

FEDERAL ELECTION COMMISSION

Internal Documents, Duplicate Documents,
Contribution Correspondence, Banking Information

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

86040575313

Signed Alan K. Diney
date April 17, 1986

FEC 9-21-77

Richard [unclear]
4/13/86

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mondale for President Committee, Inc.)
Michael S. Berman, Treasurer) MUR 1839
Arkansas Education Association)
Ms. Peggy Nabors, President)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 26, 1985, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 1839:

1. Find reason to believe that the Mondale for President Committee and Michael S. Berman violated 2 U.S.C. § 441b.
2. Find reason to believe that the Arkansas Education Association violated 2 U.S.C § 441b.
3. Direct the Office of General Counsel to send appropriate letters pursuant to these findings.

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

Attest:

2-27-85

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

36040375314

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mondale for President)	
Committee)	
Michael S. Berman,)	MUR 1839
Treasurer)	
)	
Arkansas Education)	
Association)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of March 20, 1985, do hereby certify that the Commission decided by a vote of 4-0 to direct the Office of General Counsel to send to the respondents the reason to believe notifications summarizing the factual and legal basis for the findings.

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

Attest:

3-20-85

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

35040575315

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mondale for President Committee) MUR 1839
Michael S. Berman, as treasurer)
Arkansas Education Association)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 24, 1985, do hereby certify that the Commission took the following actions in MUR 1839:

1. Failed in a vote of 3-1 to pass a motion to reject the recommendations contained in the General Counsel's report dated September 11, 1985, and close the file.

Commissioners Josefiak, McDonald, and McGarry voted affirmatively for the motion; Commissioner Elliott dissented. Commissioners Aikens and Harris were not present.

(continued)

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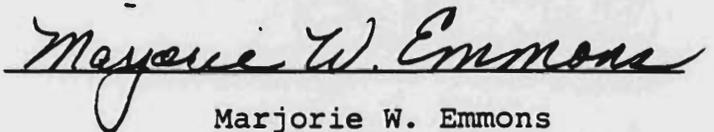
2. Decided by a vote of 4-0 to refer the matter back to the Office of General Counsel with the direction that the Counsel consider whether or not there is probable cause to believe a violation of 2 U.S.C. § 441b has been committed on the basis that the Mondale for President Committee did not pay the amount owed to the Arkansas Education Association within a reasonable time.

Commissioners Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioners Aikens and Harris were not present.

Attest:

Sept. 25, 1985

Date



Marjorie W. Emmons
Secretary of the Commission

85040375317

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mondale for President Committee)	MUR 1839
Michael S. Berman, Treasurer)	
)	
Arkansas Education Association)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of December 3, 1985, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 1839:

1. Find probable cause to believe that the Mondale for President Committee and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b.
2. Find probable cause to believe that the Arkansas Education Association violated 2 U.S.C. § 441b.
3. Approve the proposed conciliation agreement with the Mondale for President Committee and Michael S. Berman, as treasurer, as recommended in the General Counsel's report dated November 20, 1985.
4. Approve the proposed conciliation agreement with the Arkansas Education Association as recommended in the General Counsel's report dated November 20, 1985.
5. Approve the letters attached to the General Counsel's report dated November 20, 1985.

Commissiones Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision.

Attest:

12-5-85

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

8504037531B

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Mondale for President Committee) MUR 1839
Michael S. Berman, Treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of April 8, 1986, do hereby certify that the Commission took the following actions in MUR 1839:

1. Decided by a vote of 5-1 to rescind the finding of December 3, 1985, that the Mondale for President Committee and Michael S. Berman, as treasurer, and Arkansas Education Association violated 2 U.S.C. § 441b, based on procedural deficiencies.

Commissioners Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Aikens dissented.

2. Decided by a vote of 4-2 to -

- a) leave the reason to believe finding on the record;
b) close the file; and
c) direct the Office of General Counsel to send appropriate letters.

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

Attest:

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

4-8-86

Date

36040575319



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Drury

April 22, 1986

Steve M. Antosh, Vice President
The National Right to Work Committee
8001 Braddock Road, Suite 500
Springfield, VA 22160

RE: MUR 1839

Dear Mr. Antosh:

This is in reference to the complaint you filed with the Commission on October 31, 1984, concerning the Mondale for President Committee's use of postage from a postage meter belonging to the Arkansas Education Association.

Based on your complaint, the Commission determined that there was reason to believe that the Mondale for President Committee and the Arkansas Education Association ("the respondents") violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation in this matter. After the investigation was concluded, the Commission concluded, on December 3, 1985, that there was probable cause to believe that the respondents violated the Act. However, on April 8, 1986, the Commission determined to rescind, because of procedural deficiencies, its finding of probable cause. After considering all the evidence, the Commission also decided to close the file.

If you have any questions, please contact John Drury, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Letters to Respondents

8504075320



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 21, 1986

Carolyn Oliphant, Esquire
Patricia A. Fiori, Esquire
Mondale for President Committee
2201 Wisconsin Avenue, N.W.
Washington, D.C. 20007

RE: MUR 1839
Mondale for President
Committee
Michael S. Berman, as
treasurer

Dear Ms. Oliphant and Ms. Fiori:

On April 8, 1986, the Commission determined to rescind, because of procedural deficiencies, its finding of December 3, 1985, in which it found that your clients committed a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the Mondale for President Committee's use of postage from the postage meter of the Arkansas Education Association. After considering all the evidence available the Commission has decided to close the file.

Should you have any questions, please contact John Drury, the staff member assigned to handle this matter, at (202) 376-8200.

Sincerely

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 21, 1986

Robert H. Chanin, Esquire
National Education Association
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 1839
Arkansas Education Association

Dear Mr. Chanin:

On April 8 , 1986, the Commission determined to rescind, because of procedural deficiencies, its finding of December 3, 1985, in which it found that your client committed a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the Mondale for President Committee's use of postage from the postage meter of the Arkansas Education Association. After considering all the evidence available, the Commission has decided to close the file.

Should you have any questions, please contact John Drury, the staff member assigned to handle this matter, at (202) 376-8200.

Sincerely

Charles N. Steele
General Counsel

85040375322

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
Mondale for President Committee)
Michael S. Berman, Treasurer)
Arkansas Education Association)

MUR 1839

EXECUTIVE SESSION

MAR 27 11:21

APR 8 1986

GENERAL COUNSEL'S REPORT

On December 3, 1985 the Commission found probable cause to believe that the Mondale for President Committee ("the Committee") and Michael S. Berman as treasurer, and Arkansas Education Association ("AEA") violated 2 U.S.C. § 441b. This finding was premised on the theory that an unreasonable length of time had transpired between the use by the Committee of a postage meter owned by AEA and the payment for said use. The Committee had used the meter on March 12, 1984, and was billed monthly until the bill was paid in November, 1984.

On December 13, 1985, letters were sent to counsel for the Committee and AEA informing each of the Commission's findings and enclosing a conciliation agreement which had been approved by the Commission on December 3, 1985.

By their letters of January 10, 1986 and January 27, 1986 respectively, counsel for the Committee and counsel for AEA responded to the Commission's proposal to enter into conciliation (Attachments 1 and 2).

Counsel for the Committee point out that before entering into conciliation their clients require "clarification of, and request reconsideration of, the Commission's finding of probable cause..." They contend that the Commission's letter of December 13, 1985 merely informs them of the probable cause

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finding without any explanation of the violation. They point out that since the accompanying proposed conciliation agreement indicates that the Committee received a loan and "only [repaid] that loan eight months later," this "suggests" that the Commission found the violation on the basis of the length of time taken to reimburse AEA. They are unable, they contend, to determine whether the Commission agrees with the Committee that the use of the postage meter was governed by 11 C.F.R.

§ 114.9(d). They argue that it was this issue which was briefed by the General Counsel and responded to by the Committee, and consequently, if the Commission's finding is based on a different legal theory then it is procedurally defective. They further contend that the Commission should rescind its probable cause finding; if not rescinded, they request the Commission to reconsider its original conciliation offer and take no further action based on "MPC's prompt and full discharge of its debts."

Counsel for AEA essentially argues that since the proposed conciliation agreement "suggests" that the probable cause finding is predicated on the timing of the payment to AEA rather than on whether postage meters are different in-kind from other office equipment covered as "facilities" under 11 C.F.R. § 114.9(d), they are unable to assess the proposed conciliation agreement because they are uncertain as to what the basis for the statutory violation is. If the basis is the time period between usage and payment, they argue that the finding is technically defective and should be rescinded.

The action taken by the Commission on December 3, 1985 was

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predicated on a General Counsel's Report of November 20, 1985. In that report, this Office stated that it was following the previous direction of the Commission to determine whether probable cause should be found against the respondents on the basis of length of time between the use of the postage meter and the reimbursement for such use (see Attachment 3 General Counsel's Report).

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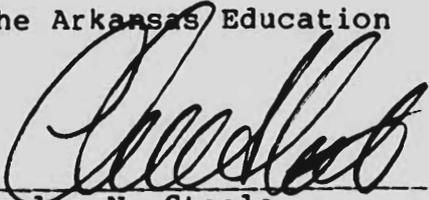
The arguments made and the points raised in counsels' letters are well taken. The Commission directed this Office to consider whether or not there is probable cause to believe a violation of 2 U.S.C. § 441b has been committed on the basis that the Committee did not pay AEA the amount owed within a reasonable time (see Attachment 4, Certification dated September 25, 1985). In that the Commission directed the Office of General Counsel specifically to recommend whether or not there is probable cause on alternate grounds we believe tht the appropriate action is to provide supplemental briefs to the respondents. See 11 C.F.R. § 111.16(a) and (b). We recommend that the Commission rescind its probable cause finding of violations of 2 U.S.C. § 441b by the Committee and AEA. We would then send supplemental briefs on the question which the Commission directed us to address.

RECOMMENDATIONS

1. Rescind the finding of December 3, 1985, that the Mondale for President Committee and Micheal S. Berman, as treasurer, and Arkansas Education Association violated 2 U.S.C. § 441b.
2. Approve the attached letter to the Mondale for President Committee and Michael S. Berman, as treasurer.

3. Approve the attached letter to the Arkansas Education Association.

26 March 1986
Date


Charles N. Steele
General Counsel

Attachments

1. Letter from Counsel for Mondale for President Committee, dated January 10, 1986
2. Letter from Counsel for Arkansas Education Association, dated January 21, 1986.
3. General Counsel's Report of November 20, 1985.
4. Certification of Commission action on September 25, 1985.
5. Letter to Mondale for President Committee.
6. Letter to Arkansas Education Association.

86040375326

... Avenue, N.W.
Washington, D.C. 20007
Telephone: 202-625-1600 333-4591

MONDALE

000#9436

January 10, 1986

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

Re: MUR 1839

Dear Mr. Steele:

This letter is in reference to your letter of December 13, 1985, informing the Mondale for President Committee ("MPC") and Michael S. Berman that the Commission has found probable cause to believe that they violated 2 U.S.C. Section 441b. Your letter proposes that our clients enter into a conciliation agreement in order to resolve this matter.

Before we are able to enter into conciliation in this matter, however, we need clarification of, and request reconsideration of, the Commission's finding of probable cause in this matter. Your letter of December 13 merely informs us that the Commission found probable cause to believe that our clients violated Section 441b without any explanation of the violation. The proposed conciliation agreement accompanying the letter indicates that MPC and Mr. Berman received a loan "only repaying that loan eight months later." This suggests that the violation found by the Commission relates to the length of time taken to reimburse the Arkansas Education Association. We are therefore unable to determine from your letter or from the conciliation agreement whether the Commission agrees with MPC that the use of this postage meter was governed by 11 C.F.R. Section 114.9(e) as MPC contends.

It is this issue, (Section 114.9(e)), and not the question of the timing of reimbursement, which was briefed by your office and responded to by MPC. If the Commission's finding is based on a different legal theory relating to the timing of reimbursement, then that finding is procedurally defective since we were not given an opportunity to respond to it as required by 11 C.F.R. Section 111.16(a) and 2 U.S.C. Section 437g(a)(3). Moreover, if that is the basis of the Commission's finding, then it is grossly unfair to propose

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GENERAL INVESTIGATIVE DIVISION

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Attachment 1

Letter to Charles N. Steele
MUR 1839
Page Two

to MPC a conciliation agreement including any admission of a violation or civil penalty. MPC has retired all legitimate, documented debts from the primary and did so early in the first quarter of 1985. It was only through diligent efforts of the Committee and its treasurer-- even while the general election campaign was ongoing-- that these debts were paid off so promptly. In sharp contrast, a year after MPC's debts were liquidated, there are other 1984 primary candidates whose debts still remain in 1986 in the millions of dollars. To take any action against MPC regarding the timing of payment of any debt is consequently unwarranted and unsupported.

For these reasons, MPC requests (1) that the Office of General Counsel or Commission clarify the alleged violation and (2) that the Commission rescind the probable cause finding if based on the time of reimbursement. If the finding is not rescinded, MPC requests that the Commission reconsider its initial conciliation agreement offer and take no further action in this matter based on MPC's prompt and full discharge of all its debts.

Thank you for your consideration of this matter. If you have any questions we can be reached at 333-4591.

Sincerely,

Carolyn U. Oliphant
Carolyn U. Oliphant
Deputy General Counsel

Patricia A. Fiori
Patricia A. Fiori
Special Counsel

36040375328

Attachment 1 p. 2



NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035
 MARY HATWOOD FUTRELL, President
 KEITH GEIGER, Vice President
 ROXANNE E. BRADSHAW, Secretary-Treasurer

OFFICE OF GENERAL COUNSEL

LEGAL SERVICES 52
 JAN 29 1986

January 27, 1986

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

Re: MUR 1839

Dear Mr. Steele:

By letter dated December 13, 1985, you informed me that the Commission found probable cause to believe the Arkansas Education Association ("AEA") committed a violation of 2 U.S.C. § 441b in connection with the use by the Mondale for President Committee ("MPC") of AEA's postage meter for election-related mailings. You suggest in your letter that this matter be resolved through conciliation and attach a proposed conciliation agreement. We do not believe that conciliation is appropriate at this time for two reasons: (1) your letter and the proposed conciliation agreement do not specify the basis for the Commission's probable cause finding, and (2) depending on what that basis is, the finding may be technically defective. Our position is set forth more fully below.

In the General Counsel's brief that you sent us on June 27, 1985, your recommendation that the Commission find probable cause was bottomed on the contention that postage meters are somehow different in kind from other office equipment so as not to constitute "labor organization facilities" within the meaning of 11 C.F.R. § 114.9(d). This is the contention to which we responded. The proposed conciliation agreement suggests, however, that the probable cause finding is predicated on the timing of the MPC's payment to AEA. Unless we know what in fact is the basis for the alleged statutory violation, we obviously are unable to assess the proposed conciliation agreement. Moreover, if the basis for the probable cause finding is the time period between usage and payment, the finding is technically

Attachment 2

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JAN 27 1986

Charles N. Steele
January 27, 1986
Page 2

defective. Under 2 U.S.C. § 437g(a) (3) and 11 C.F.R. § 111.16(a), AEA is entitled to respond to the legal and factual basis for the probable cause recommendation; since we were not afforded that opportunity, the finding should be rescinded.

Nor do we believe a probable cause finding would be warranted on the basis of the time period between usage and payment. As we indicated in our prior communications, AEA, in accordance with its regular business practice billed MPC monthly and was assured by MPC that payment would be made as soon as possible. Nothing in the Act or the Commission's pronouncements suggest that a labor organization must in these circumstances invest time, effort and money to institute a lawsuit or take other extraordinary action to expedite payment of a relatively small amount of money.

I would appreciate receiving your response to the points made in this letter as soon as possible.

Sincerely,



Robert H. Chanin
Attorney for the
Arkansas Education Association

RHC:gm

Attachment 2, p 1

85040575330

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION COMMISSION
NOV 25 1985

In the Matter of)
Mondale for President Committee)
Michael S. Berman, Treasurer)
Arkansas Education Association)

MUR 1839 NOV 25 1985 P 3:10

SENSITIVE
EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. BACKGROUND

DEC 3 1985

On September 24, 1985 the Commission directed this Office to determine whether probable cause should be found against the above captioned respondents based on the length of time between the reimbursement by the Mondale for President Committee to the Arkansas Education Association for the use of the Association's postage meter.

This report makes the requested evaluation and concludes that there is probable cause to believe that the Mondale for President Committee and Michael S. Berman, as treasurer and the Arkansas Education Association violated 2 U.S.C. § 441b.

II. LEGAL ANALYSIS

Section 441b of Title 2, United States Code prohibits labor organizations from making contributions in connection with Federal elections. Political committees are also prohibited from accepting such contributions.

Section 431(8)(A) of Title 2, United States Code, defines "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

Attachment 3

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Therefore, a labor organization is prohibited from making loans to federal candidates.

On March 12, 1984, the Association allowed the Mondale Committee to use the Association's postage meter in connection with election-related mailings. The Mondale Committee used \$2,574 in postage from the Association meter. Thereafter, the Association alleges that it billed the Mondale Committee until it received full payment in November 1984; however, this bill was paid after the Mondale Committee was notified of the complaint in this matter.

The Commission's regulations at 11 C.F.R. § 114.9(d) require that persons, other than labor organization members or employees, who make use of a labor organization's facilities, such as by using telephones or typewriters must reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge, as defined in 11 C.F.R. § 100.7(a)(1)(iii)(B), for the use of the facilities. Under this provision, the "usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contributions." Here, the normal and usual market for postage is the United States Post Office and it requires contemporaneous payment for postage whether stamps are purchased or a postage meter is filled for a patron.

Attachment 3 p 2

2025/03/13

The Association has contended that in light of its past practice of allowing non-association entities (which it has not named) to use its postage meter, it did not consider the length of time for repayment by the Mondale Committee to be unreasonably long.

The Mondale Committee and the Association have contended that usage of the Association's meter falls squarely within the meaning and intent of 11 C.F.R. § 114.9(d), and that the instant bill was paid in a commercially reasonable time.

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The General Counsel believes the fact that the Association considered the repayment period to be reasonable in light of its practice regarding other entities is unavailing. The normal and usual market for postage, i.e. the Post Office, requires contemporaneous payment. However, the Commission has allowed a campaign consultant to incur costs such as postage and later bill the Committee from the proceeds of funds raised. See AO 1979-36. This Office believes that the facts in this case are clearly distinguishable from the cited Advisory Opinion.

As this Office stated in MUR 1530, in all instances, where reimbursement of an illegal contribution is made, the Commission may consider such reimbursement and its timeliness as a mitigating factor. In MUR 1530, with regard to the use of phone banks of the American Federation of State and County Municipal Employees (AFSCME) by a political committee, the payment for such use did not begin until two months after the phone banks were

Attachment 3, p. 3

used and debts were reported outstanding for nearly nine months. In MUR 1530, AFSCME paid a civil penalty of \$3,500 in a probable cause conciliation agreement. In MUR 1349, which concerned advances to a political committee by individuals, this Office discussed advances and argued that since a recipient committee enjoyed the benefits of goods and services advanced by individuals that transaction is a contribution as long as the advance is unreimbursed, and, hence, resembles a loan. This Office concluded, in MUR 1349, that the matter was aggravated by the fact that the amount of the excessive contribution involved, \$18,712.54, was outstanding five to seven months before reimbursement was made and recommended a finding of probable cause.

The instant matter is analogous to MURs 1349 and 1530. Here, the Committee's use of the Association's postage meter was essentially a loan of \$2,574. As this loan was outstanding for some eight months, owed to a labor organization, and it appears that reimbursement was only precipitated by the filing of the complaint in this matter, the General Counsel concludes that the Commission may find that there is probable cause to believe that 2 U.S.C. § 441b was violated.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

Attached for the Commission's approval are proposed conciliation agreements with the Mondale for President Committee and Michael S. Berman, as treasurer, and the Arkansas Education

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Attachment 3, 0, 0

Association. Each of the proposed agreements provide for an

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III. RECOMMENDATIONS

1. Find probable cause to believe that the Mondale for President Committee and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b.
2. Find probable cause to believe that the Arkansas Education Association violated 2 U.S.C. § 441b.
3. Approve the attached proposed conciliation agreement with the Mondale for President Committee and Michael S. Berman, as treasurer.
4. Approve the attached proposed conciliation agreement with the Arkansas Education Association.

Amendment 3, B.S.

5. Approve the attached letters.

20 Nov 1985
Date



Charles N. Steele
General Counsel

Attachments

1. Letters to Respondents
2. Proposed Conciliation Agreement

PR

86040575336

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mondale for President Committee)	MUR 1839
Michael S. Berman, as treasurer)	
Arkansas Education Association)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 24, 1985, do hereby certify that the Commission took the following actions in MUR 1839:

1. Failed in a vote of 3-1 to pass a motion to reject the recommendations contained in the General Counsel's report dated September 11, 1985, and close the file.

Commissioners Josefiak, McDonald, and McGarry voted affirmatively for the motion; Commissioner Elliott dissented. Commissioners Aikens and Harris were not present.

(continued)

Attachment 4

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2. Decided by a vote of 4-0 to refer the matter back to the Office of General Counsel with the direction that the Counsel consider whether or not there is probable cause to believe a violation of 2 U.S.C. § 441b has been committed on the basis that the Mondale for President Committee did not pay the amount owed to the Arkansas Education Association within a reasonable time.

Commissioners Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioners Aikens and Harris were not present.

Attest:

Sept. 25, 1985

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Att documents 4, p 2

86040675338



NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035
 MARY HATWOOD FUTRELL, President
 KEITH GEIGER, Vice President
 ROXANNE E. BRADSHAW, Secretary-Treasurer

RECEIVED BY THE FEC
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 LEGAL SERVICES
 OFFICE OF GENERAL COUNSEL . .

January 27, 1986

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

Re: MUR 1839

Dear Mr. Steele:

By letter dated December 13, 1985, you informed me that the Commission found probable cause to believe the Arkansas Education Association ("AEA") committed a violation of 2 U.S.C. § 441b in connection with the use by the Mondale for President Committee ("MPC") of AEA's postage meter for election-related mailings. You suggest in your letter that this matter be resolved through conciliation and attach a proposed conciliation agreement. We do not believe that conciliation is appropriate at this time for two reasons: (1) your letter and the proposed conciliation agreement do not specify the basis for the Commission's probable cause finding, and (2) depending on what that basis is, the finding may be technically defective. Our position is set forth more fully below.

In the General Counsel's brief that you sent us on June 27, 1985, your recommendation that the Commission find probable cause was bottomed on the contention that postage meters are somehow different in kind from other office equipment so as not to constitute "labor organization facilities" within the meaning of 11 C.F.R. § 114.9(d). This is the contention to which we responded. The proposed conciliation agreement suggests, however, that the probable cause finding is predicated on the timing of the MPC's payment to AEA. Unless we know what in fact is the basis for the alleged statutory violation, we obviously are unable to assess the proposed conciliation agreement. Moreover, if the basis for the probable cause finding is the time period between usage and payment, the finding is technically

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Charles N. Steele
January 27, 1986
Page 2

defective. Under 2 U.S.C. § 437g(a)(3) and 11 C.F.R. § 111.16(a), AEA is entitled to respond to the legal and factual basis for the probable cause recommendation; since we were not afforded that opportunity, the finding should be rescinded.

Nor do we believe a probable cause finding would be warranted on the basis of the time period between usage and payment. As we indicated in our prior communications, AEA, in accordance with its regular business practice billed MPC monthly and was assured by MPC that payment would be made as soon as possible. Nothing in the Act or the Commission's pronouncements suggest that a labor organization must in these circumstances invest time, effort and money to institute a lawsuit or take other extraordinary action to expedite payment of a relatively small amount of money.

I would appreciate receiving your response to the points made in this letter as soon as possible.

Sincerely,



Robert H. Chanin
Attorney for the
Arkansas Education Association

RHC:gm

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Mondale for President
2801 Wisconsin Avenue, N.W.
Washington, D.C. 20007
Telephone: 202-625-1888 333-4591

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January 10, 1986

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

Re: MUR 1839

Dear Mr. Steele:

This letter is in reference to your letter of December 13, 1985, informing the Mondale for President Committee ("MPC") and Michael S. Berman that the Commission has found probable cause to believe that they violated 2 U.S.C. Section 441b. Your letter proposes that our clients enter into a conciliation agreement in order to resolve this matter.

Before we are able to enter into conciliation in this matter, however, we need clarification of, and request reconsideration of, the Commission's finding of probable cause in this matter. Your letter of December 13 merely informs us that the Commission found probable cause to believe that our clients violated Section 441b without any explanation of the violation. The proposed conciliation agreement accompanying the letter indicates that MPC and Mr. Berman received a loan "only repaying that loan eight months later." This suggests that the violation found by the Commission relates to the length of time taken to reimburse the Arkansas Education Association. We are therefore unable to determine from your letter or from the conciliation agreement whether the Commission agrees with MPC that the use of this postage meter was governed by 11 C.F.R. Section 114.9(e) as MPC contends.

It is this issue, (Section 114.9(e)), and not the question of the timing of reimbursement, which was briefed by your office and responded to by MPC. If the Commission's finding is based on a different legal theory relating to the timing of reimbursement, then that finding is procedurally defective since we were not given an opportunity to respond to it as required by 11 C.F.R. Section 111.16(a) and 2 U.S.C. Section 437g(a)(3). Moreover, if that is the basis of the Commission's finding, then it is grossly unfair to propose

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Letter to Charles N. Steele
MUR 1839
Page Two

to MPC a conciliation agreement including any admission of a violation or civil penalty. MPC has retired all legitimate, documented debts from the primary and did so early in the first quarter of 1985. It was only through diligent efforts of the Committee and its treasurer-- even while the general election campaign was ongoing-- that these debts were paid off so promptly. In sharp contrast, a year after MPC's debts were liquidated, there are other 1984 primary candidates whose debts still remain in 1986 in the millions of dollars. To take any action against MPC regarding the timing of payment of any debt is consequently unwarranted and unsupported.

For these reasons, MPC requests (1) that the Office of General Counsel or Commission clarify the alleged violation and (2) that the Commission rescind the probable cause finding if based on the time of reimbursement. If the finding is not rescinded, MPC requests that the Commission reconsider its initial conciliation agreement offer and take no further action in this matter based on MPC's prompt and full discharge of all its debts.

Thank you for your consideration of this matter. If you have any questions we can be reached at 333-4591.

Sincerely,

Carolyn U. Oliphant
Carolyn U. Oliphant
Deputy General Counsel

Patricia A. Fiori
Patricia A. Fiori
Special Counsel

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 13, 1985

David Ifshin, Esquire
Carolyn Oliphant, Esquire
Mondale for President Committee
2201 Wisconsin Ave., N.W.
Washington, D.C. 20007

RE: MUR 1839
Mondale for President Committee
Michael S. Berman, as treasurer

Dear Mr. Ifshin and Ms. Oliphant:

On December 3, 1985, the Commission determined that there is probable cause to believe your clients committed a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the Mondale for President Committee's use of postage from the postage meter of the Arkansas Education Association for election-related mailings.

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

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

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Paul Reyes, the staff member assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 13, 1985

Robert H. Chanin, Esquire
National Education Association
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 1839
Arkansas Education Association

Dear Mr. Chanin:

On ~~December~~ 3, 1985, the Commission determined that there is probable cause to believe your client committed a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the Mondale for President Committee's use of postage from the postage meter of the Arkansas Education Association for election-related mailings.

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

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

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Paul Reyes, the staff member assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION COMMISSION
COMMISSION SECRETARY

In the Matter of)
Mondale for President Committee)
Michael S. Berman, Treasurer)
Arkansas Education Association)

MUR 18395 NOV 25 P 3:10

SENSITIVE
EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. BACKGROUND

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On September 24, 1985 the Commission directed this Office to determine whether probable cause should be found against the above captioned respondents based on the length of time between the reimbursement by the Mondale for President Committee to the Arkansas Education Association for the use of the Association's postage meter.

This report makes the requested evaluation and concludes that there is probable cause to believe that the Mondale for President Committee and Michael S. Berman, as treasurer and the Arkansas Education Association violated 2 U.S.C. § 441b.

II. LEGAL ANALYSIS

Section 441b of Title 2, United States Code prohibits labor organizations from making contributions in connection with Federal elections. Political committees are also prohibited from accepting such contributions.

Section 431(8)(A) of Title 2, United States Code, defines "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

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Therefore, a labor organization is prohibited from making loans to federal candidates.

On March 12, 1984, the Association allowed the Mondale Committee to use the Association's postage meter in connection with election-related mailings. The Mondale Committee used \$2,574 in postage from the Association meter. Thereafter, the Association alleges that it billed the Mondale Committee until it received full payment in November 1984; however, this bill was paid after the Mondale Committee was notified of the complaint in this matter.

The Commission's regulations at 11 C.F.R. § 114.9(d) require that persons, other than labor organization members or employees, who make use of a labor organization's facilities, such as by using telephones or typewriters must reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge, as defined in 11 C.F.R. § 100.7(a)(1)(iii)(B), for the use of the facilities. Under this provision, the "usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contributions." Here, the normal and usual market for postage is the United States Post Office and it requires contemporaneous payment for postage whether stamps are purchased or a postage meter is filled for a patron.

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The Association has contended that in light of its past practice of allowing non-association entities (which it has not named) to use its postage meter, it did not consider the length of time for repayment by the Mondale Committee to be unreasonably long.

The Mondale Committee and the Association have contended that usage of the Association's meter falls squarely within the meaning and intent of 11 C.F.R. § 114.9(d), and that the instant bill was paid in a commercially reasonable time.

The General Counsel believes the fact that the Association considered the repayment period to be reasonable in light of its practice regarding other entities is unavailing. The normal and usual market for postage, i.e. the Post Office, requires contemporaneous payment. However, the Commission has allowed a campaign consultant to incur costs such as postage and later bill the Committee from the proceeds of funds raised. See AO 1979-36. This Office believes that the facts in this case are clearly distinguishable from the cited Advisory Opinion.

As this Office stated in MUR 1530, in all instances, where reimbursement of an illegal contribution is made, the Commission may consider such reimbursement and its timeliness as a mitigating factor. In MUR 1530, with regard to the use of phone banks of the American Federation of State and County Municipal Employees (AFSCME) by a political committee, the payment for such use did not begin until two months after the phone banks were

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used and debts were reported outstanding for nearly nine months. In MUR 1530, AFSCME paid a civil penalty of \$3,500 in a pre-probable cause conciliation agreement. In MUR 1349, which concerned advances to a political committee by individuals, this Office discussed advances and argued that since a recipient committee enjoyed the benefits of goods and services advanced by individuals that transaction is a contribution as long as the advance is unreimbursed, and, hence, resembles a loan. This Office concluded, in MUR 1349, that the matter was aggravated by the fact that the amount of the excessive contribution involved, \$18,712.54, was outstanding five to seven months before reimbursement was made and recommended a finding of probable cause.

The instant matter is analogous to MURs 1349 and 1530. Here, the Committee's use of the Association's postage meter was essentially a loan of \$2,574. As this loan was outstanding for some eight months, owed to a labor organization, and it appears that reimbursement was only precipitated by the filing of the complaint in this matter, the General Counsel concludes that the Commission may find that there is probable cause to believe that 2 U.S.C. § 441b was violated.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

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III. RECOMMENDATIONS

1. Find probable cause to believe that the Mondale for President Committee and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b.
2. Find probable cause to believe that the Arkansas Education Association violated 2 U.S.C. § 441b.
3. Approve the attached proposed conciliation agreement with the Mondale for President Committee and Michael S. Berman, as treasurer.
4. Approve the attached proposed conciliation agreement with the Arkansas Education Association.

5. Approve the attached letters.

20 Nov 1985
Date



Charles N. Steele
General Counsel

Attachments

1. Letters to Respondents
2. Proposed Conciliation Agreement

PR

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SEP 24 1985

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mondale for President Committee)	MUR 1839
Michael S. Berman, as treasurer)	
Arkansas Education Association)	
)	

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 COMMUNICATIONS SECTION
 FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter originated with a complaint filed by the National Right to Work Committee. On February 26, 1985, the Commission found reason to believe that the Arkansas Education Association ("AEA") violated 2 U.S.C. § 441b by permitting the Mondale for President Committee to use \$2,574 in postage from AEA's postage meter, thereby making a contribution of this amount to the Committee. In addition, the Commission found reason to believe that the Mondale for President Committee and Michael S. Berman, as treasurer, accepted a contribution from AEA in violation of 2 U.S.C. § 441b.

The General Counsel's briefs and letters notifying the Respondents of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe were mailed to the Respondents on June 27, 1985. On July 16, 1985, the Respondents submitted responses to the General Counsel's briefs.*/

*/ The General Counsel's Briefs and the responses to these briefs were previously circulated to the Commission.

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II. LEGAL ANALYSIS

Inasmuch as the Respondents' replies for the most part re-emphasize their previous arguments, this Office chiefly relies on the General Counsel's Brief for legal analysis.

We note, however, that the Respondents' recitation of the Commission's determinations in MUR 1314 does not fully characterize the Commission's handling of that matter. The Respondents state that "the Commission found that no violation arose out of the advance of \$2,646.05 in postage to the Carter-Mondale Committee by a corporation." In fact, MUR 1314 involved two issues. The first issue concerned whether the solicitation of corporate employees was conducted in violation of 2 U.S.C. § 441b(a). The second issue centered on the use of corporate facilities and staff to conduct activities on behalf of Carter-Mondale. The focal point of the case was the corporation's failure to bill the Carter-Mondale Committee for the costs associated with the rental of its facilities--specifically, its office space, furniture, telephone, typewriters and computer. Those items for which the Carter-Mondale Committee had been billed by the corporation, including postage, were referenced in the General Counsel's reports, but were not at issue. MUR 1314 concerned the use of postage only as part of the factual predicate in the conciliation agreement where it was distinguished from those facilities for which the Carter-Mondale Committee was not billed and which were, therefore, part of the

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violation. Thus the Respondents' reliance on the Commission's disposition of MUR 1314 is not fully supported. Notwithstanding what may or may not be properly inferred from from MUR 1314, separating the cost of postage from the cost of facilities such as the meter itself, stationery, envelopes etc., does present some difficulty in the absence of specific regulatory direction. However, in that the postage itself can be distinguished as an item which requires an advance payment and which essentially stores money for later use, as opposed to the use of the meter as a facility, the Office of General Counsel recommends on balance that the Commission find probable cause to believe that respondent violated 2 U.S.C. § 441b.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

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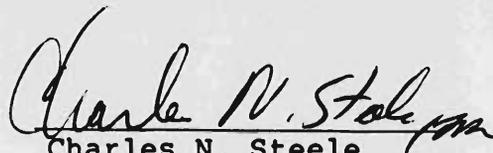
IV. RECOMMENDATIONS

1. Find probable cause to believe that the Mondale for President Committee and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b.
2. Find probable cause to believe that the Arkansas Education Association violated 2 U.S.C. § 441b.
3. Approve the attached proposed conciliation agreement with the Mondale for President Committee and Michael S. Berman, as treasurer.
4. Approve the attached proposed conciliation agreement with the Arkansas Education Association.
5. Approve the attached letters.

Date

9/11/85

Charles N. Steele
General Counsel



Attachments

Proposed conciliation agreements and cover letters.

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July 15, 1985

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

RE: MUR 1839

Dear Mr. Steele:

This letter constitutes the response of the Mondale for President Committee, Inc. ("MPC" or "Committee") to the General Counsel's Brief on this matter, dated June 25, 1985. The accompanying letter, dated June 27, 1985, notified the Committee that the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of the Federal Election Campaign Act ("Act") has occurred. FEC letter at 1. The Committee believes that with full and due consideration of this response, the Commission will determine that 1) there is no probable cause to believe that MPC violated the Act and its regulations and 2) no further action should be taken on this matter.

The General Counsel's brief makes essentially one counterargument to the Committee's defense. It argues that a postage meter is different from the office equipment referred to at 11 C.F.R. Section 114.9(d) because of the way the meter functions. This reasoning is faulty in two respects: 1) there is no distinction between the functioning of a postage meter and other office equipment; 2) the language of the sections of the Act and

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regulations concerning use of labor and corporate facilities specifically permit reimbursement and make no distinction in this respect between a postage meter and other office equipment.

The Commission argues that the function of a postage meter differs from that of any other office facility in that the "'postage' it contains has a value similar to cash." Brief at 3. Further, it argues that a postage meter, in contrast to other office machines, "requires an advance of money in order to operate." Brief at 4.

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These two assertions do not distinguish a postage meter from other office equipment referred to at 11 C.F.R. Section 114.9(d). First, all office equipment uses advanced materials in one form or another for it to function: a copy machine requires paper, phones must be installed, typewriters require ribbons and paper, cars require gas (11 C.F.R. Section 114.9(e)), and a postage meter requires postage. All of these materials have "a value similar to cash" and all are generally paid for in advance in order for the machines to operate. Therefore, any time a labor organization or corporation makes an office facility or equipment available for use by a political committee, it advances materials of monetary value. After the political committee has used the facility or equipment, it reimburses the organization for costs incurred in advance for the materials necessary for the machines to run.

The General Counsel's brief argues that postage has a value similar to cash. It implies that this similarity exists since the amount of cash paid in advance for the postage directly

corresponds to the amount of postage which may be used. However, this is true for all other office facilities as well. For example, the amount of cash paid for xerox paper purchased in advance of the use of the machine directly corresponds to the amount of paper which may be used. In addition, while it is true that it is necessary to pay for the postage in advance in order to operate a postage meter, the postage used in a postage meter is in the form of a lump sum, entered on the meter, which enables the machine to run. The postage meter cannot function without the advance of postage as it locks once the meter registers an amount under \$10.00. Likewise, the postage registered on the meter cannot be accessed unless it is used on a postage meter. The postage on the meter and the machine are interdependent. It is therefore evident that the postage on the meter does not operate like cash since it can be used only in the postage meter.

In any event, it is irrelevant whether postage has a value similar to cash or exists in the form of an advance of money since the FEC regulations specifically permit labor organizations to "advance" the use of any equipment and facilities, all of which have cash value. In fact, the Commission uses the term "reimbursement" in 11 C.F.R. Section 114.9(d). It is clear that the Commission envisioned a process involving an advance of materials of monetary value with later repayment.

Indeed, this is the first time the General Counsel has made such a novel argument, even though the Commission has had before it other similar cases, at least one of which involved the advance of postage. In MUR 1314, the Commission found that no violation arose out of the advance of \$2646.05 in postage to the

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Carter-Mondale Committee by a corporation. Disparate treatment of MPC in this case is completely unwarranted.^{1/} The General Counsel's brief also makes the unsupported assertion that it is not common practice for postage to be advanced. Even a cursory review of reports filed with the FEC by other committees would disclose many instances of debts for postage paid by a vendor. Whether or not it is common industry practice among direct mail firms, however, is irrelevant since the Commission has a regulation which specifically permits reimbursement.

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The regulations are written so that the facilities referred to at 11 C.F.R. Section 114.9(d) include all equipment and facilities with the sole exception of corporate aircraft. MPC's argument does not "miss the point" (Brief at 4) at all. MPC rigorously and in good faith followed the regulations as the Commission wrote them. If the Commission believed there were other exceptions, it should have included them in the section provided for them at 11 C.F.R. Section 114.9(e). Yet there is nothing whatsoever in that section which might indicate that a postage meter should qualify as an exception to the preceding regulation.

Furthermore, OGC argues that an advance is a contribution under the Act at 2 U.S.C. Section 431(8)(A)(i) and therefore the advance on the part of AEA of materials to be used in

^{1/} Moreover, prior to the use of any corporate and labor equipment or facilities, MPC thoroughly researched FEC precedent, including MURs, and prepared a comprehensive memorandum upon which precedent it relied.

order to operate the postage meter constitutes an illegal contribution to a political committee on the part of a labor organization. 11 C.F.R. Section 114.9(d), however, specifically permits the advancing of office facilities and equipment and provides that this use does not constitute a contribution. The only stipulation in the regulation is that the organization be reimbursed at a normal and usual rate within a reasonable amount of time. The General Counsel's brief, however, relies on the general definitional section of the Act and regulations when there is a more specific provision directly on point. It is a well-established principle of statutory and regulatory construction that an express provision governs and controls over a more general provision. See 82 C.J.S. Section 347(b) and 73 C.J.S. Section 94. Thus, 11 C.F.R. Section 114.9(d), which permits advances by allowing reimbursement for use of facilities and equipment, controls, notwithstanding the general definition of a contribution which includes an "advance."

If the Commission wished to distinguish postage meters from other machines, it should have done so specifically in 11 C.F.R. Section 114.9(e). Further, even if the Commission determines now that postage meters should be distinguished, it should not penalize the Committee which precisely followed the letter of the regulation. Rather, the proper legal remedy would be for the Commission to rewrite its regulations to establish such a new rule of law. 2 U.S.C. Section 437f(b).

Finally, the Committee believes that no further action should be taken given the following circumstances of this case:

- 1) The total amount of money involved in the use of the postage meter was only \$2574.
- 2) The Committee fully reimbursed AEA for the normal and usual charge within a commercially reasonable amount of time.
- 3) In using the postage meter, the Committee was in good faith following the regulations clearly stated in 11 C.F.R. Section 114.9(d).

For the reasons stated above, the Commission should find no probable cause to believe that a violation of the Act has occurred and should take no further action in this matter.

Respectfully submitted,

Carolyn U. Oliphant
Carolyn U. Oliphant
Deputy General Counsel

Patricia A. Fiori
Patricia A. Fiori
Special Counsel

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NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035

MARY HATWOOD FUTRELL, President
KEITH GEIGER, Vice President
ROXANNE E. BRADSHAW, Secretary-Treasurer

GOC# 8007
Reyes/Kramer
LEGAL SERVICES
OFFICE OF GENERAL COUNSEL

July 15, 1985

Ms. Marjorie Emmons
Secretary
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1839
Arkansas Education Association

Dear Ms. Emmons:

On June 27, 1985, Charles N. Steele, General Counsel for the Federal Election Commission, sent us a letter regarding the above MUR, together with a copy of a brief that he intends to submit to the Commission. In this brief, the General Counsel recommends that the Commission "[f]ind probable cause to believe that the Arkansas Education Association violated 2 U.S.C. § 441b." General Counsel's Brief at 4. The letter invites us to file with you a brief setting forth our "position on the issues and replying to the brief of the General Counsel." This letter is submitted in response to the General Counsel's invitation.

Before commenting on the recommendation set forth in the General Counsel's brief, it is appropriate by way of background to review briefly the prior communications in connection with this MUR. We initially were notified by the General Counsel of the filing of this complaint on November 6, 1984. In our response, dated December 13, 1984, we acknowledged that the Arkansas Education Association (AEA) had allowed the Mondale Committee to use its postage meter, but asserted that this did not constitute a violation of the Federal Election Campaign Act of 1971, as amended (Act). In support of this latter assertion, we cited Commission Regulation 11 C.F.R. § 114.9(d), and argued that the challenged transaction was in full compliance with that regulation.

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We subsequently received a letter from the Commission, dated March 25, 1985, notifying us that it had found "reason to believe" that AEA had violated the Act. This letter indicated that the Commission's finding derived from its belief that AEA had not complied with the requirement in 11 C.F.R. § 114.9(d) that the "labor organization [be reimbursed] within a commercially reasonable time in the amount of a normal and usual rental charge as defined in 11 C.F.R. § 100.7(a)(1)(iii)(B), for the use of the facilities." Specifically, the Commission stated that AEA had made a prohibited contribution to the Committee because it "took no steps beyond monthly billings to collect this amount for some eight months." We responded to the Commission's March 25, 1985 letter on April 4, 1985.

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In the brief sent to us by the General Counsel on June 27, 1985, the eight-month gap between usage and payment no longer appears to be a relevant factor. His recommendation that the Commission find probable cause to believe that AEA violated the Act is bottomed on the notion that postage meters are somehow different in kind from "telephones or typewriters or . . . office furniture," so as not to constitute "labor organization facilities" within the meaning of 11 C.F.R. § 114.9(d). Although the General Counsel concedes that "a postage meter may be like a piece of office equipment," General Counsel's brief at 3, he contends that a meter should be treated differently under the Act because of the "function" it performs. However, the General Counsel cites nothing in the Act, the Commission's regulations or the Commission's advisory opinions to support this position, and the only MUR we have found that is at all relevant to the question of postage -- i.e., MUR 1314 -- points to an opposite conclusion. Although a political committee had reimbursed a corporation for postage in MUR 1314, neither the General Counsel's brief nor the conciliation agreements approved by the Commission in that MUR in any way suggested that such reimbursement was unlawful.

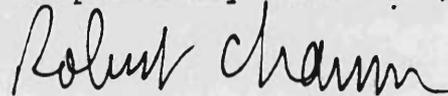
In his brief, the General Counsel does state that "the 'postage' has a value similar to cash," General Counsel's Brief at 3, but this hardly provides a basis for excluding postal meters the ambit of 11 C.F.R. § 114.9(d): the same statement presumably could be made about the paper in a photocopy or mimeograph machine, see, 11 C.F.R. § 114.9(c), the gasoline in a car, see, 11 C.F.R. § 114.9(e), or the ribbon in a typewriter, see, 11 C.F.R. § 114.9(d), all of which unquestionably can be made available to a political committee by a labor organization on a reimbursement basis.

Marjorie Emmons
July 15, 1985
Page 3

In our April 4, 1985 response to the Commission's March 25, 1985 letter, we also pointed out that AEA acted in good faith reliance on 11 C.F.R. § 114.9(d), and it should not in any event be subject to sanctions under the Act should the Commission now choose to interpret this regulation in an unduly restrictive manner. See, 2 U.S.C. § 438(e). Inasmuch as the General Counsel concedes that a postage meter is "like a piece of office equipment," see General Counsel's Brief at 4, it surely was reasonable for AEA to conclude that it was subject to the Commission regulation that allows reimbursement for the use of such equipment. If the Commission wishes to amend its regulations to provide that postage meters are not "facilities" and/or that the use of a postage meter -- like the use of an airplane, see, 11 C.F.R. 114.9(e) -- requires advance payment, it should do so prospectively through its rulemaking procedure, and not retroactively through its enforcement process.

For the foregoing reasons, we urge the Commission to reject the General Counsel's recommendation of probable cause. At the least, we urge the Commission to take no further action against AEA.

Respectfully submitted,



Robert H. Chanin
Counsel for AEA

RHC:gm

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 27, 1985

David Ifshin, Esquire
Carolyn Oliphant, Esquire
Mondale for President
2201 Wisconsin Avenue, N.W.
Washington, D.C. 20007

RE: MUR 1839
Mondale for President
Committee
Michael S. Berman, Treasurer

Dear Mr. Ifshin and Ms. Oliphant:

Based on a complaint filed with the Commission on October 31, 1984, and information supplied by you the Commission determined on February 26, 1985, that there was reason to believe that your clients had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

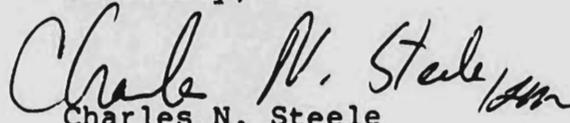
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David Ifshin, Esquire
Carolyn Oliphant, Esquire
Page 2

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety, days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Paul Reyes, the staff member assigned to handle this matter, at (202) 523-4000.

Sincerely,


Charles N. Steele
General Counsel

Enclosure
Brief

cc: The Honorable Walter F. Mondale
c/o David Ifshin, Esquire
2201 Wisconsin Avenue, N.W.
Washington, D.C. 20007

35040375365

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mondale for President) MUR 1839
Committee)
Michael S. Berman,)
Treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 31, 1984, the Federal Election Commission (the "Commission") received a complaint against the Mondale for President Campaign Committee (the "Committee"), and Michael S. Berman, as treasurer, ("Respondents") alleging that respondents violated 2 U.S.C. § 441b by accepting an advance of postage from the Arkansas Education Association. The Committee was notified of this complaint by letter dated November 13, 1984. By letter of November 20, 1984, the Committee requested an extension of time in which to respond. An extension was granted by the Office of General Counsel. The Committee's response was timely received on December 6, 1984.

On February 26, 1985 the Commission determined that there is reason to believe that the Mondale for President Committee and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b. The Committee was notified of this determination by letter dated March 25, 1984. The Committee's response to this notice was received on April 15, 1985 by the Commission. The Committee asked that the Commission rescind its finding of reason to believe or take no further action in this matter.

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II. LEGAL ANALYSIS

Section 441b of Title 2, United States Code prohibits, inter alia, labor organizations from making contributions to political committees supporting federal candidates and it prohibits federal candidates' political committees from accepting contributions from labor organizations.

The Arkansas Education Association ("AEA") is a labor organization and thus may not make contributions to the Mondale for President Committee (the "Committee"), which is a political committee within the meaning of 2 U.S.C. § 431(4).

Section 431(8)(A) of Title 2, United States Code defines "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

The AEA allowed the Committee to use its postage meter on March 12, 1984. A beginning and ending reading of the meter was taken in order to determine the amount of postage used. At the end of March the AEA business manager, Diane Schoemaker, entered a charge of \$2,574 on the AEA ledger sheet for the amount of postage used by the Committee. Diane Schoemaker has stated that she thereafter sent monthly bills to the Committee until she received payment.

The Committee explains that it treated this bill as it did all of its accounts and reported it consistently as a debt owed by the Committee. On November 20, 1984 subsequent to the filing of the complaint in this matter the Mondale Committee paid this bill in full.

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The Committee contends that the subject transaction is permitted by 11 C.F.R. § 114.9(d). Section 114.9(d) provides in full that

[p]ersons, other than those specifically mentioned in paragraphs (a) and (b) of this section, who make any use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge, as defined in 11 C.F.R. 100.7(a)(1)(iii)(B), for the use of the facilities.

The Committee contends that the AEA's postage meter is a facility within the meaning of 11 C.F.R. § 114.9(d) and, therefore, the Mondale Committee need only reimburse the AEA for the postage used from the machine. Further, the Committee contends that it paid the AEA in a commercially reasonable time.

The General Counsel contends that while a postage meter may be like a piece of office equipment, its function is quite different in that the "postage" it contains has a value similar to cash. A postage meter is a device or mechanism to print prepaid postage on mail matter, which automatically locks when the amount of postage registered therein is exhausted. Meters in the possession of postal patrons are set by postmasters for the amount of postage collected at the time of setting. Postage is a charge for postal services 1/. The United States Postal Service

1/ See generally, National Assn. of Greeting Card Publishers v. United States Postal Service, 426 U.S. 810 (1983) [Postal rates under the Postal Reorganization Act, 84 Stat. 719]

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generally requires payment prior to or when such service is rendered. A postage meter merely facilitates payment of these charges. The user prepays the postal service for future charges and then uses the machine to affix a meter stamp for the correct amount at his or her convenience. The advance of postage by the AEA is, therefore, a \$2,574 loan.

On the other hand, the Mondale Committee argues that 11 C.F.R. § 114.9(e) requiring advance payment for the use of corporate or labor organization facilities applies only to transportation services, such as airplanes. Since a postage meter is not an airplane, the Committee contends, no advance payment is necessary. This contention misses the point. A postage meter is a device that is used in an office. However, this device requires an advance of money in order to operate. It essentially stores money which it translates into stamps bearing an amount that represents payment for postal services. Therefore, the issue here is the loan of money by the AEA and not simply the use of its postage meter. The fact that the AEA considered the repayment period to be reasonable in light of its practice regarding non-AEA entities using its postage meter is unavailing. Therefore, the General Counsel concludes that the Committee accepted the loan from the AEA and, therefore, violated 2 U.S.C. § 441b.

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III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the Mondale for President Committee and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b.

Date

Jan 25, 1935

Charles N. Steele

Charles N. Steele
General Counsel

86040375370



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 27, 1985

Robert H. Chanin, Esquire
National Education Association
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 1839
Arkansas Education
Association

Dear Mr. Chanin:

Based on a complaint filed with the Commission on October 31, 1984, and information supplied by you the Commission determined on February 26, 1985, that there was reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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Robert H. Chanin, Esquire
Page 2

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety, days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Paul Reyes, the staff member assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
Charles N. Steele
General Counsel

Enclosure
Brief

36040375372

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Arkansas Education Association) MUR 1839

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 31, 1984, the Federal Election Commission (the "Commission") received a complaint against the Arkansas Education Association ("AEA") alleging that respondents violated 2 U.S.C. § 441b by advancing postage to the Mondale for President Committee and Michael S. Berman, as treasurer. The AEA was notified of this complaint by letter dated November 13, 1984. By letter of November 19, 1984, the AEA requested an extension of time in which to respond. An extension was granted by the Office of General Counsel making the response due on December 13, 1984. The response, dated December 13, 1984, was received on December 19, 1984.

On February 26, 1985 the Commission determined that there is reason to believe that the AEA violated 2 U.S.C. § 441b. The AEA was notified of this determination by letter dated March 25, 1984. The AEA's response to this notice was received on April 5, 1985 by the Commission. The AEA asserted that the use of its postage meter by the Mondale Committee is permitted by 11 C.F.R. § 114.9(d) and that it was repaid for that use within a commercially reasonable time.

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II. LEGAL ANALYSIS

Section 441b of Title 2, United States Code prohibits, inter alia, labor organizations from making contributions to political committees supporting federal candidates and it prohibits federal candidates' political committees from accepting contributions from labor organizations.

The Arkansas Education Association ("AEA") is a labor organization and thus may not make contributions to the Mondale for President Committee (the "Committee"), which is a political committee within the meaning of 2 U.S.C. § 431(4).

Section 431(8) (A) of Title 2, United States Code defines "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

The AEA allowed the Committee to use its postage meter on March 12, 1984. A beginning and ending reading of the meter was taken in order to determine the amount of postage used. At the end of March the AEA business manager, Diane Schoemaker, entered a charge of \$2,574 on the AEA ledger sheet for the amount of postage used by the Committee. Diane Schoemaker has stated that she thereafter sent monthly bills to the Committee until she received payment.

The Mondale Committee explains that it treated this bill as it did all of its accounts and reported it consistently as a debt owed by the Committee. On November 20, 1984 subsequent to the filing of the complaint in this matter the Mondale Committee paid this bill in full.

86040575374

The AEA contends that the subject transaction is permitted by 11 C.F.R. § 114.9(d). Section 114.9(d) provides in full that

[p]ersons, other than those specifically mentioned in paragraphs (a) and (b) of this section, who make any use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge, as defined in 11 C.F.R. 100.7(a)(1)(iii)(B), for the use of the facilities.

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The AEA contends that its postage meter is a facility within the meaning of 11 C.F.R. § 114.9(d) and, therefore, the Mondale Committee need only reimburse the AEA for the postage used from the machine. Further, the AEA contends that it was paid in a commercially reasonable time in view of its practice of allowing non-AEA entities to use its meter and the amount of money involved.

The General Counsel contends that while a postage meter may be like a piece of office equipment, its function is quite different in that the "postage" it contains has a value similar to cash. A postage meter is a device or mechanism to print prepaid postage on mail matter, which automatically locks when the amount of postage registered therein is exhausted. Meters in the possession of postal patrons are set by postmasters for the amount of postage collected at the time of setting. Postage is a charge for postal services.^{1/} The United States Postal Service

^{1/} See generally, National Assn. of Greeting Card Publishers v. United States Postal Service, 426 U.S. 810 (1983). [Postal rates under the Postal Reorganization Act, 84 Stat. 719].

generally requires payment prior to or when such service is rendered. A postage meter merely facilitates payment of these charges. The user prepays the postal service for future charges and then uses the machine to affix a meter stamp for the correct amount at his or her convenience. The advance of postage by the AEA is, therefore, a \$2,574 loan. The issue here is the loan of money by the AEA and not simply the use of its postage meter.

The fact that the AEA considered the repayment period to be reasonable in light of its practice regarding non-AEA users of its postage meter is unavailing.

The General Counsel concludes that the AEA made a loan to the Mondale for President Committee and, therefore, violated 2 U.S.C. § 441b.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the Arkansas Education Association violated 2 U.S.C. § 441b.

June 25, 1985
Date

Charles N. Steele
Charles N. Steele
General Counsel

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April 9, 1985

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

RE: MUR 1839

Dear Mr. Steele:

This letter and the accompanying documents constitute the response of the Mondale for President Committee, Inc. ("MPC" or "Committee") to the FEC's letter of March 25, 1985. The letter informed MPC that the Commission found that there is reason to believe that MPC violated 2 U.S.C. Section 441b because "it appears that . . . [the Committee] accepted a prohibited contribution" from the Arkansas Education Association (AEA). For the reasons set forth below, the Commission should rescind its finding of reason to believe, find no probable cause to believe that MPC violated the Act or take no further action in this matter.

I. THE FACTS OF THIS CASE DO NOT DEMONSTRATE ANY VIOLATION OF THE ACT

The salient facts of MUR 1839 are that: (1) the AEA agreed to allow MPC to use its office equipment, i.e., a postage meter; (2)

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MPC agreed to pay the full cost associated with its use of the equipment within a commercially reasonable time; (3) AEA took a reading before MPC used the equipment; (4) MPC used the equipment; (5) AEA took a reading after MPC used the equipment; (6) AEA billed MPC the normal and usual rental charge for the use of the equipment; and (7) MPC reimbursed AEA within a commercially reasonable time for the use of the equipment. Certainly, these facts demonstrate no violation of the Act. Instead of violation, these facts illustrate a textbook example of compliance with the Act.

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As the attached affidavit makes clear, in the interim period between the time MPC received the AEA bill and the time MPC paid it, MPC regularly reported the debt to the Commission. See Affidavit of P. Christine Brewer. Furthermore, as Ms. Brewer states in her affidavit, MPC accorded the AEA debt the same treatment as all other outstanding accounts payable. That the Commission should choose to find reason to believe against this Committee on these facts is especially ironic given that MPC has discharged its debts in full perhaps more quickly than any other recent Democratic presidential primary committee.

Given the facts of this case, MPC is at a loss to understand the basis for the Commission's reason to believe finding. To the extent that the Commission's finding rests on facts, rather than a novel interpretation of its regulations, the Commission's finding is without a reasonable basis.

II. AS A MATTER OF LAW, USE OF A POSTAGE METER IS GOVERNED BY THE COMMISSION'S REGULATIONS AT 11 C.F.R. 114.9(d) AND THE COMMISSION ACTS UNREASONABLY, ARBITRARILY, AND CAPRICIOUSLY IF IT APPLIES THE REGULATIONS AT 11 C.F.R. 114.9(e) TO THIS SITUATION BECAUSE SECTION 114.9(e) PERTAINS ONLY TO TRANSPORTATION SERVICES

The Commission's regulations at 11 C.F.R. Section 114.9(d) mandate that:

Persons . . . who make use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge . . .

9 This language does not restrict the types of corporate and labor
7 organization equipment or facilities which may be leased. For
3 all such equipment and facilities, the regulations specifically
5 provide that reimbursement within a commercially reasonable time is
7 the appropriate means of payment. MPC and AEA complied with this
0 regulation in every respect. Thus, there is absoluteley no
4 basis for complainant's assertion that the use of the AEA's postage
0 meter constituted a prohibited "advance".

8 The Explanation and Justification for 11 C.F.R.
2 Section 114.9(d) makes clear that the word "facilities" refers to
office equipment.¹/A postage meter is a standard piece of office
equipment like a typewriter, photocopier or desk. Like these
other items, a postage meter can be readily rented or

1/ The Explanation and Justification for 11 C.F.R. 114.9(d) provides that "a person . . . who makes any use of corporate or labor organization facilities will be required to reimburse in the amount of the normal and usual rental for the facilities. Any person who rents corporate or labor organization equipment or furniture, as for example a corporation might loan a candidate office furniture, is required to pay the normal and usual rental charge for the equipment or furniture used. (Emphasis added.)

purchased from any number of companies, e.g., Pitney-Bowes, Friden. Because a postage meter is so clearly a part of the class of things the Commission seeks to regulate with 11 C.F.R. 114.9(d), there is no justification for the Commission to treat postage meters differently from desks, typewriters or other office equipment.

There is only one instance where the Commission requires advance payment for use of corporate and labor equipment, i.e., airplanes. The regulations at 11 C.F.R. 114.9(e), which by their own terms apply only to airplanes and other means of

transportation, unequivocally state that reimbursement for transportation services must be made in advance. See 11 C.F.R. 114.9(e). These regulations demonstrate that when the Commission wished to specify reimbursement in advance of use, it clearly and unequivocally did so.

Although the notification of the reason to believe finding does not set forth any basis for the Commission's reasoning, it would seem that the Commission bases its finding on either one of two theories. The first possible theory is that in the Commission's view a postage meter is more like an airplane or other means of transportation than it is like a telephone, typewriter or other piece of office equipment. The second possible theory is that in the Commission's view the regulations at 11 C.F.R. 114.9(e), which by any reading pertain only to airplanes and other means of transportation, 2/ somehow

2/ A postage meter is not ordinarily an "airplane or other means of transportation." Moreover, absent an allegation that the AEA meter was used to transport the candidate or his agents, 11 C.F.R. 114.9(e) is, as a matter of law, inapplicable to the present case.

apply to postage meters. Regardless of the theory to which the Commission subscribes, these theories strain the limits of reasonableness and rationality. A postage meter is a postage meter, and no amount of wishing by the Commission or Complainant can turn a postage meter into an airplane. Similarly, the regulations which specify payment in advance apply only to airplanes and other means of transportation. Only promulgation of new regulations, and not Commission fiat, can prescribe a different method of payment than the one used by MPC for use of a postage meter.

CONCLUSION

For the reasons stated above, the Commission should rescind its finding of reason to believe and either find no probable cause against MPC or take no further action in this matter.

Respectfully submitted,

David M. Ifshin
General Counsel

Carolyn U. Oliphant
Carolyn U. Oliphant
Deputy General Counsel

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AFFIDAVIT OF P. CHRISTINE BREWER

P. Christine Brewer, being duly sworn, deposes and says:

1. I am the Comptroller of the Mondale for President Committee. I have held this position since 12/17/82.

2. MPC records indicate that in late May 1984 a bill for \$2,574 was received by our Finance Office from the Arkansas Education Association (AEA).

3. MPC records further indicate that this bill was paid in full in November 1984 and that MPC regularly reported to the FEC the \$2,574 owed to the AEA. See MPC Schedule D-P filed with the Commission in June, July, August, September of 1984 as well as MPC's Pre-General, Post-General, and Year-End reports.

4. This bill was paid within a commercially reasonable time. MPC has made every effort to pay all bills expeditiously. In April 1984 the Committee adopted a system for prioritizing its debts in order to assure the promptest payment possible as money became available. The AEA debt was accorded the same treatment as all other outstanding accounts payable. Moreover, MPC has discharged its debts perhaps more quickly than any other recent

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Democratic presidential primary committee. Our entire primary debt was paid off by March 1985 and all our bills were paid in full.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746.

Signed: J Christine Brewer

Executed on: 4/09/05

36040375383

GCC 7086



NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035
MARY HATWOOD FUTRELL, President
KEITH GEIGER, Vice President
ROXANNE E. BRADSHAW, Secretary-Treasurer

LEGAL SERVICES
OFFICE OF GENERAL COUNSEL

APR 8 10:57

DON CAMERON, Executive Director

April 4, 1985

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

Re: MUR 1839 - Arkansas Education Association

Dear Mr. McGarry:

On March 25, 1984, you notified me that the Commission "determined that there is reason to believe the Arkansas Education Association ["AEA"] had violated 2 U.S.C. § 441b." The Commission made this determination because "it appears that [AEA] made a prohibited contribution to the Mondale for President Committee ["MPC"] when it allowed the Committee to utilize the Association's postage meter advancing \$2,574 in postage. [AEA] took no steps beyond monthly billings to collect this amount for eight months." You invited AEA to "submit any factual or legal materials which [we] believe are relevant to the Commission's analysis of this matter." This letter is submitted on behalf of AEA in response to this invitation.

In our initial response to this MUR on December 13, 1984, we pointed out that AEA's dealings with MPC in this instance were entirely consistent with AEA's normal business practices vis-a-vis other non-AEA entities that make use of AEA's postage meter: specifically, readings of the meter were taken before and after the use by MPC; the amount owed by MPC was entered into the AEA ledger at the end of the month in which the use occurred; and MPC was billed at the beginning of each month thereafter until payment was received in November 1984.

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We asserted in our December 13, 1984 letter that this transaction complied fully with the requirements of the controlling Commission Regulation on the use of labor organization facilities by an entity such as MPC, 11 C.F.R. § 114.9(d). Inasmuch as your letter of March 25, 1985 fails to indicate why the Commission disagrees with this assertion, we can in this response only speculate as to the basis for the Commission's February 26, 1985 determination that AEA "made a prohibited contribution to the Mondale for President Committee".

One possibility is that the Commission considers postage meters to be somehow different in kind from "telephones or typewriters or ... office furniture," so as not to constitute "labor organization facilities" within the meaning of 11 C.F.R. § 114.9(d). We find nothing in the Act, the Commission's Regulations or Advisory Opinions, or common logic to support such a distinction.

Alternatively, the Commission may have concluded that the approximately 8-month gap between usage and payment is not "a commercially-reasonable time" within the meaning of 11 C.F.R. § 114.9(d). As our December 13, 1984 letter indicates, we would strongly disagree. During the period in question, AEA billed MPC on a regular monthly basis, and was assured by MPC that payment would be made as soon as possible. Again, we find nothing in the Act or the Commission's pronouncements to suggest that a labor organization must in these circumstances invest time, effort and money to institute a lawsuit or take other extraordinary action to expedite payment of a relatively small amount of money.

Finally, inasmuch as AEA acted in good faith reliance on 11 C.F.R. § 114.9(d), it should not, in any event, be subject to sanctions under the Act if the Commission now chooses to interpret this Regulation in an unduly restrictive manner. 2 U.S.C. § 438(e).

Based on the foregoing, we respectfully request that the Commission take no further action and that it close the file on this matter.

Sincerely,

Robert H. Chanin

Robert H. Chanin
General Counsel

86010375385



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 25, 1985

Robert H. Chanin, Esquire
General Counsel
National Education Association
1201 16th Street, N.W.
Washington, D.C. 20036

RE: MUR 1839
Arkansas Education Association

Dear Mr. Chanin

The Federal Election Commission notified your client on November 6, 1984, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, and your client, the Commission, on February 26, 1985, determined that there is reason to believe that your client has violated 2 U.S.C. § 441b, a provision of the Act. Specifically, it appears that your client made a prohibited contribution to the Mondale for President Committee when it allowed the Committee to utilize the Association's postage meter advancing \$2,574 in postage. Your client took no steps beyond monthly billings to collect this amount for some eight months.

You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials within ten days of your receipt of this letter.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2, of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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Letter to Robert H. Chanin, Esquire
MUR 1839
Page 2

If you have any questions, please contact Paul Reyes, the
staff member assigned to this matter at, (202) 523-4000.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 25, 1985

David Ifshin, Esquire
General Counsel
Mondale for President
2201 Wisconsin Avenue, N.W.
Washington, D.C. 20007

RE: MUR 1839
Mondale for President,
Michael Berman, Treasurer

Dear Mr. Ifshin:

The Federal Election Commission notified your client on November 6, 1984, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on February 26, 1985, determined that there is reason to believe that your client has violated 2 U.S.C. § 441b, a provision of the Act. Specifically, it appears that your client accepted a prohibited contribution from the Arkansas Education Association when it utilized a postage meter owned by the Association and was advanced \$2,574 in postage. Your client then repaid the Association for that use some eight months later.

You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials within ten days of your receipt of this letter.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2, of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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Letter to David Ifshin, Esquire
MUR 1839
Page 2

If you have any questions, please contact Paul Reyes, the
staff member assigned to this matter at, (202) 523-4000.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Procedures

860403/5389

cc: The Honorable Walter F. Mondale
c/o David Ifshin, Esquire
2201 Wisconsin Avenue
Washington, D.C. 20007

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

ED
REC
SECRETARY

25 MAR 11 P 2:16

In the Matter of)
Mondale for President)
Committee)
Michael S. Berman, Treasurer)
Arkansas Education Association)

MUR 1839

General Counsel's Report

I. BACKGROUND

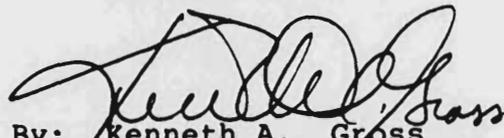
On February 26, 1985, the Commission found that there is reason to believe that the respondents in the above captioned matter violated 2 U.S.C. § 441b. The Commission also directed the Office of General Counsel to send appropriate letters pursuant to its findings.

Attached for Commission approval are proposed letters to the respondents and proposed questions and requests for documents.

II. RECOMMENDATION

Approve and send the attached proposed letters, questions and requests for documents.

Charles N. Steele
General Counsel


By: Kenneth A. Gross
Associate General Counsel

March 11, 1985
DATE

Attachments
Proposed Letters (2) with
Questions and Document Requests

35040575390



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Robert H. Chanin, Esquire
Office of Education Association
General Counsel
Arkansas Education Association
1201 16th Street, N.W.
Washington, D.C. 20036

RE: MUR 1839
Arkansas Education Association

Dear Mr. Chanin

The Federal Election Commission notified your client on November 6, 1984, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, and your client, the Commission, on February 26, 1985, determined that there is reason to believe that your client has violated 2 U.S.C. § 441b, a provision of the Act. Specifically, it appears that your client made a prohibited in-kind contribution to the Mondale for President Committee.

Your client's response to the Commission's initial notification of this complaint did not provide complete information regarding the matters in question. Please submit answers to the enclosed questions and the accompanying documents requested within 10 days of receipt of this letter. Statements should be submitted under oath.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2, of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

Attachment

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Letter to Robert H. Chanin, Esquire
MUR 1839
Page 2

If you have any questions, please contact Paul Reyes, the
staff member assigned to this matter at, (202) 523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Procedures

36040575392

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Arkansas Education) MUR 1839
Association)
1500 West Forth Street)
Little Rock, Arkansas 72201)

INTERROGATORIES AND DOCUMENTS REQUESTED

With respect to the use of a postage meter furnished to the Mondale for President Committee (hereinafter, the "Committee") by the Arkansas Education Association (hereinafter, the "AEA"), the Office of General Counsel requests that you answer the following questions.

1. What, if any, amount of postage did the meter contain when the Committee used it during the period in question in this matter, approximately March 12, 1984 through November 1984?
2. State the complete terms of any agreement entered into, orally or in writing, by the AEA with the Committee for the use of the postage meter. Include, for example, any reimbursement schedule, number of times to be used, the name of any AEA official who authorized the use of the postage meter, and whether the Committee used the entire device if it is of the type made up of more than one unit.
3. State the name, address and telephone number of any person who operated the meter for the Committee. Identify each such person additionally by title.
4. State the location of use of the meter. (E.G., at AEA Headquarters in the mail room, at Committee headquarters in the Chairman's office, etc.)
5. State the number of pieces mailed by the Committee using the AEA postage meter and the rate at which postage was affixed.
6. State the rate at which the AEA purchases postage from the United States Postal Service and the rate at which the Committee purchases postage from the United States Postal Service.
7. State whether any other labor organization or any corporation provided the same or substantially the same service to the Committee as the AEA. Identify by name, address and telephone number any such organization.

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INTERROGATORIES
TO
The Arkansas Education Association
MUR 1839
Page Two

8. State whether the AEA has an established Association policy regarding the use of its postage meter by non-AEA entities.
- a) If the answer is yes, explain the terms of any such policy and identify by name, address and telephone number the organizations and their representatives who have ever used the AEA postage meter.
 - b) State the date any entity listed in the answer to Interrogatory number 8.a) above used the AEA's postage meter, the amount charged for such use, the number of billings made to each group on a given basis-i.e., weekly, monthly, etc., and whether each entity paid the full amount owed.
9. State the source from which the AEA acquired its postage meter and the terms under which it was acquired, e.g., rented, leased from Pitney Bowes regional sales office # x, located at 1234 Main Street, Little Rock.

DOCUMENTS REQUESTED

With respect to the use by the Committee of a postage meter furnished by the AEA and to the Interrogatories above, please provide any documentation available to the AEA, including but not limited to letters, contracts, brochures, messages, desk notes, bills, invoices, etc. Legible copies are acceptable provided that the front and back side of any two sided material is provided.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

David Ifshin, Esquire
General Counsel
Mondale for President
2201 Wisconsin Avenue, N.W.
Washington, D.C. 20007

RE: MUR 1839
Mondale for President,
Michael Berman, Treasurer

Dear Mr. Ifshin:

The Federal Election Commission notified your client on November 6, 1984, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on February 26, 1985, determined that there is reason to believe that your client has violated 2 U.S.C. § 441b, a provision of the Act. Specifically, it appears that your client accepted a prohibited contribution in-kind from the Arkansas Education Association.

Your client's response to the Commission's initial notification of this complaint did not provide complete information regarding the matters in question. Please submit answers to the enclosed questions and the accompanying documents requested within 10 days of receipt of this letter. Statements should be submitted under oath.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2, of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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Letter to David Ifshin, Esquire
MUR 1839
Page 2

If you have any questions, please contact Paul Reyes, the staff member assigned to this matter at, (202) 523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Procedures

36040575396

cc: The Honorable Walter F. Mondale
c/o David Ifshin, Esquire
2201 Wisconsin Avenue
Washington, D.C. 20007

6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mondale for President) MUR 1839
Committee)
Michael S. Berman,)
Treasurer)

INTERROGATORIES AND DOCUMENTS REQUESTED

With respect to the use of a postage meter furnished to the Mondale for President Committee (hereinafter, the "Committee") by the Arkansas Education Association (hereinafter, the "AEA"), the Office of General Counsel requests that you answer the following questions.

1. What, if any, amount of postage did the meter contain when the Committee used it during the period in question in this matter, approximately March 12, 1984 through November 1984?
2. State the complete terms of any agreement entered into, orally or in writing, with the AEA for the use of the postage meter. Include, for example, any stated reimbursement schedule, number of times to be used, the name of any AEA official who authorized the use of the postage meter and whether the Committee used the entire device if it is of the type made up of more than one unit.
3. State the name, address and telephone number of any person who operated the meter for the Committee. Identify each such person additionally by title.
4. State the location of use of the meter. (e.g., at AEA Headquarters in the mail room, at Committee headquarters in the Chairman's office, etc.)
5. State what it would have cost the Committee to acquire a similar machine in the area where the AEA is located. Identify by name and location each business from which the Committee could have reasonably rented, purchased, leased or otherwise acquired a similar machine.
6. State the number of pieces mailed using the AEA postage meter and the rate at which postage was affixed.

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INTERROGATORIES
TO
The Mondale for President
Committee
MUR 1839
Page Two

7. State the rate at which the AEA purchases postage from the United States Postal Service and the rate at which the Committee purchases postage from the United States Postal Service.
8. State whether any other labor organization or any corporation provided the same or substantially the same postage meter service to the Committee as that provided by AEA. Identify by name, address and telephone number any such organization.
9. If Interrogatory number 8 above is answered in the affirmative, please provide the same information requested in Interrogatories number 1 through 7 above for each entity listed in Interrogatory number 8.

DOCUMENTS REQUESTED

With respect to the use of a postage meter furnished by the AEA to the Committee and the Interrogatories above, please provide any documentation available to the Committee, including but not limited to letters, contracts, brochures, messages, desk notes, etc. Legible copies are acceptable provided that the front and back side of any two sided material is provided.

86040575398

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mondale for President Committee, Inc.)	MUR 1839
Michael S. Berman, Treasurer)	
Arkansas Education Association)	
Ms. Peggy Nabors, President)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

The National Right to Work Committee ("NRWC"), William A. Wilson, treasurer, alleges that in violation of 2 U.S.C. § 441b, the Arkansas Education Association ("AEA") advanced \$2,574 in postage, in connection with the 1984 primary election to the Mondale for President Committee, Inc., (the "Mondale Committee"), and Michael S. Berman, as treasurer. The NRWC also alleges that the Mondale Committee violated 2 U.S.C. § 441b by accepting this contribution. In response to notification of this complaint both respondents requested extensions of time in which to file answers, which answers were timely received and are analyzed below.

II. FACTUAL AND LEGAL ANALYSIS

Section 441b, Title 2 United States Code, prohibits labor organizations from making, and candidates from accepting, a contribution or expenditure in connection with a Federal election. Sections 431(8) and (9), Title 2 United States Code, define "contribution" and "expenditure" to include any direct or indirect payments, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party or organization, in connection with..." any Federal election.

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Labor organizations are thus prohibited from making any contributions or expenditures to a Federal candidate. NRWC maintains that the advance of postage was not in the regular and normal method of doing business; NRWC states that a 'survey' it took of four mailing houses in the Washington, D.C. area indicates that the normal business practice by mail houses is not to advance postage to political committees under any circumstance. Thus the NRWC concludes that the advancing of postage by AEA to the Mondale Committee is an unlawful union "subsidy" of the Mondale Committee.

Whether treated as an advance, something of value, or a gift of services, unless exempted from the prohibition of 2 U.S.C. § 441b, any contributions or expenditures made with treasury funds by a labor organization in connection with a federal election are impermissible. Certain exceptions to this broad prohibition are found in the Commission's Regulations at 11 C.F.R. § 114.9.

The Mondale Committee response relies on the exemption found in 11 C.F.R. § 114.9(d) for the use or rental of corporate or labor organization facilities by persons other than stockholders, or employees of corporations and members or employees of labor organizations. This exemption permits persons to use the facilities of corporations or labor organizations, such as typewriters or furniture, for activity in connection with a federal election. The use of facilities is not considered a prohibited contribution if the corporation or labor organization is reimbursed within a commercially reasonable time for the

amount of the normal and usual rental charge. "Normal and usual rental charge" is defined at 11 C.F.R. § 100.7(a)(1)(iii)(B), as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution. The Mondale Committee observes that the regulation does not limit the type of "facilities" that may be used and says that on or about March 12, 1984 it arranged to use AEA's postage meter for a mailing. The Mondale Committee says that AEA agreed to bill the Committee and did so promptly and regularly until the debt was paid in full on November 20, 1984.

The AEA response confirms the explanation of the Mondale Committee. The AEA also submitted an unnotarized Declaration of Diane Schoemaker, the Business Manager of the AEA. Ms. Schoemaker says that a beginning and ending reading of the AEA postage meter was taken in order to determine the amount of postage used by the Mondale Committee. At the end of March 1984, she entered a \$2,574 charge on the AEA ledger sheet for the actual amount of postage used by the Mondale Committee. She says further that she billed the Committee every month thereafter until the bill was paid in full. Even though no part of this bill was paid until November 1984, some eight months later, she says that she did not consider an alternative course of action for collection of the sum beyond monthly billing because she did not consider the period of time inordinate. Ms. Schoemaker states that it is common for other non-AEA entities to use the

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AEA postage meter and that she followed the same practice in this transaction as she normally does for other entities.

The Office of General Counsel believes that the requirements of 11 C.F.R. §114.9(d) were met in the subject transaction and therefore recommends that the Commission find no reason to believe that either respondent violated the Federal Election Campaign Act of 1971, as amended. 11 C.F.R. § 114.9(d) permits the AEA to allow persons, such as the Mondale Committee, to use its facilities and a postage meter is a typical piece of office equipment, like typewriters. Under the circumstances, the repayment period was not inordinately long and the amount owed has been paid in full.

III. RECOMMENDATIONS

1. Find no reason to believe that the Mondale for President Committee and Michael S. Berman violated 2 U.S.C. § 441b.
2. Find no reason to believe that the Arkansas Education Association violated 2 U.S.C. § 441b.
3. Close the file.
4. Approve and send the attached, proposed letters.

Charles N. Steele
General Counsel

February 15, 1985
Date

BY:

Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

Attachments
Responses
Proposed Letters

86040375402

December 5, 1984

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

RE: MUR 1839

Dear Mr. Steele:

3 5 0 4 0 3 7 5 4 0 3
This letter constitutes the Response of the Mondale for President Committee, Inc. (MPC) to the complaint filed by William A. Wilson on behalf of the National Right to Work Committee (NRWC) on November 2, 1984. Complainant alleges that the Arkansas Education Association (AEA) made an "unlawful union subsidy" to MPC under 2 U.S.C. Section 441b because AEA "advanced" \$2574 in postage costs to MPC. Complaint at 1. However, as explained below, the transaction with AEA was fully in accord with the Commission's regulations at 11 C.F.R. Section 114.9(d). Because MPC neither accepted an unlawful subsidy nor committed a violation of 11 C.F.R. Section 114.9(d), MPC requests the Commission to find no reason to believe that a violation of the Act occurred and to dismiss the NRWC's complaint.

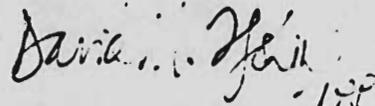
The Commission's regulations at 11 C.F.R. Section 114.9(d) mandate that:

Persons . . . who make use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the

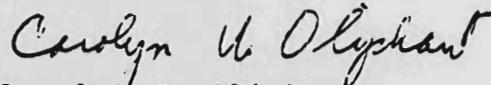
Attachment 1

For these reasons, MPC respectfully requests that the Commission find no reason to believe that a violation of the Act has occurred and dismiss this complaint.

Sincerely,



David M. Ifshin
General Counsel



Carolyn U. Oliphant
Deputy General Counsel

85040575405



NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D.C. 20036 • (202) 822-7033
 MARY HATWOOD FUTRELL, President
 KEITH GEIGER, Vice President
 ROXANNE E. BRADSHAW, Secretary-Treasurer

FEDERAL ELECTION COMMISSION
 GLEC# 6038
 LEGAL SERVICES: 57
 OFFICE OF GENERAL COUNSEL

December 13, 1984

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

Re: MUR 1839

Dear Mr. Steele:

On November 6, 1984 you wrote to Peggy Nabors, President, Arkansas Education Association ("AEA") regarding the above MUR. I have been authorized to represent AEA, and this response is submitted on its behalf. (A Designation of Counsel statement has been filed previously.)

MUR 1839 is based upon a complaint filed by the National Right to Work Committee ("NRWC"). The complaint alleges that AEA advanced \$2,574 in postage to the Mondale Campaign ("Campaign") and that this constituted an in-kind contribution in violation of Section 441b of the Federal Election Campaign Act of 1971, as amended ("Act"). Although AEA did allow the Campaign to use its postage meter, NRWC's assertion that this constituted a violation of the Act is, for the reasons set forth below, wholly without merit.

The controlling Commission regulation is 11 C.F.R. § 114.9(d), which provides as follows:

[P]ersons . . . who make use of . . . labor organization facilities . . . for activity in connection with a Federal election are required to reimburse . . . the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge as defined in 11 C.F.R. § 100.7(a)(1)(iii)(B), for the use of the facilities.

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Charles N. Steele

December 13, 1984

Page 2

As the attached declaration of Diane Schoemaker makes clear, the transaction between AEA and the Campaign complied fully with the requirements of the above regulation.

To begin with, AEA charged the Campaign the actual amount of the postage used, which obviously satisfies the "normal and usual rental charge" requirement. In accordance with its regular billing procedure, AEA initially billed the Campaign for the \$2,574 in April, 1984, and sent follow-up bills each month thereafter until the bill was paid in November, 1984. As Ms. Schoemaker's declaration indicates, this is the approach AEA would have taken with any outside group which made use of AEA facilities; that is, it would bill promptly after such use and would continue to bill on a monthly basis until payment was received. Only if the bill remained unpaid for an inordinate period of time would AEA consider alternative courses of action to collect the amount in question. Inasmuch as this was not the case with the \$2,574 (it was paid within a "commercially reasonable time") it was unnecessary for AEA to consider such alternative courses of action.

The sole basis for NRWC's complaint is the allegation that the transaction between AEA and the Campaign was not "similar to a normal business transaction" according to the standards of "four major mailing companies in the Washington, D.C. metropolitan area," which were survey[ed] by William Wilson, NRWC Vice President, in order to ascertain "industry practice concerning the making of postage advances to political committees." According to Wilson, "[e]ach of [the] companies [surveyed] indicated that they never, under any circumstances, advanced postage to a political committee." Even if we were to assume, arguendo, that this so-called survey of Washington, D.C. companies was somehow indicative of industry practice in Arkansas, it would in any event be totally irrelevant vis-a-vis the application of 11 C.F.R. § 114.9(d). This regulation does not require that labor organizations follow "industry practice," but expressly sanctions reimbursement if certain requirements are met. As we have demonstrated, those requirements were met here.

For the foregoing reasons, the Commission should find no reason to believe AEA violated the Act and should dismiss this complaint.

Sincerely,



Robert H. Chanin
General Counsel

RC:gm

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DECLARATION OF DIANE SCHOEMAKER

1. I am the Business Manager of the Arkansas Education Association ("AEA"). In this capacity I have the responsibility for maintaining the records of AEA's business and financial transactions, including recording and collecting amounts owed to AEA.

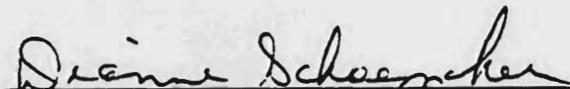
2. On March 12, 1984, the Mondale Campaign ("Campaign") made use of AEA's postage meter. A beginning and ending reading of the meter was taken in order to determine the amount of postage used.

3. At the end of March, I entered a \$2,574 charge on the ledger sheet for the amount of postage used by the Campaign.

4. In April, and every month thereafter until I received payment, I sent bills to the Campaign for the \$2,574.

5. It is common for non-AEA entities to make use of AEA's postage meter (and other facilities) and the transaction with the Campaign was entirely consistent with AEA's normal business practice vis-a-vis these other entities. Specifically, I bill promptly after the use of the facility and continue to bill on a monthly basis until I receive payment. I would not consider alternative courses of action beyond the monthly billing unless I did not receive payment after an inordinate period of time. Inasmuch as payment was received from the Campaign within what I considered to be a reasonable time, it was not necessary to consider alternative courses of action.

I hereby declare under penalty of perjury that to the best of my knowledge and belief the foregoing is true and correct.


DIANE SCHOEMAKER

December 11, 1984

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NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035
 MARY HATWOOD FUTRELL, President
 KEITH GEIGER, Vice President
 ROXANNE E. BRADSHAW, Secretary-Treasurer

RECEIVED AT THE FEC
 GLL#6038
 LEGAL SERVICES: 57
 OFFICE OF GENERAL COUNSEL

December 13, 1984

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

Re: MUR 1839

Dear Mr. Steele:

On November 6, 1984 you wrote to Peggy Nabors, President, Arkansas Education Association ("AEA") regarding the above MUR. I have been authorized to represent AEA, and this response is submitted on its behalf. (A Designation of Counsel statement has been filed previously.)

MUR 1839 is based upon a complaint filed by the National Right to Work Committee ("NRWC"). The complaint alleges that AEA advanced \$2,574 in postage to the Mondale Campaign ("Campaign") and that this constituted an in-kind contribution in violation of Section 441b of the Federal Election Campaign Act of 1971, as amended ("Act"). Although AEA did allow the Campaign to use its postage meter, NRWC's assertion that this constituted a violation of the Act is, for the reasons set forth below, wholly without merit.

The controlling Commission regulation is 11 C.F.R. § 114.9(d), which provides as follows:

[P]ersons . . . who make use of . . . labor organization facilities . . . for activity in connection with a Federal election are required to reimburse . . . the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge as defined in 11 C.F.R. § 100.7(a)(1)(iii)(B), for the use of the facilities.

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Charles N. Steele
December 13, 1984
Page 2

As the attached declaration of Diane Schoemaker makes clear, the transaction between AEA and the Campaign complied fully with the requirements of the above regulation.

To begin with, AEA charged the Campaign the actual amount of the postage used, which obviously satisfies the "normal and usual rental charge" requirement. In accordance with its regular billing procedure, AEA initially billed the Campaign for the \$2,574 in April, 1984, and sent follow-up bills each month thereafter until the bill was paid in November, 1984. As Ms. Schoemaker's declaration indicates, this is the approach AEA would have taken with any outside group which made use of AEA facilities; that is, it would bill promptly after such use and would continue to bill on a monthly basis until payment was received. Only if the bill remained unpaid for an inordinate period of time would AEA consider alternative courses of action to collect the amount in question. Inasmuch as this was not the case with the \$2,574 (it was paid within a "commercially reasonable time") it was unnecessary for AEA to consider such alternative courses of action.

The sole basis for NRWC's complaint is the allegation that the transaction between AEA and the Campaign was not "similar to a normal business transaction" according to the standards of "four major mailing companies in the Washington, D.C. metropolitan area," which were survey[ed]" by William Wilson, NRWC Vice President, in order to ascertain "industry practice concerning the making of postage advances to political committees." According to Wilson, "[e]ach of [the] companies [surveyed] indicated that they never, under any circumstances, advanced postage to a political committee." Even if we were to assume, arguendo, that this so-called survey of Washington, D.C. companies was somehow indicative of industry practice in Arkansas, it would in any event be totally irrelevant vis-a-vis the application of 11 C.F.R. § 114.9(d). This regulation does not require that labor organizations follow "industry practice," but expressly sanctions reimbursement if certain requirements are met. As we have demonstrated, those requirements were met here.

For the foregoing reasons, the Commission should find no reason to believe AEA violated the Act and should dismiss this complaint.

Sincerely,

Robert H. Chanin *gk*

Robert H. Chanin
General Counsel

RHC:gm

96040375410

DECLARATION OF DIANE SCHOEMAKER

1. I am the Business Manager of the Arkansas Education Association ("AEA"). In this capacity I have the responsibility for maintaining the records of AEA's business and financial transactions, including recording and collecting amounts owed to AEA.

2. On March 12, 1984, the Mondale Campaign ("Campaign") made use of AEA's postage meter. A beginning and ending reading of the meter was taken in order to determine the amount of postage used.

3. At the end of March, I entered a \$2,574 charge on the ledger sheet for the amount of postage used by the Campaign.

4. In April, and every month thereafter until I received payment, I sent bills to the Campaign for the \$2,574.

5. It is common for non-AEA entities to make use of AEA's postage meter (and other facilities) and the transaction with the Campaign was entirely consistent with AEA's normal business practice vis-a-vis these other entities. Specifically, I bill promptly after the use of the facility and continue to bill on a monthly basis until I receive payment. I would not consider alternative courses of action beyond the monthly billing unless I did not receive payment after an inordinate period of time. Inasmuch as payment was received from the Campaign within what I considered to be a reasonable time, it was not necessary to consider alternative courses of action.

I hereby declare under penalty of perjury that to the best of my knowledge and belief the foregoing is true and correct.


DIANE SCHOEMAKER

December 11, 1984

35040375411

December 5, 1984

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

RE: MUR 1839

Dear Mr. Steele:

26040375412
This letter constitutes the Response of the Mondale for President Committee, Inc. (MPC) to the complaint filed by William A. Wilson on behalf of the National Right to Work Committee (NRWC) on November 2, 1984. Complainant alleges that the Arkansas Education Association (AEA) made an "unlawful union subsidy" to MPC under 2 U.S.C. Section 441b because AEA "advanced" \$2574 in postage costs to MPC. Complaint at 1. However, as explained below, the transaction with AEA was fully in accord with the Commission's regulations at 11 C.F.R. Section 114.9(d). Because MPC neither accepted an unlawful subsidy nor committed a violation of 11 C.F.R. Section 114.9(d), MPC requests the Commission to find no reason to believe that a violation of the Act occurred and to dismiss the NRWC's complaint.

The Commission's regulations at 11 C.F.R. Section 114.9(d) mandate that:

Persons . . . who make use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the

amount of the normal and usual rental charge
. . .

There is no restriction in the regulations as to the types of corporate and labor organization equipment or facilities which may be leased. For all such equipment and facilities, the regulations specifically provide that reimbursement within a commercially reasonable time is the appropriate means of payment.1/ MPC and AEA complied with this regulation in every respect. Thus, there is absolutely no basis for complainant's assertion that the use of the corporate postage meter constituted a prohibited "advance."

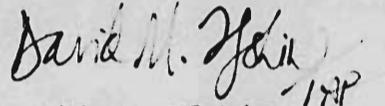
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The transaction questioned by Complainant occurred on or about March 12, 1984. MPC arranged to use AEA's postage meter for a mailing. It was understood that AEA would bill MPC the normal and usual charge for the use of the postage meter and that MPC would pay AEA within a commercially reasonable time. A reading of the postage meter was taken before and after MPC's use of the machine. The AEA billed MPC promptly and regularly for the amount owed, and MPC reimbursed AEA within a commercially reasonable time.2/

1/ In the one instance where the Commission requires advance payment for use of corporate and labor equipment, i.e., airplanes, the regulations unequivocally state that reimbursement must be made in advance. See 11 C.F.R. 114.9(e).

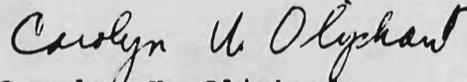
2/ The AEA bill was paid in full on November 20, 1984. MPC has regularly and expeditiously liquidated its obligations.

For these reasons, MPC respectfully requests that the Commission find no reason to believe that a violation of the Act has occurred and dismiss this complaint.

Sincerely,



David M. Ifshin
General Counsel



Carolyn U. Oliphant
Deputy General Counsel

R 6 0 4 0 5 7 5 4 1 4

SENSITIVE

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

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARY

84 DEC 6 P 1:54

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY
OGC TO THE COMMISSION 12/1/84 - 1:50

MUR NO. 1839
DATE COMPLAINT RECEIVED BY
OGC October 31, 1984
DATE OF NOTIFICATION TO
RESPONDENT November 6, 1984
STAFF MEMBER
Paul Reyes

COMPLAINANT'S NAME: National Right to Work Committee
William A. Wilson, Treasurer

RESPONDENTS' NAMES: Mondale for President Committee, Inc.
Michael S. Berman, Treasurer
Arkansas Education Association
Ms. Peggy Nabors, President

RELEVANT STATUTE: 2 U.S.C. § 441b

INTERNAL REPORTS
CHECKED: Committee Reports

FEDERAL AGENCIES
CHECKED: None

SUMMARY OF ALLEGATIONS

The National Right to Work Committee ("NRWC"), William A. Wilson, treasurer, alleges that in violation of 2 U.S.C. § 441b, the Arkansas Education Association ("AEA") advanced \$2,574 in postage, in connection with the 1984 primary election, to the Mondale for President Committee, Inc. (the "Mondale Committee"), and Michael S. Berman, treasurer.

FACTUAL AND LEGAL ANALYSIS

Based on a review of the Mondale Committee's latest FEC report on file, the NRWC contends that the advance of \$2,574 has

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not been repaid by the Mondale Committee. Since AEA itself, and not a separate, segregated fund, is listed as the creditor, NRWC concludes that the AEA used general treasury funds to make the advance. As something of value, complainant asserts, postage is treated as an in-kind contribution under 11 CF.R. § 100.7(a)(4), unless it is provided on the same terms and conditions as normal business practices. NRWC treasurer Wilson states that he contacted four mailing houses in Washington, D.C. and was informed by them "that they never, under any circumstances, advanced postage to a political committee." Therefore, NRWC concludes, the advance of postage to the Mondale Committee, not being similar to a normal business transaction, violates 2 U.S.C. § 441b as an unlawful union contribution.

By letter to the General Counsel dated November 13, 1984, the Mondale Committee requested a ten day extension of time in which to file its answer to the Commission's notification of the receipt of this complaint. That request was granted and the Mondale Committee response is due on December 6, 1984.

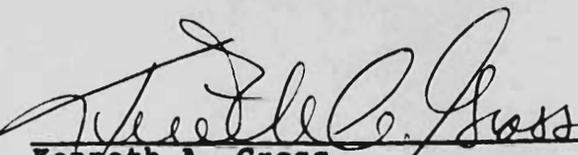
By letter to the Office of General Counsel, dated November 19, 1984, the Arkansas Education Association requested and was subsequently granted a fifteen day extension of time in which to file its answer to the Commission's notification of the receipt of this complaint. The AEA response is due on December 13, 1984.

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Upon receipt of the respondents' answers, this Office will make recommendations to the Commission regarding further action in this matter.

Charles N. Steele
General Counsel

Dec. 6, 1934
Date

BY: 
Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David Ifshin, Esquire
Carolyn Oliphant, Esquire
Mondale for President, Inc.
2201 Wisconsin Avenue, N.W.
Washington, D.C. 20007

Re: MUR 18~~38~~³⁹

Dear Mr. Ifshin and Ms. Oliphant:

This letter is to notify your client, Mondale for President, Inc., that on November 2, 1984 the Federal Election Commission received a complaint which alleges that Mondale for President, Inc. may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 18~~38~~³⁹. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against Mondale for President, Inc. in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you 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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If you have any questions, please contact Paul Reyes, the staff person assigned to this matter at (202) 523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel



By: Kenneth A. Gross
Associate General Counsel

Enclosures

1. Complaint.
2. Procedures
3. Designation of Counsel Statement

86340375419



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 6, 1984

William A. Wilson
Vice President
National Right to Work
Committee - Employee Rights
Campaign Committee
8000 Braddock Road, Suite 500
Springfield, Virginia 22160

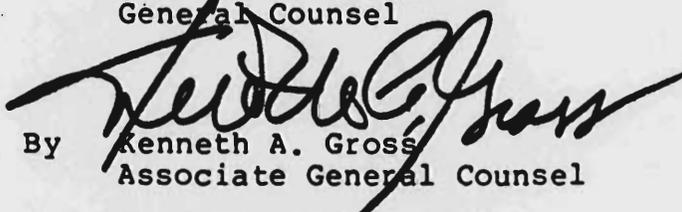
Dear Mr. Wilson:

This letter is to acknowledge receipt of your complaint which we received on October 31, 1984, against Mondale for President Committee, Inc. and the Arkansas Education Association, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Barbara A. Johnson at (202) 523-4143.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

Enclosure

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Peggy Nabors
President
Arkansas Education Association
1500 West Fourth Street
Little Rock, Arkansas 72201

Re: MUR 1839

Dear Ms. Nabors:

This letter is to notify you that on October 31, 1984 the Federal Election Commission received a complaint which alleges that the Arkansas Education Association may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1839. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against the Arkansas Education Association in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

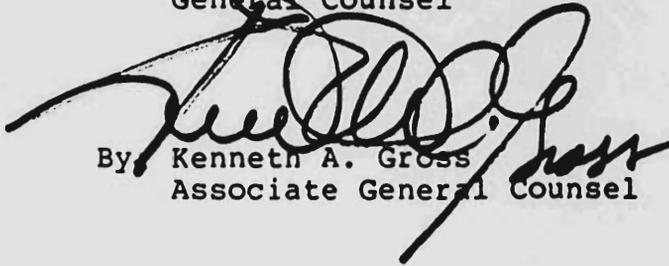
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Paul Reyes, the staff person assigned to this matter at (202) 523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel



By, Kenneth A. Gross
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

860403/5422

RECEIVED AT THE FEC
HAND DELIVERED
84 OCT 30 11 53 AM '84

BEFORE THE
FEDERAL ELECTION COMMISSION

THE NATIONAL RIGHT TO WORK COMMITTEE)
8001 Braddock Road, Suite 500)
Springfield, VA 22160)
(703) 321-9820,)

Complainant,)

v.)

WALTER F. MONDALE and MONDALE)
FOR PRESIDENT CAMPAIGN COMMITTEE)
2201 Wisconsin Avenue, N.W.)
Washington, DC 20007)

and)

ARKANSAS EDUCATION ASSOCIATION)
1500 West Fourth Street)
Little Rock, AR 72201,)

Respondents.)

MUR

1839

84 OCT 31 9:40

GENERAL COUNSEL

COMPLAINT

1. The National Right To Work Committee, Complainant, hereby requests an investigation into the matters alleged herein pursuant to 2 U.S.C. § 437g. Respondents are Walter F. Mondale, the Mondale for President Campaign Committee, and the Arkansas Education Association (AEA). The addresses of the Complainant and Respondents are set forth above.

2. During this year's primary campaign for the Presidential nomination, AEA advanced \$2574 in postage to the Mondale campaign. To date, this advance has not been repaid. See, attached excerpt from the Mondale Campaign's latest FEC report.

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3. Since the AEA itself, rather than any separate segregated fund, is listed as the creditor, the conclusion can be drawn that general treasury funds of AEA were used to make this advance.

4. An advance of anything of value to a candidate for federal office is treated as an in-kind contribution, unless provided on the same terms and conditions as a normal business transaction. 11 C.F.R. § 100.7(a)(1)(iii).

5. The undersigned, William A. Wilson, contacted four major mailing companies in the Washington, D.C. metropolitan area: E.U. Services; Stewart mailing; Diversified Mailing Services; and Metro Printing and Mailing. These companies were asked about the industry practice concerning the making of postage advances to political committees. Each of these companies indicated that they never, under any circumstances, advanced postage to a political committee.

6. The advancing of postage by AEA to the Mondale campaign, not being similar to a normal business transaction, constitutes an unlawful union subsidy of the Mondale campaign under 2 U.S.C. § 441b.

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7. WHEREFORE, Complainant prays that this violation be remedied and that Respondents be assessed an appropriate penalty.

THE NATIONAL RIGHT TO WORK COMMITTEE

By: William A. Wilson
William A. Wilson, Vice President

The foregoing Complaint was subscribed and sworn to before me this 29th day of October, 1984, by William A. Wilson as Vice President of The National Right To Work Committee.

Lorraine C. Colson
Notary Public

My Commission expires on November 30, 1987.

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**DEBTS AND OBLIGATIONS
 EXCLUDING LOANS**

Use separate
 title(s) for
 category
 the detailed
 summary page.

NAME OF COMMITTEE (in Full)	OUTSTANDING BALANCE BEGINNING THIS PERIOD	DATE AND AMOUNT INCURRED THIS PERIOD	PAYMENT THIS PERIOD	OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD
MONDALE FOR PRESIDENT COMMITTEE				
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor Angie's 11700 Wilshire Boulevard Los Angeles, California 90025	2953.31	-0-	-0-	2953.31
Nature of Debt (Purpose): food				
B. Full Name, Mailing Address and Zip Code of Debtor or Creditor Appel Rental Services, Inc. 965 Liberty Avenue Pittsburgh, Pennsylvania 15222	174.50	0-	9/26/84 174.50	-0-
Nature of Debt (Purpose): equipment rental				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor Ardmore Area Trades and Lbr. Cncl. Post Office Box 2418 Ardmore, Oklahoma 73401	106.41	-0-	-0-	106.41
Nature of Debt (Purpose): telephones				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor Arkansas Education Association 1500 West Fourth Street Little Rock, Arkansas	2574.00	-0-	-0-	2574.00
Nature of Debt (Purpose): postage				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor Arkansas Louisiana Gas Company Post Office Box 751 Little Rock, Arkansas 72203	1084.15	-0-	-0-	1084.15
Nature of Debt (Purpose): utilities				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor Armies Electronics Inc. 316 Federal Plaza West Youngstown, Ohio 44503	275.00	-0-	9/26/84 275.00	-0-
Nature of Debt (Purpose): equipment rental				
1) SUBTOTALS This Period This Page (optional)				
2) TOTAL This Period (last page this line only)				
3) TOTAL OUTSTANDING LOANS from Schedule C-P (last page only)				

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FEDERAL ELECTION COMMISSION

1325 K STREET NW
WASHINGTON, D.C. 20463

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THIS IS THE BEGINNING OF MUR # 1839

Date Filmed 4/30/86 Camera No. --- 2

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