



FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1479

Date Filmed 7-26-83 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

- Documents relating to conciliation
- 12 Day Pre-Brief Report
- All Routing Cards

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):

- | | | | |
|-------------------------------------|---|--------------------------|--|
| <input type="checkbox"/> | (1) Classified Information | <input type="checkbox"/> | (6) Personal privacy |
| <input type="checkbox"/> | (2) Internal rules and practices | <input type="checkbox"/> | (7) Investigatory files |
| <input checked="" type="checkbox"/> | (3) Exempted by other statute | <input type="checkbox"/> | (8) Banking Information |
| <input type="checkbox"/> | (4) Trade secrets and commercial or financial information | <input type="checkbox"/> | (9) Well Information (geographic or geophysical) |
| <input checked="" type="checkbox"/> | (5) Internal Documents | | |

Signed Maibeth Tarrant
 Date 7/6/83

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 1, 1983

Richard V. Wiebusch, Esq.
Sheehan, Phinney, Bass & Green
Hampshire Plaza
1000 Elm Street
Manchester, New Hampshire 03101-1799

Re: MUR 1479
New Hampshire Republican
State Committee

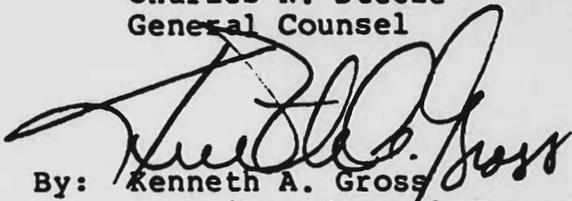
Dear Mr. Wiebusch:

On June 30, 1983, the Commission accepted the conciliation agreement signed by your client and a civil penalty in settlement of violations of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Campaign Act of 1971, as amended, and 11 C.F.R. § 102.5(a)(1). Accordingly, the file has been closed in this matter, and it will become a part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel


By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Richard V. Wiebusch, Esq.
Sheehan, Phinney, Bass & Green
Hampshire Plaza
1000 Elm Street
Manchester, New Hampshire 03101-1799

Re: MUR 1479
New Hampshire Republican
State Committee

Dear Mr. Wiebusch:

On , 1983, the Commission accepted the conciliation agreement signed by your client and a civil penalty in settlement of violations of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Campaign Act of 1971, as amended, and 11 C.F.R. § 102.5(a)(1). Accordingly, the file has been closed in this matter, and it will become a part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

MT
6/30/83

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
)
New Hampshire Republican) MUR 1479
State Committee)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Reason to believe has been found that the New Hampshire Republican State Committee ("Respondent") violated 2 U.S.C. § 441a(a)(1)(A) by contributing in excess of \$1,000 per election to a federal candidate and 11 C.F.R. § 102.5(a)(1) by transferring funds from its non-federal account to its federal account.

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

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

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

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III. The Commission has found that Respondent violated 2 U.S.C. § 441a(a)(1)(A) by contributing \$10,000 to the Cobleigh for Congress Committee in the 1980 General Election. Respondent contends that at the time the contribution was made, it believed that the contribution was permissible and further contends that it exercised diligence and good faith in formulating that belief.

IV. The Commission has found that the Respondent violated 11 C.F.R. § 102.5(a)(1) by transferring \$18,483.50 from its non-federal account to its federal account. Respondent contends that the violation is mitigated in that New Hampshire State law prohibits corporate and labor union contributions and limits individual contributions to \$5,000 and those prohibitions and limitations were complied with.

V. Respondent will pay a civil penalty to the Treasurer of the United States in the amount of five hundred dollars (\$500), pursuant to 2 U.S.C. § 437g(a)(5)(A) to settle this matter.

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

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement

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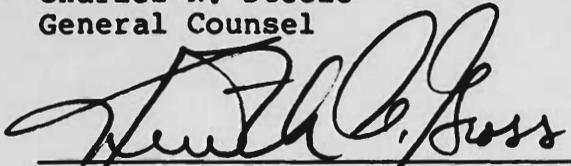
or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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

IX. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

FOR THE COMMISSION:

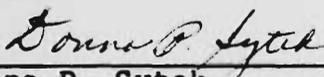
Charles N. Steele
General Counsel



By: Kenneth A. Gross
Associate General Counsel

6/30/85
Date

FOR THE RESPONDENT:


Donna P. Sytek
Chair

6/15/83
Date

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
New Hampshire Republican) MUR 1479
State Committee)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 30, 1983, the Commission decided by a vote of 5-0 to take the following actions in MUR 1479:

1. Approve the conciliation agreement as submitted with the General Counsel's June 27, 1983 Memorandum to the Commission.
2. Close the file.
3. Approve the letter as attached to the General Counsel's June 27, 1983 Memorandum.

Commissioners Aikens, Elliott, Harris, McGarry and Reiche voted affirmatively in this matter; Commissioner McDonald did not cast a vote.

Attest:

6-30-83

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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

6-27-83, 4:35
6-28-83, 11:00

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NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE

127

April 4 19 83

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PAY
TO THE
ORDER OF

Federal Election Commission

\$ 500⁰⁰

Five Hundred

DOLLARS

BankEast

CONCORD, N. H. 03301

FOR

Donna P. Aylett

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
New Hampshire Republican) MUR 1479
State Committee)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 11, 1983, the Commission decided by a vote of 5-0 to take the following actions in MUR 1479:

1. Enter into pre-probable cause conciliation with the New Hampshire Republican State Committee.
2. Approve the conciliation agreement as submitted with the General Counsel's January 7, 1983, Memorandum to the Commission.
3. Approve the letter as submitted with the Memorandum to the Commission dated January 7, 1983.

Commissioners Aikens, Elliott, Harris, McDonald and Reiche voted affirmatively in this matter; Commissioner McGarry did not cast a vote.

Attest:

1-11-83

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary: 1-7-83, 9:02
Circulated on 48 hour tally basis: 1-7-83, 2:00

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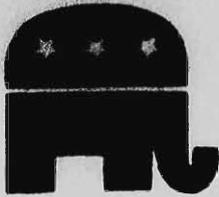


**NEW HAMPSHIRE REPUBLICAN
STATE COMMITTEE**

134 NORTH MAIN STREET CONCORD, N.H. 03301



Ms. Marybeth Tarrant
Office of General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 2-463



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**NEW HAMPSHIRE REPUBLICAN
STATE COMMITTEE**

134 NORTH MAIN STREET CONCORD, N.H. 03301
PHONE 603-225-9341
800-858-3307

DEC 15 P 4: 23

DONNA P. SYTEK, *Chairman*
JOHN P. STABILE, II, *Asst. Chairman*

December 13, 1982

Ms. Marybeth Tarrant
Office of General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

Dear Ms. Tarrant:

Thank you for taking the time to meet with me last week to discuss MUR 1479.

Per our conversation, I am hereby requesting that a conciliation agreement pursuant to 11 CFR §111:18 (d) be drafted. I hope we can settle this matter expeditiously and at last close the books on the 1980 elections.

Sincerely yours,

Donna P. Sytek
Chairman

DPS/ap

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82 DEC 1 8:06

STATEMENT OF DESIGNATION OF COUNSEL

Re MUR: 1479

NAME OF COUNSEL: RICHARD V. WIEBUSCH, ESQ.
ADDRESS: 1000 ELM STREET, 18th Floor, MANCHESTER, N. H. 03101
TELEPHONE: (603) 668-0300

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12 DEC 1 8:39

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and
other communications from the Commission and to act on my
behalf before the Commission.

NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE

Nov. 29, 1982
Date

Alice Pinkham, Treas.
Signature

NAME: Alice Pinkham
ADDRESS: 134 North Main St., Concord, NH 03301
HOME PHONE:
BUSINESS PHONE: 603-225-9341

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**NEW HAMPSHIRE REPUBLICAN
STATE COMMITTEE**

134 NORTH MAIN STREET CONCORD, N.H. 03301



Marybeth Tarrant, Staff Member
FEDERAL ELECTION COMMISSION
1325 K STREET, N.W.
WASHINGTON, D. C. 20463

FEDERAL ELECTION COMMISSION

1325 K STREET, NW
WASHINGTON, DC 20469

OFFICIAL BUSINESS

POSTAGE AND FEES PAID



TO
OGE

Lucille Lagasse, Treasurer
Cobleigh for Congress
180 West Clarke Street
Manchester, New Hampshire 03104

POSTAGE TO BE PAID BY ADDRESSEE
NOT DELIVERABLE AS ADDRESSEE
UNABLE TO FORWARD

Resent to:
137 Mountain Rd.
E. Concord, NH 03201
12/1/82

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 17, 1982

Lucille Lagasse, Treasurer
Cobleigh for Congress
180 West Clarke Street
Manchester, New Hampshire 03104

Re: MUR 1479

Dear Ms. Lagasse:

On November 16, 1982, the Commission found reason to believe that your committee, Cobleigh for Congress, had violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file as it pertains to your committee. The file will be made part of the public record within 30 days after this matter has been closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The confidentiality provisions of 2 U.S.C. § 437g(a) (4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

The Commission reminds you that the acceptance of an excessive contribution is nevertheless a violation of the Act and that such activity should not occur in the future.

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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Letter to Lucille Lagasse
Page 2

If you have any questions, please direct them to
Marybeth Tarrant at (202) 523-4529.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman, for the
Federal Election Commission

Enclosure

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FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR 1479
STAFF MEMBER(S) & TEL. NO.
Marybeth Tarrant
(202) 523-4529

RESPONDENT Cobleigh for Congress

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

It appears that the New Hampshire Republican State Committee Federal Account (Federal Account) 1/ contributed \$10,000 for the November, 1980 general election to Cobleigh for Congress (Cobleigh Committee) which was \$9,000 in excess of the limitation of 2 U.S.C. § 441a(a)(1)(A). Acceptance of an excessive contribution is a violation of section 441a(f).

FACTUAL BASIS AND LEGAL ANALYSIS

The Federal Account's 2/ 1980 30 Day Post-General Election Report disclosed a contribution to a federal candidate (Marshall Cobleigh, 1st Congressional District of New Hampshire) in the amount of \$10,000 designated for the general election. 3/ At the

1/ On August 10, 1982, this committee filed a Statement of Organization amendment changing its name from New Hampshire Commitment '80 to the New Hampshire Republican State Committee Federal Account.

2/ A cover letter attached to the Federal Account's Statement of Organization, which was received at the Commission on October 2, 1980, noted that this was a "separate account within the Republican State Committee". In response to a January 28, 1981 RFAI, an amended Statement of Organization was received on February 19, 1981 which noted that there were no affiliated committees.

3/ Marshall Cobleigh lost in the general election receiving 39% of the vote. It should be noted that the Cobleigh for Congress Committee filed a termination report on April 3, 1981 disclosing \$0 cash on hand and no outstanding debts.

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time of the contribution to the candidate, the Federal Account was not a qualified multicandidate committee. On August 26, 1981, a Request for Additional Information (RFAI) was sent to the committee which noted the apparent excessive contribution, and requested that the committee either amend its report or seek a refund of the amount in excess of \$1,000.

On September 14, 1981, the Commission received the Federal Account's response requesting an extension of time in which to clarify the matter. A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RFAI, was sent on September 18, 1981.

The Federal Account's attorney, Mr. Richard Wiebush, called to discuss the matter on September 18, 1981. He stated that the Federal Account is one account of the New Hampshire Republican State Committee (the State Committee) and since the State Committee was a qualified multicandidate committee, the contribution by the Federal Account did not violate 2 U.S.C. § 441a. Mr. Wiebush expressed his belief that the contribution in question had been made prior to the termination of the State Committee. A RAD staff member explained that, according to records at the Commission, the State Committee had filed a 1980 April Quarterly Termination Report on May 20, 1980, and that the contribution made by the Federal Account had occurred on October 21, 1980. 4/

4/ The New Hampshire Republican State Committee (FEC ID# C00005629) and the New Hampshire Republican Committee / Federal Account ("the Federal Account," FEC ID # C00076687) were audited in 1978 and found not to be "political committees." See the Final Audit Report for these committees which was released to the public on November 14, 1978. The Federal Account filed a 1978 Year End Termination Report with no residual funds. However, its apparent successor, New Hampshire Commitment '80, registered on October 2, 1980.

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On September 22, 1981, Mr. Wiebush called again in reference to this matter. He applied the limits of 2 U.S.C. § 441a(d) (coordinated party expenditures) to the contribution made by the Federal Account, and argued that the contribution was within such limits. The RAD staff member explained that under that provision the committee may pay a vendor on behalf of the candidate, but not the candidate directly. Mr. Wiebush disagreed with the Commission's interpretation as stated by the analyst and requested copies of any advisory opinions which would clarify the Commission's position.

A RAD staff member phoned Mr. Wiebush on September 23, 1981 to inform him that copies of Advisory Opinions 1979-30 and 1975-120 and Opinion of Counsel 1975-126 would be sent to him.

On October 8, 1981, a written response was received which argued against applying those AO's to the situation at hand and which also stated that it was "too late" to obtain a refund from Mr. Cobleigh's "defunct campaign." 5/

An RFAI was sent to the Cobleigh Committee on January 7, 1982 advising the committee to make a refund of the excessive amount or to amend its report. No response was received and on January 29, 1982, a second notice was sent.

As of this writing, no response has been received. The RAD analyst assigned to the Cobleigh Committee has not contacted the

5/ It should also be noted that this contribution was made after the primary election and that the Cobleigh Committee only had an outstanding debt of \$4,000 from the primary election. This was a \$4,000 loan from Marshall Cobleigh.

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committee as she has been unable to obtain a telephone number.

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. Section 441a(f) prohibits a political committee from knowingly accepting any contribution in violation of the provisions of section 441a. Pursuant to section 441a(a)(2)(A), no multicandidate political committee shall make contributions with respect to any election for federal office which, in the aggregate, exceed \$5,000. Under 2 U.S.C. § 441a(d), the state committee of a political party may not make any expenditure in connection with the general election campaign of a candidate for federal office in a state who is affiliated with such party which exceeds, in the case of a candidate for election to the office of Representative, \$10,000. 6/

When first confronted with the possible excessive contribution, the Federal Account argued that it was a qualified multicandidate committee, because the State Committee had been one, and that, somehow, application of the \$5,000 contribution limit would mitigate the violation. However, since the State Committee terminated in May, 1980 and the Federal Account did not register until October 2, 1980, the Federal Account would have had to be registered for six months and have received

6/ Pursuant to 2 U.S.C. § 441a(c), this figure is to be adjusted to reflect the latest cost-of-living increase. Thus, in 1980 the limit for House candidates was \$14,720, representing a 47.2% increase.

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contributions from more than 50 persons in order to qualify as a multicandidate committee. See 2 U.S.C. § 441a(4). At the time of the contribution, the Federal Account had only been registered for 19 days.

Subsequent to this, the committee claimed that the \$10,000 was a section 441a(d) expenditure, arguing against the RAD analyst's explanation that the \$10,000 could not be given directly to the candidate if it was to be a coordinated party expenditure.

In the past, the Commission has permitted party committees to make § 441a(d) expenditures in close coordination with a candidate. However, to preserve the distinction between contributions and expenditures under the Act, the Commission has never permitted a party committee to transfer its § 441a(d) spending authority directly to a candidate. The party committee, not the candidate, must make the § 441a(d) expenditure.

While this point may not be clear in the Act or the regulations as pointed out by Mr. Wiebush, the Commission had clearly established its policy in this regard prior to the making of the contribution in question. Through the issuance of the following advisory opinions, opinions of counsel and campaign guides, the New Hampshire Republican State Committee should have been aware of Commission policy.

In AO 1975-120, issued on January 26, 1976, the Commission discussed the distinction between party committee contributions to a candidate and expenditures on his behalf under § 608(f). 7/

7/ 18 U.S.C. § 608(f) was the forerunner of 2 U.S.C. § 441a(d).

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After noting that a direct donation and an expenditure are different, the opinion states: "In one case, the candidate acquires exclusive use of the monies in question; in the other, the state party, although it may consult with the candidate as to how to expend the funds, has control over how the monies are used." With reference to AO 1975-120, the issue was further discussed in OC 1975-126, issued on March 15, 1976. This opinion states, in relevant part:

The distinction between a contribution and expenditure is one of dominion and control. An outright donation of monies or anything of value, when it is actively or constructively received by a candidate or committee, comes within the full dominion and control of the candidate or committee, and may be applied to any purpose at their discretion. Such an outright donation is a contribution, and is attributable to the limits of 18 U.S.C. § 608(b). A State Committee expenditure is generally characterized by the fact that the beneficiary (e.g., here, the Congressional candidate or his/her campaign committee) has not exercised total dominion or control over the purpose to which a disbursement is applied ...

OC 1976-38, issued four days later on March 19, 1976, contains additional language defining the scope of the expenditure right under § 608(f). The opinion states in relevant part:

The § 608(f) expenditure may not be a direct donation of money to a candidate. In that situation, the party committee is making a contribution to the candidate since the candidate acquires the exclusive use of the money. The party committee can, however, directly purchase goods or services for the

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candidate under the § 608(f) expenditure limit. Although the DNC or the State party may consult with the candidate as to how to expend the funds, the party committees retain control over how the monies are used.

The two opinions of counsel were issued after the Buckley decision, when the Commission was unable to issue AOs. Both carry the notation that the letter was ". . . an opinion of counsel which the Commission has noted without objection; . . ."

Based on these opinions, the Campaign Guide for State and Subordinate Party Committees, issued in September 1976, informed candidates and party committee representatives that short of making direct contributions, the party committees may coordinate with candidates by making expenditures designated by the candidates and assuming obligations incurred by candidates. In addition, in the August 1980 issue of the Record, the Commission issued a Supplement for State and Local Party Organizations which, on page 2, made the point that if a party committee directly gave the candidate the money to pay a bill, the money would be a contribution, not a party expenditure.

Further, the instructions on the back Schedule F, issued in March 1980, on which coordinated party expenditures are to be reported, state that § 441a(d) expenditures are not contributions to the candidate.

Thus, since it is clear that the \$10,000 cannot be considered a § 441a(d) expenditure nor can the Federal Account be considered a qualified multicandidate committee at the time of

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the contribution, it appears that the committee has exceeded the limitations of 2 U.S.C. § 441a(a)(1)(A) by \$9,000. 8/ Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Cobleigh Committee violated 2 U.S.C. § 441a(f). However, as the Cobleigh Committee terminated 1 1/2 years ago, the General Counsel recommends that the Commission take no further action with regard to that committee.

8/ Both the Federal Account and the Cobleigh Committee reported the contribution for the general election only.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 17, 1982

Alice Pinkham, Treasurer
New Hampshire Republican State Committee
134 North Main Street
Concord, New Hampshire 03301

Re: MUR 1479

Dear Ms. Pinkham:

On November 16, 1982, the Federal Election Commission determined that there is reason to believe that your committee, the New Hampshire Republican State Committee, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by making an excessive contribution to Cobleigh for Congress. In addition, the Commission found reason to believe that your committee violated 11 C.F.R. § 102.5(a)(1) by transferring funds from its non-federal account to its federal account. The General Counsel's factual and legal analysis, which formed a basis for the Commission's findings, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your committee. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

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

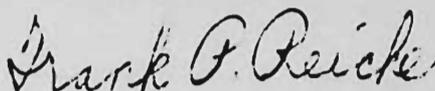
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Letter to Alice Pinkham
Page 2

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 Marybeth Tarrant, the staff member assigned to this matter, at 202-523-4529.

Sincerely,



Frank P. Reiche
Chairman, for the
Federal Election Commission

Enclosures

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

83040413792

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR 1479
STAFF MEMBER(S) & TEL. NO.
Marybeth Tarrant
(202) 523-4529

RESPONDENT New Hampshire Republican State Committee

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

SUMMARY OF ALLEGATIONS

It appears that the New Hampshire Republican State Committee Federal Account (Federal Account) 1/ contributed \$10,000 for the November, 1980 general election to Cobleigh for Congress (Cobleigh Committee) in violation of 2 U.S.C. § 441a(a)(1)(A). In addition, it appears that the New Hampshire Republican State Committee violated 11 C.F.R. § 102.5 by transferring \$18,483.50 from its non-federal account to the Federal Account.

FACTUAL BASIS AND LEGAL ANALYSIS

A. Excessive Contribution

The Federal Account's 2/ 1980 30 Day Post-General Election Report disclosed a contribution to a federal candidate (Marshall Cobleigh, 1st Congressional District of New Hampshire) in the amount of \$10,000 designated for the general election. 3/ At the

1/ On August 10, 1982, this committee filed a Statement of Organization amendment changing its name from New Hampshire Commitment '80 to the New Hampshire Republican State Committee Federal Account.

2/ A cover letter attached to the Federal Account's Statement of Organization, which was received at the Commission on October 2, 1980, noted that this was a "separate account within the Republican State Committee". In response to a January 28, 1981 RFAI, an amended Statement of Organization was received on February 19, 1981 which noted that there were no affiliated committees.

3/ Marshall Cobleigh lost in the general election receiving 39% of the vote. It should be noted that the Cobleigh for Congress Committee filed a termination report on April 3, 1981 disclosing \$0 cash on hand and no outstanding debts.

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time of the contribution to the candidate, the Federal Account was not a qualified multicandidate committee. On August 26, 1981, a Request for Additional Information (RAFI) was sent to the committee which noted the apparent excessive contribution, and requested that the committee either amend its report or seek a refund of the amount in excess of \$1,000.

On September 14, 1981, the Commission received the Federal Account's response requesting an extension of time in which to clarify the matter. A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RAFI, was sent on September 18, 1981.

Respondent's attorney, Mr. Richard Wiebush, called to discuss the matter on September 18, 1981. He stated that the Federal Account is one account of the New Hampshire Republican State Committee (the State Committee) and since the State Committee was a qualified multicandidate committee, the contribution by the Federal Account did not violate 2 U.S.C. § 441a. Mr. Wiebush expressed his belief that the contribution in question had been made prior to the termination of the State Committee. A RAD staff member explained that, according to records at the Commission, the State Committee had filed a 1980 April Quarterly Termination Report on May 20, 1980, and that the contribution made by the Federal Account had occurred on October 21, 1980. 4/

4/ The New Hampshire Republican State Committee (FEC ID# C00005629) and the New Hampshire Republican Committee / Federal Account ("the Federal Account," FEC ID # C00076687) were audited in 1978 and found not to be "political committees." See the Final Audit Report for these committees which was released to the public on November 14, 1978. The Federal Account filed a 1978 Year End Termination Report with no residual funds. However, its apparent successor, New Hampshire Commitment '80, registered on October 2, 1980.

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On September 22, 1981, Mr. Wiebush called again in reference to this matter. He applied the limits of 2 U.S.C. § 441a(d) (coordinated party expenditures) to the contribution made by the Federal Account, and argued that the contribution was within such limits. The RAD staff member explained that under that provision the committee may pay a vendor on behalf of the candidate, but not the candidate directly. Mr. Wiebush disagreed with the Commission's interpretation as stated by the analyst and requested copies of any advisory opinions which would clarify the Commission's position.

A RAD staff member phoned Mr. Wiebush on September 23, 1981 to inform him that copies of Advisory Opinions 1979-30 and 1975-120 and Opinion of Counsel 1975-126 would be sent to him.

On October 8, 1981, a written response was received which argued against applying those AO's to the situation at hand and which also stated that it was "too late" to obtain a refund from Mr. Cobleigh's "defunct campaign." 5/

An RFAI was sent to the Cobleigh Committee on January 7, 1982 advising the committee to make a refund of the excessive amount or to amend its report. No response was received and on January 29, 1982, a second notice was sent.

As of this writing, no response has been received. The analyst assigned to the Cobleigh Committee has not contacted the

5/ It should also be noted that this contribution was made after the primary election and that the Cobleigh Committee only had an outstanding debt of \$4,000 from the primary election. This was a \$4,000 loan from Marshall Cobleigh.

committee as she has been unable to obtain a telephone number.

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. Section 441a(f) prohibits a political committee from knowingly accepting any contribution in violation of the provisions of section 441a. Pursuant to section 441a(a)(2)(A), no multicandidate political committee shall make contributions with respect to any election for federal office which, in the aggregate, exceed \$5,000. Under 2 U.S.C. § 441a(d), the state committee of a political party may not make any expenditure in connection with the general election campaign of a candidate for federal office in a state who is affiliated with such party which exceeds, in the case of a candidate for election to the office of Representative, \$10,000. 6/

When first confronted with the possible excessive contribution, the Federal Account argued that it was a qualified multicandidate committee, because the State Committee had been one, and that, somehow, application of the \$5,000 contribution limit would mitigate the violation. However, since the State Committee terminated in May, 1980 and the Federal Account did not register until October 2, 1980, the Federal Account would have had to be registered for six months and have received

6/ Pursuant to 2 U.S.C. § 441a(c), this figure is to be adjusted to reflect the latest cost-of-living increase. Thus, in 1980 the limit for House candidates was \$14,720, representing a 47.2% increase.

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contributions from more than 50 persons in order to qualify as a multicandidate committee. See 2 U.S.C. § 441a(4). At the time of the contribution, the Federal Account had only been registered for 19 days.

Subsequent to this, the committee claimed that the \$10,000 was a section 441a(d) expenditure, arguing against the RAD analyst's explanation that the \$10,000 could not be given directly to the candidate if it was to be a coordinated party expenditure.

In the past, the Commission has permitted party committees to make § 441a(d) expenditures in close coordination with a candidate. However, to preserve the distinction between contributions and expenditures under the Act, the Commission has never permitted a party committee to transfer its § 441a(d) spending authority directly to a candidate. The party committee, not the candidate, must make the § 441a(d) expenditure.

While this point may not be clear in the Act or the regulations as pointed out by Mr. Wiebush, the Commission had clearly established its policy in this regard prior to the making of the contribution in question. Through the issuance of the following advisory opinions, opinions of counsel and campaign guides, the New Hampshire Republican State Committee should have been aware of Commission policy.

In AO 1975-120, issued on January 26, 1976, the Commission

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discussed the distinction between party committee contributions to a candidate and expenditures on his behalf under § 608(f). ^{7/} After noting that a direct donation and an expenditure are different, the opinion states: "In one case, the candidate acquires exclusive use of the monies in question; in the other, the state party, although it may consult with the candidate as to how to expend the funds, has control over how the monies are used." With reference to AO 1975-120, the issue was further discussed in OC 1975-126, issued on March 15, 1976. This opinion states, in relevant part:

The distinction between a contribution and expenditure is one of dominion and control. An outright donation of monies or anything of value, when it is actively or constructively received by a candidate or committee, comes within the full dominion and control of the candidate or committee, and may be applied to any purpose at their discretion. Such an outright donation is a contribution, and is attributable to the limits of 18 U.S.C. § 608(b). A State Committee expenditure is generally characterized by the fact that the beneficiary (e.g., here, the Congressional candidate or his/her campaign committee) has not exercised total dominion or control over the purpose to which a disbursement is applied ...

OC 1976-38, issued four days later on March 19, 1976, contains additional language defining the scope of the expenditure right

^{7/} 18 U.S.C. § 608(f) was the forerunner of 2 U.S.C. § 441a(d).

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under § 608(f). The opinion states in relevant part:

The § 608(f) expenditure may not be a direct donation of money to a candidate. In that situation, the party committee is making a contribution to the candidate since the candidate acquires the exclusive use of the money. The party committee can, however, directly purchase goods or services for the candidate under the § 608(f) expenditure limit. Although the DNC or the State party may consult with the candidate as to how to expend the funds, the party committees retain control over how the monies are used.

The two opinions of counsel were issued after the Buckley decision, when the Commission was unable to issue AOs. Both carry the notation that the letter was "... an opinion of counsel which the Commission has noted without objection; . . ."

Based on these opinions, the Campaign Guide for State and Subordinate Party Committees, issued in September 1976, informed candidates and party committee representatives that short of making direct contributions, the party committees may coordinate with candidates by making expenditures designated by the candidates and assuming obligations incurred by candidates. In addition, in the August 1980 issue of the Record, the Commission issued a Supplement for State and Local Party Organizations which, on page 2, made the point that if a party committee directly gave the candidate the money to pay a bill, the money would be a contribution, not a party expenditure.

Thus, since it is clear that the \$10,000 cannot be considered a § 441a(d) expenditure nor can the Federal Account be considered a qualified multicandidate committee at the time of

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the contribution, it appears that the committee has exceeded the limitations of 2 U.S.C. § 441a(a)(1)(A) by \$9,000. 8/ Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the New Hampshire Republican State Committee violated 2 U.S.C. § 441a(a)(1)(A).

B. Transfers from a Non-Federal Account to a Federal Account

The Federal Account's 1980 October Quarterly/12 Day Pre-General Election Report disclosed a loan of \$7,983.50 from the State Committee, and failed to disclose the duration, interest rate and date incurred for such loan. 9/ This information was also missing for \$10,500 in loans received as disclosed on the 1980 30 Day Post-General Election Report.

RFAI's requesting this information were sent to the Federal Account on August 26, 1981.

On September 14, 1981 the Commission received a response requesting an extension of time in which to clarify the matters. A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RFAI, was sent on September 18, 1981.

8/ Both the Federal Account and the Cobleigh Committee reported the contribution for the general election only.

9/ When the State Committee terminated in May, 1980 it had a closing cash on hand of \$5,126.40. Some or all of these funds may have been contained in this loan.

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The Federal Account responded on October 8, 1981 by disclosing the \$7,983.50 "loan" as a transfer-in from an affiliated committee. This response also indicated that the additional \$10,500 in "loans" were also transfers-in from an affiliated committee.

A RAD staff member phoned the committee on November 4, 1981 in an effort to clarify the response received on October 8, 1981. Mr. David Rines, the Executive Director, stated that the New Hampshire Republican State Committee had two separate accounts, a federal account and an account for state and local (non-federal) activity.

As result of the response of October 8, 1981 and the phone conversation of November 4, 1981, an RFAI was sent on November 10, 1981 requesting a return of the receipts to the non-federal account, or amended reports in the event that internal bank transfers have been disclosed. A Second Notice was sent on December 4, 1981 for failure to respond to the RFAI.

On December 21, 1981, a written response was received from the Federal Account. The response stated that the State Committee had borrowed \$41,000 from the Merchant's Savings Bank. The State Committee provided \$10,000 of such borrowed funds to the Federal Account, which then contributed this \$10,000 to Marshall Cobleigh. The response did not mention the other previously disclosed loans. In addition, reports filed with the Commission subsequent to this response neither disclose the repayment of these funds, nor debts owed to the State Committee.

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Pursuant to 11 C.F.R. § 102.5(a)(1), a party organization that has qualified as a political committee under the Act may register in one of two ways:

- 1) The organization may establish a separate bank account for federal election activity, which is treated as a separate federal political committee and, therefore, is subject to the Act's registration and reporting requirements. Only funds permitted by the Act may be deposited in this account and no transfers may be made to such an account from any other account(s) maintained for the purpose of financing activity in connection with non-federal elections.
- 2) The organization may register and report as a political committee under the Act. As the committee would have a single account for both federal and non-federal activity, it may receive only funds permitted by the Act, regardless of whether the funds are used for federal or non-federal elections.

The New Hampshire Republican State Committee opted for the first alternative but has made transfers from its non-federal account to its federal account. New Hampshire state law prohibits corporate and labor union contributions and individual contributions are limited to \$5,000; therefore, the state account may not contain funds prohibited by the Act. However, under 11 C.F.R. § 102.5(a)(2), the federal account may only receive those contributions designated or expressly solicited for federal campaigns, or contributions from donors who have been informed that their contributions will count against the Act's limits. Because of the need to insure that contributors are aware that funds used for federal election purposes are subject to the Act's

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limitations, the regulation prohibits the transfer of funds from a non-federal account to a federal one.

In addition, these transfers were really loans from the State Committee to the Federal Account and the Federal Account is in the process of repaying the State Committee. While the \$10,000 seems to have come from a bank loan, it appears that the State Committee obtained a \$41,000 bank loan which was first deposited into its own account. Subsequently, \$10,000 was transferred to the Federal Account.

Pursuant to 2 U.S.C. § 431(8)(A)(i), the term "contribution" includes a loan. A loan by the State Committee constitutes a contribution by the State Committee to the Federal Account. Under 2 U.S.C. § 431(4)(A), a state party organization becomes a political committee when it either receives contributions or makes expenditures aggregating over \$1,000 during a calendar year. For purposes of triggering political committee status, this transaction would constitute an expenditure. Even if these funds were only transfers and not loans, transfers apply toward the thresholds for determining if an organization is required to register as a political committee.

In AO 1981-6, it was determined that a state PAC's loan to a federal PAC made the state PAC subject to federal requirements. Given the situation here, it is clear that the State Committee technically should have registered and should be reporting as a political committee. An alternative for corrective action in this case would be for the New Hampshire Republican State

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Committee to only have one account which would be subject to the federal requirements. Even though the State Committee did not opt for this in the first place, given New Hampshire state law requirements, this would not be an unreasonable solution.

It is the recommendation of the General Counsel that the Commission find reason to believe that the New Hampshire Republican State Committee violated 11 C.F.R. § 102.5(a)(1) by transferring funds from a non-federal account to a federal account.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
New Hampshire Republican) MUR 1479
State Committee)
Cobleigh for Congress)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on November 16, 1982, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 1479:

1. Find reason to believe that the New Hampshire Republican State Committee violated 2 U.S.C. §441a(a) (1) (A);
2. Find reason to believe that Cobleigh for Congress violated 2 U.S.C. §441a(f) and take no further action.
3. Find reason to believe that the New Hampshire Republican State Committee violated 11 C.F.R. §102.5(a) (1).
4. Approve the letters attached to the General Counsel's November 4, 1982 report in this matter.

Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioner Aikens dissented. Commissioner Elliott was not present at the time of the vote.

Attest:

11-16-82

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/JODY RANSOM *JR*
DATE: NOVEMBER 5, 1982
SUBJECT: OBJECTION - MUR 1479 First General Counsel's
Report dated November 4, 1982; Received in OCS,
11-4-82, 9:55

The above-named document was circulated to the Commission on
November 4, 1982 at 9:55.

Commissioner Aikens submitted an objection at 12:22,
November 5, 1982.

This matter will be placed on the agenda for the Executive
Session of Tuesday, November 16, 1982.

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November 4, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1479

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

Thank you.

Attachment

cc: Tarrant

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

82 NOV 4 A 9: 55

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 11-4-82

MUR 1479
STAFF MEMBER(S)
Marybeth Tarrant
Scott Thomas

SENSITIVE

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

RESPONDENTS' NAMES: New Hampshire Republican State Committee and
Cobleigh for Congress

RELEVANT STATUTE: 2 U.S.C. §§ 431(8)(A)(i), 431(4)(A), 441a(a)
(1)(A), 441a(a)(2)(A), 441a(d) and 441a(f)
11 C.F.R. § 102.5

INTERNAL REPORTS CHECKED: New Hampshire Republican State
Committee Federal Account
Cobleigh for Congress

FEDERAL AGENCIES CHECKED: None

GENERATION OF MATTER

The New Hampshire Republican State Committee Federal Account
(Federal Account) 1/ was referred to the Office of General
Counsel by the Reports Analysis Division (RAD) on August 19,
1982. On September 29, 1982, the Commission voted to open a MUR
in this matter.

SUMMARY OF ALLEGATIONS

It appears that the Federal Account contributed \$10,000 to
Cobleigh for Congress (Cobleigh Committee) in violation of

1/ On August 10, 1982, this committee filed a Statement of
Organization amendment changing its name from New Hampshire
Commitment '80 to the New Hampshire Republican State Committee
Federal Account.

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2 U.S.C. § 441a(a)(1)(A). The Cobleigh Committee's acceptance of an excessive contribution would be in violation of 2 U.S.C. § 441a(f). In addition, it appears that the New Hampshire Republican State Committee violated 11 C.F.R. § 102.5 by transferring \$18,483.50 from its non-federal account to the Federal Account.

FACTUAL AND LEGAL ANALYSIS

A. Excessive Contribution

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The Federal Account's 2/ 1980 30 Day Post-General Election Report disclosed a contribution to a federal candidate (Marshall Cobleigh, 1st Congressional District of New Hampshire) in the amount of \$10,000 designated for the general election. 3/ At the time of the contribution to the candidate, the Federal Account was not a qualified multicandidate committee. On August 26, 1981, a Request for Additional Information (RFAI) was sent to the committee which noted the apparent excessive contribution, and requested that the committee either amend its report or seek a refund of the amount in excess of \$1,000.

2/ A cover letter attached to the Federal Account's Statement of Organization, which was received at the Commission on October 2, 1980, noted that this was a "separate account within the Republican State Committee". In response to a January 28, 1981 RFAI, an amended Statement of Organization was received on February 19, 1981 which noted that there were no affiliated committees.

3/ Marshall Cobleigh lost in the general election receiving 39% of the vote. It should be noted that the Cobleigh for Congress Committee filed a termination report on April 3, 1981 disclosing \$0 cash on hand and no outstanding debts.

On September 14, 1981, the Commission received the Federal Account's response requesting an extension of time in which to clarify the matter. A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RFAI, was sent on September 18, 1981.

Respondent's attorney, Mr. Richard Wiebush, called to discuss the matter on September 18, 1981. He stated that the Federal Account is one account of the New Hampshire Republican State Committee (the State Committee) and since the State Committee was a qualified multicandidate committee, the contribution by the Federal Account did not violate 2 U.S.C. § 441a. Mr. Wiebush expressed his belief that the contribution in question had been made prior to the termination of the State Committee. A RAD staff member explained that, according to records at the Commission, the State Committee had filed a 1980 April Quarterly Termination Report on May 20, 1980, and that the contribution made by the Federal Account had occurred on October 21, 1980. 4/

On September 22, 1981, Mr. Wiebush called again in reference to this matter. He applied the limits of 2 U.S.C. § 441a(d) (coordinated party expenditures) to the contribution made by the

4/ The New Hampshire Republican State Committee (FEC ID# C00005629) and the New Hampshire Republican Committee / Federal Account ("the Federal Account," FEC ID # C00076687) were audited in 1978 and found not to be "political committees." See the Final Audit Report for these committees which was released to the public on November 14, 1978. The Federal Account filed a 1978 Year End Termination Report with no residual funds. However, its apparent successor, New Hampshire Commitment '80, registered on October 2, 1980.

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Federal Account, and argued that the contribution was within such limits. The RAD staff member explained that under that provision the committee may pay a vendor on behalf of the candidate, but not the candidate directly. Mr. Wiebush disagreed with the Commission's interpretation as stated by the analyst and requested copies of any advisory opinions which would clarify the Commission's position.

A RAD staff member phoned Mr. Wiebush on September 23, 1981 to inform him that copies of Advisory Opinions 1979-30 and 1975-120 and Opinion of Counsel 1975-126 would be sent to him.

On October 8, 1981, a written response was received which argued against applying those AO's to the situation at hand and which also stated that it was "too late" to obtain a refund from Mr. Cobleigh's "defunct campaign." 5/

An RFAI was sent to the Cobleigh Committee on January 7, 1982 advising the committee to make a refund of the excessive amount or to amend its report. No response was received and on January 29, 1982, a second notice was sent.

As of this writing, no response has been received. The RAD analyst assigned to the Cobleigh Committee has not contacted the committee as she has been unable to obtain a telephone number.

5/ It should also be noted that this contribution was made after the primary election and that the Cobleigh Committee only had an outstanding debt of \$4,000 from the primary election. This was a \$4,000 loan from Marshall Cobleigh.

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Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. Section 441a(f) prohibits a political committee from knowingly accepting any contribution in violation of the provisions of section 441a. Pursuant to section 441a(a)(2)(A), no multicandidate political committee shall make contributions with respect to any election for federal office which, in the aggregate, exceed \$5,000. Under 2 U.S.C. § 441a(d), the state committee of a political party may not make any expenditure in connection with the general election campaign of a candidate for federal office in a state who is affiliated with such party which exceeds, in the case of a candidate for election to the office of Representative, \$10,000. 6/

When first confronted with the possible excessive contribution, the Federal Account argued that it was a qualified multicandidate committee, because the State Committee had been one, and that, somehow, application of the \$5,000 contribution limit would mitigate the violation. However, since the State Committee terminated in May, 1980 and the Federal Account did not register until October 2, 1980, the Federal Account would have had to be registered for six months and have received

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contributions from more than 50 persons in order to qualify as a multicandidate committee. See 2 U.S.C. § 441a(4). At the time of the contribution, the Federal Account had only been registered for 19 days.

Subsequent to this, the committee claimed that the \$10,000 was a section 441a(d) expenditure, arguing against the RAD analyst's explanation that the \$10,000 could not be given directly to the candidate if it was to be a coordinated party expenditure.

In the past, the Commission has permitted party committees to make § 441a(d) expenditures in close coordination with a candidate. However, to preserve the distinction between contributions and expenditures under the Act, the Commission has never permitted a party committee to transfer its § 441a(d) spending authority directly to a candidate. The party committee, not the candidate, must make the § 441a(d) expenditure.

While this point may not be clear in the Act or the regulations as pointed out by Mr. Wiebush, the Commission had clearly established its policy in this regard prior to the making of the contribution in question. Through the issuance of the following advisory opinions, opinions of counsel and campaign guides, the New Hampshire Republican State Committee should have been aware of Commission policy.

In AO 1975-120, issued on January 26, 1976, the Commission discussed the distinction between party committee contributions to a candidate and expenditures on his behalf under § 608(f). 7/

7/ 18 U.S.C. § 608(f) was the forerunner of 2 U.S.C. § 441a(d).

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After noting that a direct donation and an expenditure are different, the opinion states: "In one case, the candidate acquires exclusive use of the monies in question; in the other, the state party, although it may consult with the candidate as to how to expend the funds, has control over how the monies are used." With reference to AO 1975-120, the issue was further discussed in OC 1975-126, issued on March 15, 1976. This opinion states, in relevant part:

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candidate under the § 608(f) expenditure limit. Although the DNC or the State party may consult with the candidate as to how to expend the funds, the party committees retain control over how the monies are used.

The two opinions of counsel were issued after the Buckley decision, when the Commission was unable to issue AOs. Both carry the notation that the letter was ". . . an opinion of counsel which the Commission has noted without objection; . . ."

Based on these opinions, the Campaign Guide for State and Subordinate Party Committees, issued in September 1976, informed candidates and party committee representatives that short of making direct contributions, the party committees may coordinate with candidates by making expenditures designated by the candidates and assuming obligations incurred by candidates. In addition, in the August 1980 issue of the Record, the Commission issued a Supplement for State and Local Party Organizations which, on page 2, made the point that if a party committee directly gave the candidate the money to pay a bill, the money would be a contribution, not a party expenditure.

Thus, since it is clear that the \$10,000 cannot be considered a § 441a(d) expenditure nor can the Federal Account be considered a qualified multicandidate committee at the time of the contribution, it appears that the committee has exceeded the limitations of 2 U.S.C. § 441a(a)(1)(A) by \$9,000. 8/

8/ Both the Federal Account and the Cobleigh Committee reported the contribution for the general election only.

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Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the New Hampshire Republican State Committee violated 2 U.S.C. § 441a(a)(1)(A) and the Cobleigh Committee violated 2 U.S.C. § 441a(f). However, as the Cobleigh Committee terminated 1 1/2 years ago, the General Counsel recommends that the Commission take no further action with regard to that committee.

B. Transfers from a Non-Federal Account to a Federal Account

The Federal Account's 1980 October Quarterly/12 Day Pre-General Election Report disclosed a loan of \$7,983.50 from the State Committee, and failed to disclose the duration, interest rate and date incurred for such loan. 9/ This information was also missing for \$10,500 in loans received as disclosed on the 1980 30 Day Post-General Election Report.

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9/ When the State Committee terminated in May, 1980 it had a closing cash on hand of \$5,126.40. Some or all of these funds may have been contained in this loan.

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owed to the State Committee.

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limitations, the regulation prohibits the transfer of funds from a non-federal account to a federal one.

In addition, these transfers were really loans from the State Committee to the Federal Account and the Federal Account is in the process of repaying the State Committee. While the \$10,000 seems to have come from a bank loan, it appears that the State Committee obtained a \$41,000 bank loan which was first deposited into its own account. Subsequently, \$10,000 was transferred to the Federal Account.

Pursuant to 2 U.S.C. § 431(8)(A)(i), the term "contribution" includes a loan. A loan by the State Committee constitutes a contribution by the State Committee to the Federal Account. Under 2 U.S.C. § 431(4)(A), a state party organization becomes a political committee when it either receives contributions or makes expenditures aggregating over \$1,000 during a calendar year. For purposes of triggering political committee status, this transaction would constitute an expenditure. Even if these funds were only transfers and not loans, transfers apply toward the thresholds for determining if an organization is required to register as a political committee.

In AO 1981-6, it was determined that a state PAC's loan to a federal PAC made the state PAC subject to federal requirements. Given the situation here, it is clear that the State Committee technically should have registered and should be reporting as a political committee. An alternative for corrective action in this

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case would be for the New Hampshire Republican State Committee to only have one account which would be subject to the federal requirements. Even though the State Committee did not opt for this in the first place, given New Hampshire state law requirements, this would not be an unreasonable solution.

It is the recommendation of the General Counsel that the Commission find reason to believe that the New Hampshire Republican State Committee violated 11 C.F.R. § 102.5(a)(1) by transferring funds from a non-federal account to a federal account.

Recommendations

1. Find reason to believe that the New Hampshire Republican State Committee violated 2 U.S.C. § 441a(a)(1)(A).
2. Find reason to believe that Cobleigh for Congress violated 2 U.S.C. § 441a(f) and take no further action.
3. Find reason to believe that the New Hampshire Republican State Committee violated 11 C.F.R. § 102.5(a)(1).
4. Approve the attached letters.

Charles N. Steele
General Counsel

November 3, 1982
Date

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

Attachments

- Proposed letters (2)
- Summary of Reason to Believe Findings (2)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alice Pinkham, Treasurer
New Hampshire Republican State Committee
134 North Main Street
Concord, New Hampshire 03301

Re: MUR 1479

Dear Ms. Pinkham:

On , 1982, the Federal Election Commission determined that there is reason to believe that your committee, the New Hampshire Republican State Committee, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by making an excessive contribution to Cobleigh for Congress. In addition, the Commission found reason to believe that your committee violated 11 C.F.R. § 102.5(a)(1) by transferring funds from its non-federal account to its federal account. The General Counsel's factual and legal analysis, which formed a basis for the Commission's findings, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your committee. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

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

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Letter to Alice Pinkham
Page 2

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 Marybeth Tarrant, the staff member assigned to this matter, at 202-523-4529.

Sincerely,

Enclosures

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lucille Lagasse, Treasurer
Cobleigh for Congress
180 West Clarke Street
Manchester, New Hampshire 03104

Re: MUR 1479

Dear Ms. Lagasse:

On _____, 1982, the Commission found reason to believe that your committee, Cobleigh for Congress, had violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file as it pertains to your committee. The file will be made part of the public record within 30 days after this matter has been closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The confidentiality provisions of 2 U.S.C. § 437g(a) (4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

The Commission reminds you that the acceptance of an excessive contribution is nevertheless a violation of the Act and that such activity should not occur in the future.

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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Letter to Lucille Lagasse
Page 2

If you have any questions, please direct them to
Marybeth Tarrant at (202) 523-4529.

Sincerely,

Enclosure

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FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

Attachment 2

MUR 1479
STAFF MEMBER(S) & TEL. NO.
Marybeth Tarrant
(202) 523-4529

RESPONDENT New Hampshire Republican State Committee

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

SUMMARY OF ALLEGATIONS

It appears that the New Hampshire Republican State Committee Federal Account (Federal Account) 1/ contributed \$10,000 for the November, 1980 general election to Cobleigh for Congress (Cobleigh Committee) in violation of 2 U.S.C. § 441a(a)(1)(A). In addition, it appears that the New Hampshire Republican State Committee violated 11 C.F.R. § 102.5 by transferring \$18,483.50 from its non-federal account to the Federal Account.

FACTUAL BASIS AND LEGAL ANALYSIS

A. Excessive Contribution

The Federal Account's 2/ 1980 30 Day Post-General Election Report disclosed a contribution to a federal candidate (Marshall Cobleigh, 1st Congressional District of New Hampshire) in the amount of \$10,000 designated for the general election. 3/ At the

1/ On August 10, 1982, this committee filed a Statement of Organization amendment changing its name from New Hampshire Commitment '80 to the New Hampshire Republican State Committee Federal Account.

2/ A cover letter attached to the Federal Account's Statement of Organization, which was received at the Commission on October 2, 1980, noted that this was a "separate account within the Republican State Committee". In response to a January 28, 1981 RFAI, an amended Statement of Organization was received on February 19, 1981 which noted that there were no affiliated committees.

3/ Marshall Cobleigh lost in the general election receiving 39% of the vote. It should be noted that the Cobleigh for Congress Committee filed a termination report on April 3, 1981 disclosing \$0 cash on hand and no outstanding debts.

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time of the contribution to the candidate, the Federal Account was not a qualified multicandidate committee. On August 26, 1981, a Request for Additional Information (RAFI) was sent to the committee which noted the apparent excessive contribution, and requested that the committee either amend its report or seek a refund of the amount in excess of \$1,000.

On September 14, 1981, the Commission received the Federal Account's response requesting an extension of time in which to clarify the matter. A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RAFI, was sent on September 18, 1981.

Respondent's attorney, Mr. Richard Wiebush, called to discuss the matter on September 18, 1981. He stated that the Federal Account is one account of the New Hampshire Republican State Committee (the State Committee) and since the State Committee was a qualified multicandidate committee, the contribution by the Federal Account did not violate 2 U.S.C. § 441a. Mr. Wiebush expressed his belief that the contribution in question had been made prior to the termination of the State Committee. A RAD staff member explained that, according to records at the Commission, the State Committee had filed a 1980 April Quarterly Termination Report on May 20, 1980, and that the contribution made by the Federal Account had occurred on October 21, 1980. 4/

4/ The New Hampshire Republican State Committee (FEC ID# C00005629) and the New Hampshire Republican Committee / Federal Account ("the Federal Account," FEC ID # C00076687) were audited in 1978 and found not to be "political committees." See the Final Audit Report for these committees which was released to the public on November 14, 1978. The Federal Account filed a 1978 Year End Termination Report with no residual funds. However, its apparent successor, New Hampshire Commitment '80, registered on October 2, 1980.

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On September 22, 1981, Mr. Wiebush called again in reference to this matter. He applied the limits of 2 U.S.C. § 441a(d) (coordinated party expenditures) to the contribution made by the Federal Account, and argued that the contribution was within such limits. The RAD staff member explained that under that provision the committee may pay a vendor on behalf of the candidate, but not the candidate directly. Mr. Wiebush disagreed with the Commission's interpretation as stated by the analyst and requested copies of any advisory opinions which would clarify the Commission's position.

A RAD staff member phoned Mr. Wiebush on September 23, 1981 to inform him that copies of Advisory Opinions 1979-30 and 1975-120 and Opinion of Counsel 1975-126 would be sent to him.

On October 8, 1981, a written response was received which argued against applying those AO's to the situation at hand and which also stated that it was "too late" to obtain a refund from Mr. Cobleigh's "defunct campaign." 5/

An RFAI was sent to the Cobleigh Committee on January 7, 1982 advising the committee to make a refund of the excessive amount or to amend its report. No response was received and on January 29, 1982, a second notice was sent.

As of this writing, no response has been received. The analyst assigned to the Cobleigh Committee has not contacted the

5/ It should also be noted that this contribution was made after the primary election and that the Cobleigh Committee only had an outstanding debt of \$4,000 from the primary election. This was a \$4,000 loan from Marshall Cobleigh.

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committee as she has been unable to obtain a telephone number.

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. Section 441a(f) prohibits a political committee from knowingly accepting any contribution in violation of the provisions of section 441a. Pursuant to section 441a(a)(2)(A), no multicandidate political committee shall make contributions with respect to any election for federal office which, in the aggregate, exceed \$5,000. Under 2 U.S.C. § 441a(d), the state committee of a political party may not make any expenditure in connection with the general election campaign of a candidate for federal office in a state who is affiliated with such party which exceeds, in the case of a candidate for election to the office of Representative, \$10,000. 6/

When first confronted with the possible excessive contribution, the Federal Account argued that it was a qualified multicandidate committee, because the State Committee had been one, and that, somehow, application of the \$5,000 contribution limit would mitigate the violation. However, since the State Committee terminated in May, 1980 and the Federal Account did not register until October 2, 1980, the Federal Account would have had to be registered for six months and have received

6/ Pursuant to 2 U.S.C. § 441a(c), this figure is to be adjusted to reflect the latest cost-of-living increase. Thus, in 1980 the limit for House candidates was \$14,720, representing a 47.2% increase.

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contributions from more than 50 persons in order to qualify as a multicandidate committee. See 2 U.S.C. § 441a(4). At the time of the contribution, the Federal Account had only been registered for 19 days.

Subsequent to this, the committee claimed that the \$10,000 was a section 441a(d) expenditure, arguing against the RAD analyst's explanation that the \$10,000 could not be given directly to the candidate if it was to be a coordinated party expenditure.

In the past, the Commission has permitted party committees to make § 441a(d) expenditures in close coordination with a candidate. However, to preserve the distinction between contributions and expenditures under the Act, the Commission has never permitted a party committee to transfer its § 441a(d) spending authority directly to a candidate. The party committee, not the candidate, must make the § 441a(d) expenditure.

While this point may not be clear in the Act or the regulations as pointed out by Mr. Wiebush, the Commission had clearly established its policy in this regard prior to the making of the contribution in question. Through the issuance of the following advisory opinions, opinions of counsel and campaign guides, the New Hampshire Republican State Committee should have been aware of Commission policy.

In AO 1975-120, issued on January 26, 1976, the Commission

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discussed the distinction between party committee contributions to a candidate and expenditures on his behalf under § 608(f). 7/ After noting that a direct donation and an expenditure are different, the opinion states: "In one case, the candidate acquires exclusive use of the monies in question; in the other, the state party, although it may consult with the candidate as to how to expend the funds, has control over how the monies are used." With reference to AO 1975-120, the issue was further discussed in OC 1975-126, issued on March 15, 1976. This opinion states, in relevant part:

The distinction between a contribution and expenditure is one of dominion and control. An outright donation of monies or anything of value, when it is actively or constructively received by a candidate or committee, comes within the full dominion and control of the candidate or committee, and may be applied to any purpose at their discretion. Such an outright donation is a contribution, and is attributable to the limits of 18 U.S.C. § 608(b). A State Committee expenditure is generally characterized by the fact that the beneficiary (e.g., here, the Congressional candidate or his/her campaign committee) has not exercised total dominion or control over the purpose to which a disbursement is applied ...

OC 1976-38, issued four days later on March 19, 1976, contains additional language defining the scope of the expenditure right

7/ 18 U.S.C. § 608(f) was the forerunner of 2 U.S.C. § 441a(d).

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under § 608(f). The opinion states in relevant part:

The § 608(f) expenditure may not be a direct donation of money to a candidate. In that situation, the party committee is making a contribution to the candidate since the candidate acquires the exclusive use of the money. The party committee can, however, directly purchase goods or services for the candidate under the § 608(f) expenditure limit. Although the DNC or the State party may consult with the candidate as to how to expend the funds, the party committees retain control over how the monies are used.

The two opinions of counsel were issued after the Buckley decision, when the Commission was unable to issue AOs. Both carry the notation that the letter was ". . . an opinion of counsel which the Commission has noted without objection; . . ."

Based on these opinions, the Campaign Guide for State and Subordinate Party Committees, issued in September 1976, informed candidates and party committee representatives that short of making direct contributions, the party committees may coordinate with candidates by making expenditures designated by the candidates and assuming obligations incurred by candidates. In addition, in the August 1980 issue of the Record, the Commission issued a Supplement for State and Local Party Organizations which, on page 2, made the point that if a party committee directly gave the candidate the money to pay a bill, the money would be a contribution, not a party expenditure.

Thus, since it is clear that the \$10,000 cannot be considered a § 441a(d) expenditure nor can the Federal Account be considered a qualified multicandidate committee at the time of

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the contribution, it appears that the committee has exceeded the limitations of 2 U.S.C. § 441a(a)(1)(A) by \$9,000. 8/ Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the New Hampshire Republican State Committee violated 2 U.S.C. § 441a(a)(1)(A).

B. Transfers from a Non-Federal Account to a Federal Account

The Federal Account's 1980 October Quarterly/12 Day Pre-General Election Report disclosed a loan of \$7,983.50 from the State Committee, and failed to disclose the duration, interest rate and date incurred for such loan. 9/ This information was also missing for \$10,500 in loans received as disclosed on the 1980 30 Day Post-General Election Report.

RFAI's requesting this information were sent to the Federal Account on August 26, 1981.

On September 14, 1981 the Commission received a response requesting an extension of time in which to clarify the matters. A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RFAI, was sent on September 18, 1981.

8/ Both the Federal Account and the Cobleigh Committee reported the contribution for the general election only.

9/ When the State Committee terminated in May, 1980 it had a closing cash on hand of \$5,126.40. Some or all of these funds may have been contained in this loan.

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The Federal Account responded on October 8, 1981 by disclosing the \$7,983.50 "loan" as a transfer-in from an affiliated committee. This response also indicated that the additional \$10,500 in "loans" were also transfers-in from an affiliated committee.

A RAD staff member phoned the committee on November 4, 1981 in an effort to clarify the response received on October 8, 1981. Mr. David Rines, the Executive Director, stated that the New Hampshire Republican State Committee had two separate accounts, a federal account and an account for state and local (non-federal) activity.

As result of the response of October 8, 1981 and the phone conversation of November 4, 1981, an RFAI was sent on November 10, 1981 requesting a return of the receipts to the non-federal account, or amended reports in the event that internal bank transfers have been disclosed. A Second Notice was sent on December 4, 1981 for failure to respond to the RFAI.

On December 21, 1981, a written response was received from the Federal Account. The response stated that the State Committee had borrowed \$41,000 from the Merchant's Savings Bank. The State Committee provided \$10,000 of such borrowed funds to the Federal Account, which then contributed this \$10,000 to Marshall Cobleigh. The response did not mention the other previously disclosed loans. In addition, reports filed with the Commission subsequent to this response neither disclose the repayment of these funds, nor debts owed to the State Committee.

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Pursuant to 11 C.F.R. § 102.5(a)(1), a party organization that has qualified as a political committee under the Act may register in one of two ways:

- 1) The organization may establish a separate bank account for federal election activity, which is treated as a separate federal political committee and, therefore, is subject to the Act's registration and reporting requirements. Only funds permitted by the Act may be deposited in this account and no transfers may be made to such an account from any other account(s) maintained for the purpose of financing activity in connection with non-federal elections.
- 2) The organization may register and report as a political committee under the Act. As the committee would have a single account for both federal and non-federal activity, it may receive only funds permitted by the Act, regardless of whether the funds are used for federal or non-federal elections.

The New Hampshire Republican State Committee opted for the first alternative but has made transfers from its non-federal account to its federal account. New Hampshire state law prohibits corporate and labor union contributions and individual contributions are limited to \$5,000; therefore, the state account may not contain funds prohibited by the Act. However, under 11 C.F.R. § 102.5(a)(2), the federal account may only receive those contributions designated or expressly solicited for federal campaigns, or contributions from donors who have been informed that their contributions will count against the Act's limits. Because of the need to insure that contributors are aware that funds used for federal election purposes are subject to the Act's

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limitations, the regulation prohibits the transfer of funds from a non-federal account to a federal one.

In addition, these transfers were really loans from the State Committee to the Federal Account and the Federal Account is in the process of repaying the State Committee. While the \$10,000 seems to have come from a bank loan, it appears that the State Committee obtained a \$41,000 bank loan which was first deposited into its own account. Subsequently, \$10,000 was transferred to the Federal Account.

Pursuant to 2 U.S.C. § 431(8)(A)(i), the term "contribution" includes a loan. A loan by the State Committee constitutes a contribution by the State Committee to the Federal Account. Under 2 U.S.C. § 431(4)(A), a state party organization becomes a political committee when it either receives contributions or makes expenditures aggregating over \$1,000 during a calendar year. For purposes of triggering political committee status, this transaction would constitute an expenditure. Even if these funds were only transfers and not loans, transfers apply toward the thresholds for determining if an organization is required to register as a political committee.

In AO 1981-6, it was determined that a state PAC's loan to a federal PAC made the state PAC subject to federal requirements. Given the situation here, it is clear that the State Committee technically should have registered and should be reporting as a political committee. An alternative for corrective action in this case would be for the New Hampshire Republican State

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Committee to only have one account which would be subject to the federal requirements. Even though the State Committee did not opt for this in the first place, given New Hampshire state law requirements, this would not be an unreasonable solution.

It is the recommendation of the General Counsel that the Commission find reason to believe that the New Hampshire Republican State Committee violated 11 C.F.R. § 102.5(a)(1) by transferring funds from a non-federal account to a federal account.

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FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR 1479
STAFF MEMBER(S) & TEL. NO.
Marybeth Tarrant
(202) 523-4529

RESPONDENT Cobleigh for Congress

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

It appears that the New Hampshire Republican State Committee Federal Account (Federal Account) 1/ contributed \$10,000 for the November, 1980 general election to Cobleigh for Congress (Cobleigh Committee) which was \$9,000 in excess of the limitation of 2 U.S.C. § 441a(a)(1)(A). Acceptance of an excessive contribution is a violation of section 441a(f).

FACTUAL BASIS AND LEGAL ANALYSIS

The Federal Account's 2/ 1980 30 Day Post-General Election Report disclosed a contribution to a federal candidate (Marshall Cobleigh, 1st Congressional District of New Hampshire) in the amount of \$10,000 designated for the general election. 3/ At the

1/ On August 10, 1982, this committee filed a Statement of Organization amendment changing its name from New Hampshire Commitment '80 to the New Hampshire Republican State Committee Federal Account.

2/ A cover letter attached to the Federal Account's Statement of Organization, which was received at the Commission on October 2, 1980, noted that this was a "separate account within the Republican State Committee". In response to a January 28, 1981 RFAI, an amended Statement of Organization was received on February 19, 1981 which noted that there were no affiliated committees.

3/ Marshall Cobleigh lost in the general election receiving 39% of the vote. It should be noted that the Cobleigh for Congress Committee filed a termination report on April 3, 1981 disclosing \$0 cash on hand and no outstanding debts.

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time of the contribution to the candidate, the Federal Account was not a qualified multicandidate committee. On August 26, 1981, a Request for Additional Information (RAI) was sent to the committee which noted the apparent excessive contribution, and requested that the committee either amend its report or seek a refund of the amount in excess of \$1,000.

On September 14, 1981, the Commission received the Federal Account's response requesting an extension of time in which to clarify the matter. A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RAI, was sent on September 18, 1981.

The Federal Account's attorney, Mr. Richard Wiebush, called to discuss the matter on September 18, 1981. He stated that the Federal Account is one account of the New Hampshire Republican State Committee (the State Committee) and since the State Committee was a qualified multicandidate committee, the contribution by the Federal Account did not violate 2 U.S.C. § 441a. Mr. Wiebush expressed his belief that the contribution in question had been made prior to the termination of the State Committee. A RAD staff member explained that, according to records at the Commission, the State Committee had filed a 1980 April Quarterly Termination Report on May 20, 1980, and that the contribution made by the Federal Account had occurred on October 21, 1980. 4/

4/ The New Hampshire Republican State Committee (FEC ID# C00005629) and the New Hampshire Republican Committee / Federal Account ("the Federal Account," FEC ID # C00076687) were audited in 1978 and found not to be "political committees." See the Final Audit Report for these committees which was released to the public on November 14, 1978. The Federal Account filed a 1978 Year End Termination Report with no residual funds. However, its apparent successor, New Hampshire Commitment '80, registered on October 2, 1980.

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On September 22, 1981, Mr. Wiebush called again in reference to this matter. He applied the limits of 2 U.S.C. § 441a(d) (coordinated party expenditures) to the contribution made by the Federal Account, and argued that the contribution was within such limits. The RAD staff member explained that under that provision the committee may pay a vendor on behalf of the candidate, but not the candidate directly. Mr. Wiebush disagreed with the Commission's interpretation as stated by the analyst and requested copies of any advisory opinions which would clarify the Commission's position.

A RAD staff member phoned Mr. Wiebush on September 23, 1981 to inform him that copies of Advisory Opinions 1979-30 and 1975-120 and Opinion of Counsel 1975-126 would be sent to him.

On October 8, 1981, a written response was received which argued against applying those AO's to the situation at hand and which also stated that it was "too late" to obtain a refund from Mr. Cobleigh's "defunct campaign." 5/

An RFAI was sent to the Cobleigh Committee on January 7, 1982 advising the committee to make a refund of the excessive amount or to amend its report. No response was received and on January 29, 1982, a second notice was sent.

As of this writing, no response has been received. The RAD analyst assigned to the Cobleigh Committee has not contacted the

5/ It should also be noted that this contribution was made after the primary election and that the Cobleigh Committee only had an outstanding debt of \$4,000 from the primary election. This was a \$4,000 loan from Marshall Cobleigh.

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committee as she has been unable to obtain a telephone number.

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. Section 441a(f) prohibits a political committee from knowingly accepting any contribution in violation of the provisions of section 441a. Pursuant to section 441a(a)(2)(A), no multicandidate political committee shall make contributions with respect to any election for federal office which, in the aggregate, exceed \$5,000. Under 2 U.S.C. § 441a(d), the state committee of a political party may not make any expenditure in connection with the general election campaign of a candidate for federal office in a state who is affiliated with such party which exceeds, in the case of a candidate for election to the office of Representative, \$10,000. 6/

When first confronted with the possible excessive contribution, the Federal Account argued that it was a qualified multicandidate committee, because the State Committee had been one, and that, somehow, application of the \$5,000 contribution limit would mitigate the violation. However, since the State Committee terminated in May, 1980 and the Federal Account did not register until October 2, 1980, the Federal Account would have had to be registered for six months and have received

6/ Pursuant to 2 U.S.C. § 441a(c), this figure is to be adjusted to reflect the latest cost-of-living increase. Thus, in 1980 the limit for House candidates was \$14,720, representing a 47.2% increase.

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contributions from more than 50 persons in order to qualify as a multicandidate committee. See 2 U.S.C. § 441a(4). At the time of the contribution, the Federal Account had only been registered for 19 days.

Subsequent to this, the committee claimed that the \$10,000 was a section 441a(d) expenditure, arguing against the RAD analyst's explanation that the \$10,000 could not be given directly to the candidate if it was to be a coordinated party expenditure.

In the past, the Commission has permitted party committees to make § 441a(d) expenditures in close coordination with a candidate. However, to preserve the distinction between contributions and expenditures under the Act, the Commission has never permitted a party committee to transfer its § 441a(d) spending authority directly to a candidate. The party committee, not the candidate, must make the § 441a(d) expenditure.

While this point may not be clear in the Act or the regulations as pointed out by Mr. Wiebush, the Commission had clearly established its policy in this regard prior to the making of the contribution in question. Through the issuance of the following advisory opinions, opinions of counsel and campaign guides, the New Hampshire Republican State Committee should have been aware of Commission policy.

In AO 1975-120, issued on January 26, 1976, the Commission discussed the distinction between party committee contributions to a candidate and expenditures on his behalf under § 608(f). 7/

7/ 18 U.S.C. § 608(f) was the forerunner of 2 U.S.C. § 441a(d).

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After noting that a direct donation and an expenditure are different, the opinion states: "In one case, the candidate acquires exclusive use of the monies in question; in the other, the state party, although it may consult with the candidate as to how to expend the funds, has control over how the monies are used." With reference to AO 1975-120, the issue was further discussed in OC 1975-126, issued on March 15, 1976. This opinion states, in relevant part:

The distinction between a contribution and expenditure is one of dominion and control. An outright donation of monies or anything of value, when it is actively or constructively received by a candidate or committee, comes within the full dominion and control of the candidate or committee, and may be applied to any purpose at their discretion. Such an outright donation is a contribution, and is attributable to the limits of 18 U.S.C. § 608(b). A State Committee expenditure is generally characterized by the fact that the beneficiary (e.g., here, the Congressional candidate or his/her campaign committee) has not exercised total dominion or control over the purpose to which a disbursement is applied ...

OC 1976-38, issued four days later on March 19, 1976, contains additional language defining the scope of the expenditure right under § 608(f). The opinion states in relevant part:

The § 608(f) expenditure may not be a direct donation of money to a candidate. In that situation, the party committee is making a contribution to the candidate since the candidate acquires the exclusive use of the money. The party committee can, however, directly purchase goods or services for the

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candidate under the § 608(f) expenditure limit. Although the DNC or the State party may consult with the candidate as to how to expend the funds, the party committees retain control over how the monies are used.

The two opinions of counsel were issued after the Buckley decision, when the Commission was unable to issue AOs. Both carry the notation that the letter was ". . . an opinion of counsel which the Commission has noted without objection; . . ."

Based on these opinions, the Campaign Guide for State and Subordinate Party Committees, issued in September 1976, informed candidates and party committee representatives that short of making direct contributions, the party committees may coordinate with candidates by making expenditures designated by the candidates and assuming obligations incurred by candidates. In addition, in the August 1980 issue of the Record, the Commission issued a Supplement for State and Local Party Organizations which, on page 2, made the point that if a party committee directly gave the candidate the money to pay a bill, the money would be a contribution, not a party expenditure.

Further, the instructions on the back Schedule F, issued in March 1980, on which coordinated party expenditures are to be reported, state that § 441a(d) expenditures are not contributions to the candidate.

Thus, since it is clear that the \$10,000 cannot be considered a § 441a(d) expenditure nor can the Federal Account be considered a qualified multicandidate committee at the time of

83040413843

the contribution, it appears that the committee has exceeded the limitations of 2 U.S.C. § 441a(a)(1)(A) by \$9,000. 8/ Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Cobleigh Committee violated 2 U.S.C. § 441a(f). However, as the Cobleigh Committee terminated 1 1/2 years ago, the General Counsel recommends that the Commission take no further action with regard to that committee.

8/ Both the Federal Account and the Cobleigh Committee reported the contribution for the general election only.

83040413844

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
New Hampshire Commitment '80) RAD 82L-17b

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on September 29, 1982, do hereby certify that the Commission decided by a vote of 6-0 to open a Matter Under Review with respect to the above-captioned referral.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision.

Attest:

9-30-82

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

83040413845



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 30, 1982 1982

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: B. ALLEN CLUTTER *AK*
STAFF DIRECTOR

FROM: JOHN D. GIBSON *gd*
ASSISTANT STAFF DIRECTOR FOR RAD

SUBJECT: REFERRAL OF NEW HAMPSHIRE COMMITMENT '80

This is a referral of New Hampshire Commitment '80 (FEC ID# C00136457). Commitment '80 appears to have made an excessive contribution to a candidate for Federal office (2 U.S.C. 441a(a)(1)(A)) and received funds from a non-Federal account of the committee (11 CFR 102.5(a)(1)(i)). According to the Review and Referral Procedures (Chart Numbers 3 and 23), this matter requires further examination by your office. In addition, please see the companion referral for the Cobleigh for Congress Committee.

If you have any questions on this matter, please contact Alva Smith at 357-0026.

83040413846

Attachment

REPORTS ANALYSIS REFERRAL
TO
OFFICE OF GENERAL COUNSEL

DATE: July 30, 1982

ANALYST: Alva Smith

I. COMMITTEE: New Hampshire Commitment '80 (C00136457)
Alice Pinkham, Treasurer
134 North Main St.
Concord, NH 03301

II. RELEVANT STATUTES: 2 U.S.C. 441a(a)(1)(A), 11 CFR 110.1(a)(1)
and 11 CFR 102.5(a)(1)(i)

III. BACKGROUND:

A. Excessive Contribution to a Candidate for Federal
Office - 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(a)(1)

New Hampshire Commitment '80's (Commitment '80) ^{1/} 1980 30 Day Post-General Election Report disclosed a contribution to a candidate for Federal Office (Marshall Cobleigh, 1st Congressional District of New Hampshire) in the amount of \$10,000 (Attachment 5). At the time of the contribution to the candidate, Commitment '80 was not a qualified multi-candidate committee. On August 26, 1981 a Request for Additional Information (RFAI) was sent to the committee which noted the apparent excessive contribution, and requested that the committee either amend its report or seek a refund of the amount in excess of \$1,000 (Attachment 6).

On September 14, 1981 the Commission received Commitment '80's response requesting an extension of time in which to clarify the matter (Attachment 7). A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RFAI, was sent on September 18, 1981 (Attachment 8).

^{1/} A cover letter attached to Commitment '80's Statement of Organization, which was received at the Commission on October 2, 1980, noted that this was a "separate account within the Republican State Committee" (Attachment 2). In response to a January 28, 1981 RFAI, an amended Statement of Organization was received on February 19, 1981 which noted that Commitment '80 had no affiliated committees (Attachments 3 and 4, respectively).

83040413847

REPORTS ANALYSIS REFERRAL TO OGC
NEW HAMPSHIRE COMMITMENT '80
PAGE TWO

Commitment '80's attorney, Mr. Richard Wiebush, called to discuss the matter on September 18, 1981 (Attachment 9). He stated that Commitment '80 is another account of the New Hampshire Republican State Committee (the State Committee) and since the State Committee was a qualified multi-candidate committee, the contribution by Commitment '80 did not violate 2 U.S.C. 441a (See Note 1). Mr. Wiebush also noted that the contribution in question had been made prior to the termination of the State Committee. A Reports Analysis Division (RAD) Staff member explained that, according to records at the Commission, the State Committee had filed a 1980 April Quarterly Termination Report on May 20, 1980, and that the contribution made by Commitment '80 had occurred on October 21, 1980. 2/

On September 22, 1981 Mr. Wiebush called again in reference to this matter (Attachment 10). He applied the limits of 11 CFR 110.7 (coordinated party expenditures) to the contribution made by Commitment '80, and argued that the contribution was well within such limits. The RAD staff member explained the intent of 2 U.S.C. 441a(d) and 11 CFR 110.7, with which Mr. Wiebush disagreed. 3/ He then requested copies of any Advisory Opinions which would clarify the Commission's interpretation of the Act and regulations as they applied in this matter.

A RAD staff member phoned Mr. Wiebush on September 23, 1981 to inform him that copies of Advisory Opinions 1979-9, 1979-30 and 1975-120 and Opinion of Counsel 1975-126 would be sent to him (Attachment 11).

A written response stating that the contribution to Marshall Cobleigh was permissible as a coordinated party expenditure was submitted by Commitment '80 on October 8, 1981 (Attachment 12). This response also stated that it was "too late" to obtain a refund from Mr. Cobleigh's "defunct campaign."

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- 2/ The New Hampshire Republican State Committee (FEC ID# C00005629) and the New Hampshire Republican Committee / Federal Account ("the Federal Account," FEC ID# C00076687) were audited in 1978 and found not to be "political committees" (please see the Final Audit Report for these committees which was released to the public on November 14, 1978). The Federal Account filed a 1978 Year End Termination Report with no residual funds; the State Committee filed a 1980 April Quarterly Termination Report with closing cash of \$5,126.40. Some or all of these funds may have been contained in the loan of \$7,983.50 to Commitment '80 (please see III.B. of this referral); however, this point was not specifically addressed in any response from Commitment '80.
- 3/ Commitment '80's October Quarterly/12 Day Pre-General Election and 30 Day Post-General Election Reports disclosed a total of \$8,057.24 in coordinated party expenditures on behalf of Reagan/Bush. The payments, as itemized on Schedule F, were made directly to various vendors.

B. Transfers Received from a Non-Federal Account
of the Committee - 11 CFR 102.5(a)(1)(i)

Commitment '80's 1980 October Quarterly/12 Day Pre-General Election Report disclosed a loan of \$7,983.50 from the New Hampshire Republican State Committee, and failed to disclose the duration, interest rate and date incurred for such loan (Attachment 13). This information was also missing for \$10,500 in loans received as disclosed on the 1980 30 Day Post-General Election Report (Attachment 14).

RFAIs requesting this information were sent to Commitment '80 on August 26, 1981 (Attachments 6 and 15).

On September 14, 1981 the Commission received Commitment '80's response requesting an extension of time in which to clarify the matters (Attachment 7). A Second Notice, denying the request for an extension and reiterating the need for a response to the matters noted in the original RFAI, was sent on September 18, 1981 (Attachment 8).

Commitment '80 responded on October 8, 1981 by disclosing the \$7,983.50 "loan" as a transfer-in from an affiliated committee (Attachments 12 and 16). This response also indicated that the additional \$10,500 in "loans" were also transfers-in from an affiliated committee (Attachment 12, page 2).

A RAD staff member phoned Commitment '80 on November 4, 1981 in an effort to clarify the response received on October 8, 1981 (Attachment 17). Mr. David Rines, Commitment '80's Executive Director, stated that Commitment '80 was the Federal account of the New Hampshire Republican State Committee and that the State Committee had a separate account for state and local (non-Federal) activity.

As a result of Commitment '80's response of October 8, 1981 and the phone conversation of November 4, 1981, an RFAI was sent to Commitment '80 on November 10, 1981 requesting a return of the receipts to the State (non-Federal) account, or amended reports in the event that internal bank transfers have been disclosed (Attachment 18). A Second Notice was sent to Commitment '80 on December 4, 1981 for failure to respond to the RFAI (Attachment 19).

On December 21, 1981 a written response was received from Commitment '80 (Attachment 20). The response stated that the State Committee (non-Federal account) had borrowed \$41,000 from the Merchant's Savings Bank. The State Committee provided \$10,000 of such borrowed funds to Commitment '80, which then contributed this \$10,000 to Marshall Cobleigh. The response did not, however, mention the \$7,983.50 or the remaining \$500 previously disclosed as loans and later amended as transfers-in from the State Committee (non-Federal), nor were the sources of such funds from the State Committee disclosed. In addition, reports filed with the Commission subsequent to this response neither disclose the repayment of these funds, nor debts owed to the State Committee.

83040413849

REPORTS ANALYSIS REFERRAL TO OGC
NEW HAMPSHIRE COMMITMENT '80
PAGE FOUR

IV. OTHER PENDING ACTIONS INITIATED BY RAD:

There are no outstanding Requests for Additional Information
or matters requiring referral at this time.

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PARTY RELATED

COMMITTEE	DOCUMENT	RECEIPTS	EXPENDITURES	TYPE OF FILER COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
NEW HAMPSHIRE COMMITMENT 80				PARTY NON-QUALIFIED		ID #C00136457
CONNECTED ORGANIZATION:	BLANK					
1980 STATEMENT OF ORGANIZATION				20CT80	3	80FEC/166/1191
MISCELLANEOUS REPORT				11DEC80 TO FEC	2	80FEC/185/3536
PRE-PRIMARY				10CT80 - 150CT80	1	80FEC/180/3445
OCTOBER QUARTERLY		12,159	0,019	29AUG80 - 30SEP80	9	80FEC/180/3319
OCTOBER QUARTERLY - AMENDMENT		12,159	0,019	29AUG80 - 150CT80	3	81FEC/207/1367
OCTOBER QUARTERLY - AMENDMENT				29AUG80 - 150CT80	4	81FEC/207/1334
OCTOBER QUARTERLY - AMENDMENT				29AUG80 - 150CT80	2	81FEC/211/364
REQUEST FOR ADDITIONAL INFORMATION				29AUG80 - 150CT80	1	81FEC/205/054
REQUEST FOR ADDITIONAL INFORMATION 2ND				29AUG80 - 150CT80	6	81FEC/206/0642
REQUEST FOR ADDITIONAL INFORMATION				29AUG80 - 150CT80	2	81FEC/210/1712
REQUEST FOR ADDITIONAL INFORMATION 2ND				29AUG80 - 150CT80	1	81FEC/211/1055
POST-GENERAL		32,623	35,756	160CT80 - 24NOV80	13	80FEC/186/1425
POST-GENERAL - AMENDMENT		32,623	35,726	160CT80 - 24NOV80	5	81FEC/207/1370
POST-GENERAL - AMENDMENT				160CT80 - 24NOV80	1	81FEC/207/1798
POST-GENERAL - AMENDMENT				160CT80 - 24NOV80	1	81FEC/211/3076
REQUEST FOR ADDITIONAL INFORMATION				160CT80 - 24NOV80	3	81FEC/205/0545
REQUEST FOR ADDITIONAL INFORMATION 2ND				160CT80 - 24NOV80	1	81FEC/206/2024
REQUEST FOR ADDITIONAL INFORMATION				160CT80 - 24NOV80	1	81FEC/210/2134
REQUEST FOR ADDITIONAL INFORMATION 2ND				160CT80 - 24NOV80	3	81FEC/210/3290
YEAR-END		2,673	2,684	25NOV80 - 31DEC80	7	81FEC/190/2902
YEAR-END - AMENDMENT		2,673	2,684	2NOV80 - 31DEC80	4	81FEC/207/1375
YEAR-END - AMENDMENT				24NOV80 - 31DEC80	1	81FEC/207/1799
REQUEST FOR ADDITIONAL INFORMATION				25NOV80 - 31DEC80	1	81FEC/205/0549
REQUEST FOR ADDITIONAL INFORMATION 2ND				25NOV80 - 31DEC80	1	81FEC/206/2023
TOTAL		47,455	0 47,229	0	76	TOTAL PAGES

All 1979 and 1980 Reports have been reviewed.

Closing Cash on Hand, December 31, 1980, was \$196.85
 Debts Owed BY the committee were \$6,402.80

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FEDERAL ELECTION COMMISSION

DATE 15 JUN 82

COMMITTEE INDEX OF DISCLOSURE DOCUMENTS (C) (01-82)

PAGE 1

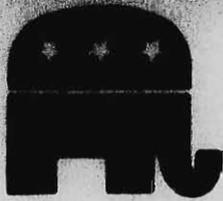
PARTY RELATED

COMMITTEE	DOCUMENT	RECEIPTS	EXPENDITURES	TYPE OF FILER COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
NEW HAMPSHIRE COMMITMENT 80 CONNECTED ORGANIZATION: BLANK				PARTY NON-QUALIFIED		ID #C00136457
1901	REQUEST FOR ADDITIONAL INFORMATION					1 01FEC/100/3229
	STATEMENT OF ORGANIZATION - AMENDMENT			19FEB81		4 01FEC/191/2854
	MISCELLANEOUS REPORT			14SEP81 TO FEC		2 01FEC/205/4000
	MID-YEAR REPORT	??	175	1JAN81 - 30JUN81		0 01FEC/198/4707
	YEAR END	1,252	1,254	1JUL81 - 31DEC81		5 02FEC/223/3163
1902	APRIL QUARTERLY	0	6	1JAN82 - 31MAR82		3 02FEC/228/087
	TOTAL	1,201	0 1,435	0		23 TOTAL PAGES

1981 and 1982 Reports have not received "Basic Review," but have been reviewed for matters relating to this referral.

Closing Cash on Hand as of March 31, 1982 was \$42.47.
Debts reported Owed BY the committee were \$ 0 1/

1/ However, the committee received an additional \$1,248.40 from the state account, for which a notation is made that the committee will return this amount.



RECEIVED
NEW HAMPSHIRE REPUBLICAN
STATE COMMITTEE 17

134 NORTH MAIN STREET CONCORD, N.H. 03301
PHONE 603-225-9541
800-852-3307

CARROLL F. JONES, *Chairman*
RICHARD JACOBS, *Asst. Chairman*

DAVID T. RINES, *Executive Director*

ATTACHMENT 2 (2 pages)

September 30, 1980

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

ATTENTION: ALVA SMITH

Gentlemen:

The enclosed Statement of Organization is for a separate account within the Republican State Committee for which we need an FEC identification number.

Alice Pinkham is assistant treasurer of the Republican State Committee, but has been made treasurer of this account - New Hampshire Commitment 80.

If there are any questions, please call me.

Sincerely,

David T. Rines
David T. Rines
Executive Director

DTR/p

Enclosure 1

830A P A 4 3 P 9 1

STATEMENT OF ORGANIZATION

RECEIVED

(see reverse side for instructions)

1. (a) Name of Committee (in Full) Check if name or address is changed. **NEW HAMPSHIRE COMMITMENT 80**

2. Date **80 OCT 2 12:17**
September 30, 1980

(b) Address (Number and Street) **134 North Main Street**

3. FEC Identification Number **CCC 134487**

(c) City, State and ZIP Code **Concord, N. H. 03301**

4. Is this an amended Statement? YES NO

5. TYPE OF COMMITTEE (check one):

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
 - (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)
- | | | | |
|-------------------|-----------------------------|---------------|----------------|
| Name of Candidate | Candidate Party Affiliation | Office Sought | State/District |
|-------------------|-----------------------------|---------------|----------------|
- (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee. (name of candidate)
 - (d) This committee is a State committee of the Republican Party. (National, State or subordinate) (Democratic, Republican, etc.)
 - (e) This committee is a separate segregated fund.
 - (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund nor a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
		<i>mitc type = X Party = REP</i>

If the registering political committee has identified a "connected organization" above, please indicate type of organization:

Corporation Corporation w/o Capital Stock Labor Organization Membership Organization Trade Association Cooperative

7. Custodian of Records: Identify by name, address (phone number - optional) and position, the person in possession of committee books and records.

Full Name Alice Pinkham	Mailing Address and ZIP Code 134 No. Main Et. Concord, N. H. 03301	Title or Position Treasurer
-----------------------------------	--	---------------------------------------

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name Alice Pinkham	Mailing Address and ZIP Code 134 No. Main St. Concord, NH 03301	Title or Position Treasurer
-----------------------------------	---	---------------------------------------

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc. Merchants Savings Bank	Mailing Address and ZIP Code One Hampshire Plaza Manchester, N. H. 03105
---	--

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Alice Pinkham *Alice Pinkham* 9-30-80
Type or Print Name of Treasurer SIGNATURE OF TREASURER Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

For further information contact: Federal Election Commission, Toll Free 800-424-9530, Local 202-523-4068

<i>RIT</i>	<i>WO</i>	<i>10/19</i>	<i>1/11/81</i>				
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ATTACHMENT 3

January 28, 1981

Alice Pinkham, Treasurer
New Hampshire Commitment 80
134 North Main Street
Concord, NH 03301

FOI

Identification No: C00136457

Reference: Statement of Organization

Dear Ms. Pinkham:

This letter is prompted by the Commission's preliminary review of your Statement of Organization. The review raised questions as to the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

- You have not identified any affiliated or connected organizations. If there are no other committees or organizations with which you share control or financing, please indicate "None" on Line 6. If you do share control or financing with other committees or organizations, please list their names, addresses and relationships on that line.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Alva Smith
Reports Analyst
Reports Analysis Division

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STATEMENT OF ORGANIZATION

ATTACHMENT 4

(see reverse side for instructions)

1. (a) Name of Committee (in Full) Check if name or address is changed. **NEW HAMPSHIRE COMMITMENT 80**

(b) Address (Number and Street) **134 North Main Street**

(c) City, State and ZIP Code **Concord, N. H. 03301**

2. Date **September 30, 1980**

3. FEC Identification Number

4. Is this an amended Statement? YES NO

5. TYPE OF COMMITTEE (check one)

(a) This committee is a principal campaign committee. (Complete the candidate information below.)

(b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate	Candidate Party Affiliation	Office Sought	State/District
-------------------	-----------------------------	---------------	----------------

(c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee.
(name of candidate)

(d) This committee is a State committee of the Republican Party.
(National, State or subordinate) (Democratic, Republican, etc.)

(e) This committee is a separate segregated fund

(f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund nor a party committee.

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Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
NONE		

If the registering political committee has identified a "connected organization" above, please indicate type of organization

Corporation Corporation w/o Capital Stock Labor Organization Membership Organization Trade Association Cooperative

7. Custodian of Records: Identify by name, address (phone number - optional) and position, the person in possession of committee books and records

Full Name	Mailing Address and ZIP Code	Title or Position
Alice Pinkham	134 No. Main St. Concord, N. H. 03301	Treasurer

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee, and the name and address of any designated agent (e.g., assistant treasurer).

Full Name	Mailing Address and ZIP Code	Title or Position
Alice Pinkham	134 No. Main St. Concord, NH 03301	Treasurer

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.	Mailing Address and ZIP Code
Merchants Savings Bank	One Hampshire Plaza Manchester, N. H. 03105

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Alice Pinkham *Alice Pinkham* 9-30-80
Type or Print Name of Treasurer SIGNATURE OF TREASURER Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

SCHEDULE B

ITEMIZED DISBURSEMENTS

Page 1 of 1 for
 LINE NUMBER 21
 (Use separate schedule(s) for each
 category of the Detailed
 Summary Page)

ATTACHMENT 5

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)

N. H. COMMITMENT 80 C00136457

30 DAY POST-GENERAL
 ELECTION REPORT

8 43 00 04 30 14 91 63 18 45 31

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Marshall Cobleigh 180 W. Clarke St. Manchester, N.H. 03104	C00131565 Campaign	10-21-80	10,000.00
24K			
B. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			
C. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			
D. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			
SUBTOTAL of Disbursements This Page (optional)			
TOTAL This Period (last page this line number only)			10,000.00



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

26 August 1981

Alice Pinkham, Treasurer
New Hampshire Commitment 80
134 North Main Street
Concord, NH 03301

Identification No: C00136457

Reference: 30 DAY POST-GENERAL ELECTION REPORT (10/16/80-11/24/80)

Dear Ms. Pinkham:

This letter is prompted by the Commission's preliminary review of your 30 Day Post-General Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

- The debt schedule (Schedule C) should include the duration and interest rate for all loans that your committee has received.
- Schedule B of your report (pertinent portion attached) discloses a contribution which appears to exceed the limits set forth in 2 U.S.C. 441a. The Act precludes an individual or a political committee, other than a multicandidate committee, from making a contribution to a candidate for Federal office in excess of \$1,000 per election. If you have made an excessive contribution, the Commission recommends that you notify the recipient and request a refund of the amount in excess of \$1,000. (Any refund itemized on Schedule A should be reported on Line 16 of the Detailed Summary Page of your next report.)

If you find the contribution in question was disclosed incompletely or incorrectly, please amend your original report with the clarifying information.

Although the Commission may take further legal steps concerning the excessive contribution, prompt action by you to obtain a refund will be taken into consideration by the Commission. The recipient of the excessive contribution is also being informed of this matter.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15)

83040413858

Alice Pinkham
New Hampshire Commitment 80

2

days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Alva Smith

Alva Smith
Reports Analyst
Reports Analysis Division

83040413859

RECEIVED



**NEW HAMPSHIRE REPUBLICAN
STATE COMMITTEE**

134 NORTH MAIN STREET CONCORD, N.H. 03301
PHONE 603-225-0941
603-225-3307

CARROLL F. JONES, *Chairman*
RICHARD JACOBS, *Asst. Chairman*

DAVID T. RINEZ, *Executive Director*

September 11, 1981

Alva Smith, Reports Analyst
Reports Analysis Division
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

Identification No: C00136457

Dear Ms. Smith:

We have received your letters of August 26, 1981. They were received on September 2, 1981.

We did not realize that we had violated any provisions of the Federal Election Campaign Act.

At present we are reviewing those reports and will take the appropriate corrective action in the near future. Therefore, we are asking for an extension of time beyond the fifteen day limit.

Will you please advise us if any further information is needed at the present time.

Thank you for your help.

Very truly yours,

Alice Pinkham, Treasurer
Commitment '80 Account

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 18, 1981

Alice Pinkham, Treasurer
New Hampshire Commitment 80
134 North Main Street
Concord, NH 03301

Identification No: C00136457

Reference: October Quarterly Report (8/29/80-10/15/80), 30 Day
Post-General Election (10/16/80-11/24/80) and Year End
(11/25/80-12/31/80) Reports

Dear Ms. Pinkham:

On August 26, 1981, you were notified that a review of your above mentioned reports raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act.

Your September 11, 1981 response is incomplete because you have not provided all the requested information. For this response to be considered adequate, the following information is still required:

-An extension may not be granted. Please provide the information previously requested. Copies of the Requests for Additional Information are enclosed.

If this information is not received by the Commission within fifteen (15) days from the date of this notice, the Commission may choose to initiate legal action to ensure compliance with the Act.

If you should have any questions related to this matter, please contact Alva Smith on our toll-free number (800)424-9530 or our local number (202)357-0026.

Sincerely,

A handwritten signature in cursive script that reads "John D. Gibson".

John D. Gibson
Acting Assist. Staff Director
Reports Analysis Division

83040413861

TELECONANALYST Alva Smith
initiated call? _____TELECON WITH: Richard Wiebush
initiated call? yes

Candidate/Committee: New Hampshire Commitment '80

DATE: September 18, 1981

SUBJECT(S): Excessive contribution to Federal candidate - clarification

Mr. Wiebush called and stated that he is in the process of amending the reports for the committee. However, he requested clarification of the matters noted in the Request for Additional Information for the 30 Day Post-General Election Report.

He explained that the Commitment '80 is another account of the State Committee and, because the state committee is qualified as a multi-candidate committee, the Commitment '80 is also qualified. I informed him that the New Hampshire Republican State Committee terminated prior to registration of the Commitment '80 committee's registration. Therefore, Commitment '80 is not a qualified multi-candidate committee and is limited to making contributions not in excess of \$1,000 per election.

He stated that the contribution occurred before the state committee terminated; however, I informed him that records at the Commission show that the state committee terminated on May 20, 1980, whereas the contribution by Commitment '80 was made on October 21, 1980. Furthermore, the Statement of Organization submitted by Commitment '80 did not list any affiliates.

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TELECON:ANALYST Alva Smith
initiated call? TELECON WITH: Richard Wiebush
initiated call? yesCandidate/Committee: New Hampshire Commitment '80DATE: September 22, 1981SUBJECT(S): 441a(a) contribution reclassified as 441a(d) expenditure . . .

Mr. Wiebush called to explain why the contribution of \$10,000 to the Marshall Cobleigh campaign was not in violation of the Federal Election Campaign Act. He stated that Section 110.7 of the Commission's regulations sets a limit well above the \$10,000 contributed to Cobleigh.

I explained that the limits of Section 110.7 refer to expenditures made on behalf of Federal candidates for the General election, not to direct contributions to a Federal candidate. Under this provision, I explained, the committee may pay a vendor on behalf of the candidate, but not the candidate directly. Any funds sent directly to the candidate (or his committee) are contributions subject to the limits of Section 110.1, which are \$1,000 per election for this committee. (Were the committee to be a qualified multi-candidate committee, the limit would be \$5,000 per election.)

Mr. Wiebush requested the direct cite in the Act or Regulations which stipulated that coordinated expenditures (Section 110.7) cannot be payments to the candidate. I explained that, while there is no direct cite to this effect, the intent is for the expenditures to be in addition to any contributions made by the party committee.

He then requested any Advisory Opinions on the matter. I stated that I would research the matter and get back to him. In the meantime, I requested that he file a statement explaining the circumstances of the contribution.

(NOTE: Shawn Woodhead also spoke with Mr. Wiebush on this matter and reiterated the position that coordinated expenditures are intended as expenditures on behalf and not direct contributions.)

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TELECON

ATTACHMENT 11

ANALYST Alva Smith
initiated call? yes

TELECON WITH: Richard Wiebush
initiated call? _____

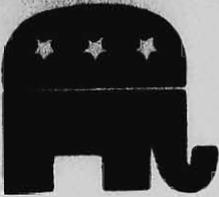
Candidate/Committee: New Hampshire Commitment '80

DATE: September 23, 1981

SUBJECT(S): Advisory Opinions regarding Coordinated Expenditures

I called Mr. Wiebush to state that I would send him copies of Advisory Opinions 1979-9, 1979-30 and 1975-120. (I also sent him a copy of Opinion of Counsel 1975-126.)

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NH

ATTACHMENT 12 (4 PAGES)
NEW HAMPSHIRE REPUBLICAN
STATE COMMITTEE

134 NORTH MAIN STREET CONCORD, N.H. 03301
PHONE 603-225-9341
800-852-3307

CARROLL F. JONES, *Chairman*
RICHARD JACOBS, *Asst. Chairman*
Donna Sytek,

DAVID T. RINES, *Executive Director*

"NH Commitment 80"
Identification Number: C00136457

October 5, 1981

Ms. Alva Smith
Reports Analyst
Reports Analysis Division
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

Dear Ms. Smith:

This is in response to your three letters of August 26, 1981 and Mr. John D. Gibson's letter of September 18, 1981, regarding the Committee's October Quarterly Report (8/29/80 - 10/15/80), 30-Day Post-General Election Report (10/16/80 - 11/24/80), and Year End Report (11/24/80 - 12/31/80). We will address your questions in the order presented by the reports.

Before examining the reports in detail, however, it may be helpful to dispose of one preliminary question concerning the nature of "NH Commitment 80". The Statement of Organization filed on September 30, 1980, states clearly that we are a State Committee of the Republican Party. Your records should show that the New Hampshire Republican State Committee terminated registration under its own name during the spring of 1980, and registered under the name "NH Commitment 80" on September 30, 1980. During the 1980 election, "NH Commitment 80" was the registered State Republican political committee and undertook all the financial functions of the Republican State Committee with regard to federal candidates in that election. Although for our own administrative purposes we treated the on-going Republican State Committee as a separate fund, as far as the federal election laws are concerned, the Republican State Committee and "NH Commitment 80" were one and the same political committee. This point should help you to understand the responses that follow:

- 1) Re October Quarterly Report (8/29/80 - 10/15/80):
Debt Schedule (Schedule C)-

You have asked why our listing of loans from the Republican State Committee totalling \$7,983.50 does not include an indication of the duration, interest rate and lending date of each loan. The simple answer is that these were not "loans" in any commerial sense of the term, but were instead transfers of funds within the Republican State Committee itself. While we regarded these transfers, from an administrative point of view, as "loans" from one internal fund to another, they were, in fact, nothing but the use of the Party's general funds for current expenses in that year's federal election. Since we hoped that the money we withdrew from our general funds would later be reimbursed from fund-raising by "NH Commitment 80",

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J.P.
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we listed the transactions as "loans". But, in truth, the "loans" were more akin to a person "borrowing" from his savings account than to his borrowing from the bank itself. Not being "loans" in any commercial sense of the term, they carried no interest of due date.

We realize that these transfers should not have been shown on Schedule C, and we are amending our report to delete Schedule C and that the references to these loans in Schedule C should be deleted from our reports, and that the Summary Pages should be amended to reflect these changes.

- 2) Re 30-Day Post-General Election Report (10/16/80 - 11/24/80):
 - a) Debt Schedule (Schedule C) - See Paragraph 1, above.
 - b) Contribution to Cobleigh Campaign (Schedule B) -

You have asked whether the expenditure of \$10,000.00 in connection with the Cobleigh Campaign exceeded the limits imposed by the Federal Election Campaign Act. In 1980, Mr. Cobleigh was the Republican Party's candidate for the House of Representatives from New Hampshire's First Congressional District. The state party committee gave him \$10,000 on October 21, 1980, as reported, for use in his campaign. We understood at the time and still believe that that expenditure was authorized by Section 315 (d) (3) of the Act.

Since "NH Commitment 80" was the State Republican political committee in this election, it was authorized by Section 315 (d) (3) of the Federal Election Campaign Act to "make (an) expenditure in connection with the general election campaign of a candidate for Federal office . . . who is affiliated with such party" totalling \$10,000. The term "expenditure" is defined by Section 301 (9) (A) (d) of the Act to include "any . . . distribution, loan, advance, deposit or gift of money . . . made by any person for the purpose of influencing any election for Federal Office." The Commission's Regulations have adopted this language from the statute. See Reg §§100.8 and 110.7 (b). The Commission's Campaign Guide for Party Committees emphasizes that "(c) contributions received are reported as contributions while contributions made are reported as expenditures by the donor committee. . . ."

You have indicated recently in telephone conversations with our counsel that the Commission staff views Section 315 (d) (3) as prohibiting a cash contribution of \$10,000 to the candidate and permitting only a payment of that amount to his creditors. Unfortunately, neither the statute nor the Regulations make that distinction and in fact both seem to say just the opposite. If that is the Commission's view, it ought to state it clearly in its Regulations. The Commission's failure to do so, in light of the requirement that Congress approve or disapprove all Commission Regulations (See Section 311 (d)) suggests that the Commission itself is unsure that this interpretation is consistent with Congress' intent. We were certainly not aware of this enforcement position in October, 1980, when the expenditure was made.

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You have asserted that, despite this lack of a clear statement in the statute or Regulations, we should have been put on notice of this enforcement position by three Advisory Opinions (AO 1975-120, AO 1979-9 and AO 1979-10) and one Opinion of Counsel (OC 1975-126) which pre-dated the expenditure. However, Section 308 (b) prohibits the Commission from proposing any rule of law not expressly stated in the Act, except by means of a rule or regulation which has been reviewed by Congress. See Section 311 (d). The obvious purpose of this restriction is to prevent the Commission from adding a gloss to the Act which has not previously been reviewed and approved by Congress. Furthermore, the Commission's Advisory Opinions, even when they apply rules of law clearly stated in the Act, may only be applied to a transaction or activity which is "indistinguishable in all its material respects from the transaction or activity with respect to which such advisory opinion is rendered". Section 308 (c) (1) (B). The authority and value of Opinions of Counsel is even less clear. Since the enforcement position you take with regard to Section 315 (d) (3) is not stated in the Act, it is beyond the Commission's power to adopt, either by Advisory Opinion or Opinion of Counsel. Even if it were not you have not called our attention to any Advisory Opinion of Counsel premised on the same facts or type of transaction as here involved. For these reasons, it seems to us that, even if we had known about these Advisory Opinions and this Opinion of Counsel in October, 1980, we could not have been expected to be guided by them.

Even had we consulted those Opinions, however, they would hardly have been of any assistance. Advisory Opinion 1975-120 was "issued on an interim basis pending final promulgation . . . of rules and regulations" OC 1975-126 merely applied the holding of AO 1975-120 two months after it was issued and, whatever its authority, certainly has no greater weight than the Advisory Opinion on which it was based. The failure of the subsequently adopted Regulations to adopt the distinction set forth in AO 1975-120 and OC 1975-126 between an "out-right cash contribution" and an "expenditure" must be interpreted as Congress' rejection of that view. This issue was also not decided by Advisory Opinion 1979-9, which does, however, contain a concession that "legislative history is silent as to the applicability of Section 315 (d) to the payment of candidate debts by the party committee." Finally, Advisory Opinion 1979-30, although it cited AO 1979-9, also did not decide the issue under consideration here.

In short, of the three Advisory Opinions and one Opinion of Counsel which you have cited to our counsel, the two which directly held that Section 315 (d) was limited to in-kind, rather than cash, expenditures was made expressly conditional on the subsequent adoption of that position in Regulations approved by Congress, an event which has never occurred. The other two did not contain holdings on this point at all, and one, when referring to it in dicta, even conceded that the point was not clear in the legislative history of the Act.

It is not our purpose in this letter to take the Commission to task for failing to state clearly and in Regulation form the view of Section 315 (d) which you say the Commission is now enforcing, but only to explain why we were unable despite consulting the Act and Regulations, to become aware of that view prior to your review of our reports. Our actions were undertaken in good faith, in reliance

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on and in a manner consistent with the language of the Act and Regulations, and it is now much too late to obtain any refund from Mr. Cobleigh's defunct campaign. If we were in error, Section 311 (e) of the Act protects us from any sanctions.

3) Re Year End Report (11/25/80 - 12/31/80):

a) Combining Loans (Schedule C) -

a b) Debt to New England Telephone Company (Schedule D) -

Prior to the election, the Committee posted a security deposit of \$6,000 with New England Telephone Company. After the election, New England Telephone Company deducted the amount of \$3,328.91 from the deposit and refunded the excess in two installments on December 16 and 31, 1980. We are amending Schedule A to show this calculation in a footnote.

For the foregoing reasons, we believe that our previous reports accurately reflect the transactions involved, that those transactions comply with the Act and Regulations, and that, with the exception of the three amendments referred to above, no change is required in our reports. We would appreciate your confirming your agreement with this view in writing within fifteen days.

Sincerely,

Alice Pinkham

Alice Pinkham, Treasurer
NH Commitment 80

Enclosures

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Name of Committee (in Full)

OCTOBER QUARTERLY REPORT

ATTACHMENT 13

N. H. Commitment 80

COOL36457

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Republican State Committee 134 North Main Street Concord, N. H. 03301 Election: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	16H 7,983.50	(F) 0	7,983.50

Terms: Date Incurred _____ Date Due _____ Interest Rate _____ % (apr) Secured

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding:
			\$
2. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding:
			\$
3. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding:
			\$

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period

Election: Primary General Other (specify):

Terms: Date Incurred _____ Date Due _____ Interest Rate _____ % (apr) Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding:
			\$
2. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding:
			\$
3. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding:
			\$

SUBTOTALS This Period This Page (optional)	
TOTALS This Period (last page in this line only)	7,893.50

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

83 37 04 01 43 17 32 83 63 95

SCHEDULE A

ITEMIZED RECEIPTS

Any information copied from such Reports or Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full) **N. H. COMMITMENT 80** C000236457 **30 DAY POST-GENERAL ELECT. RPT.** ATTACHMENT 14 (2 pages)

8 '3 7 0 4 '0 1 4 9 1 6 3 '8 7 2 0 7

A. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
N.H. Republican State Committee 134 No. Main St. Concord, N.H. 03301	C000236457 loan	10/24/80	10,000.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date-\$		
B. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
Same as above	C000236457	11/17/80	500.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date-\$		
C. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date-\$		
D. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date-\$		
E. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date-\$		
F. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date-\$		
G. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date-\$		
SUBTOTAL of Receipts This Page (optional)			
TOTAL This Period (last page this line number only)			10,500.00

Name of Committee (in Full)

N. H. Commitment 80 C00136457

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Republican State Committee 134 North Main Street Concord, N. H. 03301 Election: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	10,000.00 500.	0	10,500.00 500.

Terms: Date Incurred 10-21-80 Date Due _____ Interest Rate _____ % (apr) Secured

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding: \$
	Occupation	
2. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding: \$
	Occupation	
3. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding: \$
	Occupation	

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Election: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):			

Terms: Date Incurred _____ Date Due _____ Interest Rate _____ % (apr) Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding: \$
	Occupation	
2. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding: \$
	Occupation	
3. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding: \$
	Occupation	

SUBTOTALS This Period This Page (optional)
 TOTALS This Period (last page in this line only) 10,500.00

Carry outstanding balances only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ATTACHMENT 15

26 August 1981

Alice Pinkham, Treasurer
New Hampshire Commitment 80
134 North Main Street
Concord, NH 03301

Identification No: C00136457

Reference: OCTOBER QUARTERLY REPORT (08/29/80-10/15/80)

Dear Ms. Pinkham:

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-The debt schedule (Schedule C) should include the duration, interest rate and date for all loans that your committee has received.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Alva Smith
Reports Analyst
Reports Analysis Division

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**DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3X)**

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ATTACHMENT 16

Name of Committee (in Full)

N.H. Commitment 80

C00136457

Report Covering the Period:

From 8/29/80 To: 10/15/80

COLUMN A
Total This Period

COLUMN B
Calendar Year-to-Date

I. RECEIPTS

*MAILED
OCTOBER QUARTER
REPORT*

11. CONTRIBUTIONS (other than loans) FROM:

(a) Individuals/Persons Other Than Political Committees

4,030.00

4,030.00

(Memo Entry Unitemized \$ 3,530.00)

(b) Political Party Committees

(c) Other Political Committees

(d) **TOTAL CONTRIBUTIONS (other than loans) (add 11a, 11b and 11c)**

4,030.00

4,030.00

12. TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES

8,128.00

8,128.00

13. ALL LOANS RECEIVED

14. LOAN REPAYMENTS RECEIVED

15. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)

16. REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES

17. OTHER RECEIPTS (Dividends, Interest, etc.)

1.45

1.45

18. TOTAL RECEIPTS (Add 11d, 12, 13, 14, 15, 16 and 17)

12,159.45

12,159.45

II. DISBURSEMENTS

19. OPERATING EXPENDITURES

20. TRANSFERS TO AFFILIATED/OTHER PARTY COMMITTEES

21. CONTRIBUTIONS TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES

22. INDEPENDENT EXPENDITURES (Use Schedule E)

23. COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES (2 U.S.C. §441e(d)) (Use Schedule F)

7,938.50

7,983.50

24. LOAN REPAYMENTS MADE

25. LOANS MADE

26. REFUNDS OF CONTRIBUTIONS TO:

(a) Individuals/Persons Other Than Political Committees

(b) Political Party Committees

(c) Other Political Committees

(d) **TOTAL CONTRIBUTION REFUNDS (add 26a, 26b and 26c)**

835.50

835.50

28. TOTAL DISBURSEMENTS (Add Lines 19, 20, 21, 22, 23, 24, 25, 26d and 27)

8,819.00

8,819.00

III. NET CONTRIBUTIONS AND NET OPERATING EXPENDITURES

29. TOTAL CONTRIBUTIONS (other than loans) from Line 11d

4,030.00

4,030.00

30. TOTAL CONTRIBUTION REFUNDS from Line 26d

4,030.00

4,030.00

31. NET CONTRIBUTIONS (other than loans) (subtract Line 30 from Line 29)

32. TOTAL OPERATING EXPENDITURES from Line 19

33. OFFSETS TO OPERATING EXPENDITURES from Line 15

34. NET OPERATING EXPENDITURES (subtract Line 33 from Line 32)

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TELECONANALYST Alva Smith
initiated call? yesTELECON WITH: Alice Pinkham, David Rines and Richard Wiebush
initiated call? _____

Candidate/Committee: New Hampshire Commitment '80

DATE: November ~~4~~, 1981SUBJECT(S): Separate accounts for Federal vs non-Federal activity; "loans" from
state (non-Federal) account.

I called Mr. Wiebush regarding the committee's response concerning separate accounts of the New Hampshire Republican Committee. Mr. Wiebush was not available, so I was transferred to Ms. Alice Pinkham, the committee's treasurer. She then referred me to Mr. David Rines, the committee's Executive Director.

Mr. Rines stated that the Commitment '80 is the Federal account of the New Hampshire Republican Committee. There is also a state and local account of the state committee. He did not title the Federal account as the "New Hampshire Republican State Committee" to avoid confusion over the accounts. (The old New Hampshire Republican Committee, C00005629, terminated on the 1980 April Quarterly Report.)

In this case, I stated, additional information may be necessary regarding transfers from or between the accounts.

Mr. Rines also stated that the old committee terminated with a zero cash balance; however, the report discloses a closing cash balance of \$5,126. He is not aware of what those funds may have been used for.

Mr. Rines then suggested that I speak with Mr. Wiebush for verification of his statements. He provided me with Mr. Wiebush's office phone number.

I then called Mr. Wiebush and informed him that Mr. Rines had suggested that I call him. I asked if the two committees are separate accounts reported separately (the Federal account reported to the Commission). He wanted to know why? I explained that Section 102.5 of the Commission's regulations prohibit a Federal account from receiving funds from a non-Federal account. In response to this, he stated that he will not answer any questions over the phone; that I should send my questions in writing to the committee. I then explained what Mr. Rines had said about the accounts; Mr. Wiebush refused to agree or disagree with those statements.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ATTACHMENT 18 (2 pages)

November 10, 1981

Alice Pinkham, Treasurer
New Hampshire Commitment 80
134 North Main Street
Concord, NH 03301

Identification No: C00136457

Reference: October Quarterly Amendment (8/29/80-10/15/80) and 30 Day
Post-General Amendment (10/16/80-11/24/80)

Dear Ms. Pinkham:

This letter is prompted by the Commission's preliminary review of your above referenced reports. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-In response to the Request for Additional Information on your original October 15 Quarterly Report & 30 Day Post-General Election Report you stated that "as far as the federal election laws are concerned, the Republican State Committee and 'NH Commitment 80' were one and the same political committee." Please clarify whether this transfer is from an account maintained by your committee for non-Federal activity. If so, such transfer is prohibited by 11 C.F.R. 102.5(a)(1)(i) and the full amount should be returned to the non-Federal Account.

However, if this transaction represents an "internal transfer" of funds from one Federal account to another, and the source(s) of such funds has been identified in previous reports of receipts and disbursements, please note that such transfers should not be itemized, as doing so inflates total receipts and cash on hand. If this is the case, please amend your report accordingly.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel

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Alice Pinkham
New Hampshire Commitment 80

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free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,



Alva Smith
Reports Analyst
Reports Analysis Division

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 4, 1981

Alice Pinkham, Treasurer
New Hampshire Commitment 80
134 North Main Street
Concord, NH 03301

Identification No: C00136457

Reference: October Quarterly Amendment (8/29/80-10/15/80) and 30 Day
Post-General Amendment (10/16/80-11/24/80)

Dear Ms. Pinkham:

This letter is to inform you that as of this date, the Commission has not received your response to our request for additional information, dated November 10, 1981. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

If no response is received within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

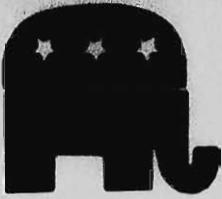
If you should have any questions related to this matter, please contact Alva Smith on our toll-free number (800)424-9530 or our local number (202)357-0026.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

83040413877



RECEIVED
ATTACHMENT 20
NEW HAMPSHIRE REPUBLICAN
STATE COMMITTEE

194 NORTH MAIN STREET CONCORD, N.H. 03301
PHONE 603-225-9341
800-852-3907

DAVID T. RINES, Executive Director

12/21/81
000/32

CARROLL F. JONES, Chairman
MICHAEL JACOBS, Asst. Chairman
Donna Sytek,

December 16, 1981

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EX-11-Q3
5/1/82-10/15/80

Ms. Alva Smith
Reports Analyst
Reports Analysis Division
Federal Election Commission
1325 K Street Northwest
Washington, D. C. 20463

Dear Ms. Smith:

This will respond to your letter of November 10, 1981, and Mr. John D. Gibson's letter of December 4, 1981.

The Republican State Committee borrowed \$41,00 from the Merchants Savings Bank, 1000 Elm Street, Manchester New Hampshire, on October 21, 1980, and gave the Bank a demand note bearing interest at 14.5% per annum. On the same date, the Republican State Committee provided \$10,000 of these funds to New Hampshire Commitment '80, which in turn gave them to Marshall Cobleigh as shown on reports previously filed. The remaining \$31,000 of borrowed funds was used by the Republican State Committee for state races. On August 21, 1981, the interest rate was increased to 18.0%.

If we have made some error in this procedure, please let me know. We have at all times attempted to disclose fully our activities and to comply with applicable statutes and regulations and we are quite willing to make any amendments necessary to assure full public disclosure of our Federal election financial activity.

Sincerely,

Alice Pinkham

Alice Pinkham, Treasurer
Commitment '80

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FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1479

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