



FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF TMR # 1340

Date Filmed 7-23-81 Camera No. --- 2

Cameraman APC

3 1 7 1 0 2 5 2 3 3
of the Federal Election Commission

MUR 1340

MUR 1340 Taylor

PS Form 3811, Jan. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

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

Show to whom and date delivered.

Show to whom, date and address of delivery.

RESTRICTED DELIVERY
Show to whom and date delivered.

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

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Robert S. Strauss
2000 L St, W.W.
D.C. 20036

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	947717	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

[Signature]

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3 1 7 1 0 1 1 3 0 1 3



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 16, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert S. Strauss
Carter/Mondale Presidential
Committee, Inc.
2000 L Street, N.W.
Washington, D.C. 20036

Re: MUR 1340

Dear Mr. Strauss:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on April 14, 1981, found reason to believe that Carter/Mondale Presidential Committee, Inc. ("the Committee") violated former 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days of receipt those contributions received by the local fundraisers of the Committee (this pertains only to contributions received prior to January 8, 1980). However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that failure to deposit contributions within 10 days of receipt appears to be a violation of 11 C.F.R. §103.3(a) and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions, please contact William Taylor, the attorney assigned to this matter at 523-4529.

Sincerely,


JOHN WARREN MCGARRY
Chairman

Enclosure

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE April 16, 1981 MUR NO. 1340
RESPONDENT Carter/Mondale STAFF MEMBER(S) & TEL NO.
Presidential Committee, Inc. Taylor
(202) 523-4529
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 was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Carter/Mondale Presidential Committee, Inc. ("the Committee"), the principal campaign committee of President Jimmy Carter. The audit covered the period from October 1, 1979 through August 31, 1980 (Attachment 1).

By conducting a random sample of the contributions received by the Committee between October 1, 1979 through August 13, 1980, the Audit staff discovered fifty-five (55) contributions that were deposited by the Committee twenty-two (22) to ninety (90) days subsequent to the date on the contributors' checks. 1/ A breakdown of these contributions is as follows:

- a) seventeen (17) contributions made prior to January 8, 1980 totalling \$670.00 of which four (4) of the contributions were over \$50.00 and thirteen (13) were \$50.00 or under;
- b) thirty-eight (38) contributions made after January 8, 1980 totalling \$4221.00 of which fourteen (14) contributions were over \$50.00 and twenty-four (24) of the contributions were \$50.00 or under.

1/ In projecting the 55 contributions discovered in the random sample throughout the entire contribution lists, it would appear that 2270 to 2970 of the contributions received were probably deposited more than 10 days after the date that appears on the check.

When notified by the Audit staff of the treasurer's responsibility of depositing all contributions received by the treasurer within ten (10) days of receipt, the Committee alleged that the delay between the date of deposit and the date on the checks was caused by the practice of accumulating contributions by the state fundraisers before transferring them to Committee headquarters for deposit.

FACTUAL AND LEGAL ANALYSIS

A. Contributions received prior to January 8, 1980

11 C.F.R. § 103.3(a) of the former regulations stated:

All contributions received by a candidate, his or her authorized political committee(s) and any other political committee(s) shall be deposited in a checking account in the appropriate campaign depository by the candidate, or by the treasurer of the committee or his or her agent, within 10 days of the candidate's or treasurer's receipt thereof (emphasis added).

Contributions received by the committee prior to the effective date of 1979 amendments are considered to have been "received" when either in the actual possession of the treasurer or in the actual possession of his or her agent (AO 1978-42, AO 1978-98, MUR 1220). In the matter at hand, the local fundraisers had apparently the authority to raise contributions for the Committee and then to transmit these funds to the treasurer of the Committee. In this capacity, the local fundraisers operated as the agents of the treasurer, and as the agent of the treasurer, receipt by the local fundraiser is considered receipt by the treasurer of the Committee. Since the funds in question had not been deposited within ten (10) days of the fundraiser's receipt, the Committee is in violation of 11 C.F.R. § 103.3(a) of the former regulations.

It must be added, not as a defense, but in mitigation of the Committee's action, that the requirement to deposit a contribution within ten (10) days of receipt by the local fundraisers is not readily apparent from § 103.3(a) of the regulations. Only by consulting the advisory opinions mentioned above could the respondent ascertain that "receipt" means receipt by a fundraiser as well as receipt by the Committee's treasurer. Moreover, under the recently amended Act, "receipt" by the committee treasurer for the purposes of depositing within the ten (10) day depository period of § 103.3(a) means that the treasurer must actually have received the contribution (see analysis of this issue contained in Part B of the report). Therefore, the Office of General

Counsel recommends that the Commission find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a), but take no further action.

B. Contributions received after January 8, 1980

11 C.F.R. § 103.3(a) of the recently amended regulations states:

All receipts by a political committee shall be deposited in account(s) established pursuant to 11 C.F.R. § 103.2. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt...

This recently amended regulation differs from its predecessor in that it makes no reference to "agent" of the treasurer. Thus, it appears that by the terms of § 103.3(a) the ten (10) day period commences to run from that point in time in which there is actual receipt of the contribution by the treasurer of the committee. This interpretation of § 103.3(a) is strengthened by the fact that 2 U.S.C. § 432(b)(1) requires: "every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of \$50 the name and address of the person making the contribution and the date of receipt." If the Commission interprets receipt to mean that "receipt" by the local fundraiser is considered receipt by the committee treasurer, then there would be a clear conflict between 2 U.S.C. § 432(b)(1) and 11 C.F.R. § 103.3(a). Such an interpretation would require a local fundraiser to forward the contribution to the committee treasurer substantially sooner than ten (10) days allowed by 2 U.S.C. § 432(b)(1). Now, in light of 2 U.S.C. § 432(b)(1), "receipt" must be interpreted, for the purposes of 11 C.F.R. § 103.3(a), to mean that the treasurer of the committee has the contribution in his or her possession or control. Moreover, 2 U.S.C. § 432(b)(1), places the burden on the local fundraisers -- the persons who receive the contributions -- to forward any contributions received to the treasurer within ten (10) days of receipt, and the failure of the local fundraisers to forward the contributions they received to the treasurer of the committee is a violation of 2 U.S.C. § 432(b)(1). Thus, the Office of General Counsel recommends that the Commission find no reason to believe that the Carter/Mondale Committee, Inc. violated 11 C.F.R. § 103.(3)(a).

Recommendations

1. Find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received prior to January 8, 1980, but take no further action.
2. Find no reason to believe that the Carter/Mondale Presidential Committee, Inc. violated 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received after January 8, 1980.
3. Close the file.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *mwe*
FROM: MARJORIE W. EMMONS/JODY CUSTER *JC*
DATE: APRIL 9, 1981
SUBJECT: OBJECTION - MUR 1340, First General Counsel's
Report; Received in OCS, 4-8-81, 3:26

The above-named document was circulated on a 48
hour vote basis at 11:00, April 9, 1981.

Commissioner Aikens submitted an objection at 3:39,
April 9, 1981.

This matter will be placed on the Executive Session
Agenda for Tuesday, April 14, 1981.

SENSITIVE

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

APR 8 P3:26

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 4-8-81

MUR # 1340
STAFF MEMBER(S) Taylor

SOURCE OF MUR: INTERNALLY GENERATED
RESPONDENT'S NAME: Carter/Mondale Presidential Committee, Inc.

RELEVANT STATUTE: 2 U.S.C. § 432(b)(1)
11 C.F.R. § 103.3(a)

INTERNAL REPORTS CHECKED: Audit

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Carter/Mondale Presidential Committee, Inc. ("the Committee"), the principal campaign committee of President Jimmy Carter. The audit covered the period from October 1, 1979 through August 31, 1980 (Attachment 1).

By conducting a random sample of the contributions received by the Committee between October 1, 1979 through August 13, 1980, the Audit staff discovered fifty-five (55) contributions that were deposited by the Committee twenty-two (22) days (90% of the total) subsequent to the date on the contributors' checks. 1/ A breakdown of these contributions is as follows:

1/ In projecting the 55 contributions discovered in the random sample throughout the entire contribution lists, it would appear that 2270 to 2970 of the contributions received were probably deposited more than 10 days after the date that appears on the check.

- a) seventeen (17) contributions made prior to January 8, 1980 totalling \$670.00 of which four (4) of the contributions were over \$50.00 and thirteen (13) were \$50.00 or under;
- b) thirty-eight (38) contributions made after January 8, 1980 totalling \$4221.00 of which fourteen (14) contributions were over \$50.00 and twenty-four (24) of the contributions were \$50.00 or under.

When notified by the Audit staff of the treasurer's responsibility of depositing all contributions received by the treasurer within ten (10) days of receipt, the Committee alleged that the delay between the date of deposit and the date on the checks was caused by the practice of accumulating contributions by the state fundraisers before transferring them to Committee headquarters for deposit.

FACTUAL AND LEGAL ANALYSIS

A. Contributions received prior to January 8, 1980

11 C.F.R. § 103.3(a) of the former regulations stated:

All contributions received by a candidate, his or her authorized political committee(s) and any other political committee(s) shall be deposited in a checking account in the appropriate campaign depository by the candidate, or by the treasurer of the committee or his or her agent, within 10 days of the candidate's or treasurer's receipt thereof (emphasis added).

Contributions received by the committee prior to the effective date of 1979 amendments are considered to have been "received" when either in the actual possession of the treasurer or in the actual possession of his or her agent (AO 1978-42, AO 1978-98, MUR 1220). In the matter at hand, the local fundraisers had apparently the authority to raise contributions for the Committee and then to transmit these funds to the treasurer of the Committee. In this capacity, the local fundraisers operated as the agents of the treasurer, and as the agent of the treasurer, receipt by the local fundraiser is considered receipt by the treasurer of the Committee. Since the funds in question had not been deposited within ten (10) days of the fundraiser's receipt, the Committee is in violation of 11 C.F.R. § 103.3(a) of the former regulations.

It must be added, not as a defense, but in mitigation of the Committee's action, that the requirement to deposit a contribution within ten (10) days of receipt by the local fundraisers is not readily apparent from § 103.3(a) of the regulations. Only by consulting the advisory opinions mentioned above could the respondent ascertain that "receipt" means receipt by a fundraiser as well as receipt by the Committee's treasurer. Moreover, under the recently amended Act, "receipt" by the committee treasurer for the purposes of depositing within the ten (10) day depository period of § 103.3(a) means that the treasurer must actually have received the contribution (see analysis of this issue contained in Part B of the report). Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a), but take no further action.

B. Contributions received after January 8, 1980

11. C.F.R. §103.3(a) of the recently amended regulations states:

All receipts by a political committee shall be deposited in account(s) established pursuant to 11 C.F.R. § 103.2. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt...

This recently amended regulation differs from its predecessor in that it makes no reference to "agent" of the treasurer. Thus, it appears that by the terms of § 103.3(a) the ten (10) day period commences to run from that point in time in which there is actual receipt of the contribution by the treasurer of the committee. This interpretation of § 103.3(a) is strengthened by the fact that 2 U.S.C. § 432(b)(1) requires: "every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of \$50 the name and address of the person making the contribution and the date of receipt." If the Commission interprets receipt to mean that "receipt" by the local fundraiser is considered receipt by the committee treasurer, then there would be a clear conflict between 2 U.S.C. § 432(b)(1) and 11 C.F.R. § 103.3(a). Such an interpretation would require a local fundraiser to forward the contribution to the committee treasurer substantially sooner than ten (10) days allowed by 2 U.S.C. § 432(b)(1). Now, in light of 2 U.S.C. § 432(b)(1), "receipt" must be interpreted, for the purposes of 11 C.F.R. § 103.3(a), to mean that the treasurer of the committee has the contribution in his or her possession or control. Moreover,

2 U.S.C. § 432(b)(1), places the burden on the local fundraisers -- the persons who receive the contributions -- to forward any contributions received to the treasurer within ten (10) days of receipt, and the failure of the local fundraisers to forward the contributions they received to the treasurer of the committee is a violation of 2 U.S.C. § 432(b)(1). 2/ Thus, the Office of General Counsel recommends that the Commission find no reason to believe that the Carter/Mondale Committee, Inc. violated 11 C.F.R. § 103.(3)(a).

Recommendations

1. Find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received prior to January 8, 1980, but take no further action.
2. Find no reason to believe that the Carter/Mondale Presidential Committee, Inc. violated 11 C.F.R § 103.3(a) by failing to deposit within ten (10) days those contributions received after January 8, 1980.
3. Approve and send the attached letter and notification of reason to believe finding to the respondents.
4. Close file.

Attachments

1. Pages 11 and 12 of Interim Audit Report.
2. Letter and Notification of Reason to Believe Finding to Respondent.

2/ The Carter/Mondale Committee neither was required to keep, nor did they keep, the names of the individual fundraisers; therefore, there is no ascertainable record of names of these individuals within the scope of the audit. Furthermore, many of the contributions were less than \$50.00 that were received as a result of fundraising concerts. Thus, we do not recommend further pursuit as to the fundraisers, since to do so would entail investigative efforts to ascertain their identity prior to making further recommendations.

Recommendation

Due to the program errors identified with the 1979 year-end report, the Audit staff recommends that the Committee file an amended 1979 year-end Schedule B-P. In addition, within 30 days of receipt of this interim report, the Audit staff recommends an amendment itemizing the two (2) convention related expenditures omitted from the September, 1980 monthly report.

H. Undisclosed Debt.

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report required to be filed shall disclose the amount and nature of outstanding debts and obligations owed, and where such debts are settled for less than their reported value, a statement as to the circumstances and conditions under which they were extinguished.

Section 104.11 of Title 11 of the Code of Federal Regulations details the reporting requirements for debts and obligations. Those which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after the obligation is incurred whichever comes first. Any loan, debt, or obligation, the amount of which is over \$500 shall be reported as of the time of the transaction.

In examining the Committee's reported outstanding debts and obligations at July 31, 1980, the Audit staff identified a total of \$98,017.60 in committee debts in excess of \$500 which were undisclosed. In addition, the committee was found to have understated their disclosed debts by \$57,648.43.

Recommendation

The Audit staff recommends that within 30 days of receipt of this interim report, the Committee amend their August Monthly report to accurately reflect outstanding debt as of July 31, 1980, and amend subsequent reports to the extent that they are affected by those changes.

I. Timely Deposit of Contributions

Section 433(h)(1) of Title 2 of the United States Code states, in part, that each committee shall designate one or more depository institutions as its campaign depository or depositories, and all receipts received by such committee shall be deposited into accounts maintained at such depositories.

ATTACHMENT 1

pp 11 and 12 of Interim Audit Report

Section 103.3(a) of Title 11 of the Code of Federal Regulations states, in part, that all deposits of receipts shall be made within 10 days of the treasurer's receipt.

In testing contributions made to the committee for the period from October 1, 1979 through August 13, 1980, the Audit staff found that from 22 to 29 percent of contributions were deposited by the Committee 30 to 60 or more days subsequent to the date on the contribution check.

When notified of the time period required by the Committee for the deposit of contributions, the Committee stated that the time lapse between date of deposit and check date was created by the practice by state fundraisers of accumulating contributions into impressive amounts before sending them to committee headquarters for deposit. The Audit staff noted that although the Committee was made aware of this practice during the threshold audit, they failed to take actions to prevent it.

Recommendation

The Audit staff recommends that the matter be referred to the Office of General Counsel for further review.

III. Findings Related to Title 26 of the United States Code Determination of Net Outstanding Campaign Obligations and Payment to the U.S. Treasury

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a)(1) and (b) of Title 11, Code of Federal Regulations requires that the candidate submit a statement of net outstanding campaign obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

The Commission preliminarily determined August 13, 1980, to be the day on which President James E. Carter's candidacy terminated for the purpose of incurring qualified campaign expenses.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert S. Strauss
Carter/Mondale Presidential
Committee, Inc.
2000 L Street, N.W.
Washington, D.C. 20036

Re: MUR 1340

Dear Mr. Strauss:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 1, 1981, found reason to believe that Carter/Mondale Presidential Committee, Inc. ("the Committee") violated former 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days of receipt those contributions received by the local fundraisers of the Committee (this pertains only to contributions received prior to January 8, 1980). However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that failure to deposit contributions within 10 days of receipt appears to be a violation of 11 C.F.R. §103.3(a) and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions, please contact William Taylor, the attorney assigned to this matter at 523-4529.

Sincerely,

Enclosure

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1340

RESPONDENT Carter/Mondale
Presidential Committee, Inc.

STAFF MEMBER(S) & TEL NO.
Taylor
(202) 523-4529

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 was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Carter/Mondale Presidential Committee, Inc. ("the Committee"), the principal campaign committee of President Jimmy Carter. The audit covered the period from October 1, 1979 through August 31, 1980 (Attachment 1).

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When notified by the Audit staff of the treasurer's responsibility of depositing all contributions received by the treasurer within ten (10) days of receipt, the Committee alleged that the delay between the date of deposit and the date on the checks was caused by the practice of accumulating contributions by the state fundraisers before transferring them to Committee headquarters for deposit.

FACTUAL AND LEGAL ANALYSIS

A. Contributions received prior to January 8, 1980

11 C.F.R. § 103.3(a) of the former regulations stated:

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Contributions received by the committee prior to the effective date of 1979 amendments are considered to have been "received" when either in the actual possession of the treasurer or in the actual possession of his or her agent (AO 1978-42, AO 1978-98, MUR 1220). In the matter at hand, the local fundraisers had apparently the authority to raise contributions for the Committee and then to transmit these funds to the treasurer of the Committee. In this capacity, the local fundraisers operated as the agents of the treasurer, and as the agent of the treasurer, receipt by the local fundraiser is considered receipt by the treasurer of the Committee. Since the funds in question had not been deposited within ten (10) days of the fundraiser's receipt, the Committee is in violation of 11 C.F.R. § 103.3(a) of the former regulations.

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- 1. Find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received prior to January 8, 1980, but take no further action.
- 2. Find no reason to believe that the Carter/Mondale Presidential Committee, Inc. violated 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received after January 8, 1980.

Recommendations

This recently amended regulation differs from its predecessor in that it makes no reference to "agent" of the treasurer. Thus, it appears that by the terms of § 103.3(a) the ten (10) day period commences to run from that point in time in which there is actual receipt of the contribution by the treasurer of the committee. This interpretation of § 103.3(a) is strengthened by the fact that 2 U.S.C. § 432(b)(1) requires: "every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of \$50 the name and address of the person making the contribution and the date of receipt." If the Commission interprets receipt to mean that "receipt" by the local fundraiser is considered receipt by the committee treasurer, then there would be a clear conflict between 2 U.S.C. § 432(b)(1) and 11 C.F.R. § 103.3(a). Such an interpretation would require a local fundraiser to forward the contribution to the committee treasurer substantially sooner than ten (10) days allowed by 2 U.S.C. § 432(b)(1). Now, in light of 2 U.S.C. § 432(b)(1), "receipt" must be interpreted, for the purposes of 11 C.F.R. § 103.3(a), to mean that the treasurer of the committee has the contribution in his or her possession or control. Moreover, 2 U.S.C. § 432(b)(1), places the burden on the local fundraisers -- the persons who receive the contributions -- to forward any contributions received to the treasurer within ten (10) days of receipt, and the failure of the local fundraisers to forward the contributions they received to the treasurer of the committee is a violation of 2 U.S.C. § 432(b)(1). Thus, the Office of General Counsel recommends that the Commission find no reason to believe that the Carter/Mondale Committee, Inc. violated 11 C.F.R. § 103.3(a).

All receipts by a political committee shall be deposited in account(s) established pursuant to 11 C.F.R. § 103.2. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt...

11 C.F.R. § 103.3(a) of the recently amended regulations states:

B. Contributions received after January 8, 1980

Counsel recommends that the Commission find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a), but take no further action.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS (MARGARET CHANEY) *mc*

DATE: MARCH 12, 1981

SUBJECT: OBJECTION - MUR 1340 - First General
Counsel's Report dated 3-12-81;
Received in OCS 3-12-81, 11:02

The above-named document was circulated on a 48
hour vote basis at 4:00, March 12, 1981.

Commissioner Tiernan submitted an objection at 4:43,
March 12, 1981.

This matter will be placed on the Executive Session
Agenda for Tuesday, March 17, 1981.

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

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION

3/10/81

MUR # 1340
STAFF MEMBER(S)
Taylor
(202) 523-4529

SOURCE OF MUR: INTERNALLY GENERATED
RESPONDENT'S NAME: Carter/Mondale Presidential Committee, Inc.
RELEVANT STATUTE: 2 U.S.C. § 432(b)(2)(A), § 432(b)(2)(B)
11 C.F.R. § 103.3(a)

INTERNAL REPORTS CHECKED: Audit

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Carter/Mondale Presidential Committee, Inc. ("the Committee"), the principal campaign committee of President Jimmy Carter. The audit covered the period from October 1, 1979 through August 31, 1980 (Attachment 1).

By conducting a random sample of the contributions received by the Committee between October 1, 1979 through August 13, 1980, the Audit staff discovered fifty-five (55) contributions that were deposited by the Committee twenty-two (22) to ninety (90) days subsequent to the date on the contributors' checks. 1/ A breakdown of these contributions is as follows:

1/ In projecting the 55 contributions discovered in the random sample throughout the entire contribution lists, it would appear that 2270 to 2970 of the contributions received were probably deposited more than 10 days after the date that appears on the check.

a) seventeen (17) contributions made prior to January 8, 1980 totalling \$670.00 of which four (4) of the contributions were over \$50.00 and thirteen (13) were \$50.00 or under;

b) thirty-eight (38) contributions made after January 8, 1980 totalling \$4221.00 of which fourteen (14) contributions were over \$50.00 and twenty-four (24) of the contributions were \$50.00 or under.

When notified by the Audit staff of the treasurer's responsibility of depositing all contributions received by the treasurer within ten (10) days of receipt, the Committee alleged that the delay between the date of deposit and the date on the checks was caused by the practice of accumulating contributions by the state fundraisers before transferring them to Committee headquarters for deposit.

FACTUAL AND LEGAL ANALYSIS

A. Contributions received prior to January 8, 1980

11 C.F.R. § 103.3(a) of the former regulations stated:

All contributions received by a candidate, his or her authorized political committee(s) and any other political committee(s) shall be deposited in a checking account in the appropriate campaign depository by the candidate, or by the treasurer of the committee or his or her agent, within 10 days of the candidate's or treasurer's receipt thereof (emphasis added).

Contributions received by the committee prior to the effective date of 1979 amendments are considered to have been "received" when either in the actual possession of the treasurer or in the actual possession of his or her agent (AO 1978-42, AO 1978-98, MUR 1220). In the matter at hand, the local fundraisers had apparently the authority to raise contributions for the Committee and then to transmit these funds to the treasurer of the Committee. In this capacity, the local fundraisers operated as the agents of the treasurer, and as the agent of the treasurer, receipt by the local fundraiser is considered receipt by the treasurer of the Committee. Since the funds in question had not been deposited within ten (10) days of the fundraiser's receipt, the Committee is in violation of 11 C.F.R. § 103.3(a) of the former regulations.

It must be added, not as a defense, but in mitigation of the Committee's action, that the requirement to deposit a contribution within ten (10) days of receipt by the local fundraisers is not readily apparent from § 103.3(a) of the regulations. Only by consulting the advisory opinions mentioned above could the respondent ascertain that "receipt" means receipt by a fundraiser as well as receipt by the Committee's treasurer. Moreover, under the recently amended

Act, "receipt" by the committee treasurer for the purposes of depositing within the ten (10) day depository period of § 103.3(a) means that the treasurer must actually have received the contribution (see analysis of this issue contained in Part B of the report). Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a), but take no further action.

B. Contributions received after January 8, 1980

11 C.F.R. § 103.3(a) of the recently amended regulations states:

All receipts by a political committee shall be deposited in account(s) established pursuant to 11 C.F.R. § 103.2. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt...

This recently amended regulation differs from its predecessor in that it makes no reference to "agent" of the treasurer. Thus, it appears that by the terms of the recently amended § 103.3(a) of the regulations the ten (10) day period commences to run from that point in time in which there is actual receipt of the contribution by the treasurer of the committee. This interpretation of § 103.3(a) is strengthened by the fact that 2 U.S.C. § 432(b)(2)(A) requires: "every person who receives a contribution for a political committee which is not an authorized committee shall, if the amount is \$50.00 or less, forward to the treasurer such contribution no later than 30 days after receiving the contribution," and from 2 U.S.C. § 432(b)(2)(B) which requires "... if the amount of the contribution is in excess of \$50.00 to forward to the treasurer such contribution, ... no later than 10 days after receiving the contribution." If the Commission interprets receipt to mean that "receipt" by the local fundraisers is considered "receipt" by the committee treasurer, then there would be a clear conflict between 2 U.S.C. § 432(b)(2)(A) and (B) and 11 C.F.R. § 103.3(a). Such an interpretation would require a local fundraiser to forward the contribution to the committee treasurer substantially sooner than thirty (30) days and ten (10) days allowed by 2 U.S.C. § 432(b)(2)(A) and (B).

It is the Office of General Counsel's opinion that the word "receipt" in § 103.3(a) of the regulations can no longer be interpreted to mean that "receipt" by the fundraiser-agent is also "receipt" by the treasurer-principal of the committee. Moreover, there is no evidence that indicates that the treasurer failed to deposit the contributions within ten (10) days once they were in his pos-

session. Therefore, the Office of General Counsel recommends that the Commission find no reason to believe that the Carter/Mondale Presidential Committee, Inc. violated 11 C.F.R. § 103.3(a).

Recommendations

1. Find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received prior to January 8, 1980, but take no further action.
2. Find no reason to believe that the Carter/Mondale Presidential Committee, Inc. violated 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received after January 8, 1980.
3. Approve and send the attached letter and notification of reason to believe finding to the respondent.
4. Close the file.

Attachments

1. Pages 11 and 12 of Interim Audit Report
2. Letter and Notification of Reason to Believe Finding to Respondent

Recommendation

Due to the program errors identified with the 1979 year-end report, the Audit staff recommends that the Committee file an amended 1979 year-end Schedule B-P. In addition, within 30 days of receipt of this interim report, the Audit staff recommends an amendment itemizing the two (2) convention related expenditures omitted from the September, 1980 monthly report.

H. Undisclosed Debt

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report required to be filed shall disclose the amount and nature of outstanding debts and obligations owed, and where such debts are settled for less than their reported value, a statement as to the circumstances and conditions under which they were extinguished.

Section 104.11 of Title 11 of the Code of Federal Regulations details the reporting requirements for debts and obligations. Those which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after the obligation is incurred whichever comes first. Any loan, debt, or obligation, the amount of which is over \$500 shall be reported as of the time of the transaction.

In examining the Committee's reported outstanding debts and obligations at July 31, 1980, the Audit staff identified a total of \$98,017.60 in committee debts in excess of \$500 which were undisclosed. In addition, the committee was found to have understated their disclosed debts by \$57,648.43.

Recommendation

The Audit staff recommends that within 30 days of receipt of this interim report, the Committee amend their August-Monthly report to accurately reflect outstanding debt as of July 31, 1980, and amend subsequent reports to the extent that they are affected by those changes.

I. Timely Deposit of Contributions

Section 432(h)(1) of Title 2 of the United States Code states, in part, that each committee shall designate one or more depository institutions as its campaign depository or depositories, and all receipts received by such committee shall be deposited into accounts maintained at such depositories.

ATTACHMENT 1

pp. 11 and 12 of Interim Audit Report

Section 103.3(a) of Title 11 of the Code of Federal Regulations states, in part, that all deposits of receipts shall be made within 10 days of the treasurer's receipt.

In testing contributions made to the committee for the period from October 1, 1979 through August 13, 1980, the Audit staff found that from 22 to 29 percent of contributions were deposited by the Committee 30 to 60 or more days subsequent to the date on the contribution check.

When notified of the time period required by the Committee for the deposit of contributions, the Committee stated that the time lapse between date of deposit and check date was created by the practice by state fundraisers of accumulating contributions into impressive amounts before sending them to committee headquarters for deposit. The Audit staff noted that although the Committee was made aware of this practice during the Threshold audit, they failed to take actions to prevent it.

Recommendation

The Audit staff recommends that the matter be referred to the Office of General Counsel for further review.

III. Findings Related to Title 26 of the United States Code
Determination of Net Outstanding Campaign Obligations
and Repayment to the U.S. Treasury

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a)(1) and (b) of Title 11, Code of Federal Regulations requires that the candidate submit a statement of net outstanding campaign obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

The Commission preliminarily determined August 13, 1980, to be the day on which President James E. Carter's candidacy terminated for the purpose of incurring qualified campaign expenses.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20036

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert S. Strauss
Carter/Mondale Presidential
Committee, Inc.
2000 L Street N.W.
Washington, D.C. 20036

Re: MUR 1340

Dear Mr. Strauss:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 1, 1981, found reason to believe that the Carter/Mondale Presidential Committee, Inc. ("the Committee") violated former 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days of receipt those contributions received by the local fundraisers of the Committee (this pertains only to contributions received prior to January 3, 1980). However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file. The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear in the public record, please do so within 10 days.

The Commission reminds you that failure to deposit contributions within 10 days of receipt appears to be a violation of 11 C.F.R. § 103.3(a) and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions, please contact William Taylor, the attorney assigned to this matter at 523-4529.

Sincerely,

Enclosure

ATTACHMENT 2

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1340

RESPONDENT Carter/Mondale

STAFF MEMBER(S) & TEL. NO.

Presidential Committee, Inc.

Taylor

(202) 523-4529

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 was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Carter/Mondale Presidential Committee, Inc. ("the Committee"), the principal campaign committee of President Jimmy Carter. The audit covered the period from October 1, 1979 through August 31, 1980.

By conducting a random sample of the contributions received by the Committee between October 1, 1979 through August 13, 1980, the Audit staff discovered fifty-five (55) contributions that were deposited by the Committee twenty-two (22) to ninety (90) days subsequent to the date on the contributors' checks. ^{1/} A breakdown of these contributions is as follows:

^{1/} In projecting the 55 contributions discovered in the random sample throughout the entire contribution lists, it would appear that 2270 to 2970 of the contributions received were probably deposited more than 10 days after the date that appears on the check.

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When notified by the Audit staff of the treasurer's responsibility of depositing all contributions received by the treasurer within ten (10) days of receipt, the Committee alleged that the delay between the date of deposit and the date on the checks was caused by the practice of accumulating contributions by the state fund-raisers before transferring them to Committee headquarters for deposit.

FACTUAL AND LEGAL ANALYSIS

A. Contributions received prior to January 8, 1980

11 C.F.R. § 103.3(a) of the former regulations stated:

All contributions received by a candidate, his or her authorized political committee(s) and any other political committee(s) shall be deposited in a checking account in the appropriate campaign depository by the candidate, or by the treasurer of the committee or his or her agent, within 10 days of the candidate's or treasurer's receipt thereof (emphasis added).

Contributions received by the committee prior to the effective date of 1979 amendments are considered to have been "received" when either in the actual possession of the treasurer or in the actual possession of his or her agent (AO 1978-42, AO 1978-98, MUR 1220). In the matter at hand, the local fundraisers had apparently the authority to raise contributions for the Committee and then to transmit these funds to the treasurer of the Committee. In this capacity, the local fundraisers operated as the agents of the treasurer, and as the agent of the treasurer, receipt by the local fundraiser is considered receipt by the treasurer of the Committee. Since the funds in question had not been deposited within ten (10) days of the fundraiser's receipt, the Committee is in violation of 11 C.F.R. § 103.3(a) of the former regulations.

It must be added, not as a defense, but in mitigation of the Committee's action, that the requirement to deposit a contribution within ten (10) days of receipt by the local fundraisers is not

readily apparent from § 103.3(a) of the regulations. Only by consulting the advisory opinions mentioned above could the respondent ascertain that "receipt" means receipt by a fundraiser as well as receipt by the Committee's treasurer. Moreover, under the recently amended Act, "receipt" by the committee treasurer for the purposes of depositing within the ten (10) day depository period of § 103.3(a) means that the treasurer must actually have received the contribution (see analysis of this issue contained in Part B of the report). Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a), but take no further action.

B. Contributions received after January 8, 1980

11 C.F.R. § 103.3(a) of the recently amended regulations

states:

All receipts by a political committee shall be deposited in account(s) established pursuant to 11 C.F.R. § 103.2. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt...

This recently amended regulation differs from its predecessor in that it makes no reference to "agent" of the treasurer. Thus, it appears that by the terms of the recently amended § 103.3(a) of the regulations the ten (10) day period commences to run from that point in time in which there is actual receipt of the contribution by the treasurer of the committee. This interpretation of § 103.3(a) is strengthened by the fact that 2 U.S.C. § 432(b)(2)(A) requires: "every person who receives a contribution for a political committee which is not an authorized committee shall, if the amount is \$50.00 or less, forward to the treasurer such contribution no later than 30 days after receiving the contribution," and from 2 U.S.C. § 432 (b)(2)(B) which requires "... if the amount of the contribution is in excess of \$50.00 to forward to the treasurer such contribution, ... no later than 10 days after receiving the contribution." If the Commission interprets receipt to mean that "receipt" by the local fundraiser is considered "receipt" by the committee treasurer, then there would be a clear conflict between 2 U.S.C. § 432(b)(2)(A) and (B) and 11 C.F.R. § 103.3(a). Such an interpretation would require a local fundraiser to forward the contribution to the committee treasurer substantially sooner than thirty (30) days and ten (10) days allowed by 2 U.S.C. § 432(b)(2)(A) and (B).

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It is the Office of General Counsel's opinion that the word "receipt" in § 103.3(a) of the regulations can no longer be interpreted to mean that "receipt" by the fundraiser-agent is also "receipt" by the treasurer-principal of the committee. Moreover, there is no evidence that indicates that the treasurer failed to deposit the contributions within ten (10) days once they were in his possession. Therefore, the Office of General Counsel recommends that the Commission find no reason to believe that the Carter/Mondale Presidential Committee, Inc. violated 11 C.F.R. § 103.3(a).

Recommendations

1. Find reason to believe that the Carter/Mondale Presidential Committee, Inc. violated former 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received prior to January 8, 1980, but take no further action.
2. Find no reason to believe that the Carter/Mondale Presidential Committee, Inc. violated 11 C.F.R. § 103.3(a) by failing to deposit within ten (10) days those contributions received after January 8, 1980.
3. Approve and send the attached letter and notification of reason to believe finding to the respondent.
4. Close the file.

310100



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 4, 1980

MEMORANDUM

TO: Robert J. Costa

THROUGH: E. Allen Clutter, III
Staff Director

FROM: Charles N. Steele *CS*
General Counsel

SUBJECT: Comments on Interim Audit Report - Carter/Mondale
Presidential Committee, Inc. - A-848

The Office of General Counsel has reviewed the Interim Post-Primary Audit Report on the Carter/Mondale Presidential Committee, Inc., and has the following comments:

Part II, A - Allocation of Expenditures of States

It is the understanding of this Office that only with regard to Iowa, Maine and New Hampshire were the Committee's allocated expenditures within 10% or approximately \$30,000 of the limit. (The next closest state expenditures came within 38% of the limit.) Hence, the Audit Division has concentrated upon these three states with regard to apparent allocation errors.

1. Media Expense Allocations

This Office concurs with the recommendation that the Committee be given 15 days from the date of its receipt of the interim audit report to provide documentation which permits accurate allocation of media production costs and which supports the media agent's allocations of media expenditures to Iowa, Maine and New Hampshire.

Memorandum to Robert J. Costa

Page Two

Comments on Interim Audit Report - Carter/Mondale Presidential Committee, Inc. - A-848

2. Adjustments to Committee Allocated Totals To Iowa, Maine and New Hampshire

a) Payments to the United States Treasurer

The Office of General Counsel concurs in the determination that the Committee should allocate to Iowa, Maine and New Hampshire the costs of the intrastate use of Air Force II and also payments for White House luncheons for delegates or constituents which were incurred in connection with the primary campaigns in these three states.

b) Long Distance Telephone Calls

It is the understanding of this Office that the Committee's deletion of interstate telephone calls made from Iowa and New Hampshire was based on a theory that such calls are comparable to interstate travel which, pursuant to 11 C.F.R. § 106.2(c)(2), need not be attributed to any individual state. This Office concurs with the Audit Division's determination that the interstate travel exemption does not apply to interstate telephone calls. There is nothing in the language of Section 106.2(c)(2) to permit its extension by analogy to expenditures other than travel, nor does the Explanation and Justification for this section provide for any such extension

c) Media (Other than Production)

The Office of General Counsel concurs in the recommendation that the Committee should be required to allocate listed media expenditures, as relevant, to Iowa, Maine and New Hampshire.

d) Travel Expense Reimbursements

The Office of General Counsel concurs in the recommendation requiring allocation of the cited travel reimbursements.

e) Outstanding Debt

The Office of General Counsel concurs with the finding that payments of outstanding debts related to the campaigns in Maine and New Hampshire are to be allocated to those states.

f) Other Vendor Payments

This Office concurs in the finding that the cited vendor payments should be allocated to the states involved.

g) Miscellaneous

This Office concurs in the finding that the reallocations noted should be made.

As is stated in the interim audit report, the Committee did not have available official state expenditure limitations at the time it began its campaigns in Maine, Iowa and New Hampshire. On February 1, 1980, an estimate of such limitations was prepared by a Committee consultant using 1978 voting age population figures and the 1979 inflation factor. As of that date the Iowa caucuses had already been held (on January 27) and the Maine caucuses and New Hampshire primaries were to be held shortly (on February 10 and 26 respectively). On February 6, 1980, the Department of Labor certified to the Commission the 1979 increase in the consumer price index, and on approximately February 8, 1980, the Audit Division informed the committees involved in presidential primary elections of the correct state expenditure limitations. A comparison of the Committee's figures with the official ones shows that the Committee's figures exceeded the official limitations by \$2,976.12 in Iowa, \$5,391.80 in Maine and \$5,391.80 in New Hampshire.

It is the opinion of the Office of General Counsel that the official state limitation figures are the ones to which committees must adhere and that the amounts by which committees exceed such limitations should in all cases be deemed non-qualified campaign expenditures and thus subject to repayment. Such required repayment is not a penalty but rather an administrative procedure to which all committees know they will be subject if they exceed the official expenditure figure.

In the present situation the Committee was at no more of a disadvantage than any other Presidential candidate's committee in terms of the timing of the release of the official state limitation figures. 2 U.S.C. § 441a(c) provides that the cost of living increase in the limitations is to be based upon data covering the twelve months preceding the calendar year at the beginning of which the Department of Labor is to certify the amount of such increase for purposes of establishing state expenditure limitations. Therefore a time lag between certain expenditure commitment and release of the official limitation figures is inevitable and should not be accepted as a mitigating factor in situations in which committees exceed their state limitations. ^{1/}

^{1/} The Committee's own estimates were apparently not established until February 1, 1980, and thus after the Iowa caucuses on January 27, 1980, only shortly before the Maine caucuses and the New Hampshire primary on February 10 and 26 respectively, and only five days before the Department of Labor released the correct inflation factor and seven days before receipt of the official limitation figures from the Audit Division.

Memorandum to Robert J. Costa

Page Four

Comments on Interim Audit Report - Carter/Mondale Presidential Committee, Inc. - A-848

Recommendation

That the Commission require repayment of the entire amounts by which the committee exceeded its state limitations in Iowa, Maine and New Hampshire.

In order to avoid duplication and confusion, it is the recommendation of this Office that the recommendation in the audit report be modified to reflect the facts that the committee has had notification through the Reports Analysis

thirty day period contained in the present report applies to contributions reported after February.

This Office also recommends that this matter be referred for possible compliance action following the thirty day period provided above.

1. Apparent Corporate Contributions

This Office concurs with the recommendation that the committee present documentation within 10 days showing that the contributions apparently received from a bank and three corporations are not in fact illegal or that refunds have been made.

2. Excessive Transfers-In

This Office concurs with the recommendation that the committee refund the remaining excessive committee contributions.

It should be noted that a "transfer-in" is a movement of funds between affiliated committees, or between party committees even if not affiliated and even if not political committees for purposes of 11 C.F.R. § 100.5. In other situations a "contribution" or "expenditure" is involved.

It should be noted that footnote 4 will have to be removed from the audit report prior to its placement on the public record because the subject matter is the subject of an enforcement action.

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Memorandum to Robert J. Costa

Page Six

Comments on Interim Audit Report - Carter/Mondale Presidential
Committee, Inc. - A - 848

As the audit report states, 11 C.F.R. § 9003.4(b)(4) permits a candidate for the Office of President to borrow from his primary campaign an amount not exceeding the residual to be left in the primary account once all debts have been paid and all required repayments made to the U.S. Treasury. (See 11 C.F.R. § 9038.3(c)(1). Section 9003.4(b)(4) also requires repayment of the primary campaign committee by the general election committee within 15 days of receipt by the candidate of federal funds pursuant to 26 U.S.C. § 9005 and 11 C.F.R. § 9005.

The audit report states that the Committee made \$5,947.22 in general election-related expenditures prior to the candidate's date of ineligibility or August 13, 1980. This Office understands that the audit report to be presented to the Commission will also state that the Committee made \$21,183.73 in general election-related expenditures after August 13. The earlier expenditures were made in July and early August while the post-eligibility expenditures were made between August 14 and September 3.

The Committee's report for May, 1980 as amended on July 18, 1980, showed debts and obligations totaling \$430,450.50 owed by the Committee, while the June report dated July 18, 1980, cited \$915,714.06 and the July report dated August 30, 1980, showed \$1,055,656.73 in debts and obligations. The statement of net outstanding campaign obligations as of the candidate's date of ineligibility originally submitted by the Committee showed debts and obligations of \$865,682.29. Therefore, it appears that neither before nor after the candidate's date of ineligibility could the Committee have reasonably anticipated a primary election residual from which to make loans to the candidate for general election campaign purposes.

It is recommended in the audit report that the payments by the Committee of general election-related expenditures prior to the candidate's date of ineligibility be deemed non-qualified campaign expenditures repayable to the U.S. Treasury. This Office understands that the Audit Division is planning to also recommend that the general election-related expenditures made after the date of ineligibility be deemed non-qualified campaign expenses and deductible from the candidate's remaining entitlement. This Office concurs with both recommendations.

In light of the general election committee's obligation under Section 9003.4(b)(4) to repay the amount spent by the Committee

Memorandum to Robert J. Costa
Page Seven
Comments on Interim Audit Report - Carter/Mondale Presidential
Committee, Inc. - A-848

for general election purposes, the willingness of the general election committee to refund the amount involved to the Committee would not serve to remedy the violation involved.

B. 2. Payment of Parking Violation

It is understood that the Audit Division is adding to the audit report a finding concerning the Committee's reimbursement of a \$195.00 payment by a limousine service for parking violations. This Office concurs with the recommendation that this payment be deemed a non-qualified campaign expenses, pursuant to 11 C.F.R. § 9032.9(a)(3), and repayable to the U.S. Treasury.

B. 3. Expenditures in Excess of State Limitations

This Office concurs with the recommendation that an amount equal to the amounts by which the Committee exceeded the state limitations in Iowa, Maine and New Hampshire (as modified by the recommendation in Part II, A, 2 above) be deemed non-qualified campaign expenditures repayable to the U. S. Treasury.

* * * * *

The citation in paragraph 2, page 1, should be augmented to reflect the fact that 26 U.S.C. § 9039(b), as well as 11 C.F.R. § 9038.1(b), authorize the Commission to conduct other examination and audits as deemed necessary.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 1980

MEMORANDUM

TO: CHARLES STEELE
GENERAL COUNSEL

THROUGH: B. ALLEN CLUTTER III *BAC*
STAFF DIRECTOR

FROM: BOB COSTA *RC*

SUBJECT: INTERIM POST-PRIMARY AUDIT REPORT ON THE
CARTER/MONDALE PRESIDENTIAL COMMITTEE, INC.

Attached is a copy of the interim post-primary audit report on the Carter/Mondale Presidential Committee, Inc.

In order to expedite the processing of this report, it is being forwarded to your office for legal analysis prior to being referenced. The referencing process has begun and your office will be made aware of any material changes to the report as a result of the referencing process as soon as possible.

Particular attention should be directed to Finding A concerning the request for additional documentation from Rafshoon Communications Inc. The subsequent review of the documentation may have a material impact upon the final total of expenditures charged to the three states noted in the report in which the Committee exceeded the expenditure limitations.

Although current procedures allow for a four (4) week review period for audit reports by your office, an expedited review would allow for the processing of the final report well within the time frames mandated by the Commission.

If you have any questions concerning matters in the report, please call Glen Bucu or Ray Lisi at extension 3-4155.

Attachment as stated

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FEDERAL ELECTION COMMISSION

WASHINGTON, D. C. 20541

October 3, 1980

MEMORANDUM

TO: CHARLES STEELE
GENERAL COUNSEL

THROUGH: B. ALLEN CLUTTER III
STAFF DIRECTOR

FROM: BOB COSTA *RJC*

SUBJECT: INTERIM POST-PRIMARY AUDIT REPORT ON THE
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If you have any questions concerning matters in the report, please call Glen Bucco or Ray Lisi at extension 3-4155.

Attachment as stated



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20417

INTERIM REPORT OF THE AUDIT DIVISION
ON
THE CARTER/MONDALE PRESIDENTIAL COMMITTEE, INC.

I. Background

A. Overview

This interim report is based on an audit of the Carter/Mondale Presidential Committee, Inc. ("the Committee"), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 9038 (a) of Title 26 of the United States Code which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037."

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

The Committee registered with the Federal Election Commission as the principal campaign committee for President James E. Carter on March 16, 1979. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from October 1, 1979 through August 31, 1980, the final coverage date of the last report filed at the time of the audit. ^{1/} The Committee reported a beginning cash balance of \$867,934.82, total receipts for the period of \$16,524,673.86, total expenditures for the period of \$17,336,473.23 and a closing cash balance on August 31, 1980 of \$56,135.45.

^{1/} A review was made to determine the accuracy of the Committee's reported net outstanding campaign obligations as of August 13, 1980, and other limited audit procedures were performed through August 31, 1980.

B. Key Personnel

The principal officers of the Committee during the period audited were: Mr. Evan S. Dobelle, Chairman, from October 1, 1979 to December 1, 1979; and Mr. Robert S. Strauss from December 1, 1979 to the present; and Mr. John H. Dalton, Treasurer from October 1, 1979 to November 15, 1979; and Mr. S. Lee Kling from November 15, 1979 to the present.

C. Scope

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

II. Interim Audit Findings and Recommendations
Relating to Title 2 of the United States Code

A. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provides, in part, that no candidate for the office of President of the United States who is eligible to receive and has received matching funds may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the state voting age population or \$200,000.00, adjusted by the Consumer Price Index.

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

In addition, Section 106.2(b) and (c) of Title 11 of the Code of Federal Regulations states, in part, that expenditures for staff, media, printing and other services used in a campaign in a specific state shall be attributed to that State, and that expenditures by a Presidential Candidate for use in two (2) or more States, shall be attributed to each State based on the voting age population in each state which can reasonably be expected to be influenced by such expenditures.

During the threshold audit, the Committee was made aware of several areas (media documentation and allocation, White House travel allocation, and national staff payroll allocation) which appeared to pose future allocation problems. Through statistical sampling and other review procedures during the post primary audit, these and additional areas were identified as containing State expenditure allocation errors. Since only the limitations relating to the States of Iowa, Maine, and New Hampshire were approached by the Committee, an extensive review was made of allocations to these States.

1. Media Expense Allocations

The Threshold Report of the Audit Division made a procedural recommendation that the Committee obtain detailed invoices from its media agent in order to properly allocate media costs to the affected States. During the Post Primary Audit, there appeared to be no change in the information content of the media invoices as a result of the Threshold finding. Therefore, the allocations made by the media agent could not be verified from available records, and the agents contract states that additional records shall be made available 60 days after the date of nomination.

Further, a review of Committee media documentation revealed production payments totaling \$604,613.68 generally supported by invoices stating "Bill for Radio and Television Production." Several invoices specifically refer to a date, or item produced i.e., video tape, 30 second spots, etc..., but no information was provided concerning the intended stations or areas of broadcast, publication, or general use. No allocation of these production costs was made by the Committee.

In addition to the above payments, an invoice of \$202,000 for production is currently outstanding and included on the Committee's Statement of Net Outstanding Campaign Obligations.

Recommendation

The Audit staff recommends that within 15 days of receipt of this interim report, that the Committee obtain or provide at the vendors offices, documentation sufficiently detailed to allow for the allocation of the \$604,613.68 in payments for production, the \$202,000 in production costs currently outstanding, and vendor allocations to Iowa, Maine and New Hampshire.

2. Adjustment to the Committee Allocated Totals For Iowa, Maine and New Hampshire

a. Payments to the United States Treasurer

The Committee did not allocate intrastate travel connected with the use of Air Force II by the Vice President, and the First Lady. In addition, several payments for the cost of White House luncheons for "State delegates" or "constituents" had also not been allocated as required.

Our review determined that an additional \$7,862.28 should be allocated to Iowa, \$4,389.35 should be allocated to Maine, and \$2,185.86 to New Hampshire.

b. Long Distance Telephone Calls

Our review determined that the Committee deleted telephone calls made from Iowa and New Hampshire to locations outside of those states.

Allocation of these calls to Iowa and New Hampshire increases each state's total expenditures by \$21,881.20 and \$16,595.37 respectively.

c. Media (Other than Production)

Review of the Committee's allocation of media costs determined that three (3) expenditures totaling \$8,121.23 for "Iowa Brochures" had not been allocated. In addition, the Committee did not allocate by voting age population, various media charges such as the cost of general brochures, the firms agency fee, freight, buttons and bumper stickers. The review also determined that the Committee had received amended allocation statements from the advertising firm which had not been reflected in the Committee's state allocation totals.

These media allocation adjustments require that an additional \$11,161.19 be allocated to Iowa, \$16,561.83 be allocated to Maine, and \$844.66 to New Hampshire. 2

2 Amounts are subject to change based upon documentation provided for review in Finding II.A.1.

d. Travel Expense Reimbursements

A review of the Committee's payments to individuals for travel expenses identified \$9,172.47 in payments relating to Iowa, \$6,686.03 relating to Maine, and \$4,935.03 relating to New Hampshire which had not been allocated as required. Generally, the payments consisted of reimbursements for lodging, car rental, and per diem for individuals doing advance and scheduling work in those states.

e. Outstanding Debt

A review of the Committee's Statement of Net Outstanding Campaign Obligations identified outstanding debts totaling \$11,098.16 which were related to the Committee's campaign in Maine, and \$1,480.19 which related to New Hampshire. As payments are made on these debts, the expenditures will be required to be allocated.

f. Other Vendor Payments

Analysis of payments from the headquarter's operating accounts to vendors for telephone, car rental, postage, etc., revealed that additional payments totaling \$4,603.43 should be allocated to Iowa, \$14,616.34 to Maine, and \$6,565.30 to New Hampshire.

g. Miscellaneous

Various tests including a review of the Committee's draft allocation system, the allocation of payroll for headquarter's staff when traveling, Committee clerical errors and other tests of expenditures, identified \$1,352.31 which should be allocated to Iowa, an over-allocation of \$700.27 to Maine, and \$9,350.22 which should be allocated to New Hampshire.

The Committee has stated that in order to effectively campaign in these early primaries, actual campaigning was begun several months prior to the publication of the state expenditure limitations. Therefore, in order to comply with the spirit of the law, a Committee consultant from Peat, Marwick and Mitchell on February 1, 1980, estimated the state limitations by using the 1978 voting age population figures, and the 1979 inflation factor of 13.3%. The Committee's estimates were higher than the actual limitations, and if considered, would reduce the excessive total of expenditures by \$13,759.72. 3/

3/ The expenditure limitations for Maine and New Hampshire are not affected by the Voting Age Population, and the cost of living factor was available shortly after the Committee made their calculation.

Recommendation

The Audit staff recommends that the Committee adjust their accounting records to reflect the amounts allocable to the three (3) states noted above, and file amendments to reflect their adjustments within 30 days of receipt of this report. With respect to other state allocations, we recommend no action be taken since it would have no effect on the Committee's compliance with these state limitations. For repayment of the amount in excess of state limitations, see Finding III.B.2. For a summary of expenditure limitations by state, see Attachment 1.

B. Receipt of Contributions Exceeding \$1,000 per Person

Section 441a(a)(1)(A) Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate and his authorized political committees with respect to any election to Federal office which, in aggregate, exceed \$1,000.

Section 103.3(b) of Title 11 of the Code of Federal Regulations states, in part, that contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository and reported. A statement noting that the legality of the contribution is in question shall be included in the report, and best efforts made to determine legality. When the legality of a contribution cannot be determined, refunds shall be made within a reasonable time and the current report shall be amended to reflect the committee's response.

1. Although our audit testing of contributions did not reveal a material problem, our pre-audit review of receipts, identified 348 contributors from whom the Committee had received contributions aggregating in excess of \$1,000. An analysis of the committee's actions regarding these excessive contributors revealed that the committee required from one to three months to take action on 29% of them, and from four to twelve months for 40%. The remaining 31% consist of excessive contributions for which the Committee took no action or for which the Audit staff was unable to determine the dates of committee action.

This matter was referred to the Committee in the Threshold audit report; however, the Committee made no apparent change in their procedures to expedite the identification and disposal of excessive contributions.

2. As a result of the pre-audit review of excessive contributions, and in performing other selective audit procedures in the course of fieldwork, the Audit staff found that the Committee had not taken final action on \$76,200.46 (excessive portion) in excessive contributions from 127 individuals. The Committee had attempted to clear \$27,709.50 of these contributions by contacting 47 contributors and requesting permission to attribute the excess portions to either the contributor's spouse, or to the General Election Legal and Accounting Compliance Fund, but as of the final date of fieldwork the contributors had not replied. The remaining \$48,490.96 represents excessive contributions from 80 contributors on which the committee had taken no action as of the end of audit fieldwork. The Audit staff found no evidence of attempts to either refund the excessive portion or attribute it to the spouse or General Election Compliance Fund.

Recommendation

The Audit staff recommends that within 30 days of receipt of this report the Committee present documentation that the contributions are not excessive, have been legally attributed or the excessive portions have been refunded to the original contributors.

C. Apparent Corporate Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank or any corporation, to make a contribution or expenditure in connection with any election to any political office. It further states that it is unlawful for any political committee, or other person to knowingly accept or receive any contribution prohibited by this section, or any officer of any corporation or national bank to consent to any contribution or expenditure by the corporation or national bank.

During the review of Committee expenditure files, documentation was noted which indicated possible corporate contributions from a bank, an insurance company, and 2 real estate companies. In all instances, it appears that corporation money totaling \$9,969.16 was used to pay for fundraising expenses, to be later reimbursed by the Committee. Reimbursement was made to the bank and insurance company; however, no payments have been made to either real estate company.

In addition, during the review of Committee matching fund submissions, one 1) corporate contribution was noted totaling \$350.00.

Recommendation

The Audit staff recommends that the Committee submit to the Audit staff additional documentation indicating that these contributions were not funded from corporate sources, or refund the remaining three (3) amounts (providing copies of the cancelled refund checks) within 30 days of receipt of the interim report.

D. Excessive Transfers-In

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Section 431(11) defines the term person to include a partnership, committee, association, corporation, or any other organization or group of persons.

In reviewing transfers received by the committee, the Audit staff identified three (3) transfers totaling \$7,000 which according to the Commission's Reports Analysis Division, were from committees that were not qualified as multi-candidate committees under Section 441a(a)(4). The Committee was notified, and refunded 2 transfers totaling \$5,000. At the final date of fieldwork, one remaining transfer of \$2,000 had not been refunded. 4/

The Committee has stated that upon receipt of these transfers, inquiry was made to the Commission's Office of Public Records as to the status of the transferring committees, and were informed that they were qualified as multi-candidate committees.

Recommendation

The Audit staff recommends that within 30 days of receipt of this report, the committee refund the remaining unqualified transfer, and provide copies of the cancelled check for verification.

4/ In addition, the Committee received a transfer from the Prince George's Med PAC which it refunded. This matter was previously referred to the Office of General Counsel by the Reports Analysis Division.

E. Disclosure of Earmarked Contributions

Section 434(b)(3) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the identification of each person who makes a contribution to the Committee during the reporting period, whose contributions have an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.

Section 110.6(c)(3) of Title 11 of the Code of Federal Regulations states that the intended recipient of an earmarked contribution shall disclose, on his next report, each conduit through which an earmarked contribution passed.

A review of reports filed with the Federal Election Commission by Committees reporting passage of earmarked contributions to this Committee identified 37 earmarked contributions in excess of \$200 which were required to be itemized with the name of the conduit on the Committee reports. Of these contributions, 23 were not found itemized, and 13 were itemized without being designated as earmarked, or identifying the conduit.

The Committee stated that many of the earmarked contributions had been received without being noted by the conduits as being earmarked.

Recommendation

The Audit staff recommends that the Committee file an amendment to the appropriate reports, itemizing the contributions as required within 30 days of receipt of this interim report.

F. Itemization of Transfers

Section 434(b)(2)(D) and 434(b)(3)(B) of Title 2 of the United States Code states in part, that each report shall disclose the total amount of contributions receipts from other political committees, together with the identification of each political committee which makes a contribution to the reporting committee during the reporting period, including the date and amount of any such contribution.

Section 104.3(a)(3)(iv) & (4)(iii) of Title 11 of the Code of Federal Regulations states, in part, that an authorized committee of a candidate for Federal office shall report the total amount of receipts received during the reporting period and during

the calendar year from committees. For all committees which make contributions to the reporting committee during the reporting period, the report shall identify the committee, the aggregate year-to-date total for such contribution, and the date of receipt and amount of the contribution.

In reviewing transfers made to the committee, the Audit staff identified 31 transfers totaling \$27,911 which were reported by the transferring committees but not disclosed on committee reports. The Committee was provided with a list of these transfers, and submitted documentation showing that some had been reported erroneously as contributions under the treasurer's name, some had been reported as earmarked contributions, and others had not been received by the committee and were being referred to the transferring committee for a letter of explanation. At the final date of fieldwork, two (2) transfers totaling \$1,100 had not been explained and were still being researched by the committee.

Recommendation

The Audit staff recommends that within 30 days of receipt of this report, the committee amend their reports to properly itemize the noted transfers.

G. Itemization of Expenditures

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made to meet a committee operating expense, together with the date, amount, and purpose of such operating expenditure.

A review of Committee expenditures from the operating and payroll accounts identified nine (9) expenditures totaling \$125,105.40 which were not itemized on Committee reports. Seven (7) of the expenditures were required to be itemized in the 1979 year-end report, and appear to have resulted from Schedule B-P programming errors. Five (5) of the expenditures were for withholding taxes related to legal and accounting payroll. Two (2) were payments to a hotel for fundraising activities, and the remaining two (2) were for hotel and equipment rental during the convention.

Three (3) additional expenditures totaling \$17,456.92 were incorrectly itemized under a different vendor name.

Recommendation

Due to the program errors identified with the 1979 year-end report, the Audit staff recommends that the Committee file an amended 1979 year-end Schedule B-P. In addition, within 30 days of receipt of this interim report, the Audit staff recommends an amendment itemizing the two (2) convention related expenditures omitted from the September, 1980 monthly report.

H. Undisclosed Debt

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report required to be filed shall disclose the amount and nature of outstanding debts and obligations owed, and where such debts are settled for less than their reported value, a statement as to the circumstances and conditions under which they were extinguished.

Section 104.11 of Title 11 of the Code of Federal Regulations details the reporting requirements for debts and obligations. Those which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after the obligation is incurred whichever comes first. Any loan, debt, or obligation, the amount of which is over \$500 shall be reported as of the time of the transaction.

In examining the Committee's reported outstanding debts and obligations at July 31, 1980, the Audit staff identified a total of \$98,017.60 in committee debts in excess of \$500 which were undisclosed. In addition, the committee was found to have understated their disclosed debts by \$57,648.43.

Recommendation

The Audit staff recommends that within 30 days of receipt of this interim report, the Committee amend their August Monthly report to accurately reflect outstanding debt as of July 31, 1980, and amend subsequent reports to the extent that they are affected by those changes.

I. Timely Deposit of Contributions

Section 432(h)(1) of Title 2 of the United States Code states, in part, that each committee shall designate one or more depository institutions as its campaign depository or depositories, and all receipts received by such committee shall be deposited into accounts maintained at such depositories.

Section 103.3(a) of Title 11 of the Code of Federal Regulations states, in part, that all deposits of receipts shall be made within 10 days of the treasurer's receipt.

In testing contributions made to the committee for the period from October 1, 1979 through August 13, 1980, the Audit staff found that from 22 to 29 percent of contributions were deposited by the Committee 30 to 60 or more days subsequent to the date on the contribution check.

When notified of the time period required by the Committee for the deposit of contributions, the Committee stated that the time lapse between date of deposit and check date was created by the practice by state fundraisers of accumulating contributions into impressive amounts before sending them to committee headquarters for deposit. The Audit staff noted that although the Committee was aware of this practice during the Threshold audit, they failed to take actions to prevent it.

Recommendation

The Audit staff recommends that the matter be referred to the Office of General Counsel for further review.

III. Findings Related to Title 26 of the United States Code Determination of Net Outstanding Campaign Obligations and Repayment to the U.S. Treasury

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(b) of Title 11, Code of Federal Regulations requires that the candidate submit a statement of net outstanding campaign obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

The Commission preliminarily determined August 13, 1980, to be the day on which President James E. Carter's candidacy terminated for the purpose of incurring qualified campaign expenses.

The Committee filed a statement of net outstanding campaign obligations dated August 15, 1980. The date of ineligibility however, was August 13, 1980. During the course of the audit, the Audit staff made necessary adjustments to the NOCO statement to reflect the candidate's position at the correct date of ineligibility, and other adjustments to correct misstatements of the accounts receivable, accounts payable and winding down costs. (See Attachment 2).

The Committee represented its outstanding debts as stated in the August monthly report to be the amount of outstanding accounts payable at August 13, 1980. Our audit of the NOCO statement indicated that the accounts payable at August 13, 1980 was mis-stated partly as a result of the inaccurate disclosure of campaign debts on the July 31, 1980 Schedule C-P of the August monthly report.

As of August 13, 1980, the Committee's reported net outstanding campaign obligations, as adjusted, totaled \$638,068.77. Based on this outstanding debt, the Committee received matching fund payments of \$114,111.11. Therefore, as of that time the Candidate has received no matching fund payments in excess of his entitlement.

Recommendation

Since no payments in excess of the Candidate's entitlement were made, the Audit staff recommends no action on this matter.

B. Apparent Unqualified Campaign Expenses

Section 9033(b)(2) of Title 26 of the United States Code provides that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than: to defray the qualified campaign expenses with respect to which such payment was made; or to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses; it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9032-9(A) and (B) of Title 26 of the United States Code defines a qualified campaign expense as a purchase, payment, distribution, loan advance, deposit, or gift of money or of anything of value incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination or election; and neither the incurring or payment of which constitutes a violation of any law of the United States or the state in which the expense is incurred or paid.

1. Payment of General Election Expenses By The Primary Election Committee

Proposed Section 9003.4(b)(4)(i) of Title 11 of the Code of Federal Regulations states in part, that a candidate who has received federal funding may borrow from his or her primary election campaign an amount not to exceed the residual balance projected to remain in the candidates primary account. 5/

Prior to the candidate's nomination on August 13, 1980, the Committee made 16 expenditures totaling \$6,367.82 for lodging, transportation, and other payments to individuals relating to the General Election campaign. As evidenced by the Statement of Net Outstanding Campaign Obligations filed as of the candidate's nomination, (see Attachment 2), no residual existed from which funds could be borrowed by the General Election Committee.

In lieu of repayment to the U. S. Treasury, the Committee has expressed a willingness to refund the \$6,367.82 to the primary campaign.

Recommendation

The Audit staff recommends that the Commission preliminarily determine that the \$6,367.82 in General Election expenses are non-qualified campaign expenses and absent a showing to the contrary within 30 days of receipt of this report, an equal amount be repayable to the Secretary of the United States Treasury.

2. Expenditures In Excess of State Limitation

As previously reported in Finding A-2, the Audit staff identified expenditures in excess of the state limitations for Iowa totaling \$56,962.19, for Maine totaling \$29,500.44, and for New Hampshire totaling \$32,112.67.

Recommendation

The Audit staff recommends that these expenditures totaling \$118,575.30 be preliminarily determined to be non-qualified campaign expenses which, absent a showing to the contrary within 30 days of receipt of this report, shall be repaid in full to the U. S. Treasury.

5/ Section 9003.(b)(4)(i) was pending before Congress at the time of the transactions and became effective on September 5, 1980.

Expenditure Limitation State Allocation Summary

	<u>Iowa</u>	<u>Maine</u>	<u>New Hampshire</u>
Committee Allocated Total	489,551.00	271,550.00	283,686.00
U.S. Treasurer	7,862.28	4,388.35	2,185.86
Telephone	21,881.20	-	18,595.37
Media	11,161.19	16,561.83	844.66
Travel Expense Reimbursements	9,172.47	6,686.03	4,935.03
Outstanding Debt	-	11,098.16	1,480.19
Large Vendors	4,603.43	14,616.34	6,565.30
Miscellaneous	1,852.81	(700.27)	9,350.22
Adjusted Total	546,084.38	4,200.44	327,642.63
State Limitation	489,881.60	294,400.00	294,400.00
Amount In Excess of Limit <u>1/</u>	56,202.78	29,800.44	33,242.63

1/ The amount in excess of limit does not include any allocation of media production costs, and may require adjustment upon verification of the vendors allocations.

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 CARTER/MONDALE PRESIDENTIAL COMMITTEE, INC.
 STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
 AUGUST 13, 1980

Attachment 2

<u>ASSETS</u>	<u>ORIGINALLY STATED</u>		<u>ADJUSTED BY AUDIT</u>
Cash in Bank	\$ 107,375.00		\$165,481.89 1/
Cash on Hand	10.00		10.00
Accounts Receivable	187,921.81		149,525.39 2/
Matching Funds Receivable	-0-		64,527.21 5/
Capital Assets	71,639.63	\$ 366,946.44	71,639.63 \$ 451,184.12
<u>OBLIGATIONS</u>			
Accounts Payable for Qualified Campaign Expenses	\$1,055,656.73		\$919,942.89 3/
Estimated Winding Down Costs 8/13/80 to 6/30/81 (Projected Termination Date)			
Salaries	45,972.00		38,310.00 4/
Computer Services	110,000.00		110,000.00
Supplies, Rent, Telephones	21,000.00		21,000.00
	<u>176,972.00</u>	<u>1,232,628.73</u>	<u>169,310.00</u> 1,089,252.89
Net Outstanding Campaign Obligation-Deficit		\$ 865,682.29	\$ 638,068.77

- 1/ Cash in bank was adjusted to reflect the candidates cash position at 8/13/80. The original NOCO statement filed by the Committee stated the cash position at 8/15/80.
- 2/ Accounts receivable was reduced by the exclusion of certain deposits which are in dispute.
- 3/ The Committee had used the 7/31/80 report, line 13, outstanding debts and obligations as a source for the accounts payable stated on the NOCO. In examining documentation for each item included in the Committee's total, the Audit staff revised the accounts payable by eliminating items that had actually been paid prior to 8/13 and were no longer liabilities, and adding debts that had previously been undisclosed or understated.
- 4/ Salaries were calculated by the Committee for a twelve month period. The projected termination date covers a 10 month period. The amount was recalculated by the Audit staff using the correct 10 month period.
- 5/ Matching Funds of \$64,527.21 were certified on the date of ineligibility but were not deposited until the following day.



FEDERAL ELECTION COMMISSION

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