FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1388

Date Filmed 6/15/82 Camera No. --- 2

Cameraman SPC

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FEDERAL ELECTION COMMISSION

1) routing slips
2) memos to and from Dealer
3) objection memos
4) Interim Audit Report

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

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

Signed Jonathan M. Levin

date June 7, 1982

FEC 9-21-77

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1982

Paul D. Kamenar, Esquire
1015 Fifteenth Street
Suite 1100
Washington, D.C. 20005

Re: MUR 1388

Dear Mr. Kamenar:

This is to advise you that after an investigation was conducted, the Commission concluded on April 21, 1982, that there is no probable cause to believe that your client, Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a). Accordingly the file in this matter, numbered MUR 1388, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record please do so within 10 days.

If you have any questions, contact Jonathan Levin at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Paul D. Kamenar, Esquire
1015 Fifteenth Street
Suite 1100
Washington, D.C. 20005

Re: MUR 1388

Dear Mr. Kamenar:

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If you have any questions, contact Jonathan Levin at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

9204031774

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1982

Honorable John B. Anderson
National Unity Campaign for
John Anderson
2720 Thirty-fifth Place, N.W.
Washington, D.C. 20007

Re: MUR 1388

Dear Mr. Anderson:

This is to advise you that after an investigation was conducted, the Commission concluded on April 21, 1982, that there is no probable cause to believe that your committee, the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a). Accordingly the file in this matter, numbered MUR 1388, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record please do so within 10 days.

If you have any questions, contact Jonathan Levin at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

32040331775

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Honorable John B. Anderson
National Unity Campaign for
John Anderson
2720 Thirty-fifth Place, N.W.
Washington, D.C. 20007

Re: MUR 1388

Dear Mr. Anderson:

This is to advise you that after an investigation was conducted, the Commission concluded on April 21, 1982, that there is no probable cause to believe that your committee, the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a). Accordingly the file in this matter, numbered MUR 1388, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record please do so within 10 days.

If you have any questions, contact Jonathan Levin at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

32040331775

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Unity Campaign for John Anderson	)	MUR 1388
	)	
Mott Enterprises, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 21, 1982, the Commission decided in a vote of 6-0 to take the following actions with regard to MUR 1388:

1. Find no probable cause to believe that the National Unity Campaign for John Anderson violated 2 U.S.C. §441b(a).

2. Find no probable cause to believe that Mott Enterprises, Inc., violated 2 U.S.C. §441b(a).

3. Approve the letters attached to the General Counsel's Report signed April 16, 1982.

4. Close the file.

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

Attest:

4-21-82

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in Commission Secretary's Office: April 19, 1982; 11:35 a.m.
Circulated on a 48 hour tally basis: April 19, 1982; 4:00 p.m.

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April 19, 1982

MEMORANDUM TO: Marjorie Emmons

FROM: Steven Barndollar

SUBJECT: MUR 1388

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

Attachment

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 APR 19 A11:35

In the Matter of	)	
	)	
National Unity Campaign for John Anderson	)	MUR 1388
	)	
Mott Enterprises, Inc.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On September 22, 1981, the Commission found reason to believe that the National Unity Campaign for John Anderson ("NUC") and Mott Enterprises, Inc., ("MEI") violated 2 U.S.C. § 441b(a) in connection with a $407,550 extension of credit by MEI to NUC. It appeared that the extension may not have been made in the ordinary course of business in accordance with 11 C.F.R. § 114.10. On that date, the Commission also approved questions to be sent to both respondents seeking information as to the extension of credit and as to other transactions by the respondents. Documents pertaining to the credit extension were also requested.

Both respondents submitted responses in early November, 1981. Based upon the answers to the questions and the documents, the General Counsel sent briefs to both respondents on February 24, 1982, stating that he would recommend that the Commission find no probable cause to believe that either NUC or MEI violated 2 U.S.C. § 441b(a). On March 11, 1982, MEI's attorney, Paul Kamenar, filed a response stating that MEI concurs with the recommendation

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but "not necessarily" with the analysis. Mr. Kamenar, therefore, referred the Commission to MEI's responses filed in answer to the reason to believe finding. NUC did not file a response to the brief.

II. **LEGAL ANALYSIS**

Since neither respondent submitted any additional analysis of this matter after receipt of the briefs, the General Counsel refers the Commission to its briefs dated February 24, 1982.

III. **RECOMMENDATIONS**

It is recommended that the Commission:

1. Find no probable cause to believe that the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a).
2. Find no probable cause to believe that Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a).
3. Approve the attached letters.
4. Close the file.

April 16, 1982
Date

Charles N. Steele
General Counsel

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

Attachments
1. Letter to John Anderson, counsel for the National Unity Campaign for John Anderson.
2. Letter to Paul Kamenar, counsel for Mott Enterprises, Inc.

32040331780

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Honorable John B. Anderson
National Unity Campaign for
John Anderson
2720 Thirty-fifth Place, N.W.
Washington, D.C. 20007

Re: MUR 1388

Dear Mr. Anderson:

This is to advise you that after an investigation was conducted, the Commission concluded on , 1982, that there is no probable cause to believe that your committee, the National Unity Campaign for John Anderson, violated 2 U.S.C. § 441b(a). Accordingly the file in this matter, numbered MUR 1388, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record please do so within 10 days.

If you have any questions, contact Jonathan Levin at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

Attachment 1

32049317881

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Paul D. Kamenar, Esquire
1015 Fifteenth Street
Suite 1100
Washington, D.C. 20005

Re: MUR 1388

Dear Mr. Kamenar:

This is to advise you that after an investigation was conducted, the Commission concluded on , 1982, that there is no probable cause to believe that your client, Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a). Accordingly the file in this matter, numbered MUR 1388, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record please do so within 10 days.

If you have any questions, contact Jonathan Levin at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

Attachment 2

32049531782

Bcc # 7333

LAW OFFICES
PAUL D. KAMENAR
1015 FIFTEENTH STREET, N.W.
SUITE 1100
WASHINGTON, D.C. 20005
(202) 393-0330

March 11, 1982

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

82 MAR 11 P3:34

RE: MUR 1388

Dear Mr. Chairman:

I have received a copy of the General Counsel's Brief dated February 10, 1982 in the above-captioned MUR which recommends that the Commission find no probable cause that the respondent violated 2 U.S.C. § 441b(a).

While we concur in that recommendation, we do not necessarily agree with the legal analysis completely as stated in the brief. Accordingly, we hereby refer the Commission to our responses filed on or about November 10, 1981 as additional or alternative grounds upon which the Commission could justify dismissal of this case. Since these documents have already been submitted to the Commission, we hereby incorporate them here by reference and request that each Commissioner review them before taking final action on this case.

Very truly yours,

Paul D. Kamenar

Paul D. Kamenar

cc: Secretary of the Commission
General Counsel's Office

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Bcc # 7336

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

82 MAR 12 A 9: 57

LAW OFFICES
PAUL D. KAMENAR
1015 FIFTEENTH STREET, N.W.
SUITE 1100
WASHINGTON, D.C. 20005

(202) 289-0238

March 11, 1982

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 MAR 11 P 4: 26

RE: MUR 1388

Dear Mr. Chairman:

I have received a copy of the General Counsel's Brief dated February 10, 1982 in the above-captioned MUR which recommends that the Commission find no probable cause that the respondent violated 2 U.S.C. § 441b(a).

While we concur in that recommendation, we do not necessarily agree with the legal analysis completely as stated in the brief. Accordingly, we hereby refer the Commission to our responses filed on or about November 10, 1981 as additional or alternative grounds upon which the Commission could justify dismissal of this case. Since these documents have already been submitted to the Commission, we hereby incorporate them here by reference and request that each Commissioner review them before taking final action on this case.

Very truly yours,

Paul D. Kamenar

Paul D. Kamenar

cc: Secretary of the Commission
General Counsel's Office

8204031785

Bcc# 7550

LAW OFFICES
PAUL D. KAMENAR
1015 FIFTEENTH STREET, N.W.
SUITE 1100
WASHINGTON, D.C. 20005
(202) 393-8535

2 12 A 9:57

March 11, 1982

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 MAR 11 P 4:25

RE: MUR 1388

Dear Mr. Chairman:

I have received a copy of the General Counsel's Brief dated February 10, 1982 in the above-captioned MUR which recommends that the Commission find no probable cause that the respondent violated 2 U.S.C. § 441b(a).

While we concur in that recommendation, we do not necessarily agree with the legal analysis completely as stated in the brief. Accordingly, we hereby refer the Commission to our responses filed on or about November 10, 1981 as additional or alternative grounds upon which the Commission could justify dismissal of this case. Since these documents have already been submitted to the Commission, we hereby incorporate them here by reference and request that each Commissioner review them before taking final action on this case.

Very truly yours,

Paul D. Kamenar

Paul D. Kamenar

cc: Secretary of the Commission
General Counsel's Office

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February 24, 1982

MEMORANDUM TO: Marjorie Emmons

FROM: Steven Barndollar

SUBJECT: MUR 1388

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1982

Honorable John B. Anderson
National Unity Campaign for
John Anderson
2720 Thirty-Fifth Place, N.W.
Washington, D.C. 20007

RE: MUR 1388

Dear Mr. Anderson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on September 22, 1981, found reason to believe that your committee, the National Unity Campaign for John Anderson, had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Should you have any questions, please contact Jonathan Levin at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

8204031790

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1982

Paul D. Kamenar, Esquire
1015 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005

RE: MUR 1388

Dear Mr. Kamenar:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on September 22, 1981, found reason to believe that your client, Mott Enterprises, Inc., had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Should you have any questions, please contact Jonathan Levin at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

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RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 FEB 24 A10: 33

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

February 24, 1982

MEMORANDUM

TO : The Commission

FROM : Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

SUBJECT: MUR 1388

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. Copies of these briefs and letters notifying the respondents of the General Counsel's intent to recommend to the Commission a finding of no probable cause to believe were mailed on February 24, 1982. Following receipt of the respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments

1. Brief to the National Unity Campaign for John Anderson ("NUC")
2. Letter to NUC
3. Brief to Mott Enterprises, Inc. ("MEI")
4. Letter to MEI

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BEFORE THE FEDERAL ELECTION COMMISSION
February 10, 1982

In the Matter of	)	
	)	
National Unity Campaign for John Anderson	)	MUR 1388
	)	

GENERAL COUNSEL'S BRIEF

I. BACKGROUND

This matter was referred to the Office of General Counsel by the Reports Analysis Division and by the Audit Division in regard to a possible violation of 2 U.S.C. § 441b(a) by the National Unity Campaign for John Anderson ("NUC"). It appeared that Mott Enterprises, Inc. ("MEI") may have extended $407,550 in credit to NUC outside the ordinary course of business.

On October 27, 1980, MEI billed NUC in the amount of $407,550 for direct mailing services including production costs and management fees. NUC repaid MEI in full on November 14, 1980, the day after NUC received the first payment on more than four million dollars in public funds from the U.S. Treasury pursuant to its entitlement under 26 U.S.C. § 9004(a)(3). While, in its dealings with most of its large vendors, NUC was required to tender a deposit or other type of prepayment in order to ensure continued performance by the vendor, no such prepayment was provided in this case.

Section 114.10(a) of the Commission regulations states, "A corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the

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corporation's business and the terms are substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation." In the absence of information as to the time period involved in the transactions and as to other circumstances, the extension of credit did not appear to comport with operating patterns established with other vendors of its size and raised the possibility that the extension was made outside the ordinary course of the corporation's business.

On September 22, 1981, the Commission found reason to believe that NUC violated 2 U.S.C. § 441b(a) and approved questions to be sent to the respondent. These questions were aimed at obtaining further information as to the transaction and as to other transactions engaged in by NUC for mailing services. Documents pertaining to the transaction were also requested. A similar set of questions and a request for documents were also sent to MEI. In addition, MEI was also questioned as to its transactions with other political and non-political clients.

NUC's response was received on November 3, 1981, and MEI's response was received on November 10, 1981.

Committee treasurer Paul Wycisk, replying for NUC, stated that MEI provided consulting and related services for the direct mail program. The services involved two mailings, one made on September 15, 1980, and comprised of 330,000 pieces at a cost of $77,550 and another made on September 19 and comprised of one million pieces at a cost of $330,000. Discussions between MEI

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and NUC as to the services provided commenced on August 29, 1980, and arrangements for the provision of services were finalized on September 15 in the form of a written contract.

Mr. Wycisk went on to state that one other company, Craver, Mathews, Smith and Company of Virginia ("CMS") provided mailing services to NUC. He stated that:

> [o]n occasion CMS would ask the Committee for "up front" money before a mailing, almost always for postage (an immediate expense which could not be billed). On a periodic basis, as CMS received subcontractor invoices, they would bill the Committee.

Mr. Wycisk enclosed a copy of the contract between NUC and MEI, called a "Letter of Agreement," and two riders to the contract, each one providing for a separate mailing and each signed by the parties on the same date that they signed the Letter of Agreement, i.e., September 15 for MEI and September 25 for NUC. These riders were referred to in clause one of the contract as providing the specific quantity, dates, costs, and fees for each mailing. The contract contained a number of terms designed to assure payment for the services provided. They include a due date of sixty days after execution of the contract, a charge of 1 1/2 percent interest per month on any overdue payment, a requirement of payment immediately upon the receipt of federal funds or from any other unencumbered cash source available to the campaign, a requirement that NUC take all legal steps necessary to receive federal funds promptly, provisions for a post-election mailing to raise funds in the event that the campaign should be unable to pay MEI with MEI as

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the priority recipient of the proceeds of such a mailing, the provision by NUC to MEI of a financial report showing NUC's creditors and the amount of its indebtedness in the event that the campaign's accumulated debt exceeded $2.5 million, a requirement that NUC obtain life insurance on John Anderson's life, and clauses stating that withdrawal from the campaign by the candidate prior to election day or a breach of any of the other aforesaid requirements would cause an acceleration of NUC's obligations to MEI and make them due immediately. In addition to a requirement for payment by NUC for mailing services, the contract also required that MEI have the right to co-own the names and addresses of the mailing respondents and to retain the mailing list "for the purposes of building its own revolving list bank." Also accompanying these documents is a letter, dated September 19, from John Anderson's campaign manager, Michael McLeod, to MEI, the purpose of which was to "warrant" to MEI that NUC would obtain at least $1.5 million in term life insurance for Mr. Anderson. The letter also referred to the fact that in its negotiations with banks for a line of credit, NUC was being asked to obtain life insurance. Mr. McLeod stated that, if the bank negotiations were successful, the amount of insurance would be increased to cover such loans.

Attorney Paul Kamenar filed the response on behalf of MEI and enclosed a sworn affidavit from Daphne W. Dwyer, II, President of Mott Enterprises, answering the questions addressed to her. Ms. Dwyer's responses as to the dates and arrangements

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of the transaction were, for the most part, more general, but not inconsistent with the responses provided by Mr. Wycisk. More particularly, Ms. Dwyer stated that MEI's profit for the contract was between $25,000 and $30,000.

In answer to questions not also addressed to NUC, Ms. Dwyer stated that MEI has never asked for a deposit from any client. She went on to state that MEI receives "partial payments from time to time on outstanding bills only in cases of continued, long-term services to a client." She maintained that since "services performed, billing and payment were all completed in a relatively short cycle," there was no need for an interim payment.

Ms. Dwyer also stated that even though MEI has never billed a client in such a large amount before, MEI "believed that the test mail results indicated that the NUC mailing presented little risk." Ms. Dwyer asserted that payment was further safeguarded by the requirement of life insurance, the requirement of a finance charge on any unpaid balance, and a requirement that MEI "be placed high on the priority of payment to creditors."

Mr. Kamenar commented upon the responses given by Ms. Dwyer. In pointing out that MEI has never required a deposit from political or non-political clients and has only required interim payments on contracts that were long-term, he contended that the MEI-NUC transaction was, therefore, in MEI's ordinary course of business.

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Mr. Kamenar argued that, in applying the standard of "similar risk and size of obligation" found in 11 C.F.R. § 114.10, the Commission should view the factors of risk and size together. Thus, while MEI had never billed a client before in an amount as high as $407,550, there were a number of risk-lowering factors in the NUC-MEI arrangement. Mr. Kamenar stated, as did Ms. Dwyer, that the first mailing was a test mail which indicated that NUC was a "low-risk entity." He also pointed to contract terms in addition to those mentioned by Ms. Dwyer. These were the commitment to post-election fundraising if necessary, NUC's obligation to inform MEI of its overall debt situation, and the requirement that NUC take all necessray legal steps to obtain federal funding. See pp. 3-4, supra.

Mr. Kamenar also enclosed a copy of the contract, the two riders to the agreement, the above-mentioned letter from NUC informing MEI that it was obtaining adequate insurance on the candidate's life, and an additional letter, dated September 28, stating that life insurance would be obtained that week. This letter also called attention to an initialed amendment by Mr. McLeod on the second rider changing the deadline for the second mailing from September 19 to September 29.

Mr. Kamenar also enclosed a copy of a letter, dated September 13 from Mr. McLeod to Ms. Dwyer, the purpose of which was to give "assurance that Mott Enterprises will be a priority creditor of NUC." The letter referred to the fact that NUC was, at that time, negotiating with a number of banks to obtain a

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$10 million line of credit with post-election funding to be "made payable in whole to pay off any borrowings made by NUC". The letter stated that the banks would insist upon a five percent margin between the percentage of the popular vote that would entitle Mr. Anderson to an amount of public funds equal to the amount drawn and Mr. Anderson's actual standing in the polls at the time of the draw. Thus, for example, if the initial draw were $3 million, (the approximate amount that Mr. Anderson would receive in public funds with a 5 percent vote) 1/ Mr. Anderson would have to have at least a ten percent poll rating (which would, if converted to a voting percentage, entitle Mr. Anderson to approximately $6.5 million in public funds). According to the letter, therefore, there would be "a 5% or $3 million margin throughout the life of the line of credit" and, "from this margin," NUC would repay MEI. The letter also stated that MEI would be first in priority for repayment from post-election funds after the banks have been paid in full.

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II. LEGAL ANALYSIS

If the extension of credit in question did not comply with the standard set out in 11 C.F.R. § 114.10, i.e., a credit extension in the ordinary course of the corporation's business

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1/ The $3 million figure was apparently based upon the assumption that the two major party candidates would receive the remaining 95 percent of the vote. See 26 U.S.C. § 9004(a)(3).

with "terms substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation," then it would be in violation of the prohibition on corporate contributions in 2 U.S.C. § 441b(a). In this matter, there was a substantial amount of credit extended accompanied by a number of contractual terms and other arrangements aimed at assuring repayment to MEI.

Some of these arrangements bear discussion beyond mere repetition of the language of the contract or the assertions made by respondents. For example, the contractual clauses requiring prompt payment by NUC upon receipt of federal funds and from any other cash source unencumbered by any lending institution and requiring that NUC take all legal steps necessary to secure federal funds raise the question of whether or not a reliance by MEI on an expectancy, i.e., the receipt of post-election federal funds, is outside the ordinary course of business for MEI. While we do not have any information as to whether or not MEI has ever relied on such an expectancy and while such an expectancy may have certain risks attendant to it, there is nothing inherent in such a reliance to cause a transaction to be considered as outside the ordinary course of business. In 1974, the Senate Committee on Rules and Administration, reporting on legislation proposing public financing of Congressional campaigns, observed that post-election funding could be used by minor party candidates to "pay outstanding campaign obligations or to reimburse loans and contributions." S. Rep. No. 93-689, 93d

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Cong. 2d Sess. 9 (1974). Furthermore, the Commission, in enforcement actions, has addressed the issue of loans to Presidential campaigns based upon expectancies of future funding. In MUR 382, the Commission found no reason to believe that four banks and the Brown for President Committee violated 2 U.S.C. § 441b(a) in connection with nine short term unsecured loans where the banks were looking to anticipated profits from fundraising concerts and anticipated receipt of federal primary matching funds. In MUR 1195, the Commission found no reason to believe that a bank and the Kennedy for President Committee violated § 441b(a) in connection with an arrangement for $1 million in loans secured by primary matching funds wherein $800,000 was received by the Committee prior to certification of Senator Kennedy's eligibility for matching funds. Finally, the Commission stated its position with respect to bank loans based upon anticipated post-election federal funding in AO 1980-108 which was issued in response to a request submitted by NUC's General Counsel, Mitchell Rogovin, on September 17, 1980, two days after the finalization of the NUC-MEI agreement. Citing the above two MURs, the Commission, while admitting that "the risk of nonpayment may be higher in the context of a loan made upon the expectation of a candidate qualifying for and receiving sufficient post-election financing than it is in the context of a loan made upon the expectation of a candidate qualifying for and receiving sufficient primary matching funds," concluded that "the existence of such risk does

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not, standing alone, take a loan secured by an expectancy in post-election funds outside the scope of the 'ordinary course of business.'" AO 1980-108.

The contractual clauses referring to federal funds also raise the question of how sure MEI could be of repayment from federal funds. From copies of correspondence submitted by both respondents, it is clear that NUC was contemplating an arrangement whereby it would owe millions of dollars to banks with the banks having first priority in the receipt of federal proceeds. The letter of September 13, referred to supra, set out an agreement in which MEI might have received some assurance that a substantial amount of money would have been available for repayment to it. Another plan was also being contemplated by NUC as evidenced by the above-mentioned advisory opinion issued in response to a request submitted by Mr. Rogovin. 2/ This arrangement involved a revolving line of bank credit up to $10 million with the amount available at any given time, referred to as "Available Commitments," being "that portion of the commitments which bears the same proportion to the total of the commitments as the most recent average poll results bears to the base poll results." AO 1980-108. The base result was twenty

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2/ It is highly possible that this plan was, in reality, the same as the one that Mr. McLeod attempted to describe in his letter of September 13, and that the differences in the descriptions of the plans resulted from minor misinterpretations by Mr. McLeod.

percent. There would be an initial borrowing of $3 million which would require at least a six percent position in the polls. All subsequent borrowings could be made only after ten days of any previous borrowing, and the total indebtedness of the campaign could not exceed the available commitment on the date of such borrowing. No single borrowing after the initial borrowing could be greater than $3 million nor less than $250,000. Based on the above details, this plan would have provided a margin between the amounts available to NUC from the banks based on a certain percentage in the polls and the amount anticipated from federal funds at that percentage in the general election. 3/ Conceivably, MEI could have been concerned that Mr. Anderson might not have received a sufficient percentage of votes and, therefore, a sufficient amount of federal funds to cover repayment to the banks with some funds remaining for payment to MEI. However, either one of these plans for bank loans, by providing for a substantial margin between potential federal funds and the loan amounts available from the banks, could have been perceived by MEI as lowering the risk that MEI would not be able to receive payment from NUC.

3/ At six percent in the polls, the candidate could have received three million dollars from the banks and, with six percent of the vote, the candidate could have received at least $3.75 million. At twenty percent in the polls, the candidate could have received up to $10 million from the banks and, with twenty percent of the vote, the candidate could have received at least $14.72 million.

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MEI's attorney and president assert that one of the risk-lowering factors for MEI in this arrangement was the first mailing which was characterized as a test mailing. While the dates given by NUC for the mailings, i.e., September 15 and September 19, would appear to preclude the idea of the first mailing as the test mailing, the second mailing may have actually occurred as late as September 29 as evidenced by Mr. McLeod's amendment of the second rider. 4/ While there was no contractual provision providing for a mailing characterized as a test mailing, the parties may very well have considered the first mailing, which was much smaller than the second, as a test. The Letter of Agreement made no mention of any specific number of mailings and, if the results of the first were not encouraging, then the second rider need not have been agreed to and no second mailing need have been conducted.

Despite any doubts as to whether or not the first mailing was a risk-lowering test mailing, there are other clauses in the contract and other arrangements that lowered the risk of nonpayment, e.g., a service charge on outstanding obligations, a commitment to post-election fundraising if necessary, the provision by NUC of a financial report of its indebtedness, acceleration of the obligation of NUC in the event of withdrawal

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4/ It appears that, in preparing his response to our questions, Mr. Wycisk may have relied on the date originally printed on the second rider. The copy of the rider sent to us by him did not include the McLeod amendment.

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by the candidate or breach of the contract, and the granting of "priority creditor" status for MEI. 5/ These factors, along with the short-term nature of the contract, overrode any necessity for a deposit or interim payment by NUC, in the General Counsel's view. 6/

5/ The assertion that MEI was a high priority creditor is based upon the letter of September 13 from Mr. McLeod to Ms. Dwyer, referred to above. However, no mention of priorities appears in the later-dated contract which, according to both respondents, constituted a finalization of the agreement.

According to the parol evidence rule, a substantive rule of contract law, "when two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing." Calamari and Perillo, Contracts, § 40, citing 3 Corbin, Contracts § 573. Therefore, if there were a dispute over the contract between NUC and MEI as to whether MEI had any particular priority such as first priority after the banks and the contract was considered to be a complete integration of the agreement, NUC might claim that NUC had no contractual obligation to grant priority to MEI. Putting aside speculation as to how a court might resolve such a dispute, the letter appears, for our purposes, to manifest an understanding between the respondents that MEI would have priority next to the banks.

6/ The obligation to purchase insurance on John Anderson's life was another risk lowering factor. While the letter from Mr. McLeod to Ms. Dwyer of September 28, 1980, states that insurance would be obtained that week, neither respondent sent documents indicating that a policy was, in fact, purchased. In a telephone conversation with an OGC staff member on January 29, 1982, Mr. McLeod stated that he believes that some insurance was obtained in connection with the NUC-MEI transaction. Mr. McLeod did not recall the amount of insurance purchased but he stated that the coverage may have been for the amount of the transaction rather than for $1.5 million.

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In addition, apart from the risk-lowering arrangements put into effect, NUC made full payment of the debt within a short period of time, i.e., the sixty day time period provided for in the contract. In MURs 303 and 454, both involving extensions of creidit by the Richard A. Viguerie Company to a committee, the Commission found no reason to believe that a violation of 2 U.S.C. § 441b(a) occurred even though in these matters the obligations from the committee to the vendor remained outstanding for long periods of time or long after the due date. In this matter, it appears not only that there were terms aimed at assuring complete repayment, but that such repayment came in a timely manner.

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that NUC violated 2 U.S.C. § 441b(a).

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III. RECOMMENDATION

1. Find no probable cause to believe that the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a).

Charles N. Steele
General Counsel

Feb 03, 1982
Date

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

(15)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Honorable John B. Anderson
National Unity Campaign for
John Anderson
2720 Thirty-Fifth Place, N.W.
Washington, D.C. 20007

RE: MUR 1388

Dear Mr. Anderson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on September 22, 1981, found reason to believe that your committee, the National Unity Campaign for John Anderson, had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Attachment 2 - p. 1

Should you have any questions, please contact Jonathan Levin at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1982

Honorable John B. Anderson
National Unity Campaign for
John Anderson
2720 Thirty-Fifth Place, N.W.
Washington, D.C. 20007

RE: MUR 1388

Dear Mr. Anderson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on September 22, 1981, found reason to believe that your committee, the National Unity Campaign for John Anderson, had violated 2 U.S.C. § 44lb(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Should you have any questions, please contact Jonathan Levin at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION
February 10, 1982

(17)

In the Matter of)
) MUR 1388
Mott Enterprises, Inc.)

GENERAL COUNSEL'S BRIEF

I. BACKGROUND

This matter was referred to the Office of General Counsel by the Reports Analysis Division and by the Audit Division in regard to a possible violation of 2 U.S.C. § 441b(a) by Mott Enterprises, Inc. ("MEI"). It appeared that MEI may have extended $407,550 in credit to the National Unity Campaign for John Anderson ("NUC") outside the ordinary course of business.

On October 27, 1980, MEI billed NUC in the amount of $407,550 for direct mailing services including production costs and management fees. NUC repaid MEI in full on November 14, 1980, the day after NUC received the first payment on more than four million dollars in public funds from the U.S. Treasury pursuant to its entitlement under 26 U.S.C. § 9004(a)(3). While, in its dealings with most of its large vendors, NUC was required to tender a deposit or other type of prepayment in order to ensure continued performance by the vendor, no such prepayment was provided in this case.

Section 114.10(a) of the Commission regulations states, "A corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the

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corporation's business and the terms are substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation." In the absence of information as to the time period involved in the transactions and as to other circumstances, the extension of credit did not appear to comport with operating patterns established with other vendors of its size and raised the possibility that the extension was made outside the ordinary course of the corporation's business.

On September 22, 1981, the Commission found reason to believe that MEI violated 2 U.S.C. § 441b(a) and approved questions to be sent to the respondent. These questions were aimed at obtaining further information as to the transaction and as to other transactions engaged in by MEI for mailing services. Documents pertaining to the transaction were also requested. A similar set of questions and a request for documents were also sent to NUC with the obvious exception of questions relating to MEI's transactions with other political and non-political clients.

NUC's response was received on November 3, 1981, and MEI's response was received on November 10, 1981.

Committee treasurer Paul Wycisk, replying for NUC, stated that MEI provided consulting and related services for the direct mail program. The services involved two mailings, one made on September 15, 1980, and comprised of 330,000 pieces at a cost of

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$77,550 and another made on September 19 and comprised of one million pieces at a cost of $330,000. Discussions between MEI and NUC as to the services provided commenced on August 29, 1980, and arrangements for the provision of services were finalized on September 15 in the form of a written contract.

Mr. Wycisk went on to state that one other company, Craver, Mathews, Smith and Company of Virginia ("CMS") provided mailing services to NUC. He stated that:

> [o]n occasion CMS would ask the Committee for "up front" money before a mailing, almost always for postage (an immediate expense which could not be billed). On a periodic basis, as CMS received subcontractor invoices, they would bill the Committee.

Mr. Wycisk enclosed a copy of the contract between NUC and MEI, called a "Letter of Agreement," and two riders to the contract, each one providing for a separate mailing and each signed by the parties on the same date that they signed the Letter of Agreement, i.e., September 15 for MEI and September 25 for NUC. These riders were referred to in clause one of the contract as providing the specific quantity, dates, costs, and fees for each mailing. The contract contained a number of terms designed to assure payment for the services provided. They include a due date of sixty days after execution of the contract, a charge of 1 1/2 percent interest per month on any overdue payment, a requirement of payment immediately upon the receipt of federal funds or from any other unencumbered cash source available to the campaign, a requirement that NUC take all legal steps necessary to receive federal funds promptly,

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provisions for a post-election mailing to raise funds in the event that the campaign should be unable to pay MEI with MEI as the priority recipient of the proceeds of such a mailing, the provision by NUC to MEI of a financial report showing NUC's creditors and the amount of its indebtedness in the event that the campaign's accumulated debt exceeded $2.5 million, a requirement that NUC obtain life insurance on John Anderson's life, and clauses stating that withdrawal from the campaign by the candidate prior to election day or a breach of any of the other aforesaid requirements would cause an acceleration of NUC's obligations to MEI and make them due immediately. In addition to a requirement for payment by NUC for mailing services, the contract also required that MEI have the right to co-own the names and addresses of the mailing respondents and to retain the mailing list "for the purposes of building its own revolving list bank." Also accompanying these documents is a letter, dated September 19, from John Anderson's campaign manager, Michael McLeod, to MEI, the purpose of which was to "warrant" to MEI that NUC would obtain at least $1.5 million in term life insurance for Mr. Anderson. The letter also referred to the fact that in its negotiations with banks for a line of credit, NUC was being asked to obtain life insurance. Mr. McLeod stated that, if the bank negotiations were successful, the amount of insurance would be increased to cover such loans.

Attorney Paul Kamenar filed the response on behalf of MEI and enclosed a sworn affidavit from Daphne W. Dwyer, II,

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President of Mott Enterprises, answering the questions addressed to her. Ms. Dwyer's responses as to the dates and arrangements of the transaction were, for the most part, more general, but not inconsistent with the responses provided by Mr. Wycisk. More particularly, Ms. Dwyer stated that MEI's profit for the contract was between $25,000 and $30,000.

In answer to questions not also addressed to NUC, Ms. Dwyer stated that MEI has never asked for a deposit from any client. She went on to state that MEI receives "partial payments from time to time on outstanding bills only in cases of continued, long-term services to a client." She maintained that since "services performed, billing and payment were all completed in a relatively short cycle," there was no need for an interim payment.

Ms. Dwyer also stated that even though MEI has never billed a client in such a large amount before, MEI "believed that the test mail results indicated that the NUC mailing presented little risk." Ms. Dwyer asserted that payment was further safeguarded by the requirement of life insurance, the requirement of a finance charge on any unpaid balance, and a requirement that MEI "be placed high on the priority of payment to creditors."

Mr. Kamenar commented upon the responses given by Ms. Dwyer. In pointing out that MEI has never required a deposit from political or non-political clients and has only required interim payments on contracts that were long-term, he contended that the

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MEI-NUC transaction was, therefore, in MEI's ordinary course of business.

Mr. Kamenar argued that, in applying the standard of "similar risk and size of obligation" found in 11 C.F.R. § 114.10, the Commission should view the factors of risk and size together. Thus, while MEI had never billed a client before in an amount as high as $407,550, there were a number of risk-lowering factors in the NUC-MEI arrangement. Mr. Kamenar stated, as did Ms. Dwyer, that the first mailing was a test mail which indicated that NUC was a "low-risk entity." He also pointed to contract terms in addition to those mentioned by Ms. Dwyer. These were the commitment to post-election fundraising if necessary, NUC's obligation to inform MEI of its overall debt situation, and the requirement that NUC take all necessray legal steps to obtain federal funding. See pp. 3-4, supra.

Mr. Kamenar also enclosed a copy of the contract, the two riders to the agreement, the above-mentioned letter from NUC informing MEI that it was obtaining adequate insurance on the candidate's life, and an additional letter, dated September 28, stating that life insurance would be obtained that week. This letter also called attention to an initialed amendment by Mr. McLeod on the second rider changing the deadline for the second mailing from September 19 to September 29.

Mr. Kamenar also enclosed a copy of a letter, dated September 13 from Mr. McLeod to Ms. Dwyer, the purpose of which was to give "assurance that Mott Enterprises will be a priority

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creditor of NUC." The letter referred to the fact that NUC was, at that time, negotiating with a number of banks to obtain a $10 million line of credit with post-election funding to be "made payable in whole to pay off any borrowings made by NUC". The letter stated that the banks would insist upon a five percent margin between the percentage of the popular vote that would entitle Mr. Anderson to an amount of public funds equal to the amount drawn and Mr. Anderson's actual standing in the polls at the time of the draw. Thus, for example, if the initial draw were $3 million, (the approximate amount that Mr. Anderson would receive in public funds with a 5 percent vote) 1/ Mr. Anderson would have to have at least a ten percent poll rating (which would, if converted to a voting percentage, entitle Mr. Anderson to approximately $6.5 million in public funds). According to the letter, therefore, there would be "a 5% or $3 million margin throughout the life of the line of credit" and, "from this margin," NUC would repay MEI. The letter also stated that MEI would be first in priority for repayment from post-election funds after the banks have been paid in full.

II. LEGAL ANALYSIS

If the extension of credit in question did not comply with the standard set out in 11 C.F.R. § 114.10, i.e., a credit

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1/The $3 million figure was apparently based upon the assumption that the two major party candidates would receive the remaining 95 percent of the vote. See 26 U.S.C. § 9004(a)(3).

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extension in the ordinary course of the corporation's business with "terms substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation," then it would be in violation of the prohibition on corporate contributions in 2 U.S.C. § 441b(a). In this matter, there was a substantial amount of credit extended accompanied by a number of contractual terms and other arrangements aimed at assuring repayment to MEI.

Some of these arrangements bear discussion beyond mere repetition of the language of the contract or the assertions made by respondents. For example, the contractual clauses requiring prompt payment by NUC upon receipt of federal funds and from any other cash source unencumbered by any lending institution and requiring that NUC take all legal steps necessary to secure federal funds raise the question of whether or not a reliance by MEI on an expectancy, i.e., the receipt of post-election federal funds, is outside the ordinary course of business for MEI. While we do not have any information as to whether or not MEI has ever relied on such an expectancy and while such an expectancy may have certain risks attendant to it, there is nothing inherent in such a reliance to cause a transaction to be considered as outside the ordinary course of business. In 1974, the Senate Committee on Rules and Administration, reporting on legislation proposing public financing of Congressional campaigns, observed that post-election funding could be used by minor party candidates to "pay outstanding campaign obligations or to

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reimburse loans and contributions." S. Rep. No. 93-689, 93d Cong. 2d Sess. 9 (1974). Furthermore, the Commission, in enforcement actions, has addressed the issue of loans to Presidential campaigns based upon expectancies of future funding. In MUR 382, the Commission found no reason to believe that four banks and the Brown for President Committee violated 2 U.S.C. § 441b(a) in connection with nine short term unsecured loans where the banks were looking to anticipated profits from fundraising concerts and anticipated receipt of federal primary matching funds. In MUR 1195, the Commission found no reason to believe that a bank and the Kennedy for President Committee violated § 441b(a) in connection with an arrangement for $1 million in loans secured by primary matching funds wherein $800,000 was received by the Committee prior to certification of Senator Kennedy's eligibility for matching funds. Finally, the Commission stated its position with respect to bank loans based upon anticipated post-election federal funding in AO 1980-108 which was issued in response to a request submitted by NUC's General Counsel, Mitchell Rogovin, on September 17, 1980, two days after the finalization of the NUC-MEI agreement. Citing the above two MURs, the Commission, while admitting that "the risk of nonpayment may be higher in the context of a loan made upon the expectation of a candidate qualifying for and receiving sufficient post-election financing than it is in the context of a loan made upon the expectation of a candidate qualifying for and receiving

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sufficient primary matching funds," concluded that "the existence of such risk does not, standing alone, take a loan secured by an expectancy in post-election funds outside the scope of the 'ordinary course of business.'" AO 1980-108.

The contractual clauses referring to federal funds also raise the question of how sure MEI could be of repayment from federal funds. From copies of correspondence submitted by both respondents, it is clear that NUC was contemplating an arrangement whereby it would owe millions of dollars to banks with the banks having first priority in the receipt of federal proceeds. The letter of September 13, referred to supra, set out an agreement in which MEI might have received some assurance that a substantial amount of money would have been available for repayment to it. Another plan was also being contemplated by NUC as evidenced by the above-mentioned advisory opinion issued in response to a request submitted by Mr. Rogovin. 2/ This arrangement involved a revolving line of bank credit up to $10 million with the amount available at any given time, referred to as "Available Commitments," being "that portion of the commitments which bears the same proportion to the total of the commitments as the most recent average poll results bears to the base poll results." AO 1980-108. The base result was twenty

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percent. There would be an initial borrowing of $3 million which would require at least a six percent position in the polls. All subsequent borrowings could be made only after ten days of any previous borrowing, and the total indebtedness of the campaign could not exceed the available commitment on the date of such borrowing. No single borrowing after the initial borrowing could be greater than $3 million nor less than $250,000. Based on the above details, this plan would have provided a margin between the amounts available to NUC from the banks based on a certain percentage in the polls and the amount anticipated from federal funds at that percentage in the general election. 3/ Conceivably, MEI could have been concerned that Mr. Anderson might not have received a sufficient percentage of votes and, therefore, a sufficient amount of federal funds to cover repayment to the banks with some funds remaining for payment to MEI. However, either one of these plans for bank loans, by providing for a substantial margin between potential federal funds and the loan amounts available from the banks, could have been perceived by MEI as lowering the risk that MEI would not be able to receive payment from NUC.

3/ At six percent in the polls, the candidate could have received three million dollars from the banks and, with six percent of the vote, the candidate could have received at least $3.75 million. At twenty percent in the polls, the candidate could have received up to $10 million from the banks and, with twenty percent of the vote, the candidate could have received at least $14.72 million.

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Despite any doubts as to whether or not the first mailing was a risk-lowering test mailing, there are other clauses in the contract and other arrangements that lowered the risk of nonpayment, e.g., a service charge on outstanding obligations, a commitment to post-election fundraising if necessary, the provision by NUC of a financial report of its indebtedness,

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4/ It appears that, in preparing his response to our questions, Mr. Wycisk may have relied on the date originally printed on the second rider. The copy of the rider sent to us by him did not include the McLeod amendment.

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acceleration of the obligation of NUC in the event of withdrawal by the candidate or breach of the contract, and the granting of "priority creditor" status for MEI. 5/ These factors, along with the short-term nature of the contract, overrode any necessity for a deposit or interim payment by NUC, in the General Counsel's view. 6/

5/ The assertion that MEI was a high priority creditor is based upon the letter of September 13 from Mr. McLeod to Ms. Dwyer, referred to above. However, no mention of priorities appears in the later-dated contract which, according to both respondents, constituted a finalization of the agreement.

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6/ The obligation to purchase insurance on John Anderson's life was another risk lowering factor. While the letter from Mr. McLeod to Ms. Dwyer of September 28, 1980, states that insurance would be obtained that week, neither respondent sent documents indicating that a policy was, in fact, purchased. In a telephone conversation with an OGC staff member on January 29, 1982, Mr. McLeod stated that he believes that some insurance was obtained in connection with the NUC-MEI transaction. Mr. McLeod did not recall the amount of insurance purchased but he stated that the coverage may have been for the amount of the transaction rather than for $1.5 million.

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In addition, apart from the risk-lowering arrangements put into effect, NUC made full payment of the debt within a short period of time, i.e., the sixty day time period provided for in the contract. In MURs 303 and 454, both involving extensions of creidit by the Richard A. Viguerie Company to a committee, the Commission found no reason to believe that a violation of 2 U.S.C. § 441b(a) occurred even though in these matters the obligations from the committee to the vendor remained outstanding for long periods of time or long after the due date. In this matter, it appears not only that there were terms aimed at assuring complete repayment, but that such repayment came in a timely manner.

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that MEI violated 2 U.S.C. § 441b(a).

III. RECOMMENDATION

1. Find no probable cause to believe that Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a).

Charles N. Steele
General Counsel

Feb. 23, 1982
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Paul D. Kamenar, Esquire
1015 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005

RE: MUR 1388

Dear Mr. Kamenar:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on September 22, 1981, found reason to believe that your client, Mott Enterprises, Inc., had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Attachment 4 - p. 1

Should you have any questions, please contact Jonathan Levin at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1982

Paul D. Kamenar, Esquire
1015 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005

RE: MUR 1388

Dear Mr. Kamenar:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on September 22, 1981, found reason to believe that your client, Mott Enterprises, Inc., had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Should you have any questions, please contact Jonathan Levin at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

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LAW OFFICES
PAUL D. KAMENAR
1015 FIFTEENTH STREET, N.W.
SUITE 1100
WASHINGTON, D.C. 20005
(202) 393-6555

81 NOV 10 P1:42
GENERAL COUNSEL

November 9, 1981

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

MUR: 1388

Dear Mr. Steele:

Because of the press of business, I will not be able to file the response in the above-captioned MUR due November 9, 1981 until November 10, 1981.

Thank you.

Very truly yours,

Paul D. Kamenar

Paul D. Kamenar

8204033183 0

P D KAMENAR
1015- 15th STreet,N.W.
Washington, D.C. 20005

RECEIVED

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Charles N. Steele
Federal Election Commission
1325 K STreet, N.W.
Washington, D.C. 20463

HAND-DELIVER

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Doc# 5774

LAW OFFICES
PAUL D. KAMENAR
1015 FIFTEENTH STREET, N.W.
SUITE 1100
WASHINGTON, D.C. 20005
(202) 393-6225

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
NOV 10 P12:54

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
NOV 10 P12:54

November 10, 1981

HAND-DELIVER

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

RE: MUR 1388

Dear Chairman McGarry:

This letter is in response to yours dated September 29, 1981 in which you stated that the Federal Election Commission determined that there is reason to believe that Mott Enterprises, Inc. (MEI) violated 2 U.S.C. § 441b(a) "by extending credit outside the ordinary course of business to the National Unity Campaign"(NUC) for John Anderson. For the reasons set forth below and in the attached sworn answers by Daphne Dwyer and documents supplied, the Commission should take no further action in this matter in that no violation occurred.

The Commission's regulations expressly provide that a corporation may extend credit to a political committee provided that:

> the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors which are of similar risk and size of obligation.
>
> 11 C.F.R. § 114.10.

As the General Counsel's report noted, MEI billed NUC for $407, 550 on October 27, 1980 and received payment in full in about two weeks, on November 14, 1980. The General Counsel's report states on page two that:

> The Committee's[NUC] handling of the Mott Enterprises account does not appear to comport with operating patterns established with other vendors of its[MEI's account] size, and suggests the possibility that an extension of credit was made outside the ordinary course of the corporation's [MEI] business.

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In the first place, we do not see how that statement supports any reason to believe that MEI violated 2 U.S.C § 441b. As the FEC's own regulations state, the issue is what is the ordinary course of the corporation's business in question, namely, MEI. Therefore, what other vendors may or may not do is irrelevant for purposes of determining whether 11 C.F.R 114.10 has been violated.

On page one of the General Counsel's Report (GC Report), it appears that the FEC's Audit Division reviewed "financial transactions between the Committee(NUC) and various vendors which provided mass mailing services for the general election campaign." Those transactions apparently showed that "in dealings with most of its large vendors [for mass mailing services], the Committee [NUC] was required to tender a deposit which served as consideration to secure future services." This statement is confusing for several reasons. Besides MEI, the only other vendor which provided mass mailing services to NUC was Craver Mathews, Smith & Company. We do not believe that any so-called "deposit" was required from NUC in that instance. What other vendors of mass mailing services for the general election contracted with NUC? Furthermore, it is unclear what exactly is meant when the GC Report states that for these vendors, NUC was "required to tender a deposit which served as consideration to secure future services." In normal legal parlance, "consideration to secure future services" means that one party provides consideration in return for a promise to perform services in the future, thus forming a present contract to perform future services. A deposit, on the other hand, may or may not be part of the contract that is agreed to. For example, a deposit by a political committee to the telephone company or to its landlord is not under contract law "consideration to secure future services." The deposit is merely a form of security to ensure performance on the other party (not the vendor), the performance being payment for services rendered by the vendor, landlord, etc. The deposit in such instances is usually returned to the committee, or if there remains any outstanding bills, is applied to the amount due and owing.

Accordingly, the Commission never had any reason to believe that MEI violated 2 U.S.C. § 441b. The situation may have been different if, for example, the FEC had information that MEI required "deposits" from its other clients. However, the Commission had no such evidence. Nor did it demonstrate what other large vendors required deposits, assuming arguendo, the validity or application of such information under some theory of liability.

Nevertheless, in the interest of resolving this matter as quickly as possible, we have voluntarily provided the information requested. That information clearly demonstrates that MEI did not violated 11 C.F.R. 114.10.

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Assuming, arguendo, that the Commission had reason to believe that MEI violated 2 U.S.C. § 441b, the key issue is whether or not "deposits" were required from other clients of MEI. As sworn to by Daphne Dwyer in the attached answers, MEI has never required a deposit by either political or nonpolitical clients. Dwyer Answers, Nos. 6,7. Accordingly, MEI's conduct with NUC was in its ordinary course of business. In the questions, the term "interim payment" is introduced for the first time, and in that regard, MEI does receive "interim payments" during the course of a contract that is extended over a period of time. Thus, if a bill is given to a client for services rendered, and services are continued to be provided with subsequent billing on a monthly cycle, the client usually pays MEI for the first bill received even though at that point in time, the client may have already received a second bill for another month's service. Dwyer Answers 5,6.

With respect to FEC Question No. 8, MEI has never billed a client in an amount as that to NUC. However, MEI's first mailing for NUC was a test mail which showed that there was little risk to MEI for providing the services. Just because a vendor has not provided credit previously to another client in an amount as large as that to a subsequent client, that vendor should not be prevented by the FEC from conducting its business in a manner it deems commercially reasonable. If the case were otherwise, a vendor would automatically be limited to extending credit to a committee equal in amount to that vendor's first client or committee, assuring a no-growth position for that vendor.

We believe that 11 C.F.R. 114.10 should be read in a manner that views the terms "risk and size of obligation" not as two separate factors, but as a composite one. In other words, the extension of credit is proper if its "terms are substantially similar to extensions of credit to nonpolitical debtors which are of similar risk and size of obligation." As a matter of practicality, it would be a rare situation that a political committee, to which credit has been extended, is similar to a nonpolitical committee in both risk and size. In other words, a small amount of credit to a high-risk entity may be functionally equivalent to a large amount of credit to a low-risk entity.

In that regard, although MEI did not have an opportunity to extend credit to a nonpolitical entity as large as that to NUC, MEI's test mailing indicated that NUC would be a low-risk entity. Furthermore, in order to lower the risk factor to compensate for the higher credit, additional terms in the contract were required that are not required in other MEI's contracts, such as placing MEI high on the priority of creditors, requiring that John Anderson take out life insurance, providing for post-election fundraising for the sole benefit of MEI should there be any outstanding debt, informing MEI of the status of NUC's overall debt structure, and other such risk-lowering provisions. See Dwyer Answer 5 and NUC/MEI contract dated September 15, 1980.

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Accordingly, not only was the extension of credit in the ordinary course of MEI's business, it was arranged on terms and under circumstances that were commercially reasonable, and thus comparable to MEI's extension of credit to nonpolitical debtors of similar risk and size of obligation considering both factors together. Indeed, the fact that NUC paid MEI's bill in full within two weeks evidences the correctness of MEI's assessment of the risk attendant to providing services to NUC. It should also be noted that the NUC was also eligible to receive federal funding in a substantial amount, and that the contract between MEI and NUC required NUC to take all legal steps necessary to obtain that funding. MEI/NUC Contract, ¶7. This situation was yet another risk-lowering feature unique to this client.

We also believe that prior Commission rulings in this area further demonstrate that no further action should be taken against MEI. In Advisory Opinion 1979-36, the Commission stated that Working Names, a direct-mail consulting firm, may incur the initial expenses in preparing and mailing fundraising materials and bill the Committee for Fauntroy for the costs plus a fee on a monthly basis if it is the ordinary course of its business and if the extension of credit is substantially similar to that given to "nonpolitical, as well as political, debtors of similar risk and size of obligation." 1 Fed. Elec. Cam. Fin. Guide, ¶5422, at 10,453.

In addition, in MUR303(76), the Commission found no reason to believe that the Richard A. Viguerie Company violated 2 U.S.C 441b for extending credit to the Committee for Responsible Youth Politics (CRYP). In that case, CRYP had an outstanding balance with RAVCO of some $20,000, and it was alleged that RAVCO required its other political clients to keep current with their debts. Nevertheless, the Commission in its "Statement of Reasons For Commission Action" stated that "there was insufficient evidence" supporting the allegation of illegal extension of credit where the debt was being paid off. In the instant case, NUC paid almost immediately and thus there never was a delay of payment that one would normally characterize as a possible unlawful extension of credit. The Commission further stated that such payments were "not indicative of unusually lenient credit terms where the debtor was paying off the debt on a regular, periodic basis." The FEC further found that the overlapping employee on RAVCO and CRYP was "not significant enough" to show a violation. All of this was done without any investigation whatsoever of the credit arrangement. The Commission dismissed the charges out of hand against RAVCO. We believe that with all the additional information voluntarily provided here, the Commission has more than ample reasons to dismiss this case also.

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Furthermore, in MUR 454(77), the Commission voted to find no reasonable cause to believe that RAVCO violated 2 U.S.C 441b with respect to its fund-raising services for the Livingston For Congress Committee. In that case, the committee had a debt of some $41,000 owed to RAVCO. However, the General Counsel's Report noted that this "did not however indicate an unusual extension of credit by RAVCO, primarily because of the shortness of the period between contracting and billing." GC Report at 4. The GC Report further stated: "There therefore does not appear to have been a deliberate extension of credit but rather an attempt to secure payment, with RAVCO's inability to do so resulting in a de facto extension of credit." Id. Finally, the GC Report concluded:

> The question of whether the terms of the extension of credit were substantially similar to those of non-political debts is unanswerable in this situation, since there is no evidence indicating whether RAVCO has non-political clients, to whom credit might be extended. In any event, the commercial reasonableness of the credit terms in the situation at issue indicates that further investigation in not warranted.
>
> As the extensions of credit appear to have been commercially reasonable transactions, and as all the debts in question were fully paid, no violation of 2 U.S.C. § 441b seems to have occurred.
>
> Id. at 5-6 (emphasis added)

In this case, there is also a short billing cycle, and the amount due was paid in full within two weeks after billing. A fortiori, the Commission should also dismiss the instant action. See also MUR 1383 in which the Commission took no action against the law firm of Danzansky, Dickey, Tydings, Quint and Gordon for extending credit of over $20,000 to Joe Tydings Senate Campaign committee even though the Commission noted that the extension of credit was not in the ordinary course of the law firm's business, and that such amounts far exceed the $1,000 limit.

For all the above reasons, the answers attached hereto, and the documents provided, we request the Commission to dismiss this case as soon as possible, The respondent reserves all rights in the premises.

Very truly yours,

Paul D. Kamenar

Paul D. Kamenar

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MUR 1388

DOCUMENTS PROVIDED TO FEC

TO BE KEPT CONFIDENTIAL

A. Daphney Dwyer's Answers

B. 1. Letter of Agreement between MEI and NUC dated September 15, 1980, with two Riders.

2. Letter of September 13, 1980 from NUC to MEI.

3. Letter from NUC to MEI dated September 19, 1980.

4. Letter from NUC to MEI dated September 28, 1980.

5. MEI Invoice to NUC dated October 27, 1980.

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ANSWERS TO FEDERAL ELECTION COMMISSION'S QUESTIONS IN MUR 1388

The following are answers to the questions propounded to Daphne Dwyer by the Federal Election Commission which were attached to the FEC's letter of September 29, 1981:

1. Services performed were as outlined in a contractual agreement entered into between Mott Enterprises, Inc. (MEI) and the National Unity Campaign (NUC) dated September 15, 1980 attached hereto. See in particular, sections 1 and 2 thereof.

2. Services provided to NUC under the contract were from September, 1980 to October, 1980. Two mailings were included in such services, both of which occurred in September, 1980.

3. MEI billed NUC for the full production costs plus a management fee. MEI's profit for this contract was between $25-30,000.

4. Arrangements were made at some time prior to the written contract and were planned and discussed by telephone.

(a) Since most of the communications concerning services to NUC by MEI were by telephone, the exact dates cannot be recalled.

(b) The date upon which arrangements for the provision of services were finalized, i.e., by September 15, 1980.

(c) Such finalization came in the form of the written agreement attached hereto.

5. Payment from NUC to MEI came in one lump sum, presumably because the total sum was billed to NUC as such, and they had the money to pay in full. MEI has never required a deposit of any client. Since the two mailings for NUC occurred in the

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same month, they were billed together as one sum to NUC. As the FEC's General Counsel's report correctly indicated, MEI billed for the work on October 27, 1980, and NUC paid in full on November 14, 1980, a period of about two weeks. Thus, NUC paid for services rendered well within the normal 30 to 60-period after billing.

Although MEI has never billed another client in an amount as that in question for NUC, we believed that the test mail results indicated that the NUC mailing presented little risk. As further safeguard for payment, our arrangements with NUC required MEI to be placed high on the priority of payment to creditors, and that John Anderson agree to take out appropriate life insurance. In short, this transaction was carried out at arm's length, was not outside MEI's ordinary course of business, and did not result in any outstanding debts by NUC to MEI. As noted, payment was quickly paid and in full. If there were any outstanding payments, our contract called for a finance charge on the unpaid balance.

6. No, MEI has never asked for a deposit from any client. Although the FEC does not define the difference between "deposit" and "interim payment", MEI does receive partial payments from time to time on outstanding bills only in cases of continued, long-term servies to a client. MEI usually bills monthly and such bills reflect expenses incurred and fees for services rendered for the prior thirty-day period or so. Thus, in this case, services performed, billing, and payment were all completed in a relatively short cylce, and hence, no need for any "interim payments."

7. See answer to No. 6.

8. No.

8204031839

DAPHNE W. DWYER II

Subscribed and sworn to before me this 6th day of November, 1981.

NOTARY PUBLIC

My commission expires: March 4, 1988

3 2 0 4 0 3 3 1 8 4 0

suite 4200 • 515 madison avenue
new york 10022 • (212) 421-2166

September 15, 1980

Mr. Michael McLeod
National Unity Campaign for John Anderson
3050 K Street, N.W.
Washington, D.C. 20007

LETTER OF AGREEMENT

Dear Mike,

This letter serves to confirm in writing the agreement between Mott Enterprises, Inc., ("MEI") and the National Unity Campaign for John Anderson, the principal campaign committee of John B. Anderson ("Campaign") for the rendition of consulting and related services by MEI for the direct mail fund-raising program of the Campaign for the general election. This agreement supersedes and replaces any other agreement between MEI and the Campaign relating to fund-raising services for the general election.

1. MEI will provide from time to time list acquisition, printing, and mailing services for the Campaign's direct mail fundraising program. The specifics of each such mailing, i.e., quantity, dates of mailing, costs and fees, shall be specified in a separate schedule or rider to this basic agreement, and made a part hereof, upon the acceptance of each such separate schedule or rider by the Campaign. All provisions of this basic agreement shall apply to each separate schedule or rider.

2. The contents of the direct mail appeals and the design of the same are subject to the approval of the Campaign prior to printing, such approval not to be unreasonably withheld.

3. MEI shall have the right to co-own with the Campaign all names and addresses of the respondents to any prospect mailings described in the attached riders to this Agreement, (i.e., "Mailing List"). MEI shall have the right to keep and maintain the Mailing List and to include the Mailing List in a data bank for the purposes of building its own revolving list bank.

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4. MEI shall have the right to retain the Mailing List of all names and addresses of the respondents to any such mailing after the termination of this Agreement. Such right shall not diminish or be considered an offset to any claims or outstanding obligations due MEI which MEI may satisfy from other assets of the Campaign for the purpose of obtaining payment for any obligation incurred by the Campaign to MEI.

5. The Campaign shall be liable for payment in full to MEI of all costs and fees incurred for each mailing as computed in the attached riders. All such payments shall become due and payable to MEI within sixty (60) days after the date of the execution of this basic agreement. Any amounts due after that date shall include a one and one-half percent (1 1/2%) per month service charge for total amount payable that is outstanding.

6. It is understood that payment shall be promptly made by the Campaign immediately upon receipt of the anticipated federal funds and from any other cash source available to the Campaign, not otherwise encumbered by any lending institution that has advanced funds to the Campaign.

7. The Campaign hereby agrees to take all legal steps necessary to receive promptly the federal funds to which it is entitled. It is hereby understood that the obligations of the Campaign to MEI are "qualified campaign expenses" for the purposes of the Presidential Election Campaign Fund Act, 26 U.S.C. 9001, et seq.

8. In the event that the Campaign should have insufficient funds with which to pay MEI for its services, the Campaign shall employ MEI, Craver, Matthews, Smith & Co. or another fundraising firm that MEI and the Campaign mutually agree is competent and reputable to conduct, at the Campaign's expense, one or more post-election fundraising mailings within one year following the election to raise funds to retire debts owed to MEI and to any other creditor.

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9. MEI shall have the right to the first receipts of any such post-election mailing described in paragraph 8, in the following amounts and

(a) MEI shall be entitled to any remaining amounts not exceeding the total amount due and owing by the Campaign to MEI at that time for prior mailings, and that such amounts payable from the receipts of the post-election mailing shall be made immediately to bring the amount owed MEI down to the average amount owed to the next four largest creditors.

10. The Campaign hereby agrees that at such time when the accumulated debt of the Campaign exceeds $2.5 million, the Campaign will provide to MEI a financial report showing the creditors and the amounts of indebtedness. The financial report, the Campaign agrees, will be sent to MEI on a weekly basis and in a timely manner. Failure to provide MEI of said indebtedness in a timely manner constitutes a material breach of this Agreement in which case paragraph 13 shall be applicable.

MEI shall treat the financial report as a confidential document and expressly agrees not to disclose its contents to any third party without the express approval of the Campaign.

11. The Campaign warrants that Life Insurance coverage for John B. Anderson ("Candidate") will be obtained. See Addendum I.

12. If the Candidate should withdraw from the election for any reason prior to November 4, 1980, manifesting such withdrawal either by words or action, such withdrawal shall constitute a material breach of this Agreement and, in which case, paragraph 13 shall be applicable.

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Withdrawal by words in any statement by the Candidate or the Campaign to the effect that the Candidate is no longer seeking the election of President to the United States, or has endorsed any other candidate for the office of the Presidency.

Any final determination by the Federal Election Commission ("FEC") of the withdrawal of the Candidate shall be conclusive.

13. In the event of any breach of paragraphs 1 - 12 above, all obligations of the Campaign to MEI shall be accelerated and become immediately due and payable. The Campaign hereby warrants that in such event, the Campaign shall pay all such obligations to MEI in such amounts and at such times as determined by MEI and is consistent with other provisions of this Agreement.

14. The failure of MEI to enforce at any time any of the provisions of this basic Agreement or any rider hereto, or to exercise any option which is provided to MEI, or to require at any time performance or payment by the Campaign of any of the provisions thereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part thereof, or of the right of MEI to thereafter enforce each and every such provision.

15. No modification of this Agreement or any riders thereto shall be binding upon the parties hereto, or either of them, unless such modification shall be in writing and duly accepted by both parties by signing their names or initials and dating the same. Such writing may be in the form of an exchange of letters or telegrams as long as such communications expressly states that it is to constitute a part of this basic agreemnt or its riders.

Sincerely,
Mott Enterprises, Inc.

DATE: September 15, 1980 by: Daphne W. Dwyer
Daphne W. Dwyer II, President

ACCEPTED AND AGREED TO
this 24th day of September, 1980

by: Michael Ma-

8204031934

Suite 4[illegible] • [illegible]
New York 10[illegible] • [illegible]

RIDER NO. 1 TO BASIC AGREEMENT

BETWEEN MEI AND NATIONAL UNITY CAMPAIGN

1. MEI has, according to prior authorization by the Campaign, mailed approximately 330,000 pieces of prospect direct mail. For these services, MEI has charged, and the Campaign hereby agrees to pay, a fee of $35 per thousand pieces mailed. The Campaign hereby also agrees to pay the costs and expenses of the mailing, approximately $200 per thousand pieces mailed, for a total amount due and payable of $77,000.

2. Payment of the aforesaid sum shall be made according to the provisions specified in the basic agreement between MEI and the Campaign.

Mott Enterprises, Inc.

By: Daphne W. Dwyer II, President DATE: September 15, 1980

ACCEPTED AND AGREED TO:

National Unity Campaign for John Anderson

By: Michael MacLeod DATE: 9/25/80

Michael MacLeod
Campaign Manager/Treasurer

9 2 2 4 0 3 3 1 8 4 3

[illegible]

[illegible] NO. 2 TO [illegible]

[illegible] MEI AND NATIONAL UNITY CAMPAIGN

1. MEI will mail approximately one million pieces of direct mail, and perform related services, i.e., list acquisition, printing, etc. For these services, MEI will charge, and the Campaign hereby agrees to pay, a fee of [illegible] thousand pieces mailed. The Campaign hereby also agrees to pay the [illegible] expenses of the mailing, approximately [illegible] per thousand pieces mailed, for a total amount due and payable of $330,000.

2. Such [illegible] will be made but on or about September 24, 1980.

3. Payment of the aforesaid sum shall be made according to the provisions specified in the basic agreement between MEI and the [illegible]

Mock Enterprises, Inc.

[illegible] DATE: September 15, 1980

By: Daphne W. Dwyer II, President

ACCEPTED AND AGREED TO:

National Unity Campaign for John Anderson

[illegible] DATE: 9/15/80

By: Michael MacLeod
Campaign Manager/Treasurer

NATIONAL UNITY CAMPAIGN
John Anderson
3255 K Street, N.W. / Washington, D.C. 20007 / (202) 775-2000

September 13, 1980

Ms. Daphne Dwyer
Mott Enterprises, Inc.
Suite 4200
515 Madison Avenue
New York, New York 10022

Dear Daphne:

Mott Enterprises is considering making a direct mail solicitation for the National Unity Campaign for John Anderson. The terms of payment for these services have been worked out and are the subject of this letter.

The purpose of this letter is to give you assurance that Mott Enterprises will be a priority creditor of NUC. Let me explain how this will work.

As you know, we are currently negotiating with a number of banks to obtain a $10 million line of credit. We wish to borrow a sum up to $10 million to use principally for media between late September and November 3, 1980. From our initial discussion with the banks, it is apparent that they will want the post-election funding to which we will become entitled under the terms of The Presidential Election Campaign Fund Act, 26USC§§9001 et seq. to be made payable in whole to pay off any borrowings made by NUC. The current negotiations are geared to draw downs based upon our standings in the polls. It is further apparent that the banks will insist upon at least a 5% margin between the amount we borrow and our standing in the polls at the time of the draw down. For example, if our initial draw down is $3 million, we would have to be at or above a 10% poll rating. (Five percent of the popular vote will get us $3 million in post election funding.)

Thus, there will be a 5% or $3 million margin throughout the life of the line of credit. It is from this margin that we expect to pay Mott Enterprises with respect to any amounts owed to it by November 4th. Further, this call upon the post-election funds will be the first in priority, after the banks have been paid in full for the line of credit.

I hope this adequately explains how we intend to deal with the post-election funds and give you adequate assurance of the

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priority position Mott Enterprises will have in payment of any debts that may be outstanding.

Sincerely,

Michael F. MacLeod
Campaign Manager/Treasurer

MFM:jhf

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ADDENDUM I

NATIONAL UNITY CAMPAIGN
John Anderson

3255 K Street, N.W. / Washington, D.C. [illegible] / (202) 775-2000

September 19, 1980

Daphne W. Dwyer II, President
Mott Enterprises, Inc.
Suite 4200
515 Madison Avenue
New York, NY 10022

Dear Daphne

As you know, NUC is currently negotiating with a number of banks for a substantial line of credit. With regard to such a loan, we will be obliged to obtain insurance on John Anderson's life. Discussions with insurance companies are currently underway.

This letter is to warrant to you that NUC will obtain term insurance on Cong. Anderson's life of a minimum amount of $1.5 million. In the event that our bank loan negotiations are successful, the amount of the insurance will be increased to cover such loans.

Sincerely,

Michael F. McLeod
Campaign Manager

MFM:[illegible]

92040331849

NATIONAL UNITY CAMPAIGN
John Anderson
3255 K Street, N.W. / Washington, D.C. 20007 / (202) 775-2000

September 28, 1980

Daphne W. Dwyer II, President
Mott Enterprises, Inc.
Suite 4200
515 Madison Avenue
New York, New York 10022

Dear Daphne:

Enclosed is the properly executed contract.

Please note the minor change, which I have initialed, to Rider No. 2. Everything else appears to be in order. You will be pleased to know that apropos of paragraph 11, the life insurance is being obtained this week.

With every best wish,

Sincerely,

Michael F. MacLeod
Campaign Manager/Treasurer

MFM:jhf

Enclosure

92040331985C

October 27, 1980

Mr. Michael Madison
Anderson For President Committee
719 8th Street, S.E.
Washington, D.C. 20003

For Services Rendered:

Mailing #1 - 330,000 pieces @ $235 per M; production costs and management fee ---------- [illegible].00

Mailing #2 - 1,000,000 pieces @ $330 per M; production costs and management fee ---------- [illegible]

TOTAL [illegible]

Please remit to:

Mott Enterprises, Inc.
515 Madison Avenue
New York, N.Y. 10022

82040331851

8 2 0 4 0 3 3 1 0 8 9 2

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

ATTN: JOHNNY LEVIN

102079 RECEIVED
Case 5754
81 NOV 3 P1:18

NATIONAL UNITY CAMPAIGN
John Anderson

The Woodward Building/15th & H Street, N.W./Suite 900/Washington, D.C. 20005/(202) 775-2000

November 2, 1981

81 NOV 3 P2:55
OFFICE OF GENERAL COUNSEL

Federal Election Commission
Office of General Counsel
1325 K Street N.W.
Washington, D.C. 20463
Mr. Jonathan Levine

Dear Mr. Levine:

Below please find my responses to your questions regarding MUR 1388. I address the questions in the order asked:

1) Consulting and related services for the direct mail program.

2) Mailing #1: 9/15/80; #2: 9/19/80.

3) (a) 8/29/80
(b) 9/15/80
(c) Yes (see attached)

4&5)The National Unity Campaign's direct mailing efforts were, with the exception of the Mott Enterprises Inc. mailings, handled by Craver, Matthews, Smith & Co. of Virginia(CMS). CMS contracted with various other companies for the mailing services they (CMS) did not provide; however, the Committee dealt only with CMS during the campaign. On occasion CMS would ask the Committee for "up front" money before a mailing, almost always for postage (an immediate expense which could not be billed). On a periodic basis, as CMS received subcontractor invoices, they would bill the Committee.

6) Per contract terms.

Enclosed find the following documents:

1) the contract between Mott Enterprises and the Committee;
2) a 9/19/81 letter from Michael MacLeod to Daphne Dwyer;
3) Mott Enterprise's billing of the Committee; and
4) the Committee's check in payment.

Should you require any additional information, please contact me.

Sincerely,
P A Wycisk
Paul A. Wycisk
Treasurer

Paid for and authorized by the National Unity Campaign for John Anderson

82040331955

RECEIVED
81 NOV 3 PM 1:18

suite 4200 • 515 madison avenue
new york 10022 • [212] 421-2155

September 15, 1980

Mr. Michael MacLeod
National Unity Campaign for John Anderson
3255 K Street, N.W.
Washington, D.C. 20007

LETTER OF AGREEMENT

Dear Mike,

This letter serves to confirm in writing the agreement between Mott Enterprises, Inc., ("MEI") and the National Unity Campaign for John Anderson, the principal campaign committee of John B. Anderson ("Campaign") for the rendition of consulting and related services by MEI for the direct mail fund-raising program of the Campaign for the general election. This agreement supersedes and replaces any other agreement between MEI and the Campaign relating to fund-raising services for the general election.

1. MEI will provide from time to time list acquisition, printing, and mailing services for the Campaign's direct mail fundraising program. The specifics of each such mailing, i.e., quantity, dates of mailing, costs and fees, shall be specified in a separate schedule or rider to this basic agreement, and made a part hereof, upon the acceptance of each such separate schedule or rider by the Campaign. All provisions of this basic agreement shall apply to each separate schedule or rider.

2. The contents of the direct mail appeals and the design of the same are subject to the approval of the Campaign prior to printing, such approval not to be unreasonably withheld.

3. MEI shall have the right to convert with the Campaign all names and addresses [illegible] any prospect mailings described in the attached rider [illegible] agreement. [illegible] shall have the right to keep and maintain the mailing lists and to add to the mailing list in a data bank for the purposes of building its own revolving list bank.

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4. MEI shall have the right to retain the Mailing List of all names and addresses of the respondents to any such mailing after the termination of this Agreement. Such right shall not diminish or be considered an offset to any claims or outstanding obligations due MEI which MEI may satisfy from other assets of the Campaign for the purpose of obtaining payment for any obligation incurred by the Campaign to MEI.

5. The Campaign shall be liable for payment in full to MEI of all costs and fees incurred for each mailing as computed in the attached riders. All such payments shall become due and payable to MEI within sixty (60) days after the date of the execution of this basic agreement. Any amounts due after that date shall include a one and one-half percent (1 1/2%) per month service charge for total amount payable that is outstanding.

6. It is understood that payment shall be promptly made by the Campaign immediately upon receipt of the anticipated federal funds and from any other cash source available to the Campaign, not otherwise encumbered by any lending institution that has advanced funds to the Campaign.

7. The Campaign hereby agrees to take all legal steps necessary to receive promptly the federal funds to which it is entitled. It is hereby understood that the obligations of the Campaign to MEI are "qualified campaign expenses" for the purposes of the Presidential Election Campaign Fund Act, 26 U.S.C. 9001, et seq.

8. In the event that the Campaign should have insufficient funds with which to pay MEI for its services, the Campaign shall employ MEI, Craver, Mathews, Smith & Co. or another fundraising firm that MEI and the Campaign mutually agree is competent and reputable to conduct, at the Campaign's expense, one or more post-election fundraising mailings within one year following the election to raise funds to retire Campaign debt, and to any other creditor.

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9. MEI shall have the right to the first receipts of any such post-election mailing described in paragraph 8, in the following amounts and priority:

(a) MEI shall be entitled to any remaining amounts not exceeding the total amount due and owing by the Campaign to MEI at that time for prior mailings, and that such amounts payable from the receipts of the post-election mailing shall be made immediately to bring the amount owed MEI down to the average amount owed to the next four largest creditors.

10. The Campaign hereby agrees that at such time when the accumulated debt of the Campaign exceeds $2.5 million, the Campaign will provide to MEI a financial report showing the creditors and the amounts of indebtedness. The financial report, the Campaign agrees, will be sent to MEI on a weekly basis and in a timely manner. Failure to provide MEI of said indebtedness in a timely manner constitutes a material breach of this Agreement in which case paragraph 13 shall be applicable.

MEI shall treat the financial report as a confidential document and expressly agrees not to disclose its contents to any third party without the express approval of the Campaign.

11. The Campaign warrants that Life Insurance coverage for John B. Anderson ("Candidate") will be obtained. See Addendum I.

12. If the Candidate shall withdraw from the election for any reason prior to November 4, 1980, [illegible] either by words or action, such withdrawal shall constitute a material breach of this Agreement and, in which case, paragraph 13 shall be applicable.

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Withdrawal by words is any statement by the Candidate or the Campaign to the effect that the Candidate is no longer seeking the election of President to the United States, or has endorsed any other candidate for the office of the Presidency.

Any final determination by the Federal Election Commission ("FEC") of the withdrawal of the Candidate shall be conclusive.

13. In the event of any breach of paragraphs 1 - 12 above, all obligations of the Campaign to MEI shall be accelerated and become immediately due and payable. The Campaign hereby warrants that in such event, the Campaign shall pay all such obligations to MEI in such amounts and at such times as determined by MEI and is consistent with other provisions of this Agreement.

14. The failure of MEI to enforce at any time any of the provisions of this basic Agreement or any rider hereto, or to exercise any option which is provided to MEI, or to require at any time performance or payment by the Campaign of any of the provisions thereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part thereof, or of the right of MEI to thereafter enforce each and every such provision.

15. No modification of this Agreement or any riders thereto shall be binding upon the parties hereto, or either of them, unless such modification shall be in writing and duly accepted by both parties by signing their names or initials and dating the same. Such writing may be in the form of an exchange of letters or telegrams as long as such communications expressly states that it is to constitute a part of this basic agreement or its riders.

Sincerely,
Mote Enterprises, Inc.

DATE: September 15 1980

By: [signature]
Stephen W. Mote II, President

ACCEPTED AND AGREED TO
this 15 day of September, 1980

By: Michael Radford
Campaign Manager/Treasurer

8204031857

RIDER NO. 1 TO BASIC AGREEMENT

BETWEEN MEI AND NATIONAL UNITY CAMPAIGN

1. MEI has, according to prior authorization by the Campaign, mailed approximately 330,000 pieces of prospect direct mail. For these services, MEI has charged, and the Campaign hereby agrees to pay, a fee of $35 per thousand pieces mailed. The Campaign hereby also agrees to pay the costs and expenses of the mailing, approximately $200 per thousand pieces mailed, for a total amount due and payable of $77,000.

2 Payment of the aforesaid sum shall be made according to the provisions specified in the basic agreement between MEI and the Campaign.

Mott Enterprises, Inc.

By: Daphne W. Dwyer II, President

DATE September 15, 1980

ACCEPTED AND AGREED TO:

National Unity Campaign for John Anderson

By: Michael MacLeod
Campaign Manager/Treasurer

DATE: 9/15/80

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RIDER NO. 2 TO BASIC AGREEMENT

BETWEEN MEI AND NATIONAL UNITY CAMPAIGN

1. MEI will mail approximately one million pieces of direct mail, and perform related services, i.e., list acquisition, printing, etc. For these services, MEI will charge, and the Campaign hereby agrees to pay, a fee of $40 per thousand pices mailed. The Campaign hereby also agrees to pay the costs and expenses of the Mailing, approximately $290 per thousand pieces mailed, for a total amount due and payable of $330,000.

2. Such mailing will be sent out on or about September 19, 1980.

3. Payment of the aforesaid sum shall be made according to the provisions specified in the basic agreement between MEI and the Campaign.

Mott Enterprises, Inc.

By: John W. Dwyer II, President DATE: September 15, 1980

AGREED AND ACCEPTED TO:

National Unity Campaign for John Anderson

By: [illegible] DATE: 9/15/80

82040331859

NATIONAL UNITY CAMPAIGN
John Anderson
3253 K Street, N.W. Washington, D.C. 20007 (202) 775-2[illegible]

September 19, 1980

Daphne W. Dayer II, President
NUC Enterprises, Inc.
Suite 4200
515 Madison Avenue
New York, NY 10022

Dear Daphne

As you know, NUC is currently negotiating with a number of banks for a substantial line of credit. With regard to such a loan, we will be obliged to obtain insurance on John Anderson's life. Discussions with insurance companies are currently underway.

This letter is to warrant to you that NUC will obtain term insurance on Cong. Anderson's life of a minimum amount of $1.5 million. In the event that our bank loan negotiations are successful, the amount of the insurance will be increased to cover such loans.

Sincerely,

Michael F. McLeod
Campaign Manager

MFM:ms

8204031860

suite 4200 • 515 madison avenue
new york 10022 • [212] 421-2155

October 27, 1980

Mr. Michael Macleod
Anderson For President Committee
719 8th Street, S.E.
Washington, D.C. 20003

For Services Rendered:

Mailing #1 - 330,000 pieces @ $235 per M: production costs and management fee ----------	$ 77,550.00
Mailing #2 - 1,000,000 pieces @ $330 per M: production costs and management fee ----------	330,000.00
TOTAL	$407,550.00

Please remit to:

Mott Enterprises, Inc.
515 Madison Avenue
New York, N. Y. 10022

32040331861

suite 4200 • 515 madison avenue
new york 10022 • (212) 421-2155

THE NATIONAL UNITY CAMPAIGN
FOR JOHN ANDERSON
DIRECT MAIL ACCOUNT
[illegible] NE. TEL. 202-789-6700
WASHINGTON, D.C. 20002

(64)

2302

15-129
640

PAY FOUR HUNDRED SEVEN THOUSAND FIVE HUNDRED FIFTY AND NO CENTS

TO THE ORDER OF
Mott Enterprises, Inc.
515 Madison Avenue
New York NY 10022

DATE 11/14/80

AMOUNT $407,550.00

NOT NEGOTIABLE

⑈00002302⑈ ⑆054001204⑆ 264257 3⑈

THE NATIONAL UNITY CAMPAIGN
FOR JOHN ANDERSON

DETACH - FOR YOUR RECORDS

DATE	DESCRIPTION	AMOUNT
11/14/80	Direct Mail Production Costs $407,550.00 20-4000-	$407,550.00

920403186

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Federal Election Commission
Office of General Counsel
Mr. Jonathan Levine
1325 K Street N.W.
Washington, D.C. 20463

RECEIVED
81 NOV 3 P1:18

NATIONAL UNITY CAMPAIGN
John Anderson

The Woodward Building/15th & H Street, N.W./Suite 900/Washington, D.C. 20005

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 22, 1981

Paul D. Kamenar, Esquire
1015 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005

RE: MUR 1388

Dear Mr. Kamenar:

This is in reference to your letter dated October 16, 1981, in which you request, on behalf of Mott Enterprises, Inc., an extension of time until November 9 in which to respond to the Commission's reason to believe notice in the above-captioned matter.

I have reviewed your request and agree to the extension. Your committee's response is due, therefore, on November 9, 1981. If you have any questions, please contact Jonathan Levin at 202-523-4039.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 22, 1981

Mr. Paul A. Wycisk, Treasurer
National Unity Campaign for
John Anderson
1426 H Street, N.W.
Suite 900
Washington, D.C. 20005

RE: MUR 1388

Dear Mr. Wycisk:

This is in reference to your letter dated October 2, 1981, in which you request an extension of time until November 2 in which to respond to the Commission's reason to believe notice in the above-captioned matter.

I have reviewed your request and agree to the extension. Your committee's response is due, therefore, on November 2, 1981. If you have any questions, please contact Jonathan Levin at 202-523-4039.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

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81 OCT 19 P2:39

LAW OFFICES
PAUL D. KAMENAR
1015 FIFTEENTH STREET, N.W.
SUITE 1100
WASHINGTON, D.C. 20005

(202) 393-6595

RECEIVED
GENERAL COUNSEL
81 OCT 19 P4:19

October 16, 1981

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

Dear Mr. Levin:

I am the attorney for the respondent in MUR 1388. Because of the press of other business, including legal matters with the FEC both at the agency level and in court, and because of the fact that respondent is located out of town, we will be able to respond to the FEC's notice by November 9, 1981.

We reserve all rights in the premises.

Very truly yours,

Paul D. Kamenar

Paul D. Kamenar

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Gcc# 5619

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: OCTOBER 13, 1981

SUBJECT: REFERRAL OF LETTER REGARDING MUR 1388

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

Attachment:
Letter from Daphne W. Dwyer II
dated October 8, 1981

82040331867

OCT 13 P3:51

LAW OFFICES
PAUL D. KAMENAR
1015 FIFTEENTH STREET, N.W.
SUITE 1100
WASHINGTON, D.C. 20005

81 OCT 19 P2: 38

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

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DAPHNE WILSON DWYER II

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 OCT 13 P2: 28

October 8, 1981

Federal Election Commission
Washington, D.C. 20463

RE: MUR 1388

Dear John Warren McGarry:

I received your letter dated September 29, 1981 and MUR 1388 on October 5, 1981.

I hereby designate Paul D. Kamenar as my attorney. His address: 1015 Fifteenth Street, NW
Suite 1100
Washington, D.C. 20005

Telephone: (202) 393-8535

Sincerely,

Daphne W. Dwyer II

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MIDDLESEX-ESSEX, MA CIB
PM
9 OCT
1981

John Warren McGarry, Chairman
Federal Election Commission
Washington, D.C. 20463

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81 OCT 5 AM: 47

NATIONAL UNITY CAMPAIGN
John Anderson

The Woodward Building/15th & H Street, N.W./Suite 900/Washington, D.C. 20005/(202) 775-2000

RECEIVED
SECRETARIAT
GENERAL COUNSEL
81 SEP 4 P1:29

October 2, 1981

Federal Election Commission
Office of General Counsel
Mr. Jonathan Levin
1325 K Street N.W.
Washington, D.C. 20463

Dear Mr. Levin:

Per our telephone conversation today I hereby request an extension of time to respond to your letter of September 29 regarding MUR #1388.

I request this extension until November 2, 1981, since I am leaving town tomorrow evening for at least two weeks, possibly longer. I have been called back to the Midwest on family business which I hope to have finished by October 19. Immediately upon my return to Washington I will call you and proceed with the response to the MUR.

Should you have any questions, Mr. Levin, this office will know how to reach me. You might also consider contacting Mr. Mike MacLeod who was Treasurer of the National Unity Campaign during the time of the alleged violation. Thank you for your cooperation in this matter.

Sincerely,

Paul A. Wycisk

Paul A. Wycisk
Treasurer

32040331871

Paid for and authorized by The National Unity Campaign for John Anderson

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81 OCT 5 A11

Federal Election Commission
Office of General Counsel
Mr. Jonathan Levin
1325 K Street N.W.
Washington, D.C. 20463

NATIONAL UNITY CAMPAIGN
John Anderson

The Woodward Building/15th & H Street, N.W./Suite 900/Washington, D.C. 20005

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 29, 1981

Paul A. Wycisk, Treasurer
National Unity Campaign for
John Anderson
1426 H Street, N.W.
Suite 900
Washington, D.C. 20005

RE: MUR 1388

Dear Mr. Wycisk:

On September 22, 1981, the Federal Election Commission determined that there is reason to believe that your committee, the National Unity Campaign for John Anderson, violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting an extension of credit outside the ordinary course of business from Mott Enterprises, Inc. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. See 11 C.F.R. § 111.18(d).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel,

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and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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

Sincerely,

John Warren McGarry
Chairman

Enclosure
General Counsel's Factual and Legal Analysis
Interrogatories
Procedures
Designation of Counsel Statement

32040331874

Paul A. Wycisk, Treasurer
National Unity Campaign for
John Anderson
1426 H Street, N.W.
Suite 900
Washington, D.C. 20005

RE: MUR 1388 JF 9/24/81

Dear Mr. Wycisk:

On , 1981, the Federal Election Commission determined that there is reason to believe that your committee, the National Unity Campaign for John Anderson, violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting an extension of credit outside the ordinary course of business from Mott Enterprises, Inc. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel,

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and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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

Sincerely,

JI 9/24/81

John Warren McGarry
Chairman

Enclosure
General Counsel's Factual and Legal Analysis
Interrogatories
Procedures
Designation of Counsel Statement

32040331876

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

RESPONDENT: National Unity Campaign for John Anderson

MUR # 1388

STAFF MEMBER(S)

Frances B. Hagan 202/523-4529
Jonathan Levin 202/523-4039

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

The National Unity Campaign ("NUC" or "the Committee") received a corporate contribution totaling $407,550 from Mott Enterprises, Inc., for corporate services rendered not in the ordinary course of business in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.10(a).

FACTUAL BASIS AND LEGAL ANALYSIS

During its review of financial transactions between the Committee and various vendors which provided mass mailing services for the general election campaign, the Audit Division observed that, in dealings with most of its large vendors, 1/ the Committee was required to tender a deposit which served as consideration to secure future services. In an invoice dated October 27, 1980, one of NUC's largest mass mailing contractors, Mott Enterprises, Inc., billed NUC for production costs and management totaling $407,550. NUC repaid Mott Enterprises in full on November 14, 1980, the day after the Committee received the first payment

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1/ Auditors estimate "large" as contracts or services totaling greater than $100,000.

8204031877

on more than $4 million in public funds from the U.S. Treasury pursuant to its entitlement under 26 U.S.C. § 9004(a)(3).

11 C.F.R. § 114.10(a) states, "A corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation." The Committee's handling of the Mott Enterprises account does not appear to comport with operating patterns established with other vendors of its size, and suggests the possibility that an extension of credit was made outside the ordinary course of the corporation's business. Such activity contradicts the regulation regarding corporate extensions of credit as set forth above, and indicates a possible receipt of a corporate contribution which is prohibited by 2 U.S.C. § 441b(a). Therefore, the General Counsel recommends that the Commission find reason to believe that the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe that the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a) by accepting an extension of credit outside the ordinary course of business.

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FEDERAL ELECTION COMMISSION

TO : Paul A. Wycisk, Treasurer
National Unity Campaign for John Anderson
MUR 1388

The following questions refer to the services provided by Mott Enterprises, Inc., to the National Unity Campaign for John Anderson ("NUC") in return for which NUC paid $407,550:

1. What services were provided by Mott Enterprises?

2. When were these services provided? If the services entailed more than one mailing, state the dates upon which each mailing was made.

3. When and how were arrangements made for the services? Your response should include, but not be limited to:

   (a) the date upon which Mott Enterprises and NUC began discussions as to the services provided;

   (b) the date upon which arrangements for the provision of services were finalized;

   (c) whether or not such finalization came in the form of a written agreement;

4. How many other companies performed mailing services for NUC?

5. In transactions for mailing services to NUC, did any of the other companies referred to in your response to Interrogatory #4 ask for a deposit or other interim payment prior to the final payment for the services rendered? If so, what percentage of these companies asked for such a deposit or interim payment?

6. Why was payment by NUC to Mott Enterprises made in one lump sum payment? Why was no deposit required of NUC?

Request for Documents

Submit copies of any relevant documents in your possession, including, but not limited to:

(a) all contracts entered into by Mott Enterprises and NUC;

(b) all correspondence about the arrangement either before or after finalization of the agreement;

(c) all bills or invoices of vendors used by Mott Enterprises;

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(d) all bills or invoices of Mott Enterprises sent to NUC;

(e) any internal memoranda or other internal written communication of Mott Enterprises concerning the arrangement either before or after finalization.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 29, 1981

Daphne W. Dwyer, II, President
Mott Enterprises, Inc.
515 Madison Avenue
New York, New York 10022

RE: MUR 1388

Dear Ms. Dwyer:

On September 22, 1981, the Federal Election Commission determined that there is reason to believe that your company, Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by extending credit outside the ordinary course of business to the National Unity Campaign for John Anderson. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. See 11 C.F.R. § 111.18(d).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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

Sincerely,

John Warren McGarry
Chairman

Enclosures
General Counsel's Factual and Legal Analysis
Interrogatories
Procedures
Designation of Counsel Statement

82040318 82

Daphne W. Dwyer, II, President
Mott Enterprises, Inc.
515 Madison Avenue
New York, New York 10022

RE: MUR 1388

Dear Ms. Dwyer:

On , 1981, the Federal Election Commission determined that there is reason to believe that your company, Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by extending credit outside the ordinary course of business to the National Unity Campaign for John Anderson. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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

Sincerely,

John Warren McGarry
Chairman

JS 9/24/81

Enclosures
General Counsel's Factual and Legal Analysis
Interrogatories
Procedures
Designation of Counsel Statement

32040331384

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mott Enterprises, Inc.

MUR # 1388
STAFF MEMBER(S)

Frances B. Hagan 202/523-4529
Jonathan Levin 202/523-4039

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Mott Enterprises, Inc. made a contribution to the National Unity Campaign for John Anderson ("NUC" or "the Committee") through services extended outside the ordinary course of business in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.10(a).

FACTUAL BASIS AND LEGAL ANALYSIS

During its review of financial transactions between the Committee and various vendors which provided mass mailing services for the general election campaign, the Audit Division observed that, in dealings with most of its large vendors, 1/ the Committee was required to tender a deposit which served as consideration to secure future services. In an invoice dated October 27, 1980, one of NUC's largest mass mailing contractors, Mott Enterprises, Inc., billed NUC for production costs and management totaling $407,550. NUC repaid Mott Enterprises in full on November 14, 1980, the day after the Committee received the first payment

1/ Auditors estimate "large" as contracts or services totaling greater than $100,000.

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on more than $4 million in public funds from the U.S. Treasury pursuant to its entitlement under 26 U.S.C. § 9004(a)(3).

11 C.F.R. § 114.10(a) states, "A corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation." The Committee's handling of the Mott Enterprises account does not appear to comport with operating patterns established with other vendors of its size, and suggests the possibility that an extension of credit was made outside the ordinary course of the corporation's business. Such activity contradicts the regulation regarding corporate extensions of credit as set forth above, and indicates a possible corporate contribution which is prohibited by 2 U.S.C. § 441b(a). Therefore, the General Counsel recommends that the Commission find reason to believe that Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe that Mott Enterprises, Inc. violated 2 U.S.C. § 441b(a) by extending credit outside the ordinary course of business to the National Unity Campaign for John Anderson.

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FEDERAL ELECTION COMMISSION

TO : Daphne W. Dwyer, II, President
Mott Enterprises, Inc.
MUR 1388

The following questions and request for documents refer to the services provided by Mott Enterprises, Inc., to the National Unity Campaign for John Anderson ("NUC") in return for which NUC paid $407,550:

1. What services were provided by Mott Enterprises?

2. When were these services provided? If the services entailed more than one mailing, state the dates upon which each mailing was made.

3. What was the cost to Mott Enterprises for each mailing?

4. When and how were arrangements made for the services? Your response should include, but not be limited to:

   (a) the date upon which Mott Enterprises and NUC began discussions as to the services provided;

   (b) the date upon which arrangements for the provision of services were finalized;

   (c) whether or not such finalization came in the form of a written agreement.

5. Why was payment by NUC to Mott Enterprises made in one lump sum payment? Why was no deposit required of NUC?

6. In transactions for mailing services to other political clients, has Mott Enterprises asked for a deposit or other interim payment prior to the final payment for the services rendered? Since the formation of Mott Enterprises, what percentage of your political clients have been asked for such a deposit or interim payment?

7. In transactions for mailing services to businesses and other non-political clients, has Mott Enterprises asked for a deposit or other interim payment prior to the final payment for the services rendered? If so, since the formation of Mott Enterprises, what percentage of your non-political clients have been asked for such a deposit or interim payment?

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8. Has Mott Enterprises ever extended credit to any other customer or client to the extent of $407,550 or more? If so, for each customer or client, state:

   (a) the type of client, i.e., political or non-political;

   (b) if political, whether or not the client was a party, a single candidate committee, a multi-candidate committee, or some other form of political committee;

   (c) the terms of the arrangement, e.g., the type of services to be provided, the amount of services to be provided, how payment was to be made, the amount of payment to be made, whether or not a deposit or interim payment was required.

Request for Documents

Submit copies of any relevant documents in your possession, including, but not limited to:

   (a) all contracts entered into by Mott Enterprises and NUC;

   (b) all correspondence about the arrangement either before or after finalization of the agreement;

   (c) all bills or invoices of vendors used by Mott Enterprises;

   (d) all bills or invoices of Mott Enterprises sent to NUC;

   (e) any internal memoranda or other internal written communication of Mott Enterprises concerning the arrangement either before or after finalization.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1388
	)	Pre-MUR 70
National Unity Campaign for John Anderson	)	
Mott Enterprises, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 22, 1981, the Commission decided by a vote of 4-2 to take the following actions regarding MUR 1388 and Pre-MUR 70:

1. Find REASON TO BELIEVE that Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a) by extending credit outside the ordinary course of business to the National Unity Campaign for John Anderson.

2. Find REASON TO BELIEVE that the National Unity Campaign for John Anderson violated 2 U.S.C. §441b(a) by accepting an extension of credit outside the ordinary course of business from Mott Enterprises, Inc.

3. Merge Pre-MUR 70 with MUR 1388.

(Continued)

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4. Approve the letters with questions as submitted with the First General Counsel's Report dated September 14, 1981.

Commissioners Harris, Reiche, Thomson, and Tiernan cast affirmative votes for the decision; Commissioners Aikens and McGarry dissented.

Attest:

9/22/81
Date

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

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Received in Office of the Commission Secretary: 9-14-81, 12:18
Circulated on 48 hour vote basis: 9-14-81, 4:00
Objection Filed. Placed on Agenda for 9-22-81.

September 14, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1388 and PreMUR 70

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

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

81 SEP 14 P12: 48

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION 9-14-81

MUR # 1388 & PreMUR 48

STAFF MEMBER(S)

Frances B. Hagan
Jonathan Levin

SENSITIVE

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENT'S NAME: National Unity Campaign for John Anderson
Mott Enterprises, Inc.

RELEVANT STATUTE: 2 U.S.C. § 441b(a)
11 C.F.R. § 114.10(a)
2 U.S.C. § 431(8)(A)(i)

INTERNAL REPORTS CHECKED: MUR 1333, Audit Reports; National Unity Campaign Reports

FEDERAL AGENCIES CHECKED: Not Applicable

GENERATION OF MATTER

This matter was referred to the Office of General Counsel from the Audit Division as a result of the post-general election audit. The same matter was referred to this Office from the Reports Analysis Division and was designated as Pre-MUR 70. We are recommending herein that Pre-MUR 70 be merged with this Matter Under Review.

SUMMARY OF ALLEGATIONS

The National Unity Campaign ("NUC" or "the Committee") received a corporate contribution totaling $407,550 for corporate services rendered not in the ordinary course of business in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.10(a). Mott Enterprises, Inc., made a contribution to NUC through services extended outside the ordinary course of business in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.10(a).

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FACTUAL AND LEGAL ANALYSIS

During its review of financial transactions between the Committee and various vendors which provided mass mailing services for the general election campaign, the Audit Division observed that, in dealings with most of its large vendors, 1/ the Committee was required to tender a deposit which served as consideration to secure future services. In an invoice dated October 27, 1980, one of NUC's largest mass mailing contractors, Mott Enterprises, Inc., billed NUC for production costs and management totaling $407,550.2/NUC repaid Mott Enterprises in full on November 14, 1980, the day after the Committee received the first payment on more than $4 million in public funds from the U.S. Treasury pursuant to its entitlement under 26 U.S.C. § 9004(a)(3).

11 C.F.R. § 114.10(a) states, "A corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation." The Committee's handling of the Mott Enterprises account does not appear to comport with operating patterns established with other vendors of its size, and suggests the possibility that an extension of credit was made outside the ordinary course of the corporation's business. Such activity contradicts the

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1/ Auditors estimate "large" as contracts or services totaling greater than $100,000.

2/ NUC's 1980 Year End Report disclosed a refund of $18,000 from Mott Enterprises, Inc. on December 23, 1980.

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regulation regarding corporate extensions of credit as set forth above, and indicates a possible corporate contribution which is prohibited by 2 U.S.C. § 441b(a). Therefore, the General Counsel recommends that the Commission find reason to believe that Mott Enterprises and the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a).

RECOMMENDATION

1. Find reason to believe that Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a) by extending credit outside the ordinary course of business to the National Unity Campaign for John Anderson.
2. Find reason to believe that the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a) by accepting an extension of credit outside the ordinary course of business from Mott Enterprises, Inc.
3. Merge Pre-MUR 70 with MUR 1388.
4. Approve attached letters with questions.

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Sept. 1, 1981
Date

Charles N. Steele
General Counsel

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

Attachments

1. Letter, Factual and Legal Analysis, and Interrogatories to Mott Enterprises, Inc.

2. Letter, Factual and Legal Analysis, and Interrogatories to the National Unity Campaign for John Anderson.

3. Audit Report Excerpt
4. Referral from RAD, Pre-MUR 70

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Daphne W. Dwyer, II, President
Mott Enterprises, Inc.
515 Madison Avenue
New York, New York 10022

RE: MUR 1388

Dear Ms. Dwyer:

On , 1981, the Federal Election Commission determined that there is reason to believe that your company, Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by extending credit outside the ordinary course of business to the National Unity Campaign for John Anderson. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. See 11 C.F.R. § 111.18(d).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosures
General Counsel's Factual and Legal Analysis
Interrogatories
Procedures
Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mott Enterprises, Inc.

MUR # 1388
STAFF MEMBER(S)

Frances B. Hagan 202/523-4529
Jonathan Levin 202/523-4039

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

Mott Enterprises, Inc. made a contribution to the National Unity Campaign for John Anderson ("NUC" or "the Committee") through services extended outside the ordinary course of business in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.10(a).

FACTUAL BASIS AND LEGAL ANALYSIS

During its review of financial transactions between the Committee and various vendors which provided mass mailing services for the general election campaign, the Audit Division observed that, in dealings with most of its large vendors, 1/ the Committee was required to tender a deposit which served as consideration to secure future services. In an invoice dated October 27, 1980, one of NUC's largest mass mailing contractors, Mott Enterprises, Inc., billed NUC for production costs and management totaling $407,550. NUC repaid Mott Enterprises in full on November 14, 1980, the day after the Committee received the first payment

1/ Auditors estimate "large" as contracts or services totaling greater than $100,000.

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on more than $4 million in public funds from the U.S. Treasury pursuant to its entitlement under 26 U.S.C. § 9004(a)(3).

11 C.F.R. § 114.10(a) states, "A corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation." The Committee's handling of the Mott Enterprises account does not appear to comport with operating patterns established with other vendors of its size, and suggests the possibility that an extension of credit was made outside the ordinary course of the corporation's business. Such activity contradicts the regulation regarding corporate extensions of credit as set forth above, and indicates a possible receipt of a corporate contribution which is prohibited by 2 U.S.C. § 441b(a). Therefore, the General Counsel recommends that the Commission find reason to believe that Mott Enterprises, Inc., violated 2 U.S.C. § 441b(a).

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Recommendation

1. Find reason to believe that Mott Enterprises, Inc. violated 2 U.S.C. § 441b(a) by extending credit outside the ordinary course of business to the National Unity Campaign for John Anderson.

FEDERAL ELECTION COMMISSION

TO : Daphne W. Dwyer, II, President
Mott Enterprises, Inc.
MUR 1388

The following questions and request for documents refer to the services provided by Mott Enterprises, Inc., to the National Unity Campaign for John Anderson ("NUC") in return for which NUC paid $407,550:

1. What services were provided by Mott Enterprises?

2. When were these services provided? If the services entailed more than one mailing, state the dates upon which each mailing was made.

3. What was the cost to Mott Enterprises for each mailing?

4. When and how were arrangements made for the services? Your response should include, but not be limited to:

   (a) the date upon which Mott Enterprises and NUC began discussions as to the services provided;

   (b) the date upon which arrangements for the provision of services were finalized;

   (c) whether or not such finalization came in the form of a written agreement.

5. Why was payment by NUC to Mott Enterprises made in one lump sum payment? Why was no deposit required of NUC?

6. In transactions for mailing services to other political clients, has Mott Enterprises asked for a deposit or other interim payment prior to the final payment for the services rendered? Since the formation of Mott Enterprises, what percentage of your political clients have been asked for such a deposit or interim payment?

7. In transactions for mailing services to businesses and other non-political clients, has Mott Enterprises asked for a deposit or other interim payment prior to the final payment for the services rendered? If so, since the formation of Mott Enterprises, what percentage of your non-political clients have been asked for such a deposit or interim payment?

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8. Has Mott Enterprises ever extended credit to any other customer or client to the extent of $407,550 or more? If so, for each customer or client, state:

   (a) The type of client, i.e., political or non-political;

   (b) If political, whether or not the client was a party, a single candidate committee, a multi-candidate committee, or some other form of political committee;

   (c) The terms of the arrangement, e.g., the type of services to be provided, the amount of services to be provided, how payment was to be made, the amount of payment to be made, whether or not a deposit or interim payment was required.

Request for Documents

Submit copies of any relevant documents in your possession, including, but not limited to:

   (a) All contracts entered into by Mott Enterprises and NUC;

   (b) All correspondence about the arrangement either before or after finalization of the agreement;

   (c) All bills or invoices of vendors used by Mott Enterprises;

   (d) All bills or invoices of Mott Enterprises sent to NUC;

   (e) Any internal memoranda or other internal written communication of Mott Enterprises concerning the arrangement either before or after finalization.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Paul A. Wycisk, Treasurer
National Unity Campaign for
John Anderson
1426 H Street, N.W.
Suite 900
Washington, D.C. 20005

RE: MUR 1388

Dear Mr. Wycisk:

On , 1981, the Federal Election Commission determined that there is reason to believe that your committee, the National Unity Campaign for John Anderson, violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting an extension of credit outside the ordinary course of business from Mott Enterprises, Inc. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. See 11 C.F.R. § 111.18(d).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel,

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and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Factual and Legal Analysis
Interrogatories
Procedures
Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

RESPONDENT: National Unity Campaign for John Anderson

MUR # 1388

STAFF MEMBER(S)

Frances B. Hagan 202/523-4529
Jonathan Levin 202/523-4039

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

The National Unity Campaign ("NUC" or "the Committee") received a corporate contribution totaling $407,550 from Mott Enterprises, Inc., for corporate services rendered not in the ordinary course of business in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.10(a).

FACTUAL BASIS AND LEGAL ANALYSIS

During its review of financial transactions between the Committee and various vendors which provided mass mailing services for the general election campaign, the Audit Division observed that, in dealings with most of its large vendors, 1/ the Committee was required to tender a deposit which served as consideration to secure future services. In an invoice dated October 27, 1980, one of NUC's largest mass mailing contractors, Mott Enterprises, Inc., billed NUC for production costs and management totaling $407,550. NUC repaid Mott Enterprises in full on November 14, 1980, the day after the Committee received the first payment

1/ Auditors estimate "large" as contracts or services totaling greater than $100,000.

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on more than $4 million in public funds from the U.S. Treasury pursuant to its entitlement under 26 U.S.C. § 9004(a)(3).

11 C.F.R. § 114.10(a) states, "A corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors which are of similar risk and size of obligation." The Committee's handling of the Mott Enterprises account does not appear to comport with operating patterns established with other vendors of its size, and suggests the possibility that an extension of credit was made outside the ordinary course of the corporation's business. Such activity contradicts the regulation regarding corporate extensions of credit as set forth above, and indicates a possible receipt of a corporate contribution which is prohibited by 2 U.S.C. § 441b(a). Therefore, the General Counsel recommends that the Commission find reason to believe that the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe that the National Unity Campaign for John Anderson violated 2 U.S.C. § 441b(a) by accepting an extension of credit outside the ordinary course of business.

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FEDERAL ELECTION COMMISSION

TO : Paul A. Wycisk, Treasurer
National Unity Campaign for John Anderson
MUR 1388

The following questions refer to the services provided by Mott Enterprises, Inc., to the National Unity Campaign for John Anderson ("NUC") in return for which NUC paid $407,550:

1. What services were provided by Mott Enterprises?

2. When were these services provided? If the services entailed more than one mailing, state the dates upon which each mailing was made.

3. When and how were arrangements made for the services? Your response should include, but not be limited to:

   (a) the date upon which Mott Enterprises and NUC began discussions as to the services provided;

   (b) the date upon which arrangements for the provision of services were finalized;

   (c) whether or not such finalization came in the form of a written agreement;

4. How many other companies performed mailing services for NUC?

5. In transactions for mailing services to NUC, did any of the other companies referred to in your response to Interrogatory #4 ask for a deposit or other interim payment prior to the final payment for the services rendered? If so, what percentage of these companies asked for such a deposit or interim payment?

6. Why was payment by NUC to Mott Enterprises made in one lump sum payment? Why was no deposit required of NUC?

Request for Documents

Submit copies of any relevant documents in your possession, including, but not limited to:

(a) All contracts entered into by Mott Enterprises and NUC;

(b) All correspondence about the arrangement either before or after finalization of the agreement;

(c) All bills or invoices of vendors used by Mott Enterprises;

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(d) All bills or invoices of Mott Enterprises sent to NUC;

(e) Any internal memoranda or other internal written communication of Mott Enterprises concerning the arrangement either before or after finalization.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

INTERIM REPORT OF THE AUDIT DIVISION ON THE NATIONAL UNITY CAMPAIGN FOR JOHN ANDERSON

I. Background

A. Overview

This report is based on an audit of the National Unity Campaign For John Anderson Committee ("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 9007(a) of Title 26, United States Code which states that "after each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President."

In addition, Section 9007.1 of Title 11, Code of Federal Regulations states that "after each Presidential election, the Commission shall conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit shall include, but shall not be limited to, expenses incurred pursuant to 11 C.F.R. 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 C.F.R. 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

The Committee registered with the Federal Election Commission as the principal campaign committee for the Honorable John B. Anderson on April 24, 1980. The Committee maintains its headquarters in Washington, D.C.

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Attachment 3 p. 1 of 4

The audit covered the period from the date of inception through December 31, 1980. 1/ The Committee reported an opening cash balance of $-0-, total receipts of $17,055,962.69, total expenditures of $14,979,141.44, and a closing cash balance of $2,076,821.25 during this period. 2/

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

B. Key Personnel

The principal officers (treasurers) of the Committee during the period audited were: Mr. Francis E. Sheehan, Jr., (4/24/80-8/28/80) and Mr. Michael F. MacLeod (8/29/80 to present).

C. Scope

The audit included such tests as verification of total reported receipts, expenditures and individual transactions; review of required supporting documentation; 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

A. Findings Relating to Title 2 of the United States Code

1. Misstatement of Financial Activity

A review of the Committee's bank records and tests of the receipts and expenditure records revealed that the Committee's reported financial activity was materially misstated as described below:

a. Unreported Receipts

Section 434(b)(2) and (3)(A) of Title 2, United States Code state, in part, that each report shall disclose for the reporting period and the calendar year, the total amount of all receipts including the identification of each person who makes a contribution or contributions that have an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of the contribution.

1/ In addition, certain financial activity was reviewed through February 28, 1981.

2/ See Finding II.A.1, "Misstatement of Financial Activity", for a discussion of the inaccuracies regarding these figures.

3 p. 2 of 4

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Our review of loan activity indicated that, during the period August through November 1980, the Committee solicited and received 18,759 loans from individuals totaling $1,826,174.79. Two categories of disclosure errors or omissions were noted with respect to these loans received from individuals.

(a) Itemization of Loans Received

The Audit staff conducted a test to determine proper itemization of loans received on Schedule A-P of the Committee's disclosure reports filed. We noted that the Committee itemized only those loans in excess of $200 per transaction. The Committee did not take into consideration other contributions made by the individual which should have been aggregated with the value of any loans received and outstanding from the same individual. The Commiteee also used a $200 itemization threshold rather than the $100 threshold contained at 11 C.F.R. 104.17(b)(5)(ii). This use of the incorrect itemization threshold was apparently due to an oversight by the Committee.

(b) Itemization of Debts (Loans) Owed by the Committee

Our review also noted that the Committee did not file the appropriate schedules of outstanding debts (loans) at the close of the respective reporting periods. The Committee has obtained a comprehensive schedule of loans received which contains the name and address of the lender, amount, date received, disposition and outstanding balance as of 12/31/80 with respect to the 18,759 loans received. On April 1, 1981, the Committee filed an amendment which included the comprehensive schedule of loans noted above.

Recommendation (item 5(a) and (b))

The Audit staff recommends that no further action is necessary with regard to the disclosure of the loan activity since the amendment filed contained the required disclosure information with respect to both the receipt of loans and disposition thereof.

6. Possible Corporate Contribution

Section 441b(a) of Title 2, United States Code states, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any election to any political office.

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Section 100.7(a)(1) of Title [illegible] the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

During the course of conducting pre-audit review, the Audit staff noted an article in The Washington Post, dated November 26, 1980, which quoted a vendor, verified to be incorporated, as stating that "in the final weeks of Anderson's independent presidential effort, he was able to help keep the campaign afloat by extending $407,000 worth of credit for a direct mail fund-raising appeal." The article further quoted the vendor as stating that "he expects this to be repaid with some of the $4.2 million in retroactive federal subsidies that Anderson received after the election." (See Attachment E)

During the audit fieldwork, the Audit staff noted that the Committee was billed $407,550.00 by a vendor invoice dated October 27, 1980, and subsequently made a payment for the same amount dated November 14, 1980. 3/ The vendor was billing for services rendered in two mailings, including production costs and management fees.

Our review of the activity of other vendors that provided mass mailing services appeared to indicate that the Committee would be routinely required to remit a deposit, retainer, or other type of prepayment as consideration for future services to be provided. However, this practice of prepayment was apparently not required from the subject vendor thereby suggesting a possible extension of credit up to an amount of $407,550.00.

Further, it appears from letters in the Committee's files that the vendor refunded $36,000.00 to the Committee for overpayment of expenses. The Audit staff reviewed documentation provided for an $18,000.00 refund but could not determine if the additional $18,000.00 of the stated refund had been received by the Committee.

Recommendation

It is the recommendation of the Audit staff that within 30 days of receipt of this report the Committee provide the necessary documentation to show that the services provided by the above vendor and method of payment related thereto were in the ordinary course of business and did not represent a prohibited extension of credit by a corporation. In addition,

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3/ November 13, 1980 was the date on which the Committee received the initial post-general election public funding payment of $4,164,906.24.

3204031910

D-832

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 16, 1980

MEMORANDUM

TO : OFFICE OF GENERAL COUNSEL

ATTENTION : JONATHAN LEVIN

THROUGH : STAFF DIRECTOR

FROM : REPORTS ANALYSIS DIVISION

SUBJECT : PRE-MUR ON MOTT ENTERPRISES AND THE NATIONAL UNITY CAMPAIGN FOR JOHN ANDERSON

On May 21, 1980, the Reports Analysis Division referred to the Office of General Counsel the matter of Stewart Mott's "independent expenditure" activity on behalf of John Anderson during the 1980 presidential primary campaign (See Pre-Mur 52).

Presently, the Office of General Counsel is investigating the possibility of coordination or consultation between Mr. Mott, Mott Enterprises and agents of the Anderson for President Committee as part of MUR-1333.

The 30 Day Post-General Election Report submitted by the National Unity Campaign for John Anderson raises some additional questions. The expenditure schedule, Schedule B-P for Line 24a, discloses a payment to Mott Enterprises, Inc. for "direct mail production costs" in the amount of $407,550 (copy of schedule attached). The payment was reportedly made on November 14, 1980.

Since MUR-1333 concerns the independent activity of Mr. Mott during Anderson's primary campaign, the matter of the general election activity between Mott Enterprises and the National Unity Campaign for John Anderson is being referred to your office as a separate Pre-Mur.

Please notify Michael Filler as x34048 if your office will consider this referral as a separate matter, or combine it with MUR-1333 so that future updates can be processed accordingly.

9204031911

Attachment 4 p.1 of 2

NATIONAL UNITY CAMPAIGN FOR JOHN ANDERSON

FULL NAME AND MAILING ADDRESS	PARTICULARS OF EXPENDITURE	DATE MO DA YR	AMOUNT OF EXPENDITURE
MOTT ENTERPRISES INC. 515 MADISON AVENUE NEW YORK NY 10022	DIRECT MAIL PROD COS	11/14/80	407,550.00
NARAL, PA POLITICAL ACTION COMMITTEE 825 15TH ST NW WASHINGTON DC 20005	MAILING LIST	10/31/80	232.98
NATIONAL NEWS AGENCY, P O BOX 2026 WASHINGTON DC 20013	NATIONAL NEWS AGENCY NY TIMES/DAILY NEWS	11/14/80	60.00
	NATIONAL NEWS AGENCY DELIVERY OF PAPERS	11/14/80	26.15
NATIONAL PUBLIC RADIO, P O BOX 35042 WASHINGTON DC 20013	DUP FACILITIES NATL TOWN MEETING	11/14/80	10.00
NATIONAL PRESS CLUB, NATIONAL PRESS CLUB BUILDING 529 14TH ST NW WASHINGTON DC 20045	ROOM #1378 RENTAL	10/31/80	64.20
NATIONAL RAILROAD PASSENGER CORP. PO BOX 1582 WASHINGTON DC 20013	FREIGHT CHARGES	10/31/80	10,758.49
	AMTRAK EXPRESS MAIL	11/14/80	934.75
NEIKAMP, ROBERT BAY 1017 VAN DYKE DR ST LOUIS MO 63011	CONTRIBUTION REFUND	11/21/80	25.00
NELSON, IRVIN M P O BOX 4307 ROCKFORD IL 61110	TRAVEL EXPENSE REIMB FUNDRAISING	11/14/80	1,246.06
NEW GROWTH FLORIST, 6240 OLD DOMINION DR MCLEAN VA 22101	FLOWERS FOR ELIZABETH RODRICK	10/20/80	18.04

SUBTOTAL OF EXPENDITURES THIS PAGE 420,925.67

4 p2of2

RAD 80G-10

D-832

REPORTS ANALYSIS PRE-MUR UPDATE

***ORIGIN:** RAD

DATE March 10, 1981

ANALYST Michael Filler

TO: OFFICE OF GENERAL COUNSEL

TEAM CHIEF Irene Allen

COMPLIANCE REVIEW E. Craig Crooks

THROUGH: **STAFF DIRECTOR**

FROM: **ASSISTANT STAFF DIRECTOR FOR REPORTS ANALYSIS**

Pre-
MUR No. 70

DATE OF ORIGINAL REFERRAL December 12, 1980

For your information, the National Unity Campaign for John Anderson's Year End Report discloses an $18,000.00 receipt from Mott Enterprises, Inc. on December 23, 1980 (see attached schedule). The receipt is itemized as a "refund, rebate, return of deposit" on Line 21a of Schedule A-P.

3204033191 3

*Commission unit which initiated original Referral (e.g. AUDIT/RAD/OGC).
**INFORMATION, or RESULTS OF RAD ACTION, as appropriate.

SCHEDULE A-P
September 1978
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

ITEMIZED RECEIPTS

(Contributions, Transfers, Contributions in Kind, Federal Funds, Other Income, Loans, Refunds)

Supporting Lines 16, 17a, 18a, 18b, 19a, 20a, 21a and 22a of FEC Form 3P

Page 14 of ____ for LINE NUMBER 21 A

(Use separate schedule(s) for each numbered line)

NOTE: Any information reported herein may not be copied for sale or use by any person for purposes of soliciting contributions or for any commercial purpose.

Name of Candidate or Committee in Full

NATIONAL UNITY CAMPAIGN FOR JOHN ANDERSON

Full Name, Mailing Address and ZIP Code	Principal Place of Business	Occupation / Aggregate Year-To-Date ... ▶ $	Date (month, day, year)	Amount of each receipt this period
A. NUCJA-MN 3007 Hennepin Ave. S. Minneapolis, Mn. 55408			12/23/80	$ 3,675.09
B. Mott Enterprises, Inc. 515 Madison Ave. New York, N.Y. 10022			12/23/80	$ 18,000.00
C. Toronto Star One Yonge St. Toronto, Ont. M5E1E6			12/02/80	$ 26.32
D. Washington Journalism Review 2233 Wisconsin Ave. N.W., Suite 442 Washington, D.C. 20007			12/02/80	$ 26.32
E. Fresno Bee 1626 E St. Fresno, Ca. 93786			12/02/80	$ 44.97
F. Pittsburgh Post Gazette 50 Blvd. of the Allies Pittsburgh, Pa. 15230			12/02/80	$ 48.98

SUBTOTAL of Receipts This Page (optional) ..... $ 21,821.68

TOTAL This Period (last page this line number only) ..... $

Approved by GAO, B-187620 (RO571), Expires 82-2-28

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806-10

D-832

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 16, 1980

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SUBTOTAL OF EXPENDITURES THIS PAGE 420,925.67

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FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1388

Date Filmed 6/15/82 Camera No. --- 2

Cameraman SPC

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