of this agreement.

Feb. 10, 1982

Date

Charles N. Steele
General Counsel

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

January 28, 1982

Date

Edwin E. Huddleston, III
Edwin E. Huddleston, III
Counsel for the Carter-Mondale
Presidential Committee, Inc.

82040321964

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:)
North American Systems, Inc.) MUR 1314
and Vincent G. Marotta)

CONCILIATION AGREEMENT

Pursuant to information which came to its attention and after investigation, the Federal Election Commission (hereinafter "the Commission") determined that there was probable cause to believe that North American Systems, Inc., Respondent, (hereinafter "NAS") and Vincent G. Marotta, its Chairman ("Individual Respondent") violated 2 U.S.C. 5441b(a), a provision of the Federal Election Campaign Act of 1971 as amended ("the Act"); by using the office facilities of North American Systems, Inc., and as to Vincent G. Marotta by consenting as a corporate officer or director to the use of said facilities, in excess of that which is occasional, isolated or incidental, to organize a Carter-Mondale Presidential Fundraiser Dinner held on May 29, 1980.

NOW, THEREFORE, and notwithstanding, in order to settle and dispose of this matter and finally and formally end these proceedings, and in the spirit of conciliation as provided for in the Act and as suggested by the Commission, the Commission and Respondents duly enter into conciliation pursuant to 2 U.S.C. 5437g(a)(4)(A)(i) and do hereby agree as follows:

92040321965

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have hereto stated their position as to why no action should be taken in this matter.

III. However, Respondents enter voluntarily into this Agreement with the Commission in order to end these proceedings and terminate this matter.

IV. The parties hereto agree on the following pertinent facts:

1. NAS is an incorporated entity of which Vincent G. Marotta is the Chairman.

2. During the month of May, 1980, employees of NAS engaged in preparation activity for a May 29, 1980, fundraising dinner conducted by representatives of the Carter-Mondale Presidential Committee. The activities included labeling and stuffing envelopes, mailing invitations, constructing, maintaining, and running computer lists for said fundraiser, making follow-up telephone calls, and keeping records. These activities were conducted during normal working hours and the employees were paid therefor by NAS.

82040321966

3. At least 54 employees of NAS spent a total of approximately 468 work hours on preparation activity for the May 29, 1980, fundraiser.

4. NAS employees utilized the normal office facilities of NAS's plant for their preparation activity, to wit: office space, office furniture, telephones, typewriters and the NAS computer.

5. NAS submitted an invoice to the Carter-Mondale Presidential Committee on June 9, 1980, for \$3,494.12, as reimbursement for the cost of wages for the employees engaged in the foregoing described preparation activity, and \$2,646.05, as reimbursement for the costs of postage (a total of \$6,140.17) as expended by NAS. These were all the costs which represented an ascertainable increase of overhead for NAS.

6. NAS did not bill the Carter-Mondale Presidential Committee for the use of its facilities.

7. Respondent Marotta was aware that NAS billed the Carter-Mondale Presidential Committee only for the salary expenses of NAS employees and the postage.

82040321967

WHEREFORE, Respondents further agree:

V. 1) That 2 U.S.C. §441b(a) and 11 C.F.R. §114.9(a) require that a corporation be reimbursed for the use of its facilities when such facilities are used in excess of "occasional, isolated or incidental use" by stockholders and employees to conduct individual volunteer activities.

2) Respondents shall conduct any future fundraising activities in accordance with the provision of 11 C.F.R. §114.9(a).

3) Respondent, NAS, shall bill the Carter-Mondale Presidential Committee additionally in the amount of \$3,090.00, being the reasonable value of the use of the aforesaid facilities.

4) That reasonable collection efforts will be pursued to ensure payment of the monies due NAS from the Carter-Mondale Presidential Committee.

5) A civil penalty of Seven Hundred Fifty Dollars (\$750.00) will be paid to the Treasurer of the United States by NAS pursuant to 2 U.S.C. §437g(a)(5)(A) within thirty (30) days from the date this agreement becomes effective.

82040321968

VI. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement; it being further understood and agreed that upon the effective date of this Conciliation Agreement, unless not complied with, the provisions of 2 U.S.C. §437g(a) (4) (A) (i) shall become operative to serve as a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (6) (A).

September 1, 1981
DATE

Charles N. Steele
CHARLES N. STEELE,
General Counsel

Aug 22, 1981
DATE

Vincent G. Marotta
VINCENT G. MAROTTA, Chairman
North American Systems, Inc.

Aug 22, 1981
DATE

Vincent G. Marotta
VINCENT G. MAROTTA,
Individually

92040321969



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edwin F. Huddleston
918 - 16th Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Huddleston:

This is to advise you that the file in this matter has been closed. The Commission will make appropriate materials in the file public. As 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission, please advise us in writing if you wish any such information to become public. Should you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By:

Kenneth A. Gross
Associate General Counsel

AS
4/13/82

92040321970



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert T. DeVoy, Jr.
Ragan and Mason
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. DeVoy:

This is to advise you that the entire file in the above-captioned matter has been closed. The Commission will make appropriate materials in the file public. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

As you know, the Commission's Freedom of Information Officer informed you by letter dated February 9, 1982, that the entire file in this matter will be made public with the exception of the names of the employees of North American Systems, Inc. who were identified in the course of the investigation but who were not subjects of the investigation, and conciliation materials which are exempt pursuant to 2 U.S.C. § 437g(a)(4)(B). You have requested the Commission to review that determination. The Commission's decision on your request will govern whether any additional materials will be withheld from the public record. You will be advised of that decision as soon as it is made.

If you have any questions, please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel.

By:

Kenneth A. Gross
Associate General Counsel

JK
4/13/82

82040321971



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

J. William Petro
United States Attorney
Northern District of Ohio
U.S. Department of Justice
U.S. Courthouse
Cleveland, Ohio 44114

Re: MUR 1314

Dear Mr. Petro:

This is in reference to the above-captioned matter involving Vincent Marotta, Thomas Marotta, North American Systems, Inc., and the Carter-Mondale Presidential Committee which your office referred to the Commission on August 18, 1980.

After conducting an investigation of this matter, the Commission determined that there is probable cause to believe that Vincent Marotta, North American Systems, Inc., and the Carter-Mondale Presidential Committee violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and has now entered into conciliation agreements with them. Copies of these agreements are enclosed for your information.

We appreciate your cooperation in helping the Commission meet its enforcement responsibilities under the Act. If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4057.

Sincerely,

Charles W. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

KAG
4/13/82

Enclosures
Conciliation Agreements (2)

92040321972

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Carter/Mondale Presidential) MUR 1314
Committee)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 12, 1982, the Commission decided by a vote of 6-0 to Close the File in MUR 1314 and send the letters as attached to the General Counsel's April 8, 1982 Memorandum to the Commission.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively in this matter.

Attest:

4-12-82

Date

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

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

4-8-82, 12:44
4-8-82, 4:00

82040321973

April 8, 1982

MEMORANDUM TO: Marjorie W. Emmons
FROM: Phyllis A. Kayson
SUBJECT: MUR 1314

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

Thank you.

Attachment:

cc: White

82040321974



SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

82 APR 8 PM 2:44

April 8, 1982

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

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

SUBJECT: MUR 1314

On February 9, 1982, the Commission accepted the Conciliation Agreement signed by counsel for the Carter-Mondale Presidential Committee ("Committee"). The civil penalty (\$750) imposed upon the Committee in this matter was received by this office on March 11, 1982 (Attachment 1). As the file in this matter has been closed with respect to the other respondents involved, and the Committee has paid the required civil penalty, the General Counsel recommends that the Commission close the entire file in this matter.

Recommendations

1. Close the file in MUR 1314
2. Approve the attached letters.

Attachments

- 1 - Civil penalty (2 pages)
- 2 - Letters (3) (3 pages)

82040321975

COMMITTEE, INC.

Chairman
Manager
Treasurer

March 9, 1982

2:30 PM
All: 11

U.S. Treasury
c/o Maura White
Office Of The General Counsel
Federal Election Commission
1325 K St., NW
Washington, DC

Dear Ms. White:

Enclosed please find a check made out to the U.S. Treasury
in the amount of \$750 for civil penalties incurred in con-
nection with MUR 1314.

Sincerely,

Madeline Phelps
Madeline Phelps

82040321976

Attachment 1 p 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

**CARTER-MONDALE PRESIDENTIAL
COMMITTEE, INC.
OPERATING ACCOUNT**

.9659

March 9, 1982 19

15-720
540

**PAY
TO THE ORDER OF**

PAYED 750.00

\$ 750.00

US Treasury
c/o Maura White
Office of the General Counsel
Federal Election Commission

Wm F. Sullivan

DETACH AND RETAIN THIS STATEMENT

THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW

IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT REQUIRED

DATE	DESCRIPTION	AMOUNT
3/9/82	Civil Penalties in connection with MR 1314	\$750.00

82040521971



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert T. DeVoy, Jr.
Ragan and Mason
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. DeVoy:

This is to advise you that the entire file in the above-captioned matter has been closed. The Commission will make appropriate materials in the file public. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

As you know, the Commission's Freedom of Information Officer informed you by letter dated February 9, 1982, that the entire file in this matter will be made public with the exception of the names of the employees of North American Systems, Inc. who were identified in the course of the investigation, but who were not subjects of the investigation, and conciliation materials which are exempt pursuant to 2 U.S.C. § 437g(a)(4)(B). You have requested the Commission to review that determination. The Commission's decision on your request will govern whether any additional materials will be withheld from the public record. You will be advised of that decision as soon as it is made.

If you have any questions, please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By:

Kenneth A. Gross
Associate General Counsel

Attachment 2 p.1

8204032178



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edwin F. Huddleston
918 - 16th Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Huddleston:

This is to advise you that the file in this matter has been closed. The Commission will make appropriate materials in the file public. As 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission, please advise us in writing if you wish any such information to become public. Should you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By:

Kenneth A. Gross
Associate General Counsel

Attachment 2 p.2

92040321979



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

J. William Petro
United States Attorney
Northern District of Ohio
U.S. Department of Justice
U.S. Courthouse
Cleveland, Ohio 44114

Re: MUR 1314

Dear Mr. Petro:

This is in reference to the above-captioned matter involving Vincent Marotta, Thomas Marotta, North American Systems, Inc., and the Carter-Mondale Presidential Committee which your office referred to the Commission on August 18, 1980.

After conducting an investigation of this matter, the Commission determined that there is probable cause to believe that Vincent Marotta, North American Systems, Inc., and the Carter-Mondale Presidential Committee violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and has now entered into conciliation agreements with them. Copies of these agreements are enclosed for your information.

We appreciate your cooperation in helping the Commission meet its enforcement responsibilities under the Act. If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Conciliation Agreements (2)

Attachment 2 p.3

82040321980

5

RE-ELECTION
COMMITTEE, INC.

Chairman
Manager
Treasurer

12 MAR 11 AM 11

RECEIVED
GENERAL COUNSEL

March 9, 1982

U.S. Treasury
c/o Maura White
Office Of The General Counsel
Federal Election Commission
1325 K St., NW
Washington, DC

Dear Ms. White:

Enclosed please find a check made out to the U.S. Treasury
in the amount of \$750 for civil penalties incurred in con-
nection with MIR 1314.

Sincerely,

Madeline Phelps
Madeline Phelps

82040321901

8 2 0 4 0 3 2 1 9 8 2

**CARTER-MONDALE PRESIDENTIAL
COMMITTEE, INC.
OPERATING ACCOUNT**

.9659

March 9, 1982 19

12-720

The National
BANK OF
WASHINGTON Washington, D.C.

PAY
TO THE ORDER OF

PAY \$750.00

\$ 750.00

US Treasury
c/o Maura White
Office of the General Counsel
Federal Election Commission

Wm F. Sawyer

DETACH AND RETAIN THIS STATEMENT

THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW

IF NOT CORRECT PLEASE NOTIFY US PROMPTLY, NO DEPOSIT CHECKS

DATE	DESCRIPTION	AMOUNT
3/9/82	Civil Penalties in connection with MIR 1314	\$750.00

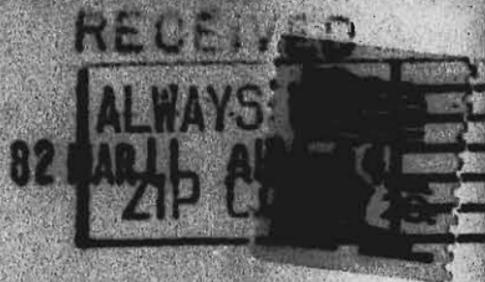
VS-1

3 CARTER/MONDALE
6 RE-ELECTION
COMMITTEE, INC.

680 L STREET, N.W., WASHINGTON, D.C. 20001

6 710 Bethesda Ave, Suite 302
1 Bethesda Md 20814
2
3
4
5
6
7
8
9
0

U.S. Treasury
c/o Maura White
Office of the General Counsel
FEC.
1325 K St, NW
Washington, DC





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 10, 1982

Edwin F. Huddleston, III
918 - 16th Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Huddleston:

On February 9, 1982, the Commission accepted the conciliation agreement signed by you on behalf of your client, the Carter-Mondale Presidential Committee, in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. Pursuant to the agreement, your client is required to pay a civil penalty of \$750 within 30 days after my execution of the agreement. Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

If you have any questions please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

BY:

Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

82040321984

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Carter-Mondale Presidential) NUR 1314
Committee, Inc.)

02 JAN 29 4:20

RECEIVED
Office of the
GENERAL COUNSEL

CONCILIATION AGREEMENT

This matter having been initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities, and after reason to believe having been found that the Carter-Mondale Presidential Committee, Inc. ("Respondent") violated 2 U.S.C. § 441b(a) by accepting an in-kind corporate contribution from North American Systems, Inc.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

82040321985

III. Respondent enters voluntarily into this agreement with the Commission.

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

1. Respondent is the principal campaign committee of Jimmy Carter for the 1980 primary elections.

2. On May 29, 1980, Respondent conducted a fund-raising event in Cleveland, Ohio.

3. The fundraising dinner was chaired by Vincent Marotta, President of North American Systems, Inc., an incorporated entity.

4. During the month of May, 1980, employees of North American Systems, Inc., engaged in preparation activity for the fundraiser during their normal working hours on the premises of North American Systems, Inc. Preparation activity included labeling and stuffing envelopes, mailing invitations, constructing, maintaining, and running computer lists, making telephone calls, recording responses, and keeping records.

5. North American Systems, Inc., paid its employees for the time they conducted preparation activity for the fundraiser in an amount equal to the employees' normal hourly wages.

6. At least 54 employees of North American Systems, Inc., spent a total of 468.75 work hours on preparation

82040321986

activity for the fundraiser. In addition, Vincent Marotta and Thomas Marotta, the Vice-President of North American Systems, Inc., spent a substantial amount of time during the three-week period prior to the fundraiser conducting preparation activity.

7. Employees of North American Systems, Inc., who conducted preparation activity for the fundraiser utilized the office space, office furniture, telephones, typewriters, and computer of North American Systems, Inc., to conduct such preparation activity.

8. North American Systems, Inc., submitted an invoice to the Carter-Mondale Presidential Committee on June 9, 1980, in the amount of \$2,646.05 for the cost of postage, and in the amount of \$3,494.12 for the cost of the wages it paid its employees while the employees engaged in preparation activity for the fundraiser.

9. North American Systems, Inc., did not bill, and Respondent did not pay, for the use of the facilities of North American Systems, Inc.

10. The usual and normal rental charge in the commercial market of the facilities of North American Systems, Inc., which were utilized to conduct preparation activity is, as estimated by North American Systems, Inc., \$3,090.

WHEREFORE, Respondent further agrees:

V. 1. That 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(a) require a political committee to reimburse a corporation for the use of its facilities when more than "occasional, isolated

82040321987

or incidental use" is made of such facilities by stockholders and employees to conduct individual volunteer activities on behalf of the political committee; and

2. To conduct any future fundraising activities in accordance with the provision of 11 C.F.R. § 114.9(a).

VI. To settle this matter without the necessity of further protracted proceedings, Respondent agrees to pay a civil penalty of Seven Hundred and Fifty Dollars (\$750) to the Treasurer of the United States pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. Respondent will reimburse North American Systems, Inc., in the amount of Three Thousand Ninety Dollars (\$3,090) for the use of the corporation's facilities.

VIII. Respondent shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. § 431, et seq.

IX. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

82040321988

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

XI. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to pay the civil penalty provided for in Paragraph VI of this agreement.

Feb. 10, 1982

Date

Charles N. Steele
General Counsel

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

January 28, 1982

Date

Edwin E. Huddleston, III
Edwin E. Huddleston, III
Counsel for the Carter-Mondale
Presidential Committee, Inc.

82040321909



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 22, 1981

Robert Devoy, Jr.
Ragan and Mason
The Farragut Building
900 17th Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Devoy:

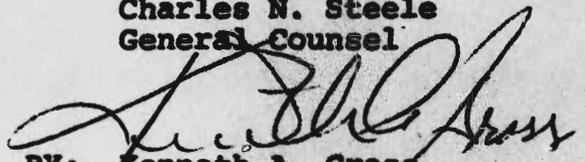
This is in response to your letter dated October 14, 1981, in which you request guidance as to whether your clients, Vincent Marotta and North American Systems, Inc., may seek to implement the requirements of the conciliation agreement entered between them and the Commission, prior to the closing of the entire file in this matter.

It is my view that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) do not bar communications between your clients and the Carter-Mondale Presidential Committee, Inc. necessary to carry out the terms of your clients' agreement. Thus, you may immediately seek to enforce the conditions of the conciliation agreement involved herein. With regard to making public any information concerning this matter, the confidentiality requirements of the statute, of course, remain in effect until the entire file has been closed. As stated in my letter to you dated September 16, 1981, we will notify you when the entire file has been closed.

If you have any questions, please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

82040321990

HAND DELIVERED

RECEIVED
Call 5663
OCT 19 10:41

EDWIN E. HUDDLESON, III
WORLD CENTER BUILDING
210 15TH STREET, N.W.
WASHINGTON, D. C. 20005
TELEPHONE 727-6800

October 16, 1981

The Honorable John W. McGarry
Chairman, Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

HAND DELIVERED

OCT 19 12:01

RECEIVED
GENERAL COUNSEL

Attention: Maura White, Esq.

Re: MUR 1314

Dear Chairman McGarry:

This will confirm the willingness of the Carter-Mondale Committee, Inc. to enter into negotiations directed towards reaching a conciliation agreement in this case.

I will be out of town on business from Sunday, October 18th through Monday, November 2d.

Sincerely,

Edwin E. Huddleson, III

Edwin E. Huddleson, III

62040331991

EDWIN E. HUDDLESON, III
WORLD CENTER BUILDING
918 16TH STREET, N. W.
WASHINGTON, D. C. 20006

RECEIVED

81 OCT 19 A10:41

92040321

The Honorable John Warner McGarry
Chairman, Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

HAND DELIVERED

EDWIN E. HUDDLESON, III
WORLD CENTER BUILDING
916 16TH STREET, N. W.
WASHINGTON, D. C. 20008

82040321093

RECEIVED

81 OCT 19 A10:42

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

HAND DELIVERED

EDWARD J. BRUNNER
ROBERT T. DEVOT, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GEORGE B. HARTSOB, JR.
GENE C. LANGE
SERGALD A. MALLA
JOHN MASON
EDWARD A. McBERNOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM R. RAGAN
EDWARD H. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

LAW OFFICES
RAGAN & MASON
THE PARKHOUT BUILDING
800 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

(202) 298-4750

CABLE ADDRESS: DONRALEGAL

TELETYPE: 710-822-9370

TELECOPIER: (202) 298-4110

GEORGE A. BROWNELL
OF COUNSEL
MEMBER NEW YORK BAR
1345 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10019
(212) 750-2000

October 14, 1981

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: M.U.R. 1314
Conciliation Agreement

Dear Mr. Gross:

Under the terms of the Conciliation Agreement entered into between our client North American Systems, Inc. and the Federal Election Commission, the Respondent is required to take the following action:

- "3) Respondent, NAS, shall bill the Carter-Mondale Presidential Committee additionally in the amount of \$3,090.00, being the reasonable value of the use of the aforesaid facilities.
- 4) That reasonable collection efforts will be pursued to ensure payment of the monies due NAS from the Carter-Mondale Presidential Committee."

In view of your letter of September 16, 1981, we wish your advice as to whether we might proceed to comply with the terms of the Conciliation Agreement at this time. Your letter admonishing that the "confidentiality provisions of 2 U.S.C. §437g(a)(4)(B) and §437g(a)(12)(A) remain in effect until the entire matter has been closed." leaves us with some doubt as to whether we should proceed now or await the closing of the entire matter. We shall refrain

82040321994

OCT 16 AM 11:41

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Benneth A. Gross, Esquire
October 14, 1981
Page 3

from taking any action with regard to the above quoted sections of the Agreement until we receive your advice.

Thank you very much for your consideration of this request.

Very truly yours,

RAGAN & MASON

Robert T. Devoy, Jr.
Robert T. Devoy, Jr.

cc: Scott Thomas, Esq.
Maura White, Esq.

82040321995

8 2 0 4 0 3 2 1 9 6

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

HAND DELIVERY

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

82040321997

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

652

DONALD J. BRIDGES
 ROBERT T. BROWN, JR.
 GARY S. EDWARDS
 FRANCIS W. FRASER
 GEORGE S. HARTSON, JR.
 GENE S. LANGE
 GERALD A. MALIA
 JOHN NASON
 EDWARD A. NIDERHOTT, JR.
 PAUL J. NELLIGOTT
 ANDREW A. NORMANDEAU
 WILLIAM F. RAGAN
 EDWARD H. SHEA
 JAMES V. STANTON
 JOSEPH R. TENNANT
 JOHN E. VARGO

LAW OFFICES
Robert S. Marshall
 GENERAL COUNSEL
 THE FEDERAL BUILDING
 600 SEVENTEENTH STREET, N.W.
 WASHINGTON, D.C. 20540
 (202) 296-4700
 CABLE ADDRESS: CONRADSEAL
 TWX: 710-225-6276
 TELECOPIER: (202) 296-4140

THOMAS H. DONNELLY
 ATTORNEY
 FEDERAL BUREAU OF INVESTIGATION
 U.S. DEPARTMENT OF JUSTICE
 400 ANDERSON DRIVE
 WASHINGTON, D.C. 20535
 (202) 755-6000

October 14, 1981

Kenneth A. Gross, Esquire
 Associate General Counsel
 Federal Election Commission
 1325 K Street, N. W.
 Washington, D. C. 20463

Re: M.U.R. 1314
Conciliation Agreement

Dear Mr. Gross:

Under the terms of the Conciliation Agreement entered into between our client North American Systems, Inc. and the Federal Election Commission, the Respondent is required to take the following action:

- "3) Respondent, NAS, shall bill the Carter-Mondale Presidential Committee additionally in the amount of \$3,090.00, being the reasonable value of the use of the aforesaid facilities.
- 4) That reasonable collection efforts will be pursued to ensure payment of the monies due NAS from the Carter-Mondale Presidential Committee."

In view of your letter of September 16, 1981, we wish your advice as to whether we might proceed to comply with the terms of the Conciliation Agreement at this time. Your letter admonishing that the "confidentiality provisions of 2 U.S.C. §437g(a)(4)(B) and §437g(a)(12)(A) remain in effect until the entire matter has been closed." leaves us with some doubt as to whether we should proceed now or await the closing of the entire matter. We shall refrain

82048327

Kenneth A. Cross, Esquire
October 14, 1981
Page 2

from taking any action with regard to the above quoted sections of the Agreement until we receive your advice.

Thank you very much for your consideration of this request.

Very truly yours,

RAGAN & MASON

Robert T. Devoy, Jr.

cc: Scott Thomas, Esq.
✓ Maura White, Esq.

62040321999

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

8 2 4 0 3 2 2 0 0 0

Scott Thomas, Esquire
General Counsel's Office
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

82040322001

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

Maura White, Esquire
General Counsel's Office
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 16, 1981

William Kraus
Garofili, Kraus, Hill, Roth
and Bartunek
950 Bond Court Building
1300 East Ninth Street
Cleveland, Ohio 44114

Re: MUR 1314

Dear Mr. Kraus:

This is to acknowledge receipt of your letter dated September 8, 1981, and payment of a civil penalty in the above-captioned matter. Accordingly, the file in this matter has been closed as it pertains to your clients, North American Systems, Inc. and Vincent Marotta. This matter will become part of the public record within 30 days, after it has been closed with respect to all other respondents involved. Should you wish to submit any factual or legal materials to appear on the public record please do so within ten days. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

BY:


Kenneth A. Gross
Associate General Counsel

cc: James Stanton
Robert Devoy

82040322002

COPIES RECEIVED
3cc # 543/

GAROFOLI, KRAUS, HILL, ROTH & BARTUNER 81 SEP 10 P12:38
ATTORNEYS & COUNSELORS AT LAW

ANTHONY J. GAROFOLI
WILLIAM J. KRAUS
DAVID G. HILL
DENNIS A. ROTH
JOSEPH W. BARTUNER
KENNETH A. KRAUS
JOHN A. POLITO
PATRICIA S. KLERI
NARIAN C. BRODER
CAROLE A. ROTH
MARK S. SCHILDHOUSE
GARY S. OHIN
CAROL ROLF

880 DEWE COURT BUILDING
1200 EAST NINTH STREET
CLEVELAND, OHIO 44114

TELEPHONES
(216) 622-1400
(216) 691-1800

September 8, 1981

VIA CERTIFIED MAIL NO.: P33 778335

Federal Election Commission
Washington, D.C. 20463

Attn: Mr. Kenneth A. Gross,
Associate General Counsel

RE: MIR 1314

71 SEP 10 P 3: 12
RECEIVED
OFFICE OF THE
GENERAL COUNSEL

32040322003

Dear Mr. Gross:

Reference is made to the conciliation agreement in the above captioned matter signed by Vincent G. Marotta and North American Systems, Inc., and accepted by the Commission on September 1, 1981.

Paragraph V-5.) of said agreement requires the payment by North American Systems, Inc. of a \$750.00, civil penalty payable to the Treasurer of the United States; and accordingly check number 1720P of North American Systems, Inc. dated September 4, 1981, in the amount of \$750.00, payable to the Treasurer of the United States is herewith enclosed in compliance with said conciliation agreement.

Pursuant to your September 2, 1981, letter, it is our understanding that this matter will now be closed; and your confirming letter in this regard will be appreciated.

Very truly yours,

William J. Kraus
William J. Kraus

WJK/dw

cc: James V. Stanton, Esq.
Robert Devoy, Esq.
Ragan and Mason

Mr. Vincent G. Marotta,
Chairman of the Board
North American Systems, Inc.

NORTH AMERICAN SYSTEMS, inc.

34780 miles road
P.O. Box 46026
Shaker Heights, Ohio 44146

DATE	INVOICE	AMOUNT

6-88
410

1720 P

REGISTERED
NEW 200885 750 DOLS 00 CTS

DOLLARS

DATE	TO THE ORDER OF	CHECK AMOUNT	DISCOUNT	CHECK AMOUNT
9-4-81	Treasurer of the United States	750 ⁰⁰		750 ⁰⁰

CLEVELAND TRUST CO. WARRENSVILLE-FARNSLEIGH OFFICE
SHAKER HEIGHTS, OHIO 44122

Luigi M. ...
9 2 0 4 0 3 8 7 8 0

GAROFOLI, KRAUS, HILL, ROTH & BARTUNER
ATTORNEYS & COUNSELORS AT LAW

950 BOND COURT BUILDING
1300 EAST NINTH STREET
CLEVELAND, OHIO 44114

81 SEP 10

CLEVELAND
PI 2:30
SEP-9 '81
OHIO

3
2
0
4
0
3
2
2
0
0
5

CERTIFIED
P33778335
MAIL

Federal Election Commission
Washington, D.C. 20463

Return Receipt Requested



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 2, 1981

James Stanton
Robert Devoy
Ragan and Mason
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Messrs. Stanton and Devoy:

On September 1, 1981, the Commission accepted the proposed conciliation agreement signed by your clients, Vincent Marotta and North American Systems, Inc., in settlement of a violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(a). Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

The file in this matter will remain open until your client has complied with paragraph V 5 of the agreement which requires the payment of a \$750 civil penalty. Please forward the civil penalty, payable to the Treasurer of the United States, to the Commission.

As you may know 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

cc: William Kraus

82040322006

James Stanton
Robert Devoy
Ragan and Hasbun
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Messrs. Stanton and Devoy:

On _____, 1981, the Commission accepted the proposed conciliation agreement signed by your clients, Vincent Marotta and North American Systems, Inc., in settlement of a violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.5(a). Enclosed you will a fully executed copy of the final conciliation agreement for your files.

The file in this matter will remain open until your client has complied with paragraph V 5 of the agreement which requires the payment of a \$750 civil penalty. Please forward the civil penalty, payable to the Treasurer of the United States, to the Commission.

As you may know 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Sincerely,

Charles N. Steele
General Counsel

mw 9/1/81

BY: Kenneth A. Gross
Associate General Counsel

cc: William Krause

82040322007

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:)
North American Systems, Inc.) MUR 1314
and Vincent G. Marotta)

CONCILIATION AGREEMENT

Pursuant to information which came to its attention and after investigation, the Federal Election Commission (hereinafter "the Commission") determined that there was probable cause to believe that North American Systems, Inc., Respondent, (hereinafter "NAS") and Vincent G. Marotta, its Chairman ("Individual Respondent") violated 2 U.S.C. §441b(a), a provision of the Federal Election Campaign Act of 1971 as amended ("the Act"), by using the office facilities of North American Systems, Inc., and as to Vincent G. Marotta by consenting as a corporate officer or director to the use of said facilities, in excess of that which is occasional, isolated or incidental, to organize a Carter-Mondale Presidential Fundraiser Dinner held on May 29, 1980.

NOW, THEREFORE, and notwithstanding, in order to settle and dispose of this matter and finally and formally end these proceedings, and in the spirit of conciliation as provided for in the Act and as suggested by the Commission, the Commission and Respondents duly enter into conciliation pursuant to 2 U.S.C. §437g(a)(4)(A)(i) and do hereby agree as follows:

82040322008

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have hereto stated their position as to why no action should be taken in this matter.

III. However, Respondents enter voluntarily into this Agreement with the Commission in order to end these proceedings and terminate this matter.

IV. The parties hereto agree on the following pertinent facts:

1. NAS is an incorporated entity of which Vincent G. Marotta is the Chairman.

2. During the month of May, 1980, employees of NAS engaged in preparation activity for a May 29, 1980, fundraising dinner conducted by representatives of the Carter-Mondale Presidential Committee. The activities included labeling and stuffing envelopes, mailing invitations, constructing, maintaining, and running computer lists for said fundraiser, making follow-up telephone calls, and keeping records. These activities were conducted during normal working hours and the employees were paid therefor by NAS.

82040322009

3. At least 54 employees of NAS spent a total of approximately 468 work hours on preparation activity for the May 29, 1980, fundraiser.

4. NAS employees utilized the normal office facilities of NAS's plant for their preparation activity, to wit: office space, office furniture, telephones, typewriters and the NAS computer.

5. NAS submitted an invoice to the Carter-Mondale Presidential Committee on June 9, 1980, for \$3,494.12, as reimbursement for the cost of wages for the employees engaged in the foregoing described preparation activity, and \$2,646.05, as reimbursement for the costs of postage (a total of \$6,140.17) as expended by NAS. These were all the costs which represented an ascertainable increase of overhead for NAS.

6. NAS did not bill the Carter-Mondale Presidential Committee for the use of its facilities.

7. Respondent Marotta was aware that NAS billed the Carter-Mondale Presidential Committee only for the salary expenses of NAS employees and the postage.

82040322010

WHEREFORE, Respondents further agree:

- V. 1) That 2 U.S.C. §441b(a) and 11 C.F.R. §114.9(a) require that a corporation be reimbursed for the use of its facilities when such facilities are used in excess of "occasional, isolated or incidental use" by stockholders and employees to conduct individual volunteer activities.
- 2) Respondents shall conduct any future fundraising activities in accordance with the provision of 11 C.F.R. §114.9(a).
- 3) Respondent, NAS, shall bill the Carter-Mondale Presidential Committee additionally in the amount of \$3,090.00, being the reasonable value of the use of the aforesaid facilities.
- 4) That reasonable collection efforts will be pursued to ensure payment of the monies due NAS from the Carter-Mondale Presidential Committee.
- 5) A civil penalty of Seven Hundred Fifty Dollars (\$750.00) will be paid to the Treasurer of the United States by NAS pursuant to 2 U.S.C. §437g(a)(5)(A) within thirty (30) days from the date this agreement becomes effective.

82040322011

VI. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement; it being further understood and agreed that upon the effective date of this Conciliation Agreement, unless not complied with, the provisions of 2 U.S.C. §437g(a)(4)(A)(i) shall become operative to serve as a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (6)(A).

September 1, 1981
DATE

Charles N. Steele
CHARLES N. STEELE,
General Counsel

Aug 22, 1981
DATE

Vincent G. Marotta
VINCENT G. MAROTTA, Chairman
North American Systems, Inc.

Aug 22, 1981
DATE

Vincent G. Marotta
VINCENT G. MAROTTA,
Individually

82040322012

RECEIVED
GCT# 5367
81 AUG 27 P4: 35

FEDERAL ELECTION COMMISSION
EDWIN E. HADDLESON III
WOODRUM CENTER BUILDING
918 15th STREET, N.W.
WASHINGTON, D.C. 20008
TELEPHONE 773-8300
81 AUG 28 P3: 01

The Honorable John Warner McGarry
Chairman, Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

August 27, 1981

Re: MUR 1314

Dear Chairman McGarry:

The Carter-Mondale Presidential Committee, Inc. ["Committee"] submits this response to your letter of July 17, 1981. Your letter indicates that the Commission has investigated North American Systems, Inc. ["NAS"] concerning its use of corporate facilities and staff to make advance preparations for a Carter-Mondale fundraiser held in May 1980. Quite apart from any possible violations of law by NAS, you state that the Commission has found "reason to believe" that the Committee may have violated 2 U.S.C. §441b(a) by "knowingly" accepting unreimbursed in-kind corporate contributions from NAS. We have two basic comments in reply.

1. The Carter-Mondale Committee will of course pay to NAS whatever reasonable reimbursement is ultimately determined to be owing to NAS under the Federal Election Campaign Act.* We will review the outcome of the Commission's investigation of NAS, with the aim of expeditiously resolving any aspects of this matter that involve the Committee's reimbursement and reporting obligations.

While the Committee has no independent knowledge of NAS's detailed operations to prepare for the May 1980 fundraiser, we are concerned about some of the legal principles reflected in the "General Counsel's Factual and Legal Analysis" ["GC Report"] attached to your letter. Two examples will illustrate our concerns: (a) The implication of the GC Report (p. 3) is that "individual volunteer activity" by corporate employees is impossible, as a matter of law, whenever a corporate officer

* This would include commercially reasonable debt settlement as permitted by the Commission's regulations.

82040322013

RECEIVED
GENERAL COUNSEL
81 AUG 28 P4: 35

31 AUG 27 4:38

The Honorable John Warner McGarry
Page Two
August 27, 1981

initiates a fundraising project and seeks out "volunteers" from corporate employees. Is this the Commission's view of the law? (b) The Commission's own regulations make it clear that "no contribution results if [a salaried] employee engages in political activity during what would otherwise be a regular work period, provided that the time taken or released time is made up or completed by the employee within a reasonable time." 11 C.F.R. §100.7(a)(3)(i); and see MUR 890 (April 30, 1979). This principle seems highly relevant to determining whether (and to what extent) NAS made a "contribution" by virtue of the fact that NAS employees worked on political activities during regular work hours (with one employee spending 104 hours and 53 other employees an average of 6.9 hours each). Why isn't this principle discussed or even mentioned as relevant in the GC Report?

2. The Committee did not "knowingly" accept an unreimbursed in-kind corporate contribution, in violation of 2 U.S.C. §441b(a). The Committee did not know (and could not reasonably have known) the very detailed, specific facts about the day-to-day use of NAS staff and facilities, in conjunction with preparations for the May 1980 fundraiser, which allegedly require the Committee to give additional reimbursement to NAS. Only NAS (and the Commission after its investigation) could have access to the very detailed information about the use of NAS facilities and staff that determine whether there was an "occasional, isolated, or incidental" use of NAS corporate facilities for "individual volunteer activity" (11 C.F.R. §114.9(a)) or an in-kind corporate contribution by NAS that calls for additional reimbursement of NAS by the Committee.

The Committee specifically provided the organizers of the May 1980 fundraiser with a manual explaining the applicable campaign election laws. [See attached affidavit of Timothy W. Finchem, National Fundraising Director of the Committee]. NAS was specifically requested to bill the Committee for all reimburseable expenses. [Id.] The invoices submitted to the Committee by NAS seemed reasonable. [Id.] We know of no campaign committee that would have the time or resources necessary to make a more detailed check into outside organizations' pre-fundraising activities of the sort that the Commission undertook in its investigation of NAS in this matter under review. The Committee's extensive efforts to comply with the law in

62040322014

The Honorable John Warner McGarry
Page Three
August 27, 1981

connection with the May 1980 fundraiser were more than reasonable.

The Commission is aware, we are sure, of the view recently expressed by the House Administration Committee that

the Commission expends too large a share of its resources pursuing minor, inadvertent violations of campaign law. As a prime example, the Commission appears to misconceive the purpose of the conciliation process. The purpose is not punitive but corrective. The Commission's practice of requiring an admission of guilt is not required by statute, and runs contrary to the principle of voluntary compliance. The payment of a fine, before the Commission concludes a conciliation agreement, proceeds from this misconception. It is the opinion of the committee that if the Commission would more closely follow the legislative intent of the statute, substantial resources could be saved in this as well as in other areas of enforcement.

H.R. Rept. 97-30, 97th Cong., 1st Sess. p. 2 (May 7, 1981).

This case against the Committee surely involves, at most, an instance of "minor, inadvertent violations of campaign law". No punitive action against the Committee is warranted in these circumstances.

OF COUNSEL:

Timothy G. Smith
Carter-Mondale
Presidential Com-
mittee, Inc.
1666 K Street, N.W.
Washington, D.C. 20006

Sincerely,

Edwin E. Huddleson, III

Edwin E. Huddleson, III
918-16th Street, N.W.
Washington, D.C. 20006
202-737-6580

Attorney for the Carter-Mondale
Presidential Committee, Inc.

82040322015

BEFORE THE
FEDERAL ELECTION COMMISSION

IN RE MUR 1314 1
AFFIDAVIT OF TIMOTHY W. FINCHEM 1

District of Columbia, ss.:

Timothy W. Finchem, being duly sworn, deposes and says:

1. During all times relevant to this matter, I served as National Fundraising Director of the Carter-Mondale Presidential Committee, Inc. ("the Committee"). I am generally familiar with the fundraising event held on May 29, 1980, of which Mr. Vincent Marrotta was dinner chairman.

2. In connection with such events, it was Committee policy and practice to inform local event hosts of the requirements of the federal election laws, including the relevant contribution limitations and prohibitions. Typically, local fundraisers were provided with a packet of materials, including a legal summary. In addition, where it appeared that corporate facilities might be used by an organizer or host of an event, it was Committee policy and practice to request that the organizer/host arrange for the corporation in question to invoice the Committee for payment of an appropriate reimbursement amount. In addition, the Committee routinely made available its fundraising and legal office staff to answer any particular questions a local fundraiser might have.

3. In the case of the event in question, Mr. Terry MacAuliffe of my staff visited Mr. Marrotta approximately 10 days

82040322016

before the event to check on the preparations for it. I have been informed that all the above general Committee policies were observed with respect to this event. Specifically, Mr. MacAuliffe has related:

- (a) that Mr. Marrotta was given the package of written materials on contribution limitations, prohibitions, etc., and an oral explanation of its contents;
- (b) that Mr. Marrotta was told to submit an invoice to the Committee for the expenses of the event, including reimbursement to his company;
- (c) that Mr. Marrotta was offered additional assistance in organizing the event, which he declined;
- (d) that Mr. Marrotta mentioned that he was keeping track of the time of his secretary and others working on the event;
- (d) that satisfied that the preparations for the event were being adequately handled, Mr. MacAuliffe did not remain in Cleveland for the remainder of the pre-event period, but returned to Washington.

4. Thus, the Committee had no detailed knowledge of the day-to-day preparation for the event. This situation is not unusual at the height of a presidential campaign. Particularly where, as in the current instance, a Committee staff member was not on-site for the full preparation period leading up to the

B 2 0 4 0 3 2 2 0 1 7

81 AUG 27 PM: 36

fundraising event itself, it was and is not possible for the Committee to independently determine the proper amount for individual invoices that were sent to the Committee for reimbursement of fundraising expenses. If such an invoice appeared reasonable based on the knowledge of the event possessed by my office, it was generally approved.

5. The combined invoices of \$6,140.17 (for employees' time and postage) sent by North American Systems, Inc. ("NAS") to the Committee seemed reasonable to me when they were submitted for reimbursement. Having no reasonable basis to question the invoices, these amounts were approved.

6. Thus, at no time did my office or any other Committee personnel of which I am aware have any information that would have lead us to believe that the invoice amounts discussed above were insufficient to fully reimburse NAS or that NAS had made any other expenditures that could be deemed to constitute corporate contributions in kind. Under the circumstances, it would be most unfair and contrary to fact to conclude that the Committee "knowingly" accepted a corporate contribution in kind.

82040322018


Timothy W. Finchem

Subscribed and sworn to, before me, this 27th day of August, 1981.


Notary Public
My commission expires 7-14-83

EDWIN E. HUDDLESON, III
WORLD CENTER BUILDING
518 15TH STREET, N. W.
WASHINGTON, D. C. 20006

8
2
0
4
0
3
2
2
0
1
9

RECEIVED

81 AUG 27 P 4: 36

The Honorable John Warner McGarry
Chairman, Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
COP 5345
31 AUG 24 1981

CARTER-MONDALE PRESIDENTIAL COMMITTEE, INC.
4710 Bethesda Avenue
Bethesda, Md. 20014

August 24, 1981

Maura White, Esq.
General Counsel's Office
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1314

Dear Ms. White:

Per our conversation of last week, this will serve to inform you that Edwin E. Huddleson, III will be representing the Carter-Mondale Presidential Committee, Inc. in connection with the above-captioned matter.

Sincerely,

Timothy G. Smith
Timothy G. Smith

cc: Edwin E. Huddleson, III, Esq.
918 16th Street, N.W.
Washington, D. C. 20006

82040322020

11:18 25 - 1

GENERAL COUNSEL
FEDERAL ELECTION COMMISSION

Carter-Mondale Presidential Comm.
710 Bethesda Avenue
Bethesda, Md. 20014



3 2 0 4 0 3 2 0 2

Edwin E. Huddleson, III, Esq.
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

RECEIVED
Geoff 5365
81 AUG 28 12:38

CARTER-MONDALE PRESIDENTIAL COMMITTEE, INC.
4710 Bethesda Avenue
Bethesda, Md. 20014

August 24, 1981

Maura White, Esq.
General Counsel's Office
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1314

Dear Ms. White:

Per our conversation of last week, this will serve to inform you that Edwin E. Huddleson, III will be representing the Carter-Mondale Presidential Committee, Inc. in connection with the above-captioned matter.

Sincerely,

Timothy G. Smith
Timothy G. Smith

cc: Edwin E. Huddleson, III, Esq.
918 16th Street, N.W.
Washington, D. C. 20006

82040322022

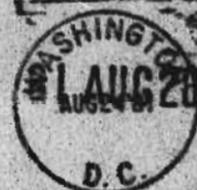
11:28 P 2:17

RECEIVED
GENERAL COUNSEL

Carter-Mondale Presidential Comm.
4710 Bethesda Avenue
Bethesda, Md. 20014

8
2
0
4
0
3
2
0

Maura White, Esq.
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 10, 1981

Carol Darr
Deputy Counsel
Carter-Mondale Presidential Committee
4710 Bethesda Avenue, #302
Bethesda, Maryland 20014

Re: MUR 1314

Dear Ms. Darr:

This is in reference to your letter dated August 4, 1981, in which you request a 30 day extension of time in which to respond to the Commission's notice that it has reason to believe the Carter-Mondale Presidential Committee violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act").

Considering the Commission's responsibilities to act expeditiously in the conduct of investigations, we cannot agree to a 30 day extension of time. A 15 day extension is, however, granted. The response of the Committee is due, therefore, on August 27, 1981. If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

82040322024

Carol Darr
Deputy Counsel
Carter-Mondale Presidential Committee
4710 Bethesda Avenue, #302
Bethesda, Maryland 20014

Re: MUR 1314

Dear Ms. Darr:

This is in reference to your letter dated August 4, 1981, in which you request a 30 day extension of time in which to respond to the Commission's notice that it has reason to believe the Carter-Mondale Presidential Committee violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act").

Considering the Commission's responsibilities to act expeditiously in the conduct of investigations, we cannot agree to a 30 day extension of time. A 15 day extension is, however, granted. The response of the Committee is due, therefore, on August 27, 1981. If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

mw 8/10/81

By: Kenneth A. Gross
Associate General Counsel

82040322025



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *MWE*
FROM: MARJORIE W. EMMONS/JODY CUSTER *JC*
DATE: AUGUST 6, 1981
SUBJECT: REFERRAL OF LETTER REGARDING MUR 1314

The attached letter regarding an extension of time was received in Chairman McGarry's office and then forwarded to the Secretary of the Commission. It is provided for your action.

82040322026

RECEIVED
GENERAL COUNSEL

81 AUG 6 P4:12

Attachment:

Letter dated August 4, 1981
From Carol Darr

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 AUG 6 PM 2: 10

CARTER/MONDALE PRESIDENTIAL COMMITTEE
4710 Bethesda Ave #302
Bethesda, MD 20014
August 4, 1981

John W. McGarry, Esq.
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

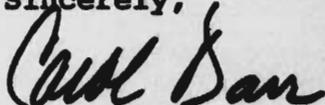
Dear Chairman McGarry:

On behalf of the Carter/Mondale Presidential Committee, Inc.
I am writing to request a 30 day extension of time in which
the Committee may respond to MUR 1314.

Owing to the Committee's substantial debt and the fact that
the Committee no longer has on its staff a full-time attorney,
the Committee must rely for the most part on volunteered legal
services, and anticipates delays in responding to this and
other matters.

Thank you for your consideration of this request.

Sincerely,



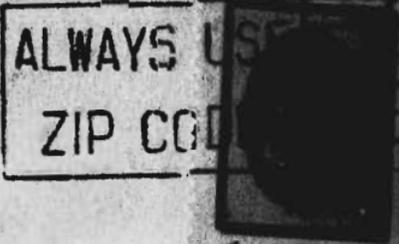
Carol Darr
Deputy Counsel

cc: Timothy G. Smith, Esq.

82040322027

Carter/Mondale Presidential Committee
4710 Bethesda Ave #302
Bethesda, MD 20014

8204032202



John W. McGarry, Esq.
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

81 AUG 6 P12:02

RECEIVED

ROUTING SLIP FOR RTB LETTER

TO: Chairman/Vice Chairman

FROM: Elissa T. Garr
OGC Enforcement Docket

DATE: 7-15-81

MUR # 1314

Date RTB Found 7-14-81

Date Cert. Rec'd in OGC 7-15-81

Staff Assigned White

STAFF CHECK:

MW Accuracy

MW Enclosures

MW Certification

Date Rec'd in OGC From Chairman/Vice Chairman

7-16-81

8
2
0
4
0
3
2
2
0
9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 17, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

S. Lee Kling, Treasurer
Carter-Mondale Presidential Committee
2000 L Street, N.W.
4th Floor
Washington, D.C. 20036

Re: MUR 1314

Dear Mr. Kling:

On July 14, 1981, the Federal Election Commission determined that there is reason to believe that your committee violated section 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the 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. Any submissions should be made within 15 days of your receipt of this letter. 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, the Commission may find probable cause to believe that a violation has occurred and proceed with informal 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 request by letter.

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. If you intend to be represented by counsel in this matter, please advise the Commission in writing by sending a letter of representation which states the name, address and telephone number of counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

82040322030

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 Maura White, the staff member assigned to this matter, at 202/523-4060.

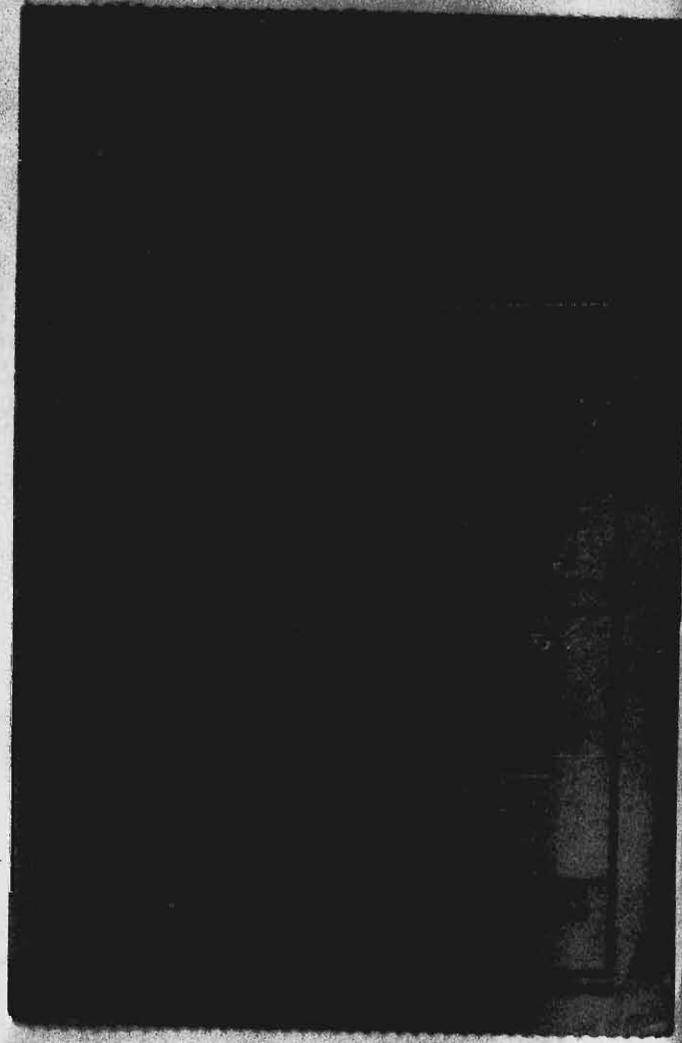
Sincerely,



JOHN WARREN MCGARRY
Chairman

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

82040322031





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

S. Lee Kling, Treasurer
Carter-Mondale Presidential Committee
2000 L Street, N.W.
4th Floor
Washington, D.C. 20036

Re: MUR 1314

Dear Mr. Kling:

On , 1981, the Federal Election Commission determined that there is reason to believe that your committee violated section 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the 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. Any submissions should be made within 15 days of your receipt of this letter. 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, the Commission may find probable cause to believe that a violation has occurred and proceed with informal 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 request by letter.

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. If you intend to be represented by counsel in this matter, please advise the Commission in writing by sending a letter of representation which states the name, address and telephone number of counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

82040322032

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 Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

*MW
7/15/81*

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

62040322033

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE July 17, 1981

MUR NO. 1314
STAFF MEMBER(S) & TEL. NO.
Maura White

RESPONDENT Carter-Mondale Presidential
Committee

202-523-4060

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

This matter involves the receipt of an in-kind corporate contribution by the Carter-Mondale Presidential Committee ("Committee"). The in-kind contribution constitutes the use of the facilities of North American Systems, Inc. ("NAS") at less than the normal and usual charge for the use of the facilities.

FACTUAL BASIS AND LEGAL ANALYSIS

On August 18, 1980, the Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The news article states that Vincent Marotta, Chairman of NAS, was the dinner chairman of a Carter-Mondale fundraiser held on May 29, 1980. Several violations of the Federal Election Campaign Act of 1971, as amended, are alleged in the news article.

Upon conducting an investigation the Commission has determined that Vincent Marotta and Thomas Marotta, Vice-President of NAS, spent a considerable amount of time during the business day, prior to the fundraiser, conducting fundraising activities on the premises of NAS. Moreover, 54 employees of NAS, who apparently volunteered to work on fundraising activities, did so during their usual working hours. Invoices for the costs of the employees' time (\$3,494.12) and postage (\$2,646.05) were submitted to the Carter-Mondale Committee in early June 1980. The filings of the Carter-Mondale Presidential Committee subsequently reported outstanding obligations to NAS in the amounts of \$3,494.12 and \$2,646.05 for "fundraising."

82040322034

Activities conducted by employees of NAS in preparation for the May 29, 1980, fundraiser included labeling and stuffing envelopes, mailing invitations, constructing, maintaining and running computer lists, making telephone calls, recording responses, and keeping records. A total of 468.75 employee work hours were involved (excluding the time of Vincent and Thomas Marotta) and all activities utilized the facilities of NAS, including its computer. NAS has informed the Commission that the use of its facilities to conduct fundraising activities did not result in any increase in overhead to the corporation.

Section 441b(a) of Title 2, United States Code, prohibits a political committee from knowingly accepting or receiving any contribution from a corporation in connection with a federal election.

Section 114.9(a) of Commission Regulations permits stockholders and employees of a corporation to make occasional, isolated, or incidental use of the facilities of the corporation for individual volunteer activity in connection with a federal election and requires that the corporation be reimbursed only to the extent that the overhead or operating costs of the corporation are increased. The term "occasional, isolated, or incidental use" generally means, when used by employees, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period, or, when used by stockholders other than employees, such use does not interfere with the corporation in carrying out its normal activities. 11 C.F.R. § 114.9(a)(1)(i) and (ii).

Pursuant to 11 C.F.R. § 114.9(a)(2), a stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activity in connection with a federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge for such facilities. The term "normal and usual charge" for goods is defined to mean the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(b). For any services, the term "usual and normal charge" means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. Id.

The issue in the matter involves the use of the facilities and staff of NAS to conduct activities on behalf of the Carter-Mondale Committee. In the General Counsel's view, in order for an in-kind contribution from NAS to the

32040322035

Committee not to have occurred, NAS should have billed the Carter-Mondale Committee in an amount equal to the cost of renting in the commercial market comparable facilities (office space, utilities, telephones, and computer). The exemption in the Commission's regulations which permits stockholders and employees who use corporate facilities for individual volunteer activity to reimburse the corporation for only the increase in overhead, see 11 C.F.R. § 114.9(a), is not applicable in this situation. The exemption is premised upon the "occasional, isolated, or incidental" use of corporate facilities for "individual volunteer activity." The activity involved in this matter should not be considered to constitute "individual volunteer activity," nor should it be considered "occasional, isolated, or incidental."

First, it appears that Vincent Marotta, Volunteer Chairman of the Fundraising Dinner Committee, sought out "volunteers" from among NAS employees, that at least 54 employees were working together on the fundraising activities, and that the corporate officers were aware of and approved of the use of the corporation's facilities and employees during regular work hours. In addition, corporate officials, acting within the scope of their employment, knew of and consented to paying the employees their regular salaries for the time they were conducting fundraising activities using corporate facilities. Because the impetus for the fundraising project did not come from the employees themselves, and because corporate officials authorized the use of the corporation's employees and facilities, the activity does not, in the General Counsel's view, constitute "individual volunteer activity" within the intended scope of 11 C.F.R. § 114.9(a).

Second, as at least 54 employees were involved, and at least 468.75 hours were used over a three week period, much more than "occasional, isolated, or incidental use" was made of NAS facilities. According to records submitted by Vincent Marotta, 25 employees spent more than four hours on the fundraising activity. See 11 C.F.R. § 114.9(a)(1)(iii). Some employees appear to have spent full work days on such activity, and one individual spent a total of 104 hours on the project. The evidence suggests that the amount of activity of many employees would have been sufficient to prevent them from completing the normal amount of work carried out during the work period. See 11 C.F.R. § 114.9(a)(1)(i).

Because the use of NAS facilities was neither "occasional, isolated, or incidental" nor "individual volunteer activity," the corporation should have billed the Carter-Mondale Committee for the usual and normal rental charge for the facilities, rather than for the increase in overhead alone. See 11 C.F.R. § 114.9(a)(2). For the office space, utilities, telephones,

62040322036

and computer usage, "the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered" is the amount that should have been calculated. See 11 C.F.R. § 100.7(a)(1)(iii)(B). ^{1/} It would have been sufficient for NAS or the Carter-Mondale Committee to obtain estimates from firms in the business of leasing office space, providing telephone service, and providing computer mailing services as to the "commercially reasonable rates prevailing at the time" for comparable services. Alternatively, and notwithstanding the preceding footnote, NAS or the Carter-Mondale Committee could have obtained estimates from firms which are in the business of providing all of the foregoing services in order to

^{1/} It is the General Counsel's view that the rates for salaries of employees who worked on the fundraising project which were billed to the Carter-Mondale Committee, were the commercially reasonable rates prevailing at the time. While it could be argued that a mailing firm, i.e. one in the business of stuffing envelopes, mailing invitations, etc., would perhaps charge a different salary rate for its employees performing such tasks, this is too conjectural to conclude that NAS should have to recalculate the salary expenses involved.

Additionally, as to the time devoted by Vincent Marotta and Thomas Marotta, it is the General Counsel's opinion that an amount representing the value of their time need not be included in the amount chargeable. Commission regulations provide that no compensation for the personal services of a person is considered to have been paid if the employee involved is paid only for work actually performed and the employee's time is considered his own to use as he sees fit. 11 C.F.R. § 100.7(a)(3)(ii). Because they serve as the corporation's Chairman of the Board and Vice-President, respectively, and because they have both stated in affidavits that their responsibilities for the company are not measured by hours of work per pay period, it appears that no payment by NAS for their time spent on political activities could be substantiated.

Although the time of Vincent and Thomas Marotta is not to be included in the amount chargeable, their use of the facilities of NAS should be included. They have indicated in affidavits that the amount of time spent by them on the fundraiser was "considerable" or "intermittently each day during the two to three week period preceding the dinner." Therefore, their activities were not "occasional, isolated, or incidental." Accordingly, the normal and usual rental charge for the facilities of NAS used by the Marottas (e.g. office space, utilities, and telephones) must be added to the amount billed to the Carter-Mondale Committee.

82040322037

obtain an overall figure as to the commercially reasonable rate for carrying out the project completed by the said employees.

In view of the foregoing, the General Counsel recommends that the Commission find reason to believe the Carter-Mondale Presidential Committee violated 2 U.S.C. § 441b(a) in regard to its acceptance of the use of the facilities of North American Systems, Inc. to conduct fundraising activities on the Committee's behalf.

Recommendation

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

82040322038



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Robert DeVoy
Ragan and Mason
Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Messrs. Stanton and DeVoy:

On July 14, 1981, the Commission determined that there is probable cause to believe your clients, Vincent Marotta and North American Systems, Inc. ("NAS"), violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the use of the facilities of NAS to conduct Carter-Mondale fundraising activities. The Commission also determined that there is no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441b(a) in connection with the use of the facilities of NAS to conduct fundraising activities, or 2 U.S.C. § 441f. The Commission further determined that there is no probable cause to believe Vincent Marotta, Thomas Marotta, or NAS violated 2 U.S.C. § 441b(a) in connection with the solicitation of NAS employees.

The Commission has a duty to attempt to resolve such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose conciliation agreements which this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreements, please sign and return them to the Commission within ten days. I will then recommend that the Commission approve the agreements. Please make your check for the civil penalty payable to the U.S. Treasurer.

32040322039

Letter to: James Stanton
Robert DeVoy

If you have any questions or suggestions for changes in the enclosed conciliation agreements, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

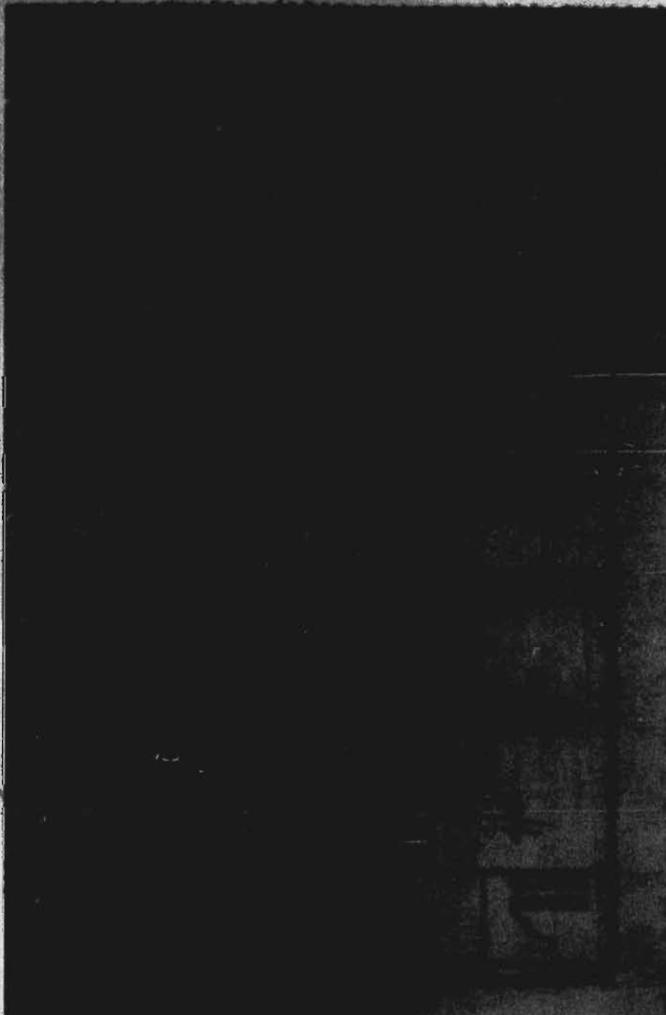
Sincerely,

Charles N. Steele
General Counsel

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

Enclosures
Conciliation Agreements

82040322040



CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Robert DeVoy
Ragan and Mason
Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Messrs. Stanton and DeVoy:

On , 1981, the Commission determined that there is probable cause to believe your clients, Vincent Marotta and North American Systems, Inc. ("NAS"), violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the use of the facilities of NAS to conduct Carter-Mondale fundraising activities. The Commission also determined that there is no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441b(a) in connection with the use of the facilities of NAS to conduct fundraising activities, or 2 U.S.C. § 441f. The Commission further determined that there is no probable cause to believe Vincent Marotta, Thomas Marotta, or NAS violated 2 U.S.C. § 441b(a) in connection with the solicitation of NAS employees.

The Commission has a duty to attempt to resolve such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose conciliation agreements which this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreements, please sign and return them to the Commission within ten days. I will then recommend that the Commission approve the agreements. Please make your check for the civil penalty payable to the U.S. Treasurer.

92040322041

Letter to: James Stanton
Robert DeVoy

If you have any questions or suggestions for changes in the enclosed conciliation agreements, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

Charles N. Steele
General Counsel

Enclosures
Conciliation Agreements

MW
7/15/81

82040322042

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
North American Systems, Inc.,)
Thomas Marotta, and Vincent)
Marotta)

MUR 1314

CERTIFICATION

I, Marjorie W. Emons, Recording Secretary for the Federal Election Commission's Executive Session on July 14, 1981, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 1314:

1. Find probable cause to believe that Vincent Marotta and North American Systems ("NAS") violated 2 U.S.C. §441b(a) in regard to the use of the facilities of NAS to conduct volunteer activities on behalf of the Carter-Mondale Presidential Committee.
2. Find no probable cause to believe Thomas Marotta violated 2 U.S.C. §441b(a) in regard to the use of the facilities of North American Systems to conduct volunteer activities on behalf of the Carter-Mondale Presidential Committee.
3. Find no probable cause to believe Thomas Marotta, Vincent Marotta, or North American Systems ("NAS") violated 2 U.S.C. §441b(a) in regard to the solicitation of NAS employees.
4. Find no probable cause to believe Thomas Marotta violated 2 U.S.C. §441f.
5. Find reason to believe the Carter-Mondale Presidential Committee violated 2 U.S.C. §441b(a).
6. Approve the letters and conciliation agreements attached to the General Counsel's June 29, 1981 report.

Attest:

Marjorie W. Emons

Marjorie W. Emons
Secretary of the Commission

7/15/81

Date

82040322043

June 29, 1981

MEMORANDUM TO: Marjorie W. Emmons
FROM: Phyllis A. Kayson
SUBJECT: MUR 1314

Please have the attached General Counsel's Report distributed to the Commission for the agenda of July 14, 1981. It must be circulated to the Commission by July 7, 1981 because it contains a recommendation of probable cause to believe believe. Thank you.

Attachment

cc: White

82040322044

CONFIDENTIAL

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

In the Matter of)
)
North American Systems, Inc.,)
Thomas Marotta, and Vincent)
Marotta)

MUR 1314

81 JUN 29 P 4: 1

EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

JUL 14 1981

I. BACKGROUND

On October 17, 1980, the Commission found reason to believe that North American Systems, Inc. ("NAS") and Vincent Marotta violated 2 U.S.C. § 441b(a), and that Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f. The responses of the respondents to questions issued by the Commission were received on November 21, 1980. On January 7, 1981, the Commission determined to issue additional questions to Thomas Marotta and Vincent Marotta; responses were received on January 23, 1981. Additional information was obtained in writing from counsel for the respondents on February 18, 1981. On April 20, 1981, three briefs were mailed to counsel for the respondents. The briefs recommend that the Commission find probable cause to believe Thomas Marotta, Vincent Marotta, and NAS violated 2 U.S.C. § 441b(a) in regard to the use of NAS facilities, no probable cause to believe the three respondents violated 2 U.S.C. § 441b(a) in regard to the solicitation of NAS employees, and no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441f. Response briefs were received on May 8, 1981.

II. Legal Analysis

A. NAS, Thomas Marotta, and Vincent Marotta

The General Counsel's probable cause recommendation concerns the use of the corporate facilities of NAS by Vincent Marotta,

82040322045

Thomas Marotta, and 54 employees of NAS in connection with a Carter-Mondale fundraising event. While the Carter-Mondale Presidential Committee was billed for the cost of the 54 employees' time, NAS did not bill the Committee for the use of its facilities. In the General Counsel's view, the fundraising activities of Vincent Marotta, Thomas Marotta, and the 54 employees of NAS went well beyond the scope of the exemption for "occasional, isolated, or incidental use" of corporate facilities found at 11 C.F.R. § 114.9(a) and, accordingly, the corporation should have billed the Carter-Mondale Committee for the usual and normal charge for the use of such facilities.

Respondents' counsel first raises a procedural argument to the effect that the "reason to believe" notice provided did not adequately apprise them of the possible violation which the General Counsel recommends pursuing. It is asserted that a "new" allegation is being made without having given respondents the notice contemplated in the Commission's regulations. To the contrary, however, the initial notice given to the respondents was sufficient to apprise them of the basis of the apparent violation which is the subject of the present probable cause recommendation. The factual and legal analysis which accompanied the reason to believe letters referred specifically to 11 C.F.R. § 114.9(a) which deals with the use of corporate facilities, and indicated that there was evidence that Thomas Marotta had used the facilities of NAS to solicit employees. The fact that the evidence subsequently

62040322046

provided by respondents' counsel pointed to even further use of the NAS corporate facilities does not make the Commission's notification defective. In any event, respondents can hardly argue now that they have not been given sufficient notice of the factual and legal basis for the apparent violation, since they have received (and responded to) the General Counsel's briefs.

Moving to the merits of the apparent violation, respondents assert that since the fundraising activities "took place entirely within a three-week period," and were neither a "regular practice" nor a "continuing practice," the activities do constitute the "occasional, isolated, or incidental use" of corporate facilities. Respondents' counsel supports this position by stating that the activities of Vincent Marotta did "not interfere with the corporation in carrying out its normal activities (see 11 C.F.R. § 114.9(a)(ii)) and that this standard should apply to Vincent Marotta because he owns 50 percent of the corporation's stock. In regard to the activities of Thomas Marotta, counsel's argument is less clear. The response brief of Thomas Marotta states that his activities should be held against the standard of § 114.9(a)(i) and that Thomas Marotta's activities did not in fact "interfere with the corporation in carrying out its normal activities." However, respondents' counsel has incorrectly stated the standard of § 114.9(a)(i). The correct standard at 11 C.F.R. § 114.9(a)(i) is one of "an amount of activity during any particular work period which does not prevent the employee from completing the

82040322047

normal amount of work which that employee usually carries out during such work period." Compare 11 C.F.R. § 114.9(a)(i) and (ii). Counsel provides no argument that the fundraising activities of Thomas Marotta did not interfere with the completion of his normal amount of work.

Respondents argue further that the standards of "individual volunteer activity" and "occasional, isolated, or incidental use" of corporate facilities can be considered to apply to the activities of only Thomas Marotta and Vincent Marotta, and not the activities of NAS employees who were paid for their fundraising efforts. In addition to counsel's unsupported argument that the use of paid volunteers is "superfluous" to this matter, counsel makes the additional argument that there is no evidence to suggest that the employees involved "were prevented from completing the normal amount of work for that period." It is asserted that since the late spring and early summer months are the slowest months of activity for NAS, the Commission should "disregard the contention that there was an interference with the normal work of this period." Thus, it is the position of the respondents that because there was no increase in overhead to NAS, and only the activities of Thomas and Vincent Marotta are relevant in this matter, the activities fall within the purview of 11 C.F.R. § 114.9(a) and no additional reimbursement to the corporation is required.

Furthermore, the response briefs argue that the interpretation of 11 C.F.R. § 114.9(a) as contained in the Explanation

82040322048

and Justification of Regulations, published by the Commission (1978), should be applied to this matter. Respondents cite the following:

The Commission rejected an option which would have prohibited the use of corporate and labor organization facilities for individual volunteer activity. The Commission took the position that if the stockholder, employee or member reimburses the corporation or labor organization for the use, such use will not be a violation of Federal law. In determining the proper formula for reimbursement, the Commission rejected an option which would have required the stockholder, employee, or member to reimburse for all use even if the use did not result in any increased cost to the corporation or labor organization. Rather, the Commission adopted the present subsections which require an individual to reimburse for occasional, isolated or incidental use only to the extent that the corporation or labor organization incurs expenses, above its normal operating costs as a result of such activity. (emphasis added)

82040322049

Additionally, counsel asserts that an opinion issued by the General Counsel while the § 114.9 Regulations were being drafted further supports respondents' arguments concerning reimbursement for the use of corporate facilities. Counsel's argument focalizes on the following excerpt:

I am of the view that when a professional volunteers his or her services to a campaign and carries the volunteer efforts out in facilities and with equipment he or she normally uses in pursuit of his or her professional employment, and where no increase in the usual overhead costs for the use of such space and facilities is incurred because of the volunteer effort, there is no need to allocate any portion of the usual overhead costs as a contribution. (emphasis added)

Finally, the assertion is made that the General Counsel is seeking to impose a different level of reimbursement for the use of corporate facilities in this matter than the Commission

sought in MUR 1261 (closed).

It is the view of the General Counsel that respondent's argument that neither the standard of "individual volunteer activity" nor "occasional, isolated, or incidental use" of corporate facilities pertain to the actions of paid staff, is totally without merit. There does not appear to be any basis in law for respondents' arguments that a corporate employee who is paid for conducting political activities, may use the facilities of the corporate employer to conduct such activities without triggering a requirement that the corporation be reimbursed for the use of the facilities. Indeed, the respondents do not even explain the basis for their contention. It is the view of the General Counsel that as 11 C.F.R. § 114.9 specifically addresses the use of corporate facilities by both "stockholders and employees" and "other persons," a corporation which permits any individual to use the corporate facilities must be reimbursed in accordance with § 114.9.

Respondents' argument that volunteer activity which is conducted during a three week period constitutes "occasional, isolated, or incidental use" of corporate facilities is equally unfounded. Section 114.9 of the Commission's regulations sets forth specific standards to define the term "occasional, isolated, or incidental use." In regard to corporate employees, the standard is one of whether the employee is prevented from completing the normal amount of work which the employee usually

82040322050

carries out during the work period. It is the view of the General Counsel that the activities of the 54 NAS employees involved in this matter, as well as the activities of Thomas and Vincent Marotta, do not fall within § 114.9(a)(i). Although counsel for the respondent argues that 11 C.F.R. § 114.9(a)(ii) (pertaining to use of corporate facilities by stockholders other than employees which does not interfere with the corporation in carrying out its normal activities) is the standard applicable to the activities of Vincent Marotta 1/, it is the view of the General Counsel that § 114.9(a)(i) is the standard to be applied to both Thomas and Vincent Marotta, since as officers of NAS, they are employees of NAS.

While counsel argues that there is "no evidence to suggest that employees were prevented from completing the normal amount of work" during the three-week period, the foundation for respondents' argument is that the majority of the business of the corporation takes place in the second half of the calendar year. Although respondents' contention concerning the flow of its business may be true, it does not appear likely that a corporation organized for profit would retain at least 54 employees throughout the year unless there was significant business to occupy the employees' time. The volunteer time of NAS employees varied from one hour to 104

1/ As stated above, it is not clear from Thomas Marotta's reply brief that it is his contention that this standard is also applicable to his activities.

82040322051

hours per person. It would seem that this amount of time would prevent each of the 54 employees from completing their normal amount of work usually completed each business day. As Vincent and Thomas Marotta stated in affidavits that the time spent by them on fundraising activities was, respectively, "considerable" and "intermittently each day during the two to three week period preceding the dinner," it also does not seem probable that they completed the normal amount of work they normally complete each day. Thus, the General Counsel remains of the view that the activities of the 54 NAS employees, Thomas Marotta, and Vincent Marotta do not constitute occasional, isolated, or incidental use of corporate facilities.

Another issue in this matter involves the term "individual volunteer activity." As stated in the General Counsel's Briefs, it is the view of the General Counsel that while the activities of Vincent and Thomas Marotta may constitute such activity, the activities of the 54 NAS employees do not. Besides the respondents' unsupported statement that paid employees' use of corporate facilities is not relevant, respondents argue that there are "no cites" to the record which support the General Counsel's statement that Vincent Marotta "sought out" volunteers. However, the response of Vincent Marotta indicated that there was a "need" for volunteers to carry out fundraising activities, that Vincent Marotta was in charge of the fundraising dinner, and that 54 of his employees ultimately were paid to carry out fundraising activity. The General Counsel's conclusion

82040322052

that the impetus for the fundraising activities originated with Vincent Marotta appears to be correct. Indeed, respondents' counsel does not argue that the conclusion is erroneous but only that no cites to the record are provided.

The General Counsel does not view the respondents' references to draft regulations or the Explanation and Justification of Regulations as supportive of respondents' contentions. The reimbursement scheme explained in the Explanation and Justification (page 35) is clearly premised upon the "occasional, isolated, or incidental use" of corporate facilities. If such a standard is not met, the corporation must be reimbursed for not only the increase in overhead, but also the usual and normal charge for use of such facilities.

The respondents' reference to an Opinion of Counsel (OC 1975-30), incorrectly cited as an Advisory Opinion, is equally unconvincing. As an Opinion of Counsel, such opinion represents only the view of the General Counsel, and not the view of the Commission. More importantly, the opinion was released in March, 1976, prior to the draft regulations noted in counsel's response briefs.

Finally, respondents' reliance upon the disposition of MUR 1261 is misplaced. While MUR 1261 involved the use of corporate stationery, the evidence available did not expressly indicate that corporate facilities were used in preparing the

82040322053

solicitations. Moreover, MUR 1261 is materially distinguishable from the instant matter as MUR 1261 involved only the activities of a single corporate officer.

The General Counsel's proposed recommendation that Thomas Marotta violated 2 U.S.C. § 441b(a) in regard to the use of corporate facilities centered on Thomas Marotta's apparent consent, as a corporate officer, to such use. However, the response submitted in reply to the General Counsel's Brief, asserts that Thomas Marotta's fundraising activities "were separate and distinct from the volunteers who stuffed envelopes and performed other clerical tasks," and that he "had no involvement with these tasks, and had no information as to what charges were forwarded to the Carter-Mondale Committee for reimbursement." Respondent supports this contention by stating that he has "no functional relationship to the Administrative section" of NAS. In view of this additional information, it is the position of the General Counsel that Thomas Marotta should not now be considered to have consented to the making of an in-kind contribution by NAS to the Carter-Mondale campaign. Nevertheless, it continues to be the position of the General Counsel that NAS should have billed the Carter-Mondale committee for the normal and usual charge for the facilities utilized by Thomas Marotta while conducting volunteer activities on the committee's behalf.

The instant matter also involves the General Counsel's

82040322054

recommendations that the Commission find no probable cause to believe Vincent Marotta, Thomas Marotta, or NAS violated 2 U.S.C. § 441b(a) in regard to the solicitation of NAS employees, and no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441f. As the respondents' reply briefs do not directly address these recommendations, the legal analysis, as presented in the General Counsel's Briefs, remains the same.

B. Carter-Mondale Presidential Committee, Inc.

Section 441b(a) of Title 2, United States Code, prohibits a political committee from knowingly accepting or receiving any contribution from a corporation in connection with a federal election.

Based upon the oral statements of counsel for the Marottas and NAS, counsel for the Carter-Mondale committee advised Vincent Marotta on seeking reimbursement for the services here involved. Both the response of Vincent Marotta and reports filed by the Carter-Mondale Presidential Committee indicate that the committee was billed for the costs of labor and postage alone. Thus, the evidence suggests that the Carter-Mondale committee was both aware that the facilities of NAS were used to conduct fundraising activities on the committee's behalf, and that the committee was not billed for the use of the facilities.

In view of the foregoing, the General Counsel recommends that the Commission find reason to believe the Carter-Mondale

82040322055

Presidential Committee violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution from NAS.

III. Discussion of Conciliation and a Civil Penalty

IV. General Counsel's Recommendation

1. Find probable cause to believe Vincent Marotta and North American Systems ("NAS") violated 2 U.S.C. § 441b(a) in regard to the use of the facilities of NAS to conduct volunteer activities on behalf of the Carter-Mondale Presidential Committee.
2. Find no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441b(a) in regard to the use of the facilities of North American Systems to conduct volunteer activities on behalf of the Carter-Mondale Presidential Committee.
3. Find no probable cause to believe Thomas Marotta, Vincent Marotta, or North American Systems ("NAS") violated 2 U.S.C. § 441b(a) in regard to the solicitation of NAS employees.
4. Find no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441f.
5. Find reason to believe the Carter-Mondale Presidential Committee violated 2 U.S.C. § 441b(a).

82040322056

6. Approve the attached letters and conciliation agreements.

Attachments:

1. Proposed letters and conciliation agreements.

29 June 1951
Date


Charles N. Steele
General Counsel

82040322057

82040322058

ATTACHMENT 1



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Robert DeVoy
Ragan and Mason
Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Messrs. Stanton and DeVoy:

On , 1981, the Commission determined that there is probable cause to believe your clients, Vincent Marotta and North American Systems, Inc. ("NAS"), violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the use of the facilities of NAS to conduct Carter-Mondale fundraising activities. The Commission also determined that there is no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441b(a) in connection with the use of the facilities of NAS to conduct fundraising activities, or 2 U.S.C. § 441f. The Commission further determined that there is no probable cause to believe Vincent Marotta, Thomas Marotta, or NAS violated 2 U.S.C. § 441b(a) in connection with the solicitation of NAS employees.

The Commission has a duty to attempt to resolve such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States-District Court and seek payment of a civil penalty.

We enclose conciliation agreements which this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreements, please sign and return them to the Commission within ten days. I will then recommend that the Commission approve the agreements. Please make your check for the civil penalty payable to the U.S. Treasurer.

92040322059

Letter to: James Stanton
Robert DeVoy

If you have any questions or suggestions for changes in the enclosed conciliation agreements, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

Charles N. Steele
General Counsel

Enclosures
Conciliation Agreements

82040322060



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

S. Lee Kling, Treasurer
Carter-Mondale Presidential Committee
2000 L Street, N.W.
4th Floor
Washington, D.C. 20036

Re: MUR 1314

Dear Mr. Kling:

On , 1981, the Federal Election Commission determined that there is reason to believe that your committee violated section 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the 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. Any submissions should be made within 15 days of your receipt of this letter. 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, the Commission may find probable cause to believe that a violation has occurred and proceed with informal 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 request by letter.

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. If you intend to be represented by counsel in this matter, please advise the Commission in writing by sending a letter of representation which states the name, address and telephone number of counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

82040322061

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 Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

82040322062

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1314
STAFF MEMBER(S) & TEL. NO.
Maura White

RESPONDENT Carter-Mondale Presidential
Committee

202-523-4060

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

This matter involves the receipt of an in-kind corporate contribution by the Carter-Mondale Presidential Committee ("Committee"). The in-kind contribution constitutes the use of the facilities of North American Systems, Inc. ("NAS") at less than the normal and usual charge for the use of the facilities.

FACTUAL BASIS AND LEGAL ANALYSIS

On August 18, 1980, the Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The news article states that Vincent Marotta, Chairman of NAS, was the dinner chairman of a Carter-Mondale fundraiser held on May 29, 1980. Several violations of the Federal Election Campaign Act of 1971, as amended, are alleged in the news article.

Upon conducting an investigation the Commission has determined that Vincent Marotta and Thomas Marotta, Vice-President of NAS, spent a considerable amount of time during the business day, prior to the fundraiser, conducting fundraising activities on the premises of NAS. Moreover, 54 employees of NAS, who apparently volunteered to work on fundraising activities, did so during their usual working hours. Invoices for the costs of the employees' time (\$3,494.12) and postage (\$2,646.05) were submitted to the Carter-Mondale Committee in early June 1980. The filings of the Carter-Mondale Presidential Committee subsequently reported outstanding obligations to NAS in the amounts of \$3,494.12 and \$2,646.05 for "fundraising."

82040322063

Activities conducted by employees of NAS in preparation for the May 29, 1980, fundraiser included labeling and stuffing envelopes, mailing invitations, constructing, maintaining and running computer lists, making telephone calls, recording responses, and keeping records. A total of 468.75 employee work hours were involved (excluding the time of Vincent and Thomas Marotta) and all activities utilized the facilities of NAS, including its computer. NAS has informed the Commission that the use of its facilities to conduct fundraising activities did not result in any increase in overhead to the corporation.

Section 441b(a) of Title 2, United States Code, prohibits a political committee from knowingly accepting or receiving any contribution from a corporation in connection with a federal election.

Section 114.9(a) of Commission Regulations permits stockholders and employees of a corporation to make occasional, isolated, or incidental use of the facilities of the corporation for individual volunteer activity in connection with a federal election and requires that the corporation be reimbursed only to the extent that the overhead or operating costs of the corporation are increased. The term "occasional, isolated, or incidental use" generally means, when used by employees, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period, or, when used by stockholders other than employees, such use does not interfere with the corporation in carrying out its normal activities. 11 C.F.R. § 114.9(a)(1)(i) and (ii).

Pursuant to 11 C.F.R. § 114.9(a)(2), a stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activity in connection with a federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge for such facilities. The term "normal and usual charge" for goods is defined to mean the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). For any services, the term "usual and normal charge" means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. Id.

The issue in the matter involves the use of the facilities and staff of NAS to conduct activities on behalf of the Carter-Mondale Committee. In the General Counsel's view, in order for an in-kind contribution from NAS to the

82040322064

Committee not to have occurred, NAS should have billed the Carter-Mondale Committee in an amount equal to the cost of renting in the commercial market comparable facilities (office space, utilities, telephones, and computer). The exemption in the Commission's regulations which permits stockholders and employees who use corporate facilities for individual volunteer activity to reimburse the corporation for only the increase in overhead, see 11 C.F.R. § 114.9(a), is not applicable in this situation. The exemption is premised upon the "occasional, isolated, or incidental" use of corporate facilities for "individual volunteer activity." The activity involved in this matter should not be considered to constitute "individual volunteer activity;" nor should it be considered "occasional, isolated, or incidental."

First, it appears that Vincent Marotta, Volunteer Chairman of the Fundraising Dinner Committee, sought out "volunteers" from among NAS employees, that at least 54 employees were working together on the fundraising activities, and that the corporate officers were aware of and approved of the use of the corporation's facilities and employees during regular work hours. In addition, corporate officials, acting within the scope of their employment, knew of and consented to paying the employees their regular salaries for the time they were conducting fundraising activities using corporate facilities. Because the impetus for the fundraising project did not come from the employees themselves, and because corporate officials authorized the use of the corporation's employees and facilities, the activity does not, in the General Counsel's view, constitute "individual volunteer activity" within the intended scope of 11 C.F.R. § 114.9(a).

Second, as at least 54 employees were involved, and at least 468.75 hours were used over a three week period, much more than "occasional, isolated, or incidental use" was made of NAS facilities. According to records submitted by Vincent Marotta, 25 employees spent more than four hours on the fundraising activity. See 11 C.F.R. § 114.9(a)(1)(iii). Some employees appear to have spent full work days on such activity, and one individual spent a total of 104 hours on the project. The evidence suggests that the amount of activity of many employees would have been sufficient to prevent them from completing the normal amount of work carried out during the work period. See 11 C.F.R. § 114.9(a)(1)(i).

Because the use of NAS facilities was neither "occasional, isolated, or incidental" nor "individual volunteer activity," the corporation should have billed the Carter-Mondale Committee for the usual and normal rental charge for the facilities, rather than for the increase in overhead alone. See 11 C.F.R. § 114.9(a)(2). For the office space, utilities, telephones,

82040322065

and computer usage, "the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered" is the amount that should have been calculated. See 11 C.F.R. § 100.7(a)(1)(iii)(B). ^{1/} It would have been sufficient for NAS or the Carter-Mondale Committee to obtain estimates from firms in the business of leasing office space, providing telephone service, and providing computer mailing services as to the "commercially reasonable rates prevailing at the time" for comparable services. Alternatively, and notwithstanding the preceding footnote, NAS or the Carter-Mondale Committee could have obtained estimates from firms which are in the business of providing all of the foregoing services in order to

^{1/} It is the General Counsel's view that the rates for salaries of employees who worked on the fundraising project which were billed to the Carter-Mondale Committee, were the commercially reasonable rates prevailing at the time. While it could be argued that a mailing firm, i.e. one in the business of stuffing envelopes, mailing invitations, etc., would perhaps charge a different salary rate for its employees performing such tasks, this is too conjectural to conclude that NAS should have to recalculate the salary expenses involved.

Additionally, as to the time devoted by Vincent Marotta and Thomas Marotta, it is the General Counsel's opinion that an amount representing the value of their time need not be included in the amount chargeable. Commission regulations provide that no compensation for the personal services of a person is considered to have been paid if the employee involved is paid only for work actually performed and the employee's time is considered his own to use as he sees fit. 11 C.F.R. § 100.7(a)(3)(ii). Because they serve as the corporation's Chairman of the Board and Vice-President, respectively, and because they have both stated in affidavits that their responsibilities for the company are not measured by hours of work per pay period, it appears that no payment by NAS for their time spent on political activities could be substantiated.

Although the time of Vincent and Thomas Marotta is not to be included in the amount chargeable, their use of the facilities of NAS should be included. They have indicated in affidavits that the amount of time spent by them on the fundraiser was "considerable" or "intermittently each day during the two to three week period preceding the dinner." Therefore, their activities were not "occasional, isolated, or incidental." Accordingly, the normal and usual rental charge for the facilities of NAS used by the Marottas (e.g. office space, utilities, and telephones) must be added to the amount billed to the Carter-Mondale Committee.

82040322066

18
obtain an overall figure as to the commercially reasonable rate for carrying out the project completed by the RAS employees.

In view of the foregoing, the General Counsel recommends that the Commission find reason to believe the Carter-Mondale Presidential Committee violated 2 U.S.C. § 441b(a) in regard to its acceptance of the use of the facilities of North American Systems, Inc. to conduct fundraising activities on the Committee's behalf.

Recommendation

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

82040322067

600 # 4641

DONALD J. BRUNNER
ROBERT T. DEVROY, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. McDERMOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM F. RAGAN
EDWARD M. SHEA
JAMES V. STANTON
JOSEPH A. TENNANT
JOHN E. VARGO

LAW OFFICES
RAGAN & MASON
THE FARRAGUT BUILDING
900 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 296-4750
CABLE ADDRESS: DOWRALESAL
TWX: 710-822-9370
TELECOPIER: (202) 296-4110

GEORGE S. HARTZOG, JR.
OF COUNSEL
GEORGE R. BROWNELL
OF COUNSEL
REMOVED NEW YORK BAR
1340 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10019
(212) 769-2000

31 MAY 8 12:03

RECEIVED
GENERAL COUNSEL

May 7, 1981

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

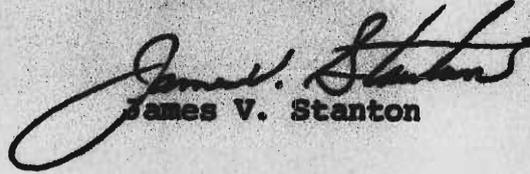
Dear Mr. Steele:

Re: M.U.R. 1314

Enclosed please find three copies of the brief of each of the three respondents in the above-referenced matter. Ten copies of each are being sent under separate cover to the Secretary of the Commission.

Very truly yours,

RAGAN & MASON


James V. Stanton

Enclosures

92040322068

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Thomas Marotta)

M.U.R. 1314

Request for Confidential Treatment

Thomas Marotta, respondent in Federal Election Commission Proceeding M.U.R. 1314(80), pursuant to 5 U.S.C. §552(b)(7) and 11 C.F.R. §4.5(a)(7) of the Federal Election Commission Regulations, hereby requests confidential treatment for all documents in M.U.R. 1314 which make reference to the name of _____ in the alleged violation of 2 U.S.C. 441f by Mr. Thomas Marotta, for the following reasons:

- (1) that _____, an employee of North American Systems, Inc., was at no time a named respondent in the Federal Election Commission M.U.R. Proceeding 1314, and;
- (2) that the General Counsel conducted an investigation of the allegation of a violation of 2 U.S.C. 441f and recommended to the Commission that there was no probable cause to believe that the loan to _____ constituted a violation of said section, and;
- (3) that the loan which was made by Thomas Marotta to _____ was,

82040322069

RECEIVED
GENERAL COUNSEL

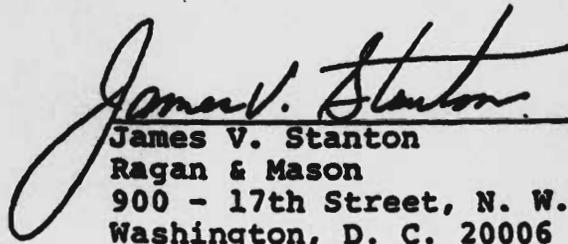
31 MAY 8 PM 2:04

and remains, a matter personal and confidential between respondent Thomas Marotta and North American Systems' employee, _____, and;

- (4) that the unnecessary public disclosure of _____'s name in the matter related to the loan made by Thomas Marotta would cause _____ public embarrassment and discomfort and would constitute, according to 5 U.S.C. §552(b)(7) and 11 C.F.R. 4.5(a)(7), an unwarranted invasion of the personal privacy of _____

WHEREFORE, respondent Thomas Marotta requests the Federal Election Commission to treat as confidential investigation records, pursuant to 5 U.S.C. §552(b)(7) and 11 C.F.R. 4.5(a)(7), all documents which make reference to the name of _____ in Federal Election Commission Proceeding M.U.R. 1314(80).

Respectfully submitted,



 James V. Stanton
 Ragan & Mason
 900 - 17th Street, N. W.
 Washington, D. C. 20006
 (202) 296-4750

Attorney for Respondent

May , 1981

82040322070

1980 and extensive interviews conducted to ensure the most comprehensive response possible to the Commission's inquiry.

The replies to the Commission's inquiries and the additional materials submitted along with the replies generated a second round of written questions from the Commission. Once again, respondent, with assistance of counsel undertook a complete review of the matter, and provided the General Counsel with a complete disclosure under oath of the matters to which these inquiries were directed.

A third and final set of inquiries was telephoned to respondent's counsel on February 11, 1981, and those matters were fully addressed in letter form on February 17, 1981.

On April 24, 1981, respondent received official notice from the General Counsel that his office was prepared to recommend that the Commission find probable cause to believe that the respondent violated 2 U.S.C. §441b(a), and accompanying such notification was the Brief stating the position of the General Counsel on the legal and factual issues of the case. It is noteworthy that the Brief of the General Counsel recommends a dismissal of all substantive charges, and the introduction of an entirely new factual basis for the alleged violation.

82040322072

II. REASON TO BELIEVE NOTIFICATION

When the Chairman of the Federal Election Commission notified respondent in the original 1980 charges that the Commission had "reason to believe that you violated §441b(a) of the Federal Election Campaign Act," the Chairman also included the "General Counsel's factual and legal analysis, which formed a basis for the Commission's findings." At that time, the Chairman indicated a reliance by the Commission upon that factual and legal analysis in making its initial finding.

That memorandum of General Counsel, which formed the basis for the Commission's finding of a reason to believe that a violation of §441b(a) had occurred, contains the following:

"The issue in this matter becomes therefore, one of whether Vincent Marotta was acting as an individual volunteer or, alternatively, was acting within the scope of his employment or was otherwise authorized by North American Systems, Inc.

If the activities of Vincent Marotta were within the scope of his employment, then the solicitation would be considered a violation of 2 U.S.C. §441b(a) by Vincent Marotta. The basis for an apparent violation of §441b(a) is two fold: first, the solicitation constitutes an in-kind contribution to the Carter Campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel. (emphasis added)

82040322073

Thereafter, the investigation proceeded on the alleged violation of §441b(a) to determine whether respondent had so violated the Act by acting within the scope of his employment, or had not violated the Act by acting as an individual volunteer for the Carter campaign. The basis for an apparent violation was listed as follows: "first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications...." However, on April 24, 1981, respondent learned that the General Counsel was advising that the original charges had not been substantiated and therefore no violation of the Act had occurred for the solicitation charged as the original basis for the investigation. However, the General Counsel is now recommending that the Commission find probable cause to believe a violation had occurred with respect to new charges for use of the facilities of North American Systems, Inc. in excess of what he stated as being "occasional, isolated, or incidental use." For the first time, on April 24, 1981, the General Counsel, while dropping all substantive charges for solicitation, now recommends a violation of a very technical provision of the regulations.

Respondent is at a loss to understand how the General Counsel can, at this late date, drop all pending

82040322074

charges and seek to create a new basis for a violation of the Federal Election Campaign Act. The creation of the new basis for a violation of law, after an exhaustive investigation by the General Counsel has proven all original charges to be without merit at this late date, seems manifestly unfair; and for the Commission to accept these new charges at this time would be contrary to that sense of fair play which has heretofore characterized the actions of the Federal Election Commission. A careful reading of the entire record reveals the General Counsel, after a very thorough investigation, properly recognized that the facts do not support the initial allegations, and this is what respondent has contended throughout these proceedings. As heretofore stated, this investigation arose from a newspaper article which was replete with innuendo and speculation and totally lacking in factual material. The article was an attempt to discredit the activities of respondent, and bring him into disrepute in the community. It is regrettable that such venomous personal attacks should occur, but respondent believes that the recommendation of the General Counsel to dismiss the substantive allegations represents a vindication of his position that would otherwise be unavailable to him. The position of the General Counsel is analogous to that of the editors and publisher of the WASHINGTON POST who relied upon the legitimacy of

82040322075

a prize winning news article, only to learn to their chagrin that it was, in fact, merely a "collection of anecdotes and impressions." In the case at bar, the General Counsel has similarly found that, upon investigation, the facts do not support the allegation made by the newspaper article, and the General Counsel rightfully recommends a dismissal of the charges. Respondent believes that fair play would, at that point, have required that this investigation be terminated and respondent relieved of the burden of further defensive proceedings. Notwithstanding, General Counsel has recommended an entirely new factual basis for continuing this action; and this, respondent asserts, violates the regulations of the Federal Election Commission.

Section 111.9 of the Commission's regulations, designated "The reason to believe finding; notification (2 U.S.C. 437g(a)(2))" provides, in relevant part, as follows:

"(a) If the Commission. . .determines . . .that it has reason to believe . . .its Chairman or Vice-Chairman shall notify such respondent. . . setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding."

Respondent submits that the alleged factual basis, supporting the original finding of the Commission that it had

82040322076

reason to believe a violation had occurred, were all successfully rebutted by respondent in the course of the investigation and resulted in the General Counsel's recommendation that the Commission find no probable cause to believe that Vincent Marotta violated 2 U.S.C. 441b(a) in regard to the solicitation of North American Systems, Inc. employees. Therefore, respondent believes that at that point the investigation should be considered closed. The regulations do not provide for bringing of additional subsequent factual material to support what would, in effect, be new charges. Respondent therefore urges that a finding that the original factual basis for the charges cannot be supported is per se a dismissal of this entire matter.

However, respondent will demonstrate that a new charge for the violation of 441b(a) for use of corporation facilities is without merit.

III. THE PROBABLE CAUSE RECOMMENDATION

On page 13 of his Brief, General Counsel asserts the new issue with which respondent is faced in this matter, namely, that he used the staff and facilities of North American Systems, Inc. "to conduct activities on behalf of the Carter-Mondale campaign."

At the outset, it is important to note this matter concerns a single fundraiser, and the preparations

82040322077

for it took place entirely within a three-week period. On that basis alone, the respondent contends that this three-week period qualifies under the term "occasional, isolated and incidental use." This was not a regular practice by these individual volunteers, who were also employees of North American Systems, Inc., and not a continuing practice. These persons kept careful records of their time, and the cost of their time was billed to the Carter campaign. These persons were performing merely envelope stuffing and other clerical functions, they were not making direct solicitation of contributions.

In the opening description of this new issue, the General Counsel states that "NAS appears to have billed the Carter-Mondale campaign only for the hourly rate of the employees involved and for the cost of postage." The implication clearly remains that there were, in fact, other costs incurred by North American Systems, Inc. which were somehow "absorbed," thus resulting in an in-kind corporate contribution by North American Systems, Inc. Respondent affirms that there were no other costs. There was no additional cost incurred by North American Systems, Inc. by virtue of the volunteer activity of certain employees for the fundraising dinner. The computer charge to North American Systems, Inc. is a

82040322078

flat monthly rate. There was no increase in costs to North American Systems, Inc. for telephone service, nor was there any increase in utility costs by virtue of this activity. The only costs incurred were labor and postage, and for these costs there were invoices sent to the Carter-Mondale Committee on a timely basis.

The General Counsel contends that the activities of the volunteers "should not be considered to constitute 'individual volunteer activity'; nor should it be considered 'occasional, isolated, or incidental.'" To support the first contention that this was not "individual volunteer activity," the General Counsel asserts that "Vincent Marotta, Volunteer Chairman of the Fundraising Dinner Committee, sought out 'volunteers' from among NAS employees, that at least 54 employees were working together on the fundraising activities, and that the corporate officers were aware of and approved of the use of the corporation's facilities and employees during regular work hours." As to the allegation that Vincent Marotta "sought out" volunteers from among NAS employees, the General Counsel provides no cites to the record which would support such a statement. The individual volunteer activity which allegedly transcends the acceptable standard can be measured only against the activities of the respondent. The volunteers who stuffed the envelopes, were paid and the Carter-Mondale Committee was billed

82040322079

82040322000

accordingly. Certainly, the General Counsel would not assert that these people who were paid for their efforts must conform to a standard of "individual volunteer activity." The only individual under investigation is Vincent Marotta, and the General Counsel has recognized that Vincent Marotta was in this matter acting as an individual volunteer for the Carter-Mondale Committee and not as a corporate officer. Therefore to create an issue as to the activities of the paid envelope stuffers at this juncture is not relevant to this matter. The only volunteer activity under legitimate scrutiny is that of Vincent Marotta, and the General Counsel has already clearly found that his activities were of a volunteer nature. Therefore, General Counsel is in error by using such phrases as "Because the impetus for the fund-raising project did not come from the employees themselves..." as constituting substantiating evidence. The envelope stuffers were paid for their work, while Vincent Marotta did, in fact, have the impetus for his personal voluntary activity, and his are the only actions under consideration.

The General Counsel pursues this argument with a second element as follows:

"Second, as at least 54 employees were involved, and at least 468.75 hours were used over a three week period, much more than 'occasional, isolated, or incidental use' was made of NAS facilities."

The "occasional, isolated, or incidental use of facilities" in terms of "individual volunteer activity" relates only to Vincent Marotta's actions, not to the actions of paid staff. Held against the Federal Election Commission standard set forth under 11 C.F.R. §114.9(a)(ii) (respondent assumes that the Commission will consider his activities under this standard since he holds fifty percent of the stock of the corporation), the respondent did "not interfere with the corporation in carrying out its normal activities."

Therefore the insertion of the number of hours for which the Carter-Mondale Committee was billed for envelope stuffers is totally superfluous to the General Counsel's recommendation for probable cause and should be summarily dismissed by the Commission.

Furthermore, while General Counsel asserts that the "evidence suggests that the amount of activity of many employees would have been sufficient to prevent them from completing the normal amount of work carried out during that work period" respondent replies that there is no evidence which suggests that employees were prevented from completing the normal amount of work for that period. Respondent advises the Commission that the late spring and early summer months are traditionally the slowest months of activity for North American Systems, Inc. This corporation is involved with the manufacture of a consumer appliance

82040322081

which receives its largest demand in the late fall and early winter months, as holiday gift giving and entertaining provide the greatest demand for the product. Over two-thirds of the business of this corporation takes place in the second half of the calendar year. Respondent respectfully requests that the Commission disregard the contention that there was an interference with the normal work of this period as not being supported either by the facts, much less the evidence.

The difficulty surrounding the General Counsel's opinion that the respondent violated 441b(a) by making more than occasional, isolated, or incidental use of corporate facilities without reimbursement for office space, telephones, utilities, and computer use, centers upon the correct interpretation of the phrase "occasional, isolated, or incidental use of corporate facilities." If the use of NAS facilities were only "occasional, isolated, or incidental," no violation could have occurred. However, the General Counsel contends that the use of facilities were more than occasional, isolated, or incidental, therefore, absent reimbursement for office space, utilities, telephones, etc., 441b(a) would have been violated. The proper application of the facts of this case to the Federal Election Commission regulations is important to the inquiry. Consequently, it is essential to examine past Federal Election

82040322082

Commission interpretations of the phrase "occasional, isolated, or incidental use of corporate facilities."

Federal Election Commission regulation 11 C.F.R. 114.9(a)(1) was initially drafted in the spring of 1976. During the period of time between April 1976 and July 1976, the then General Counsel of the Federal Election Commission, Mr. John Murphy, submitted a series of proposals concerning 114.9(a)(1) in an attempt to formulate a final version of the regulation. At least four differing versions of the regulation were drafted in 1976 and within each separate version there were several alternatives offered. In reviewing these various drafts of 114.9(a)(1), one inescapably concludes that there existed a good deal of confusion as to precisely what the regulation should state. For example, in the June 22, 1976 draft of §114.9(a)(1), the General Counsel's draft recommended to the Commission that for activities other than voter registration and the administration of separate segregated fund,

"corporate facilities may not be used for any other activities in connection with a federal election." 2/

Now this proposed regulation was a good deal different than what was recommended to the Commission by the General Counsel in May of the same year, for note that in May, the proposed 114.9 read, in part,

82040322063

Stockholders and executive or administrative personnel or other employees of a corporation or officers, members or employees of a labor organization may make occasional or incidental use of the facilities of a corporation or labor organization for other activity which is in connection with a Federal election and will be required to reimburse the corporation or labor organization only to the extent that the overhead or operating costs to the corporation or labor organization are increased. 3/

It was not until July 2, 1976, that the General Counsel put forward a draft of 114.9(a)(1) which was reflective of the regulation as it stands today. In explaining the final version of then General Counsel's recommendation to the full Commission, Mr. Murphy stated,

The Commission rejected an option which would have prohibited the use of corporate labor organization facilities for individual volunteer activity. The Commission took the position that if the stockholder, employee or member reimburses the corporation or labor organization for the use, such use will not be a violation of Federal law. In determining the proper formula for reimbursement, the Commission rejected an option which would have required the stockholder, employee, or member to reimburse for all use even if the use did not result in any increased cost to the corporation or labor organization. Rather, the Commission adopted the present subsections which require an individual to reimburse for occasional, isolated or incidental use only to the extent that the corporation or labor organization incurs expenses, above its normal operating costs as a result of such activity. 4/ (emphasis added)

82040322084

This was the prevailing interpretation of how the Federal Election Commission could best regulate the use of corporate facilities in connection with federal campaigns. Therefore, respondent urges the Commission to apply the explanation and interpretation by former General Counsel Murphy as to the intent and meaning of its preparation of the language of the regulation at the time of adoption by the Commission. As further evidence of the interpretation envisioned by the drafters of the regulation, respondent brings to the attention of the Commission an Advisory Opinion by that same former General Counsel, John Murphy, which was published at the time that the regulation now in question was being prepared.

I am of the view that when a professional volunteers his or her services to a campaign and carries the volunteer efforts out in facilities and with equipment he or she normally uses in pursuit of his or her professional employment, and where no increase in the usual overhead costs for the use of such space and facilities is incurred because of the volunteer effort, there is no need to allocate any portion of the usual overhead costs as a contribution. 5/ (emphasis added)

In his Brief, General Counsel cites an Advisory Opinion relating to an entirely different subsection of 11 C.F.R. 114.9 which has no bearing on the present factual situation. This referenced Advisory Opinion, cited by the General Counsel, addresses the question of outside campaign volunteers going into the offices of an unrelated corporation

82040322085

to use a telephone bank. The subsection to which the cited Advisory Opinion addresses states in the opening sentence:

"Persons other than those specifically mentioned in paragraphs (a) and (b) of this section...."

Those persons specifically mentioned in paragraph (a) are "stockholders and employees of the corporation" and in paragraph (b) are "officials, members, and employees of a labor organization." Therefore the reference to 11 C.F.R. 114.9(d) relating as it does, to "other persons" has no bearing on this case, because all persons in this case involved here fall into paragraph (a).

The Brief of the General Counsel not only mistakenly relies upon an irrelevant Advisory Opinion (in view of the facts of the case), but he also has omitted any reference to a recent Matter Under Review which contained a very similar set of facts and wherein he recommended that all proceedings be terminated at the Reason to Believe stage of the proceedings, even though that matter arose on the basis of a complaint filed by an outside citizen, whereas this present case arises from a newspaper article.

In that case, M.U.R. 1261 (80), filed against the McGovern Campaign Committee, Larry's Food Products, Inc., Chip Goodman, et. al., the General Counsel, after investigation by Staff Member White, recommended that the

82040322086

Federal Election Commission "Find no reason to believe that Larry's Food Products, Inc. or Chip Goodman violated 2 U.S.C. §441b(a)." In M.U.R. 1261 (80), the Vice-President of Larry's Food Products, Inc., Mr. Chip Goodman, sent solicitation letters, on corporate letterhead, requesting contribution checks to a "Child Nutrition Appreciation Reception" the proceeds of which were to be used to benefit the McGovern Campaign. The respondent in that case had billed the McGovern campaign for the stationery and postage, and it was determined that Goodman was operating as a volunteer, and not in his official corporate capacity. The General Counsel did not seek to have the secretarial time, the typewriter and other office equipment used in preparing the lists and the letters, nor any overhead for office space, utilities, telephones, etc., treated as an in-kind corporate contribution. Respondent does not understand how the facts in M.U.R. 1261 (80) which was finalized in November 1980, while the current investigation was already underway, by the same Federal Election Commission staff member, are different from the case at hand. Apparently, the fact that Chip Goodman used the facilities, personnel, and equipment of Larry's Foods, while rightfully seeking re-imbusement only for actual expenses was satisfactory to General Counsel in that instance. Respondent does not understand why General

82040322087

Counsel seeks to extract more from respondent who obviously went even further than Mr. Goodman, in that respondent included costs of clerical help in his re-imbusement filings with the Carter campaign.

IV. SUMMARY

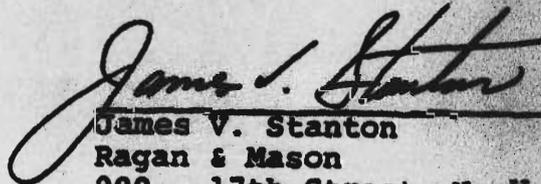
The respondent petitions the Federal Election Commission to dismiss the pending matter concerning the activities of respondent's involvement in the Fundraising Dinner for the Carter-Mondale Committee. Respondent believes that the Brief of the General Counsel, urging the Commission to make a finding of probable cause that a violation of Section 441b(a) has occurred, is defective and violative of the Commission's regulations. The Brief recommends a dismissal of all charges against the respondent which were alleged in the original Factual and Legal Memorandum, and creates at this stage of the proceedings an entirely new factual basis for a violation.

Furthermore, while the General Counsel asserts that the activities of the respondent were more than "occasional, isolated, or incidental," Counsel urges the Commission to adopt a different standard for re-imbusement than was in the mind of the Commission and its General Counsel at the time of the promulgation of the regulation under consideration herein. Second, General Counsel, in this Brief dated April, 1981 seeks to impose a different standard for re-imbursable costs for this respondent than

82040322088

he recommended in November, 1980 in another case with the same factual issues.

Respondent has fully co-operated with the Commission in all of its requests for information. The General Counsel has correctly determined that the facts herein will not support the charge initially levelled against respondent, and has therefore recommended a comparatively insubstantial charge. Respondent urges the Commission to recognize that the resulting charge of the General Counsel is unfairly levelled against respondent who made every effort to comply with the terms of the law, and ratification by the Commission of the General Counsel's theories would impose upon the public a burden so onerous as to discourage legitimate political activities of anyone in the position of a corporate official.



James V. Stanton
Ragan & Mason
900 - 17th Street, N. W.
Washington, D. C. 20006
(202) 296-4750

Attorney for Respondent

May 7, 1981

82040322089

FOOTNOTES

- 1/ Federal Election Commission M.U.R. 1314-80, "General Counsel's Factual and Legal Analysis" dated October 20, 1980, p. 3.
- 2/ Federal Election Commission, "Commissioner Memorandum #618 From General Counsel Jack Murphy to The Commission," dated June 22, 1976, p. 43.
- 3/ Federal Election Commission, "Commissioner Memorandum #516 From General Counsel John Murphy to The Commission," dated May 10, 1976, p. 30.
- 4/ Explanation and Justification of the Disclosure Regulations, House Document #94-573, Explanation and Justification for Part 114, p. 20. See also: Explanation and Justification of Regulations, Prescribed by the Federal Election Commission, April 13, 1977, p. 35.
- 5/ Federal Election Commission Advisory Opinion 1975-30, p. 3.

82040322090

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) M.U.R. 1314
North American Systems, Inc.)

RESPONDENT'S BRIEF

I. BACKGROUND

On October 23, 1980 respondent received notification from the Chairman of the Federal Election Commission, Max L. Friedersdorf, "that on October 17, 1980 the Federal Election Commission determined that there is reason to believe that North American Systems, Inc. violated §441b(a) of the Federal Election Campaign Act of 1971, as amended." The Chairman's letter continued as follows: "The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information." The charges were brought on the basis of a news article which appeared in a Cleveland paper.

Also included with the Chairman's notification letter was a set of questions to which he requested the respondent provide replies.

On November 21, 1980, the respondent transmitted the replies, (submitted under oath), to the Commission's questions through counsel. These responses were prepared after a lengthy and painstaking reconstruction of the events leading up to the Fundraising Dinner held on May 29,

82040322091

91 MAY 08 12 00
GENERAL COUNSEL

1980 and extensive interviews conducted to ensure the most comprehensive response possible to the Commission's inquiry.

The replies to the Commission's inquiries and the additional materials submitted along with the replies generated a second round of written questions from the Commission. Once again, respondent, with assistance of counsel undertook a complete review of the matter, and provided the General Counsel with a complete disclosure under oath of the matters to which these inquiries were directed.

A third and final set of inquiries was telephoned to respondent's counsel on February 11, 1981, and those matters were fully addressed in letter form on February 17, 1981.

On April 24, 1981, respondent received official notice from the General Counsel that his office was prepared to recommend that the Commission find probable cause to believe that the respondent violated 2 U.S.C. §441b(a), and accompanying such notification was the Brief stating the position of the General Counsel on the legal and factual issues of the case. It is noteworthy that the Brief of the General Counsel recommends a dismissal of all substantive charges, and the introduction of an entirely new factual basis for the alleged violation.

82040322092

II. REASON TO BELIEVE NOTIFICATION

When the Chairman of the Federal Election Commission notified respondent in the original 1980 charges that the Commission had "reason to believe that North American Systems, Inc. violated §441b(a) of the Federal Election Campaign Act," the Chairman also included the "General Counsel's factual and legal analysis, which formed a basis for the Commission's findings." At that time, the Chairman indicated a reliance by the Commission upon that factual and legal analysis in making its initial finding.

That memorandum of General Counsel, which formed the basis for the Commission's finding of a reason to believe that a violation of §441b(a) had occurred, contains the following:

"The issue in this matter becomes therefore, one of whether Vincent and Thomas Marotta were acting as individual volunteers or, alternatively, were acting within the scope of their employment or were otherwise authorized by North American Systems, Inc.

If the activities of Vincent and Thomas Marotta were within the scope of their employment, then the solicitation would be considered a violation of 2 U.S.C. §441b(a) by North American Systems, Inc. The basis for an apparent violation of §441b(a) is two fold: first, the solicitation constitutes an in-kind contribution to the Carter Campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel. 1/ (emphasis added)

82040322093

Thereafter, the investigation proceeded on the alleged violation of §441b(a) to determine whether respondent, Vincent Marotta, had so violated the Act by acting within the scope of his employment, or had not violated the Act by acting as an individual volunteer for the Carter campaign. The basis for an apparent violation was listed as follows: "first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications" However, on April 24, 1981, respondent learned that the General Counsel was advising that the original charges had not been substantiated and therefore no violation of the Act had occurred for the solicitation charged as the original basis for the investigation. However, the General Counsel is now recommending that the Commission find probable cause to believe a violation had occurred with respect to new charges for use of the facilities of North American Systems, Inc. in excess of what he stated as being "occasional, isolated, or incidental use." For the first time, on April 24, 1981, the General Counsel, while dropping all substantive charges for solicitation, now recommends a violation of a very technical provision of the regulations.

Respondent is at a loss to understand how the General Counsel can, at this late date, drop all pending

82040322094

charges and seek to create a new basis for a violation of the Federal Election Campaign Act. The creation of the new basis for a violation of law, after an exhaustive investigation by the General Counsel has proven all original charges to be without merit at this late date, seems manifestly unfair; and for the Commission to accept these new charges at this time would be contrary to that sense of fair play which has heretofore characterized the actions of the Federal Election Commission. A careful reading of the entire record reveals the General Counsel, after a very thorough investigation, properly recognized that the facts do not support the initial allegations, and this is what respondent has contended throughout these proceedings. As heretofore stated, this investigation arose from a newspaper article which was replete with innuendo and speculation and totally lacking in factual material. The article was an attempt to discredit the activities of Vincent and Thomas Marotta, and bring them into disrepute in the community. It is regrettable that such venomous personal attacks should occur, but respondent believes that the recommendation of the General Counsel to dismiss the substantive allegations represents a vindication of their position that would otherwise be unavailable to them. The position of the General Counsel is analogous to that of the editors and publisher of the WASHINGTON POST who relied upon the legitimacy of

82040322095

a prize winning news article, only to learn to their chagrin that it was, in fact, merely a "collection of anecdotes and impressions." In the case at bar, the General Counsel has similarly found that, upon investigation, the facts do not support the allegation made by the newspaper article, and the General Counsel rightfully recommends a dismissal of the charges. Respondent believes that fair play would, at that point, have required that this investigation be terminated and respondent relieved of the burden of further defensive proceedings. Notwithstanding, General Counsel has recommended an entirely new factual basis for continuing this action; and this, respondent asserts, violates the regulations of the Federal Election Commission.

Section 111.9 of the Commission's regulations, designated "The reason to believe finding; notification (2 U.S.C. 437g(a)(2))" provides, in relevant part, as follows:

"(a) If the Commission. . .determines . . .that it has reason to believe . . .its Chairman or Vice-Chairman shall notify such respondent. . . setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding."

Respondent submits that the alleged factual basis, supporting the original finding of the Commission that it had

82040322096

reason to believe a violation had occurred, were all successfully rebutted by respondent in the course of the investigation and resulted in the General Counsel's recommendation that the Commission find no probable cause to believe that North American Systems, Inc. violated 2 U.S.C. 441b(a) in regard to the solicitation of North American Systems, Inc. employees. Therefore, respondent believes that at that point the investigation should be considered closed. The regulations do not provide for bringing of additional subsequent factual material to support what would, in effect, be new charges. Respondent therefore urges that a finding that the original factual basis for the charges cannot be supported is per se a dismissal of this entire matter.

However, respondent will demonstrate that a new charge for the violation of 441b(a) for use of corporation facilities is without merit.

III. THE PROBABLE CAUSE RECOMMENDATION

On page 13 of his Brief, General Counsel asserts the new issue with which respondent is faced in this matter, namely, that the staff and facilities of North American Systems, Inc. were used "to conduct activities on behalf of the Carter-Mondale campaign."

At the outset, it is important to note this matter concerns a single fundraiser, and the preparations

82040322097

for it took place entirely within a three-week period. On that basis alone, the respondent contends that this three-week period qualifies under the term "occasional, isolated and incidental use." This was not a regular practice by these individual volunteers, who were also employees of North American Systems, Inc., and not a continuing practice. These persons kept careful records of their time, and the cost of their time was billed to the Carter campaign. These persons were performing merely envelope stuffing and other clerical functions, they were not making direct solicitation of contributions.

In the opening description of this new issue, the General Counsel states that "NAS appears to have billed the Carter-Mondale campaign only for the hourly rate of the employees involved and for the cost of postage." The implication clearly remains that there were, in fact, other costs incurred by North American Systems, Inc. which were somehow "absorbed," thus resulting in an in-kind corporate contribution by North American Systems, Inc. Respondent affirms that there were no other costs. There was no additional cost incurred by North American Systems, Inc. by virtue of the volunteer activity of certain employees for the fundraising dinner. The computer charge to North American Systems, Inc. is a

82040322098

flat monthly rate. There was no increase in costs to North American Systems, Inc. for telephone service, nor was there any increase in utility costs by virtue of this activity. The only costs incurred were labor and postage, and for these costs there were invoices sent to the Carter-Mondale Committee on a timely basis.

The General Counsel contends that the activities of the volunteers "should not be considered to constitute 'individual volunteer activity'; nor should it be considered 'occasional, isolated, or incidental.'" To support the first contention that this was not "individual volunteer activity," the General Counsel asserts that "Vincent Marotta, Volunteer Chairman of the Fundraising Dinner Committee, sought out 'volunteers' from among NAS employees, that at least 54 employees were working together on the fundraising activities, and that the corporate officers were aware of and approved of the use of the corporation's facilities and employees during regular work hours." As to the allegation that Vincent Marotta "sought out" volunteers from among NAS employees, the General Counsel provides no cites to the record which would support such a statement. The individual volunteer activity which allegedly transcends the acceptable standard can be measured only against the activities of the respondents, Vincent and Thomas Marotta. The volunteers who stuffed the envelopes, were paid and the Carter-Mondale

82040322099

82040322100

Committee was billed accordingly. Certainly, the General Counsel would not assert that these people who were paid for their efforts must conform to a standard of "individual volunteer activity." The only individuals under investigation are Vincent and Thomas Marotta, and the General Counsel has recognized that Vincent and Thomas Marotta were in this matter acting as individual volunteers for the Carter-Mondale Committee and not as corporate officers. Therefore to create an issue as to the activities of the paid envelope stuffers at this juncture is not relevant to this matter. The only volunteer activity under legitimate scrutiny is that of Vincent and Thomas Marotta, and the General Counsel has already clearly found that their activities were of a volunteer nature. Therefore, General Counsel is in error by using such phrases as "Because the impetus for the fundraising project did not come from the employees themselves..." as constituting substantiating evidence. The envelope stuffers were paid for their work, while Vincent and Thomas Marotta did, in fact, have the impetus for their personal voluntary activity, and their actions are the only ones under consideration.

The General Counsel pursues this argument with a second element as follows:

"Second, as at least 54 employees were involved, and at least 468.75 hours were used over a three week period, much more than 'occasional,

isolated, or incidental use' was made of NAS facilities."

The "occasional, isolated, or incidental use of facilities" in terms of "individual volunteer activity" relates only to Vincent and Thomas Marotta's actions, not to the actions of paid staff. Held against the Federal Election Commission standard set forth under 11 C.F.R. §114.9(a)(i) and (ii) the respondents did "not interfere with the corporation in carrying out its normal activities." Therefore the insertion of the number of hours for which the Carter-Mondale Committee was billed for envelope stuffers is totally superfluous to the General Counsel's recommendation for probable cause and should be summarily dismissed by the Commission.

Furthermore, while General Counsel asserts that the "evidence suggests that the amount of activity of many employees would have been sufficient to prevent them from completing the normal amount of work carried out during that work period" respondent replies that there is no evidence which suggests that employees were prevented from completing the normal amount of work for that period. Respondent advises the Commission that the late spring and early summer months are traditionally the slowest months of activity for North American Systems, Inc. This corporation is involved with the manufacture of a consumer appliance

82040322101

which receives its largest demand in the late fall and early winter months, as holiday gift giving and entertaining provide the greatest demand for the product. Over two-thirds of the business of this corporation takes place in the second half of the calendar year. Respondent respectfully requests that the Commission disregard the contention that there was an interference with the normal work of this period as not being supported either by the facts, much less the evidence.

The difficulty surrounding the General Counsel's opinion that the respondent violated 441b(a) by making more than occasional, isolated, or incidental use of corporate facilities without reimbursement for office space, telephones, utilities, and computer use, centers upon the correct interpretation of the phrase "occasional, isolated, or incidental use of corporate facilities." If the use of NAS facilities were only "occasional, isolated, or incidental," no violation could have occurred. However, the General Counsel contends that the use of facilities were more than occasional, isolated, or incidental, therefore, absent reimbursement for office space, utilities, telephones, etc., 441b(a) would have been violated. The proper application of the facts of this case to the Federal Election Commission regulations is important to the inquiry. Consequently, it is essential to examine past Federal Election

82040322102

Commission interpretations of the phrase "occasional, isolated, or incidental use of corporate facilities."

Federal Election Commission regulation 11 C.F.R. 114.9(a)(1) was initially drafted in the spring of 1976. During the period of time between April 1976 and July 1976, the then General Counsel of the Federal Election Commission, Mr. John Murphy, submitted a series of proposals concerning 114.9(a)(1) in an attempt to formulate a final version of the regulation. At least four differing versions of the regulation were drafted in 1976 and within each separate version there were several alternatives offered. In reviewing these various drafts of 114.9(a)(1), one inescapably concludes that there existed a good deal of confusion as to precisely what the regulation should state. For example, in the June 22, 1976 draft of §114.9(a)(1), the General Counsel's draft recommended to the Commission that for activities other than voter registration and the administration of separate segregated fund,

"corporate facilities may not be used for any other activities in connection with a federal election." 2/

Now this proposed regulation was a good deal different than what was recommended to the Commission by the General Counsel in May of the same year, for note that in May, the proposed 114.9 read, in part,

82040322103

Stockholders and executive or administrative personnel or other employees of a corporation or officers, members or employees of a labor organization may make occasional or incidental use of the facilities of a corporation or labor organization for other activity which is in connection with a Federal election and will be required to reimburse the corporation or labor organization only to the extent that the overhead or operating costs to the corporation or labor organization are increased. 3/

It was not until July 2, 1976, that the General Counsel put forward a draft of 114.9(a)(1) which was reflective of the regulation as it stands today. In explaining the final version of then General Counsel's recommendation to the full Commission, Mr. Murphy stated,

The Commission rejected an option which would have prohibited the use of corporate labor organization facilities for individual volunteer activity. The Commission took the position that if the stockholder, employee or member reimburses the corporation or labor organization for the use, such use will not be a violation of Federal law. In determining the proper formula for reimbursement, the Commission rejected an option which would have required the stockholder, employee, or member to reimburse for all use even if the use did not result in any increased cost to the corporation or labor organization. Rather, the Commission adopted the present subsections which require an individual to reimburse for occasional, isolated or incidental use only to the extent that the corporation or labor organization incurs expenses, above its normal operating costs as a result of such activity. 4/ (emphasis added)

92040322104

This was the prevailing interpretation of how the Federal Election Commission could best regulate the use of corporate facilities in connection with federal campaigns. Therefore, respondent urges the Commission to apply the explanation and interpretation by former General Counsel Murphy as to the intent and meaning of its preparation of the language of the regulation at the time of adoption by the Commission. As further evidence of the interpretation envisioned by the drafters of the regulation, respondent brings to the attention of the Commission an Advisory Opinion by that same former General Counsel, John Murphy, which was published at the time that the regulation now in question was being prepared.

I am of the view that when a professional volunteers his or her services to a campaign and carries the volunteer efforts out in facilities and with equipment he or she normally uses in pursuit of his or her professional employment, and where no increase in the usual overhead costs for the use of such space and facilities is incurred because of the volunteer effort, there is no need to allocate any portion of the usual overhead costs as a contribution. 5/ (emphasis added)

In his Brief, General Counsel cites an Advisory Opinion relating to an entirely different subsection of 11 C.F.R. 114.9 which has no bearing on the present factual situation. This referenced Advisory Opinion, cited by the General Counsel, addresses the question of outside campaign volunteers going into the offices of an unrelated corporation

82040322105

to use a telephone bank. The subsection to which the cited Advisory Opinion addresses states in the opening sentence:

"Persons other than those specifically mentioned in paragraphs (a) and (b) of this section...."

Those persons specifically mentioned in paragraph (a) are "stockholders and employees of the corporation" and in paragraph (b) are "officials, members, and employees of a labor organization." Therefore the reference to 11 C.F.R. 114.9(d) relating as it does, to "other persons" has no bearing on this case, because all persons in this case involved here fall into paragraph (a).

The Brief of the General Counsel not only mistakenly relies upon an irrelevant Advisory Opinion (in view of the facts of the case), but he also has omitted any reference to a recent Matter Under Review which contained a very similar set of facts and wherein he recommended that all proceedings be terminated at the Reason to Believe stage of the proceedings, even though that matter arose on the basis of a complaint filed by an outside citizen, whereas this present case arises from a newspaper article.

In that case, M.U.R. 1261 (80), filed against the McGovern Campaign Committee, Larry's Food Products, Inc., Chip Goodman, et. al., the General Counsel, after investigation by Staff Member White, recommended that the

82040322106

Federal Election Commission "Find no reason to believe that Larry's Food Products, Inc. or Chip Goodman violated 2 U.S.C. §441b(a)." In M.U.R. 1261 (80), the Vice-President of Larry's Food Products, Inc., Mr. Chip Goodman, sent solicitation letters, on corporate letterhead, requesting contribution checks to a "Child Nutrition Appreciation Reception" the proceeds of which were to be used to benefit the McGovern Campaign. The respondent in that case had billed the McGovern campaign for the stationery and postage, and it was determined that Goodman was operating as a volunteer, and not in his official corporate capacity. The General Counsel did not seek to have the secretarial time, the typewriter and other office equipment used in preparing the lists and the letters, nor any overhead for office space, utilities, telephones, etc., treated as an in-kind corporate contribution. Respondent does not understand how the facts in M.U.R. 1261 (80) which was finalized in November 1980, while the current investigation was already underway, by the same Federal Election Commission staff member, are different from the case at hand. Apparently, the fact that Chip Goodman used the facilities, personnel, and equipment of Larry's Foods, while rightfully seeking re-imbusement only for actual expenses was satisfactory to General Counsel in that instance. Respondent does not understand why General

82040322107

Counsel seeks to extract more from respondent who obviously went even further than Mr. Goodman, in that respondent included costs of clerical help in their re-imbusement filings with the Carter campaign.

IV. SUMMARY

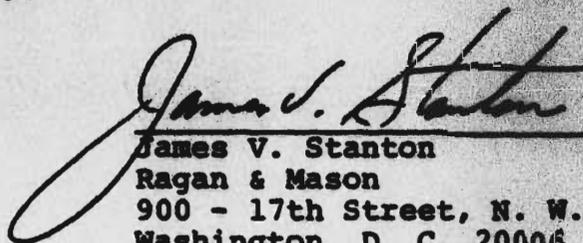
The respondent petitions the Federal Election Commission to dismiss the pending matter concerning the activities of respondent's involvement in the Fundraising Dinner for the Carter-Mondale Committee. Respondent believes that the Brief of the General Counsel, urging the Commission to make a finding of probable cause that a violation of Section 441b(a) has occurred, is defective and violative of the Commission's regulations. The Brief recommends a dismissal of all charges against the respondent which were alleged in the original Factual and Legal Memorandum, and creates at this stage of the proceedings an entirely new factual basis for a violation.

Furthermore, while the General Counsel asserts that the activities of the respondent were more than "occasional, isolated, or incidental," Counsel urges the Commission to adopt a different standard for re-imbusement than was in the mind of the Commission and its General Counsel at the time of the promulgation of the regulation under consideration herein. Second, General Counsel, in this Brief dated April, 1981 seeks to impose a different

82040322108

standard for re-imbursable costs for this respondent than he recommended in November, 1980 in another case with the same factual issues.

Respondent has fully co-operated with the Commission in all of its requests for information. The General Counsel has correctly determined that the facts herein will not support the charge initially levelled against respondent, and has therefore recommended a comparatively insubstantial charge. Respondent urges the Commission to recognize that the resulting charge of the General Counsel is unfairly levelled against respondent who made every effort to comply with the terms of the law, and ratification by the Commission of the General Counsel's theories would impose upon the public a burden so onerous as to discourage legitimate political activities of corporate officials.


James V. Stanton
Ragan & Mason
900 - 17th Street, N. W.
Washington, D. C. 20006
(202) 296-4750

Attorney for Respondent

May 7, 1981

82040322109

FOOTNOTES

- 1/ Federal Election Commission M.U.R. 1314-80, "General Counsel's Factual and Legal Analysis" dated October 20, 1980, p. 3.
- 2/ Federal Election Commission, "Commissioner Memorandum #618 From General Counsel Jack Murphy to The Commission," dated June 22, 1976, p. 43.
- 3/ Federal Election Commission, "Commissioner Memorandum #516 From General Counsel John Murphy to The Commission," dated May 10, 1976, p. 30.
- 4/ Explanation and Justification of the Disclosure Regulations, House Document #94-573, Explanation and Justification for Part 114, p. 20. See also: Explanation and Justification of Regulations, Prescribed by the Federal Election Commission, April 13, 1977, p. 35.
- 5/ Federal Election Commission Advisory Opinion 1975-30, p. 3.

82040322110

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Thomas Marotta)

M.U.R. 14

91 MAY 8 PM 2: 04

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

RESPONDENT'S BRIEF

I. BACKGROUND

On October 23, 1980 respondent received notification from the Chairman of the Federal Election Commission, Max L. Friedersdorf, "that on October 17, 1980 the Federal Election Commission determined that there is reason to believe that you violated §401b(a) and §401f of the Federal Election Campaign Act of 1971, as amended." The Chairman's letter continued as follows: "The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information." The charges were brought on the basis of a news article which appeared in a Cleveland paper.

Also included with the Chairman's notification letter was a set of questions to which he requested the respondent provide replies.

On November 21, 1980, the respondent transmitted the replies, (submitted under oath), to the Commission's questions through counsel. These responses were prepared after a lengthy and painstaking reconstruction of the events leading up to the Fundraising Dinner held on May 29,

82040322111

1980 and extensive interviews conducted to ensure the most comprehensive response possible to the Commission's inquiry.

The replies to the Commission's inquiries and the additional materials submitted along with the replies generated a second round of written questions from the Commission. Once again, respondent, with assistance of counsel undertook a complete review of the matter, and provided the General Counsel with a complete disclosure under oath of the matters to which these inquiries were directed.

A third and final set of inquiries was telephoned to respondent's counsel on February 11, 1981, and those matters were fully addressed in letter form on February 17, 1981.

On April 24, 1981, respondent received official notice from the General Counsel that his office was prepared to recommend that the Commission find probable cause to believe that the respondent violated 2 U.S.C. §441b(a), and accompanying such notification was the Brief stating the position of the General Counsel on the legal and factual issues of the case. It is noteworthy that the Brief of the General Counsel recommends a dismissal of all substantive charges, and the introduction of an entirely new factual basis for the alleged violation.

82040322112

II. REASON TO BELIEVE NOTIFICATION

When the Chairman of the Federal Election Commission notified respondent in the original 1980 charges that the Commission had "reason to believe that you violated §441b(a) of the Federal Election Campaign Act," the Chairman also included the "General Counsel's factual and legal analysis, which formed a basis for the Commission's findings." At that time, the Chairman indicated a reliance by the Commission upon that factual and legal analysis in making its initial finding.

That memorandum of General Counsel, which formed the basis for the Commission's finding of a reason to believe that a violation of §441b(a) had occurred, contains the following:

"The issue in this matter becomes therefore, one of whether Thomas Marotta was acting as an individual volunteer or, alternatively, was acting within the scope of his employment or was otherwise authorized by North American Systems, Inc.

If the activities of Thomas Marotta were within the scope of his employment, then the solicitation would be considered a violation of 2 U.S.C. §441b(a) by Thomas Marotta. The basis for an apparent violation of §441b(a) is two fold: first, the solicitation constitutes an in-kind contribution to the Carter Campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel. 1/ (emphasis added)

82040322113

Thereafter, the investigation proceeded on the alleged violation of §441b(a) to determine whether respondent had so violated the Act by acting within the scope of his employment, or had not violated the Act by acting as an individual volunteer for the Carter campaign. The basis for an apparent violation was listed as follows: "first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications...." However, on April 24, 1981, respondent learned that the General Counsel was advising that the original charges had not been substantiated and therefore no violation of the Act had occurred for the solicitation charged as the original basis for the investigation. However, the General Counsel is now recommending that the Commission find probable cause to believe a violation had occurred with respect to new charges for use of the facilities of North American Systems, Inc. in excess of what he stated as being "occasional, isolated, or incidental use." For the first time, on April 24, 1981, the General Counsel, while dropping all substantive charges for solicitation, now recommends a violation of a very technical provision of the regulations.

Respondent is at a loss to understand how the General Counsel can, at this late date, drop all pending

82040322114

charges and seek to create a new basis for a violation of the Federal Election Campaign Act. The creation of the new basis for a violation of law, after an exhaustive investigation by the General Counsel has proven all original charges to be without merit at this late date, seems manifestly unfair; and for the Commission to accept these new charges at this time would be contrary to that sense of fair play which has heretofore characterized the actions of the Federal Election Commission. A careful reading of the entire record reveals the General Counsel, after a very thorough investigation, properly recognized that the facts do not support the initial allegations, and this is what respondent has contended throughout these proceedings. As heretofore stated, this investigation arose from a newspaper article which was replete with innuendo and speculation and totally lacking in factual material. The article was an attempt to discredit the activities of respondent, and bring him into disrepute in the community. It is regrettable that such venomous personal attacks should occur, but respondent believes that the recommendation of the General Counsel to dismiss the substantive allegations represents a vindication of his position that would otherwise be unavailable to him. The position of the General Counsel is analogous to that of the editors and publisher of the WASHINGTON POST who relied upon the legitimacy of

82040322115

a prize winning news article, only to learn to their chagrin that it was, in fact, merely a "collection of anecdotes and impressions." In the case at bar, the General Counsel has similarly found that, upon investigation, the facts do not support the allegation made by the newspaper article, and the General Counsel rightfully recommends a dismissal of the charges. Respondent believes that fair play would, at that point, have required that this investigation be terminated and respondent relieved of the burden of further defensive proceedings. Notwithstanding, General Counsel has recommended an entirely new factual basis for continuing this action; and this, respondent asserts, violates the regulations of the Federal Election Commission.

Section 111.9 of the Commission's regulations, designated "The reason to believe finding; notification (2 U.S.C. 437g(a)(2))" provides, in relevant part, as follows:

"(a) If the Commission. . .determines . . .that it has reason to believe . . .its Chairman or Vice-Chairman shall notify such respondent. . . setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding."

Respondent submits that the alleged factual basis, supporting the original finding of the Commission that it had

82040322116

reason to believe a violation had occurred, were all successfully rebutted by respondent in the course of the investigation and resulted in the General Counsel's recommendation that the Commission find no probable cause to believe that Thomas Marotta violated 2 U.S.C. 441b(a) in regard to the solicitation of North American Systems, Inc. employees and that there is no evidence to sustain a violation of 2 U.S.C. 441f. Therefore, respondent believes that at that point the investigation should be considered closed. The regulations do not provide for bringing of additional subsequent factual material to support what would, in effect, be new charges. Respondent therefore urges that a finding that the original factual basis for the charges cannot be supported is per se a dismissal of this entire matter.

However, respondent will demonstrate that a new charge for the violation of 441b(a) for use of corporation facilities is without merit.

III. THE PROBABLE CAUSE RECOMMENDATION

On page 13 of his Brief, General Counsel asserts the new issue with which respondent is faced in this matter, namely, that he used the staff and facilities of North American Systems, Inc. "to conduct activities on behalf of the Carter-Mondale campaign."

The respondent, Thomas Marotta, is the Vice-President for Production at North American Systems, Inc.

82040322117

In that capacity, he has no functional relationship to the Administrative section of the Corporation, and his office is located in a totally separate portion of the corporate facilities. Although he was a volunteer for the Fundraising Dinner, his functions relating to the dinner preparations were separate and distinct from the volunteers who stuffed envelopes and performed other clerical tasks. Respondent had no involvement with these tasks, and had no information as to what charges were forwarded to the Carter-Mondale Committee for reimbursement.

Nevertheless, it is important to note this matter concerns a single fundraiser, and the preparations for it took place entirely within a three-week period. On that basis alone, the respondent contends that this three-week period qualifies under the term "occasional, isolated and incidental use." This was not a regular practice by these individual volunteers, who were also employees of North American Systems, Inc., and not a continuing practice. These persons kept careful records of their time, and the cost of their time was billed to the Carter campaign. These persons were performing merely envelope stuffing and other clerical functions, they were not making direct solicitation of contributions.

In the opening description of this new issue, the General Counsel states that "NAS appears to have billed the Carter-Mondale campaign only for the hourly

82040322118

rate of the employees involved and for the cost of postage." The implication clearly remains that there were, in fact, other costs incurred by North American Systems, Inc. which were somehow "absorbed," thus resulting in an in-kind corporate contribution by North American Systems, Inc. Respondent affirms that there were no other costs. There was no additional cost incurred by North American Systems, Inc. by virtue of the volunteer activity of certain employees for the fundraising dinner. The computer charge to North American Systems, Inc. is a flat monthly rate. There was no increase in costs to North American Systems, Inc. for telephone service, nor was there any increase in utility costs by virtue of this activity. The only costs incurred were labor and postage, and for these costs there were invoices sent to the Carter-Mondale Committee on a timely basis.

The General Counsel contends that the activities of the volunteers "should not be considered to constitute 'individual volunteer activity'; nor should it be considered 'occasional, isolated, or incidental.'" To support the first contention that this was not "individual volunteer activity," the General Counsel asserts that "Vincent Marotta, Volunteer Chairman of the Fundraising Dinner Committee, sought out 'volunteers' from among NAS employees, that at least 54 employees were working together on the fundraising

82040322119

activities, and that the corporate officers were aware of and approved of the use of the corporation's facilities and employees during regular work hours." As to the allegation that Vincent Marotta "sought out" volunteers from among NAS employees, the General Counsel provides no cites to the record which would support such a statement. The individual volunteer activity which allegedly transcends the acceptable standard can be measured only against the activities of the respondent. The volunteers who stuffed the envelopes, were paid and the Carter-Mondale Committee was billed accordingly. Certainly, the General Counsel would not assert that these people who were paid for their efforts must conform to a standard of "individual volunteer activity." The only individual under investigation is Thomas Marotta, and the General Counsel has recognized that Thomas Marotta was in this matter acting as an individual volunteer for the Carter-Mondale Committee and not as a corporate officer. Therefore to create an issue as to the activities of the paid envelope stuffers at this juncture is not relevant to this matter. The only volunteer activity under legitimate scrutiny is that of Thomas Marotta, and the General Counsel has already clearly found that his activities were of a volunteer nature. Therefore, General Counsel is in error by using such phrases as "Because the impetus for the fund-raising project did not come from the employees themselves..."

82040322120

as constituting substantiating evidence. The envelope stuffers were paid for their work, while Thomas Marotta did, in fact, have the impetus for his personal voluntary activity, and his are the only actions under consideration.

The General Counsel pursues this argument with a second element as follows:

"Second, as at least 54 employees were involved, and at least 468.75 hours were used over a three week period, much more than 'occasional, isolated, or incidental use' was made of NAS facilities."

The "occasional, isolated, or incidental use of facilities" in terms of "individual volunteer activity" relates only to Thomas Marotta's actions, not to the actions of paid staff. Held against the Federal Election Commission standard set forth under 11 C.F.R. §114.9(a)(i), the respondent did "not interfere with the corporation in carrying out its normal activities." Therefore the insertion of the number of hours for which the Carter-Mondale Committee was billed for envelope stuffers is totally superfluous to the General Counsel's recommendation for probable cause and should be summarily dismissed by the Commission.

Furthermore, while General Counsel asserts that the "evidence suggests that the amount of activity of many employees would have been sufficient to prevent them from

82040322121

8 2 0 4 0 3 2 2 1 2 2

completing the normal amount of work carried out during that work period" respondent replies that there is no evidence which suggests that employees were prevented from completing the normal amount of work for that period. Respondent advises the Commission that the late spring and early summer months are traditionally the slowest months of activity for North American Systems, Inc. This corporation is involved with the manufacture of a consumer appliance which receives its largest demand in the late fall and early winter months, as holiday gift giving and entertaining provide the greatest demand for the product. Over two-thirds of the business of this corporation takes place in the second half of the calendar year. Respondent respectfully requests that the Commission disregard the contention that there was an interference with the normal work of this period as not being supported either by the facts, much less the evidence.

The difficulty surrounding the General Counsel's opinion that the respondent violated 44b(a) by making more than occasional, isolated, or incidental use of corporate facilities without reimbursement for office space, telephones, utilities, and computer use, centers upon the correct interpretation of the phrase "occasional, isolated, or incidental use of corporate facilities." If the use of

NAS facilities were only "occasional, isolated, or incidental," no violation could have occurred. However, the General Counsel contends that the use of facilities were more than occasional, isolated, or incidental, therefore, absent reimbursement for office space, utilities, telephones, etc., 44lb(a) would have been violated. The proper application of the facts of this case to the Federal Election Commission regulations is important to the inquiry. Consequently, it is essential to examine past Federal Election Commission interpretations of the phrase "occasional, isolated, or incidental use of corporate facilities."

Federal Election Commission regulation 11 C.F.R. 114.9(a)(1) was initially drafted in the spring of 1976. During the period of time between April 1976 and July 1976, the then General Counsel of the Federal Election Commission, Mr. John Murphy, submitted a series of proposals concerning 114.9(a)(1) in an attempt to formulate a final version of the regulation. At least four differing versions of the regulation were drafted in 1976 and within each separate version there were several alternatives offered. In reviewing these various drafts of 114.9(a)(1), one inescapably concludes that there existed a good deal of confusion as to precisely what the regulation should state. For example, in the June 22, 1976 draft of §114.9(a)(1), the General

82040322123

Counsel's draft recommended to the Commission that for activities other than voter registration and the administration of separate segregated fund,

"corporate facilities may not be used for any other activities in connection with a federal election." 2/

Now this proposed regulation was a good deal different than what was recommended to the Commission by the General Counsel in May of the same year, for note that in May, the proposed 114.9 read, in part,

Stockholders and executive or administrative personnel or other employees of a corporation or officers, members or employees of a labor organization may make occasional or incidental use of the facilities of a corporation or labor organization for other activity which is in connection with a Federal election and will be required to reimburse the corporation or labor organization only to the extent that the overhead or operating costs to the corporation or labor organization are increased. 3/

It was not until July 2, 1976, that the General Counsel put forward a draft of 114.9(a)(1) which was reflective of the regulation as it stands today. In explaining the final version of then General Counsel's recommendation to the full Commission, Mr. Murphy stated,

82040322124

The Commission rejected an option which would have prohibited the use of corporate labor organization facilities for individual volunteer activity. The Commission took the position that if the stockholder, employee or member reimburses the corporation or labor organization for the use, such use will not be a violation of Federal law. In determining the proper formula for reimbursement, the Commission rejected an option which would have required the stockholder, employee, or member to reimburse for all use even if the use did not result in any increased cost to the corporation or labor organization. Rather, the Commission adopted the present subsections which require an individual to reimburse for occasional, isolated or incidental use only to the extent that the corporation or labor organization incurs expenses, above its normal operating costs as a result of such activity. ^{4/} (emphasis added)

This was the prevailing interpretation of how the Federal Election Commission could best regulate the use of corporate facilities in connection with federal campaigns. Therefore, respondent urges the Commission to apply the explanation and interpretation by former General Counsel Murphy as to the intent and meaning of its preparation of the language of the regulation at the time of adoption by the Commission. As further evidence of the interpretation envisioned by the drafters of the regulation, respondent brings to the attention of the

82040322125

Commission an Advisory Opinion by that same former General Counsel, John Murphy, which was published at the time that the regulation now in question was being prepared.

I am of the view that when a professional volunteers his or her services to a campaign and carries the volunteer efforts out in facilities and with equipment he or she normally uses in pursuit of his or her professional employment, and where no increase in the usual overhead costs for the use of such space and facilities is incurred because of the volunteer effort, there is no need to allocate any portion of the usual overhead costs as a contribution. 5/
(emphasis added)

In his Brief, General Counsel cites an Advisory Opinion relating to an entirely different subsection of 11 C.F.R. 114.9 which has no bearing on the present factual situation. This referenced Advisory Opinion, cited by the General Counsel, addresses the question of outside campaign volunteers going into the offices of an unrelated corporation to use a telephone bank. The subsection to which the cited Advisory Opinion addresses states in the opening sentence:

"Persons other than those specifically mentioned in paragraphs (a) and (b) of this section...."

82040322126

Those persons specifically mentioned in paragraph (a) are "stockholders and employees of the corporation" and in paragraph (b) are "officials, members, and employees of a labor organization." Therefore the reference to 11 C.F.R. 114.9(d) relating as it does, to "other persons" has no bearing on this case, because all persons in this case involved here fall into paragraph (a).

The Brief of the General Counsel not only mistakenly relies upon an irrelevant Advisory Opinion (in view of the facts of the case), but he also has omitted any reference to a recent Matter Under Review which contained a very similar set of facts and wherein he recommended that all proceedings be terminated at the Reason to Believe stage of the proceedings, even though that matter arose on the basis of a complaint filed by an outside citizen, whereas this present case arises from a newspaper article.

In that case, M.U.R. 1261 (80), filed against the McGovern Campaign Committee, Larry's Food Products, Inc., Chip Goodman, et. al., the General Counsel, after investigation by Staff Member White, recommended that the Federal Election Commission "Find no reason to believe that Larry's Food Products, Inc. or Chip Goodman violated 2 U.S.C. §441b(a)." In M.U.R. 1261 (80), the Vice-President

82040322127

of Larry's Food Products, Inc., Mr. Chip Goodman, sent solicitation letters, on corporate letterhead, requesting contribution checks to a "Child Nutrition Appreciation Reception" the proceeds of which were to be used to benefit the McGovern Campaign. The respondent in that case had billed the McGovern campaign for the stationery and postage, and it was determined that Goodman was operating as a volunteer, and not in his official corporate capacity. The General Counsel did not seek to have the secretarial time, the typewriter and other office equipment used in preparing the lists and the letters, nor any overhead for office space, utilities, telephones, etc., treated as an in-kind corporate contribution. Respondent does not understand how the facts in M.U.R. 1261 (80) which was finalized in November 1980, while the current investigation was already underway, by the same Federal Election Commission staff member, are different from the case at hand. Apparently, the fact that Chip Goodman used the facilities, personnel, and equipment of Larry's Foods, while rightfully seeking re-imbusement only for actual expenses was satisfactory to General Counsel in that instance. Respondent does not understand why General Counsel seeks to extract more from respondent who obviously went even further than Mr. Goodman, in that respondent

82040322128

included costs of clerical help in his re-imbusement filings with the Carter campaign.

IV. SUMMARY

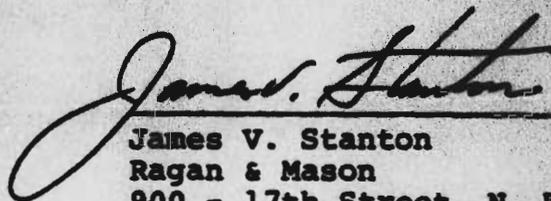
The respondent petitions the Federal Election Commission to dismiss the pending matter concerning the activities of respondent's involvement in the Fundraising Dinner for the Carter-Mondale Committee. Respondent believes that the Brief of the General Counsel, urging the Commission to make a finding of probable cause that a violation of Section 441b(a) has occurred, is defective and violative of the Commission's regulations. The Brief recommends a dismissal of all charges against the respondent which were alleged in the original Factual and Legal Memorandum, and creates at this stage of the proceedings an entirely new factual basis for a violation.

Furthermore, while the General Counsel asserts that the activities of the respondent were more than "occasional, isolated, or incidental," Counsel urges the Commission to adopt a different standard for re-imbusement than was in the mind of the Commission and its General Counsel at the time of the promulgation of the regulation under consideration herein. Second, General Counsel, in this Brief dated April, 1981 seeks to impose a different standard for re-imbursable costs for this respondent than

82040322129

he recommended in November, 1980 in another case with the same factual issues.

Respondent has fully co-operated with the Commission in all of its requests for information. The General Counsel has correctly determined that the facts herein will not support the charge initially levelled against respondent, and has therefore recommended a comparatively insubstantial charge. Respondent urges the Commission to recognize that the resulting charge of the General Counsel is unfairly levelled against respondent who made every effort to comply with the terms of the law, and ratification by the Commission of the General Counsel's theories would impose upon the public a burden so onerous as to discourage legitimate political activities of anyone in the position of a corporate official.



James V. Stanton
Ragan & Mason
900 - 17th Street, N. W.
Washington, D. C. 20006
(202) 296-4750

Attorney for Respondent

May 7, 1981

82040322130

FOOTNOTES

- 1/ Federal Election Commission M.U.R. 1314-80, "General Counsel's Factual and Legal Analysis" dated October 20, 1980, p. 3.
- 2/ Federal Election Commission, "Commissioner Memorandum #618 From General Counsel Jack Murphy to The Commission," dated June 22, 1976, p. 43.
- 3/ Federal Election Commission, "Commissioner Memorandum #516 From General Counsel John Murphy to The Commission," dated May 10, 1976, p. 30.
- 4/ Explanation and Justification of the Disclosure Regulations, House Document #94-573, Explanation and Justification for Part 114, p. 20. See also: Explanation and Justification of Regulations, Prescribed by the Federal Election Commission, April 13, 1977, p. 35.
- 5/ Federal Election Commission Advisory Opinion 1975-30, p. 3.

82040322131

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING
600 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20008

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

ATTENTION: *Maura White*

FIRST CLASS MAIL

FIRST CLASS MAIL



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 20, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Robert Devoy
Ragan and Mason
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Messrs. Stanton and Devoy:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by you, the Federal Election Commission, on October 17, 1980, found reason to believe that your clients, Vincent Marotta and North American Systems, Inc. violated 2 U.S.C. § 441b(a), and your client Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f. An investigation in this matter was then instituted.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that North American Systems, Inc., Thomas Marotta, and Vincent Marotta violated 2 U.S.C. § 441b(a), and no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441f. The Commission may or may not approve the General Counsel's recommendations.

Submitted for your review are three briefs stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote as to whether there is probable cause to believe any violation has occurred.

32040322133

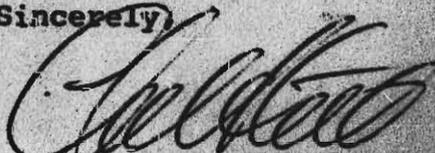
Letter to: James Stanton
Robert Devoy

Page 2

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement. This does not preclude settlement of this matter through conciliation prior to a finding a probable cause to believe, if you so request by letter.

Should you have any questions, please contact Maura White at 202/523-4060.

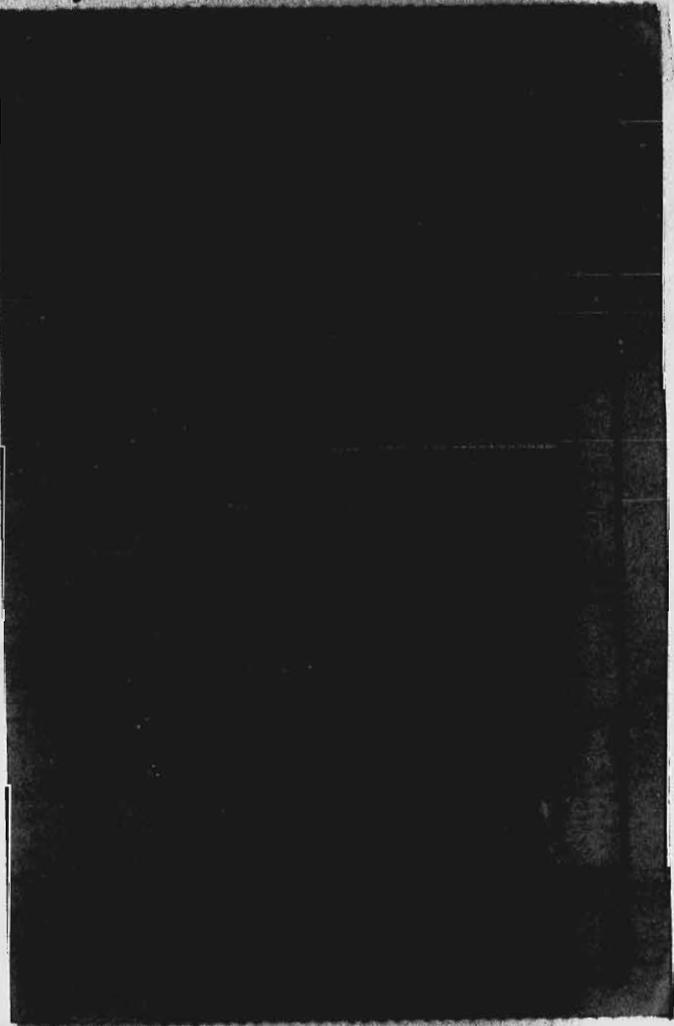
Sincerely,



Charles
General

Enclosures
Briefs (3)

82040322134



April 20, 1961

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Carr
SUBJECT: MSR 1314

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

82040322135

SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 APR 20 P 3: 44

April 20, 1981

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel *CNS*

SUBJECT: MUR 1314

Attached for the Commission's review are three briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of each brief and a letter notifying the respondents' counsel of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe as to one issue and no probable cause to believe as to other issues were mailed on April 20, 1981. Following receipt of the Respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments:

1. Briefs (3)
2. Letter (1)

8 2 0 4 0 3 2 2 1 3 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
North American Systems ("NAS")) MUR 1314

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On August 18, 1980, the Federal Election Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The news article alleges, inter alia, that employees of North American Systems, Inc. ("NAS") were "pressured into buying tickets" by Vincent and Thomas Marotta to a Carter-Mondale fundraiser held on May 29, 1980. Vincent Marotta was identified in the news article as the Chairman of NAS and the dinner chairman of the Carter-Mondale fundraiser; Thomas Marotta was identified as the Vice-President of NAS.

The news article alleges that plant foremen employed by NAS were called into the office of Thomas Marotta and asked to make donations to the Carter-Mondale fundraiser. Some employees were allegedly loaned funds to make donations. The Plain Dealer news article supports its allegation by stating that their review of FEC records indicates that employees of NAS bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of reports filed by the Carter-Mondale Presidential Committee for the period in question, revealed that at least 36 individuals employed by NAS had in fact made contributions to the Carter-Mondale

02040322137

campaign totalling \$9,850 on May 27 and 28, 1980.

On October 17, 1980, the Commission found reason to believe NAS, Thomas Marotta, and Vincent Marotta violated 2 U.S.C. § 441b(a). On October 20, 1980, notification letters and questions were mailed to NAS, Thomas Marotta, and Vincent Marotta. The responses of the three respondents were received on November 21, 1980. On January 7, 1981, the Commission determined to issue additional questions to Thomas Marotta and Vincent Marotta; their responses were received on January 23, 1981.

Based upon the responses received from the respondents in this matter, it appears that the employees of NAS were solicited for contributions to a Carter-Mondale fundraising dinner by the Vice-President of NAS. While NAS does not appear to have authorized the solicitation of its employees for contributions, both the Chairman and Vice-President of the corporation appear to have engaged in activities directly relating to the fundraiser during business hours. Employees of NAS who apparently volunteered to work on preparations for the fundraiser seem to have done so during their usual working hours. The employees were apparently compensated for such activity by NAS, and the Carter-Mondale Presidential Committee billed for the cost of the employees' time.

The response of NAS states that it did not, nor did any of "its officers, directors, or agents acting in any official capacity," solicit the employees of NAS for contributions to

82040322138

the May 29, 1980, Carter-Mondale fundraising dinner. The response also asserts that NAS did not give authorization to any person to solicit its employees for contributions. Any officer or director who solicited employees, the response maintains, "did so as a volunteer for the Carter-Mondale re-election campaign and not as a representative of North American Systems, Inc." Thus, the response of NAS contends that it "is not aware of any officer, director, or agent who solicited contributions [from employees of NAS] since any who did conduct such solicitation did so as a volunteer for the Carter/Mondale re-election committee."

The reply of NAS concludes that it "has not, at any time, authorized any of its officers, employees, or agents to conduct solicitations on behalf of any candidates (emphasis added)." Additionally, the corporation's response asserts that it "did not loan any money to employees, nor did it authorize any of its officers, directors, or agents to loan money to any employee in order that the employee could make a contribution to the fundraiser held on May 29, 1980."

A general statement was included with the response of Vincent Marotta to questions issued by the Commission. The statement contends that Vincent Marotta, "acting at all times as a Volunteer Chairman for the Fundraising Dinner Committee took steps to insure that the Corporation [NAS], of which he was Chairman of the Board, was not involved in the Fundraising Dinner or events leading to such Dinner." It also states that

82040322139

NAS has not, at any time, "either officially sanctioned or participated in the political Dinner." The statement continues that although there was a need for volunteers to assist in the preparation and mailing of the invitations, all volunteers were directed to "maintain records of time and incidental expenses incurred to insure that there be no increase in overhead" to NAS. Moreover, expenses which were incurred by NAS were "all submitted to the Carter-Mondale Campaign Committee for reimbursement."

The statement of Vincent Marotta further maintains that Vincent Marotta "issued guidance to all those who would be involved with the solicitation that extreme care must be used at all times to comply with the requirements of the law, and that the volunteers must specifically advise any persons solicited that the solicitation in no way involved the company [NAS]." Finally, the statement notes that Vincent Marotta was "conscious of the necessity to ensure that all preparations were conducted in full compliance with the laws governing campaign fundraising," and argues that "all activities were carried out in strict compliance of the law."

The reply of Vincent Marotta to interrogatories states that he was not authorized by NAS to solicit either its corporate employees or any other persons for contributions to political candidates. He further asserts that he himself "as Chairman of the Board of [NAS] did not authorize the solicitation of any employee or any other person for contributions" to the May 29, 1980, fundraiser. Vincent Marotta's

82040322140

reply does acknowledge, however, that the "production" personnel of NAS were solicited for contributions to the fundraiser. 1/ According to Vincent Marotta, the Vice-President of NAS, Thomas Marotta, solicited employees of NAS as a "volunteer" for the Carter-Mondale campaign and the solicitations were conducted with the "knowledge" and "consent" of Vincent Marotta as "Chairman of the Carter-Mondale Fundraising Dinner Committee."

While the response of Vincent Marotta acknowledges that he solicited contributions to the Carter-Mondale fundraiser, the response maintains that he did not solicit the employees of NAS and that he "took care that his solicitations were made in his private capacity and not as chairman of North American Systems, Inc." 2/ The solicitations which Vincent Marotta undertook were conducted "during business hours and from Vincent Marotta's office on the premises of North American Systems, Inc.," but, according to the reply, did not diminish Mr. Marotta's job performance as "none of the hours of volunteer work ... represented an intrusion into the regular discharge of his corporate responsibilities."

1/ In response to a specific question as to whether these employees were either stockholders or executive or administrative personnel, Vincent Marotta stated that they were not.

2/ The reply of Vincent Marotta also states that he does not have knowledge of any solicitation of the executive personnel of NAS who purchased tickets to the May 29, 1980, fundraiser. It is Mr. Marotta's belief that the executive personnel of NAS who were identified by the Commission in interrogatories to Mr. Marotta, were mailed invitations to attend the Carter-Mondale fundraising dinner.

82040322141

It is further asserted in Vincent Marotta's reply that there was "no cost incurred" by NAS for Vincent Marotta's actions. 3/

In response to a Commission inquiry into the possible use of the computer facilities of NAS for Carter-Mondale fundraising activities, the reply of Vincent Marotta states that the facilities were in fact used. Mr. Marotta explains that "approximately 51 hours of time recorded by computer operators" was involved, and the the "cost incurred by the company [NAS] was \$425.66 which represents the labor costs." He explains, furthermore, that "there were no additional costs to the company because the lease rate of the facilities is a flat, fixed rate paid on a regular monthly basis" and that the Carter-Mondale campaign "was billed the amount of \$425.66 for the labor involved in the use of the computer." Invoices for all expenses incurred by NAS were submitted to the Carter-Mondale committee on June 9, 1980, according to Mr. Marotta's reply. 4/ Counsel for Mr. Marotta has stated,

3/ The response emphasizes that while Vincent Marotta "devoted a considerable amount of time" to the preparation for the fundraiser, he is "paid on a salaried basis and is expected to manage the affairs of the corporation in an orderly fashion but is not expected to work a particular number of hours per period."

4/ Based upon documentation provided by Vincent Marotta and the filings of the Carter-Mondale Presidential Committee, it appears that NAS submitted invoices to the Carter-Mondale committee for \$2,646.05 (postage), \$3,494.12 (salaries), and \$96.00. The invoice for salaries represents the work time of 54 employees for a total of 468.75 work hours. Employee work time (salaries) includes labor costs in connection with "labeling and stuffing envelopes, mailing invitations; constructing, maintaining and running computer lists; telephone calls; recording responses and keeping records." The time of Vincent Marotta and Thomas Marotta devoted to volunteer activity was not included in the amount to be reimbursed.

82040322142

however, that as of February 17, 1981, NAS had not received reimbursement from the Carter-Mondale committee even though invoices were submitted in a "timely fashion."

Virtually identical responses to those of Vincent Marotta were submitted by Thomas Marotta. Thomas Marotta also included a general statement with his response which states that while he served as a member of the Carter-Mondale fundraising committee, "his service was not related to his employment as Vice-President of North American Systems, Inc." While the statement acknowledges that Thomas Marotta solicited contributions from the employees of North American Systems, Inc., it also notes that Thomas Marotta solicited "numerous persons who had no affiliation with the company." The reply of Thomas Marotta further explains that all of the solicitations were conducted "wholly apart from his duties at the company" and that he "advised each of the employees of North American Systems, Inc. that they were being solicited by ... [him] as a volunteer for the Carter/Mondale Re-election Committee and not as a North American Systems, Inc. officer." 5/

In regard to the solicitation of the employees of NAS, the response of Thomas Marotta states that the solicitations

5/ The reply of Thomas Marotta continues that "[e]ach employee of North American Systems was advised that any decision they made whether or not to contribute was their personal decision to make and would have no relationship to their present or future employment, nor would their decision result in any benefit to them in their employment." Moreover, "[t]his entire separation from their employment was stressed with each person solicited to make every effort to avoid any misunderstanding and to insure that any decision whether or not to contribute was a personal one on their part."

82040322143

8 2 0 4 0 3 2 2 1 4 4

were conducted only during "lunch hours and break periods" during the business day, that every foreman and supervisor was solicited, and that none of the persons solicited were executive or administrative personnel of NAS. 6/ The reply of Thomas Marotta contends that there were "no officers, directors, or agents of North American Systems, Inc. who, in such capacity, either sanctioned or approved his activities as a volunteer," or consented to, or requested him or any person to conduct solicitations for contributions to the Carter-Mondale campaign. Additionally, the reply asserts that although the "solicitations were conducted with the knowledge of the Chairman of the Board of North American Systems, Inc.," Thomas Marotta "was not authorized by North American Systems, Inc. to make solicitations."

II. LEGAL ANALYSIS

(a) The law applicable

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making a contribution or expenditure in connection with any election for federal office, and prohibits any officer or director of the corporation from consenting to any contribution or expenditure by the corporation in connection with any federal election.

6/ Thomas Marotta's response also states that he worked "intermittently each day during the two to three week period preceding the dinner on the fundraising solicitation, as a volunteer for the Carter-Mondale campaign during lunch hours and breaks before and after his work hours."

The term "contribution or expenditure" is defined to include "any direct or indirect payment ... or gift of money, or any services, or anything of value ... to any candidate ... in connection with any [federal election]." 2 U.S.C. § 441b(b)(2).

Pursuant to 2 U.S.C. § 441b(b)(2)(A) and 11 C.F.R. § 114.3(a), a corporation may make partisan communications in connection with a federal election to its stockholders and executive or administrative personnel and their families.

Section 114.9(a) of Commission Regulations permits stockholders and employees of a corporation to make occasional, isolated, or incidental use of the facilities of the corporation for individual volunteer activity in connection with a federal election and requires that the corporation be reimbursed only to the extent that the overhead or operating costs of the corporation are increased. The term "occasional, isolated, or incidental use" generally means, when used by employees, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period, or, when used by stockholders, such use does not interfere with the corporation in carrying out its normal activities. 11 C.F.R. § 114.9(a)(1)(i) and (ii).

Pursuant to 11 C.F.R. § 114.9(a)(2), a stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activity in connection with a federal election is

82040322145

required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge for such facilities. The term "normal and usual charge" for goods is defined to mean the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). For any services, the term "usual and normal charge" means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. Id.

(b) Application of the law to the facts

The first issue to be considered in this matter is whether the solicitation of NAS employees was conducted in violation of 2 U.S.C. § 441b(a). ^{7/} The solicitation of employees by a corporation for contributions to a candidate constitutes, in the General Counsel's view, the making of "communications" by the corporation to its employees. While a corporation may pay for such communications made to its stockholders and executive and administrative personnel, payments for communications to any other corporate employees are prohibited under the Act.

As discussed earlier, Thomas Marotta, Vice-President of NAS, solicited the production employees of NAS for contributions to the May 29, 1980, Carter-Mondale fundraiser.

^{7/} Unless such activity falls within the communication exemption of § 441b(a)(2)(A), the communication may constitute the making of a "contribution or expenditure" under § 441b(a).

82040322146

Two questions are raised by these circumstances: (1) Can the corporation be held liable for the actions of Thomas Marotta which were allegedly undertaken as a volunteer for the Carter-Mondale committee? (2) Did the corporation in fact make a "payment ... or gift of money ... or anything of value" if the activity took place during the break time or lunch hours of the persons involved?

Under general agency principles, a corporation will be liable only for the actions of a corporate officer undertaken in the scope of the officer's employment. 19 Am Jur. 2d Corporations § 1256 (1965). NAS has specifically denied that it authorized Thomas Marotta to solicit its employees, and Thomas Marotta has asserted that none of the officers, directors, or agents of NAS, in such capacity sanctioned or approved his activities. There is no indication that the solicitation of political contributions is part of Thomas Marotta's usual duties; nor is there evidence that the company has, in the past, approved of a similar course of conduct. According to the statement of Thomas Marotta, he solicited numerous persons who had no affiliation with NAS, as well as NAS employees. It thus appears that the solicitations of NAS employees were not undertaken by Thomas Marotta in the scope of his employment and that the corporation cannot be held liable for his actions.

As to the question of whether the corporation actually made a payment or gift of a thing of value, the sworn statement of Thomas Marotta contends that the solicitations took

82040322147

place only on lunch hours and break periods. Moreover, as Thomas Marotta is Vice-President of the company, his assertion that his responsibilities are not measured in terms of the number of hours worked per week is credible. Commission regulations, at 11 C.F.R. § 100.7(a)(3) (ii), contemplate that no compensation for the personal services of a person is considered to have been paid if the employee involved is paid only for work actually performed and the employee's time is considered his own to use as he sees fit. Accordingly, in the General Counsel's view, there does not appear to be a sufficient basis for contending that NAS made any "payment ... or gift of money ... or anything of value" in connection with the solicitation of NAS employees by Thomas Marotta.

As Thomas Marotta appears to have been acting outside the scope of his employment and no payment by NAS can be attributed to his activities, this office recommends that the Commission find no probable cause to believe NAS violated 2 U.S.C. § 441b(a) in connection with Thomas Marotta's solicitation of NAS employees.

A second issue involved in this matter centers on the use of the facilities and staff of NAS to conduct activities on behalf of the Carter-Mondale campaign. As indicated above, the office facilities of NAS, including office space, utilities, telephones, and a computer, were utilized to stuff envelopes, mail invitations, prepare computer lists, and solicit contributions.

82040322148

In addition, at least 468.75 work hours of employees were devoted to these activities. NAS appears to have billed the Carter-Mondale committee only for the hourly rate of the employees involved and the cost of postage. The committee was not billed for any rental charge for office space, utilities, telephones, or computer usage.

In the General Counsel's view, in order for an in-kind contribution from NAS not to have occurred, NAS should have billed the Carter-Mondale committee in an amount equal to the cost of renting in the commercial market comparable facilities (office space, utilities, telephones, and computer). The exemption in the Commission's regulations which permits stockholders and employees who use corporate facilities for individual volunteer activity to reimburse the corporation for only the increase in overhead, see 11 C.F.R. § 114.9(a), is not applicable in this situation. The exemption is premised upon the "occasional, isolated, or incidental" use of corporate facilities for "individual volunteer activity." The activity involved in this matter should not be considered to constitute "individual volunteer activity;" nor should it be considered "occasional, isolated, or incidental."

First, it appears that Vincent Marotta, Volunteer Chairman of the Fundraising Dinner Committee, sought out "volunteers" from among NAS employees, that at least 54 employees were working together on the fundraising activities, and that the corporate officers were aware of and approved of the use

82040322149

of the corporation's facilities and employees during regular work hours. In addition, corporate officials, acting within the scope of their employment, knew of and consented to paying the employees their regular salaries for the time they were conducting fundraising activities using corporate facilities. Because the impetus for the fundraising project did not come from the employees themselves, and because corporate officials authorized the use of the corporation's employees and facilities, the activity does not, in the General Counsel's view, constitute "individual volunteer activity" within the intended scope of 11 C.F.R. § 114.9(a).

Second, as at least 54 employees were involved, and at least 468.75 hours were used over a three week period, much more than "occasional, isolated, or incidental use" was made of NAS facilities. According to records submitted by Vincent Marotta, 25 employees spent more than four hours on the fundraising activity. See 11 C.F.R. § 114.9(a)(1)(i). Some employees appear to have spent full work days on such activity, and one individual spent a total of 104 hours on the project. The evidence suggests that the amount of activity of many employees would have been sufficient to prevent them from completing the normal amount of work carried out during the work period. See 11 C.F.R. § 114.9(a)(1)(i).

Because the use of NAS facilities was neither "occasional, isolated, or incidental" nor "individual volunteer activity," the corporation should have billed the Carter-Mondale committee

82040322150

for the usual and normal rental charge for the facilities, rather than for the increase in overhead alone. See 11 C.F.R. § 114.9(a)(2). For the office space, utilities, telephones, and computer usage, "the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered" is the amount that should have been calculated. See 11 C.F.R. § 100.7(a)(1)(iii)(B); FEC Advisory Opinion 1978-34. 8/

8/ It is the General Counsel's view that the rates for salaries of employees who worked on the fundraising project which were billed to the Carter-Mondale committee, were the commercially reasonable rates prevailing at the time. While it could be argued that a mailing firm, i.e. one in the business of stuffing envelopes, mailing invitations, etc., would perhaps charge a different salary rate for its employees performing such tasks, this is too conjectural to conclude that NAS should have to recalculate the salary expenses involved.

Additionally, as to the time devoted by Vincent Marotta and Thomas Marotta, it is the General Counsel's opinion that an amount representing the value of their time need not be included in the amount chargeable. Commission regulations provide that no compensation for the personal services of a person is considered to have been paid if the employee involved is paid only for work actually performed and the employee's time is considered his own to use as he sees fit. 11 C.F.R. § 100.7(a)(3)(ii). Because they serve as the corporation's Chairman of the Board and Vice-President, respectively, and because they have both stated in affidavits that their responsibilities for the company are not measured by hours of work per pay period, it appears that no payment by NAS for their time spent on political activities could be substantiated.

Although the time of Vincent and Thomas Marotta is not to be included in the amount chargeable, their use of the facilities of NAS should be included. They have indicated in affidavits that the amount of time spent by them on the fundraiser was "considerable" or "intermittently each day during the two to three week period preceding the dinner." Therefore, their activities were not "occasional, isolated, or incidental." Accordingly, the normal and usual rental charge for the facilities of NAS used by the Marottas (e.g. office space, utilities, and telephones) must be added to the amount billed to the Carter-Mondale committee.

92040322151

It would have been sufficient for NAS or the Carter-Mondale committee to obtain estimates from firms in the business of leasing office space, providing telephone service, and providing computer mailing services as to the "commercially reasonable rates prevailing at the time" for comparable services. Alternatively, and notwithstanding the preceding footnote, NAS or the Carter-Mondale committee could have obtained estimates from firms which are in the business of providing all of the foregoing services in order to obtain an overall figure as to the commercially reasonable rate for carrying out the project completed by the NAS employees.

In view of the foregoing, the General Counsel believes there is probable cause to believe NAS violated 2 U.S.C. § 441b(a) in regard to the use of its facilities to conduct fundraising activities on behalf of the Carter-Mondale Presidential Committee.

II. General Counsel's Recommendations

1. Find no probable cause to believe North American Systems, Inc. ("NAS") violated 2 U.S.C. § 441b(a) in regard to the solicitation of its employees.

82040322152

2. Find probable cause to believe North American Systems, Inc. ("NAS") violated 2 U.S.C. § 441b(a) in regard to the use of the corporate facilities of NAS to conduct fundraising activities on behalf of the Carter-Mondale Presidential Committee.

20 April 1981
Date



Charles N. Steele
General Counsel

82040322153

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1314
Vincent Marotta)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On August 18, 1980, the Federal Election Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The news article alleges, inter alia, that employees of North American Systems, Inc. ("NAS") were "pressured into buying tickets" by Vincent and Thomas Marotta to a Carter-Mondale fundraiser held on May 29, 1980. Vincent Marotta was identified in the news article as the Chairman of NAS and the dinner chairman of the Carter-Mondale fundraiser; Thomas Marotta was identified as the Vice-President of NAS.

The news article alleges that plant foremen employed by NAS were called into the office of Thomas Marotta and asked to make donations to the Carter-Mondale fundraiser. Some employees were allegedly loaned funds to make donations. The Plain Dealer news article supports its allegation by stating that their review of FEC records indicates that employees of NAS bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of reports filed by the Carter-Mondale Presidential Committee for the period in question, revealed that at least 36 individuals employed by NAS had in fact made contributions to the Carter-Mondale

82040322154

campaign totalling \$9,850 on May 27 and 28, 1980.

On October 17, 1980, the Commission found reason to believe NAS, Thomas Marotta, and Vincent Marotta violated 2 U.S.C. § 441b(a). On October 20, 1980, notification letters and questions were mailed to NAS, Thomas Marotta, and Vincent Marotta. The responses of the three respondents were received on November 21, 1980. On January 7, 1981, the Commission determined to issue additional questions to Thomas Marotta and Vincent Marotta; their responses were received on January 23, 1981.

Based upon the responses received from the respondents in this matter, it appears that the employees of NAS were solicited for contributions to a Carter-Mondale fundraising dinner by the Vice-President of NAS. While NAS does not appear to have authorized the solicitation of its employees for contributions, both the Chairman and Vice-President of the corporation appear to have engaged in activities directly relating to the fundraiser during business hours. Employees of NAS who apparently volunteered to work on preparations for the fundraiser seem to have done so during their usual working hours. The employees were apparently compensated for such activity by NAS, and the Carter-Mondale Presidential Committee billed for the cost of the employees' time.

The response of NAS states that it did not, nor did any of "its officers, directors, or agents acting in any official capacity," solicit the employees of NAS for contributions to

82040322155

the May 29, 1980, Carter-Mondale fundraising dinner. The response also asserts that NAS did not give authorization to any person to solicit its employees for contributions. Any officer or director who solicited employees, the response maintains, "did so as a volunteer for the Carter-Mondale re-election campaign and not as a representative of North American Systems, Inc." Thus, the response of NAS contends that it "is not aware of any officer, director, or agent who solicited contributions [from employees of NAS] since any who did conduct such solicitation did so as a volunteer for the Carter/Mondale re-election committee."

The reply of NAS concludes that it "has not, at any time, authorized any of its officers, employees, or agents to conduct solicitations on behalf of any candidates (emphasis added)." Additionally, the corporation's response asserts that it "did not loan any money to employees, nor did it authorize any of its officers, directors, or agents to loan money to any employee in order that the employee could make a contribution to the fundraiser held on May 29, 1980."

A general statement was included with the response of Vincent Marotta to questions issued by the Commission. The statement contends that Vincent Marotta, "acting at all times as a Volunteer Chairman for the Fundraising Dinner Committee took steps to insure that the Corporation [NAS], of which he was Chairman of the Board, was not involved in the Fundraising Dinner or events leading to such Dinner." It also states that

82040322156

ES

- 4 -

NAS has not, at any time, "either officially sanctioned or participated in the political Dinner." The statement continues that although there was a need for volunteers to assist in the preparation and mailing of the invitations, all volunteers were directed to "maintain records of time and incidental expenses incurred to insure that there be no increase in overhead" to NAS. Moreover, expenses which were incurred by NAS were "all submitted to the Carter-Mondale Campaign Committee for reimbursement."

82040322157

The statement of Vincent Marotta further maintains that Vincent Marotta "issued guidance to all those who would be involved with the solicitation that extreme care must be used at all times to comply with the requirements of the law, and that the volunteers must specifically advise any persons solicited that the solicitation in no way involved the company [NAS]." Finally, the statement notes that Vincent Marotta was "conscious of the necessity to ensure that all preparations were conducted in full compliance with the laws governing campaign fundraising," and argues that "all activities were carried out in strict compliance of the law."

The reply of Vincent Marotta to interrogatories states that he was not authorized by NAS to solicit either its corporate employees or any other persons for contributions to political candidates. He further asserts that he himself "as Chairman of the Board of [NAS] did not authorize the solicitation of any employee or any other person for contributions" to the May 29, 1980, fundraiser. Vincent Marotta's

reply does acknowledge, however, that the "production" personnel of NAS were solicited for contributions to the fundraiser. 1/ According to Vincent Marotta, the Vice-President of NAS, Thomas Marotta, solicited employees of NAS as a "volunteer" for the Carter-Mondale campaign and the solicitations were conducted with the "knowledge" and "consent" of Vincent Marotta as "Chairman of the Carter-Mondale Fundraising Dinner Committee."

While the response of Vincent Marotta acknowledges that he solicited contributions to the Carter-Mondale fundraiser, the response maintains that he did not solicit the employees of NAS and that he "took care that his solicitations were made in his private capacity and not as chairman of North American Systems, Inc." 2/ The solicitations which Vincent Marotta undertook were conducted "during business hours and from Vincent Marotta's office on the premises of North American Systems, Inc.," but, according to the reply, did not diminish Mr. Marotta's job performance as "none of the hours of volunteer work ... represented an intrusion into the regular discharge of his corporate responsibilities."

1/ In response to a specific question as to whether these employees were either stockholders or executive or administrative personnel, Vincent Marotta stated that they were not.

2/ The reply of Vincent Marotta also states that he does not have knowledge of any solicitation of the executive personnel of NAS who purchased tickets to the May 29, 1980, fundraiser. It is Mr. Marotta's belief that the executive personnel of NAS who were identified by the Commission in interrogatories to Mr. Marotta, were mailed invitations to attend the Carter-Mondale fundraising dinner.

82040322158

It is further asserted in Vincent Marotta's reply that there was "no cost incurred" by NAS for Vincent Marotta's actions. 3/

In response to a Commission inquiry into the possible use of the computer facilities of NAS for Carter-Mondale fundraising activities, the reply of Vincent Marotta states that the facilities were in fact used. Mr. Marotta explains that "approximately 51 hours of time recorded by computer operators" was involved, and the the "cost incurred by the company [NAS] was \$425.66 which represents the labor costs." He explains, furthermore, that "there were no additional costs to the company because the lease rate of the facilities is a flat, fixed rate paid on a regular monthly basis" and that the Carter-Mondale campaign "was billed the amount of \$425.66 for the labor involved in the use of the computer." Invoices for all expenses incurred by NAS were submitted to the Carter-Mondale committee on June 9, 1980, according to Mr. Marotta's reply. 4/ Counsel for Mr. Marotta has stated,

92040322159

3/ The response emphasizes that while Vincent Marotta "devoted a considerable amount of time" to the preparation for the fundraiser, he is "paid on a salaried basis and is expected to manage the affairs of the corporation in an orderly fashion but is not expected to work a particular number of hours per period."

4/ Based upon documentation provided by Vincent Marotta and the filings of the Carter-Mondale Presidential Committee, it appears that NAS submitted invoices to the Carter-Mondale committee for \$2,646.05 (postage), \$3,494.12 (salaries), and \$96.00. The invoice for salaries represents the work time of 54 employees for a total of 468.75 work hours. Employee work time (salaries) includes labor costs in connection with "labeling and stuffing envelopes, mailing invitations; constructing, maintaining and running computer lists; telephone calls; recording responses and keeping records." The time of Vincent Marotta and Thomas Marotta devoted to volunteer activity was not included in the amount to be reimbursed.

however, that as of February 17, 1981, NAS had not received reimbursement from the Carter-Mondale committee even though invoices were submitted in a "timely fashion."

Virtually identical responses to those of Vincent Marotta were submitted by Thomas Marotta. Thomas Marotta also included a general statement with his response which states that while he served as a member of the Carter-Mondale fundraising committee, "his service was not related to his employment as Vice-President of North American Systems, Inc." While the statement acknowledges that Thomas Marotta solicited contributions from the employees of North American Systems, Inc., it also notes that Thomas Marotta solicited "numerous persons who had no affiliation with the company." The reply of Thomas Marotta further explains that all of the solicitations were conducted "wholly apart from his duties at the company" and that he "advised each of the employees of North American Systems, Inc. that they were being solicited by ... [him] as a volunteer for the Carter/Mondale Re-election Committee and not as a North American Systems, Inc. officer." 5/

In regard to the solicitation of the employees of NAS, the response of Thomas Marotta states that the solicitations

5/ The reply of Thomas Marotta continues that "[e]ach employee of North American Systems was advised that any decision they made whether or not to contribute was their personal decision to make and would have no relationship to their present or future employment, nor would their decision result in any benefit to them in their employment." Moreover, "[t]his entire separation from their employment was stressed with each person solicited to make every effort to avoid any misunderstanding and to insure that any decision whether or not to contribute was a personal one on their part."

82040322160

were conducted only during "lunch hours and break periods" during the business day, that every foreman and supervisor was solicited, and that none of the persons solicited were executive or administrative personnel of NAS. ^{6/} The reply of Thomas Marotta contends that there were "no officers, directors, or agents of North American Systems, Inc. who, in such capacity, either sanctioned or approved his activities as a volunteer," or consented to, or requested him or any person to conduct solicitations for contributions to the Carter-Mondale campaign. Additionally, the reply asserts that although the "solicitations were conducted with the knowledge of the Chairman of the Board of North American Systems, Inc.," Thomas Marotta "was not authorized by North American Systems, Inc. to make solicitations."

II. LEGAL ANALYSIS

(a) The law applicable

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making a contribution or expenditure in connection with any election for federal office, and prohibits any officer or director of the corporation from consenting to any contribution or expenditure by the corporation in connection with any federal election.

^{6/} Thomas Marotta's response also states that he worked "intermittently each day during the two to three week period preceding the dinner on the fundraising solicitation, as a volunteer for the Carter-Mondale campaign during lunch hours and breaks before and after his work hours."

32040322161

The term "contribution or expenditure" is defined to include "any direct or indirect payment ... or gift of money, or any services, or anything of value ... to any candidate ... in connection with any [federal election]." 2 U.S.C. § 441b(b)(2).

Pursuant to 2 U.S.C. § 441b(b)(2)(A) and 11 C.F.R. § 114.3(a), a corporation may make partisan communications in connection with a federal election to its stockholders and executive or administrative personnel and their families.

Section 114.9(a) of Commission Regulations permits stockholders and employees of a corporation to make occasional, isolated, or incidental use of the facilities of the corporation for individual volunteer activity in connection with a federal election and requires that the corporation be reimbursed only to the extent that the overhead or operating costs of the corporation are increased. The term "occasional, isolated, or incidental use" generally means, when used by employees, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period, or, when used by stockholders, such use does not interfere with the corporation in carrying out its normal activities. 11 C.F.R. § 114.9(a)(1)(i) and (ii).

Pursuant to 11 C.F.R. § 114.9(a)(2), a stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activity in connection with a federal election is

82040322162

required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge for such facilities. The term "normal and usual charge" for goods is defined to mean the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). For any services, the term "usual and normal charge" means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. Id.

(b) Application of the law to the facts

The first issue to be considered in this matter is whether the solicitation of NAS employees was conducted in violation of 2 U.S.C. § 441b(a). ^{7/} The solicitation of employees by a corporation for contributions to a candidate constitutes, in the General Counsel's view, the making of "communications" by the corporation to its employees. While a corporation may pay for such communications made to its stockholders and executive and administrative personnel, payments for communications to any other corporate employees are prohibited under the Act.

As discussed earlier, Thomas Marotta, Vice-President of NAS, solicited the production employees of NAS for contributions to the May 29, 1980, Carter-Mondale fundraiser.

^{7/} Unless such activity falls within the communication exemption of § 441b(a)(2)(A), the communication may constitute the making of a "contribution or expenditure" under § 441b(a).

82040322163

Two questions are raised by these circumstances: (1) Can the corporation be held liable for the actions of Thomas Marotta which were allegedly undertaken as a volunteer for the Carter-Mondale committee? (2) Did the corporation in fact make a "payment ... or gift of money ... or anything of value" if the activity took place during the break time or lunch hours of the persons involved?

Under general agency principles, a corporation will be liable only for the actions of a corporate officer undertaken in the scope of the officer's employment. 19 Am Jur. 2d Corporations § 1256 (1965). NAS has specifically denied that it authorized Thomas Marotta to solicit its employees, and Thomas Marotta has asserted that none of the officers, directors, or agents of NAS, in such capacity sanctioned or approved his activities. There is no indication that the solicitation of political contributions is part of Thomas Marotta's usual duties; nor is there evidence that the company has, in the past, approved of a similar course of conduct. According to the statement of Thomas Marotta, he solicited numerous persons who had no affiliation with NAS, as well as NAS employees. It thus appears that the solicitations of NAS employees were not undertaken by Thomas Marotta in the scope of his employment and that the corporation cannot be held liable for his actions.

As to the question of whether the corporation actually made a payment or gift of a thing of value, the sworn statement of Thomas Marotta contends that the solicitations took

82040322164

place only on lunch hours and break periods. Moreover, as Thomas Marotta is Vice-President of the company, his assertion that his responsibilities are not measured in terms of the number of hours worked per week is credible. Commission regulations, at 11 C.F.R. § 100.7(a)(3)(ii), contemplate that no compensation for the personal services of a person is considered to have been paid if the employee involved is paid only for work actually performed and the employee's time is considered his own to use as he sees fit. Accordingly, in the General Counsel's view, there does not appear to be a sufficient basis for contending that NAS made any "payment ... or gift of money ... or anything of value" in connection with the solicitation of NAS employees by Thomas Marotta.

As Thomas Marotta appears to have been acting outside the scope of his employment and no payment by NAS can be attributed to his activities, this office recommends that the Commission find no probable cause to believe NAS violated 2 U.S.C. § 441b(a) in connection with Thomas Marotta's solicitation of NAS employees. As there was no apparent violation by NAS, Vincent Marotta cannot be considered to have consented to the making of an impermissible contribution or expenditure as a corporate officer or director. Accordingly, this office recommends that the Commission find no probable cause to believe Vincent Marotta violated 2 U.S.C. § 441b(a) in connection with Thomas Marotta's solicitation of NAS employees.

82040322165

A second issue involved in this matter centers on the use of the facilities and staff of NAS to conduct activities on behalf of the Carter-Mondale campaign. As indicated above, the office facilities of NAS, including office space, utilities, telephones, and a computer, were utilized to stuff envelopes, mail invitations, prepare computer lists, and solicit contributions. In addition, at least 468.75 work hours of employees were devoted to these activities. NAS appears to have billed the Carter-Mondale committee only for the hourly rate of the employees involved and the cost of postage. The committee was not billed for any rental charge for office space, utilities, telephone, or computer usage.

In the General Counsel's view, in order for an in-kind contribution from NAS not to have occurred, NAS should have billed the Carter-Mondale committee in an amount equal to the cost of renting in the commercial market comparable facilities (office space, utilities, telephones, and computer). The exemption in the Commission's regulations which permits stockholders and employees who use corporate facilities for individual volunteer activity to reimburse the corporation for only the increase in overhead, see 11 C.F.R. § 114.9(a), is not applicable in this situation. The exemption is premised upon the "occasional, isolated, or incidental" use of corporate facilities for "individual volunteer activity." The activity involved in this matter should not be considered to constitute

82040322166

"individual volunteer activity;" nor should it be considered "occasional, isolated, or incidental."

First, it appears that Vincent Marotta, Volunteer Chairman of the Fundraising Dinner Committee, sought out "volunteers" from among NAS employees, that at least 54 employees were working together on the fundraising activities, and that the corporate officers were aware of and approved of the use of the corporation's facilities and employees during regular work hours. In addition, corporate officials, acting within the scope of their employment, knew of and consented to paying the employees their regular salaries for the time they were conducting fundraising activities using corporate facilities. Because the impetus for the fundraising project did not come from the employees themselves, and because corporate officials authorized the use of the corporation's employees and facilities, the activity does not, in the General Counsel's view, constitute "individual volunteer activity" within the intended scope of 11 C.F.R. § 114.9(a).

Second, as at least 54 employees were involved, and at least 468.75 hours were used over a three week period, much more than "occasional, isolated, or incidental use" was made of NAS facilities. According to records submitted by Vincent Marotta, 25 employees spent more than four hours on the fundraising activity. See 11 C.F.R. § 114.9(a)(1)(iii).

82040322167

Some employees appear to have spent full work days on such activity, and one individual spent a total of 104 hours on the project. The evidence suggests that the amount of activity of many employees would have been sufficient to prevent them from completing the normal amount of work carried out during the work period. See 11 C.F.R. § 114.9(a)(1)(i).

Because the use of NAS facilities was neither "occasional, isolated, or incidental" nor "individual volunteer activity," the corporation should have billed the Carter-Mondale committee for the usual and normal rental charge for the facilities, rather than for the increase in overhead alone. See 11 C.F.R. § 114.9(a)(2). For the office space, utilities, telephones, and computer usage, "the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered" is the amount that should have been calculated. See 11 C.F.R. § 100.7(a)(1)(iii)(B); FEC Advisory Opinion 1978-34. 8/

8/ It is the General Counsel's view that the rates for salaries of employees who worked on the fundraising project which were billed to the Carter-Mondale committee, were the commercially reasonable rates prevailing at the time. While it could be argued that a mailing firm, i.e. one in the business of stuffing envelopes, mailing invitations, etc., would perhaps charge a different salary rate for its employees performing such tasks, this is too conjectural to conclude that NAS should have to recalculate the salary expenses involved.

Additionally, as to the time devoted by Vincent Marotta and Thomas Marotta, it is the General Counsel's opinion that an amount representing the value of their time need not be included in the amount chargeable. Commission regulations provide that no compensation for the personal services of (cont'd. on next page)

02040322168

It would have been sufficient for NAS or the Carter-Mondale committee to obtain estimates from firms in the business of leasing office space, providing telephone service, and providing computer mailing services as to the "commercially reasonable rates prevailing at the time" for comparable services. Alternatively, and notwithstanding the preceding footnote, NAS or the Carter-Mondale committee could have obtained estimates from firms which are in the business of providing all of the foregoing services in order to obtain an overall figure as to the commercially reasonable rate for carrying out the project completed by the NAS employees.

In view of the foregoing, the General Counsel believes there is probable cause to believe NAS violated 2 U.S.C.

8/ (cont'd.) a person is considered to have been paid if the employee involved is paid only for work actually performed and the employee's time is considered his own to use as he sees fit. 11 C.F.R. § 100.7(a)(3)(ii). Because they serve as the corporation's Chairman of the Board and Vice-President, respectively, and because they have both stated in affidavits that their responsibilities for the company are not measured by hours of work per pay period, it appears that no payment by NAS for their time spent on political activities could be substantiated.

Although the time of Vincent and Thomas Marotta is not to be included in the amount chargeable, their use of the facilities of NAS should be included. They have indicated in affidavits that the amount of time spent by them on the fundraiser was "considerable" or "intermittently each day during the two to three week period preceding the dinner." Therefore, their activities were not "occasional, isolated, or incidental." Accordingly, the normal and usual rental charge for the facilities of NAS used by the Marottas (e.g. office space, utilities, and telephones) must be added to the amount billed to the Carter-Mondale committee.

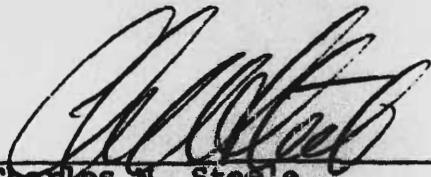
82040322169

§ 441b(a) in regard to the use of its facilities to conduct fundraising activities on behalf of the Carter-Mondale committee. As Chairman of the Board and Chief Executive Officer of NAS, it appears that Vincent Marotta was aware of the amount that NAS billed the Carter-Mondale Presidential Committee and the fact that only the salary expenses and postage costs were billed. It further appears that he permitted NAS to bill in such a manner and thereby consented to the making of an in-kind contribution. Accordingly, the General Counsel believes there is probable cause to believe Vincent Marotta violated 2 U.S.C. § 441b(a).

II. General Counsel's Recommendations

1. Find no probable cause to believe Vincent Marotta violated 2 U.S.C. § 441b(a) in regard to the solicitation of NAS employees.
2. Find probable cause to believe Vincent Marotta violated 2 U.S.C. § 441b(a) in regard to the use of the corporate facilities of NAS to conduct fundraising activities on behalf of the Carter-Mondale Presidential Committee.

July 1, 1981
Date


Charles N. Steele
General Counsel

82040322170

In the Matter of
Thomas Marotta

)
) MUR 1314
)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On August 18, 1980, the Federal Election Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The news article alleges, inter alia, that employees of North American Systems, Inc. ("NAS") were "pressured into buying tickets" by Vincent and Thomas Marotta, to a Carter-Mondale fundraiser held on May 29, 1980, and that some employees were loaned money by Thomas Marotta to use to purchase tickets to the fundraiser. Vincent Marotta was identified in the news article as the Chairman of NAS and the dinner chairman of the Carter-Mondale fundraiser; Thomas Marotta was identified as the Vice-President of NAS.

The news article alleges that plant foremen employed by NAS were called into the office of Thomas Marotta and asked to make donations to the Carter-Mondale fundraiser. The Plain Dealer news article supports its allegation by stating that their review of FEC records indicates that employees of NAS bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of reports filed by the Carter-Mondale Presidential Committee for the period in question, revealed that at least 36 individuals employed by NAS had in fact made contributions to the Carter-Mondale

82040322171

campaign totalling \$9,850 on May 27 and 28, 1980.

On October 17, 1980, the Commission found reason to believe NAS and Vincent Marotta violated 2 U.S.C. § 441b(a), and Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f. On October 20, 1980, notification letters and questions were mailed to NAS, Thomas Marotta, and Vincent Marotta. The responses of the three respondents were received on November 21, 1980.

On January 7, 1981, the Commission determined to issue additional questions to Thomas Marotta and Vincent Marotta; their responses were received on January 23, 1981.

Based upon the responses received from the respondents in this matter, it appears that the employees of NAS were solicited for contributions to a Carter-Mondale fundraising dinner by the Vice-President of NAS. While NAS does not appear to have authorized the solicitation of its employees for contributions, both the Chairman and Vice-President of the corporation appear to have engaged in activities directly relating to the fundraiser during business hours. Employees of NAS who apparently volunteered to work on preparations for the fundraiser seem to have done so during their usual working hours. The employees were apparently compensated for such activity by NAS, and the Carter-Mondale Presidential Committee billed for the cost of the employees' time.

The response of NAS states that it did not, nor did any of "its officers, directors, or agents acting in any official capacity," solicit the employees of NAS for contributions to

82040322172

the May 29, 1980, Carter-Mondale fundraising dinner. The response also asserts that NAS did not give authorization to any person to solicit its employees for contributions. Any officer or director who solicited employees, the response maintains, "did so as a volunteer for the Carter-Mondale re-election campaign and not as a representative of North American Systems, Inc." Thus, the response of NAS contends that it "is not aware of any officer, director, or agent who solicited contributions [from employees of NAS] since any who did conduct such solicitation did so as a volunteer for the Carter/Mondale re-election committee."

The reply of NAS concludes that it "has not, at any time, authorized any of its officers, employees, or agents to conduct solicitations on behalf of any candidates (emphasis added)." Additionally, the corporation's response asserts that it "did not loan any money to employees, nor did it authorize any of its officers, directors, or agents to loan money to any employee in order that the employee could make a contribution to the fundraiser held on May 29, 1980."

A general statement was included with the response of Vincent Marotta to questions issued by the Commission. The statement contends that Vincent Marotta, "acting at all times as a Volunteer Chairman for the Fundraising Dinner Committee took steps to insure that the Corporation [NAS], of which he was Chairman of the Board, was not involved in the Fundraising Dinner or events leading to such Dinner." It also states that

82040322173

NAS has not, at any time, "either officially sanctioned or participated in the political Dinner." The statement continues that although there was a need for volunteers to assist in the preparation and mailing of the invitations, all volunteers were directed to "maintain records of time and incidental expenses incurred to insure that there be no increase in overhead" to NAS. Moreover, expenses which were incurred by NAS were "all submitted to the Carter-Mondale Campaign Committee for reimbursement."

The statement of Vincent Marotta further maintains that Vincent Marotta "issued guidance to all those who would be involved with the solicitation that extreme care must be used at all times to comply with the requirements of the law, and that the volunteers must specifically advise any persons solicited that the solicitation in no way involved the company [NAS]." Finally, the statement notes that Vincent Marotta was "conscious of the necessity to ensure that all preparations were conducted in full compliance with the laws governing campaign fundraising," and argues that "all activities were carried out in strict compliance of the law."

The reply of Vincent Marotta to interrogatories states that he was not authorized by NAS to solicit either its corporate employees or any other persons for contributions to political candidates. He further asserts that he himself "as Chairman of the Board of [NAS] did not authorize the solicitation of any employee or any other person for contributions" to the May 29, 1980, fundraiser. Vincent Marotta's

82040322174

reply does acknowledge, however, that the "production" personnel of NAS were solicited for contributions to the fundraiser. 1/ According to Vincent Marotta, the Vice-President of NAS, Thomas Marotta, solicited employees of NAS as a "volunteer" for the Carter-Mondale campaign and the solicitations were conducted with the "knowledge" and "consent" of Vincent Marotta as "Chairman of the Carter-Mondale Fundraising Dinner Committee."

While the response of Vincent Marotta acknowledges that he solicited contributions to the Carter-Mondale fundraiser, the response maintains that he did not solicit the employees of NAS and that he "took care that his solicitations were made in his private capacity and not as chairman of North American Systems, Inc." 2/ The solicitations which Vincent Marotta undertook were conducted "during business hours and from Vincent Marotta's office on the premises of North American Systems, Inc.," but, according to the reply, did not diminish Mr. Marotta's job performance as "none of the hours of volunteer work ... represented an intrusion into the regular discharge of his corporate responsibilities."

1/ In response to a specific question as to whether these employees were either stockholders or executive or administrative personnel, Vincent Marotta stated that they were not.

2/ The reply of Vincent Marotta also states that he does not have knowledge of any solicitation of the executive personnel of NAS who purchased tickets to the May 29, 1980, fundraiser. It is Mr. Marotta's belief that the executive personnel of NAS who were identified by the Commission in interrogatories to Mr. Marotta, were mailed invitations to attend the Carter-Mondale fundraising dinner.

82040322175

It is further asserted in Vincent Marotta's reply that there was "no cost incurred" by NAS for Vincent Marotta's actions. 3/

In response to a Commission inquiry into the possible use of the computer facilities of NAS for Carter-Mondale fundraising activities, the reply of Vincent Marotta states that the facilities were in fact used. Mr. Marotta explains that "approximately 51 hours of time recorded by computer operators" was involved, and the the "cost incurred by the company [NAS] was \$425.66 which represents the labor costs." He explains, furthermore, that "there were no additional costs to the company because the lease rate of the facilities is a flat, fixed rate paid on a regular monthly basis" and that the Carter-Mondale campaign "was billed the amount of \$425.66 for the labor involved in the use of the computer." Invoices for all expenses incurred by NAS were submitted to the Carter-Mondale committee on June 9, 1980, according to Mr. Marotta's reply. 4/ Counsel for Mr. Marotta has stated,

3/ The response emphasizes that while Vincent Marotta "devoted a considerable amount of time" to the preparation for the fundraiser, he is "paid on a salaried basis and is expected to manage the affairs of the corporation in an orderly fashion but is not expected to work a particular number of hours per period."

4/ Based upon documentation provided by Vincent Marotta and the filings of the Carter-Mondale Presidential Committee, it appears that NAS submitted invoices to the Carter-Mondale committee for \$2,646.05 (postage), \$3,494.12 (salaries), and \$96.00. The invoice for salaries represents the work time of 54 employees for a total of 468.75 work hours. Employee work time (salaries) includes labor costs in connection with "labeling and stuffing envelopes, mailing invitations; constructing, maintaining and running computer lists; telephone calls; recording responses and keeping records." The time of Vincent Marotta and Thomas Marotta devoted to volunteer activity was not included in the amount to be reimbursed.

82040322176

however, that as of February 17, 1981, NAS had not received reimbursement from the Carter-Mondale committee even though invoices were submitted in a "timely fashion."

Virtually identical responses to those of Vincent Marotta were submitted by Thomas Marotta. Thomas Marotta also included a general statement with his response which states that while he served as a member of the Carter-Mondale fundraising committee, "his service was not related to his employment as Vice-President of North American Systems, Inc." While the statement acknowledges that Thomas Marotta solicited contributions from the employees of North American Systems, Inc., it also notes that Thomas Marotta solicited "numerous persons who had no affiliation with the company." The reply of Thomas Marotta further explains that all of the solicitations were conducted "wholly apart from his duties at the company" and that he "advised each of the employees of North American Systems, Inc. that they were being solicited by ... [him] as a volunteer for the Carter/Mondale Re-election Committee and not as a North American Systems, Inc. officer." 5/

In regard to the solicitation of the employees of NAS, the response of Thomas Marotta states that the solicitations

5/ The reply of Thomas Marotta continues that "[e]ach employee of North American Systems was advised that any decision they made whether or not to contribute was their personal decision to make and would have no relationship to their present or future employment, nor would their decision result in any benefit to them in their employment." Moreover, "[t]his entire separation from their employment was stressed with each person solicited to make every effort to avoid any misunderstanding and to insure that any decision whether or not to contribute was a personal one on their part."

82040322177

were conducted only during "lunch hours and break periods" during the business day, that every foreman and supervisor was solicited, and that none of the persons solicited were executive or administrative personnel of NAS. 5/ The reply of Thomas Marotta contends that there were "no officers, directors, or agents of North American Systems, Inc. who, in such capacity, either sanctioned or approved his activities as a volunteer," or consented to, or requested him or any person to conduct solicitations for contributions to the Carter-Mondale campaign. Additionally, the reply asserts that although the "solicitations were conducted with the knowledge of the Chairman of the Board of North American Systems, Inc.," Thomas Marotta "was not authorized by North American Systems, Inc. to make solicitations."

In response to the allegation that Thomas Marotta loaned money to individuals so they could purchase tickets to the Carter fundraiser, the reply of Thomas Marotta asserts that the allegation is without merit. Mr. Marotta's response contends that "there were no loans made by him to enable persons to make contributions to the Carter/Mondale Re-election Campaign [sic]." While his response admits that "on a number of occasions over the past years," he made loans to employees of NAS, it further argues that "[n]one of these loans were made to facilitate contributions to the Carter/Mondale campaign."

6/ Thomas Marotta's response also states that he worked "intermittently each day during the two to three week period preceding the dinner on the fundraising solicitation, as a volunteer for the Carter Mondale campaign during lunch hours and breaks before and after his work hours."

82040322179

The response does make mention, however, of a loan of \$300 made by Thomas Marotta to an employee of NAS, three weeks prior to the fundraiser. Although the employee subsequently purchased tickets to the fundraiser, it is the understanding of Thomas Marotta, his response states, that "the loan was needed by the employee for purposes other than a campaign contribution." A subsequent response submitted by Thomas Marotta further states that the loan was repaid in mid-August 1980 through weekly payments. 7/

II. LEGAL ANALYSIS

(a) The law applicable

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election for federal office and prohibits any officer or director of the corporation from consenting to any contribution or expenditure by the corporation in connection with any federal election. The term "contribution or expenditure" is defined to include "any direct or indirect payment ... or gift of money, or any services, or anything of value ... to any candidate ... in connection with any [federal election]." 2 U.S.C. § 441b(b)(2).

7/ was identified in Thomas Marotta's response as the employee of NAS to whom he made a loan during the first week of May 1980. The response states that the loan was made because of "car repair expenses."

82040322179

Pursuant to 2 U.S.C. § 441b(b)(2)(A) and 11 C.F.R. § 114.3(a), a corporation may make partisan communications in connection with a federal election to its stockholders and executive or administrative personnel and their families.

Section 114.9(a) of Commission Regulations permits stockholders and employees of a corporation to make occasional, isolated, or incidental use of the facilities of the corporation for individual volunteer activity in connection with a federal election and requires that the corporation be reimbursed only to the extent that the overhead or operating costs of the corporation are increased. The term "occasional, isolated, or incidental use" generally means, when used by employees, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period, or, when used by stockholders, such use does not interfere with the corporation in carrying out its normal activities. 11 C.F.R. § 114.9(a)(1)(i) and (ii).

Pursuant to 11 C.F.R. § 114.9(a)(2), a stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activity in connection with a federal election is required to reimburse

82040322100

the corporation within a commercially reasonable time for the normal and usual rental charge for such facilities. The term "normal and usual charge" for goods is defined to mean the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). For any services, the term "usual and normal charge" means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. Id.

The term "contribution" is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit or money, or anything of value made by any person for the purpose of influencing any election for federal office. Under 2 U.S.C. § 441f, no person shall make a contribution in the name of another or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by a person in the name of another.

(b) Application of the law to the facts

The first issue to be considered in this matter is whether the solicitation of NAS employees was conducted in violation of 2 U.S.C. § 441b(a). 8/ The solicitation of employees by a corporation for contributions to a candidate constitutes, in the General Counsel's view, the making of "communications" by the corporation to its employees. While

8/ Unless such activity falls within the communication exemption of § 441b(a)(2)(A), the communication may constitute the making of a "contribution or expenditure" under § 441b(a).

82040322181

a corporation may pay for such communications made to its stockholders and executive and administrative personnel, payments for communications to any other corporate employee are prohibited under the Act.

As discussed earlier, Thomas Marotta, Vice-President of NAS, solicited the production employees of NAS for contributions to the May 29, 1980, Carter-Mondale fundraiser. Two questions are raised by these circumstances: (1) Can the corporation be held liable for the actions of Thomas Marotta which were allegedly undertaken as a volunteer for the Carter-Mondale committee? (2) Did the corporation in fact make a "payment ... or gift of money ... or anything of value" if the activity took place during the break time or lunch hours of the persons involved?

Under general agency principles, a corporation will be liable only for the actions of a corporate officer undertaken in the scope of the officer's employment. 19 Am. Jur. 2nd Corporations § 1256 (1965). NAS has specifically denied that it authorized Thomas Marotta to solicit its employees, and Thomas Marotta has asserted that none of the officers, directors, or agents of NAS, in such capacity, sanctioned or approved his activities. There is no indication that the solicitation of political contributions is part of Thomas Marotta's usual duties; nor is there evidence that the company has, in the past, approved of a similar course of conduct. According to the statement of Thomas Marotta, he solicited numerous persons who had

82040322182

no affiliation with NAS, as well as NAS employees. It thus appears that the solicitations of NAS employees were not undertaken by Thomas Marotta in the scope of his employment and that the corporation cannot be held liable for his actions.

As to the question of whether the corporation actually made a payment or gift of a thing of value, the sworn statement of Thomas Marotta contends that the solicitations took place only on lunch hours and break periods. Moreover, as Thomas Marotta is Vice-President of the company, his assertion that his responsibilities are not measured in terms of the number of hours worked per week is credible. Commission regulations, at 11 C.F.R. § 100.7(a)(3)(ii), contemplate that no compensation for the personal services of a person is considered to have been paid if the employee involved is paid only for work actually performed and the employee's time is considered his own to use as he sees fit. Accordingly, in the General Counsel's view, there does not appear to be a sufficient basis for contending that NAS made any "payment ... or gift of money ... or anything of value" in connection with the solicitation of NAS employees by Thomas Marotta.

As Thomas Marotta appears to have been acting outside the scope of his employment and no payment by NAS can be attributed to his activities, this office recommends that

82040322183

the Commission find no probable cause to believe NAS violated 2 U.S.C. § 441b(a) in connection with Thomas Marotta's solicitation of NAS employees. As there was no apparent violation by NAS, Thomas Marotta cannot be considered to have consented to the making of an impermissible contribution or expenditure as a corporate officer or director. Accordingly, this office recommends that the Commission find no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441b(a) in connection with his solicitation of NAS employees.

A second issue involved in this matter centers on the use of the facilities and staff of NAS to conduct activities on behalf of the Carter campaign. As indicated above, the office facilities of NAS, including office space, utilities, telephones, and a computer, were utilized to stuff envelopes, mail invitations, prepare computer lists, and solicit contributions. In addition, at least 468.75 work hours of employees were devoted to these activities. NAS appears to have billed the Carter-Mondale committee only for the hourly rate of the employees involved and the cost of postage. The committee was not billed for any rental charge for office space, utilities, telephones, or computer usage.

In the General Counsel's view, in order for an in-kind contribution from NAS not to have occurred, NAS should have billed the Carter-Mondale committee in an amount equal to

82040322184

the cost of renting in the commercial market comparable facilities (office space, utilities, telephones, and computer). The exemption in the Commission's regulations which permits stockholders and employees who use corporate facilities for individual volunteers activity to reimburse the corporation for only the increase in overhead, see 11 C.F.R. § 114.9(a), is not applicable in this situation. The exemption is premised upon the "occasional, isolated, or incidental" use of corporate facilities for "individual volunteer activity." The activity involved in this matter should not be considered to constitute "individual volunteer activity;" nor should it be considered "occasional, isolated, or incidental."

First, it appears that Vincent Marotta, Volunteer Chairman of the Fundraising Dinner Committee, sought out "volunteers from among NAS employees, that at least 54 employees were working together on the fundraising activities, and that the corporate officers were aware of and approved of the use of the corporation's facilities and employees during regular work hours. In addition, corporate officials, acting within the scope of their employment, knew of and consented to paying the employees their regular salaries for the time they were conducting fundraising activities and using corporate facilities. Because the impetus for the fundraising project did not come from the employees themselves, and because corporate officials authorized the use of the corporation's employees and facilities, the activity does not, in the General

82040322185

Counsel's view, constitute "individual volunteer activity" within the intended scope of 11 C.F.R. § 114.9(a).

Second, as at least 54 employees were involved, and at least 468.75 hours were used over a three week period, much more than "occasional, isolated, or incidental use" was made of NAS facilities. According to records submitted by Vincent Marotta, 25 employees spent more than four hours on the fundraising activity. See 11 C.F.R. § 114.9(a)(1)(iii). Some employees appear to have spent full work days on such activity, and one individual spent a total of 104 hours on the project. The evidence suggests that the amount of activity of many employees would have been sufficient to prevent them from completing the normal amount of work carried out during the work period. See 11 C.F.R. § 114.9(a)(1)(i).

Because the use of NAS facilities was neither "occasional, isolated, or incidental" nor "individual volunteer activity," the corporation should have billed the Carter-Mondale committee for the usual and normal rental charge for the facilities, rather than for the increase in overhead alone. See 11 C.F.R. § 114.9(a)(2). For the office space, utilities, telephones, and computer usage, "the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered" is the amount that should have been calculated. See 11 C.F.R. § 100.7(a)(1)(iii)(B);

32040322106

FEC Advisory Opinion 1978-34. 9/ It would have been sufficient for NAS or the Carter-Mondale committee to obtain estimates from firms in the business of leasing office space, providing telephone service, and providing computer mailing services as to the "commercially reasonable rates prevailing at the time" for comparable services. Alternatively, and notwithstanding the preceding footnote,

9/ It is the General Counsel's view that the rates for salaries of employees who worked on the fundraising project which were billed to the Carter-Mondale committee, were the commercially reasonable rates prevailing at the time. While it could be argued that a mailing firm, i.e. one in the business of stuffing envelopes, mailing invitations, etc., would perhaps charge a different salary rate for its employees performing such tasks, this is too conjectural to conclude that NAS should have to recalculate the salary expenses involved.

Additionally, as to the time devoted by Vincent Marotta and Thomas Marotta, it is the General Counsel's opinion that an amount representing the value of their time need not be included in the amount chargeable. Commission regulations provide that no compensation for the personal services of a person is considered to have been paid if the employee involved is paid only for work actually performed and the employee's time is considered his own to use as he sees fit. 11 C.F.R. § 100.7(a)(3)(ii). Because they serve as the corporation's Chairman of the Board and Vice-President, respectively, and because they have both stated in affidavits that their responsibilities for the company are not measured by hours of work per pay period, it appears that no payment by NAS for their time spent on political activities could be substantiated.

Although the time of Vincent and Thomas Marotta is not to be included in the amount chargeable, their use of the facilities of NAS should be included. They have indicated in affidavits that the amount of time spent by them on the fundraiser was "considerable" or "intermittently each day during the two to three week period preceding the dinner." Therefore, their activities were not "occasional, isolated, or incidental." Accordingly, the normal and usual rental charge for the facilities of NAS used by the Marottas (e.g. office space, utilities, and telephones) must be added to the amount billed to the Carter-Mondale committee.

82040322107

NAS or the Carter-Mondale committee could have obtained estimates from firms which are in the business of providing all of the foregoing services in order to obtain an overall figure as to the commercially reasonable rate for carrying out the project completed by the NAS employees.

In view of the foregoing, the General Counsel believes there is probable cause to believe NAS violated 2 U.S.C. § 441b(a) in regard to the use of its facilities to conduct fundraising activities on behalf of the Carter-Mondale committee. As Vice-President of NAS, it appears that Thomas Marotta was aware of the amount that NAS billed the Carter-Mondale Presidential Committee and the fact that only the salary expenses and postage costs were billed. It further appears that he permitted NAS to bill in such a manner and thereby consented to the making of an in-kind contribution. Accordingly, the General Counsel believes there is probable cause to believe Thomas Marotta violated 2 U.S.C. § 441b(a).

Concerning a possible violation of 2 U.S.C. § 441f by Thomas Marotta, it is the General Counsel's view that there is no probable cause to believe a violation of the Act has occurred. This view is based upon the apparent facts, as asserted in the response of the respondent, that Thomas Marotta made no loans to any persons to enable the persons to purchase tickets to the Carter-Mondale fundraiser, and that the one loan Thomas Marotta made to a NAS employee proximate to the date of the fundraiser was for other than

82040322188

the purchase of fundraiser tickets. In consideration of the above, and that there is no evidence to indicate otherwise, there does not appear to be any basis on which to sustain a violation of 2 U.S.C. § 441f.

III. General Counsel's Recommendations

1. Find no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441b(a) in regard to the solicitation of NAS employees.
2. Find probable cause to believe Thomas Marotta violated 2 U.S.C. § 441b(a) in regard to the use of the corporate facilities of NAS to conduct fundraising activities on behalf of the Carter-Mondale Presidential Committee.
3. Find no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441f.

21 April 1984
Date


Charles N. Steele
General Counsel

82040322189



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 20, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Robert Devoy
Ragan and Mason
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Messrs. Stanton and Devoy:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by you, the Federal Election Commission, on October 17, 1980, found reason to believe that your clients, Vincent Marotta and North American Systems, Inc. violated 2 U.S.C. § 441b(a), and your client Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f. An investigation in this matter was then instituted.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that North American Systems, Inc., Thomas Marotta, and Vincent Marotta violated 2 U.S.C. § 441b(a), and no probable cause to believe Thomas Marotta violated 2 U.S.C. § 441f. The Commission may or may not approve the General Counsel's recommendations.

Submitted for your review are three briefs stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote as to whether there is probable cause to believe any violation has occurred.

82040322190

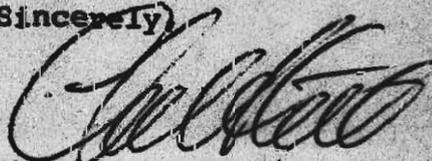
Letter to: James Stanton
Robert Devoy

Page 2

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement. This does not preclude settlement of this matter through conciliation prior to a finding a probable cause to believe, if you so request by letter.

Should you have any questions, please contact Maura White at 202/523-4060.

Sincerely,



Charles N. Steele
General Counsel

Enclosures
Briefs (3)

82040322191



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *mwe*
FROM: MARJORIE W. EMMONS / JODY CUSTER *jc*
DATE: APRIL 1, 1981
SUBJECT: MUR 1314 Interim Investigative Report #1,
dated 3-27-81; Received in OCS 3-30-81, 4:31

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, March 31, 1981.

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

82040322192

March 30, 1981

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa F. Carr
SUBJECT: MUR 1314

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

Attachment

pakayson:3-30-81
cc: White/Thomas

32040322193

BEFORE THE FEDERAL ELECTION COMMISSION
March 27, 1981

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 MAR 30 P 4: 31

In the Matter of)
)
Vincent Marotta, Thomas Marotta,)
North American Systems, Inc.)

MUR 1314

INTERIM INVESTIGATIVE REPORT #1

On January 7, 1981, the Commission determined to issue additional questions to Vincent Marotta and Thomas Marotta in order to resolve this matter. Questions were mailed to the respondents on January 8, 1981, and their responses were received on January 23, 1981. Additional information was sought by telephone from the respondents' counsel on February 11, 1981, in order to clarify the responses of January 23, 1981. Counsel for the respondents replied in writing to the inquiry on February 18, 1981. This office expects to mail briefs to the three respondents next week.

30 March 1981
Date



Charles N. Steele
General Counsel

82040322194

60004000

EDWARD J. BRUNNER
ROBERT T. DEVOY, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GEORGE S. HARTZOG, JR.
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. NIDERMOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM F. RAGAN
EDWARD M. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

LAW OFFICES
RAGAN & MASON
THE FARRAGUT BUILDING
900 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 398-4750
CABLE ADDRESS: DONRALEGAL
TWX: 710-622-8370
TELECOPIER: (202) 398-4110

GEORGE H. BROWNELL
OF COUNSEL
1945 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10018
(212) 700-3000

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
61 FEB 18 AID: 47

February 17, 1981

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

Re: M.U.R. 1314 (80)
Confidential

Dear Ms. White:

This letter is in response to your telephone inquiries of February 11, 1981 concerning the above-captioned matter. The responses are based upon our information and belief as a result of the extensive interviews which were conducted during a series of visits to the offices of North American Systems, Inc. in Cleveland, Ohio.

1. The loan of funds by Thomas Marotta to an employee.
 - A) Was there any discussion between Thomas Marotta and this employee concerning a contribution to the Carter Mondale Campaign Committee at the time the loan was made?

Response

The loan by Thomas Marotta to the employee and that employee's subsequent contribution to the Carter Mondale Campaign Committee were discrete and separate occurrences. The loan was made prior to the solicitation of the employee and there was no reference to the loan at the time of the subsequent solicitation.

82040322195

Ms. Maura White
Page 2
February 17, 1981

- B) Has the loan been repaid? When was it repaid? What was the method of repayment?

Response

The loan was repaid in thirty dollar increments on a weekly basis until the full amount was repaid. The loan was fully repaid in approximately mid-August.

2. Has North American Systems, Inc. been reimbursed for expenses incurred by the Carter Mondale Campaign Committee?

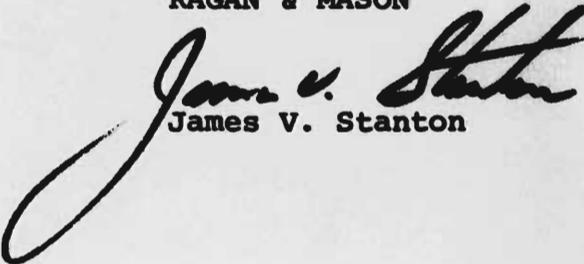
Response

All expenses incurred by North American Systems, Inc. incident to the Fundraising Dinner to benefit the Carter Mondale Campaign were submitted in a timely fashion to the Carter Mondale Campaign Committee for reimbursement. To date, the Carter Mondale Committee has not reimbursed North American Systems, Inc. for the invoices submitted in late May and early June, 1980.

We trust that the foregoing responses provide the information you have requested. If we might provide further information or assistance, please contact us as we are eager to obtain a resolution of this matter. Thank you for your cooperation and this opportunity to comment.

Very truly yours,

RAGAN & MASON


James V. Stanton

82040322196

82040322197

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

**Ms. Maura White
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463**

QUESTIONS

TO: Thomas Marotta

1. For each employee of North American Systems, Inc., listed below, please state whether, to the best of your knowledge, the person was solicited by any officer, director, agent, or employee of North American Systems, Inc., for a contribution to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee. If the answer is yes, please state the circumstances under which the solicitation took place, including the name and position of the person who solicited the individual and the time and place of the solicitation.

- a)
- b)
- c)
- d)
- e)
- f)
- g)
- h)
- i)
- j)
- k)
- l)
- m)
- n)
- o)
- p)
- q)
- r)
- s)
- t)
- u)
- v)
- w)
- x)

91 JAN 23 P 3:31

RECEIVED
GENERAL INVESTIGATIVE
DIVISION

82040322198

RESPONSE

The respondent included in his submission of November 21, 1980 a list of persons who were solicited for contributions by him as a volunteer for the Carter Mondale campaign. Among those listed on November 21 were two names which appear above:

The other persons named on the above list were not solicited by respondent, and he has no knowledge that any solicitations occurred for contributions from the remaining names on the list.

1. RESPONSE [cont'd.]

Please refer to respondent's submission of November 21, 1980, question 2(b) for discussion of time and method of solicitation of the two names on the list of persons who he invited to the Carter Mondale Dinner.

02040322199

2. Please state the name and position of all persons employed by North American Systems, Inc., other than yourself, who solicited the employees of North American Systems, Inc., for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

RESPONSE

The respondent has no knowledge of which other persons, if any, employed by North American Systems acting as volunteers for the Carter Mondale campaign, who solicited the employees of North American Systems, Inc. for contributions to the May 29, 1980 fundraiser.

82040322200

3. To the extent not provided already in response to question 1 or your earlier response, please state the names of all persons solicited by each employee named in response to question 2, and explain the circumstances under which the solicitations took place, including the time and place of the solicitations.

RESPONSE

Not applicable.

32040322201

4. With regard to all of the employees identified in your previous response or in response to questions 1 and 3 herein as having been solicited, please state which, if any, of those employees is either: (1) a stockholder of North American Systems, Inc., or (2) an executive or administrative employee of North American Systems, Inc., (meaning an individual employed by the company and paid on a salary rather than hourly basis who has policymaking, managerial, professional, or supervisory responsibilities, but not meaning a salaried foreman or other salaried lower level supervisor having direct supervision over hourly employees).

RESPONSE

(1) None.

(2) None.

82040322202

5. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the knowledge of yourself or other officers, directors, or agents of North American Systems, Inc.

RESPONSE

The respondent had direct knowledge of the solicitations which he personally conducted as a volunteer for the Carter Mondale campaign. There were no officers, directors, or agents of North American Systems, Inc. who, in such capacity, sanctioned or approved his activities as a volunteer.

82040322203

6. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the consent, or at the request, of yourself or any other officer, director, or agent of North American Systems, Inc.

RESPONSE

No officer, director, or agent of North American Systems, Inc. acting in that capacity consented to, or requested respondent or any other person, (to his knowledge) to conduct any solicitations for contributions to the Carter Mondale campaign.

82040322204

7. Please state whether at any time North American Systems, Inc., produced and distributed at its own expense, without reimbursement, any materials, such as flyers, posters, newsletters, or mailings, to solicit its employees for contributions to the May 29, 1980, fundraiser. If so, please explain the circumstances under which the materials were produced and distributed, including the cost involved and whether the materials were distributed to employees who were neither stockholders nor executive or administrative personnel of the company.

RESPONSE

The respondent has no information upon which to base a response.

82040322203

8. Please state to the best of your knowledge the number of hours you worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.

RESPONSE

The respondent worked intermittently each day during the two to three week period preceding the dinner on the fund-raising solicitation, as a volunteer for the Carter Mondale campaign during lunch hours and breaks before and after his work hours.

- a) Of the hours listed, please state to the best of your knowledge the number of hours worked during what would otherwise be your regular work period on behalf of North American Systems, Inc.

RESPONSE

The respondent is a salaried employee (officer) of the company who works far in excess of a normal 40-hour work week on company matters. The specific volunteer activities undertaken by the respondent were conducted during lunch hours and break times, as well as before and after the regular work day.

32040322206

b) Please state whether you are paid on an hourly or salaried basis and whether you are expected as part of your duties and responsibilities on behalf of North American Systems, Inc., to work a particular number of hours per period.

RESPONSE

The respondent is paid on a salaried basis, but is not expected to work a fixed number of hours per week, i.e., 40-hour work week. The respondent's responsibilities are not confined to what might typically be considered a 40-hour work week, but his position requires job performance rather than the number of hours contributed to the effort.

c) Please state whether any hours you worked on preparations for the fundraiser during what would otherwise be your regular work period, if any, were made up to North American Systems, Inc. If the answer is no, please explain.

RESPONSE

The respondent typically works far in excess of the 40-hour work week and has done so both before and after the volunteer activities. The respondent's responsibilities are not measured in terms of the number of hours worked per week, but rather the manner in which he discharges his responsibilities and the results he achieves. If a strict 40-hour per week test were to be imposed upon this situation for purposes of uniformity, the respondent has more than offset any loss of time incurred by the company because of the number of hours in excess of forty per week which he has worked since his volunteer activities for the Carter Mondale campaign. This is consistent with the policy of the company in all volunteer civic activities undertaken by management personnel.

82040322207

9. State the name of the employee of North American Systems, Inc., to whom you made a "loan of a personal nature," referred to in your response to the Commission's reason to believe finding.

RESPONSE

a) State the date and amount of the loan.

RESPONSE

The loan was made during the first week of May (approximately) and the amount was \$300.

b) State whether there was any discussion, between you and the individual to whom you made the loan, concerning the making of a contribution to the Carter/Mondale Presidential Committee.

RESPONSE

As indicated in the "General Statement" and the response to question 6(a) submitted by the respondent on November 21, 1980, the respondent made a loan to this individual employee consistent with his past practice of making personal loans to his employees, generally for personal emergencies. In this case the loan was made because of the employee's unexpected car repair expenses. Subsequent to the making of this loan, the same individual was invited to attend the Carter Mondale fundraiser by the respondent.

92040322208

I declare under penalty of perjury that the foregoing statement and the responses to the Questions of the Federal Election Commission are true and correct.

Thomas Marotta
Thomas Marotta

Subscribed and sworn to before me this 19th
day of January, 1981.



Robert A. Rini
Notary Public in and for the
County of Cuyahoga,
State of Ohio

ROBERT A. RINI
Notary Public - State of Ohio - Lake Cty.
My Commission Expires Oct. 28, 1988

82040322209

1. For each employee of North American Systems, Inc., listed below, please state whether, to the best of your knowledge, the person was solicited by any officer, director, agent, or employee of North American Systems, Inc., for a contribution to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee. If the answer is yes, please state the circumstances under which the solicitation took place, including the name and position of the person who solicited the individual and the time and place of the solicitation.

- a)
- b)
- c)
- d)
- e)
- f)
- g)
- h)
- i)
- j)
- k)
- l)
- m)
- n)
- o)
- p)
- q)
- r)
- s)
- t)
- u)
- v)
- w)
- x)

3 2 0 4 0 3 2 2 2 1 0

31 JAN 23 P 3: 31

RECEIVED
GENERAL COUNSEL

RESPONSE

The respondent did not personally solicit any employees of North American Systems, Inc. for contributions to the fundraiser to benefit the Carter Mondale campaign. The respondent does have personal knowledge that all names listed above, except three, are executive, as opposed to production employees of North American Systems, Inc.^{1/} The respondent believes that all executive personnel listed above, as well as others not listed, were mailed invitations to attend the Carter Mondale Dinner. Respondent does not have knowledge of any solicitation conducted of these executive personnel. The production personnel were invited to attend the Dinner by Thomas Marotta, and the manner of invitation was addressed in his responses filed on November 21, 1980.

^{1/} This individual is not an employee of North American Systems, Inc.

2. Please state the name and position of all persons employed by North American Systems, Inc., other than yourself, who solicited the employees of North American Systems, Inc., for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

RESPONSE

The respondent is aware of the following person who, as volunteers for the Carter Mondale campaign, solicited contributions from persons employed by North American Systems, Inc., for the referenced dinner:

Thomas Marotta

3 2 0 4 0 3 2 2 2 1 1

3. To the extent not provided already in response to question 1 or your earlier response, please state the names of all persons solicited by each employee named in response to question 2, and explain the circumstances under which the solicitations took place, including the time and place of the solicitations.

RESPONSE

Thomas Marotta

- The names of North American Systems, Inc. employees and a description of the solicitation was provided in Thomas Marotta's submission of November 21, 1980.

82040322212

4. With regard to all of the employees identified in your previous response or in response to questions 1 and 3 herein as having been solicited, please state which, if any, of those employees is either: (1) a stockholder of North American Systems, Inc., or (2) an executive or administrative employee of North American Systems, Inc., (meaning an individual employed by the company and paid on a salary rather than hourly basis who has policymaking, managerial, professional, or supervisory responsibilities, but not meaning a salaried foreman or other salaried lower level supervisor having direct supervision over hourly employees).

RESPONSE

- (1) None.
- (2) None.

82040322213

5. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the knowledge of yourself or other officers, directors, or agents of North American Systems, Inc.

RESPONSE

The invitations extended to production employees by Thomas Marotta were done so with my knowledge, as Chairman of the Carter Mondale Fundraising Dinner Committee.

82040322214

6. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the consent, or at the request, of yourself or any other officer, director, or agent of North American Systems, Inc.

RESPONSE

The invitations to attend the Dinner which Thomas Marotta extended to production employees were done with my consent as Chairman of the Carter Mondale Fundraising Dinner Committee.

82040322215

7. Please state whether at any time North American Systems, Inc., produced and distributed at its own expense, without reimbursement, any materials, such as flyers, posters, newsletters, or mailings, to solicit its employees for contributions to the May 29, 1980, fundraiser. If so, please explain the circumstances under which the materials were produced and distributed, including the cost involved and whether the materials were distributed to employees who were neither stockholders nor executive or administrative personnel of the company.

RESPONSE

All expenses incurred by volunteers for the Fundraiser were submitted to the Carter Mondale Committee for reimbursement and copies of all such invoices were provided with respondent's submission on November 21, 1980. There was no increase in overhead incurred by North American Systems, Inc. as a result of respondent's involvement as a volunteer for the Carter Mondale campaign.

82040322216

8. Please state to the best of your knowledge the number of hours you worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.

RESPONSE

The respondent devoted a considerable amount of time to the preparations for the Dinner between May 8, 1980, when the decision was made to have the President attend a Fundraising Dinner in Cleveland and the event itself on May 29, 1980, as well as a lesser amount of time in the days following the Dinner as the various administrative details were completed. It would be difficult to approximate a number of hours devoted to this effort, but there was a substantial involvement by the respondent in this time period.

- a) Of the hours listed, please state to the best of your knowledge the number of hours worked during what would otherwise be your regular work period on behalf of North American Systems, Inc.

RESPONSE

As Chairman of the Board and Chief Executive Officer of North American Systems, Inc., a privately held corporation, the respondent devotes his attention to the corporate affairs on a full time basis, seven days a week. The respondent does, however, have extensive volunteer commitments to a number of civic activities, including the Carter Mondale campaign. The civic commitments are often interspersed with corporate activities and do not interfere with the responsibilities of the respondent to those corporate activities. Therefore, none of the hours of volunteer work for the Carter Mondale campaign, because of this mixture of responsibilities, represented an intrusion into the regular discharge of his corporate responsibilities.

82040322217

b) Please state whether you are paid on an hourly or salaried basis and whether you are expected as part of your duties and responsibilities on behalf of North American Systems, Inc., to work a particular number of hours per period.

RESPONSE

The respondent is paid on a salaried basis and is expected to manage the affairs of the corporation in an orderly fashion but is not expected to work a particular number of hours per period.

c) Please state whether any hours you worked on preparations for the fundraiser during what would otherwise be your regular work period, if any, were made up to North American Systems, Inc. If the answer is no, please explain.

RESPONSE

The performance of the respondent as Chairman of the Board and Chief Executive Officer of North American Systems, Inc. is not measured in terms of the number of hours dedicated to the company, therefore the hours volunteered to the Carter Mondale campaign did not intrude upon his performance as Chairman of the Board of the company, and were not specifically "made up" to North American Systems, Inc.

8 2 0 4 0 3 2 2 2 1 8

9. Please state the name and position of all employees, officers, or directors of North American Systems, Inc. who worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee, during a regular work period but whose services were not billed to the Carter/Mondale Presidential Committee for reimbursement.

RESPONSE

Vincent G. Marotta, Chairman of the Board

Thomas Marotta, Vice President

- a) Please state the reason the persons' services were not billed to the Carter/Mondale Presidential Committee for reimbursement, and the amount of time spent on the preparation activity.

RESPONSE

Executive personnel work far in excess of a normal forty hour work week. Their responsibilities are measured in job performance not in hours present at the company, therefore their volunteer activities on behalf of the Carter Mondale Campaign Committee, as well as other civic commitments, are undertaken only as the time committed to volunteer activities will not interfere with their on-going management functions. Since the job performance, the standard of measurement for management personnel, was not diminished by this volunteer activity, there was no cost incurred by the company by their actions. In the case of

02040322219

a) [cont'd.]

hourly workers who participated in the preparations for the dinner, the time was billed to the Carter Mondale Campaign Committee for reimbursement, as noted in respondent's submission on November 21, 1980.

32040322220

10. Please state whether North American Systems, Inc., has ownership, or contracts out for the use of, computer facilities.

RESPONSE

Yes, North American Systems, Inc. leases computer services for a fixed fee on a monthly basis.

- a) If the answer to question 10 is yes, please state whether those facilities were used to assist in preparation and activity related to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

RESPONSE

The computer facilities were utilized to assist in the preparations for the May 29, 1980 Dinner to benefit the Carter Mondale campaign.

- b) If the answer to question 10 (a) is yes, please state the amount of computer time spent conducting these activities and the exact cost of operating the facilities for the period specified.

RESPONSE

There were approximately 51 hours of time recorded by computer operators for the preparations for the Dinner. The cost incurred by the company was \$425.66 which represents the labor costs. There were no additional costs to the company because the lease rate of the facilities is a flat, fixed rate paid on a regular monthly basis.

- c) If the answer to question 10(a) is yes, please state whether the Carter/Mondale Presidential Committee was billed for the use of the computer facilities and the amount and date of the billing.

RESPONSE

The Carter Mondale campaign was billed the amount of \$425.66 for the labor involved in the use of the computer. The time sheets and resultant charges were included with the invoices sent to the Carter Mondale committee on June 9, 1980 and provided the Commission with respondent's submission of November 21, 1980.

3 2 0 4 0 3 2 2 2 1

11. Please state the date that North American Systems, Inc. submitted an invoice(s) to the Carter/Mondale Presidential Committee for the cost of the staff time spent in making preparations for the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

RESPONSE

JUNE 9, 1980.

82040322222

I declare under penalty of perjury that the foregoing statement and the responses to the Questions of the Federal Election Commission are true and correct.

Vincent Marotta
Vincent Marotta

Subscribed and sworn to before me this 19th
day of January, 1981.



Robert A. Rini
Notary Public in and for the
County of Cuyahoga,
State of Ohio

ROBERT A. RINI
Notary Public - State of Ohio - Lakin Co.
My Commission Expires Oct. 29, 1989

8204032223

DONALD J. BRUNNER
ROBERT T. DEVOY, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GEORGE S. HARTZOG, JR.
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. MIDERMOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM F. RAGAN
EDWARD M. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

LAW OFFICES
RAGAN & MASON
THE FARRAGUT BUILDING
800 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 296-4750
CABLE ADDRESS: DONRALEGAL
TWX: 710-622-9370
TELECOPIER: (202) 296-4110

911
RECEIVED
6007
3729
BI JAN 14 P 2: 34
GEORGE S. BROWNELL
OF COUNSEL
GENERAL NEW YORK BAR
1540 AVENUE OF THE AMERICAS
NEW YORK, N. Y. 10019
(212) 755-0000

January 13, 1981

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

Re: MUR1314(80)

Dear Ms. White:

Pursuant to our telephone conversation of this date, I have made the technical correction which we agreed upon. Therefore, when we submit the responses of Mr. Vincent Marotta in the above-captioned matter, questions 10(b) and 10(c) will reference question 10(a) rather than the general question number 10, and the responses of Mr. Marotta will reflect this correction.

Thank you for your cooperation in this matter.

Very truly yours,
RAGAN & MASON
Robert T. Devoy Jr.
Robert T. Devoy, Jr.

cc: James V. Stanton, Esquire

3204032224

31 JAN 14 8 31: 09

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

8 2 0 4 0 3 2 2 2 5

LAW OFFICES
RAGAN & MASON
THE FARRAGUT BUILDING
900 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20006

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





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 9, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Ragan and Mason
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

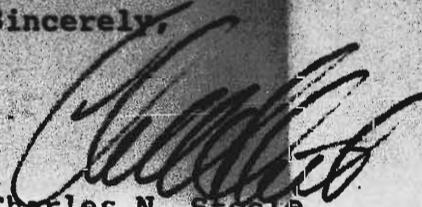
Re: MUR 1314

Dear Mr. Stanton:

While the Commission acknowledges receipt of the responses of your clients Thomas Marotta, Vincent Marotta, and North American Systems, Inc. to the questions issued by the Commission on October 20, 1980, the Commission has determined that additional information is necessary in order to resolve this matter. Enclosed please find one set of questions propounded to Thomas Marotta and one set of questions propounded to Vincent Marotta. Your clients' responses should be made under oath and submitted within fifteen days of your receipt of this letter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,



Charles N. Steele
General Counsel

Enclosures



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Ragan and Mason
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

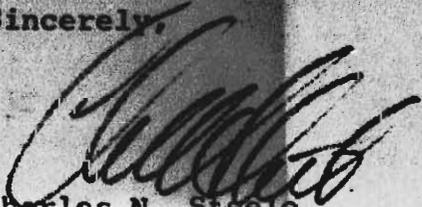
Re: MUR 1314

Dear Mr. Stanton:

While the Commission acknowledges receipt of the responses of your clients Thomas Marotta, Vincent Marotta, and North American Systems, Inc. to the questions issued by the Commission on October 20, 1980, the Commission has determined that additional information is necessary in order to resolve this matter. Enclosed please find one set of questions propounded to Thomas Marotta and one set of questions propounded to Vincent Marotta. Your clients' responses should be made under oath and submitted within fifteen days of your receipt of this letter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,


Charles N. Steele
General Counsel

Enclosures

82040322227

8204032220



MW MUR 1314

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

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:
*James Stanton
 Ragsdale Mason*

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 _____ *97703* _____
 (Always obtain signature of addressee or postmaster)

I have received the article described above.
 SIGNATURE Address Address Address
Ragsdale Mason D.M.

DATE OF DELIVERY *JAN 12 1991*

ADDRESS *81 TUNTS BLDG*

6. UNABLE TO DELIVER BECAUSE
RECEIVED

RETURN RECEIVED, REGISTERED, INSURED AND CERTIFIED MAIL

3550403220



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Ragan and Mason
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Stanton:

While the Commission acknowledges receipt of the responses of your clients Thomas Marotta, Vincent Marotta, and North American Systems, Inc., to the questions issued by the Commission on October 20, 1980, the Commission has determined that additional information is necessary in order to resolve this matter. Enclosed please find one set of questions propounded to Thomas Marotta and one set of questions propounded to Vincent Marotta. Your clients' responses should be made under oath and submitted within fifteen days of your receipt of this letter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

mw 1/8/80

Charles N. Steele
General Counsel

Enclosures

0204032229

TO: Thomas Harott

1. For each employee of North American Systems, Inc., listed below, please state whether, to the best of your knowledge, the person was solicited by any officer, director, agent, or employee of North American Systems, Inc., for a contribution to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee. If the answer is yes, please state the circumstances under which the solicitation took place, including the name and position of the person who solicited the individual and the time and place of the solicitation.

- a)
- b)
- c)
- d)
- e)
- f)
- g)
- h)
- i)
- j)
- k)
- l)
- m)
- n)
- o)
- p)
- q)
- r)
- s)
- t)
- u)
- v)
- w)
- x)

2. Please state the name and position of all persons employed by North American Systems, Inc., other than yourself, who solicited the employees of North American Systems, Inc., for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

3. To the extent not provided already in response to question 1 or your earlier response, please state the names of all persons solicited by each employee named in response to question 2, and explain the circumstances under which the solicitations took place, including the time and place of the solicitations.

02040322230

Questions

To: Thomas Marot

Page 2

- 3 2 0 4 0 3 2 2 3 1
4. With regard to all of the employees identified in your previous response or in response to questions 1 and 3 herein as having been solicited, please state which, if any, of those employees is either: (1) a stockholder of North American Systems, Inc., or (2) an executive or administrative employee of North American Systems, Inc., (meaning an individual employed by the company and paid on a salary rather than hourly basis who has policymaking, managerial, professional, or supervisory responsibilities, but not meaning a salaried foreman or other salaried lower level supervisor having direct supervision over hourly employees).
 5. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the knowledge of yourself or other officers, directors, or agents of North American Systems, Inc.
 6. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the consent, or at the request, of yourself or any other officer, director, or agent of North American Systems, Inc.
 7. Please state whether at any time North American Systems, Inc., produced and distributed at its own expense, without reimbursement, any materials, such as flyers, posters, newsletters, or mailings, to solicit its employees for contributions to the May 29, 1980, fundraiser. If so, please explain the circumstances under which the materials were produced and distributed, including the cost involved and whether the materials were distributed to employees who were neither stockholders nor executive or administrative personnel of the company.
 8. Please state to the best of your knowledge the number of hours you worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.
 - a) Of the hours listed, please state to the best of your knowledge the number of hours worked during what would otherwise be your regular work period on behalf of North American Systems, Inc.
 - b) Please state whether you are paid on an hourly or salaried basis and whether you are expected as part of your duties and responsibilities on behalf of North American Systems, Inc., to work a particular number of hours per period.

Questions

To: Thomas Marotta

Page 3

- c) Please state whether any hours you worked on preparations for the fundraiser during what would otherwise be your regular work period, if any, were made up to North American Systems, Inc. If the answer is no, please explain.
9. State the name of the employee of North American Systems, Inc., to whom you made a "loan of a personal nature," referred to in your response to the Commission's reason to believe finding.
- a) State the date and amount of the loan.
- b) State whether there was any discussion, between you and the individual to whom you made the loan, concerning the making of a contribution to the Carter/Mondale Presidential Committee.

82040322232

TO: Vincent Marozzi

1. For each employee of North American Systems, Inc., listed below, please state whether, to the best of your knowledge, the person was solicited by any officer, director, agent, or employee of North American Systems, Inc., for a contribution to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee. If the answer is yes, please state the circumstances under which the solicitation took place, including the name and position of the person who solicited the individual and the time and place of the solicitation.

a)
b)
c)
d)
e)
f)
g)
h)
i)
j)
k)
l)
m)
n)
o)
p)
q)
r)
s)
t)
u)
v)
w)
x)

2. Please state the name and position of all persons employed by North American Systems, Inc., other than yourself, who solicited the employees of North American Systems, Inc., for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.
3. To the extent not provided already in response to question 1 or your earlier response, please state the names of all persons solicited by each employee named in response to question 2, and explain the circumstances under which the solicitations took place, including the time and place of the solicitations.

82040322233

Questions

To: Vincent Maro

Page 2

- 8 2 0 4 0 3 2 2 2 3 4
4. With regard to all of the employees identified in your previous response or in response to questions 1 and 3 herein as having been solicited, please state which, if any, of those employees is either: (1) a stockholder of North American Systems, Inc., or (2) an executive or administrative employee of North American Systems, Inc., (meaning an individual employed by the company and paid on a salary rather than hourly basis who has policymaking, managerial, professional, or supervisory responsibilities, but not meaning a salaried foreman or other salaried lower level supervisor having direct supervision over hourly employees).
 5. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the knowledge of yourself or other officers, directors, or agents of North American Systems, Inc.
 6. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the consent, or at the request, of yourself or any other officer, director, or agent of North American Systems, Inc.
 7. Please state whether at any time North American Systems, Inc., produced and distributed at its own expense, without reimbursement, any materials, such as flyers, posters, newsletters, or mailings, to solicit its employees for contributions to the May 29, 1980, fundraiser. If so, please explain the circumstances under which the materials were produced and distributed, including the cost involved and whether the materials were distributed to employees who were neither stockholders nor executive or administrative personnel of the company.
 8. Please state to the best of your knowledge the number of hours you worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.
 - a) Of the hours listed, please state to the best of your knowledge the number of hours worked during what would otherwise be your regular work period on behalf of North American Systems, Inc.
 - b) Please state whether you are paid on an hourly or salaried basis and whether you are expected as part of your duties and responsibilities on behalf of North American Systems, Inc., to work a particular number of hours per period.

Questions

To: Vincent Marotta

Page 3

c) Please state whether any hours you worked on preparations for the fundraiser during what would otherwise be your regular work period, if any, were made up to North American Systems, Inc. If the answer is no, please explain.

9. Please state the name and position of all employees, officers, or directors of North American Systems, Inc. who worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee, during a regular work period but whose services were not billed to the Carter/Mondale Presidential Committee for reimbursement.

a) Please state the reason the persons' services were not billed to the Carter/Mondale Presidential Committee for reimbursement, and the amount of time spent on the preparation activity.

10. Please state whether North American Systems, Inc., has ownership, or contracts out for the use of, computer facilities.

a) If the answer to question 10 is yes, please state whether those facilities were used to assist in preparation and activity related to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

b) If the answer to question 10 is yes, please state the amount of computer time spent conducting these activities and the exact cost of operating the facilities for the period specified.

c) If the answer to question 10 is yes, please state whether the Carter/Mondale Presidential Committee was billed for the use of the computer facilities and the amount and date of the billing.

11. Please state the date that North American Systems, Inc. submitted an invoice(s) to the Carter/Mondale Presidential Committee for the cost of the staff time spent in making preparations for the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

82040322235



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Ragan and Mason
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Stanton:

While the Commission acknowledges receipt of the responses of your clients Thomas Marotta, Vincent Marotta, and North American Systems, Inc., to the questions issued by the Commission on October 20, 1980, the Commission has determined that additional information is necessary in order to resolve this matter. Enclosed please find one set of questions propounded to Thomas Marotta and one set of questions propounded to Vincent Marotta. Your clients' responses should be made under oath and submitted within fifteen days of your receipt of this letter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

mw 1/8/80

Charles N. Steele
General Counsel

Enclosures

8204032236

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Thomas Marotta) MUR 1314
Vincent Marotta)
North American Systems, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 7, 1981, the Commission decided by a vote of 6-0 to send the letter with questions, as attached to the General Counsel's January 5, 1981 memorandum, to the counsel for Thomas Marotta and Vincent Marotta.

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

Attest:

1-7-81

Date

Margaret E. Chaney
for Marjorie W. Emmons
Secretary of the Commission

Received in Office of the Commission Secretary: 1-5-81, 10:15
Circulated on 48 hour vote basis: 1-5-81, 4:00

82040322237

January 5, 1981

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1314

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

3 2 0 4 0 3 2 2 2 3 8



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 JAN 5 AIO: 15

January 5, 1981

MEMORANDUM TO: The Commission
FROM: Charles N. Steele
General Counsel *[Signature]*
SUBJECT: MUR 1314 - Issuance of Additional Questions

On October 17, 1980, the Commission determined there is reason to believe that Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f, and that Vincent Marotta and North American Systems, Inc., violated 2 U.S.C. § 441b(a). On November 21, 1980, the responses of the three respondents to questions issued by the Commission were received by the Office of the General Counsel. We have reviewed the responses and determined that it is necessary to obtain additional information from the respondents in order for this office to make a further recommendation to the Commission. Therefore, the General Counsel recommends that the Commission approve the issuance of the attached additional questions to Thomas Marotta and Vincent Marotta and the attached letter to their counsel.

Recommendation

Send the attached letter with questions.

Attachment

Proposed letter to James Stanton with questions

9204032239



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton
Ragan and Mason
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Stanton:

While the Commission acknowledges receipt of the responses of your clients Thomas Marotta, Vincent Marotta, and North American Systems, Inc., to the questions issued by the Commission on October 20, 1980, the Commission has determined that additional information is necessary in order to resolve this matter. Enclosed please find one set of questions propounded to Thomas Marotta and one set of questions propounded to Vincent Marotta. Your clients' responses should be made under oath and submitted within fifteen days of your receipt of this letter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

Charles N. Steele
General Counsel

Enclosures

82040322240

QUESTIONS

TO: Thomas Narotta

1. For each employee of North American Systems, Inc., listed below, please state whether, to the best of your knowledge, the person was solicited by any officer, director, agent, or employee of North American Systems, Inc., for a contribution to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee. If the answer is yes, please state the circumstances under which the solicitation took place, including the name and position of the person who solicited the individual and the time and place of the solicitation.

- a)
- b)
- c)
- d)
- e)
- f)
- g)
- h)
- i)
- j)
- k)
- l)
- m)
- n)
- o)
- p)
- q)
- r)
- s)
- t)
- u)
- v)
- w)
- x)

2. Please state the name and position of all persons employed by North American Systems, Inc., other than yourself, who solicited the employees of North American Systems, Inc., for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

3. To the extent not provided already in response to question 1 or your earlier response, please state the names of all persons solicited by each employee named in response to question 2, and explain the circumstances under which the solicitations took place, including the time and place of the solicitations.

82040322241

Questions

To: Thomas Marot

Page 2

- 32040322242
4. With regard to all of the employees identified in your previous response or in response to questions 1 and 3 herein as having been solicited, please state which, if any, of those employees is either: (1) a stockholder of North American Systems, Inc., or (2) an executive or administrative employee of North American Systems, Inc., (meaning an individual employed by the company and paid on a salary rather than hourly basis who has policymaking, managerial, professional, or supervisory responsibilities, but not meaning a salaried foreman or other salaried lower level supervisor having direct supervision over hourly employees).
 5. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the knowledge of yourself or other officers, directors, or agents of North American Systems, Inc.
 6. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the consent, or at the request, of yourself or any other officer, director, or agent of North American Systems, Inc.
 7. Please state whether at any time North American Systems, Inc., produced and distributed at its own expense, without reimbursement, any materials, such as flyers, posters, newsletters, or mailings, to solicit its employees for contributions to the May 29, 1980, fundraiser. If so, please explain the circumstances under which the materials were produced and distributed, including the cost involved and whether the materials were distributed to employees who were neither stockholders nor executive or administrative personnel of the company.
 8. Please state to the best of your knowledge the number of hours you worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.
 - a) Of the hours listed, please state to the best of your knowledge the number of hours worked during what would otherwise be your regular work period on behalf of North American Systems, Inc.
 - b) Please state whether you are paid on an hourly or salaried basis and whether you are expected as part of your duties and responsibilities on behalf of North American Systems, Inc., to work a particular number of hours per period.

Questions

To: Thomas Marotta

Page 3

c) Please state whether any hours you worked on preparations for the fundraiser during what would otherwise be your regular work period, if any, were made up to North American Systems, Inc. If the answer is no, please explain.

9. State the name of the employee of North American Systems, Inc., to whom you made a "loan of a personal nature," referred to in your response to the Commission's reason to believe finding.

a) State the date and amount of the loan.

b) State whether there was any discussion, between you and the individual to whom you made the loan, concerning the making of a contribution to the Carter/Mondale Presidential Committee.

02040322243

TO: Vincent Haro

1. For each employee of North American Systems, Inc., listed below, please state whether, to the best of your knowledge, the person was solicited by any officer, director, agent, or employee of North American Systems, Inc., for a contribution to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee. If the answer is yes, please state the circumstances under which the solicitation took place, including the name and position of the person who solicited the individual and the time and place of the solicitation.

a)
b)
c)
d)
e)
f)
g)
h)
i)
j)
k)
l)
m)
n)
o)
p)
q)
r)
s)
t)
u)
v)
w)
x)

2. Please state the name and position of all persons employed by North American Systems, Inc., other than yourself, who solicited the employees of North American Systems, Inc., for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.
3. To the extent not provided already in response to question 1 or your earlier response, please state the names of all persons solicited by each employee named in response to question 2, and explain the circumstances under which the solicitations took place, including the time and place of the solicitations.

82040322244

Questions

To: Vincent Maro

Page 2

4. With regard to all of the employees identified in your previous response or in response to questions 1 and 3 herein as having been solicited, please state which, if any, of those employees is either: (1) a stockholder of North American Systems, Inc., or (2) an executive or administrative employee of North American Systems, Inc., (meaning an individual employed by the company and paid on a salary rather than hourly basis who has policymaking, managerial, professional, or supervisory responsibilities, but not meaning a salaried foreman or other salaried lower level supervisor having direct supervision over hourly employees).
5. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the knowledge of yourself or other officers, directors, or agents of North American Systems, Inc.
6. With regard to all solicitations referred to in questions 1 and 3, please state whether the solicitations were conducted with the consent, or at the request, of yourself or any other officer, director, or agent of North American Systems, Inc.
7. Please state whether at any time North American Systems, Inc., produced and distributed at its own expense, without reimbursement, any materials, such as flyers, posters, newsletters, or mailings, to solicit its employees for contributions to the May 29, 1980, fundraiser. If so, please explain the circumstances under which the materials were produced and distributed, including the cost involved and whether the materials were distributed to employees who were neither stockholders nor executive or administrative personnel of the company.
8. Please state to the best of your knowledge the number of hours you worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.
- a) Of the hours listed, please state to the best of your knowledge the number of hours worked during what would otherwise be your regular work period on behalf of North American Systems, Inc.
- b) Please state whether you are paid on an hourly or salaried basis and whether you are expected as part of your duties and responsibilities on behalf of North American Systems, Inc., to work a particular number of hours per period.

82040322245

Questions

To: Vincent Marotta

Page 3

c) Please state whether any hours you worked on preparations for the fundraiser during what would otherwise be your regular work period, if any, were made up to North American Systems, Inc. If the answer is no, please explain.

9. Please state the name and position of all employees, officers, or directors of North American Systems, Inc. who worked on any of the preparations for the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee, during a regular work period but whose services were not billed to the Carter/Mondale Presidential Committee for reimbursement.

a) Please state the reason the persons' services were not billed to the Carter/Mondale Presidential Committee for reimbursement, and the amount of time spent on the preparation activity.

10. Please state whether North American Systems, Inc., has ownership, or contracts out for the use of, computer facilities.

a) If the answer to question 10 is yes, please state whether those facilities were used to assist in preparation and activity related to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

b) If the answer to question 10 is yes, please state the amount of computer time spent conducting these activities and the exact cost of operating the facilities for the period specified.

c) If the answer to question 10 is yes, please state whether the Carter/Mondale Presidential Committee was billed for the use of the computer facilities and the amount and date of the billing.

11. Please state the date that North American Systems, Inc. submitted an invoice(s) to the Carter/Mondale Presidential Committee for the cost of the staff time spent in making preparations for the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee.

82040322246

348/RECEIVED
GENERAL COUNSEL

DONALD J. BRUNNER
ROBERT T. DeVOY, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GEORGE B. HARTZOG
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. McDERMOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM F. RAGAN
EDWARD M. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

300 DEC 5 11:15

LAW OFFICES
RAGAN & MASON
THE FARRAGUT BUILDING
200 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 296-4780
CABLE ADDRESS: DONRALESAL
TWX: 710-622-9370
TELECOPIER: (202) 296-4110

GEORGE H. BROWNELL
OF COUNSEL
MEMBER NEW YORK BAR
1348 AVENUE OF THE AMERICAS
NEW YORK, N. Y. 10019
212 755-3000

December 5, 1980

HAND DELIVERY

Max L. Friedersdorf, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: M.U.R. 1314(80)

Dear Mr. Chairman:

The Federal Election Commission has notified my clients, North American Systems, Inc., Vincent Marotta, and Thomas Marotta, that they are under investigation by the Commission for alleged violations of the Federal Election Campaign Act of 1971, as amended. Pursuant to the request of the Commission, my clients have submitted written responses to questions transmitted to them in your letter, on behalf of the Commission, which was dated October 20, 1980.

Since my clients have responded to those questions and in so doing, have demonstrated that the allegations are generally without substance, it is their belief that the matter can be resolved through the conciliation process. We therefore wish to advise the Commission that my clients are prepared to go forward with the conciliation process.

Please advise us at your convenience how we might undertake a final resolution of this matter. Thank you for your courtesy.

Very truly yours,

RAGAN & MASON

James V. Stanton
James V. Stanton

8204032247

60-3385

DONALD J. BRUNNER
ROBERT T. DEVOY, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GEORGE S. HARTZOG, JR.
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. McDERMOTT, JR.
PAUL J. McELLIGOTT
ANDREW A. NORMANDEAU
WILLIAM F. RAGAN
EDWARD H. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

LAW OFFICES
RAGAN & MASON
THE FARRASUT BUILDING
800 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20006
(202) 298-4750
CABLE ADDRESS: DOKRALEGAL
TWX: 710-622-9370
TELECOPIER: (202) 298-4110

GEORGE S. BROWNELL
OF COUNSEL
MEMBER NEW YORK BAR
(1840 AVENUE OF THE AMERICAS)
NEW YORK, N. Y. 10019
ONE 702-2000

November 21, 1980

Max L. Friedersdorf, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

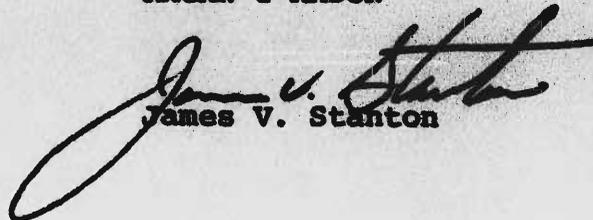
Re: M.U.R. 1314(80)

Dear Mr. Chairman:

Enclosed please find the Responses to the questions submitted to Mr. Thomas Marotta in the above-captioned matter, and one attachment to the Responses. The Responses have been verified and signed by Mr. Marotta.

Very truly yours,

RAGAN & MASON


James V. Stanton

Enclosure

0204032248

30 NOV 21 4:38

GENERAL COUNCIL

FEDERAL ELECTIONS COMMISSION

RE: M.U.R. 1314 (80)

GENERAL STATEMENT OF

THOMAS MAROTTA

82040322249

The purpose of this statement is to present a general summary of the facts and circumstances of the involvement of the respondent as a Member of the Committee which conducted a Fundraising Dinner to benefit the Carter/Mondale Re-election Campaign and to supplement the information provided in response to the Commission's questions. The matters discussed herein are submitted in response to Chairman Max L. Friedersdorf's letter of October 20, 1980, and it is requested that the submissions be treated as confidential pursuant to the provisions of 2 U.S.C. 437 g (a) (12) and 11 C.F.R. 111.21.

The respondent served as a member of the Committee which sponsored a Fundraising Dinner for the Carter/Mondale Re-election Committee. He served in this capacity as a volunteer, and his service was not related to his employment as Vice-President of North American Systems, Inc. In carrying out his responsibilities as a volunteer fundraiser for the Carter/Mondale Re-election Committee, the respondent solicited contributions for a fundraising dinner which was held on

8 2 0 4 0 3 2 2 2 5 0

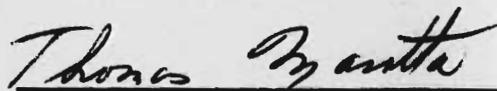
May 29, 1980. The designation of the date for the dinner was made just three weeks before the event occurred. Due to the relatively short notice of the event, the respondent was actively engaged in solicitation of contributions leading up to the event. The respondent solicited contributions for both employees of North American Systems, Inc. as well as numerous persons who had no affiliation with that company. All of the solicitations were conducted by the respondent wholly apart from his duties at the company. The respondent advised each of the employees of North American Systems, Inc. that they were being solicited by the respondent as a volunteer for the Carter/Mondale Re-election Committee and not as a North American Systems, Inc. officer. Each employee of North American Systems was advised that any decision they made whether or not to contribute was their personal decision to make and would have no relationship to their present or future employment, nor would their decision result in any benefit to them in their employment. This entire separation from their employment was stressed with each person solicited to make every effort to avoid any misunderstanding and to insure that any decision whether or not to contribute was a personal one on their part.

Several persons who were employees of the company made a contribution to the Fundraising Dinner, while many

others refrained from making any contribution. The respondent feels that there is no basis for the contention that he made suggestions to any person solicited that whether or not such person made a contribution would have any bearing on their present or future employment or any benefit to be derived from such employment.

The respondent further contends that there were no loans made by him to enable persons to make contributions to the Carter/Mondale Re-election Campaign. The respondent has, on a number of occasions over the past years made loans to employees of North American Systems, Inc. None of these loans were made to facilitate contributions to the Carter/Mondale Campaign. In one particular case, a loan of a personal nature was made to an employee of North American Systems, Inc., and that individual subsequently purchased two tickets to the Carter/Mondale Dinner. It is understood by the respondent that the loan was needed by the employee for purposes other than a campaign contribution, but the respondent brings this incident to the attention of the Commission because the loan to the employee and his subsequent purchase of tickets were proximate in time.

Respectfully Submitted,


Thomas Marotta

82040322251

I declare under penalty of perjury that the foregoing statement and the responses to the Questions of the Federal Election Commission are true and correct.

Thomas M. ...

Subscribed and sworn to before me this 19th day of November, 1980.

Dorothy G. Allen
Notary Public in and for the
County of Cuyahoga,
State of Ohio

DOROTHY G. ALLEN, Notary Public
STATE OF OHIO
My Commission Expires Oct. 26, 1983

82040322252



QUESTIONS

TO: Thomas Marotta

- 1a) What role, if any, did you play in a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?

The respondent served as a volunteer member of the Committee for the Fundraising Dinner held to benefit the Carter/Mondale Presidential Committee on May 29, 1980.

- b) State whether or not you solicited contributions to the fundraiser.

The respondent, in the course of his service as a volunteer member of the Carter/Mondale Dinner Committee, did solicit contributions to the event.

82040322253

2a) If the answer to question 1(b) is yes, state whether or not the solicitation included the employees of North American Systems, Inc.

The solicitations did include employees of North American Systems, Inc.

b) If the solicitation included the employees of North American Systems, Inc., describe the method(s) of solicitation employed, the number of employees solicited, the names of employees solicited, and the amount of time spent on the solicitation(s).

a) The respondent personally invited employees of North American Systems, Inc. The invitations were extended to employees at different times during the day, such as break time, lunch, etc.

b) See Attachment No. One.

c) Every foreman and supervisor. These were all salaried, non-union employees.

d) Since the lead time before the dinner was very short because of the scheduling difficulties for the President, the solicitations took place entirely within a two to three week period prior to the event. The solicitations were conducted during lunch hours and break periods during the day.

c) State whether or not you solicited contributions from any individual, including employees of North American Systems, Inc., during the normal business hours, and on the premises, of North American Systems, Inc.

All solicitations of North American Systems, Inc. employees were made during the business day, but were conducted during lunch hours and break periods during the day. The solicitations took place on the premises of North American Systems, Inc.

d) If the answer to question 2(c) is yes, state the amount of time that was spent conducting the solicitation(s).

Each solicitation was conducted in a short discussion with each person solicited, during break periods and lunch hours in the two to three week period in advance of the Fundraising Dinner.

8204032254

3a) If the employees of North American Systems, Inc. were solicited for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee, by either North American Systems or its officers or directors, did you authorize the solicitation as an officer or director?

There were no solicitations authorized or conducted by North American Systems, Inc., its officers or directors. Respondent conducted solicitations as a volunteer member of the Dinner Committee, not as a representative of North American Systems. At the beginning of each solicitation, respondent advised that the discussion was outside of the individual's work responsibilities, had no relationship to their work in any way, and the decision whether or not to make a contribution would have absolutely no relationship to their job now or in the future.

b) Were you authorized by North American Systems, Inc. to solicit the employees of North American Systems, Inc. for contributions to the May 29, 1980, fundraiser? If the answer is yes, describe the manner in which you were authorized.

The respondent was not authorized by North American Systems, Inc. to make solicitations. To the contrary, respondent was advised by the Chairman of the Board of North American Systems, Inc. that great care must be exercised to ensure that there was absolutely no connection between the Corporation and the Dinner, and that each person solicited should fully understand that fact.

02040322255

- 4) State whether or not, at any time, you were authorized by North American Systems, Inc. to solicit contributions from the employees of North American Systems, Inc. for any candidate. If the answer is yes, state the number of times you conducted a solicitation(s) and the manner in which you were authorized to conduct the solicitation(s).

The respondent was never authorized by North American Systems, Inc. to solicit contributions for any candidate.

82040322256

- 82040322257
- 5a) State whether or not, at any time, you solicited contributions from the employees of North American Systems, Inc. without the authorization of North American Systems, Inc. If the answer is yes, state the number of times you conducted a solicitation.

As stated in the previous response, respondent was never authorized by North American Systems, Inc. to solicit contributions. All solicitations were conducted as a Volunteer Member of the Fundraising Dinner Committee and each person solicited was advised that the respondent was acting entirely apart from his position in the company and that the decision whether or not to make a contribution was a personal one, not related to any present or future employment or benefit.

- b) State whether each solicitation was conducted with the knowledge of the officers, directors, or agents of North American Systems, Inc.

The solicitations were conducted with the knowledge of the Chairman of the Board of North American Systems, Inc. However, the Chairman of the Board had made it very clear to respondent that each person contacted must be advised at the outset that there was no connection with the company in the solicitation.

6a) State whether or not you loaned money to any individual, including employees of North American Systems, in order that they may purchase tickets to the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.

The respondent did not loan any money to employees of North American Systems or to any other individual in order that they might purchase tickets to the May 29, 1980 Dinner.

b) If the answer is yes, list all individuals by name, address, employer, and the amount and date of the loan.

Not applicable.

82040322258

7a) State whether or not you gave money to any individual including employees of North American Systems, Inc., in order that they may purchase tickets to the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.

The respondent did not give money to any individual nor to any employees of North American Systems, Inc. in order that they might purchase tickets to the May 29, 1980 Dinner.

b) If the answer is yes, list all individuals by name, address, employer, amount of money, and the date of the transaction.

Not applicable.

92040322259

000-3386

DONALD J. BRUNNER
ROBERT T. DeVOY, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GEORGE B. HARTZOG, JR.
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. McDERMOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM F. RAGAN
EDWARD M. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

LAW OFFICES
RAGAN & MASON
THE FARRAGUT BUILDING
900 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20006
(202) 898-4750
CABLE ADDRESS: DONRALEGAL
TWX: 710-822-9370
TELECOPIER: (202) 898-4110

GEORGE R. BROWNELL
OF COUNSEL
MEMBER NEW YORK BAR
1348 AVENUE OF THE AMERICAS
NEW YORK, N. Y. 10019
(212) 768-5000

30 NOV 21 4:38
GENERAL COUNSEL

November 21, 1980

Max L. Friedersdorf, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

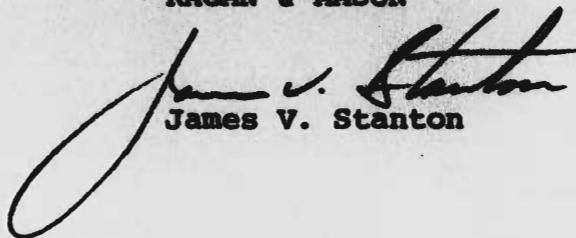
Re: M.U.R. 1314(80)

Dear Mr. Chairman:

Enclosed please find Responses to the Questions submitted to Mr. Vincent G. Marotta in the above-captioned matter. Also enclosed is a General Statement and a series of attachments submitted by the Respondent under the terms of your letter inviting the submission of additional material.

Very truly yours,

RAGAN & MASON


James V. Stanton

Enclosures

82040322260

FEDERAL ELECTIONS COMMISSION

RE: M.U.R. 1314 (80)

GENERAL STATEMENT OF
VINCENT G. MAROTTA

The purpose of this statement is to present a general summary of the facts and circumstances surrounding the Campaign Dinner for the Carter/Mondale Re-election Campaign to supplement the responses to the Commission's questions. The matters discussed herein are submitted in response to Chairman Max L. Friedersdorf's letter of October 20, 1980, and it is requested that the submission be treated as confidential pursuant to the provisions of 2 U.S.C. 437g(a)(12) and 11 C.F.R. 111.21.

During the Spring of 1980, President Carter faced a serious political challenge within his own Party, at the same time as international events required his careful attention. Due to the combination of these two factors, his campaign staff was at a tremendous disadvantage and was not able to plan the President's activities very far in advance. Therefore, although there was general agreement on the fact that a fundraising dinner should be held in Cleveland, it was impossible to establish a date certain for the event until approximately three weeks before the event was to occur.

82040322261

(A final agreement on the date for the Dinner was made on May 8, 1980.)

This was an extremely short period of time in which to make the necessary arrangements. While recognizing that there was an extremely short period of time in which to prepare, the respondent was also conscious of the necessity to ensure that all preparations were conducted in full compliance of the laws governing campaign fundraising. The respondent was of the belief that an abundance of caution was required to ensure that the short period of time did not give rise to any short-cuts or abbreviated attention to the requirements of the law. Furthermore, the respondent, acting at all times as a Volunteer Chairman of the Fundraising Dinner Committee, took steps to insure that the Corporation, of which he was Chairman of the Board, was not involved in the Fundraising Dinner or the events leading to such Dinner. The Corporation has not, at any time, either officially or unofficially sanctioned or participated in the political Dinner. The respondent has directed all volunteers to maintain records of time and incidental expenses incurred to insure that there be no increase in overhead to the Corporation as a result of the activities of the volunteers for the Carter/Mondale Dinner Committee. The respondent issued guidance to all those who would be involved with the solicitation that extreme care must be used at all

82040322262

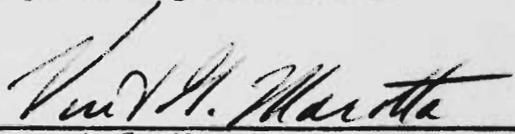
times to comply with the requirements of the law, and further that the volunteers must specifically advise any persons solicited that the solicitation in no way involved the company.

There was a need for volunteers to assist in the preparation and mailing of the invitations and to do telephone calls incidental to the Dinner. A careful record was maintained of all the hours of the volunteer clerical assistants, the postage that was utilized to mail the invitations, and a record of all expenses incurred on behalf of the Dinner. Those expenses were all submitted to the Carter/Mondale Campaign Committee for re-imbusement. Appended to this statement are copies of the various records which were maintained to demonstrate the scrupulous attention paid to these details, no matter how minor they might appear.

It is the respondent's belief that all activities were carried out in strict compliance of the law and that a review of the attached records and responses will amply demonstrate to the Commission that there are no grounds upon which to proceed in this matter.

Thank you for this opportunity to submit the statement on this matter.

Respectfully submitted,



Vincent G. Marotta

82040322263

I declare under penalty of perjury that the foregoing statement and the responses to the Questions of the Federal Election Commission are true and correct.

[Handwritten Signature]

Subscribed and sworn to before me this 19th day of November, 1980.

[Handwritten Signature]
Notary Public in and for the
County of Cuyahoga,
State of Ohio

DOROTHY G. ALLEN, Notary Public
STATE OF OHIO
My Commission Expires Oct. 26, 1983

82040322264



QUESTIONS

TO: Vincent Marotta

- 1a) What role, if any, did you play in a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?

The respondent served as Chairman of the Dinner Committee to benefit the Carter/Mondale Presidential Campaign held on May 29, 1980.

- b) State whether or not you solicited contributions to the fundraiser.

The respondent, in his capacity as Chairman of the Dinner Committee, did solicit contributions to the fundraiser. Mr. Marotta took care that his solicitations were made in his private capacity and not as chairman of North American Systems, Inc.

62040322265

- 3 2 0 4 0 3 2 2 2 6 6
- 2a) If the answer to question 1(b) is yes, state whether or not the solicitation included the employees of North American Systems, Inc.

The respondent did not solicit contributions from the employees of North American Systems, Inc.

- b) If the solicitation included the employees of North American Systems, Inc., describe the method(s) of solicitation employed, the number of employees solicited, the names of employees solicited, and the amount of time spent on the solicitation(s).

Not applicable.

- c) State whether or not you solicited contributions from any individual, including employees of North American Systems Inc., during the normal business hours, and on the premises, of North American Systems, Inc.

The respondent did solicit contributions to the fundraiser during business hours and from his office on the premises of North American Systems, Inc. There were no employees of North American Systems, Inc. solicited by the respondent. Respondent took great care in maintaining records for purposes of reimbursement of costs for North American Systems from the Presidential Campaign Committee.

- d) If the answer to question 2(c) is yes, state the amount of time that was spent conducting the solicitation(s).

The final plans for the dinner were made a very short time prior to the event. This abbreviated period was the result of decisions by the President's staff on the allocation of his time during the extensive number of state primaries which were held in the Spring and Summer of 1980. When the decision was made to proceed with the dinner, there was approximately two to three weeks to complete the preparations. During that time period, a substantial amount of time was spent by the respondent in making all arrangements for the President's arrival, including solicitation of contributions to the dinner.

- 3a) If the employees of North American Systems, Inc. were solicited for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee, by either North American Systems, Inc. or its officer or directors, did you authorize the solicitation as an officer or director?

The respondent, as Chairman of the Board of North American Systems, Inc., did not authorize either the solicitation of any employee or any other person for contributions. The respondent advised that all solicitations must take place on a strictly volunteer basis, and that all contributions must be given on a strictly volunteer basis, with no connection between the Fund-raising Dinner and North American Systems, Inc.

- b) Were you authorized by North American Systems, Inc. to solicit the employees of North American Systems, Inc. for contributions to the May 29, 1980, fundraiser? If the answer is yes, describe the manner in which you were authorized.

The respondent was not authorized by North American Systems, Inc. to solicit employees of North American Systems or any other person.

82040322267

- 4) State whether or not, at any time, you were authorized by North American Systems, Inc. to solicit contributions from the employees of North American Systems, Inc. for any candidate. If the answer is yes, state the number of times you conducted a solicitation(s) and the manner in which you were authorized to conduct the solicitation(s).

The respondent was not, at any time, authorized by North American Systems, Inc. to solicit contributions from either employees of North American Systems, Inc. or any other person for any candidate.

82040322268

5a) State whether or not, at any time, you solicited contributions from the employees of North American Systems, Inc. without the authorization of North American Systems, Inc. If the answer is yes, state the number of times you conducted a solicitation.

The respondent did not solicit contributions from employees of North American Systems, Inc. at any time.

b) State whether or not each solicitation was conducted with the knowledge of the officers, directors, or agents of North American Systems, Inc.

Not applicable.

82040322269

The pages attached hereto represent total wages paid by North American Systems to its employees for the purpose of preparing for the President Carter dinner on May 29.

Tasks performed include labeling and stuffing envelopes, mailing invitations; constructing, maintaining and running computer lists; telephone calls; recording responses and keeping records.

82040322270

NORTH AMERICAN SYSTEMS,

P. O. BOX 4000
LAKESIDE BLVD
WILMINGTON HEIGHTS, OHIO 44146

To **ALL EMPLOYEES**

Date **JUNE 6, 1980**

Subject **CARTER/MONDALE DINNER**

From **VINCENT G. MAROTTA**

Thank you for volunteering your services for the recent dinner for President Carter. In order to have an accurate account of all costs involved in the dinner and so that we may submit this information to the Carter/Mondale Campaign Headquarters in Washington, D. C. for reimbursement, please indicate on the attached form exactly how many hours you spent working for the campaign. Then please give the form to your department head for completion by Monday afternoon.

When figuring your hours, please include such tasks as labeling and stuffing envelopes, printing or maintaining computer lists, keypunch, etc.

For your assistance in figuring your hours, on Tuesday, May 13, labeling and stuffing took 4½ hours (9:30 - 11:00 a.m. and 1:00 - 4:00 p.m.).

If you have any doubt as to how to figure your hours, please contact Maggie Hausman.

82040322271

0.00 +
19.60 +
165.00 +
17.30 +
12.12 +
10.10 +
11.54 +
5.63 +
19.05 +
38.00 +
295.05 +
8.65 +
39.70 +
12.26 +
17.89 +
10.30 +
30.16 +
39.42 +
16.44 +
9.38 +
18.18 +
22.32 +
33.75 +
14.01 +
12.64 +
8.65 +
15.39 +
23.00 +
21.12 +
8.65 +
16.16 +
22.49 +
9.80 +
9.30 +
19.08 +
28.47 +
24.30 +
71.25 +
31.44 +
55.30 +
75.00 +
36.77 +
39.60 +
15.38 +
46.16 +
370.30 +
7.93 +
280.32 +
124.19 +
2,246.72 ◊

8204032272



June 9, 1980

Ms. Tricia Segal
Carter/Mondale Headquarters
1413 K Street, N. W.
Washington, D. C. 20005

Dear Tricia:

Enclosed herewith you will find the invoices for the Carter dinner on May 29, 1980 at the Cleveland Plaza in Cleveland, Ohio.

Please call me at your convenience for any clarification or explanation.

Sincerely,

Maggie Hausman, Assistant to
Vincent G. Marotta, Chairman of the Board
enclosures

82040322/273

STATEMENT

JUL 31 1980

MAY 31 80

THE CLEVELAND PLAZA

EUCLID AVE. AT EAST 12TH ST.
CLEVELAND, OHIO 44115
TEL: AREA CODE 216-596-6800

CARTER-MONDALE COMMITTEE
ATTN: MR VINCE MAROTTA
C/O "MR COFFEE"
24700 MILES ROAD
BEDFORD HEIGHTS OHIO 44146

AMOUNT \$ 12,021.04

TO INSURE PROPER CREDIT, DETACH THIS STUB, FOLD WITH CHECK AND RETURN IN THE ENCLOSED ENVELOPE. YOUR CANCELED CHECK WILL SERVE AS YOUR RECEIPT.

DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
	BALANCE FORWARD			
MAY 29 80	BANQUET CHECK #9145	11,000.00		
	BANQUET CHECK #9148	1,907.22		
	BANQUET CHECK #9149	1,000.00		
	BANQUET CHECK #9161	113.82		14,021.04
MAY 31 80	ADJUSTMENT - SERVICES NOT RENDERED		2,000.00	12,021.04

PC 08

82040322274

MONTHLY LATE CHARGE OF 1 1/2% WILL BE ADDED TO PAST DUE ACCOUNTS

THE CLEVELAND PLAZA
EUCLID AVE. AT EAST 12TH ST.
CLEVELAND, OHIO 44115
TEL: AREA CODE 216-596-6800

STATEMENTS ARE MONTHLY. IF PAYMENT IS NOT RECEIVED, PLEASE RETURN THIS STATEMENT TO THE CREDIT DEPARTMENT.

Send to: Joan Porter, Finance Dept.
C/M, 2000 L St. N.W., 20036

0.00 *
 7,365.00 +
 133.99 +
 55.65 +
 2,646.05 +
 14,021.04 +
 450.00 +
 25,271.73 *
 3,494.72 +
 28,766.45 *

2001 EAST 71ST STREET • CLEVELAND, OHIO 44103

Circle 1 (No Cash)

PHONE: HENDERSON 1-8040



INVOICE

**OLIVER PRINTING
 COMPANY, INC.**

8
2
0
4
0
3
2
2
2
7
5

• Carter/Mondale Presidential Committee
 Attn: Maggie Hansen
 24700 Miles Road
 Bedford Heights, Ohio 44116

YOUR ORDER NO. Maggie Hansen

OUR ORDER NO. 11671

DATE: 5/29/80

TERMS:

A late charge of 1 per cent per month will be charged on all accounts 30 days past due, Net 30 days.

1560-6

25,500 Invitations, Outside Envelopes, Response Cards,
 Response Envelopes, Committee Cards
 2,000 Tickets & Envelopes
 1,500 Special Programs
 All for Carter/Mondale Fund Raiser

\$ 7965.00

2 Pkes Total

3 2 0 4 0 3 2 2 2 7 6

LABCO

LABCO INCORPORATED

CHICAGO, ILLINOIS 60606

FBI 38-108128

TERMS

30 DAYS NET FROM DATE OF SHIPMENT.
NO DISCOUNT

*We hereby certify that these goods were produced in compliance with all applicable requirements of sections 6, 7, & 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the Labor-Management Department of Labor issued under section 14 thereof.

FOB WAREHOUSE

SALES REPRESENTATIVE
BROWER

PART QUANTITY

1 20.000

SHIP TO
ALMAH AMERICAN SYS
24700 MILES, INC. 21N CP
BEECHCRD HTS, OF 44146

SOLD TO
ALMAH AMERICAN
SYSTEMS INC
24700 MILES OF
BEECHCRD HTS OF
44146

DATE

5/05/80

RD SALES NO. P.O. NUMBER

414 1888

PLY DESCRIPTION

4017 P b 1 REG
PREPAID FREIGHT CHARGES 10 FCLLCH
3.33 CHIC LIE TAX

RECEIVED

MAY 15 1980

NORTH AMERICAN SYSTEMS INC.

ORDER SHIPPED ORDER
COMPLETE 5/09/80

CUSTOMER DUPLICATE

INVOICE TOTAL

131.00

INVOICE NUMBER

094689

ORDER NO.

091479

CUSTOMER NO.

5203000033

UNIT PRICE

6.39

127.00

6.99

3 2 0 4 0 3 2 2 2 7 7

LABCO

LABCO INCORPORATED

CHICAGO, ILLINOIS 60680

FEL 30-108778

TERMS 30 DAYS NET FROM DATE OF SHIPMENT.
NO DISCOUNT

F.O.B. WAREHOUSE

DATE 6/03/80

INVOICE NUMBER 711147

We hereby certify that these goods were produced in compliance with all applicable requirements of sections 6, 7, & 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under section 14.

SALES REPRESENTATIVE
BROWER

PO 416
SALES NO. 3888
P.O. NUMBER

ORDER NO. 899479
CUSTOMER NO. 420568153
UNIT PRICE
AMOUNT

PART QUANTITY

1 AIR CHGS ON IN 6-4889 010 05/09/80
AIR FREIGHT

55.68

SHIP TO
NORTH AMERICAN SYS INC
24700 MILLS RD
BEEFORD HTS OH

RECEIVED

JUN 6 1980

NORTH AMERICAN SYSTEMS INC.

SOLD TO
NORTH AMERICAN
SYSTEMS
INCORPORATED
24700 MILLS RD
BEEFORD HTS OH
441146

SHIPPED ORDER
CUSTOMER DUPLICATE 7/9/80

ORDER
PARTIAL

INVOICE TOTAL

55.68

STATEMENT

MAY 31 1980

THE CLEVELAND PLAZA

EUCLID AVE. AT EAST 12TH ST.
CLEVELAND, OHIO 44115
TEL AREA CODE 216-896-6800

GARTER - MONDALE COMMITTEE
ATTN MR VINCE MAROTTA
C/O "MR COFFEE"
24700 MILES ROAD
BEDFORD HEIGHTS OHIO 44146

AMOUNT \$ 14,021.04

TO INSURE PROPER CREDIT, DETACH THIS STUB, FOLD WITH CHECK AND RETURN IN THE ENCLOSED ENVELOPE. YOUR CANCELED CHECK WILL SERVE AS YOUR RECEIPT.

DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
	BALANCE FORWARD			
MAY 29 80	BANQUET CHECK #9145	11,000.00		
	BANQUET CHECK #9148	1,907.22		
	BANQUET CHECK #9149	1,000.00		
	BANQUET CHECK #9161	113.82		14,021.04

32040322278

MONTHLY LATE CHARGE
OF 1 1/2% WILL BE ADDED
TO PAST DUE ACCOUNTS

THE CLEVELAND PLAZA
EUCLID AVE. AT EAST 12TH ST.
CLEVELAND, OHIO 44115
TEL AREA CODE 216-896-6800

ALL BILLS ARE PAYABLE
WHEN PRESENTED

June 5, 1980

Carter/Mondale Campaign Headquarters
1413 K Street, N. W.
Washington, D. C. 20005

INVOICE

For postage incurred in mailing invitations for
President Carter dinner, May 29, 1980

\$2,646.05

Payable to: North American Systems, Inc.

82040322283

0.00	*
2482.80	+
50.70	+
52.50	+
46.05	+
1.35	+
0.83	+
3.82	+
2646.05	*

140.06

2482.80

2482.80

5-13-80

15
165.52 *pes*
00 TC

4979.76

50.70

00 T

50.70

5-14-80

15
338 *pes*
00 TC

00 TC

4832.45
4779.96 -

9 52.50 T

5-15-80

52.50
15
350 *pes*
00 TC

00 TC

25.80

7.20

5.25

7.80

9 46.05 T

82040322284

16

1.72

48

35

52

pes

3.07 T

00 T

4656.32

4654.97

81.35

5-16-80

.135

15

.09 *pes*

00 TC

00 T

00 T

4420.45

4411.62

9 8.83 T

5-19-80

8.83

15

58 *pes*

13 T

8 3.82

5-21

22 *pes*

62-3387

DONALD J. BRUNNER
ROBERT T. DEVOT, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GEORGE B. HARTZOG, JR.
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. McDERMOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM F. RAGAN
EDWARD M. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

LAW OFFICES
RAGAN & MASON
THE FARRAGUT BUILDING
800 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 298-4750
CABLE ADDRESS: DONRALEGAL
TWX: 710-622-8370
TELEPHONE: (202) 298-4110

GEORGE R. BROWNELL
OF COUNSEL
MEMBER NEW YORK BAR
1845 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10019
(212) 788-3000

30 NOV 21 4:37

GENERAL COUNSEL

November 21, 1980

Max L. Friedersdorf, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

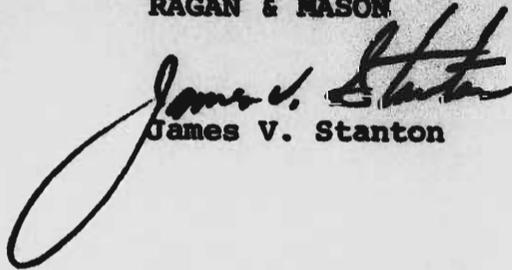
Re: M.U.R. 1314(80)

Dear Mr. Chairman:

Enclosed please find the Responses to the questions submitted to North American Systems, Inc. in the above-captioned matter, and one attachment to the Responses. The Responses have been verified and signed by the Chairman of the Board of the Corporation.

Very truly yours,

RAGAN & MASON


James V. Stanton

Enclosure

32040322285

QUESTIONS

TO: North American Systems

- 1a) Did North American Systems, Inc. or any of its officers, directors, or agents solicit its employees for contributions to a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?

The respondent did not solicit, nor did any of its officers, directors or agents acting in any official capacity, solicit any contributions from either employees or any other person for a fundraiser held on May 29, 1980 to benefit the Carter/Mondale Presidential Committee.

- b) State the date and time of all such solicitations, the name of all officers, directors, or agents of North American Systems, Inc. who conducted the solicitations, and the name of all employees solicited.

Not applicable.

- c) Describe the method(s) of solicitation employed, the amount of time spent on the solicitation(s), and the cost of such solicitation(s).

Not applicable.

- d) Was the solicitation(s) authorized by North American Systems, Inc.?

There were no solicitations conducted by North American Systems, its officers, directors, or agents acting in an official capacity, and there were no authorizations given to any persons to solicit contributions by North American Systems, Inc.

- e) State the name of all officers, directors, or agents of North American Systems, Inc. who authorized the solicitation of the employees.

Not applicable.

82040322286

2a) Did any officers, directors, or agents of North American Systems, Inc. solicit the employees of North American Systems, Inc. without the authorization of North American Systems, Inc., for contributions to a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?

The respondent did not give authorization to any person to solicit contributions. Any officer, director, or agent of North American Systems, Inc. who solicited contributions or performed any other function in relation to the fundraiser held on May 29, 1980 did so as a volunteer for the Carter/Mondale re-election campaign and not as a representative of North American Systems, Inc.

b) State the name of all officers, directors, or agents who conducted the solicitations.

The respondent is not aware of any officer, director, or agent who conducted solicitations since any who did conduct such solicitation did so as a volunteer for the Carter/Mondale re-election committee.

82040322207

3a) Has North American Systems, Inc., at any time, authorized any of its officers, employees, or agents to conduct solicitations on behalf of any candidate?

North American Systems, Inc. has not, at any time, authorized any of its officers, employees, or agents to conduct solicitations on behalf of any candidates.

b) If the answer is yes, state the name and position of all individuals so authorized.

Not applicable.

82040322288

- 4a) Did North American Systems, Inc. or any of its officers, directors, or agents loan money to any employee, including an advance of wages or a bonus, in order that the employee could make a contribution to the fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?

The respondent did not loan any money to employees, nor did it authorize any of its officers, directors, or agents to loan money to any employee in order that the employee could make a contribution to the fundraiser held on May 29, 1980.

- b) State the name of all officers, directors, or agents who made the loans.

Not applicable.

- c) State the name and address of all employees who were loaned money, and the date and amount of the loan.

Not applicable.

- d) State the method by which each loan was made.

Not applicable.

82040322289

5) Provide a copy of the most recent Constitution and Bylaws of North American Systems, Inc.

See Attachment No. One.

82040322290

6) State the name and official position of all individuals on the Board of Directors of North American Systems, Inc.

Vincent G. Marotta, Chairman

Samual L. Glazer, Vice Chairman

VERIFICATION OF RESPONSES ON BEHALF OF CORPORATION

I declare under penalty of perjury that the foregoing responses to the Questions of the Federal Election Commission are true and correct.

Vincent G. Marotta

Vincent G. Marotta
Chairman of the Board
North American Systems, Inc.

Subscribed and sworn to before me this 19th
day of November, 1980.

Dorothy G. Allen

Notary Public in and for the
County of Cuyahoga, State of Ohio

DOROTHY G. ALLEN, Notary Public
STATE OF OHIO
My Commission Expires Oct. 26, 1983

82040322291

AMENDED

ARTICLES OF INCORPORATION

NORTH AMERICAN SYSTEMS, INC.

FIRST: The name of the corporation shall be:

NORTH AMERICAN SYSTEMS, INC.

SECOND: The place in Ohio where the corporation's principal office is to be located is the City of Cleveland, County of Cuyahoga.

THIRD: The purpose or purposes for which the corporation is formed are to engage in any lawful act or activity for which corporations may be formed under Sections 1701.01 through 1701.98, inclusive, of the Ohio Revised Code as now enacted and as it may hereafter be amended from time to time (hereinafter sometimes referred to as the "Ohio General Corporation Law").

FOURTH: The maximum number of shares which the corporation is authorized to have outstanding is 500 shares, all of which shall be common shares without par value.

FIFTH: The amount of stated capital with which the corporation shall begin business shall be not less than Five Hundred Dollars (\$500).

SIXTH: Subject only to any limitation or restriction that may be now or hereafter contained in any other Article of these articles of incorporation, the corporation by the board of directors (and without any approval or other authorization or action by the shareholders) shall have the power and authority, to the full extent permitted under the Ohio General Corporation Law, at any time and from time to time, to purchase or otherwise acquire shares of any class or series of the corporation, any voting-trust certificates for, or warrants or options to purchase, such shares, and any bonds, debentures, notes, scrip, obligations, evidences of indebtedness, or other securities of the corporation, to such extent or amount and in such manner and upon such terms and conditions as the board of directors shall deem expedient, and independent of any provisions that may now or hereafter be contained in the articles of incorporation of the corporation with respect to the redemption of shares of any class or series as a matter of right or obligation of the corporation.

SEVENTH: Every statute of the State of Ohio hereafter enacted, whereby rights or privileges of shareholders of a corpo-

3204032292

ration organized under the Ohio General Corporation Law are increased, diminished, or in any way affected, or whereby effect is given to any action authorized, ratified, or approved by less than all the shareholders of any such corporation, shall apply to the corporation, and shall bind every shareholder to the same extent as if such statute had been in force on the effective date of these articles of incorporation.

EIGHTH: In the event the code of regulations or the directors' by-laws, if any, of the corporation, now or hereafter adopted, contain any terms or provisions that are inconsistent or in conflict with any of the terms or provisions of these articles of incorporation, such terms and provisions of these articles of incorporation shall control and shall supersede such conflicting or inconsistent terms and provisions of the code of regulations or directors' by-laws, but such conflict or inconsistency shall not impair, nullify or otherwise affect the remaining terms and provisions of such code of regulations or directors' by-laws, which shall remain in full force and effect. Any reference herein to these articles of incorporation or any Article thereof shall mean the articles of incorporation of the corporation and any such Article as then in effect and as the same may be amended from time to time thereafter.

NINTH: No holder of shares of the corporation of any class shall be entitled as such, as a matter of right, to subscribe for or purchase shares of any class, now or hereafter authorized, or to purchase or subscribe for securities convertible into or exchangeable for shares of the corporation or to which shall appertain or be attached any warrants or rights entitling the holder thereof to subscribe for or purchase shares, except such rights of subscription or purchase, if any, at such price or prices, and upon such terms and conditions, as the board of directors in its discretion may from time to time determine.

TENTH: Notwithstanding any provision of the Ohio General Corporation Law allowing or permitting for any purpose the vote, consent, waiver or release of the holders of shares entitling them to exercise less than two-thirds (2/3) of the voting power of the corporation, or any class or classes of shares thereof, for any such purpose the affirmative vote, consent, waiver, or release of the holders of shares entitling them to exercise (2/3) of the voting power of the corporation of such class or classes shall instead be required. In addition, the affirmative vote or consent of holders of two-thirds (2/3) of all classes of stock of the corporation entitled to vote shall be required (i) for the adoption of any agreement of merger or consolidation of the corporation with or into any other corporation, (ii) for liquidation or dissolution of the corporation, (iii) to authorize any sale or lease of all or any substantial part of the assets of the corpo-

3
2
2
2
2
3
0
4
0
3
2
9
3

ration to, or any sale or lease to the corporation (or any subsidiary thereof), in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than Two Million Dollars (\$2,000,000), of any other corporation, person, or other entity, and (iv) to the effect any proposed amendment to these articles of incorporation or any Article thereof. Such affirmative vote or consent shall be in addition to the vote or consent of the holders of the stock of the corporation otherwise required or entitled by law or any agreement between the corporation and any national securities exchange.

ELEVENTH: Before any share of stock of the corporation may be sold, conveyed, or transferred (other than by gift, or by will, or by operation of law, including the laws of descent and distribution of any state), such stock ("offered stock") must first be offered for sale, conveyance, or transfer to the corporation at the same price and upon the same terms and conditions as are the subject of a bona fide offer to purchase. Such offer to the Corporation shall be made in writing and signed by the offering shareholder. The offer shall indicate the price and terms and conditions of a bona fide offer received by such shareholder, and shall identify the prospective purchaser. The offer shall be sent by registered mail to the corporation at its principal place of business (presently 24700 Miles Road, Bedford Heights, Ohio 44146). The offer to the corporation shall remain open for a period of sixty (60) days from the date upon which it is received by the corporation. The corporation shall be entitled to purchase all of the offered stock unless a majority of the board of directors votes to reject all or any portion of such offered stock. In the event that a majority of the board of directors votes to reject all or any portion of such offered stock, the corporation shall be deemed to have accepted the offer to purchase that portion of such offered stock not rejected by a majority of the board of directors, so that only the portion of the offered stock which a majority of the board of directors voted to reject shall not be purchased by the corporation.

Acceptance by the corporation of the shareholder's offer to purchase shall be made in writing, which shall set forth the number of shares which will be purchased by the corporation. Such acceptance shall be sent within the aforementioned sixty (60) day period by registered mail to the offering shareholder at the address stated in the offer.

In the event that all or any portion of the offered stock is not purchased by the corporation pursuant to such offer, for a period of one hundred eighty (180) days after expiration of such offer, the offered stock may be sold, conveyed, or transferred, but only at the same price and upon the same

32040322294

terms and conditions as were offered to the corporation, for a period of one hundred eighty (180) days after expiration of such offer, the offered stock may be sold, conveyed, or transferred, but only at the same price and upon the same terms and conditions as were offered to the corporation, to the person who made the bona fide offer. In the event such offered stock is not so disposed of within such one hundred eighty (180) day period, it must again be offered to the corporation, pursuant to the terms of this Article prior to any sale, conveyance, or transfer thereof (other than by gift or by will or pursuant to the operation of the law, including the law of descent and distribution of any State).

TWELFTH: These amended articles of incorporation supersede the articles of incorporation of the corporation previously in effect.

8 2 0 4 0 3 2 2 2 9 5

NORTH AMERICAN SYSTEMS, INC.

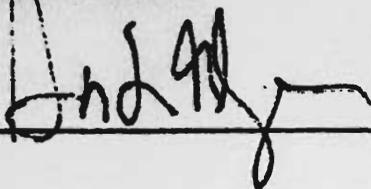
(the "company")

Code of Regulations

Adopted: _____

Officer's Certificate

The undersigned officer of the company hereby certifies that this is a true and complete copy of the code of regulations duly adopted under section 1701.11(A), Ohio Revised Code, effective the date set forth above.



(Title)

82040322296

CODE OF REGULATIONS

Table of Contents

Page

Article I: Meetings of Shareholders

§1.01	Annual Meeting
§1.02	Special Meetings
§1.03	Place of Meetings
§1.04	Notices of Meetings
§1.05	Waiver of Notice
§1.06	Quorum and Vote Requirement
§1.07	Organization
§1.08	Order of Business
§1.09	Voting
§1.10	Proxies
§1.11	Inspectors of Elections
§1.12	Record Date
§1.13	List of Shareholders at Meetings
§1.14	Action in Writing in Lieu of Meeting

Article II: Board of Directors

§2.01	General Powers
§2.02	Number
§2.03	Compensation and Expenses
§2.04	Election
§2.05	Term of Office
§2.06	Removal
§2.07	Vacancies
§2.08	Action in Writing in Lieu of Meeting
§2.09	Resignations
§2.10	Quorum, Vote Requirement, and Manner of Acting
§2.11	Executive and Other Committees
§2.12	Directors' Bylaws

Article III: Officers

§3.01	Number and Titles
§3.02	Additional Officers, Agents, Etc.
§3.03	Election, Terms of Office, Qualifications and Compensation
§3.04	Removal
§3.05	Resignations
§3.06	Vacancies

8204032297

CODE OF REGULATIONS

ARTICLE I

Meetings of Shareholders

§1.01. Annual Meeting. The annual meeting of the shareholders, for the purpose of electing directors and transacting such other business as may come before the meeting, shall be held on such date and at such time as the board of directors may fix from year to year, or if the Board of Directors fails so to fix a date and time for the meeting in any year, at 11:00 a.m. on the first Tuesday of the fifth calendar month following the end of the last fiscal year of the company, if not a legal holiday, but if that day is a legal holiday under Ohio law, the annual meeting shall be held on the first succeeding day which is not a Saturday, Sunday or legal holiday. If for any reason the election of directors is not held at the annual meeting or any adjournment thereof, the board of directors may cause the election to be held at a Special shareholders' meeting.

§1.02. Special Meeting. A special meeting of the shareholders may be called by the chairman of the board, if any, or by the chairman, or by a majority of the directors acting with or without a meeting, or by the holders of record of twenty-five percent of all the shares outstanding at the time of the calling of such shareholders' meeting and then entitled to be voted at such meeting. Upon delivery in person or by registered mail to the chairman or secretary of a written request for a shareholders' meeting (which request shall specify the purposes of such meeting) by any persons entitled to call such a meeting, it shall be the duty of the officer to whom the request is delivered to give to the shareholders entitled thereto notice of a meeting to be held not less than seven nor more than 60 days after delivery of such request, as such officer shall fix. If, upon such a request, such officer does not within ten days call the meeting, the persons making such request may call it by giving notice as provided in §1.04, or by causing it to be given by any designated representative

§1.03. Place of Meetings. All shareholders' meetings shall be held at such place or places, within or without the State of Ohio, as may from time to time be fixed by the board of directors or if not so fixed, then as shall be specified in the respective notices or waivers of notices thereof.

§1.04. Notices of Meetings. Except as otherwise expressly required by law, notice of each shareholders' meeting, whether annual or special, shall be given not more than 60 days and not less than seven days before the date specified for the meeting by the chairman or secretary, or, in case of their refusal or fail-

32040322298

ure to do so, by the person or persons entitled to call such meeting, to each shareholder entitled to notices of the meeting, by delivering a written notice thereof to him personally or by posting it in a postage-prepaid envelope addressed to him at his address as it appears on the records of the company, or, if he shall not have furnished his address to the company, then at his most recent post office address known to the sender. Except when expressly required by law, no publication of any notice of a shareholders' meeting shall be required. If shares are transferred after notice has been given, notice need not be given to the transferee. A record date may be fixed for determining the shareholders entitled to notice of any meeting of shareholders in accordance with the provisions of §1.12. Every notice of a shareholders' meeting, in addition to stating the time and place of the meeting, shall state briefly the purposes thereof as may be specified by the person or persons requesting or calling the meeting. Notice of the adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at such meeting.

§1.05. Waiver of Notice. Any shareholder, either before or after any meeting, may waive in writing any notice thereof required by law, the articles, or these regulations. Such written waivers shall be filed with or entered upon the records of the meeting. Notice of a meeting shall be deemed to be waived by any shareholder who attends such meeting either in person or by proxy and who does not, before or at the commencement of the meeting, protest the lack of proper notice.

§1.06. Quorum and Vote Requirement. At any shareholders' meeting, the holders of shares entitling them to exercise two-thirds of the voting power of the company, present in person or by proxy and entitled to vote thereat, shall constitute a quorum for the transaction of business, unless a different number is required by law, the articles, or these regulations. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting power of the shareholders present in person or by proxy and entitled to vote or, in the absence of all of the shareholders, any officer entitled to preside or act as secretary of the meeting, may adjourn the meeting from time to time. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Except where the Ohio General Corporation Law or other applicable law, or the articles, or other provisions of these regulations designate or require a greater proportion of the voting power of the company with respect to any matter to be

32040322299

acted upon by shareholders, the holders of two-thirds of the shares present in person or by proxy and entitled to vote at any shareholders' meeting at which a quorum is present may authorize or take action with respect to each matter properly submitted to the shareholders at such meeting.

§1.07. Organization. At each shareholders' meeting the chairman of the meeting shall be: the chairman of the board, if any, and if he be so directed by the board of directors; or, in his absence or if he is not so directed, such person or alternate thereto as may be designated by the board of directors; or in the absence thereof or if the directors do not so designate, the chairman of the company; or, in the absence of all of the foregoing, a chairman chosen by a majority in voting power of the shareholders present in person or by proxy and entitled to vote thereat. The secretary of the company, or, in his absence, any assistant secretary, or, in the absence of all of them, any person whom the chairman of the meeting appoints for such meeting, shall act as secretary of each shareholders' meeting.

§1.08. Order of Business. The order of business at each shareholders' meeting shall be as determined by the chairman of the meeting, except that the order of business at any meeting may be changed by the vote of a majority in voting power of those shareholders present in person or by proxy and entitled to vote thereat. Unless otherwise fixed by the chairman or the shareholders as provided above, the order of business at each such shareholders' meeting shall be as follows:

1. Roll call;
2. Appointment of inspectors of election, if not appointed in advance by the board of directors and if desired by the chairman or requested by any shareholder present in person or by proxy;
3. Proof of notice of meeting or waiver thereof;

A QUORUM BEING PRESENT:

4. Reading of minutes of preceding meeting, unless dispensed with by the vote of a majority in voting power of those shareholders present in person or by proxy and entitled to vote thereat;
5. Report of board of directors, if any;
6. Reports of officers, if any;
7. Reports of committees, if any;
8. Election of directors, if any;
9. Unfinished business, if any; and
10. New business, if any.

32040322300

§1.09. Voting. Each holder of shares of a class entitled to vote by law or the articles shall be entitled to one vote in person or by proxy for each such share registered in his name on the records of the company. As provided in §1.12, a record date for determining shareholders entitled to vote at any meeting may be fixed. Shares of its own stock shall not be voted directly or indirectly by the company. Persons, if any, holding voting shares in a fiduciary capacity shall be entitled to vote the shares so held. A shareholder whose voting shares are pledged shall be entitled to vote the shares standing in his name on the records of the company. Any shareholder present in person or by proxy at any meeting and entitled to vote thereat may require that a share vote be taken upon any question or matter to be voted upon by the shareholders, and may further require that such share vote be taken by written ballot. When any vote is taken by written ballot, each ballot shall be signed by the shareholder voting, or by his proxy if there be such proxy, and shall state the number of shares voted. Otherwise, share votes shall be made orally.

§1.10. Proxies. Each shareholder who is entitled to attend a meeting of shareholders, to vote thereat, or to execute consents, waivers or releases, may be represented at such meeting, vote thereat, execute and deliver such consents, waivers or releases, and exercise any of his other rights as a shareholder, by proxy or proxies appointed by a writing signed by such shareholder, which need not be sealed, witnessed, or acknowledged. Except as herein otherwise specifically provided, actions taken by proxy or proxies shall be governed by the provisions of the Ohio General Corporation Law.

§1.11. Inspectors of Elections. Inspectors of elections may be appointed and act as provided in the Ohio General Corporation Law.

§1.12. Record Date. For any lawful purpose, including without limitation the determination of shareholders entitled to receive notice of and to vote at a meeting of shareholders and for such other purposes specified in section 1701.45(A) of the Ohio General Corporation Law, the board of directors may fix a record date which shall not be a date earlier than the date on which the record date is fixed. Subject to the foregoing, such record date shall not be more than sixty days preceding the date of the event or purpose for which it was fixed, unless such event or purpose is one for which no maximum period is required under said section 1701.45(a) (in which case the record date shall be such number of days preceding the event or purpose as the board of directors shall determine). If no record date is fixed there-

3 2 0 4 0 3 2 2 3 0 1

for, the record date for determining the shareholders who are entitled to receive notice of, or to vote at, a meeting of shareholders shall be the date next preceding the day on which notice is given, or the date next preceding the day on which the meeting is held, as the case may be. Only the holder of a share of record on the record date for any event or purpose shall be deemed the holder of such share with respect to such event or purpose notwithstanding any transfer of such share after such record date. The determination of shareholders of record on any record date shall be made as of the close of the business on that date.

§1.13. List of Shareholders at Meetings. Upon request of any shareholder at any meeting of shareholders, there shall be produced at such meeting an alphabetically arranged list, or classified lists, of the shareholders of record as of the applicable record date, who are entitled to vote at such meeting, showing their respective addresses and the number and classes of shares held by each.

§1.14 Action in Writing in Lieu of Meeting. Any action which may be taken at a meeting of the shareholders, may be taken without a meeting if authorized by a writing or writings signed by each of the holders of shares who would be entitled to notice of a meeting called for the purpose of taking such action, or such lesser proportion of shareholders that may now or hereafter be permitted by the Ohio General Corporation Law, the articles or these regulations.

32040322302

ARTICLE II

Board of Directors

§2.01. General Powers. The powers of the company shall be exercised, its business and affairs shall be conducted, and its property shall be controlled by the board of directors, except as may otherwise be provided by applicable law, the articles, or these regulations.

§2.02. Number. The number of directors constituting the full board of directors shall be four (4) directors; provided, however, that no reduction in the number of directors in and of itself shall have the effect of removing any director from office prior to the expiration of his term of office.

§2.03. Compensation and Expenses. The directors shall be entitled to such compensation, if any, as the board of directors may from time to time determine and establish. No director shall be precluded from serving the company as an officer or in any other capacity, or from receiving compensation therefor. Directors may be reimbursed for their reasonable expenses incurred in the performance of their duties, including the expense of traveling to and from meetings of the board, if such reimbursement is authorized by a majority of them.

§2.04. Election. At each meeting of the shareholders for the election of directors at which a quorum is present, the persons receiving the greatest number of votes shall be deemed elected the directors. Any shareholder may cumulate his votes at an election of directors upon fulfillment of the conditions prescribed in the Ohio General Corporation Law.

§2.05. Term of Office. Unless he earlier resigns, is removed as hereinafter provided, dies, or is adjudged mentally incompetent, each director shall hold office until the sine die adjournment of the annual meeting of shareholders next succeeding his election, or the taking by the shareholders of action in writing in lieu of such meeting, or, if the election of directors shall not be held at the annual meeting or any adjournment thereof, until the sine die adjournment of the special meeting of the shareholders for the election of directors held thereafter as provided for in §1.01, or the taking by the shareholders of action in writing in lieu of such a meeting, and until his successor is elected and qualified.

§2.06. Removal. Any director of directors may be removed, either with or without cause, at any time, by the affirmative

32040322303

vote of two-thirds in voting power of the shareholders of record of the company entitled to vote for the election of directors in the place of those to be removed. However, unless all the directors, or all the directors of a particular class, are removed, no individual director shall be removed in case the votes of a sufficient number of shares are cast against his removal which, if cumulatively voted at an election of all the directors, or all the directors of a particular class, as the case may be, would be sufficient to elect at least one director. The vacancy in the board of directors caused by any such removal may be filled by the shareholders at such meeting. Any director may also be removed by the board of directors for any of the causes specified in the Ohio General Corporation Law.

§2.07. Vacancies. A vacancy in the board of directors shall be filled by unanimous vote of the remaining directors until the shareholders hold an election to fill the vacancy. Shareholders entitled to elect directors may elect a director to fill any vacancy in the board (whether or not the vacancy has previously been temporarily filled by the remaining directors) at any shareholders' meeting called for that purpose.

§2.08. Action in Writing in Lieu of Meeting. Any action which may be taken by the board of directors, or any committee of directors, at any meeting thereof may be taken without a meeting if authorized by a writing or writings signed by each of the directors, or by each member of such committee, as the case may be.

§2.09. Resignations. Any director may resign by giving written notice to the chairman of the board, if any, to the chairman, or to the secretary of the company. Such resignation shall take effect upon receipt of such notice, or at any other time specified therein. Unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

§2.10. Quorum, Vote Requirement, and Manner of Acting. A majority of the directors serving as such as of the time of any meeting of directors (even though, because of one or more vacancies, less than a majority of the total number of directors fixed under §2.02) must be present in person at such meeting in order to constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors. In the absence of a quorum, a majority of those present may adjourn a meeting from time to time until a quorum is obtained. Notice of an adjourned meeting need not be given. The directors shall

82040322304

act only as a board. Individual directors shall have no power as such.

§2.11. Executive and Other Committees. The board of directors may create and from time to time abolish or reconstitute an executive committee and any other committee or committees of directors each to consist of not less than three directors, and may delegate to any such committee or committees any or all of the authority of the directors, however conferred, other than that of adopting directors' bylaws under §2.12 and that of filling vacancies in the board of directors or in any committee of directors. Each such committee shall serve at the pleasure of the directors, shall act only in the intervals between meetings of the board of directors, and shall be subject to the control and direction of the board of directors. The directors may adopt or authorize the committees to adopt provisions with respect to the government of any such committee or committees which are not inconsistent with applicable law, the articles, these regulations, or any directors' bylaws. An act or authorization of an act by any such committee within the authority properly delegated to it by the directors shall be as effective for all purposes as the act or authorization of the full board of directors. Except as otherwise expressly provided in these regulations, each right, power, or authority conferred in these regulations to the "directors" or to the "board of directors" or to the "board" shall also be deemed conferred to each committee or committees to which any such right, power, or authority is delegated (expressly or by necessary implication) by the board of directors.

§2.12. Directors' Bylaws. For purposes of their own government the directors, by vote of a majority of all directors then serving as such, may adopt, revoke and from time to time amend director's bylaws not inconsistent with applicable law, the articles, or these regulations. Without limiting the generality of the foregoing, the directors' bylaws may contain provisions with respect to the frequency, organization, place, time, notice, adjournment, and order of business of meetings of the board of directors or committees of directors, and the establishment, membership, authority and duties of committees of directors.

82040322305

ARTICLE III

Officers

§3.01 Number and Titles. The officers of the company shall be a chairman, a president, a treasurer, and a secretary. There may, in addition, be a chairman of the board, at any time during which the board of directors shall see fit to cause such office to be filled. There shall be such one or more vice presidents, assistant treasurers and assistant secretaries, if any, as the board of directors may from time to time determine and elect to office. If there is more than one vice president, the board may, in its discretion, establish designations for the vice presidencies so as to distinguish among them as to either or both their functions or their order, if any, of succession to the duties and authority of the president and other vice presidents. Any person may hold two or more offices and perform the duties thereof, except that no officer shall execute, acknowledge, or verify any instrument in more than one capacity if such instrument is required by law, the articles, these regulations, or any directors' bylaws to be executed, acknowledged, or verified by two or more officers.

§3.02. Additional Officers, Agents, Etc. In addition to the officers specified in §3.01, the company shall have such other officers, agents, and committees as the board of directors may deem advisable and may elect, each of whom or each member of which shall hold office for such period, have such authority, and perform such duties as may be provided in these regulations or as may, from time to time, be determined by the board of directors. The board of directors may delegate to any officer or committee the power to appoint any subordinate officers, agents, or committees. In the absence of any officer, or for any other reason the board of directors may deem appropriate, the board of directors may delegate, for such time as the board of directors shall determine, the powers and duties, or any of them, of such officer to any other officer or officers, or to any director or directors.

§3.03. Election, Terms of Office, Qualifications and Compensation. The officers shall be elected by the board of directors. Each shall be elected for an indeterminate term and shall hold office during the pleasure of the board of directors. The board of directors may hold annual elections of officers. At any time after one year following an election of a full slate of officers, an election of officers shall be held within 30 days after delivery to the chairman or the secretary of a written request for such election by any director. The notice of the

82040322306

meeting held in response to such request shall specify that an election of officers is one of the purposes thereof. The chairman of the board, if any, shall be a director of the company; the qualifications, if any, of all other officers shall be such as the board of directors may establish. An officer shall be entitled to such salary or other compensation or benefits of employment, if any, for his services as such as the directors, or a duly authorized officer or committee of officers, may authorize from time to time, subject to the terms and conditions relating to the compensation of any particular officer contained in any express contract of employment then in effect between such officer and the company.

§3.04. Removal. Any officer may be removed, either with or without cause, at any time, by the board of directors. Any officer appointed by an officer or committee to which the board of directors shall have delegated the power of appointment may be removed, either with or without cause, by the committee or superior officer (including successors) who made the appointment, or by any committee or officer upon whom such power of removal may be conferred by the board of directors.

§3.05 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise shall be filled in the manner prescribed for regular appointments or elections to such office.

§3.07 Powers, Authority and Duties. Officers of the company shall have the powers and authority conferred and the duties prescribed by law, in addition to those specified or provided for in the other sections of this Article. Such powers, authority and duties of any officer shall be subject to the limitations, modifications, definitions, conditions, or other terms, if any, contained in any express contract of employment between such officer and the company, whether entered into or amended prior to, concurrently with, or after the adoption of these regulations.

§3.08. The Chairman of the Board. The chairman of the board, if and while there be an incumbent of the office and if he be so directed by the board of directors, shall preside at all meetings of the shareholders and of the directors at which he is present. He shall have such other duties and authority as may be assigned or delegated to him from time to time by the board of directors. He shall from time to time report to the board of directors all matters within his knowledge which the interests of the company may require to be brought to the notice of the board of directors.

82040322307

§3.09. The Chairman. If and while there is no incumbent in the office of chairman of the board, and during the absence or disability of the chairman of the board, the chairman shall have the duties and authority specified in §3.08. Subject to the control of the board of directors and unless as otherwise determined by the board of directors, the chairman shall be the chief executive officer of the company, shall superintend and manage the business of the company and shall co-ordinate and supervise the work of its other officers. Either personally or through other officers or employees of the company, he shall employ, direct, fix the compensation of, discipline, and discharge its personnel; employ agents, professional advisers and consultants; and perform all functions of a general manager of the company's business. He may execute and deliver in the name of the company all deeds, mortgages, bonds, contracts, and other instruments either when specifically authorized by the board of directors or when required or deemed necessary or advisable by him in the ordinary conduct of the company's normal business, except in cases where the execution thereof shall be expressly delegated by these regulations or by the board of directors to some other officer or agent of the company or shall be required by law or otherwise to be executed by some other officer or agent. He may cause the seal of the company, if any, to be fixed to any instrument. He shall, in general, perform all duties and have all authority incident to the office of the chairman and such other duties as from time to time may be assigned to him by the board of directors.

§3.10 The Secretary. The secretary shall:

(a) Keep the minutes of all meetings of the shareholders and of the board of directors in one or more books provided for that purpose;

(b) Cause all notices to the shareholders and the directors of the company to be duly given in accordance with these regulations and the Ohio General Corporation Law;

(c) Be custodian of the corporate records and of the seal of the company, if any;

(d) Have charge, directly or through such transfer agent or agents and registrar or registrars as the board of directors may appoint, of the issue, transfer, and registration of certificate for shares of the company and of the records thereof, such records to be kept in such manner as to show at any time the number and class of shares in the company issued and outstanding, the names and addresses of the holders of record

82040322308

thereof, the numbers and classes of shares held by each, and the date when each share certificate was issued;

(e) Exhibit at all reasonable times to any director the aforesaid records of the issue, transfer, and registration of such certificates, upon application at the place where those records are kept;

(f) Have available at each shareholders' meeting the list or lists required by §1.13 above, certified by the officer or agent in charge of the transfer of shares;

(g) Sign (or cause the treasurer or other proper officer of the company thereunto authorized by the board of directors to sign), with the chairman of the board or the chairman or a vice president, certificates for shares of the company;

(h) In general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the board of directors.

(i) In the absence or disability of the Chairman, the secretary shall perform such duties of the Chairman as the board of directors may designate.

§3.11 The Assistant Secretaries. The assistant secretaries, if any, shall perform such duties as from time to time may be assigned to them individually or collectively, by the board of directors by the chairman or by the secretary. In the absence or disability of the secretary, one or more of the assistant secretaries may perform such duties of the secretary as the secretary, the chairman, or the board of directors may designate.

§3.12 The President and Vice Presidents. The President and vice presidents, if any, shall perform such duties as may be assigned to them, individually or collectively, by the board of directors, by the chairman, or by the secretary.

§3.13 The Treasurer. If required by the board of directors, the treasurer shall give bond for the faithful discharge of his duties in such penal sum and with such sureties as the board of directors shall determine. The treasurer shall:

(a) Have charge and custody of, and be responsible for, all funds, securities, notes, contracts, deeds, documents, and all other indicia of title in the company and valuable effects of the company; receive and give receipts for moneys payable to the company from any sources whatsoever; deposit all

82040322309

moneys in the name of the company in the banks, trust companies, or other depositories as shall be selected by or pursuant to the direction of the board of directors; cause such funds to be disbursed by checks or drafts on the authorized depositories of the company, signed as the board of directors may require; and be responsible for the accuracy of the amounts of, and cause to be preserved proper vouchers for, all moneys disbursed;

(b) Have the right to require from time to time reports or statements giving such information as he may desire with respect to any and all financial transactions of the company from the officers, employees, or agents transacting the same;

(c) Keep or cause to be kept, at the principal office or such other office or offices of the company as the board of directors shall from time to time designate, correct records of the moneys, business, and transactions of the company, and exhibit those records to any director of the company upon application at such office;

(d) Render to the board of directors or the chairman of the board or the president whenever requested an account of the financial condition of the company and of all his transactions as treasurer and, as soon as practicable after the close of each fiscal year, make and submit to the board of directors a like report for such fiscal year;

(e) Lay before each annual meeting of the shareholders, or the meeting held in lieu thereof, the financial statement required by the Ohio General Corporation Law, and furnish copies of such statement to shareholders as required by said statute;

(f) Cause the books, reports, statements, certificates, and all other documents and records required by law to be property kept and filed; and

(g) In general, perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the board of directors or the chairman or any vice-chairman.

§3.14. The Assistant Treasurers. The assistant treasurers, if any, shall perform such duties as from time to time may be assigned to them, individually or collectively, by the board of directors, by the chairman, by any vice chairman, or by the treasurer. In the absence or disability of the treasurer, one or more of the assistant treasurers may perform such duties

82040322310

of the treasurer as the treasurer, the chairman, or the board of directors may designate.

ARTICLE IV

Certain Transactions with Directors and Officers

A director or officer of the company shall not be disqualified by his office from dealing with the company as a vendor, purchaser, lessor, lessee, employee, agent, or otherwise, and no contract or transaction shall be void or voidable or in any way affected with respect to the company for the reason that it is between the company and one or more of its directors or officers, or between the company and any other corporation, trust, partnership or other organization in which one or more of its directors or officers are directors, trustees, partners, or officers, or have a financial or personal interest, or for the reason that one or more interested directors or officers participate in or vote at the meeting of directors or a committee thereof which authorizes such contract or transaction, if in any such case (a) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or known to the directors or a committee thereof and the directors or a committee thereof, in good faith, reasonably justified by such facts, authorize or ratify the contract or transaction by the affirmative vote of a majority of the directors; or (b) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon and the contract or transaction is specifically approved or ratified at a meeting of the shareholders held for such purpose by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the company; or (c) the contract or transaction is fair as to the company as or the time it is authorized or approved or ratified by the directors, of a committee thereof, or by the shareholders. Without lierting or qualifying the foregoing, if in any judicial or other inquiry, suit, cause, or proceeding, the question as to whether a director or officer of the company or the company acting through its directors has acted in good faith is material, then notwithstanding any statute or rule of law or of equity to the contrary (if any there be), his or its good faith shall be presumed, in the absence of proof to the contrary by clear and convincing evidence.

32040322311

ARTICLE V

Indemnification of Certain Persons

§5.01. Actions Not by the Company. The company shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the company, by reason of the fact that he is or was a director or officer of the company or is or was serving at the request of the company as a director, officer, partner, or trustee of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonable incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the company, and with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the company, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful. Nothing in this §5.01 shall obligate the company to indemnify hereunder, or prevent the company in its discretion from so indemnifying, any person by reason of the fact that he is or was an employee or agent of the company or is or was serving at the request of the company as an employee or agent of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise.

§5.02. Actions by the Company. The company shall indemnify any person who was or is a party or is treated to be made a party to any threatened, pending, or completed action or suit by or in the right of the company to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the company, or is or was serving at the request of the company as a director, officer, partner, or trustee of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner

8 2 0 4 0 3 2 2 3 1 2

which he reasonably believed to be in or not opposed to the best interests of the company, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the company unless, and only to the extent that, the court of common pleas, or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances, of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court of common pleas or such other court shall deem proper. Nothing in this §5.02 shall obligate the company to indemnify hereunder, or prevent the company in its discretion from so indemnifying, any person by reason of the fact that he is or was an employee or agent of the company or is or was serving at the request of the company as an employee or agent of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise.

§5.03. Indemnification for Expenses. To the extent that a person indemnified by right or at the option of the company under §5.01 or §5.02 has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said sections, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

§5.04. Determination of Indemnification. Any indemnification under §5.01 and §5.02, unless ordered by a court, shall be made by the company only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because such person has met the applicable standard of conduct set forth in §5.01 and §5.02 hereof. Such determination shall be made (a) by a majority vote of a quorum consisting of directors of the company who were not and are not parties to or threatened with any such action, suit, or proceeding, or (b) if such a quorum is not obtainable or if a majority vote of a quorum of disinterested directors so directs, in a written opinion by independent legal counsel, other than an attorney or a firm having associated therewith an attorney who has been retained by or who has performed services for the company or any person to be indemnified, within the past five years, or (c) by the shareholders, (d) by the court of common pleas or the court in which such action, suit, or proceeding was brought. Any determination made by the disinterested directors under clause (a) or by independent legal counsel under clause (b) of this §5.04 shall be promptly communicated to the person who threatened or brought the action or suit by or in the right of the company under §5.02, and

3
1
3
2
2
3
4
0
4
0
2
3

within ten days after receipt of such notification, such person shall have the right to petition the court of common pleas or the court in which such action or suit was brought to review the reasonableness of such determination.

3 2 0 4 0 3 2 2 3 1 4

§5.05. Advances of Expenses. Expenses, including attorneys' fees, incurred in defending any action, suit, or proceeding referred to in §5.01 and §5.02 may be paid by the company in advance of the final disposition of such action, suit, or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the indemnified person to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the company as authorized in this Article. No shareholder shall have the right to question expenses paid pursuant to this §5.05 so long as the board of directors has authorized such payment and the aforementioned undertaking has been received by the company; provided that the restriction contained in this sentence shall not be construed to restrict a shareholder's right to question the reasonableness of the ultimate determination of indemnification as provided in §5.04.

§5.06. Indemnification Not Exclusive. The indemnification provided for in this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under these articles, or any agreement, vote of shareholders or disinterested directors, statute (as now existing or as hereafter enacted or amended), or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to serve as a director, officer, partner, trustee, or in any other indemnified capacity and shall inure to the benefit of the heirs, executors, and administrators of such a person.

§5.07. Insurance. The company may purchase and maintain insurance on behalf of any person who is or was a director, officer, trustee, employee, or agent of the company, or is or was serving at the request of the company as a director, officer, partner, trustee, employee, or agent of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the company has the obligation or power to indemnify him against such liability under this Article.

§5.08. Definitions. As used in this Article, references to "company" include all constituent corporations in a consoli-

ation or merger and the new or surviving corporation, so that any person who is or was a director or officer of such a constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, partner, trustee, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust, or other enterprise, shall stand in the same position under this section with respect to the new or surviving corporation as he would if he had served the new or surviving corporation in the same capacity.

82040322315

ARTICLE VI
Shares and Their Transfer

3 2 0 4 0 3 2 3 1 6

§6.01 Certificates for Shares. Every owner of one or more shares of the company shall be entitled to a certificate or certificates, which shall be in such form as the board of directors shall prescribe, certifying the number and class of fully-paid shares of the company owned by him. The certificates for the respective classes of such shares shall be numbered in the order in which they are issued and shall be signed in the name of the company by the chairman of the board or by the chairman of the company. The seal of the company, if any, may be affixed thereto. A record shall be kept of the name of the owner or owners of the shares represented by each such certificate and the number of shares represented thereby, the date thereof, and in case of cancellation, the date of cancellation. Every certificate surrendered to the company for exchange or transfer shall be cancelled and no new certificate or certificates shall be issued in exchange for any existing certificates until such existing certificates shall have been so cancelled, except in cases provided for in §6.03.

§6.02 Regulations. The board of directors may adopt such rules and regulations as it may deem expedient, not inconsistent with these regulations, concerning the issue, transfer, and registration of certificates for shares. It may appoint one or more transfer agents or one or more registrars, or both, and may require all certificates for shares to bear the signatures of either or both.

§6.03. Lost, Destroyed, and Mutilated Certificates. If any certificate for shares becomes worn, defaced, or mutilated but is still substantially intact and recognizable, the directors, upon production and surrender thereof, shall order it cancelled and a new certificate issued in lieu thereof. The holder of any shares shall immediately notify the company if a certificate therefor shall be lost, destroyed, or mutilated beyond recognition, and the company may issue a new certificate in the place of any certificate theretofore issued by it which is alleged to have been lost or destroyed or mutilated beyond recognition. The board of directors may require the owner of the certificate which is alleged to have been lost, destroyed, or mutilated beyond recognition, or his legal representatives, to give the company a bond with such surety or sureties, and in such penal sum, as it may direct, so as to indemnify the company and its directors and officers against any claim that may be made against it or any of them on account of the issuance of such new certificate in place of the allegedly lost, destroyed, or

mutilated certificate. The board of directors may, however, refuse to issue any new certificate except pursuant to legal proceedings pursuant to the laws of Ohio.

§6.04. Transfer of Shares, Restrictions on Transfer. Transfers of shares in the company shall be made only on the books of the company by the registered holder thereof, his legal guardian, executor, or administrator, or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the company or with a transfer agent appointed by the board of directors, and on surrender of the certificate or certificates for such shares. The person in whose name shares stand on the books of the company shall, to the full extent permitted by law, be deemed the owner thereof for all purposes as regards the company.

No restrictions on the right to transfer shares of the company and no reservation of a lien thereon shall be effective against a transferee of such shares unless there is a set forth on the face or back of each certificate for such shares the statement or statements required by the Ohio General Corporation Law or any other applicable law.

§6.05. Restriction on Transfer of Shares. Before any share of stock of the Corporation may be sold, conveyed, or transferred (other than by gift, or by will, or by operation of law, including the laws of descent and distribution of any state), such stock ("offered stock") must first be offered for sale, conveyance, or transfer to the Corporation at the same price and upon the same terms and conditions as are the subject of a bona fide offer to purchase. Such offer to the Corporation shall be made in writing and signed by the offering shareholder. The offer shall indicate the price and terms and conditions of a bona fide offer received by such shareholder, and shall identify the prospective purchaser. The offer shall be sent by registered mail to the Corporation at its principle place of business (presently 24700 Miles Road, Bedford Heights, Ohio 44146). The offer to the Corporation shall remain open for a period of sixty (60) days from the date upon which it is received by the Corporation. The Corporation shall be entitled to purchase all or any portion of such offered stock. The Corporation shall be deemed to have accepted the offer to purchase all of the offered stock unless a majority of the board of directors votes to reject all or any portion of such offered stock. In the event that a majority of the board of directors votes to reject all or any portion of such offered stock, the Corporation shall be deemed to have accepted the offer to purchase that portion of such offered stock not rejected by a majority of the board of directors, so that

92040322317

only the portion of the offered stock which a majority of the board of directors voted to reject shall not be purchased by the Corporation.

Acceptance by the Corporation of the shareholder's offer to purchase shall be made in writing, which shall set forth the number of shares which will be purchased by the Corporation. Such acceptance shall be sent within the aforementioned sixty (60) day period by registered mail to the offering shareholder at the address stated in the offer.

In the event that all or any portion of the offered stock is not purchased by the Corporation pursuant to such offer, for a period of one hundred eighty (180) days after expiration of such offer, the offered stock may be sold, conveyed, or transferred, but only at the same price and upon the same terms and conditions as were offered to the Corporation, to the person who made the bona fide offer. In the event such offered stock is not so disposed of within such one hundred eighty (180) day period, it must again be offered to the Corporation, pursuant to the terms of this Article, prior to any sale, conveyance, or transfer thereof (other than by gift or by will or pursuant to the operation of law, including the law of descent and distribution of any State).

82040322318

ARTICLE VII

Miscellaneous

§7.01. Corporate Seal. The board of directors may adopt and alter a corporate seal, and use the same for a facsimile thereof, but failure to affix or refer to the corporate seal, if any, shall not affect the validity of any instrument.

§7.02 Examinaiton of Books by Shareholders. The board of directors may make reasonable rules and regulations prescribing under what conditions the books, records, accounts, and documents of the company, or any of them, shall be open to the inspection of the shareholders. No shareholder shall be denied any right which is conferred by the Ohio General Corporation Law, or any other Ohio law to inspect any book, record, account, or document of the company.

§7.03. Dividends. Subject to the articles, these regulations and to the extent and as permitted by the Ohio General Corporation Law, the board of directors may declare dividends, including stock dividends, on the shares of the company whenever and in such amounts, if any, as the articles may provide, or as, in the opinion of the board of directors, the condition of the affairs of the company renders advisable. Unless otherwise required by the articles with respect to shares of any class or series, the declaration of dividends, if any, shall be wholly within the discretion of the board if directors, irrespective of the amount of surplus or capital surplus available for such purpose.

§7.04. Amendment of Regulations. These regulations may be amended, repealed, or superseded by a new code of regulations (a) at any annual or special meeting of the shareholders by the affirmative vote of the holders of record of shares entitling them to exercise two-thirds of the voting power on such proposal, or (b) without a meeting of the shareholders, by the written consent of the holders of record of shares entitling them to exercise two-thirds of the voting power on such proposal. If any such amendment or new code of regulations is adopted without a meeting of the shareholders, the secretary shall mail a copy of the amendment or new code of regulations to each shareholder who would have been entitled to vote thereon, but who did not participate in the adoption thereof.

§7.05. Definitions. As used herein, and as of any point in time, "articles" shall mean the articles of incorporation of the company as then in effect and as the same may thereafter be

82040322319

amended from time to time; "regulations" shall mean this code of regulations as then in effect and as the same may thereafter be amended from time to time; the "Ohio General Corporation Law" shall mean Section 1701.01 through 1701.99, inclusive, of the Ohio Revised Code, or any subsequent statute of like tenor or effect, as then in effect and as the same may thereafter be amended from time to time; and references to any section or subsection of the Ohio General Corporation Law shall include any subsequent amendment (including any renumbering) to such section or subsection or other amendment to the Ohio General Corporation Law dealing with the same subject matter as such section or subsection.

§7.06. Construction of Regulations. In the event these regulations contain any terms or provisions that are inconsistent or in conflict with any of the terms or provisions of the articles, such terms and provisions of the articles shall control and supersede such conflicting or inconsistent terms and provisions of these regulations, but such conflict or inconsistency shall not impair, nullify or otherwise affect the remaining terms and provisions of these regulations which shall remain in full force and effect. The captions at the beginnings of the several articles and sections of these regulations are not part of the context hereof, but are merely labels to assist in locating and reading those Articles and sections thereof; such captions shall be ignored in construing these regulations.

82040322320

92040322321

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

HAND DELIVERY

Federal Election Commission

1325 K Street, N. W.

Washington, D. C. 20463

ATTENTION: MS. MAURA WHITE

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

TO:

Max L. Friedersdorf, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

FIRST CLASS MAIL

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20008

TO:

Max L. Friedersdorf, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

FIRST CLASS MAIL

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

TO:

Max L. Friedersdorf, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

FIRST CLASS MAIL



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 6, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton, Esquire
Ragan and Mason
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: ~~Mail~~ 1314

Dear Mr. Stanton:

This is to inform you that the Commission has considered your request for an extension of time and has agreed to grant you an additional 15 days to respond to questions propounded to your clients, Thomas Marotta, Vincent Marotta, and North American Systems, Inc. Your response, therefore, should be submitted within 25 days from the day of receipt of the reasons to believe notification letters mailed to your clients.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,


Charles N. Steele
General Counsel

82040322325



FEDERAL
WASHINGTON

1980

CERTIFIED MAIL
RETURN RECEIPT

82040322326

to
Thomas
Inc.
in 25
ave

SENDER: Complete items 1, 2, and 3. Add your address to the return address.

1. PAYMENT: The following services require payment in advance. 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:
James Stanton

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	NO.
	94791	

(Always obtain signature of addressee.)

I have received the article described above.
SIGNATURE: *Roger Mc...* ADDRESS: *STANTON*

4. ADDRESS: Complete only if corrected.

5. REASONS TO DELIVER:

MW MUR 1314

James St
Ragan ar
900 Ave
Washing

Dear Mr.

The
consider
and has
respond
Marotta,
Your res
days fro
notice

ii
White,
303-523-

3 JAN 0 3 3 1 5 3



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton, Esquire
Ragan and Mason
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Stanton:

This is to inform you that the Commission has considered your request for an extension of time and has agreed to grant you an additional 15 days to respond to questions propounded to your clients, Thomas Marotta, Vincent Marotta, and North American Systems, Inc. Your response, therefore, should be submitted within 25 days from the day of receipt of the reason to believe notification letters mailed to your clients.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

mw 11/6/80

Charles N. Steele
General Counsel

82040322327

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Thomas Marotta) MUR 1314
Vincent Marotta)
North American Systems, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on November 5, 1980, the Commission decided by a vote of 6-0 to take the following actions regarding MUR 1314:

1. Deny the request for a 30 day extension of time in which to responde to questions.
2. Grant a 15 day extension in this matter.

Commissioners Aikens, Friedersdorf, Harris, McGarry, Reiche, and Tiernan voted affirmatively.

Attest:

11/5/80

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 10-31-80, 4:00
Circulated on 48 hour vote basis: 11- 3-80, 11:00

82040322320

October 31, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1314

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

82040322329



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 OCT 31 P 4: 00

October 31, 1980

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel *CNS*

SUBJECT: MUR 1314--Request for an Extension
of Time in which to Respond

On October 29, 1980, counsel for Thomas Marotta, Vincent Marotta, and North American Systems, Inc., respondents in this matter, filed a written request for a 30 day extension of time in which to respond to questions propounded to his clients (Attachment A). The Office of General Counsel recommends that the Commission deny a 30 day extension of time. It is recommended, however, that the Commission grant a 15 day extension in this matter.

Attachments:
Attachment A
Proposed letter to counsel

92040322330

White

HAND DELIVERED

600# 3144

DONALD J. BRUNNER
 ROBERT T. DEVOT, JR.
 GARY R. EDWARDS
 FRANCIS W. FRASER
 GEORGE S. HARTZOG, JR.
 GENE C. LANGE
 GERALD A. MALIA
 JOHN MASON
 EDWARD A. McDERMOTT, JR.
 PAUL J. McELLIGOTT
 ANDREW A. NORMANDEAU
 WILLIAM F. RAGAN
 EDWARD M. SHEA
 JAMES V. STANTON
 JOSEPH P. TENNANT
 JOHN E. YARGO

LAW OFFICES
RAGAN & MASON
 THE FARRAGUT BUILDING
 900 SEVENTEENTH STREET, N.W.
 WASHINGTON, D.C. 20006

(202) 596-4750
 CABLE ADDRESS: DONRALEGAL
 TWX: 710-825-9370
 TELECOMER: (202) 596-4110

OCT 28 1980
 GEORGE S. BROWNELL
 OF COUNSEL
 ATTORNEYS AT LAW
 1100 NEW YORK AVENUE, N.E.
 WASHINGTON, D.C. 20002
 (202) 775-3000

October 28, 1980

OCT 29 10:15

RECEIVED
GENERAL COUNSEL

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

Dear Commission Members:

Re: NUR 1314 (80)

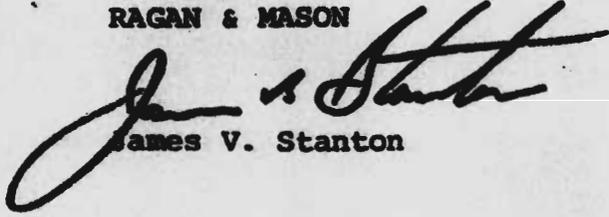
Please be advised that this firm has been retained by the two individual and one corporate respondent in the above matter, and these respondents have sent this date the letter of representation as provided in 11 C.F.R. 111.23. Due to the fact that it is necessary to conduct an investigation of the matters alleged in the General Counsel's Factual And Legal Analysis in order to assist the respondents in the preparation of the responses to the questions submitted by the Commission, we respectfully request an additional 30 days to submit the requested information to the Commission.

The time extension, if granted, will be utilized to conduct the necessary review of the facts of this matter and conduct on-site investigations in Cleveland, Ohio where all three respondents are located.

Thank you for your consideration of this request.

Respectfully,

RAGAN & MASON



James V. Stanton

ATTACHMENT A

82040322331



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Stanton, Esquire
Ragan and Mason
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Re: MUR 1314

Dear Mr. Stanton:

This is to inform you that the Commission has considered your request for an extension of time and has agreed to grant you an additional 15 days to respond to questions propounded to your clients, Thomas Marotta, Vincent Marotta, and North American Systems, Inc. Your response, therefore, should be submitted within 25 days from the day of receipt of the reason to believe notification letters mailed to your clients.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely, .

Charles N. Steele
General Counsel

82040322332

GC01

3179

MR. COFFEE

NORTH AMERICAN SYSTEMS, inc. • p.o. box 4805 • 24700 miles road • bedford heights, ohio 44146 • phone 216/464-4000

October 28, 1980

CERTIFIED MAIL

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

RE: MUR 1314 (80)

Dear Mr. Secretary:

In accordance with the provisions of 11 C.F.R. 111.23 and the letter of Chairman Max L. Friedersdorf dated October 20, 1980, I, Vincent G. Marotta, hereby advise the Commission that I will be represented in the above captioned matter before the Commission by the following attorney:

James V. Stanton, Esquire
Ragan and Mason
900 Seventeenth Street, N. W.
Washington, D. C. 20006

Telephone: 296-4750

I hereby authorize Mr. Stanton to receive any and all notifications from the Commission on my behalf.

Sincerely,

Vincent G. Marotta
Chairman of the Board

cc: Maura White

82040322333

0 OCT 31 AIO : SB

RECEIVED
OFFICE OF THE
GENERAL COUNSEL



NORTH AMERICAN SYSTEMS, inc. • p.o. box 45005 • 24700 miles road • bedford heights, ohio 44145 • phone 216/454-4000

October 28, 1980

CERTIFIED MAIL

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

RE: MUR 1314 (80)

Dear Mr. Secretary:

In accordance with the provisions of 11 C.F.R. 111.23 and the letter of Chairman Max L. Friedersdorf dated October 20, 1980, I, Thomas Marotta, hereby advise the Commission that I will be represented in the above captioned matter before the Commission by the following attorney:

James V. Stanton, Esquire
Ragan and Mason
900 Seventeenth Street, N. W.
Washington, D. C. 20006

Telephone: 296-4750

I hereby authorize Mr. Stanton to receive any and all notifications from the Commission on my behalf.

Sincerely,

Thomas Marotta
Vice President

cc: Ms. Maura White

02040322334

MR. COFFEE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

NORTH AMERICAN SYSTEMS, Inc. • p.o. box 46006 • 24700 miles road • Washington, D.C. 20046 • phone 216/464-4000

October 28, 1980

CERTIFIED MAIL

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

RE: MUR 1314 (80)

Dear Mr. Secretary:

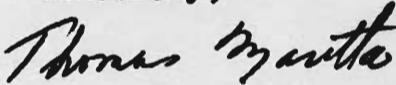
In accordance with the provisions of 11 C.F.R. 111.23 and the letter of Chairman Max L. Friedersdorf dated October 20, 1980, I, Thomas Marotta, hereby advise the Commission that I will be represented in the above captioned matter before the Commission by the following attorney:

James V. Stanton, Esquire
Ragan and Mason
900 Seventeenth Street, N. W.
Washington, D. C. 20006

Telephone: 296-4750

I hereby authorize Mr. Stanton to receive any and all notifications from the Commission on my behalf.

Sincerely,



Thomas Marotta
Vice President

✓cc: Ms. Maura White

32040322335

MR. COFFEE

NORTH AMERICAN SYSTEMS, inc. • p.o. box 48005 • 20700 miles road • bedford heights, ohio 41416 • phone 216/464-4000

October 28, 1980

CERTIFIED MAIL

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

RE: MUR 1314 (80)

Dear Mr. Secretary:

In accordance with the provisions of 11 C.F.R. 111.23 and the letter of Chairman Max L. Friedersdorf dated October 20, 1980, North American Systems, Inc. hereby advises the Commission that it will be represented in the above captioned matter before the Commission by the following attorney:

James V. Stanton, Esquire
Ragan and Mason
900 Seventeenth Street, N. W.
Washington, D. C. 20006

Telephone: 296-4750

North American Systems, Inc. hereby authorizes Mr. Stanton to receive any and all notifications from the Commission on its behalf.

Sincerely,

North American Systems, Inc.



Vincent G. Marotta
Chairman of the Board

cc: Ms. Maura White

8 2 0 4 0 3 2 2 3 3 6

MR. COFFEE

NORTH AMERICAN SYSTEMS, inc. • p.o. box 46006 • 2400 miles road • bedford heights, ohio 44146 • phone 216/464-4000

October 28, 1980

CERTIFIED MAIL

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

RE: MUR 1314 (80)

Dear Mr. Secretary:

In accordance with the provisions of 11 C.F.R. 111.23 and the letter of Chairman Max L. Friedersdorf dated October 20, 1980, I, Vincent G. Marotta, hereby advise the Commission that I will be represented in the above captioned matter before the Commission by the following attorney:

James V. Stanton, Esquire
Ragan and Mason
900 Seventeenth Street, N. W.
Washington, D. C. 20006

Telephone: 296-4750

I hereby authorize Mr. Stanton to receive any and all notifications from the Commission on my behalf.

Sincerely,



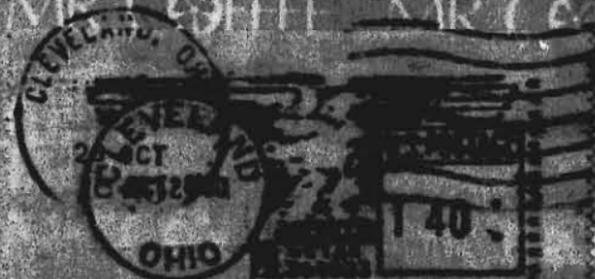
Vincent G. Marotta
Chairman of the Board

cc: Maura White

82040322337

NORTH AMERICAN SYSTEMS

2670 Hill Road, P.O. Box 46805, Bedford Heights, Ohio 44146



Office of the
Commission Secretary

80 OCT 30 P 5: 14

CERTIFIED

No. 388027

MAIL

Attention: Ms. Maura White
C/O Commission Secretary
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

90 OCT 30 AM: 56

Return Receipt Requested

CERTIFIED MAIL

RONALD J. BRUNNER
ROBERT T. DEVOY, JR.
DARY R. EDWARDS
FRANCIS W. FRASER
GEORGE B. HARTZOG, JR.
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. McDERMOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM F. IRASAN
EDWARD M. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

RECEIVED
SECRETARY
RAGAN & MASON
THE FARRAGUT BUILDING
800 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 596-4750
CABLE ADDRESS: RORALEGAL
FAX: 710-522-9370
TELECOPIER: (202) 596-4110

GEORGE H. BROWNELL
OF COUNSEL
ATTORNEY AT LAW
1440 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10019
212 759-3000

October 28, 1980

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

Dear Commission Members:

Re: MRJ 1314 (80)

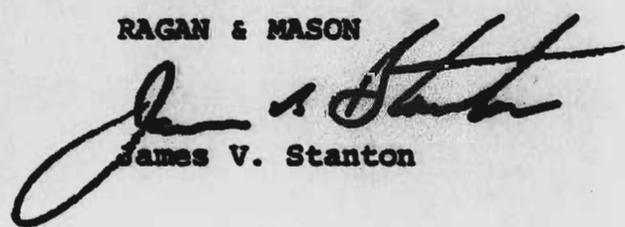
Please be advised that this firm has been retained by the two individual and one corporate respondent in the above matter, and these respondents have sent this date the letter of representation as provided in 11 C.F.R. 111.23. Due to the fact that it is necessary to conduct an investigation of the matters alleged in the General Counsel's Factual And Legal Analysis in order to assist the respondents in the preparation of the responses to the questions submitted by the Commission, we respectfully request an additional 30 days to submit the requested information to the Commission.

The time extension, if granted, will be utilized to conduct the necessary review of the facts of this matter and conduct on-site investigations in Cleveland, Ohio where all three respondents are located.

Thank you for your consideration of this request.

Respectfully,

RAGAN & MASON


James V. Stanton

8204032339

82040322340

LAW OFFICES

RAGAN & MASON

THE FARRAGUT BUILDING

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

HAND DELIVERED

80 OCT 29 AIO: 12

HAND DELIVERY

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

DONALD J. BRUNNER
ROBERT T. DEVOY, JR.
GARY R. EDWARDS
FRANCIS W. FRASER
GEORGE B. HARTSOG, JR.
GENE C. LANGE
GERALD A. MALIA
JOHN MASON
EDWARD A. McDERMOTT, JR.
PAUL J. McELLIOTT
ANDREW A. NORMANDEAU
WILLIAM F. RAGAN
EDWARD M. SHEA
JAMES V. STANTON
JOSEPH R. TENNANT
JOHN E. VARGO

LAW OFFICES
RAGAN & MASON
THE FARRAGUT BUILDING
800 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 296-4780
CABLE ADDRESS: DONRALEGAL
FAX: 710-822-9370
TELECOPIER: (202) 296-4110

HAND DELIVERED

GC# 3144

GEORGE R. BROWNELL
OF COUNSEL
80 OCT 28 1980
MEMBER OF THE AMERICAN
NEW YORK, N.Y. 10018
BILL 788-2000

October 28, 1980

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

Dear Commission Members:

Re: MUR 1314 (80)

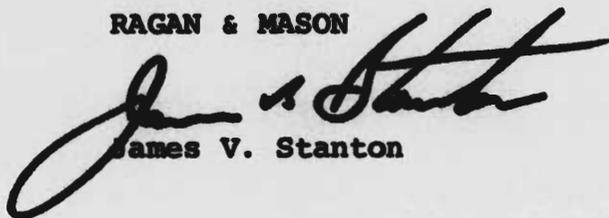
Please be advised that this firm has been retained by the two individual and one corporate respondent in the above matter, and these respondents have sent this date the letter of representation as provided in 11 C.F.R. 111.23. Due to the fact that it is necessary to conduct an investigation of the matters alleged in the General Counsel's Factual And Legal Analysis in order to assist the respondents in the preparation of the responses to the questions submitted by the Commission, we respectfully request an additional 30 days to submit the requested information to the Commission.

The time extension, if granted, will be utilized to conduct the necessary review of the facts of this matter and conduct on-site investigations in Cleveland, Ohio where all three respondents are located.

Thank you for your consideration of this request.

Respectfully,

RAGAN & MASON



James V. Stanton

82040322341

30 OCT 29 A10:15

GENERAL COUNSEL

LAW OFFICES

2 RAGAN & MASON

THE FARRAGUT BUILDING

4 900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

2
2
2
3
0
4
4
2

HAND DELIVERED

80 OCT 23 A10: 12

HAND DELIVERY

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

Attention: Maura White

ROUTING SLIP FOR RTB LETTER

TO: Chairman/Vice Chairman

FROM: Elissa T. Garr
OGC Enforcement Docket

DATE: 10-17-80

MUR # 1314 (formerly PM56)

Date RTB Found 10-17-80

Date Cert. Rec'd in OGC 10-17-80

Staff Assigned White

STAFF CHECK:

MW Accuracy

MW Enclosures

MW Certification

Date Rec'd in OGC From Chairman/Vice Chairman

10-20-80

82040322343



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 20, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Vincent Marotta, President
North American Systems, Inc.
24700 Miles Road
Bedford Heights, Ohio 44146

Re: MUR 1314(80)

Dear Mr. Marotta:

This letter is to notify you that on October 17, 1980, the Federal Election Commission determined that there is reason to believe that you violated § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the 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. Additionally, please submit answers to the enclosed questions. Your response should be submitted within ten days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

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.

In the absence of any information which demonstrates that no further action should be taken against you, 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.

82040322344

Letter to: Vincent Marotta
Page 2

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 have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Max L. Friedersdorf
Max L. Friedersdorf
Chairman



Enclosures

32040322345

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE October 20, 1980

MUR NO. 1314
STAFF MEMBER(S) & TEL. NO.
M. White/ S. Thomas

RESPONDENT Vincent Marotta

202-523-4060

BACKGROUND

On August 18, 1980, the Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The article alleges a possible violation of 2 U.S.C. § 441b(a) by Vincent Marotta.

FACTUAL AND LEGAL ANALYSIS

The Plain Dealer news article states that Vincent G. Marotta, "Mr. Coffee millionaire" and dinner chairman for a Carter fundraiser held on May 29, 1980, "turned to employees, friends and people who [did] business with his North American Systems Inc" in an attempt to sell \$150 tickets to the fundraiser. The article contends that a "two-week Plain Dealer investigation into Marotta's fundraising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws."

The investigation conducted by the The Plain Dealer apparently included "[i]nterviews of dozens of Mr. Coffee employees and business associates" which revealed that "[p]lant foreman were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations," that "[s]ome employees, after saying they could not afford the \$150 were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems,"

82040322346

and that other employees "who asked not to be named contended they felt pressured to buy tickets they could not afford." On the other hand, the article did state that "dozens" of Mr. Coffee employees "said they were under no pressure to buy tickets to the dinner organized by their boss," and quoted one unidentified foreman, who apparently was personally solicited by Thomas Marotta, as saying "He [Thomas Marotta] made it very clear that it had nothing to do with job security, advancement, being hired, fired, or laid off."

The Plain Dealer states that their review of FEC records indicates that employees at North American Systems bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of a report filed by the Carter/Mondale Presidential Committee for the period May 1, 1980, through May 31, 1980, has revealed that at least 36 individuals employed by North American Systems did, in fact, make contributions totalling \$9,850 to the Carter committee on May 27 and 28, 1980. 1/

Under 2 U.S.C. § 441b(a), no corporation may make any contribution or any expenditure in connection with any election to federal office and no officer or director of any corporation may consent to any contribution or expenditure by the corporation in connection with any federal election. Pursuant to section 114.9 of Commission Regulations, stockholders and employees of a corporation may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election and are only required to reimburse the corporation to the extent that the overhead or operating costs of the corporation are increased.

1/ The occupations listed for the 36 contributors employed by North American Systems were reported as follows: 13 managers, seven vice-presidents, two salespersons, one executive assistant, one secretary, one chairman, one wholesaler, one engineer, one supervisor, one accountant, one controller, and one director. No occupations were listed for four persons and one individual's occupation was reported as "Gen."

82040322347

The issue in this matter becomes, therefore, one of whether Vincent Marotta was acting as an individual volunteer or, alternatively, was acting within the scope of his employment or was otherwise authorized by North American Systems, Inc. If the alleged solicitations conducted by Vincent Marotta were not conducted as individual volunteer activity, then his actions could be construed as an impermissible corporate contribution or expenditure on behalf of the Carter campaign by North American Systems, Inc. for the value of the time involved and the services provided. As a corporate officer, Vincent Marotta could commit the corporation to liability if he was carrying out a function incidental to his official position or a course of conduct that the corporation had approved of in the past.

If the activities of Vincent Marotta were within the scope of his employment, then the solicitation would be considered a violation of 2 U.S.C. § 441b(a) by Vincent Marotta. The basis for an apparent violation of § 441b(a) is two-fold: first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel.

Therefore, the General Counsel recommends that the Commission find reason to believe that Vincent Marotta violated 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe that Vincent Marotta violated 2 U.S.C. § 441b(a).

82040322.348

Employees report Marotta pressure to give to Carter



Marotta

By Joseph D. Rice
and James Neff

Late this May, Mr. Coffee millionaire Vincent G. Marotta, a political newcomer supporting President Carter, beseeched a Cleveland business friend:

"I'm in trouble," the friend quoted Marotta. "I need your help."

Marotta, who five months earlier started drumming up donations for Carter, was having trouble selling \$150 tickets to a May 29 fund-raising bash at the Cleveland Plaza. Because of his Rose Garden strategy, the beleaguered president was making his sole dinner ap-

pearance of the primaries in Cleveland.

As dinner chairman, Marotta, 56, was worried because ticket sales were lagging and he wanted to make a good impression on the president's men.

Marotta turned to employees, friends and people who do business with his North American Systems Inc.

The dinner netted more than \$200,000 for the Carter campaign. A review of campaign finance records shows more than \$34,000 came through Marotta employees, friends and business associates.

A two-week Plain Dealer inves-
Continued on Page 26-A

Marotta pushed them to give to Carter, workers say

★ From First Page

litigation into Marotta's fund-raising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws.

Interviews with dozens of Mr. Coffee employees and business associates disclosed:

• **Plant foremen** were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations.

• A Federal Elections Commission (FEC) spokesman said its regulations do not allow corporations to make partisan communications (for example, ask for political donations) from certain types of employees, including foremen.

• Some employees, after saying they could not afford the \$150 tickets, were loaned money to purchase tickets by Thomas Marotta, chief president of North American Systems.

• A FEC spokesman said federal law prohibits a person from making a contribution in the name of another and a loan is defined by law as a contribution.

• Suppliers doing business with North American Systems were actively solicited.

• Vincent and Thomas Marotta and their lawyer, Robert J. Rotatori

refused to be interviewed by The Plain Dealer.

Dozens of Mr. Coffee employees, from janitors to executives, said they were under no pressure to buy tickets or donate to the dinner organized by their boss.

"When a good customer needs help, you help him," said the friend Marotta told he was in trouble.

"I shook Carter's hand and got my money's worth," said Joseph Snakovsky, a foreman who bought a ticket.

Frank Kubicki, a North American comptroller, said he was glad he received an invitation in the mail because it showed he was accepted by company hierarchy.

"I would have felt bad if I didn't get invited," said Kubicki, who bought two \$150 tickets and went with his wife.

Herbert J. Fletcher, a quality control supervisor, said he bought tickets more out of respect for Marotta than in support of Carter.

"I did it for Vince," he said. "He's treated me royally since I've been here."

Some employees, who asked not to be named, contended they felt pressured to buy tickets they could not afford.

"I felt there was definitely pressure on me to go to that thing," one said. "I did not want to lose

my job. Have you tried to get a job lately in this recession?"

A foreman explained the situation at the Bedford Heights plant:

"There was talk of laying some foremen off. There's always rumors. So you want to stay in their good graces. I bought a ticket because I thought it was the best thing to do at the time — politically."

Thomas Marotta, according to sources, called the plant's 20 or so foremen into his office individually and made a pitch to buy tickets.

"He made it very clear it had nothing to do with job security, advancement, being hired, fired or laid off," a foreman said.

Workers on coffee breaks grumbled about the tickets, and at least one person circulated the rumor people would be fired if they did not give, sources said.

Many foremen, each fearing he was the only holdout, decided to buy tickets, employees said.

FEC records, which list campaign contributions of \$50 or more, show that employees at North American Systems bought tickets heavily on May 27 and 28, just before the May 29 dinner.

"The shop was extremely tense those two days," said an employee. "The foremen were all tense. There was a lot of pressure. The usual

mirth and laughter wasn't there."

FEC records show that some foremen, who make \$300 to \$400 a week, each have given as much as \$400 to different Marotta-sponsored fund-raisers this year.

Some foremen were even loaned money to purchase tickets to the high-priced dinner, sources said.

Coercion of contributions has been outlawed for 75 years. The Supreme Court and the federal government, in cases involving federal employees and union members, have said that contributions must be "knowing, free-choice donations."

Federal election laws prohibit corporations from asking for political contributions from union members. Most North American Systems employees are line workers who are members of Teamsters Union Local 73.

There is no evidence Marotta or his managers solicited donations from them.

Although 1,200 persons attended the Carter fund-raiser, it was reported about 1,000 bought tickets. Some contributions came in a few days after the event.

Peter L. Gentile, who oversees the 20 or so foremen, bought two \$150 tickets in May. But June 2, he donated \$700 more to the Carter campaign, and his wife, Frances L., gave \$1,000.

"I felt they needed more support," Gentile said. "We gave from our heart," his wife said.

Other Mr. Coffee employees who gave were registered Republicans or Independents.

"I don't even like Carter," said one employee. But he donated.

North American Systems, with an estimated \$150 million annual sales, does business with manufacturers, suppliers, shippers, salesmen and representatives in Ohio and nationwide. Persons at these firms bought \$21,950 worth of tickets to the Marotta-chaired fund-raiser at the Cleveland Plaza.

Seven executives of Par Industries Inc. of Medina and two of their wives gave \$1,000 each, the maximum annual contribution permissible to a candidate. Thirteen persons connected with J. E. Stamping Inc. in Brooklyn gave \$5,100.

Employees of both firms said they received invitations from Vincent Marotta to attend the dinner but insisted no pressure was exerted on them to donate.

"We thought it was a good idea," said Michael L. Bobincheck, who said Marotta called him about the dinner. "It kind of snowballed and everybody got involved."

An executive of a firm doing business with a Marotta supplier said he was contacted by the firm

and asked for a donation. The executive said he bought tickets.

"To me, it stunk to high hell," he said.

Of the \$830,500 Carter had raised in Ohio by July 24, \$53,450 he came from Marotta, his family, employees and associates, election records show.

Marotta and eight family members each gave the maximum \$1,000 to Carter's campaign. Ten North American Systems employees or their relatives each donated \$1,000.

Mr. Coffee employees contributed \$8,675 in February to the campaign of Sen. John H. Glenn, D-Ohio.

Charles A. Floyd, a "retiree" Carolina manufacturer's representative for Mr. Coffee, gave \$500 to the Glenn fund. Asked why he was interested in Ohio politics, Floyd said, "I don't want to talk about it."

National finance chairman for Carter, S. Stephen Selig III declines to comment on reports of Marotta's fund-raising activities.

Ohio Democratic Chairman C. Paul Tippa said pressure is being put on him to raise money for politicians.

"Every time you hear about it, you go down to Public Hearing and you hear about it."

With houses and Mr. Coffee, IV

By James Neff
and Joseph D. Rice

"He represents the American ideal and is a perfect example of the American dream come true." — Invitation to the first Outstanding American of the Year award in 1978 honoring Vincent G. Marotta.

The story of Vince Marotta's rapid rise falls easily into clearly defined chapters.

Chapter One: Marotta, the young part-owner of a small lumberyard, cashes in on the post-World War II housing boom by mass-producing crackerboxes in the cornfields of Brunswick, North Ridgeville and other outlying areas.

It took carpenters about three days to build the simple frame houses, the early ones set on nothing more than a concrete slab. With unpainted walls and unfinished floors, the starter homes sold like crazy for \$5,995.

On one weekend, Marotta and his partner, Samuel L. Glazer, held open house and sold nearly 150 homes. On Monday, they would buy the farm next door, tell their engineers to design another subdivision and wait for the onslaught of young home buyers.

Chapter Two: About 5,000 houses, seven shopping centers (Richmond Mall, for one) and a dozen years later, multi-millionaire Marotta and his partner were slammed by the late-1960s financing crunch. While recuperating from an operation to remove a brain tumor, Marotta wondered what to do next.

Marotta has repeated many times the story of how he became Mr. Coffee:

He just could not get a good cup of coffee at home. So in that great American tradition, the one about the world beating a path to the door of the man who builds a better mousetrap, the self-made millionaire decided to invent the perfect coffee brewer. By 1972, local inventor Ed Abel hit upon the design that became patent number 3,693,535, and Marotta, without borrowing a penny, started manufacturing the home coffee brewers.

By 1979, Marotta and his North American Systems Inc. expanded to plants in Bedford Heights, employing as many as 2,000, and in Los Angeles. The Mr. Coffee brewer had captured more than half of the coffee brewer market, and self-made millionaire Marotta was sitting pretty with half interest in a company with \$150 million a year in sales and earning more than 20% on equity.

Chapter Three: After conquering the worlds of real estate and household appliances, Marotta, apparently seeking a new arena, turned his energies to politics.

As a local figure, Marotta was perhaps little-known to the average person here until he was honored at the first annual Outstanding American Charity Award Dinner in 1978.

VGM license plates, earlier passed up an invitation to join President Carter and a group of Italian Americans in a ceremony declaring Oct. 10 as Columbus Day.

He instead went to Detroit to accept the Italian-American Man of the Year Award.

After Marotta returned, his executive vice president, Vincent J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was not given more prominence.

The reporter defended Marotta's treatment and said nothing more was planned.

"But what am I going to tell Vince?" Menier asked.

The Outstanding American Charity Award dinner, organized by Menier, was attended by a gaggle of celebrities, including former New York Yankee and Mr. Coffee pitcher Joe DiMaggio, ABC newscaster Howard K. Smith, former president Gerald R. Ford and comedian Bob Hope. Hope and Ford, it was reported, were paid to attend the event, which raised \$100,000 for Sister Henrietta and the Our Lady of Fatima Mission Center in Hough.

Thousands of invitations were mailed for the \$100-a-plate prime rib dinner.

In part, they read: "He (Marotta) is indeed a most unique individual who has excelled in fields of sports, education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Last summer, Marotta had his political coming out when he hosted a fund-raising breakfast for Sen. John H. Glenn, D-O.

In late 1979, Marotta, accompanied by former Ohio governor Michael V. DiSalle, met with Stephen Smith, Sen. Edward M. Kennedy's brother-in-law and campaign chairman.

Anxious to offer his services as a fund-raiser or a political operative to the presidential candidate, Marotta presented Smith with a two-page resume — bound in thick, brown textured Naugahyde — that listed his accomplishments: 14 "civic, charitable and social affiliations," numerous business experiences and eight "athletic achievements," including his 1942 signing to play professional baseball for the St.

82040322351

ideal

Coffee, Marotta rises to delve in politics

tes, earlier passed up an invitation to accept the Man of the Year Award from President Carter and a group of friends in a ceremony declaring Oct. 10 as Coffee Day.

Marotta went to Detroit to accept the Man of the Year Award.

After he returned, his executive vice president J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement deserved more prominence.

Menier defended Marotta's treatment and said more was planned.

"Is he going to tell Vince?" Menier asked.

Marotta's American Charity Award was presented by Menier, was attended by a group of friends, including former New York Yankees pitcher Joe DiMaggio, former Cleveland broadcaster Howard K. Smith, former President R. Ford and comedian Chevy Chase. At the event, which raised \$100,000 for the Henrietta and the Our Lady Center in Hough.

Invitations were mailed for a Thanksgiving dinner.

"He (Marotta) is indeed an individual who has excelled in sports, industry, and business. He is an American ideal and is a perfect example of how the American dream can come true."

Marotta had his political debut when he hosted a fund-raising dinner for John H. Glenn, D-O.

Marotta, accompanied by former Mayor Michael V. DiSalle, met with Sen. Edward M. Kennedy's campaign chairman.

For his services as a fund-raiser, Marotta presented Smith with a watch. The watch had a band bound in thick, brown leather that listed his accomplishments, including his 1942 military service and professional baseball for the St.

Louis Cardinals, his tryout with the Cleveland Browns, and a college record of 9.7 seconds for the 100-yard dash.

Smith, apparently unimpressed, never called Marotta. Marotta denied this exchange ever took place.

The determined Marotta next approached Carter lieutenants, and by January the manufacturer was hosting a Carter fund-raiser at his sumptuous Shaker Heights home on 33rd Park Blvd. Attended by Robert Strauss, Carter's campaign chairman, City Council President George L. Forbes, D-20, and business heavyweights here, the event raised about \$130,000.

Marotta's success put him in direct competition with Milton A. Wolf, Carter's main Cleveland fund-raiser since the president's successful 1976 campaign.

Both Marotta, the political newcomer, and Wolf, the more experienced hand, claim to have the most direct Cleveland pipeline to the White House.

In April, Wolf held a Carter fund-raiser at his Shaker Heights home which Rosalynn Carter attended. Wolf did not invite Marotta, who lives a short walk away, and Mr. Coffee reportedly was steaming.

"There's bad blood between the two," said a prominent Cleveland Democrat.

It is said that Carter rewarded Wolf for his early support and for his then ability to raise funds with an ambassadorship to Austria. Political insiders surmise that Marotta would appreciate an ambassadorship, maybe to Italy.

A top Carter official last week said Marotta and two or three other Ohio supporters probably are in line for high-level government posts if the president is re-elected.

But reports of Marotta's heavy-handed fund-raising tactics could damage his chances.

As a prominent Cleveland businessman and Democratic heavyweight explained it: "He (Marotta) is new to the game and doesn't know the rules."

QUESTIONS

TO: Vincent Marotta

- 1a) What role, if any, did you play in a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
- b) State whether or not you solicited contributions to the fundraiser.
- 2a) If the answer to question 1(b) is yes, state whether or not the solicitation included the employees of North American Systems, Inc.
- b) If the solicitation included the employees of North American Systems, Inc., describe the method(s) of solicitation employed, the number of employees solicited, the names of employees solicited, and the amount of time spent on the solicitation(s).
- c) State whether or not you solicited contributions from any individual, including employees of North American Systems Inc., during the normal business hours, and on the premises, of North American Systems, Inc.
- d) If the answer to question 2(c) is yes, state the amount of time that was spent conducting the solicitation(s).
- 3a) If the employees of North American Systems, Inc. were solicited for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee, by either North American Systems, Inc. or its officer or directors, did you authorize the solicitation as an officer or director?
- b) Were you authorized by North American Systems, Inc. to solicit the employees of North American Systems, Inc. for contributions to the May 29, 1980, fundraiser? If the answer is yes, describe the manner in which you were authorized.
- 4) State whether or not, at any time, you were authorized by North American Systems, Inc. to solicit contributions from the employees of North American Systems, Inc. for any candidate. If the answer is yes, state the number of times you conducted a solicitation(s) and the manner in which you were authorized to conduct the solicitation(s).

82040322353

- 5a) State whether or not, at any time, you solicited contributions from the employees of North American Systems, Inc. without the authorization of North American Systems, Inc. If the answer is yes, state the number of times you conducted a solicitation.
- b) State whether or not each solicitation was conducted with the knowledge of the officers, directors, or agents of North American Systems, Inc.

82040322354



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 20, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Vincent Marotta, President
North American Systems, Inc.
24700 Miles Road
Bedford Heights, Ohio 44146

Re: MUR 1314(80)

Dear Mr. Marotta:

This letter is to notify you that on October 17, 1980, the Federal Election Commission determined that there is reason to believe that North American Systems, Inc. violated § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

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.

In the absence of any information which demonstrates that no further action should be taken against North American Systems, 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.

82040322355

Letter to: Vincent Marotta
Page 2

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.

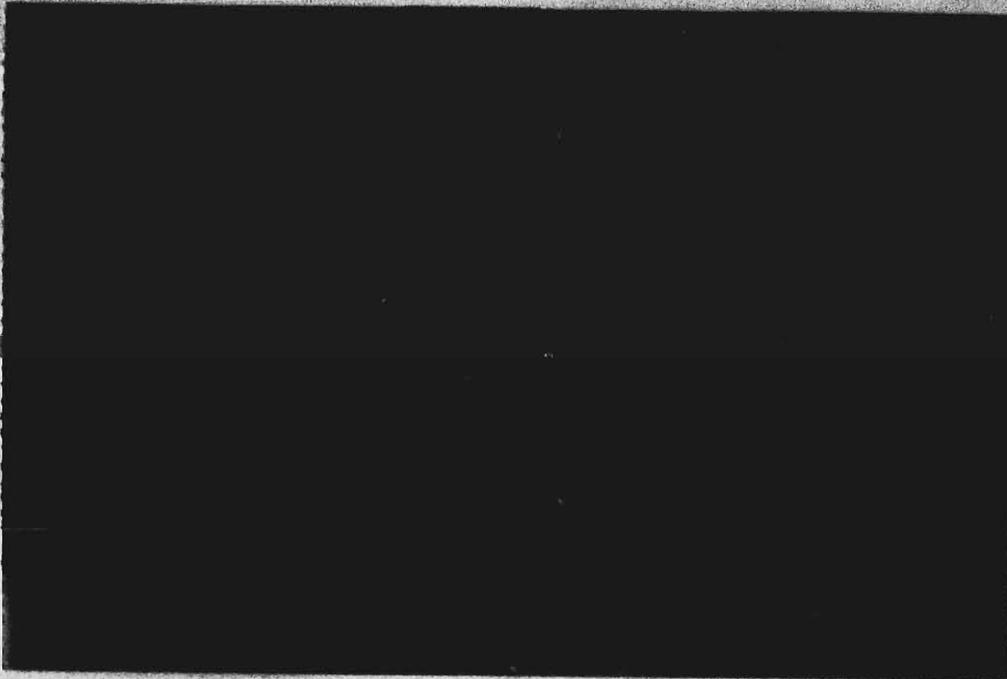
If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Max L. Friedersdorf
Max L. Friedersdorf
Chairman

Enclosures

82040322356



FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE October 20, 1980

MUR NO. 1314

STAFF MEMBER(S) & TEL. NO.
M. White/ S. Thomas

RESPONDENT North American Systems, Inc.

202-523-4060

BACKGROUND

On August 18, 1980, the Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The article alleges a possible violation of 2 U.S.C. § 441b(a) by North American Systems, Inc.

FACTUAL AND LEGAL ANALYSIS

The Plain Dealer news article states that Vincent G. Marotta, "Mr. Coffee millionaire" and dinner chairman for a Carter fundraiser held on May 29, 1980, "turned to employees, friends and people who [did] business with his North American Systems Inc" in an attempt to sell \$150 tickets to the fundraiser. The article contends that a "two-week Plain Dealer investigation into Marotta's fundraising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws."

The investigation conducted by the The Plain Dealer apparently included "[i]nterviews of dozens of Mr. Coffee employees and business associates" which revealed that "[p]lant foreman were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations," that "[s]ome employees, after saying they could not afford the \$150 were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems,"

82040322357

and that other employees "who asked not to be named contended they felt pressured to buy tickets they could not afford." On the other hand, the article did state that "dozens" of Mr. Coffee employees "said they were under no pressure to buy tickets to the dinner organized by their boss," and quoted one unidentified foreman, who apparently was personally solicited by Thomas Marotta, as saying "He [Thomas Marotta] made it very clear that it had nothing to do with job security, advancement, being hired, fired, or laid off."

The Plain Dealer states that their review of FEC records indicates that employees at North American Systems bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of a report filed by the Carter/Mondale Presidential Committee for the period May 1, 1980, through May 31, 1980, has revealed that at least 36 individuals employed by North American Systems did, in fact, make contributions totalling \$9,850 to the Carter committee on May 27 and 28, 1980. 1/

Under 2 U.S.C. § 441b(a), no corporation may make any contribution or any expenditure in connection with any election to federal office and no officer or director of any corporation may consent to any contribution or expenditure by the corporation in connection with any federal election. Pursuant to section 114.9 of Commission Regulations, stockholders and employees of a corporation may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election and are only required to reimburse the corporation to the extent that the overhead or operating costs of the corporation are increased.

1/ The occupations listed for the 36 contributors employed by North American Systems were reported as follows: 13 managers, seven vice-presidents, two salespersons, one executive assistant, one secretary, one chairman, one wholesaler, one engineer, one supervisor, one accountant, one controller, and one director. No occupations were listed for four persons and one individual's occupation was reported as "Gen."

92040322358

The issue in this matter becomes, therefore, one of whether Thomas and Vincent Marotta were acting as individual volunteers or, alternatively, were acting within the scope of their employment or were otherwise authorized by North American Systems, Inc. If the alleged solicitations conducted by Thomas and Vincent Marotta were not conducted as individual volunteer activity, then their actions could be construed as an impermissible corporate contribution or expenditure on behalf of the Carter campaign by North American Systems, Inc. for the value of the time involved and the services provided. As corporate officers, Thomas and Vincent Marotta could commit the corporation to liability if they were carrying out a function incidental to their official positions or a course of conduct that the corporation had approved of in the past.

If the activities of Thomas and Vincent Marotta were within the scope of their employment, then the solicitation would be considered a violation of 2 U.S.C. § 441b(a) by North American Systems, Inc. The basis for an apparent violation of § 441b(a) is two-fold: first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel.

Therefore, the General Counsel recommends that the Commission find reason to believe that North American Systems, Inc. violated 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe that North American Systems, Inc. violated 2 U.S.C. § 441b(a).

82040322359

CLEVELAND PLAIN DEALER 8/10/80

Employees report Marotta pressure to give to Carter



Marotta

By Joseph D. Rice
and James Neff

Late this May, Mr. Coffee millionaire Vincent G. Marotta, a political newcomer supporting President Carter, beseeched a Cleveland business friend:

"I'm in trouble," the friend quoted Marotta: "I need your help."

Marotta, who five months earlier started drumming up donations for Carter, was having trouble selling \$150 tickets to a May 29 fund-raising bash at the Cleveland Plaza. Because of his Rose Garden strategy, the beleaguered president was making his sole dinner ap-

pearance of the primaries in Cleveland.

As dinner chairman, Marotta, 56, was worried because ticket sales were lagging and he wanted to make a good impression on the president's men.

Marotta turned to employees, friends and people who do business with his North American Systems Inc.

The dinner netted more than \$200,000 for the Carter campaign. A review of campaign finance records shows more than \$34,000 came through Marotta employees, friends and business associates.

A two-week Plain Dealer investigation
Continued on Page 26-A

Marotta pushed them to give to Carter, workers say

refused to be interviewed by The Plain Dealer.

Dozens of Mr. Coffin employees, from janitors to executives, said they were under so much pressure to buy tickets or donate to the dinner organized by their boss.

"When a good customer needs help, you help him," said the foreman Marotta told he was in trouble.

"I shook Carter's hand and got my money's worth," said Joseph Szakovsky, a foreman who bought a ticket.

Frank Kubicki, a North American comptroller, said he was glad he received an invitation in the mail because it showed he was accepted by company hierarchy.

"I would have felt bad if I didn't get invited," said Kubicki, who bought two \$150 tickets and went with his wife.

Herbert J. Fletcher, a quality control supervisor, said he bought tickets more out of respect for Marotta than in support of Carter.

"I did it for Vince," he said. "He's treated me royally since I've been here."

Some employees, who asked not to be named, contended they felt pressured to buy tickets they could not afford.

"I felt there was definitely pressure on me to go to that thing," one said. "I did not want to lose

my job. Have you tried to get a job lately in this recession?"

A foreman explained the situation at the Bedford Heights plant:

"There was talk of laying some foremen off. There's always rumors. So you want to stay in their good graces. I bought a ticket because I thought it was the best thing to do at the time — politically."

Thomas Marotta, according to sources, called the plant's 20 or so foremen into his office individually and made a pitch to buy tickets.

"He made it very clear it had nothing to do with job security, advancement, being hired, fired or laid off," a foreman said.

Workers on coffee breaks grumbled about the tickets, and at least one person circulated the rumor people would be fired if they did not give, sources said.

Many foremen, each fearing he was the only holdout, decided to buy tickets, employees said.

FEC records, which list campaign contributions of \$40 or more, show that employees at North American Systems bought tickets heavily on May 27 and 28, just before the May 29 dinner.

"The shop was extremely tense those two days," said an employee. "The foremen were all tense. There was a lot of pressure. The usual

mirch and laughter wasn't there."

FEC records show that some foremen, who make \$300 to \$400 a week, each have given as much as \$100 to different Marotta-sponsored fund-raisers this year.

Some foremen were even loaned money to purchase tickets to the high-priced dinner, sources said.

Coercion of contributions has been outlawed for 75 years. The Supreme Court and the federal government, in cases involving federal employes and union members, have said that contributions must be "knowing, free-choice donations."

Federal election laws prohibit corporations from asking for political contributions from union members. Most North American Systems employes are line workers who are members of Teamsters Union Local 73.

There is no evidence Marotta or his managers solicited donations from them.

Although 1,200 persons attended the Carter fund-raiser, it was reported about 1,000 bought tickets. Some contributions came in a few days after the event.

Peter L. Gentile, who oversees the 20 or so foremen, bought two \$150 tickets in May. But June 1, he donated \$700 more to the Carter campaign, and his wife, Frances L., gave \$1,000.

"I felt they needed more support," Gentile said. "We gave from our heart," his wife said.

Other Mr. Coffin employes who gave were registered Republicans or independents.

"I don't even like Carter," said one employe. But he donated.

North American Systems, with an estimated \$150 million annual sales, does business with manufacturers, suppliers, shippers, salesmen and representatives in Ohio and nationwide. Persons at these firms bought \$21,950 worth of tickets to the Marotta-chaired fund-raiser at the Cleveland Plaza.

Seven executives of Par Industries Inc. of Medina and two of their wives gave \$1,000 each, the maximum annual contribution permissible to a candidate. Thirteen persons connected with J. E. Stamping Inc. in Brooklyn gave \$9,100.

Employes of both firms said they received invitations from Vincent Marotta to attend the dinner but insisted no pressure was exerted on them to donate.

"We thought it was a good idea," said Michael L. Bobinchuck, who said Marotta called him about the dinner. "It kind of snowballed and everybody got involved."

An executive of a firm doing business with a Marotta supplier said he was contacted by the em-

plier and asked for a donation. The executive said he bought tickets.

"To me, it stunk to high heaven," he said.

Of the \$638,500 Carter had raised in Ohio by July 24, \$53,450 had come from Marotta, his family employes and associates, election records show.

Marotta and eight family members each gave the maximum \$1,000 to Carter's campaign. Ten North American Systems employes or their relatives each donated \$1,000.

Mr. Coffin employes contributed \$8,875 in February to the campaign of Sen. John H. Glenn, D-O.

Charles A. Floyd, a North Carolina manufacturer's representative for Mr. Coffin, gave \$500 to the Glenn fund. Asked why he was interested in Ohio politics, Floyd said, "I don't want to talk about it."

National Finance chairman for Carter, S. Stephen Seig III declined to comment on reports of Marotta's fund-raising activities.

Ohio Democratic Chairman C. Paul Tipps said pressure is necessary in raising money for politicians.

"Every ticket you sell is pressure," Tipps said. "You just don't go down to Public Square and stop people's votes."

With houses and Mr. Coffee, Marotta

By James Neff
and Joseph D. Rice

"He represents the American ideal and is a perfect example of the American dream come true." — Invitation to the first Outstanding American of the Year award in 1978 honoring Vincent G. Marotta.

The story of Vince Marotta's rapid rise falls easily into clearly defined chapters.

Chapter One: Marotta, the young partner-owner of a small lumberyard, cashes in on the post-World War II housing boom by mass-producing crackerboxes in the cornfields of Brunswick, North Ridgeville and other outlying areas.

It took carpenters about three days to build the simple frame houses, the early ones set on nothing more than a concrete slab. With unpainted walls and unfinished floors, the starter homes sold like crazy for \$5,995.

On one weekend, Marotta and his partner, Samuel L. Glazer, held open house and sold nearly 150 homes. On Monday, they would buy the farm next door, tell their engineers to design another subdivision and wait for the onslaught of young home buyers.

Chapter Two: About 5,000 houses, seven shopping centers (Richmond Mall, for one) and a dozen years later, multi-millionaire Marotta and his partner were slammed by the late-1960s financing crunch. While recuperating from an operation to remove a brain tumor, Marotta wondered what to do next.

Marotta has repeated many times the story of how he became Mr. Coffee.

He just could not get a good cup of coffee at home. So in that great American tradition, the one about the world beating a path to the door of the man who builds a better mousetrap, the self-made millionaire decided to invent the perfect coffee brewer. By 1972, local inventor Ed Abel hit upon the design that became patent number 3,693,535, and Marotta, without borrowing a penny, started manufacturing the home coffee brewers.

By 1979, Marotta and his North American Systems Inc. expanded to plants in Bedford Heights, employing as many as 2,000, and in Los Angeles. The Mr. Coffee brewer had captured more than half of the coffee brewer market, and self-made millionaire Marotta was sitting pretty with half interest in a company with \$150 million a year in sales and earning more than 20% on equity.

Chapter Three: After conquering the worlds of real estate and household appliances, Marotta, apparently seeking a new arena, turned his energies to politics.

As a local figure, Marotta was perhaps little-known to the average person here until he was honored at the first annual Outstanding American Charity Award Dinner in 1978.

VGM license plates, earlier passed up an invitation to join President Carter and a group of Italian Americans in a ceremony declaring Oct. 10 as Columbus Day.

He instead went to Detroit to accept the Italian-American Man of the Year Award.

After Marotta returned, his executive vice president, Vincent J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was not given more prominence.

The reporter defended Marotta's treatment and said nothing more was planned.

"But what am I going to tell Vince?" Menier asked.

The Outstanding American Charity Award dinner, organized by Menier, was attended by a gaggle of celebrities, including former New York Yankee and Mr. Coffee pitcher Joe DiMaggio, ABC newscaster Howard K. Smith, former president Gerald R. Ford and comedian Bob Hope. Hope and Ford, it was reported, were paid to attend the event, which raised \$100,000 for Sister Henrietta and the Our Lady of Fatima Mission Center in Hough.

Thousands of invitations were mailed for the \$100-a-plate prime rib dinner.

In part, they read: "He (Marotta) is indeed a most unique individual who has excelled in fields of sports, education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Last summer, Marotta had his political coming out when he hosted a fund-raising breakfast for Sen. John H. Glenn, D-O.

In late 1979, Marotta, accompanied by former Ohio governor Michael V. DiSalle, met with Stephen Smith, Sen. Edward M. Kennedy's brother-in-law and campaign chairman.

Anxious to offer his services as a fundraiser or a political operative to the presidential candidate, Marotta presented Smith with a two-page resume — bound in thick, brown textured Naugahyde — that listed his accomplishments: 14 "civic, charitable and social affiliations," numerous business experiences and eight "athletic achievements," including his 1942 signing to play professional baseball for the St.

82040322362

ideal

Coffee, Marotta rises to delve in politics

ates, earlier passed up an invitation to accept the award. President Carter and a group of friends were in a ceremony declaring Oct. 10 as Marotta Day.

Marotta went to Detroit to accept the award. He was named Man of the Year Award.

Marotta returned, his executive vice president J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was given more prominence.

Menier defended Marotta's treatment and said the award was planned.

"I'm not going to tell Vince," Menier said.

The awarding American Charity Award by Menier, was attended by a group of friends, including former New York Times coffee pitchman Joe DiMaggio, broadcaster Howard K. Smith, former Mayor Frank R. Ford and comedian Chevy Chase. Ford, it was reported, was the guest of honor at the event, which raised \$100,000 for the Our Lady Center in Hough.

Invitations were mailed for a time rib dinner.

Menier said: "He (Marotta) is indeed a unique individual who has excelled in education, and business. He is an American ideal and is a perfect example of the American dream come true."

Marotta had his political debut when he hosted a fund-raising dinner for John H. Glenn, D-O.

Marotta, accompanied by former Mayor Michael V. DiSalle, met with Sen. Edward M. Kennedy's campaign chairman.

For his services as a fund-raiser, Marotta presented Smith with a letter that listed his accomplishments in charitable and social affairs, business experiences and eight awards, including his 1942 National Baseball for the St.

Louis Cardinals, his tryout with the Cleveland Browns, and a college record of 9.7 seconds for the 100-yard dash.

Smith, apparently unimpressed, never called Marotta. Marotta denied this exchange ever took place.

The determined Marotta next approached Carter lieutenants, and by January the manufacturer was hosting a Carter fund-raiser at his sumptuous Shaker Heights home on S. Park Blvd. Attended by Robert Strauss, Carter's campaign chairman, City Council President George L. Forbes, D-20, and business heavyweights here, the event raised about \$130,000.

Marotta's success put him in direct competition with Milton A. Wolf, Carter's main Cleveland fund-raiser since the president's successful 1976 campaign.

Both Marotta, the political newcomer, and Wolf, the more experienced hand, claim to have the most direct Cleveland pipeline to the White House.

In April, Wolf held a Carter fund-raiser at his Shaker Heights home which Rosalynn Carter attended. Wolf did not invite Marotta, who lives a short walk away, and Mr. Coffee reportedly was steaming.

"There's bad blood between the two," said a prominent Cleveland Democrat.

It is said that Carter rewarded Wolf for his early support and for his then ability to raise funds with an ambassadorship to Austria. Political insiders surmise that Marotta would appreciate an ambassadorship, maybe to Italy.

A top Carter official last week said Marotta and two or three other Ohio supporters probably are in line for high-level government posts if the president is re-elected.

But reports of Marotta's heavy-handed fund-raising tactics could damage his chances.

As a prominent Cleveland businessman and Democratic heavyweight explained it: "He (Marotta) is new to the game and doesn't know the rules."

QUESTIONS

TO: North American Systems

- 82040322364
- 1a) Did North American Systems, Inc. or any of its officers, directors, or agents solicit its employees for contributions to a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
 - b) State the date and time of all such solicitations, the name of all officers, directors, or agents of North American Systems, Inc. who conducted the solicitations, and the name of all employees solicited.
 - c) Describe the method(s) of solicitation employed, the amount of time spent on the solicitation(s), and the cost of such solicitation(s).
 - d) Was the solicitation(s) authorized by North American Systems, Inc.?
 - e) State the name of all officers, directors, or agents of North American Systems, Inc. who authorized the solicitation of the employees.
- 2a) Did any officers, directors, or agents of North American Systems, Inc. solicit the employees of North American Systems, Inc. without the authorization of North American Systems, Inc., for contributions to a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
 - b) State the name of all officers, directors, or agents who conducted the solicitations.
- 3a) Has North American Systems, Inc., at any time, authorized any of its officers, employees, or agents to conduct solicitations on behalf of any candidate?
 - b) If the answer is yes, state the name and position of all individuals so authorized.
- 4a) Did North American Systems, Inc. or any of its officers, directors, or agents loan money to any employee, including an advance of wages or a bonus, in order that the employee could make a contribution to the fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
 - b) State the name of all officers, directors, or agents who made the loans.

To: North American Systems, Inc.

- 2 -

- c) State the name and address of all employees who were loaned money, and the date and amount of the loan.
- d) State the method by which each loan was made.
- 5) Provide a copy of the most recent Constitution and Bylaws of North American Systems, Inc.
- 6) State the name and official position of all individuals on the Board of Directors of North American Systems, Inc.

82040322365



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 20, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Marotta, Vice-President
North American Systems, Inc.
24700 Miles Road
Bedford Heights, Ohio 44146

Re: MUR 1314(80)

Dear Mr. Marotta:

This letter is to notify you that on October 17, 1980, the Federal Election Commission determined that there is reason to believe that you violated §§ 441b(a) and 441f of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the 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. Additionally, please submit answers to the enclosed questions. Your response should be submitted within ten days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

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.

In the absence of any information which demonstrates that no further action should be taken against you, 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.

82040322366

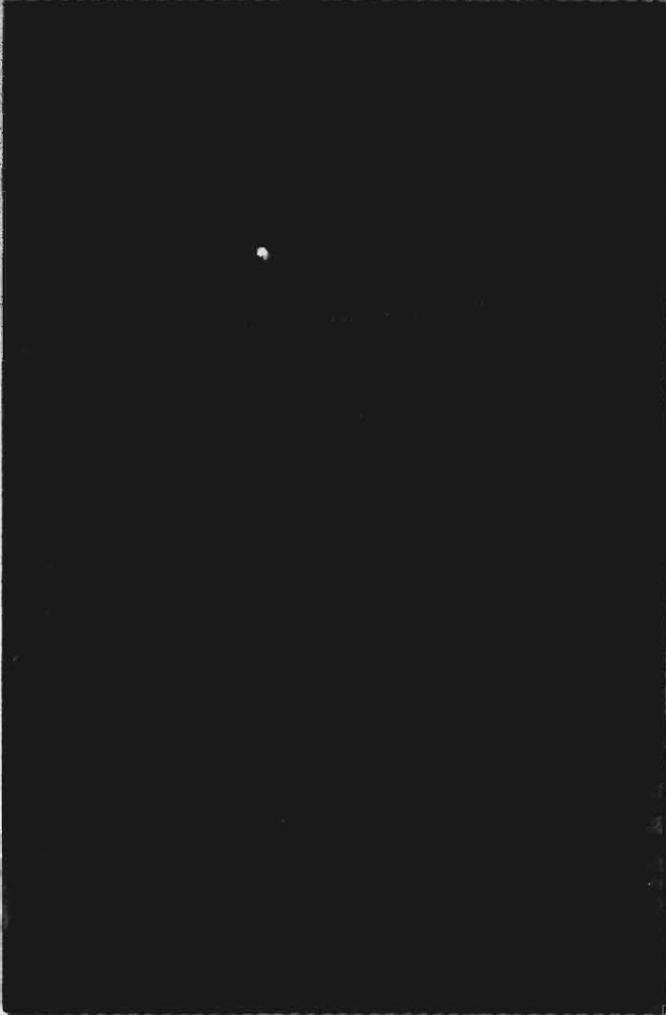
Letter to: Thomas Marotta
Page 2

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 have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Max L. Friedersdorf
Max L. Friedersdorf
Chairman



Enclosures

82040322367

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE October 20, 1980

MUR NO. 1314
STAFF MEMBER(S) & TEL. NO.
M. White/ S. Thomas

RESPONDENT Thomas Marotta

202-523-4060

BACKGROUND

On August 18, 1980, the Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The article alleges a possible violation of 2 U.S.C. § 441b(a) and § 441f by Thomas Marotta.

FACTUAL AND LEGAL ANALYSIS

The Plain Dealer news article states that Vincent G. Marotta, "Mr. Coffee millionaire" and dinner chairman for a Carter fundraiser held on May 29, 1980, "turned to employees, friends and people who [did] business with his North American Systems Inc" in an attempt to sell \$150 tickets to the fundraiser. The article contends that a "two-week Plain Dealer investigation into Marotta's fundraising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws."

The investigation conducted by the The Plain Dealer apparently included "[i]nterviews of dozens of Mr. Coffee employees and business associates" which revealed that "[p]lant foreman were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations," that "[s]ome employees, after saying they could not afford the \$150 were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems,"

82040322368

and that other employees "who asked not to be named contended they felt pressured to buy tickets they could not afford." On the other hand, the article did state that "dozens" of Mr. Coffee employees "said they were under no pressure to buy tickets to the dinner organized by their boss," and quoted one unidentified foreman, who apparently was personally solicited by Thomas Marotta, as saying "He [Thomas Marotta] made it very clear that it had nothing to do with job security, advancement, being hired, fired, or laid off."

The Plain Dealer states that their review of FEC records indicates that employees at North American Systems bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of a report filed by the Carter/Mondale Presidential Committee for the period May 1, 1980, through May 31, 1980, has revealed that at least 36 individuals employed by North American Systems did, in fact, make contributions totalling \$9,850 to the Carter committee on May 27 and 28, 1980. 1/

Under 2 U.S.C. § 441b(a), no corporation may make any contribution or any expenditure in connection with any election to federal office and no officer or director of any corporation may consent to any contribution or expenditure by the corporation in connection with any federal election. Pursuant to section 114.9 of Commission Regulations, stockholders and employees of a corporation may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election and are only required to reimburse the corporation to the extent that the overhead or operating costs of the corporation are increased.

1/ The occupations listed for the 36 contributors employed by North American Systems were reported as follows: 13 managers, seven vice-presidents, two salespersons, one executive assistant, one secretary, one chairman, one wholesaler, one engineer, one supervisor, one accountant, one controller, and one director. No occupations were listed for four persons and one individual's occupation was reported as "Gen."

82040322369

The issue in this matter becomes, therefore, one of whether Thomas Marotta was acting as an individual volunteer or, alternatively, was acting within the scope of his employment or was otherwise authorized by North American Systems, Inc. If the alleged solicitations conducted by Thomas Marotta were not conducted as individual volunteer activity, then his actions could be construed as an impermissible corporate contribution or expenditure on behalf of the Carter campaign by North American Systems, Inc. for the value of the time involved and the services provided. As a corporate officer, Thomas Marotta could commit the corporation to liability if he was carrying out a function incidental to his official position or a course of conduct that the corporation had approved of in the past.

If the activities of Thomas Marotta were within the scope of his employment, then the solicitation would be considered a violation of 2 U.S.C. § 441b(a) by Thomas Marotta. The basis for an apparent violation of § 441b(a) is two-fold: first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel.

The allegation that individuals were loaned money by Thomas Marotta to purchase tickets to the Carter fundraiser also states a violation of the Act in the General Counsel's view. A contribution is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. Under 2 U.S.C. § 441f, no person shall make a contribution in the name of another or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another. Even if Thomas Marotta was not acting in the scope of his employment, a violation would exist.

Therefore, the General Counsel recommends that the Commission find reason to believe that Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f.

Recommendation

1. Find reason to believe that Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f.

82040322370

Employees report Marotta pressure to give to Carter



Marotta

By Joseph D. Rice
and James Neff

Late this May, Mr. Coffee millionaire Vincent G. Marotta, a political newcomer supporting President Carter, beseeched a Cleveland business friend:

"I'm in trouble," the friend quoted Marotta. "I need your help."

Marotta, who five months earlier started drumming up donations for Carter, was having trouble selling \$150 tickets to a May 29 fund-raising bash at the Cleveland Plaza. Because of his Rose Garden strategy, the beleaguered president was making his sole dinner ap-

pearance of the primaries in Cleveland.

As dinner chairman, Marotta, 56, was worried because ticket sales were lagging and he wanted to make a good impression on the president's men.

Marotta turned to employees, friends and people who do business with his North American Systems Inc.

The dinner netted more than \$200,000 for the Carter campaign. A review of campaign finance records shows more than \$34,000 came through Marotta employees, friends and business associates.

A two-week Plain Dealer inves-
Continued on Page 26-A

Marotta pushed them to give to Carter, workers say

★ From First Page

litigation into Marotta's fund-raising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws.

Interviews with dozens of Mr. Coffee employees and business associates disclosed:

Foremen were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations.

A Federal Elections Commission (FEC) spokesman said its regulations do not allow corporations to make partisan communications (for example, ask for political donations) from certain types of employees, including foremen.

Some employees, after saying they could not afford the \$150 tickets, were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems.

A FEC spokesman said federal law prohibits a person from making a contribution in the name of another and a loan is defined by law as a contribution.

Suppliers doing business with North American Systems were cavily solicited.

Vincent and Thomas Marotta and their lawyer, Robert J. Rotatori

refused to be interviewed by The Plain Dealer.

Dozens of Mr. Coffee employees, from janitors to executives, said they were under no pressure to buy tickets or donate to the dinner organized by their boss.

"When a good customer needs help, you help him," said the friend Marotta told he was in trouble.

"I shook Carter's hand and got my money's worth," said Joseph Snakovsky, a foreman who bought a ticket.

Frank Kubicki, a North American comptroller, said he was glad he received an invitation in the mail because it showed he was accepted by company hierarchy.

"I would have felt bad if I didn't get invited," said Kubicki, who bought two \$150 tickets and went with his wife.

Herbert J. Fletcher, a quality control supervisor, said he bought tickets more out of respect for Marotta than in support of Carter.

"I did it for Vince," he said. "He's treated me royally since I've been here."

Some employees, who asked not to be named, contended they felt pressured to buy tickets they could not afford.

"I felt there was definitely pressure on me to go to that thing," one said. "I did not want to lose

my job. Have you tried to get a job lately in this recession?"

A foreman explained the situation at the Bedford Heights plant:

"There was talk of laying some foremen off. There's always rumors. So you want to stay in their good graces. I bought a ticket because I thought it was the best thing to do at the time — politically."

Thomas Marotta, according to sources, called the plant's 20 or so foremen into his office individually and made a pitch to buy tickets.

"He made it very clear it had nothing to do with job security, advancement, being hired, fired or laid off," a foreman said.

Workers on coffee breaks grumbled about the tickets, and at least one person circulated the rumor people would be fired if they did not give, sources said.

Many foremen, each fearing he was the only holdout, decided to buy tickets, employees said.

FEC records, which list campaign contributions of \$50 or more, show that employees at North American Systems bought tickets heavily on May 27 and 28, just before the May 29 dinner.

"The shop was extremely tense those two days," said an employee. "The foremen were all tense. There was a lot of pressure. The usual

mirth and laughter wasn't there."

FEC records show that some foremen, who make \$300 to \$400 a week, each have given as much as \$400 to different Marotta-sponsored fund-raisers this year.

Some foremen were even loaned money to purchase tickets to the high-priced dinner, sources said.

Coercion of contributions has been outlawed for 75 years. The Supreme Court and the federal government, in cases involving federal employees and union members, have said that contributions must be "knowing, free-choice donations."

Federal election laws prohibit corporations from asking for political contributions from union members. Most North American Systems employees are line workers who are members of Teamsters Union Local 73.

There is no evidence Marotta or his managers solicited donations from them.

Although 1,200 persons attended the Carter fund-raiser, it was reported about 1,000 bought tickets. Some contributions came in a few days after the event.

Peter L. Gentile, who oversees the 20 or so foremen, bought two \$150 tickets in May. But June 2, he donated \$700 more to the Carter campaign, and his wife, Frances L., gave \$1,000.

"I felt they needed more support," Gentile said. "We gave from our heart," his wife said.

Other Mr. Coffee employees who gave were registered Republican or independents.

"I don't even like Carter," said one employee. But he donated.

North American Systems, with an estimated \$150 million annual sales, does business with manufacturers, suppliers, shippers, salesmen and representatives in Ohio and nationwide. Persons at these firms bought \$21,950 worth of tickets to the Marotta-chaired fund-raiser at the Cleveland Plaza.

Seven executives of Par Industries Inc. of Medina and two of their wives gave \$1,000 each, the maximum annual contribution permissible to a candidate. Thirteen persons connected with J. B. Stamping Inc. in Brooklyn gave \$9,100.

Employees of both firms said they received invitations from Vincent Marotta to attend the dinner but insisted no pressure was exerted on them to donate.

"We thought it was a good idea," said Michael L. Bobincheck, who said Marotta called him about the dinner. "It kind of snowballed and everybody got involved."

An executive of a firm doing business with a Marotta supplier said he was contacted by the com-

pany and asked for a donation. The executive said he bought tickets.

"To me, it stunk to high heaven," he said.

Of the \$232,500 Carter had raised in Ohio by July 24, \$52,450 he came from Marotta, his family, employees and associates, election records show.

Marotta and eight family members each gave the maximum \$1,000 to Carter's campaign. Ten North American Systems employees or their relatives each donate \$1,000.

Mr. Coffee employees contributed \$2,075 in February to the campaign of Sen. John M. Glenn, D-O.

Charles A. Floyd, a "retail Carolina manufacturer's representative for Mr. Coffee, gave \$500 to the Glenn fund. Asked why he was interested in Ohio politics, Floyd said, "I don't want to talk about it."

National Finance chairman for Carter, E. Stephen Song III declines to comment on reports of Marotta's fund-raising activities.

Ohio Democratic Chairman C. Paul Tipps said pressure is necessary in raising money for politicians.

"Every ticket you sell is good money," Tipps said. "You have to go down to the public square and make a deal for it."

By James Neff
and Joseph D. Rice

"He represents the American ideal and is a perfect example of the American dream come true." — Invitation to the first Outstanding American of the Year award in 1978 honoring Vincent G. Marotta.

The story of Vince Marotta's rapid rise falls easily into clearly defined chapters.

Chapter One: Marotta, the young part-owner of a small lumberyard, cashes in on the post-World War II housing boom by mass-producing crackerboxes in the cornfields of Brunswick, North Ridgeville and other outlying areas.

It took carpenters about three days to build the simple frame houses, the early ones set on nothing more than a concrete slab. With unpainted walls and unfinished floors, the starter homes sold like crazy for \$5,995.

On one weekend, Marotta and his partner, Samuel L. Glazer, held open house and sold nearly 150 homes. On Monday, they would buy the farm next door, tell their engineers to design another subdivision and wait for the onslaught of young home buyers.

Chapter Two: About 5,000 houses, seven shopping centers (Richmond Mall, for one) and a dozen years later, multi-millionaire Marotta and his partner were slammed by the late-1960s financing crunch. While recuperating from an operation to remove a brain tumor, Marotta wondered what to do next.

Marotta has repeated many times the story of how he became Mr. Coffee:

He just could not get a good cup of coffee at home. So in that great American tradition, the one about the world beating a path to the door of the man who builds a better mousetrap, the self-made millionaire decided to invent the perfect coffee brewer. By 1972, local inventor Ed Abel hit upon the design that became patent number 3,693,535, and Marotta, without borrowing a penny, started manufacturing the home coffee brewers.

By 1979, Marotta and his North American Systems Inc. expanded to plants in Bedford Heights, employing as many as 2,000, and in Los Angeles. The Mr. Coffee brewer had captured more than half of the coffee brewer market, and self-made millionaire Marotta was sitting pretty with half interest in a company with \$150 million a year in sales and earning more than 20% on equity.

Chapter Three: After conquering the worlds of real estate and household appliances, Marotta, apparently seeking a new arena, turned his energies to politics.

As a local figure, Marotta was perhaps little-known to the average person here until he was honored at the first annual Outstanding American Charity Award Dinner in 1978.

Vince license plates, earlier passed up an invitation to join President Carter and a group of Italian Americans in a ceremony declaring Oct. 10 as Columbus Day.

He instead went to Detroit to accept the Italian-American Man of the Year Award.

After Marotta returned, his executive vice president, Vincent J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was not given more prominence.

The reporter defended Marotta's treatment and said nothing more was planned.

"But what am I going to tell Vince?" Menier asked.

The Outstanding American Charity Award dinner, organized by Menier, was attended by a gaggle of celebrities, including former New York Yankee and Mr. Coffee pitcher Joe DiMaggio, ABC newscaster Howard K. Smith, former president Gerald R. Ford and comedian Bob Hope. Hope and Ford, it was reported, were paid to attend the event, which raised \$100,000 for Sister Henrietta and the Our Lady of Fatima Mission Center in Hough.

Thousands of invitations were mailed for the \$100-a-plate prime rib dinner.

In part, they read: "He (Marotta) is indeed a most unique individual who has excelled in fields of sports, education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Last summer, Marotta had his political coming out when he hosted a fund-raising breakfast for Sen. John H. Glenn, D-O.

In late 1979, Marotta, accompanied by former Ohio governor Michael V. DiSalle, met with Stephen Smith, Sen. Edward M. Kennedy's brother-in-law and campaign chairman.

Anxious to offer his services as a fundraiser or a political operative to the presidential candidate, Marotta presented Smith with a two-page resume — bound in thick, brown textured Naugahyde — that listed his accomplishments: 14 "civic, charitable and social affiliations," numerous business experiences and eight "athletic achievements," including his 1942 signing to play professional baseball for the St.

820403223173

ideal

Coffee, Marotta rises to delve in politics

ites, earlier passed up an invitation to President Carter and a group of others in a ceremony declaring Oct. 10 as Marotta Day.

Marotta went to Detroit to accept the Man of the Year Award.

Marotta returned, his executive vice president J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was more prominent.

Menier defended Marotta's treatment and said more was planned.

"I'm going to tell Vince?" Menier said.

Marotta's American Charity Award ceremony, held by Menier, was attended by a number of celebrities, including former New York Yankees pitcher Joe DiMaggio, former Senator Howard K. Smith, former President Gerald R. Ford and comedian Ed Ford, it was reported. The event, which raised \$100,000 for Henrietta and the Our Lady Center in Hough.

Invitations were mailed for a special rib dinner.

Menier read: "He (Marotta) is indeed an individual who has excelled in education, and business. He is an American ideal and is a perfect example of how the American dream can come true."

Marotta had his political debut when he hosted a fund-raising dinner for John H. Glenn, D-O.

Marotta, accompanied by former Mayor Michael V. DiSalle, met with Sen. Edward M. Kennedy's campaign chairman.

Marotta's services as a fund-raiser were operative to the president. Marotta presented Smith with a letter bound in thick, brown texture. The letter listed his accomplishments, charitable and social affiliations, business experiences and eight awards, including his 1942 National Baseball for the St.

Louis Cardinals, his tryout with the Cleveland Browns, and a college record of 9.7 seconds for the 100-yard dash.

Smith, apparently unimpressed, never called Marotta. Marotta denied this exchange ever took place.

The determined Marotta next approached Carter lieutenants, and by January the manufacturer was hosting a Carter fund-raiser at his sumptuous Shaker Heights home on S. Park Blvd. Attended by Robert Strauss, Carter's campaign chairman, City Council President George L. Forbes, D-20, and business heavyweights here, the event raised about \$130,000.

Marotta's success put him in direct competition with Milton A. Wolf, Carter's main Cleveland fund-raiser since the president's successful 1976 campaign.

Both Marotta, the political newcomer, and Wolf, the more experienced hand, claim to have the most direct Cleveland pipeline to the White House.

In April, Wolf held a Carter fund-raiser at his Shaker Heights home which Rosalynn Carter attended. Wolf did not invite Marotta, who lives a short walk away, and Mr. Coffee reportedly was steaming.

"There's bad blood between the two," said a prominent Cleveland Democrat.

It is said that Carter rewarded Wolf for his early support and for his then ability to raise funds with an ambassadorship to Austria. Political insiders surmise that Marotta would appreciate an ambassadorship, maybe to Italy.

A top Carter official last week said Marotta and two or three other Ohio supporters probably are in line for high-level government posts if the president is re-elected.

But reports of Marotta's heavy-handed fund-raising tactics could damage his chances.

As a prominent Cleveland businessman and Democratic heavyweight explained it: "He (Marotta) is new to the game and doesn't know the rules."

QUESTIONS

TO: Thomas Marotta

- 1a) What role, if any, did you play in a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
- b) State whether or not you solicited contributions to the fundraiser.
- 2a) If the answer to question 1(b) is yes, state whether or not the solicitation included the employees of North American Systems, Inc.
- b) If the solicitation included the employees of North American Systems, Inc., describe the method(s) of solicitation employed, the number of employees solicited, the names of employees solicited, and the amount of time spent on the solicitation(s).
- c) State whether or not you solicited contributions from any individual, including employees of North American Systems, Inc., during the normal business hours, and on the premises, of North American Systems, Inc.
- d) If the answer to question 2(c) is yes, state the amount of time that was spent conducting the solicitation(s).
- 3a) If the employees of North American Systems, Inc. were solicited for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee, by either North American Systems or its officers or directors, did you authorize the solicitation as an officer or director?
- b) Were you authorized by North American Systems, Inc. to solicit the employees of North American Systems, Inc. for contributions to the May 29, 1980, fundraiser? If the answer is yes, describe the manner in which you were authorized.
- 4) State whether or not, at any time, you were authorized by North American Systems, Inc. to solicit contributions from the employees of North American Systems, Inc. for any candidate. If the answer is yes, state the number of times you conducted a solicitation(s) and the manner in which you were authorized to conduct the solicitation(s).

82040322375

- 5a) State whether or not, at any time, you solicited contributions from the employees of North American Systems, Inc. without the authorization of North American Systems, Inc. If the answer is yes, state the number of times you conducted a solicitation.
- b) State whether each solicitation was conducted with the knowledge of the officers, directors, or agents of North American Systems, Inc.
- 6a) State whether or not you loaned money to any individual, including employees of North American Systems, in order that they may purchase tickets to the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.
- b) If the answer is yes, list all individuals by name, address, employer, and the amount and date of the loan.
- 7a) State whether or not you gave money to any individual including employees of North American Systems, Inc., in order that they may purchase tickets to the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.
- b) If the answer is yes, list all individuals by name, address, employer, amount of money, and the date of the transaction.

82040322376



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Williams J. Edwards
United States Attorney
Northern District of Ohio
U.S. Department of Justice
U.S. Courthouse
Cleveland, Ohio 44114

Re: MUR 1314(80)

Dear Mr. Edwards:

This is to acknowledge receipt of your letter of August 18, 1980, advising us of the possibility of a violation of the Federal Election Campaign Act of 1971, as amended, by Vincent Marotta, Thomas Marotta, and North American Systems, Inc. We are currently reviewing the matter and will advise you of the Commission's determination.

If you have any questions or additional information, please call Maura White, the staff member assigned to this matter, at (202) 523-4060. Our file number for this matter is MUR 1314

Put
the Com

),
ial.



82040322377



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Williams J. Edwards
United States Attorney
Northern District of Ohio
U.S. Department of Justice
U.S. Courthouse
Cleveland, Ohio 44114

Re: MUR

Dear Mr. Edwards:

This is to acknowledge receipt of your letter of August 18, 1980, advising us of the possibility of a violation of the Federal Election Campaign Act of 1971, as amended, by Vincent Marotta, Thomas Marotta, and North American Systems, Inc. We are currently reviewing the matter and will advise you of the Commission's determination.

If you have any questions or additional information, please call Maura White, the staff member assigned to this matter, at (202) 523-4060. Our file number for this matter is MUR .

Pursuant to 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), the Commission's review of this matter shall remain confidential.

Sincerely,

mw 10/17/80

Charles N. Steele
General Counsel

82040322378

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Thomas Marotta)
Vincent Marotta)
North American Systems)

Pre-MUR 56

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on October 17, 1980, the Commission decided by a vote of 6-0 to take the following actions regarding Pre-MUR 56:

1. Open a mater under review.
2. Find REASON TO BELIEVE that Thomas Marotta violated 2 U.S.C. § 441b(a) and 441f.
3. Find REASON TO BELIEVE that Vincent Marotta and North American Systems violated 2 U.S.C. §441b(a).
4. Approve the letters and questions as attached to the First General Counsel's Report dated October 14, 1980.

Voting for this determination were Commissioners Aikens, Friedersdorf, Harris, McGarry, Reiche, and Tiernan.

Attest:

10/17/80

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 10-14-80, 5:02
Circulated on 48 hour vote basis: 10-15-80, 11:00

82040322379

October 14, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Carr
SUBJECT: Pre NUR 86

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

82040322380

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION

10-14-80

Pre-NUR # 56

STAFF MEMBER(S) M. White

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENT'S NAME:

Thomas Marotta
Vincent Marotta
North American Systems

RELEVANT STATUTE:

2 U.S.C. §§ 441b(a) and 441f

INTERNAL REPORTS CHECKED:

Public records

FEDERAL AGENCIES CHECKED:

None

80 OCT 14 P 5: 02

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

SUMMARY OF ALLEGATIONS

On August 18, 1980, William J. Edwards, Assistant U.S. Attorney, Northern District of Ohio, U.S. Department of Justice, referred a matter involving Vincent and Thomas Marotta to the Federal Election Commission. The referral was based solely on an article which appeared in The Plain Dealer on August 10, 1980, in which the Department of Justice notes "allegations are made of possible violations of Federal election laws regarding the solicitation of campaign contributions by Vincent G. Marotta, president of North American Systems, Inc." (Attachment 1).

FACTUAL AND LEGAL ANALYSIS

The Plain Dealer news article states that Vincent G. Marotta, "Mr. Coffee millionaire" and dinner chairman for a Carter fundraiser held on May 29, 1980, "turned to employees, friends and people who [did] business with his North American Systems Inc" in an attempt to sell \$150 tickets to the fundraiser. The article contends that a "two-week Plain Dealer investigation into Marotta's fund-raising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws."

620403228

The investigation conducted by the The Plain Dealer apparently included "[i]nterviews of dozens of Mr. Coffee employees and business associates" which revealed that "[p]lant foreman were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations," that "[s]ome employees, after saying they could not afford the \$150 were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems," and that other employees "who asked not to be named contended they felt pressured to buy tickets they could not afford." On the other hand, the article did state that "dozens" of Mr. Coffee employees "said they were under no pressure to buy tickets to the dinner organized by their boss," and quoted one unidentified foreman, who apparently was personally solicited by Thomas Marotta, as saying "He [Thomas Marotta] made it very clear that it had nothing to do with job security, advancement, being hired, fired, or laid off."

Both identified and unidentified sources are quoted in the news article. It should be noted that those sources which most directly support the contentions of The Plain Dealer are unidentified while the statements made by individuals who were both identified and quoted in the article do not expressly state that they were either pressured to buy tickets or loaned money to purchase tickets.

The Plain Dealer states that their review of FEC records indicates that employees at North American Systems bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of a report filed by the Carter/Mondale Presidential Committee for the period May 1, 1980, through May 31, 1980, has revealed that at least 36 individuals employed by North American Systems did, in fact, make contributions totalling \$9,850 to the Carter committee on May 27 and 28, 1980. 1/

1/ The occupations listed for the 36 contributors employed by North American Systems were reported as follows: 13 managers, seven vice-presidents, two salespersons, one executive assistant, one secretary, one chairman, one wholesaler, one engineer, one supervisor, one accountant, one controller, and one director. No occupations were listed for four persons and one individual's occupation was reported as "Gen."

82040322382

Under 2 U.S.C. § 441b(a), no corporation may make any contribution or any expenditure in connection with any election to federal office and no officer or director of any corporation may consent to any contribution or expenditure by the corporation in connection with any federal election. Pursuant to section 114.9 of Commission Regulations, stockholders and employees of a corporation may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election and are only required to reimburse the corporation to the extent that the overhead or operating costs of the corporation are increased.

The issue in this matter becomes, therefore, one of whether Thomas and Vincent Marotta were acting as individual volunteers or, alternatively, were acting within the scope of their employment or were otherwise authorized by North American Systems, Inc. If the alleged solicitations conducted by Thomas and Vincent Marotta were not conducted as individual volunteer activity, then their actions could be construed as an impermissible corporate contribution or expenditure on behalf of the Carter campaign by North American Systems, Inc. for the value of the time involved and services provided. As corporate officers, Thomas and Vincent Marotta could commit the corporation to liability if they were carrying out a function incidental to their official positions or a course of conduct that the corporation had approved of in the past. These are factual questions, requiring further evidence.

If the activities of Vincent and Thomas Marotta were within the scope of their employment, then the solicitation would be considered a violation of 2 U.S.C. § 441b(a) by North American Systems, Inc., Thomas Marotta, and Vincent Marotta. The basis for an apparent violation of § 441b(a) is two-fold: first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel. 2/

2/ If Thomas or Vincent Marotta were soliciting contributions to the separate segregated fund of North American Systems, Inc., that solicitation would be limited by the solicitation restrictions of 2 U.S.C. § 441b(b). However, as stated in The Plain Dealer news article, the solicitation in question was to benefit the Carter campaign. As the solicitation was to the Carter campaign and not the separate segregated fund of North American Systems, Inc. it appears that no violation of 2 U.S.C. § 441b(b)(4) has occurred.

9 2 0 4 0 3 2 2 3 8 3

- 4 -

The allegation that individuals were loaned money by Thomas Marotta to purchase tickets to the Carter fundraiser also states a violation of the Act in the General Counsel's view. A contribution is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. Under 2 U.S.C. § 441f, no person shall make a contribution in the name of another or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another. Even if Thomas Marotta was not acting in the scope of his employment, a violation would exist.

The verified fact that 36 employees of North American Systems, Inc. did make contributions to the Carter campaign on May 27 and 28 raises questions about the propriety of the alleged activities of Thomas Marotta, Vincent Marotta, and North American Systems, Inc. In the General Counsel's view there is reason to believe that violations of the Act have occurred.

RECOMMENDATIONS

1. Open a matter under review.
2. Find reason to believe that Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f.
3. Find reason to believe that Vincent Marotta and North American Systems violated 2 U.S.C. § 441b(a).
4. Approve the attached letters and questions.

Attachments:

- A Department of Justice referral
- B Letters (4) - letter to Vincent Marotta
 - letter to Thomas Marotta
 - letter to North American Systems
 - letter to Dept. of Justice

62040322384

82040322385

ATTACHMENT #1

909721-
80-2618 P12:
3004
536

United States Attorney
Northern District of Ohio

U.S. Courthouse
Cleveland, Ohio 44114

August 13, 1980

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

Re: Allegations of Illegal Campaign Contributions

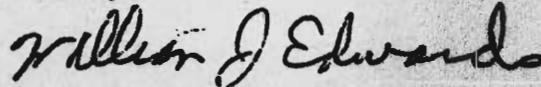
Dear Sirs:

Please find enclosed a copy of an article which appeared in the Cleveland Plain Dealer on Sunday, August 10, 1980, in which allegations are made of possible violations of Federal election laws regarding the solicitation of campaign contributions by Mr. Vincent G. Marotta, president of North American Systems, Inc. based in Cleveland.

After consulting with the Public Integrity Section of the Department of Justice, I am referring this article to you for any action which you deem necessary.

Thank you for your cooperation in this matter.

Sincerely,



WILLIAM J. EDWARDS
First Assistant U. S. Attorney

Enclosure

cc: Mr. Craig Donsanto
Department of Justice
P.O. Box 50168, F Street Station
Washington, D. C. 20004

82040322386

92 11 9107 01

711 10 1980

Employees report Marotta pressure to give to Carter



Marotta

By Joseph D. Rice
and James Neff

Late this May, Mr. Coffee millionaire Vincent G. Marotta, a political newcomer supporting President Carter, beseeched a Cleveland business friend:

"I'm in trouble," the friend quoted Marotta. "I need your help."

Marotta, who five months earlier started drumming up donations for Carter, was having trouble selling \$150 tickets to a May 29 fund-raising bash at the Cleveland Plaza. Because of his Rose Garden strategy, the beleaguered president was making his sole dinner ap-

pearance of the primaries in Cleveland.

As dinner chairman, Marotta, 56, was worried because ticket sales were lagging and he wanted to make a good impression on the president's men.

Marotta turned to employees, friends and people who do business with his North American Systems Inc.

The dinner netted more than \$200,000 for the Carter campaign. A review of campaign finance records shows more than \$34,000 came through Marotta employees, friends and business associates.

A two-week Plain Dealer inves-

Continued on Page 26-A

Marotta pushed them to give to Carter, workers say

From First Page

Investigation into Marotta's fund-raising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws.

Interviews with dozens of Mr. Coffee employees and business associates disclosed:

That foremen were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations.

A Federal Elections Commission (FEC) spokesman said its regulations do not allow corporations to make partisan communications (for example, ask for political donations) from certain types of employees, including foremen.

Some employees, after saying they could not afford the \$150 tickets, were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems.

A FEC spokesman said federal law prohibits a person from making a contribution in the name of another and a loan is defined by law as a contribution.

Suppliers doing business with North American Systems were heavily solicited.

Vincent and Thomas Marotta and their lawyer, Robert J. Rotatori

refused to be interviewed by The Plain Dealer.

Dozens of Mr. Coffee employees, from janitors to executives, said they were under no pressure to buy tickets or donate to the dinner organized by their boss.

"When a good customer needs help, you help him," said the friend Marotta told he was in trouble.

"I shook Carter's hand and got my money's worth," said Joseph Snakovsky, a foreman who bought a ticket.

Frank Kubicki, a North American comptroller, said he was glad he received an invitation in the mail because it showed he was accepted by company hierarchy.

"I would have felt bad if I didn't get invited," said Kubicki, who bought two \$150 tickets and went with his wife.

Herbert J. Fletcher, a quality control supervisor, said he bought tickets more out of respect for Marotta than in support of Carter.

"I did it for Vince," he said. "He's treated me royally since I've been here."

Some employees, who asked not to be named, contended they felt pressured to buy tickets they could not afford.

"I felt there was definitely pressure on me to go to that thing," one said. "I did not want to lose

my job. Have you tried to get a job lately in this recession?"

A foreman explained the situation at the Bedford Heights plant:

"There was talk of laying some foremen off. There's always rumors. So you want to stay in their good graces. I bought a ticket because I thought it was the best thing to do at the time — politically."

Thomas Marotta, according to sources, called the plant's 20 or so foremen into his office individually and made a pitch to buy tickets.

"He made it very clear it had nothing to do with job security, advancement, being hired, fired or laid off," a foreman said.

Workers on coffee breaks grumbled about the tickets, and at least one person circulated the rumor people would be fired if they did not give, sources said.

Many foremen, each fearing he was the only holdout, decided to buy tickets, employees said.

FEC records, which list campaign contributions of \$50 or more, show that employees at North American Systems bought tickets heavily on May 27 and 28, just before the May 29 dinner.

"The shop was extremely tense those two days," said an employee. "The foremen were all tense. There was a lot of pressure. The usual

mirth and laughter wasn't there."

FEC records show that some foremen, who make \$300 to \$400 a week, each have given as much as \$400 to different Marotta-sponsored fund-raisers this year.

Some foremen were even loaned money to purchase tickets to the high-priced dinner, sources said.

Coercion of contributions has been outlawed for 75 years. The Supreme Court and the federal government, in cases involving federal employees and union members, have said that contributions must be "knowing, free-choice donations."

Federal election laws prohibit corporations from asking for political contributions from union members. Most North American Systems employees are line workers who are members of Teamsters Union Local 73.

There is no evidence Marotta or his managers solicited donations from them.

Although 1,200 persons attended the Carter fund-raiser, it was reported about 1,000 bought tickets. Some contributions came in a few days after the event.

Peter L. Gentile, who oversees the 20 or so foremen, bought two \$150 tickets in May. But June 3, he donated \$700 more to the Carter campaign, and his wife, Frances L., gave \$1,000.

"I felt they needed more support," Gentile said. "We gave from our heart," his wife said.

Other Mr. Coffee employees who gave were registered Republicans or independents.

"I don't even like Carter," said one employe. But he donated.

North American Systems, with an estimated \$150 million annual sales, does business with manufacturers, suppliers, shippers, salesmen and representatives in Ohio and nationwide. Persons at these firms bought \$21,950 worth of tickets to the Marotta-chaired fund-raiser at the Cleveland Plaza.

Seven executives of Par. Industries Inc. of Medina and two of their wives gave \$1,000 each, the maximum annual contribution permissible to a candidate. Thirteen persons connected with J. B. Stamping Inc. in Brooklyn gave \$9,100.

Employees of both firms said they received invitations from Vincent Marotta to attend the dinner but insisted no pressure was exerted on them to donate.

"We thought it was a good idea," said Michael L. Bobincheck, who said Marotta called him about the dinner. "It kind of snowballed and everybody got involved."

An executive of a firm doing business with a Marotta supplier said he was contacted by the firm

and asked for a donation. The executive said he bought tickets.

"To me, it stuck to high school," he said.

Of the \$630,500 Carter had raised in Ohio by July 24, \$52,450 he came from Marotta, his family employees and associates, electric records show.

Marotta and eight family members each gave the maximum \$5,000 to Carter's campaign. To North American Systems employees or their relatives each donate \$1,000.

Mr. Coffee employees contributed \$8,675 in February to the campaign of Sen. John H. Glenn, D-O.

Charles A. Floyd, a "retired" Carolina manufacturer's representative for Mr. Coffee, gave \$500 to the Glenn fund. Asked why he was interested in Ohio politics, Floyd said, "I don't want to talk about it."

National Finance chairman for Carter, S. Stephen Solig III declines to comment on reports of Marotta's fund-raising activities.

Ohio Democratic Chairman C. Paul Tippy said pressure is necessary in raising money in politicians.

"Every time you call to raise money," Tippy said. "The ball don't go down to Public Support and they don't make money for it."

With houses and Mr. Coffee, Marotta

By James Neff
and Joseph D. Rice

"He represents the American ideal and is a perfect example of the American dream come true." — Invitation to the first Outstanding American of the Year award in 1978 honoring Vincent G. Marotta.

The story of Vince Marotta's rapid rise falls easily into clearly defined chapters.

Chapter One: Marotta, the young partner-owner of a small lumberyard, cashes in on the post-World War II housing boom by mass-producing crackerboxes in the cornfields of Brunswick, North Ridgeville and other outlying areas.

It took carpenters about three days to build the simple frame houses, the early ones set on nothing more than a concrete slab. With unpainted walls and unfinished floors, the starter homes sold like crazy for \$5,995.

On one weekend, Marotta and his partner, Samuel L. Glazer, held open house and sold nearly 150 homes. On Monday, they would buy the farm next door, tell their engineers to design another subdivision and wait for the onslaught of young home buyers.

Chapter Two: About 5,000 houses, seven shopping centers (Richmond Mall, for one) and a dozen years later, multi-millionaire Marotta and his partner were slammed by the late-1960s financing crunch. While recuperating from an operation to remove a brain tumor, Marotta wondered what to do next.

Marotta has repeated many times the story of how he became Mr. Coffee:

He just could not get a good cup of coffee at home. So in that great American tradition, the one about the world beating a path to the door of the man who builds a better mousetrap, the self-made millionaire decided to invent the perfect coffee brewer. By 1972, local inventor Ed Abel hit upon the design that became patent number 3,693,535, and Marotta, without borrowing a penny, started manufacturing the home coffee brewers.

By 1979, Marotta and his North American Systems Inc. expanded to plants in Bedford Heights, employing as many as 2,000, and in Los Angeles. The Mr. Coffee brewer had captured more than half of the coffee brewer market, and self-made millionaire Marotta was sitting pretty with half interest in a company with \$150 million a year in sales and earning more than 20% on equity.

Chapter Three: After conquering the worlds of real estate and household appliances, Marotta, apparently seeking a new arena, turned his energies to politics.

As a local figure, Marotta was perhaps little-known to the average person here until he was honored at the first annual Outstanding American Charity Award Dinner in 1978.

VGM license plates, earlier passed up an invitation to join President Carter and a group of Italian Americans in a ceremony declaring Oct. 10 as Columbus Day.

He instead went to Detroit to accept the Italian-American Man of the Year Award.

After Marotta returned, his executive vice president, Vincent J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was not given more prominence.

The reporter defended Marotta's treatment and said nothing more was planned.

"But what am I going to tell Vince?" Menier asked.

The Outstanding American Charity Award dinner, organized by Menier, was attended by a gaggle of celebrities, including former New York Yankee and Mr. Coffee pitcher Joe DiMaggio, ABC newscaster Howard K. Smith, former president Gerald R. Ford and comedian Bob Hope. Hope and Ford, it was reported, were paid to attend the event, which raised \$100,000 for Sister Henrietta and the Our Lady of Fatima Mission Center in Hough.

Thousands of invitations were mailed for the \$100-a-plate prime rib dinner.

In part, they read: "He (Marotta) is indeed a most unique individual who has excelled in fields of sports, education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Last summer, Marotta had his political coming out when he hosted a fund-raising breakfast for Sen. John H. Glenn, D-O.

In late 1979, Marotta, accompanied by former Ohio governor Michael V. DiSalle, met with Stephen Smith, Sen. Edward M. Kennedy's brother-in-law and campaign chairman.

Anxious to offer his services as a fundraiser or a political operative to the presidential candidate, Marotta presented Smith with a two-page resume — bound in thick, brown textured Naugahyde — that listed his accomplishments: 14 "civic, charitable and social affiliations," numerous business experiences and eight "athletic achievements," including his 1942 signing to play professional baseball for the St.

62040322309

1 ideal

Coffee, Marotta rises to delve in politics

ates, earlier passed up an invitation to accept the award from President Carter and a group of fans in a ceremony declaring Oct. 10 as Coffee Day.

Marotta went to Detroit to accept the Man of the Year Award.

Marotta returned, his executive vice president J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was given more prominence.

Menier defended Marotta's treatment and said the award was planned.

"Is he going to tell Vince?" Menier asked.

Marotta's American Charity Award ceremony, held by Menier, was attended by a group of fans, including former New York Yankees pitcher Joe DiMaggio, former Cleveland Indians pitcher Howard K. Smith, former Cleveland Indians pitcher R. Ford and comedian Red Ford, it was reported. The event, which raised money for the Henrietta and the Our Lady Center in Houghsboro, Ohio, was held at the Sheraton Hotel.

Invitations were mailed for a rib dinner.

Menier said: "He (Marotta) is indeed an ideal who has excelled in education, and business. He is an American ideal and is a perfect example of the American dream come true."

Marotta had his political debut when he hosted a fund-raising dinner for John H. Glenn, D-O.

Marotta, accompanied by former Cleveland Indians pitcher Michael V. DiSalle, met with Sen. Edward M. Kennedy's campaign chairman.

For his services as a fund-raiser, Marotta presented Smith with a certificate bound in thick, brown leather that listed his accomplishments, charitable and social affiliations, business experiences and eight awards, including his 1942 National Baseball Player of the Year award for the St.

Louis Cardinals, his tryout with the Cleveland Browns, and a college record of 9.7 seconds for the 100-yard dash.

Smith, apparently unimpressed, never called Marotta. Marotta denied this exchange ever took place.

The determined Marotta next approached Carter lieutenants, and by January the manufacturer was hosting a Carter fund-raiser at his sumptuous Shaker Heights home on S. Park Blvd. Attended by Robert Strauss, Carter's campaign chairman, City Council President George L. Forbes, D-20, and business heavyweights here, the event raised about \$130,000.

Marotta's success put him in direct competition with Milton A. Wolf, Carter's main Cleveland fund-raiser since the president's successful 1976 campaign.

Both Marotta, the political newcomer, and Wolf, the more experienced hand, claim to have the most direct Cleveland pipeline to the White House.

In April, Wolf held a Carter fund-raiser at his Shaker Heights home which Rosalynn Carter attended. Wolf did not invite Marotta, who lives a short walk away, and Mr. Coffee reportedly was steaming.

"There's bad blood between the two," said a prominent Cleveland Democrat.

It is said that Carter rewarded Wolf for his early support and for his then ability to raise funds with an ambassadorship to Austria. Political insiders surmise that Marotta would appreciate an ambassadorship, maybe to Italy.

A top Carter official last week said Marotta and two or three other Ohio supporters probably are in line for high-level government posts if the president is re-elected.

But reports of Marotta's heavy-handed fund-raising tactics could damage his chances.

As a prominent Cleveland businessman and Democratic heavyweight explained it: "He (Marotta) is new to the game and doesn't know the rules."

PROPOSED LETTERS TO RESPONDENTS

82040322391



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Vincent Marotta, President
North American Systems, Inc.
24700 Miles Road
Bedford Heights, Ohio 44146

Re: MUR

Dear Mr. Marotta:

This letter is to notify you that on , 1980, the Federal Election Commission determined that there is reason to believe that North American Systems, Inc. violated § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

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.

In the absence of any information which demonstrates that no further action should be taken against North American Systems, 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.

82040322392

Letter to: Vincent Marotta
Page 2

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 have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Enclosures

82040322393

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. _____
STAFF MEMBER(S) & TEL. NO.
M. White/ S. Thomas

RESPONDENT North American Systems, Inc.

202-523-4060

BACKGROUND

On August 18, 1980, the Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The article alleges a possible violation of 2 U.S.C. § 441b(a) by North American Systems, Inc.

FACTUAL AND LEGAL ANALYSIS

The Plain Dealer news article states that Vincent G. Marotta, "Mr. Coffee millionaire" and dinner chairman for a Carter fundraiser held on May 29, 1980, "turned to employees, friends and people who [did] business with his North American Systems Inc" in an attempt to sell \$150 tickets to the fundraiser. The article contends that a "two-week Plain Dealer investigation into Marotta's fundraising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws."

The investigation conducted by the The Plain Dealer apparently included "[i]nterviews of dozens of Mr. Coffee employees and business associates" which revealed that "[p]lant foreman were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations," that "[s]ome employees, after saying they could not afford the \$150 were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems,"

82040322394

and that other employees "who asked not to be named contended they felt pressured to buy tickets they could not afford." On the other hand, the article did state that "dozens" of Mr. Coffee employees "said they were under no pressure to buy tickets to the dinner organized by their boss," and quoted one unidentified foreman, who apparently was personally solicited by Thomas Marotta, as saying "He [Thomas Marotta] made it very clear that it had nothing to do with job security, advancement, being hired, fired, or laid off."

The Plain Dealer states that their review of FEC records indicates that employees at North American Systems bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of a report filed by the Carter/Mondale Presidential Committee for the period May 1, 1980, through May 31, 1980, has revealed that at least 36 individuals employed by North American Systems did, in fact, make contributions totalling \$9,850 to the Carter committee on May 27 and 28, 1980. 1/

Under 2 U.S.C. § 441b(a), no corporation may make any contribution or any expenditure in connection with any election to federal office and no officer or director of any corporation may consent to any contribution or expenditure by the corporation in connection with any federal election. Pursuant to section 114.9 of Commission Regulations, stockholders and employees of a corporation may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election and are only required to reimburse the corporation to the extent that the overhead or operating costs of the corporation are increased.

1/ The occupations listed for the 36 contributors employed by North American Systems were reported as follows: 13 managers, seven vice-presidents, two salespersons, one executive assistant, one secretary, one chairman, one wholesaler, one engineer, one supervisor, one accountant, one controller, and one director. No occupations were listed for four persons and one individual's occupation was reported as "Gen."

3 2 0 4 0 3 2 2 3 9 5

The issue in this matter becomes, therefore, one of whether Thomas and Vincent Marotta were acting as individual volunteers or, alternatively, were acting within the scope of their employment or were otherwise authorized by North American Systems, Inc. If the alleged solicitations conducted by Thomas and Vincent Marotta were not conducted as individual volunteer activity, then their actions could be construed as an impermissible corporate contribution or expenditure on behalf of the Carter campaign by North American Systems, Inc. for the value of the time involved and the services provided. As corporate officers, Thomas and Vincent Marotta could commit the corporation to liability if they were carrying out a function incidental to their official positions or a course of conduct that the corporation had approved of in the past.

If the activities of Thomas and Vincent Marotta were within the scope of their employment, then the solicitation would be considered a violation of 2 U.S.C. § 441b(a) by North American Systems, Inc. The basis for an apparent violation of § 441b(a) is two-fold: first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel.

Therefore, the General Counsel recommends that the Commission find reason to believe that North American Systems, Inc. violated 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe that North American Systems, Inc. violated 2 U.S.C. § 441b(a).

82040322396

Employees report Marotta pressure to give to Carter



Marotta

By Joseph D. Rice
and James Neff

Late this May, Mr. Coffee millionaire Vincent G. Marotta, a political newcomer supporting President Carter, beseeched a Cleveland business friend:

"I'm in trouble," the friend quoted Marotta. "I need your help."

Marotta, who five months earlier started drumming up donations for Carter, was having trouble selling \$150 tickets to a May 29 fund-raising bash at the Cleveland Plaza. Because of his Rose Garden strategy, the beleaguered president was making his sole dinner ap-

pearance of the primaries in Cleveland.

As dinner chairman, Marotta, 56, was worried because ticket sales were lagging and he wanted to make a good impression on the president's men.

Marotta turned to employees, friends and people who do business with his North American Systems Inc.

The dinner netted more than \$200,000 for the Carter campaign. A review of campaign finance records shows more than \$34,000 came through Marotta employees, friends and business associates.

A two-week Plain Dealer inves-
Continued on Page 26-A

Marotta pushed them to give to Carter, workers say

From First Page

igation into Marotta's fund-raising activities has disclosed reports of employees being pressured into buying tickets and possible violations of federal election laws.

Interviews with dozens of Mr. Coffee employees and business associates disclosed:

• That foremen were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations.

• A Federal Elections Commission (FEC) spokesman said its regulations do not allow corporations to make partisan communications (for example, ask for political donations) from certain types of employees, including foremen.

• Some employees, after saying they could not afford the \$150 tickets, were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems.

• A FEC spokesman said federal law prohibits a person from making a contribution in the name of another and a loan is defined by law as a contribution.

• Suppliers doing business with North American Systems were heavily solicited.

Vincent and Thomas Marotta and their lawyer, Robert J. Rotatori

refused to be interviewed by The Plain Dealer.

Dozens of Mr. Coffee employees, from janitors to executives, said they were under no pressure to buy tickets or donate to the dinner organized by their boss.

"When a good customer needs help, you help him," said the friend Marotta told he was in trouble.

"I shook Carter's hand and got my money's worth," said Joseph Sokolovsky, a foreman who bought a ticket.

Frank Kubicki, a North American comptroller, said he was glad he received an invitation in the mail because it showed he was accepted by company hierarchy.

"I would have felt bad if I didn't get invited," said Kubicki, who bought two \$150 tickets and went with his wife.

Herbert J. Fletcher, a quality control supervisor, said he bought tickets more out of respect for Marotta than in support of Carter.

"I did it for Vince," he said. "He's treated me royally since I've been here."

Some employees, who asked not to be named, contended they felt pressured to buy tickets they could not afford.

"I felt there was definitely pressure on me to go to that thing," one said. "I did not want to lose

my job. Have you tried to get a job lately in this recession?"

A foreman explained the situation at the Bedford Heights plant:

"There was talk of laying some foremen off. There's always foremen. So you want to stay in their good graces. I bought a ticket because I thought it was the best thing to do at the time — politically."

Thomas Marotta, according to sources, called the plant's 20 or so foremen into his office individually and made a pitch to buy tickets.

"He made it very clear it had nothing to do with job security, advancement, being hired, fired or laid off," a foreman said.

Workers on coffee breaks grumbled about the tickets, and at least one person circulated the rumor people would be fired if they did not give, sources said.

Many foremen, each fearing he was the only holdout, decided to buy tickets, employees said.

FEC records, which list campaign contributions of \$50 or more, show that employees at North American Systems bought tickets heavily on May 27 and 28, just before the May 29 dinner.

"The shop was extremely tense those two days," said an employee. "The foremen were all tense. There was a lot of pressure. The usual

snirth and laughter wasn't there."

FEC records show that some foremen, who make \$300 to \$400 a week, each have given as much as \$400 to different Marotta-sponsored fund-raisers this year.

Some foremen were even loaned money to purchase tickets to the high-priced dinner, sources said.

Coercion of contributions has been outlawed for 75 years. The Supreme Court and the federal government, in cases involving federal employees and union members, have said that contributions must be "knowing, free-choice donations."

Federal election laws prohibit corporations from asking for political contributions from union members. Most North American Systems employees are line workers who are members of Teamsters Union Local 73.

There is no evidence Marotta or his managers solicited donations from them.

Although 1,200 persons attended the Carter fund-raiser, it was reported about 1,000 bought tickets. Some contributions came in a few days after the event.

Peter L. Gentile, who oversees the 20 or so foremen, bought two \$150 tickets in May. But June 1, he donated \$700 more to the Carter campaign, and his wife, Frances L., gave \$1,000.

"I felt they needed more support," Gentile said. "We gave from our heart," his wife said.

Other Mr. Coffee employees who gave were registered Republicans or independents.

"I don't even like Carter," said one employee. But he donated.

North American Systems, with an estimated \$150 million annual sales, does business with manufacturers, suppliers, shippers, salesmen and representatives in Ohio and nationwide. Persons at these firms bought \$21,950 worth of tickets to the Marotta-chaired fund-raiser at the Cleveland Plaza.

Seven executives of Par Industries Inc. of Medina and two of their wives gave \$1,000 each, the maximum annual contribution permissible to a candidate. Thirteen persons connected with J. B. Stamping Inc. in Brooklyn gave \$9,100.

Employees of both firms said they received invitations from Vincent Marotta to attend the dinner but insisted no pressure was exerted on them to donate.

"We thought it was a good idea," said Michael L. Bobinchuck, who said Marotta called him about the dinner. "It kind of snowballed and everybody got involved."

An executive of a firm doing business with a Marotta supplier said he was contacted by the sup-

plier and asked for a donation. The executive said he bought tickets.

"To me, it stunk to high hell," he said.

Of the \$638,500 Carter had raised in Ohio by July 24, \$53,450 had come from Marotta, his family employees and associates, election records show.

Marotta and eight family members each gave the maximum \$1,000 to Carter's campaign. Ten North American Systems employees or their relatives each donated \$1,000.

Mr. Coffee employees contributed \$8,675 in February to the campaign of Sen. John H. Glenn, D-O.

Charles A. Floyd, a North Carolina manufacturer's representative for Mr. Coffee, gave \$500 to the Glenn fund. Asked why he was interested in Ohio politics, Floyd said, "I don't want to talk about it."

National finance chairman for Carter, S. Stephen Selig III declined to comment on reports of Marotta's fund-raising activities.

Ohio Democratic Chairman C. Paul Tipps said pressure is necessary in raising money for politicians.

"Every ticket you sell is pressure," Tipps said. "You just don't go down to Public Square and stop people from buying."

82040322398

With houses and Mr. Coffee, 1978

By James Neff
and Joseph D. Rice

"He represents the American ideal and is a perfect example of the American dream come true." — Invitation to the first Outstanding American of the Year award in 1978 honoring Vincent G. Marotta.

The story of Vince Marotta's rapid rise falls easily into clearly defined chapters.

Chapter One: Marotta, the young partner-owner of a small lumberyard, cashes in on the post-World War II housing boom by mass-producing crackerboxes in the cornfields of Brunswick, North Ridgeville and other outlying areas.

It took carpenters about three days to build the simple frame houses, the early ones set on nothing more than a concrete slab. With unpainted walls and unfinished floors, the starter homes sold like crazy for \$5,995.

On one weekend, Marotta and his partner, Samuel L. Glazer, held open house and sold nearly 150 homes. On Monday, they would buy the farm next door, tell their engineers to design another subdivision and wait for the onslaught of young home buyers.

Chapter Two: About 5,000 houses, seven shopping centers (Richmond Mall, for one) and a dozen years later, multi-millionaire Marotta and his partner were slammed by the late-1960s financing crunch. While recuperating from an operation to remove a brain tumor, Marotta wondered what to do next.

Marotta has repeated many times the story of how he became Mr. Coffee:

He just could not get a good cup of coffee at home. So in that great American tradition, the one about the world beating a path to the door of the man who builds a better mousetrap, the self-made millionaire decided to invent the perfect coffee brewer. By 1972, local inventor Ed Abel hit upon the design that became patent number 3,693,535, and Marotta, without borrowing a penny, started manufacturing the home coffee brewers.

By 1979, Marotta and his North American Systems Inc. expanded to plants in Bedford Heights, employing as many as 2,000, and in Los Angeles. The Mr. Coffee brewer had captured more than half of the coffee brewer market, and self-made millionaire Marotta was sitting pretty with half interest in a company with \$150 million a year in sales and earning more than 20% on equity.

Chapter Three: After conquering the worlds of real estate and household appliances, Marotta, apparently seeking a new arena, turned his energies to politics.

As a local figure, Marotta was perhaps little-known to the average person here until he was honored at the first annual Outstanding American Charity Award Dinner in 1978.

VGM license plates, earlier passed up an invitation to join President Carter and a group of Italian Americans in a ceremony declaring Oct. 10 as Columbus Day.

He instead went to Detroit to accept the Italian-American Man of the Year Award.

After Marotta returned, his executive vice president, Vincent J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was not given more prominence.

The reporter defended Marotta's treatment and said nothing more was planned.

"But what am I going to tell Vince?" Menier asked.

The Outstanding American Charity Award dinner, organized by Menier, was attended by a gaggle of celebrities, including former New York Yankee and Mr. Coffee pitcher Joe DiMaggio, ABC newscaster Howard K. Smith, former president Gerald R. Ford and comedian Bob Hope. Hope and Ford, it was reported, were paid to attend the event, which raised \$100,000 for Sister Henrietta and the Our Lady of Fatima Mission Center in Hough.

Thousands of invitations were mailed for the \$100-a-plate prime rib dinner.

In part, they read: "He (Marotta) is indeed a most unique individual who has excelled in fields of sports, education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Last summer, Marotta had his political coming out when he hosted a fund-raising breakfast for Sen. John H. Glenn, D-O.

In late 1979, Marotta, accompanied by former Ohio governor Michael V. DiSalle, met with Stephen Smith, Sen. Edward M. Kennedy's brother-in-law and campaign chairman.

Anxious to offer his services as a fundraiser or a political operative to the presidential candidate, Marotta presented Smith with a two-page resume — bound in thick, brown textured Naugahyde — that listed his accomplishments: 14 "civic, charitable and social affiliations," numerous business experiences and eight "athletic achievements," including his 1942 signing to play professional baseball for the St.

8204032299

ideal

Coffee, Marotta rises to delve in politics

ates, earlier passed up an invitation to accept the Man of the Year Award.

went to Detroit to accept the Man of the Year Award.

ta returned, his executive vice president J. Menier, called a Plain to ask why Marotta's achievement more prominence.

defended Marotta's treatment more was planned.

"I'm going to tell Vince?" Menier

ing American Charity Award by Menier, was attended by a number of celebrities, including former New York Yankees pitcher Joe DiMaggio, former baseball player Howard K. Smith, former President Gerald R. Ford and comedian Chevy Chase. The event, which raised \$100,000 for the Our Lady Center in Hough.

Invitations were mailed for a 7-course rib dinner.

Menier said: "He (Marotta) is indeed an individual who has excelled in education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Marotta had his political debut when he hosted a fund-raising dinner for John H. Glenn, D-O.

Marotta, accompanied by former Ohio Governor Michael V. DiSalle, met with Sen. Edward M. Kennedy's campaign chairman.

For his services as a fund-raiser, Marotta presented Smith with a watch bound in thick, brown leather. The watch face listed his accomplishments, charitable and social affiliations, business experiences and eight awards, including his 1942 National Baseball for the St.

Louis Cardinals, his tryout with the Cleveland Browns, and a college record of 9.7 seconds for the 100-yard dash.

Smith, apparently unimpressed, never called Marotta. Marotta denied this exchange ever took place.

The determined Marotta next approached Carter lieutenants, and by January the manufacturer was hosting a Carter fund-raiser at his sumptuous Shaker Heights home on S. Park Blvd. Attended by Robert Strauss, Carter's campaign chairman, City Council President George L. Forbes, D-20, and business heavyweights here, the event raised about \$130,000.

Marotta's success put him in direct competition with Milton A. Wolf, Carter's main Cleveland fund-raiser since the president's successful 1976 campaign.

Both Marotta, the political newcomer, and Wolf, the more experienced hand, claim to have the most direct Cleveland pipeline to the White House.

In April, Wolf held a Carter fund-raiser at his Shaker Heights home which Rosalynn Carter attended. Wolf did not invite Marotta, who lives a short walk away, and Mr. Coffee reportedly was steaming.

"There's bad blood between the two," said a prominent Cleveland Democrat.

It is said that Carter rewarded Wolf for his early support and for his then ability to raise funds with an ambassadorship to Austria. Political insiders surmise that Marotta would appreciate an ambassadorship, maybe to Italy.

A top Carter official last week said Marotta and two or three other Ohio supporters probably are in line for high-level government posts if the president is re-elected.

But reports of Marotta's heavy-handed fund-raising tactics could damage his chances.

As a prominent Cleveland businessman and Democratic heavyweight explained it: "He (Marotta) is new to the game and doesn't know the rules."

QUESTIONS

TO: North American Systems

- 82040322401
- 1a) Did North American Systems, Inc. or any of its officers, directors, or agents solicit its employees for contributions to a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
 - b) State the date and time of all such solicitations, the name of all officers, directors, or agents of North American Systems, Inc. who conducted the solicitations, and the name of all employees solicited.
 - c) Describe the method(s) of solicitation employed, the amount of time spent on the solicitation(s), and the cost of such solicitation(s).
 - d) Was the solicitation(s) authorized by North American Systems, Inc.?
 - e) State the name of all officers, directors, or agents of North American Systems, Inc. who authorized the solicitation of the employees.
- 2a) Did any officers, directors, or agents of North American Systems, Inc. solicit the employees of North American Systems, Inc. without the authorization of North American Systems, Inc., for contributions to a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
- b) State the name of all officers, directors, or agents who conducted the solicitations.
- 3a) Has North American Systems, Inc., at any time, authorized any of its officers, employees, or agents to conduct solicitations on behalf of any candidate?
- b) If the answer is yes, state the name and position of all individuals so authorized.
- 4a) Did North American Systems, Inc. or any of its officers, directors, or agents loan money to any employee, including an advance of wages or a bonus, in order that the employee could make a contribution to the fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
- b) State the name of all officers, directors, or agents who made the loans.

- c) State the name and address of all employees who were loaned money, and the date and amount of the loan.
- d) State the method by which each loan was made.
- 5) Provide a copy of the most recent Constitution and Bylaws of North American Systems, Inc.
- 6) State the name and official position of all individuals on the Board of Directors of North American Systems, Inc.

82040322402



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Marotta, Vice-President
North American Systems, Inc.
24700 Miles Road
Bedford Heights, Ohio 44146

Re: MUR

Dear Mr. Marotta:

This letter is to notify you that on _____, 1980, the Federal Election Commission determined that there is reason to believe that you violated §§ 441b(a) and 441f of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the 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. Additionally, please submit answers to the enclosed questions. Your response should be submitted within ten days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

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.

In the absence of any information which demonstrates that no further action should be taken against you, 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.

32040322103

Letter to: Thomas Marotta
Page 2

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 have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

32040322404

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO.
STAFF MEMBER(S) & TEL. NO.
M. White/ S. Thomas

RESPONDENT Thomas Marotta

202-523-4060

BACKGROUND

On August 18, 1980, the Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The article alleges a possible violation of 2 U.S.C. § 441b(a) and § 441f by Thomas Marotta.

FACTUAL AND LEGAL ANALYSIS

The Plain Dealer news article states that Vincent G. Marotta, "Mr. Coffee millionaire" and dinner chairman for a Carter fundraiser held on May 29, 1980, "turned to employees, friends and people who [did] business with his North American Systems Inc" in an attempt to sell \$150 tickets to the fundraiser. The article contends that a "two-week Plain Dealer investigation into Marotta's fundraising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws."

The investigation conducted by the The Plain Dealer apparently included "[i]nterviews of dozens of Mr. Coffee employees and business associates" which revealed that "[p]lant foreman were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations," that "[s]ome employees, after saying they could not afford the \$150 were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems,"

82040322405

and that other employees "who asked not to be named contended they felt pressured to buy tickets they could not afford." On the other hand, the article did state that "dozens" of Mr. Coffee employees "said they were under no pressure to buy tickets to the dinner organized by their boss," and quoted one unidentified foreman, who apparently was personally solicited by Thomas Marotta, as saying "He [Thomas Marotta] made it very clear that it had nothing to do with job security, advancement, being hired, fired, or laid off."

The Plain Dealer states that their review of FEC records indicates that employees at North American Systems bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of a report filed by the Carter/Mondale Presidential Committee for the period May 1, 1980, through May 31, 1980, has revealed that at least 36 individuals employed by North American Systems did, in fact, make contributions totalling \$9,850 to the Carter committee on May 27 and 28, 1980. 1/

Under 2 U.S.C. § 441b(a), no corporation may make any contribution or any expenditure in connection with any election to federal office and no officer or director of any corporation may consent to any contribution or expenditure by the corporation in connection with any federal election. Pursuant to section 114.9 of Commission Regulations, stockholders and employees of a corporation may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election and are only required to reimburse the corporation to the extent that the overhead or operating costs of the corporation are increased.

1/ The occupations listed for the 36 contributors employed by North American Systems were reported as follows: 13 managers, seven vice-presidents, two salespersons, one executive assistant, one secretary, one chairman, one wholesaler, one engineer, one supervisor, one accountant, one controller, and one director. No occupations were listed for four persons and one individual's occupation was reported as "Gen."

82040322406

The issue in this matter becomes, therefore, one of whether Thomas Marotta was acting as an individual volunteer or, alternatively, was acting within the scope of his employment or was otherwise authorized by North American Systems, Inc. If the alleged solicitations conducted by Thomas Marotta were not conducted as individual volunteer activity, then his actions could be construed as an impermissible corporate contribution or expenditure on behalf of the Carter campaign by North American Systems, Inc. for the value of the time involved and the services provided. As a corporate officer, Thomas Marotta could commit the corporation to liability if he was carrying out a function incidental to his official position or a course of conduct that the corporation had approved of in the past.

If the activities of Thomas Marotta were within the scope of his employment, then the solicitation would be considered a violation of 2 U.S.C. § 441b(a) by Thomas Marotta. The basis for an apparent violation of § 441b(a) is two-fold: first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel.

The allegation that individuals were loaned money by Thomas Marotta to purchase tickets to the Carter fundraiser also states a violation of the Act in the General Counsel's view. A contribution is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. Under 2 U.S.C. § 441f, no person shall make a contribution in the name of another or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another. Even if Thomas Marotta was not acting in the scope of his employment, a violation would exist.

Therefore, the General Counsel recommends that the Commission find reason to believe that Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f.

Recommendation

1. Find reason to believe that Thomas Marotta violated 2 U.S.C. §§ 441b(a) and 441f.

32040322107

CLEVELAND PLAIN DEALER 8/10/80

Employees report Marotta pressure to give to Carter



Marotta

By Joseph D. Rice
and James Neff

Late this May, Mr. Coffee millionaire Vincent G. Marotta, a political newcomer supporting President Carter, beseeched a Cleveland business friend:

"I'm in trouble," the friend quoted Marotta: "I need your help."

Marotta, who five months earlier started drumming up donations for Carter, was having trouble selling \$150 tickets to a May 29 fund-raising bash at the Cleveland Plaza. Because of his Rose Garden strategy, the beleaguered president was making his sole dinner ap-

pearance of the primaries in Cleveland.

As dinner chairman, Marotta, 56, was worried because ticket sales were lagging and he wanted to make a good impression on the president's men.

Marotta turned to employees, friends and people who do business with his North American Systems Inc.

The dinner netted more than \$200,000 for the Carter campaign. A review of campaign finance records shows more than \$34,000 came through Marotta employees, friends and business associates.

A two-week Plain Dealer inves-
Continued on Page 26-A

Marotta pushed them to give to Carter, workers say

From First Page

Investigation into Marotta's fund-raising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws.

Interviews with dozens of Mr. Coffee employees and business associates disclosed:

Foremen were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations.

A Federal Election Commission (FEC) spokesman said its regulations do not allow corporations to make partisan communications (for example, ask for political donations) from certain types of employees, including foremen.

Some employees, after saying they could not afford the \$150 tickets, were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems.

A FEC spokesman said federal law prohibits a person from making a contribution in the name of another and a loan is defined by law as a contribution.

Suppliers doing business with North American Systems were rarely solicited.

Vincent and Thomas Marotta and their lawyer, Robert J. Rotolari

refused to be interviewed by The Plain Dealer.

Dozens of Mr. Coffee employees, from janitors to executives, said they were under no pressure to buy tickets or donate to the dinner organized by their boss.

"When a good customer needs help, you help him," said the friend Marotta told he was in trouble.

"I shook Carter's hand and got my money's worth," said Joseph Sashovsky, a foreman who bought a ticket.

Frank Kubicki, a North American comptroller, said he was glad he received an invitation in the mail because it showed he was accepted by company hierarchy.

"I would have felt bad if I didn't get invited," said Kubicki, who bought two \$150 tickets and went with his wife.

Herbert J. Fletcher, a quality control supervisor, said he bought tickets more out of respect for Marotta than in support of Carter.

"I did it for Vince," he said. "He's treated me royally since I've been here."

Some employees, who asked not to be named, contended they felt pressured to buy tickets they could not afford.

"I felt there was definitely pressure on me to go to that thing," one said. "I did not want to lose

my job. Have you tried to get a job lately in this recession?"

A foreman explained the situation at the Bedford Heights plant:

"There was talk of laying some foremen off. There's always rumors. So you want to stay in their good graces. I bought a ticket because I thought it was the best thing to do at the time — politically."

Thomas Marotta, according to sources, called the plant's 20 or so foremen into his office individually and made a pitch to buy tickets.

"He made it very clear it had nothing to do with job security, advancement, being hired, fired or laid off," a foreman said.

Workers on coffee breaks grumbled about the tickets, and at least one person circulated the rumor people would be fired if they did not give, sources said.

Many foremen, each fearing he was the only holdout, decided to buy tickets, employees said.

FEC records, which list campaign contributions of \$50 or more, show that employees at North American Systems bought tickets heavily on May 27 and 28, just before the May 29 dinner.

"The shop was extremely tense those two days," said an employee. "The foremen were all tense. There was a lot of pressure. The usual

mirth and laughter wasn't there."

FEC records show that some foremen, who make \$300 to \$400 a week, each have given as much as \$400 to different Marotta-sponsored fund-raisers this year.

Some foremen were even loaned money to purchase tickets to the high-priced dinner, sources said.

Coercion of contributions has been outlawed for 75 years. The Supreme Court and the federal government, in cases involving federal employees and union members, have said that contributions must be "knowing, free-choice donations."

Federal election laws prohibit corporations from asking for political contributions from union members. Most North American Systems employees are line workers who are members of Teamsters Union Local 72.

There is no evidence Marotta or his managers solicited donations from them.

Although 1,200 persons attended the Carter fund-raiser, it was reported about 1,000 bought tickets. Some contributions came in a few days after the event.

Peter L. Gentile, who oversees the 20 or so foremen, bought two \$150 tickets in May. But June 3, he donated \$700 more to the Carter campaign, and his wife, Frances L., gave \$1,000.

"I felt they needed more support," Gentile said. "We gave from our heart," his wife said.

Other Mr. Coffee employees who gave were registered Republicans or independents.

"I don't even like Carter," said one employee. But he donated.

North American Systems, with an estimated \$180 million annual sales, does business with manufacturers, suppliers, shippers, salesmen and representatives in Ohio and nationwide. Persons at these firms bought \$21,050 worth of tickets to the Marotta-chaired fund-raiser at the Cleveland Plaza.

Seven executives of Par. Industries Inc. of Medina and two of their wives gave \$1,000 each, the maximum annual contribution permissible to a candidate. Thirteen persons connected with J. B. Stamping Inc. in Brooklyn gave \$9,100.

Employees of both firms said they received invitations from Vincent Marotta to attend the dinner but insisted no pressure was exerted on them to donate.

"We thought it was a good idea," said Michael L. Bobinchuck, who said Marotta called him about the dinner. "It kind of snowballed and everybody got involved."

An executive of a firm doing business with a Marotta supplier said he was contacted by the em-

plier and asked for a donation. The executive said he bought tickets.

"To me, it stunk to high heaven," he said.

Of the \$630,500 Carter had raised in Ohio by July 24, \$53,450 had come from Marotta, his family, employees and associates, election records show.

Marotta and eight family members each gave the maximum \$1,000 to Carter's campaign. Ten North American Systems employees or their relatives each donated \$1,000.

Mr. Coffee employees contributed \$8,675 in February to the campaign of Sen. John H. Glenn, D-O.

Charles A. Floyd, a Carolina manufacturer's representative for Mr. Coffee, gave \$500 to the Glenn fund. Asked why he was interested in Ohio politics, Floyd said, "I don't want to talk about it."

National signage chairman for Carter, S. Stephen Selig III declined to comment on reports of Marotta's fund-raising activities.

Ohio Democratic Chairman C. Paul Tipps said pressure is necessary in raising money for politicians.

"Every ticket you sell is pressure," Tipps said. "You just don't go down to Public Square and stop people from buying."

Wii houses and Mr. Coffee, Mc

By James Neff
and Joseph D. Rice

"He represents the American ideal and is a perfect example of the American dream come true." — Invitation to the first Outstanding American of the Year award in 1978 honoring Vincent G. Marotta.

The story of Vince Marotta's rapid rise falls easily into clearly defined chapters.

Chapter One: Marotta, the young part-owner of a small lumberyard, cashes in on the post-World War II housing boom by mass-producing crackerboxes in the cornfields of Brunswick, North Ridgeville and other outlying areas.

It took carpenters about three days to build the simple frame houses, the early ones set on nothing more than a concrete slab. With unpainted walls and unfinished floors, the starter homes sold like crazy for \$5,995.

On one weekend, Marotta and his partner, Samuel L. Glazer, held open house and sold nearly 150 homes. On Monday, they would buy the farm next door, tell their engineers to design another subdivision and wait for the onslaught of young home buyers.

Chapter Two: About 5,000 houses, seven shopping centers (Richmond Mall, for one) and a dozen years later, multi-millionaire Marotta and his partner were slammed by the late-1960s financing crunch. While recuperating from an operation to remove a brain tumor, Marotta wondered what to do next.

Marotta has repeated many times the story of how he became Mr. Coffee:

He just could not get a good cup of coffee at home. So in that great American tradition, the one about the world beating a path to the door of the man who builds a better mousetrap, the self-made millionaire decided to invent the perfect coffee brewer. By 1972, local inventor Ed Abel hit upon the design that became patent number 3,693,535, and Marotta, without borrowing a penny, started manufacturing the home coffee brewers.

By 1979, Marotta and his North American Systems Inc. expanded to plants in Bedford Heights, employing as many as 2,000, and in Los Angeles. The Mr. Coffee brewer had captured more than half of the coffee brewer market, and self-made millionaire Marotta was sitting pretty with half interest in a company with \$150 million a year in sales and earning more than 20% on equity.

Chapter Three: After conquering the worlds of real estate and household appliances, Marotta, apparently seeking a new arena, turned his energies to politics.

As a local figure, Marotta was perhaps little-known to the average person here until he was honored at the first annual Outstanding American Charity Award Dinner in 1978.

VGM license plates, earlier passed up an invitation to join President Carter and a group of Italian Americans in a ceremony declaring Oct. 10 as Columbus Day.

He instead went to Detroit to accept the Italian-American Man of the Year Award.

After Marotta returned, his executive vice president, Vincent J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was not given more prominence.

The reporter defended Marotta's treatment and said nothing more was planned.

"But what am I going to tell Vince?" Menier asked.

The Outstanding American Charity Award dinner, organized by Menier, was attended by a gaggle of celebrities, including former New York Yankee and Mr. Coffee pitcher Joe DiMaggio, ABC newscaster Howard K. Smith, former president Gerald R. Ford and comedian Bob Hope. Hope and Ford, it was reported, were paid to attend the event, which raised \$100,000 for Sister Henrietta and the Our Lady of Fatima Mission Center in Hough.

Thousands of invitations were mailed for the \$100-a-plate prime rib dinner.

In part, they read: "He (Marotta) is indeed a most unique individual who has excelled in fields of sports, education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Last summer, Marotta had his political coming out when he hosted a fund-raising breakfast for Sen. John H. Glenn, D-O.

In late 1979, Marotta, accompanied by former Ohio governor Michael V. DiSalle, met with Stephen Smith, Sen. Edward M. Kennedy's brother-in-law and campaign chairman.

Anxious to offer his services as a fundraiser or a political operative to the presidential candidate, Marotta presented Smith with a two-page resume — bound in thick, brown textured Naugahyde — that listed his accomplishments: 14 "civic, charitable and social affiliations," numerous business experiences and eight "athletic achievements," including his 1942 signing to play professional baseball for the St.

82040322410

ideal

Coffee, Marotta rises to delve in politics

...tes, earlier passed up an invita-
...resident Carter and a group of
...ns in a ceremony declaring Oct.
...Day.

...went to Detroit to accept the
...Man of the Year Award.

...ta returned, his executive vice
...at J. Menier, called a Plain
...to ask why Marotta's achieve-
...en more prominence.

...defended Marotta's treatment
...more was planned.

...I going to tell Vince?" Meni-

...ing American Charity Award
...by Menier, was attended by a
...ties, including former New
...Mr. Coffee pitcher Joe Di-
...caster Howard K. Smith, for-
...ward R. Ford and comedian
...and Ford, it was reported,
...and the event, which raised
...Henrietta and the Our Lady
...Center in Hough.

...itations were mailed for
...me rib dinner.

...ead: "He (Marotta) is indeed
...ividual who has excelled in
...ducation, and business. He
...erican ideal and is a perfect
...erican dream come true."

...Marotta had his political
...he hosted a fund-raising
...ohn H. Glenn, D-O.

...Marotta, accompanied by for-
...Michael V. DiSalle, met with
...n. Edward M. Kennedy's
...ampaign chairman.

...or his services as a fund-
...operative to the presiden-
...otta presented Smith with a
...bound in thick, brown tex-
...that listed his accomplish-
...eritable and social affilia-
...ness experiences and eight
...nts," including his 1942
...ssional baseball for the St.

Louis Cardinals, his tryout with the Cleveland Browns, and a college record of 9.7 seconds for the 100-yard dash.

Smith, apparently unimpressed, never called Marotta. Marotta denied this exchange ever took place.

The determined Marotta next approached Carter lieutenants, and by January the manufacturer was hosting a Carter fund-raiser at his sumptuous Shaker Heights home on S. Park Blvd. Attended by Robert Strauss, Carter's campaign chairman, City Council President George L. Forbes, D-20, and business heavyweights here, the event raised about \$130,000.

Marotta's success put him in direct competition with Milton A. Wolf, Carter's main Cleveland fund-raiser since the president's successful 1976 campaign.

Both Marotta, the political newcomer, and Wolf, the more experienced hand, claim to have the most direct Cleveland pipeline to the White House.

In April, Wolf held a Carter fund-raiser at his Shaker Heights home which Rosalynn Carter attended. Wolf did not invite Marotta, who lives a short walk away, and Mr. Coffee reportedly was steaming.

"There's bad blood between the two," said a prominent Cleveland Democrat.

It is said that Carter rewarded Wolf for his early support and for his then ability to raise funds with an ambassadorship to Austria. Political insiders surmise that Marotta would appreciate an ambassadorship, maybe to Italy.

A top Carter official last week said Marotta and two or three other Ohio supporters probably are in line for high-level government posts if the president is re-elected.

But reports of Marotta's heavy-handed fund-raising tactics could damage his chances.

As a prominent Cleveland businessman and Democratic heavyweight explained it: "He (Marotta) is new to the game and doesn't know the rules."

QUESTIONS

TO: Thomas Marotta

- 1a) What role, if any, did you play in a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
- b) State whether or not you solicited contributions to the fundraiser.
- 2a) If the answer to question 1(b) is yes, state whether or not the solicitation included the employees of North American Systems, Inc.
- b) If the solicitation included the employees of North American Systems, Inc., describe the method(s) of solicitation employed, the number of employees solicited, the names of employees solicited, and the amount of time spent on the solicitation(s).
- c) State whether or not you solicited contributions from any individual, including employees of North American Systems, Inc., during the normal business hours, and on the premises, of North American Systems, Inc.
- d) If the answer to question 2(c) is yes, state the amount of time that was spent conducting the solicitation(s).
- 3a) If the employees of North American Systems, Inc. were solicited for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee, by either North American Systems or its officers or directors, did you authorize the solicitation as an officer or director?
- b) Were you authorized by North American Systems, Inc. to solicit the employees of North American Systems, Inc. for contributions to the May 29, 1980, fundraiser? If the answer is yes, describe the manner in which you were authorized.
- 4) State whether or not, at any time, you were authorized by North American Systems, Inc. to solicit contributions from the employees of North American Systems, Inc. for any candidate. If the answer is yes, state the number of times you conducted a solicitation(s) and the manner in which you were authorized to conduct the solicitation(s).

82040322412

TO: Thomas Marotta

- 2 -

- 5a) State whether or not, at any time, you solicited contributions from the employees of North American Systems, Inc. without the authorization of North American Systems, Inc. If the answer is yes, state the number of times you conducted a solicitation.
- b) State whether each solicitation was conducted with the knowledge of the officers, directors, or agents of North American Systems, Inc.
- 6a) State whether or not you loaned money to any individual, including employees of North American Systems, Inc. in order that they may purchase tickets to the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.
- b) If the answer is yes, list all individuals by name, address, employer, and the amount and date of the loan.
- 7a) State whether or not you gave money to any individual including employees of North American Systems, Inc., in order that they may purchase tickets to the May 29, 1980, fundraiser to benefit the Carter/Mondale Presidential Committee.
- b) If the answer is yes, list all individuals by name, address, employer, amount of money, and the date of the transaction.

82040322413



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Vincent Marotta, President
North American Systems, Inc.
24700 Miles Road
Bedford Heights, Ohio 44146

Re: MUR

Dear Mr. Marotta:

This letter is to notify you that on _____, 1980, the Federal Election Commission determined that there is reason to believe that you violated § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the 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. Additionally, please submit answers to the enclosed questions. Your response should be submitted within ten days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

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.

In the absence of any information which demonstrates that no further action should be taken against you, 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.

82040322414

Letter to: Vincent Marotta
Page 2

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 have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

82040322415

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO.
STAFF MEMBER(S) & TEL. NO.
M. White/ S. Thomas

RESPONDENT Vincent Marotta

202-523-4060

BACKGROUND

On August 18, 1980, the Commission received information concerning a news article which appeared in The Plain Dealer on August 10, 1980. The article alleges a possible violation of 2 U.S.C. § 441b(a) by Vincent Marotta.

FACTUAL AND LEGAL ANALYSIS

The Plain Dealer news article states that Vincent G. Marotta, "Mr. Coffee millionaire" and dinner chairman for a Carter fundraiser held on May 29, 1980, "turned to employees, friends and people who [did] business with his North American Systems Inc" in an attempt to sell \$150 tickets to the fundraiser. The article contends that a "two-week Plain Dealer investigation into Marotta's fundraising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws."

The investigation conducted by the The Plain Dealer apparently included "[i]nterviews of dozens of Mr. Coffee employees and business associates" which revealed that "[p]lant foreman were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations," that "[s]ome employees, after saying they could not afford the \$150 were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems,"

82040322416

and that other employees "who asked not to be named contended they felt pressured to buy tickets they could not afford." On the other hand, the article did state that "dozens" of Mr. Coffee employees "said they were under no pressure to buy tickets to the dinner organized by their boss," and quoted one unidentified foreman, who apparently was personally solicited by Thomas Marotta, as saying "He [Thomas Marotta] made it very clear that it had nothing to do with job security, advancement, being hired, fired, or laid off."

The Plain Dealer states that their review of FEC records indicates that employees at North American Systems bought tickets "heavily on May 27 and 28, just before the May 29 dinner." A review of a report filed by the Carter/Mondale Presidential Committee for the period May 1, 1980, through May 31, 1980, has revealed that at least 36 individuals employed by North American Systems did, in fact, make contributions totalling \$9,850 to the Carter committee on May 27 and 28, 1980. 1/

Under 2 U.S.C. § 441b(a), no corporation may make any contribution or any expenditure in connection with any election to federal office and no officer or director of any corporation may consent to any contribution or expenditure by the corporation in connection with any federal election. Pursuant to section 114.9 of Commission Regulations, stockholders and employees of a corporation may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election and are only required to reimburse the corporation to the extent that the overhead or operating costs of the corporation are increased.

1/ The occupations listed for the 36 contributors employed by North American Systems were reported as follows: 13 managers, seven vice-presidents, two salespersons, one executive assistant, one secretary, one chairman, one wholesaler, one engineer, one supervisor, one accountant, one controller, and one director. No occupations were listed for four persons and one individual's occupation was reported as "Gen."

82040322417

The issue in this matter becomes, therefore, one of whether Vincent Marotta was acting as an individual volunteer or, alternatively, was acting within the scope of his employment or was otherwise authorized by North American Systems, Inc. If the alleged solicitations conducted by Vincent Marotta were not conducted as individual volunteer activity, then his actions could be construed as an impermissible corporate contribution or expenditure on behalf of the Carter campaign by North American Systems, Inc. for the value of the time involved and the services provided. As a corporate officer, Vincent Marotta could commit the corporation to liability if he was carrying out a function incidental to his official position or a course of conduct that the corporation had approved of in the past.

If the activities of Vincent Marotta were within the scope of his employment, then the solicitation would be considered a violation of 2 U.S.C. § 441b(a) by Vincent Marotta. The basis for an apparent violation of § 441b(a) is two-fold: first, the solicitation constitutes an in-kind contribution to the Carter campaign by North American Systems, Inc.; second, North American Systems, Inc. would have made partisan communications to its employees other than its stockholders and executive or administrative personnel.

Therefore, the General Counsel recommends that the Commission find reason to believe that Vincent Marotta violated 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe that Vincent Marotta violated 2 U.S.C. § 441b(a).

82040322418

CLEVELAND PLAIN DEALER 8/10/80

Employees report Marotta pressure to give to Carter



Marotta

By Joseph D. Rice
and James Neff

Late this May, Mr. Coffee millionaire Vincent G. Marotta, a political newcomer supporting President Carter, beseeched a Cleveland business friend:

"I'm in trouble," the friend quoted Marotta. "I need your help."

Marotta, who five months earlier started drumming up donations for Carter, was having trouble selling \$150 tickets to a May 29 fund-raising bash at the Cleveland Plaza. Because of his Rose Garden strategy, the beleaguered president was making his sole dinner ap-

pearance of the primaries in Cleveland.

As dinner chairman, Marotta, 56, was worried because ticket sales were lagging and he wanted to make a good impression on the president's men.

Marotta turned to employees, friends and people who do business with his North American Systems Inc.

The dinner netted more than \$200,000 for the Carter campaign. A review of campaign finance records shows more than \$34,000 came through Marotta employees, friends and business associates.

A two-week Plain Dealer inves-
Continued on Page 26-A

Marotta pushed them to give to Carter, workers say

★ From First Page

litigation into Marotta's fund-raising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws.

Interviews with dozens of Mr. Coffee employees and business associates disclosed:

Foremen were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations.

A Federal Elections Commission (FEC) spokesman said its regulations do not allow corporations to make partisan communications (for example, ask for political donations) from certain types of employees, including foremen.

Some employees, after saying they could not afford the \$150 tickets, were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems.

A FEC spokesman said federal law prohibits a person from making a contribution in the name of another and a loan is defined by law as a contribution.

Suppliers doing business with North American Systems were cavily solicited.

Vincent and Thomas Marotta and their lawyer, Robert J. Rotatori

refused to be interviewed by The Plain Dealer.

Dozens of Mr. Coffee employees, from janitors to executives, said they were under no pressure to buy tickets or donate to the dinner organized by their boss.

"When a good customer needs help, you help him," said the friend Marotta told he was in trouble.

"I shook Carter's hand and got my money's worth," said Joseph Szakovsky, a foreman who bought a ticket.

Frank Kubicki, a North American comptroller, said he was glad he received an invitation in the mail because it showed he was accepted by company hierarchy.

"I would have felt bad if I didn't get invited," said Kubicki, who bought two \$150 tickets and went with his wife.

Herbert J. Fletcher, a quality control supervisor, said he bought tickets more out of respect for Marotta than in support of Carter.

"I did it for Vince," he said. "He's treated me royally since I've been here."

Some employees, who asked not to be named, contended they felt pressured to buy tickets they could not afford.

"I felt there was definitely pressure on me to go to that thing," one said. "I did not want to lose

my job. Have you tried to get a job lately in this recession?"

A foreman explained the situation at the Bedford Heights plant:

"There was talk of laying some foremen off. There's always rumors. So you want to stay in their good graces. I bought a ticket because I thought it was the best thing to do at the time — politically."

Thomas Marotta, according to sources, called the plant's 20 or so foremen into his office individually and made a pitch to buy tickets.

"He made it very clear it had nothing to do with job security, advancement, being hired, fired or laid off," a foreman said.

Workers on coffee breaks grumbled about the tickets, and at least one person circulated the rumor people would be fired if they did not give, sources said.

Many foremen, each fearing he was the only holdout, decided to buy tickets, employees said.

FEC records, which list campaign contributions of \$50 or more, show that employees at North American Systems bought tickets heavily on May 27 and 28, just before the May 29 dinner.

"The shop was extremely tense (those two days)," said an employee. "The foremen were all tense. There was a lot of pressure. The usual

birth and laughter wasn't there."

FEC records show that some foremen, who make \$300 to \$400 a week, each have given as much as \$400 to different Marotta-sponsored fund-raisers this year.

Some foremen were even loaned money to purchase tickets to the high-priced dinner, sources said.

Coercion of contributions has been outlawed for 75 years. The Supreme Court and the federal government, in cases involving federal employees and union members, have said that contributions must be "knowing, free-choice donations."

Federal election laws prohibit corporations from asking for political contributions from union members. Most North American Systems employees are line workers who are members of Teamsters Union Local 73.

There is no evidence Marotta or his managers solicited donations from them.

Although 1,200 persons attended the Carter fund-raiser, it was reported about 1,000 bought tickets. Some contributions came in a few days after the event.

Peter L. Gentile, who oversees the 20 or so foremen, bought two \$150 tickets in May. But June 2, he donated \$700 more to the Carter campaign, and his wife, Frances L., gave \$1,000.

"I felt they needed more support," Gentile said. "We gave from our heart," his wife said.

Other Mr. Coffee employees who gave were registered Republicans or independents.

"I don't even like Carter," said one employee. But he donated.

North American Systems, with an estimated \$150 million annual sales, does business with manufacturers, suppliers, shippers, salesmen and representatives in Ohio and nationwide. Persons at these firms bought \$21,950 worth of tickets to the Marotta-chaired fund-raiser at the Cleveland Plaza.

Seven executives of Par Industries Inc. of Medina and two of their wives gave \$1,000 each, the maximum annual contribution permissible to a candidate. Thirteen persons connected with J. E. Stamping Inc. in Brooklyn gave \$9,100.

Employees of both firms said they received invitations from Vincent Marotta to attend the dinner but insisted no pressure was exerted on them to donate.

"We thought it was a good idea," said Michael L. Bobinbuck, who said Marotta called him about the dinner. "It kind of snowballed and everybody got involved."

An executive of a firm doing business with a Marotta supplier said he was recruited by the son

and asked for a donation. The executive said he bought tickets.

"To me, it stunk to high hell," he said.

Of the \$630,500 Carter had raised in Ohio by July 26, \$53,450 he came from Marotta, his family, employees and associates, election records show.

Marotta and eight family members each gave the maximum, \$1,000 to Carter's campaign. Ten North American Systems employees or their relatives each donated \$1,000.

Mr. Coffee employees contributed \$9,575 in February to the campaign of Sen. John E. Glenn, D-O.

Charles A. Floyd, a "retiree" Caroline manufacturer's representative for Mr. Coffee, gave \$300 to the Glenn fund. Asked why he was interested in Ohio politics, Floyd said, "I don't want to talk about it."

National Finance chairman J. Carter, S. Stephen King III declines to comment on reports of Marotta's fund-raising activities.

Ohio Democratic Chairman C. Paul Tapp said pressure is necessary in raising money for politicians.

"Every time you call to give money," Tapp said, "the guy says go down to Public Square and buy some more money."

With houses and Mr. Coffee, Ma

By James Neff
and Joseph D. Rice

"He represents the American ideal and is a perfect example of the American dream come true." — Invitation to the first Outstanding American of the Year award in 1978 honoring Vincent G. Marotta.

The story of Vince Marotta's rapid rise falls easily into clearly defined chapters.

Chapter One: Marotta, the young part-owner of a small lumberyard, cashes in on the post-World War II housing boom by mass-producing crackerboxes in the cornfields of Brunswick, North Ridgeville and other outlying areas.

It took carpenters about three days to build the simple frame houses, the early ones set on nothing more than a concrete slab. With unpainted walls and unfinished floors, the starter homes sold like crazy for \$8,995.

On one weekend, Marotta and his partner, Samuel L. Glazer, held open house and sold nearly 150 homes. On Monday, they would buy the farm next door, tell their engineers to design another subdivision and wait for the onslaught of young home buyers.

Chapter Two: About 8,000 houses, seven shopping centers (Richmond Mall, for one) and a dozen years later, multi-millionaire Marotta and his partner were slammed by the late-1960s financing crunch. While recuperating from an operation to remove a brain tumor, Marotta wondered what to do next.

Marotta has repeated many times the story of how he became Mr. Coffee:

He just could not get a good cup of coffee at home. So in that great American tradition, the one about the world beating a path to the door of the man who builds a better mousetrap, the self-made millionaire decided to invent the perfect coffee brewer. By 1972, local inventor Ed Abel hit upon the design that became patent number 3,693,535, and Marotta, without borrowing a penny, started manufacturing the home coffee brewers.

By 1979, Marotta and his North American Systems Inc. expanded to plants in Bedford Heights, employing as many as 2,000, and in Los Angeles. The Mr. Coffee brewer had captured more than half of the coffee brewer market, and self-made millionaire Marotta was sitting pretty with half interest in a company with \$150 million a year in sales and earning more than 20% on equity.

Chapter Three: After conquering the worlds of real estate and household appliances, Marotta, apparently seeking a new arena, turned his energies to politics.

As a local figure, Marotta was perhaps little-known to the average person here until he was honored at the first annual Outstanding American Charity Award Dinner in 1978.

VGM license plates, earlier passed up an invitation to join President Carter and a group of Italian Americans in a ceremony declaring Oct. 10 as Columbus Day.

He instead went to Detroit to accept the Italian-American Man of the Year Award.

After Marotta returned, his executive vice president, Vincent J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was not given more prominence.

The reporter defended Marotta's treatment and said nothing more was planned.

"But what am I going to tell Vince?" Menier asked.

The Outstanding American Charity Award dinner, organized by Menier, was attended by a gaggle of celebrities, including former New York Yankee and Mr. Coffee pitchman Joe DiMaggio, ABC newscaster Howard K. Smith, former president Gerald R. Ford and comedian Bob Hope. Hope and Ford, it was reported, were paid to attend the event, which raised \$100,000 for Sister Henrietta and the Our Lady of Fatima Mission Center in Hough.

Thousands of invitations were mailed for the \$100-a-plate prime rib dinner.

In part, they read: "He (Marotta) is indeed a most unique individual who has excelled in fields of sports, education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Last summer, Marotta had his political coming out when he hosted a fund-raising breakfast for Sen. John H. Glenn, D-O.

In late 1979, Marotta, accompanied by former Ohio governor Michael V. DiSalle, met with Stephen Smith, Sen. Edward M. Kennedy's brother-in-law and campaign chairman.

Anxious to offer his services as a fund-raiser or a political operative to the presidential candidate, Marotta presented Smith with a two-page resume — bound in thick, brown textured Naugahyde — that listed his accomplishments: 14 "civic, charitable and social affiliations," numerous business experiences and eight "athletic achievements," including his 1942 signing to play professional baseball for the St.

32040322421

ideal

Coffee, Marotta rises to delve in politics

ates, earlier passed up an invitation from President Carter and a group of friends in a ceremony declaring Oct. 10 as Coffee Day.

Marotta went to Detroit to accept the title of Man of the Year Award.

Marotta returned, his executive vice president J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement warranted more prominence.

Menier defended Marotta's treatment and said more was planned.

"I'm going to tell Vince?" Menier said.

The American Charity Award ceremony, hosted by Menier, was attended by a number of celebrities, including former New York Yankees pitcher Joe DiMaggio, former baseball star Howard K. Smith, former President R. Ford and comedian Chevy Chase. And Ford, it was reported, attended the event, which raised \$100,000 for the Our Lady Center in Hough.

Invitations were mailed for a time rib dinner.

Menier said: "He (Marotta) is indeed a special individual who has excelled in education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Marotta had his political debut when he hosted a fund-raising dinner for John H. Glenn, D-O.

Marotta, accompanied by former Governor Michael V. DiSalle, met with Sen. Edward M. Kennedy's campaign chairman.

For his services as a fund-raiser, Marotta presented Smith with a certificate bound in thick, brown textured leather that listed his accomplishments, charitable and social affiliations, business experiences and eight awards, including his 1942 National Baseball for the St.

Louis Cardinals, his tryout with the Cleveland Browns, and a college record of 9.7 seconds for the 100-yard dash.

Smith, apparently unimpressed, never called Marotta. Marotta denied this exchange ever took place.

The determined Marotta next approached Carter lieutenants, and by January the manufacturer was hosting a Carter fund-raiser at his sumptuous Shaker Heights home on S. Park Blvd. Attended by Robert Strauss, Carter's campaign chairman, City Council President George L. Forbes, D-20, and business heavyweights here, the event raised about \$130,000.

Marotta's success put him in direct competition with Milton A. Wolf, Carter's main Cleveland fund-raiser since the president's successful 1976 campaign.

Both Marotta, the political newcomer, and Wolf, the more experienced hand, claim to have the most direct Cleveland pipeline to the White House.

In April, Wolf held a Carter fund-raiser at his Shaker Heights home which Rosalynn Carter attended. Wolf did not invite Marotta, who lives a short walk away, and Mr. Coffee reportedly was steaming.

"There's bad blood between the two," said a prominent Cleveland Democrat.

It is said that Carter rewarded Wolf for his early support and for his then ability to raise funds with an ambassadorship to Austria. Political insiders surmise that Marotta would appreciate an ambassadorship, maybe to Italy.

A top Carter official last week said Marotta and two or three other Ohio supporters probably are in line for high-level government posts if the president is re-elected.

But reports of Marotta's heavy-handed fund-raising tactics could damage his chances.

As a prominent Cleveland businessman and Democratic heavyweight explained it: "He (Marotta) is new to the game and doesn't know the rules."

QUESTIONS

TO: Vincent Marotta

- 1a) What role, if any, did you play in a fundraiser held on May 29, 1980, to benefit the Carter/Mondale Presidential Committee?
- b) State whether or not you solicited contributions to the fundraiser.
- 2a) If the answer to question 1(b) is yes, state whether or not the solicitation included the employees of North American Systems, Inc.
- b) If the solicitation included the employees of North American Systems, Inc., describe the method(s) of solicitation employed, the number of employees solicited, the names of employees solicited, and the amount of time spent on the solicitation(s).
- c) State whether or not you solicited contributions from any individual, including employees of North American Systems Inc., during the normal business hours, and on the premises, of North American Systems, Inc.
- d) If the answer to question 2(c) is yes, state the amount of time that was spent conducting the solicitation(s).
- 3a) If the employees of North American Systems, Inc. were solicited for contributions to the May 29, 1980, fundraiser held to benefit the Carter/Mondale Presidential Committee, by either North American Systems, Inc. or its officer or directors, did you authorize the solicitation as an officer or director?
- b) Were you authorized by North American Systems, Inc. to solicit the employees of North American Systems, Inc. for contributions to the May 29, 1980, fundraiser? If the answer is yes, describe the manner in which you were authorized.
- 4) State whether or not, at any time, you were authorized by North American Systems, Inc. to solicit contributions from the employees of North American Systems, Inc. for any candidate. If the answer is yes, state the number of times you conducted a solicitation(s) and the manner in which you were authorized to conduct the solicitation(s).

82040322423

- 5a) State whether or not, at any time, you solicited contributions from the employees of North American Systems, Inc. without the authorization of North American Systems, Inc. If the answer is yes, state the number of times you conducted a solicitation.
- b) State whether or not each solicitation was conducted with the knowledge of the officers, directors, or agents of North American Systems, Inc.

82040322424



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Williams J. Edwards
United States Attorney
Northern District of Ohio
U.S. Department of Justice
U.S. Courthouse
Cleveland, Ohio 44114

Re: MUR

Dear Mr. Edwards:

This is to acknowledge receipt of your letter of August 18, 1980, advising us of the possibility of a violation of the Federal Election Campaign Act of 1971, as amended, by Vincent Marotta, Thomas Marotta, and North American Systems, Inc. We are currently reviewing the matter and will advise you of the Commission's determination.

If you have any questions or additional information, please call Maura White, the staff member assigned to this matter, at (202) 523-4060. Our file number for this matter is MUR .

Pursuant to 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), the Commission's review of this matter shall remain confidential.

Sincerely,

Charles N. Steele
General Counsel

82040322425

August 19, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: DOJ Referral

Please have the attached referral distributed to the
Commission for their information. Thank you.

82040322426



U.S. Department of Justice

RECEIVED

909721
80 AUG 18 P12: 27

United States Attorney
Northern District of Ohio

ecce#
5360

U.S. Courthouse
Cleveland, Ohio 44114

August 13, 1980

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

Re: Allegations of Illegal Campaign Contributions

Dear Sirs:

Please find enclosed a copy of an article which appeared in the Cleveland Plain Dealer on Sunday, August 10, 1980, in which allegations are made of possible violations of Federal election laws regarding the solicitation of campaign contributions by Mr. Vincent G. Marotta, president of North American Systems, Inc. based in Cleveland.

After consulting with the Public Integrity Section of the Department of Justice, I am referring this article to you for any action which you deem necessary.

Thank you for your cooperation in this matter.

Sincerely,

WILLIAM J. EDWARDS
First Assistant U. S. Attorney

Enclosure

cc: Mr. Craig Donsanto
Department of Justice
P.O. Box 50168, F Street Station
Washington, D. C. 20004

10 AUG 18 11: 26

7330 00 7100000

82040322427

CLEVELAND PLAIN DEALER 8/10/80

Employees report Marotta pressure to give to Carter



Marotta

By Joseph D. Rice
and James Neff

Late this May, Mr. Coffee millionaire Vincent G. Marotta, a political newcomer supporting President Carter, beseeched a Cleveland business friend:

"I'm in trouble," the friend quoted Marotta. "I need your help."

Marotta, who five months earlier started drumming up donations for Carter, was having trouble selling \$150 tickets to a May 29 fund-raising bash at the Cleveland Plaza. Because of his Rose Garden strategy, the beleaguered president was making his sole dinner ap-

pearance of the primaries in Cleveland.

As dinner chairman, Marotta, 54, was worried because ticket sales were lagging and he wanted to make a good impression on the president's men.

Marotta turned to employees, friends and people who do business with his North American Systems Inc.

The dinner netted more than \$200,000 for the Carter campaign. A review of campaign finance records shows more than \$34,000 came through Marotta employees, friends and business associates.

A two-week Plain Dealer investigation
Continued on Page 26-A

Marotta pushed them to give to Carter, workers say

★ From First Page

Investigation into Marotta's fund-raising activities has discovered reports of employees being pressured into buying tickets and possible violations of federal election laws.

Interviews with dozens of Mr. Coffee employees and business associates disclosed:

• Plant foremen were called individually into the office of Thomas V. Marotta, Vincent's brother, and asked to make donations.

A Federal Elections Commission (FEC) spokesman said its regulations do not allow corporations to make partisan communications (for example, ask for political donations) from certain types of employees, including foremen.

• Some employees, after saying they could not afford the \$150 tickets, were loaned money to purchase tickets by Thomas Marotta, vice president of North American Systems.

A FEC spokesman said federal law prohibits a person from making a contribution in the name of another and a loan is defined by law as a contribution.

• Suppliers doing business with North American Systems were heavily solicited.

Vincent and Thomas Marotta and their lawyer, Robert J. Rotatori

refused to be interviewed by The Plain Dealer.

Dozens of Mr. Coffee employees, from janitors to executives, said they were under no pressure to buy tickets or donate to the dinner organized by their boss.

"When a good customer needs help, you help him," said the friend Marotta told he was in trouble.

"I shook Carter's hand and got my money's worth," said Joseph Snakovsky, a foreman who bought a ticket.

Frank Kubicki, a North American comptroller, said he was glad he received an invitation in the mail because it showed he was accepted by company hierarchy.

"I would have felt bad if I didn't get invited," said Kubicki, who bought two \$150 tickets and went with his wife.

Herbert J. Fletcher, a quality control supervisor, said he bought tickets more out of respect for Marotta than in support of Carter.

"I did it for Vince," he said. "He's treated me royally since I've been here."

Some employees, who asked not to be named, contended they felt pressured to buy tickets they could not afford.

"I felt there was definitely pressure on me to go to that thing," one said. "I did not want to lose

my job. Have you tried to get a job lately in this recession?"

A foreman explained the situation at the Bedford Heights plant:

"There was talk of laying some foremen off. There's always rumors. So you want to stay in their good graces. I bought a ticket because I thought it was the best thing to do at the time — politically."

Thomas Marotta, according to sources, called the plant's 20 or so foremen into his office individually and made a pitch to buy tickets.

"He made it very clear it had nothing to do with job security, advancement, being hired, fired or laid off," a foreman said.

Workers on coffee breaks grumbled about the tickets, and at least one person circulated the rumor people would be fired if they did not give, sources said.

Many foremen, each fearing he was the only holdout, decided to buy tickets, employees said.

FEC records, which list campaign contributions of \$50 or more, show that employees at North American Systems bought tickets heavily on May 27 and 28, just before the May 29 dinner.

"The shop was extremely tense those two days," said an employee. "The foremen were all tense. There was a lot of pressure. The usual

snirth and laughter wasn't there."

FEC records show that some foremen, who make \$300 to \$400 a week, each have given as much as \$400 to different Marotta-sponsored fund-raisers this year.

Some foremen were even loaned money to purchase tickets to the high-priced dinner, sources said.

Coercion of contributions has been outlawed for 75 years. The Supreme Court and the federal government, in cases involving federal employees and union members, have said that contributions must be "knowing, free-choice donations."

Federal election laws prohibit corporations from asking for political contributions from union members. Most North American Systems employees are line workers who are members of Teamsters Union Local 73.

There is no evidence Marotta or his managers solicited donations from them.

Although 1,200 persons attended the Carter fund-raiser, it was reported about 1,000 bought tickets. Some contributions came in a few days after the event.

Peter L. Gentile, who oversees the 20 or so foremen, bought two \$150 tickets in May. But June 3, he donated \$700 more to the Carter campaign, and his wife, Frances L., gave \$1,000.

"I felt they needed more support," Gentile said. "We gave from our heart," his wife said.

Other Mr. Coffee employees who gave were registered Republicans or independents.

"I don't even like Carter," said one employee. But he donated.

North American Systems, with an estimated \$150 million annual sales, does business with manufacturers, suppliers, shippers, salesmen and representatives in Ohio and nationwide. Persons at these firms bought \$21,950 worth of tickets to the Marotta-chaired fund-raiser at the Cleveland Plaza.

Seven executives of Par Industries Inc. of Medina and two of their wives gave \$1,000 each, the maximum annual contribution permissible to a candidate. Thirteen persons connected with J. B. Stamping Inc. in Brooklyn gave \$9,100.

Employees of both firms said they received invitations from Vincent Marotta to attend the dinner but insisted no pressure was exerted on them to donate.

"We thought it was a good idea," said Michael L. Bobinchuck, who said Marotta called him about the dinner. "It kind of snowballed and everybody got involved."

An executive of a firm doing business with a Marotta supplier said he was contacted by the sup-

plier and asked for a donation. The executive said he bought tickets.

"To me, it stunk to high heaven," he said.

Of the \$638,500 Carter had raised in Ohio by July 24, \$53,450 had come from Marotta, his family employees and associates, election records show.

Marotta and eight family members each gave the maximum \$1,000 to Carter's campaign. Ten North American Systems employees or their relatives each donated \$1,000.

Mr. Coffee employees contributed \$8,675 in February to the campaign of Sen. John H. Glenn, D-O.

Charles A. Floyd, a North Carolina manufacturer's representative for Mr. Coffee, gave \$500 to the Glenn fund. Asked why he was interested in Ohio politics, Floyd said, "I don't want to talk about it."

National finance chairman for Carter, S. Stephen Selig III declined to comment on reports of Marotta's fund-raising activities.

Ohio Democratic Chairman C. Paul Tipps said pressure is necessary in raising money for politicians.

"Every ticket you sell is pressure," Tipps said. "You just don't go down to Public Square and stop people going by."

American ideal With houses and Mr. Coffee, M

By James Neff
and Joseph D. Rice

"He represents the American ideal and is a perfect example of the American dream come true." — Invitation to the first Outstanding American of the Year award in 1978 honoring Vincent G. Marotta.

The story of Vince Marotta's rapid rise falls easily into clearly defined chapters.

Chapter One: Marotta, the young part-owner of a small lumberyard, cashes in on the post-World War II housing boom by mass-producing crackerboxes in the cornfields of Brunswick, North Ridgeville and other outlying areas.

It took carpenters about three days to build the simple frame houses, the early ones set on nothing more than a concrete slab. With unpainted walls and unfinished floors, the starter homes sold like crazy for \$5,995.

On one weekend, Marotta and his partner, Samuel L. Glazer, held open house and sold nearly 150 homes. On Monday, they would buy the farm next door, tell their engineers to design another subdivision and wait for the onslaught of young home buyers.

Chapter Two: About 5,000 houses, seven shopping centers (Richmond Mall, for one) and a dozen years later, multi-millionaire Marotta and his partner were slammed by the late-1960s financing crunch. While recuperating from an operation to remove a brain tumor, Marotta wondered what to do next.

Marotta has repeated many times the story of how he became Mr. Coffee:

He just could not get a good cup of coffee at home. So in that great American tradition, the one about the world beating a path to the door of the man who builds a better mousetrap, the self-made millionaire decided to invent the perfect coffee brewer. By 1972, local inventor Ed Abel hit upon the design that became patent number 3,693,535, and Marotta, without borrowing a penny, started manufacturing the home coffee brewers.

By 1979, Marotta and his North American Systems Inc. expanded to plants in Bedford Heights, employing as many as 2,000, and in Los Angeles. The Mr. Coffee brewer had captured more than half of the coffee brewer market, and self-made millionaire Marotta was sitting pretty with half interest in a company with \$150 million a year in sales and earning more than 20% on equity.

Chapter Three: After conquering the worlds of real estate and household appliances, Marotta, apparently seeking a new arena, turned his energies to politics.

As a local figure, Marotta was perhaps little-known to the average person here until he was honored at the first annual Outstanding American Charity Award Dinner in 1978.

Marotta, who drives a Rolls-Royce with

VGM license plates, earlier passed up an invitation to join President Carter and a group of Italian Americans in a ceremony declaring Oct. 10 as Columbus Day.

He instead went to Detroit to accept the Italian-American Man of the Year Award.

After Marotta returned, his executive vice president, Vincent J. Menier, called a Plain Dealer reporter to ask why Marotta's achievement was not given more prominence.

The reporter defended Marotta's treatment and said nothing more was planned.

"But what am I going to tell Vince?" Menier asked.

The Outstanding American Charity Award dinner, organized by Menier, was attended by a gaggle of celebrities, including former New York Yankee and Mr. Coffee pitchman Joe DiMaggio, ABC newscaster Howard K. Smith, former president Gerald R. Ford and comedian Bob Hope. Hope and Ford, it was reported, were paid to attend the event, which raised \$100,000 for Sister Henrietta and the Our Lady of Fatima Mission Center in Hough.

Thousands of invitations were mailed for the \$100-a-plate prime rib dinner.

In part, they read: "He (Marotta) is indeed a most unique individual who has excelled in fields of sports, education, and business. He represents the American ideal and is a perfect example of the American dream come true."

Last summer, Marotta had his political coming out when he hosted a fund-raising breakfast for Sen. John H. Glenn, D-O.

In late 1979, Marotta, accompanied by former Ohio governor Michael V. DiSalle, met with Stephen Smith, Sen. Edward M. Kennedy's brother-in-law and campaign chairman.

Anxious to offer his services as a fundraiser or a political operative to the presidential candidate, Marotta presented Smith with a two-page resume — bound in thick, brown textured Naugahyde — that listed his accomplishments: 14 "civic, charitable and social activities," numerous business experiences and eight "athletic achievements," including his 1949 signing to play professional baseball for the St.

Marotta rises to delve in politics

Louis Cardinals, his tryout with the Cleveland Browns, and a college record of 9.7 seconds for the 100-yard dash.

Smith, apparently unimpressed, never called Marotta. Marotta denied this exchange ever took place.

The determined Marotta next approached Carter lieutenants, and by January the manufacturer was hosting a Carter fund-raiser at his sumptuous Shaker Heights home on S. Park Blvd. Attended by Robert Strauss, Carter's campaign chairman, City Council President George L. Forbes, D-29, and business heavyweights here, the event raised about \$130,000.

Marotta's success put him in direct competition with Milton A. Wolf, Carter's main Cleveland fund-raiser since the president's successful 1976 campaign.

Both Marotta, the political newcomer, and Wolf, the more experienced hand, claim to have the most direct Cleveland pipeline to the White House.

In April, Wolf held a Carter fund-raiser at his Shaker Heights home which Rosalynn Carter attended. Wolf did not invite Marotta, who lives a short walk away, and Mr. Coffee reportedly was steaming.

"There's bad blood between the two," said a prominent Cleveland Democrat.

It is said that Carter rewarded Wolf for his early support and for his then ability to raise funds with an ambassadorship to Austria. Political insiders surmise that Marotta would appreciate an ambassadorship, maybe to Italy.

A top Carter official last week said Marotta and two or three other Ohio supporters probably are in line for high-level government posts if the president is re-elected.

But reports of Marotta's heavy-handed fund-raising tactics could damage his chances.

As a prominent Cleveland businessman and Democratic heavyweight explained it: "He (Marotta) is new to the game and doesn't know the rules."

82040322431

U. S. DEPARTMENT OF JUSTICE

RETURN IN FIVE DAYS TO

OFFICE OF

UNITED STATES ATTORNEY

400 U. S. COURTHOUSE

CLEVELAND, OHIO 44114

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

8 2 0 4 0 3 2 0 0 1

Federal Election Commission

1225 K Street, N.W.

Washington, D. C. 20543



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20461

THIS IS THE BEGINNING OF MUR # 1314

Date Filmed 5/26/82 Camera No. --- 2

Cameraman SPC