FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

R 3.5.87

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 2051 .

87044054773

CCC #2433

WALTER M. CALINGER

ATTORNEY AT LAW

1407 SOUTH 13TH STREET

OMAHA, NEBRASKA 68108

87 JAN 8 P3:33

RECEIVED
FEDERAL ELECTION COMMISSION
GENERAL COUNSEL

TO Lawrence M. Noble
Deputy General Councel
Federal Election Commission
Washington, D.C. 20463

DATE January 1, 1987

SUBJECT Settlement Agreement
MUR 2051

Enclosed please find check for $1,000.00 per settlement agreement of MUR 2051.

Sincerely yours,

Walter M. Calinger

Walter M. Calinger

Item # ML5N72 Wheeler Graphics 1982

FOLD AT (—) TO FIT DRAWING BOARD ENVELOPE # EW10P

ALTER M. CALINGER
ATTORNEY AT LAW
1407 SOUTH 13TH STREET
OMAHA, NEBRASKA 68108

P 471 606 870

OMAHA NEBR
FEB
1997

FIRST CLASS
MAIL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2051

DATE FILMED 3/31/87 CAMERA NO. 2

CAMERAMAN AS

3 7 0 4 0 5 4 6 2 1 5

MUR 2051

FEDERAL ELECTION COMMISSION

1) Routing Slips
2) Correspondence Control Slips
3) Memos from Docket
4) RAD Referral Criteria
5) 12 Day Reports and Comments
6) 12 Day Pre-Brief Reports and Comments
7) Checking Account #s
8) Materials and statements pertaining to conciliation
9) Referral to an open MUR

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

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

Signed Jonathan M. Levin

date 3/10/87

FEC 9-21-77

8704324210

CCC #2433

WALTER M. CALINGER
ATTORNEY AT LAW
1407 SOUTH 13TH STREET
OMAHA, NEBRASKA 68108

87 JAN 8 P3:33

GENERAL

TO Lawrence M. Noble
Deputy General Councel
Federal Election Commission
Washington, D.C. 20463

DATE January 1, 1987

SUBJECT Settlement Agreement
MUR 2051

Enclosed please find check for $1,000.00 per settlement agreement of MUR 2051.

Sincerely yours,

Walter M. Calinger

Walter M. Calinger

Item # ML5N72 © Wheeler Group Inc. 1982

FOLD AT (—) TO FIT DRAWING BOARD ENVELOPE # EW10P

agc

WALTER MELVIN CALINGER
ATTORNEY AT LAW
1407 S. 13TH ST.
OMAHA, NE 68108

1899

January 5, 1987

27-2
1040

PAY TO THE ORDER OF Federal Election Commission $ 1,000.00

One Thousand Dollars 00/100 DOLLARS

Omaha National Bank
Farnam at Seventeenth
Omaha, Nebraska 68102

FOR settlement agreement: MUR 2051

Walter M. Calinger

ACC# 2433

MEMORANDUM

TO: Debra A. Reed

TO: Judy Smith

FROM: Judy Smith

FROM: Debra A. Reed

CHECK NO. 1899 (a copy of which is attached) RELATING TO MUR 2051 (Levin) AND NAME Callinger for Congress Cmte. John W. Herdzina, as treas.

WAS RECEIVED ON 1/8/87. PLEASE INDICATE THE ACCOUNT INTO WHICH IT SHOULD BE DEPOSITED:

/ / BUDGET CLEARING ACCOUNT (#95F3875.16)

/ ✓ / CIVIL PENALTIES ACCOUNT (#95-1099.160)

/ / OTHER

SIGNATURE Debra A. Reed DATE 1/9/87

82 JAN 8 AM 10:32

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
Calinger for Congress Committee	)	
John W. Herdzina, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 26, 1986, the Commission decided by a vote of 6-0 to take the following actions in MUR 2051:

1. Accept the conciliation agreement, as recommended in the General Counsel's Report signed November 20, 1986.

2. Close the file.

3. Approve the letters, as recommended in the General Counsel's Report signed November 20, 1986.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for this decision.

Attest:

11-26-86
Date

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

Received in Office of Commission Secretary:	Fri.,	11-21-86,	3:46
Circulated on 48 hour tally basis:	Mon.,	11-24-86,	11:00
Deadline for vote:	Wed.,	11-26-86,	11:00

87044021 9

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
86 NOV 10 A11:17

In the Matter of	)	
	)	
Calinger for Congress Committee	)	MUR 2051
John W. Herdzina, as treasurer	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe was found that the Calinger for Congress Committee and John W. Herdzina, as its treasurer ("Respondents"), violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in excess of $1,000 from individuals.

NOW, THEREFORE, the Commission and Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

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

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

III. Respondents enter voluntarily into this agreement with the Commission.

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

1. Respondent Calinger for Congress Committee was the principal campaign committee of Walter Calinger for election to the House of Representatives in the 1984 Democratic primary in the Second District of Nebraska.

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2. Respondent John W. Herdzina is the treasurer of Calinger for Congress.

3. On May 2, 1984, the Respondents received a $1,000 contribution from John Hughes.

4. On May 10, 1984, the Respondents received a $10,000 loan. This loan originated from a $10,000 bank loan wherein Mr. Calinger and Mr. Hughes were co-makers of the note for repayment.

5. On April 26, 1984, the Respondents received a $100 contribution from Larry and Mariana Myers bringing their yearly non-loan contribution total to $125.

6. On May 5, 1984, the Respondents received a $2,000 loan. This loan originated from a $2,000 bank loan wherein Mr. Calinger and Mr. Myers were co-makers of the note for repayment.

7. Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a.

9. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

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V. Respondents accepted contributions in excess of the limits of 2 U.S.C. § 441a(a)(1)(A) in the form of loan guarantees and direct contributions in violation of 2 U.S.C. § 441a(f).

VI. Respondents will pay a civil penalty to the Treasurer of the United States in the amount of One Thousand Dollars, pursuant to 2 U.S.C. 437g(a)(5)(A).

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

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

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

9704054222

X. This Conciliation Agreement constitutes the entire agreement between the Commission and the Respondents on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by any party or by agents of any party, that is not contained in this written agreement, shall be valid.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

BY: _____ 12/1/86
Lawrence M. Noble
Deputy General Counsel
Date

FOR THE RESPONDENTS:

F. Joseph Warin _____ November 10, 1986
F. Joseph Warin
Attorney for Callinger for
Congress Committee
Date

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Plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 2, 1986

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
Committee
John W. Herdzina, as treasurer

John J. Hughes

Dear Mr. Warin:

On November 26, 1986, the Commission accepted the conciliation agreement signed by you, on behalf of the Calinger for Congress Committee and John W. Herdzina, as treasurer, in settlement of violations of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondents and the Commission. Should you wish any such information to become part of the public record, please advise us in writing within ten days of your receipt of this letter. In addition, should you wish to submit any other legal or factual materials to be placed on the public record on behalf of your clients, please do so within ten days of your receipt of this letter.

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

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Conciliation Agreement

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 2, 1986

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within thirty days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within 10 days of your receipt of this letter.

Should you have any questions, contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

87114042025

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 2, 1986

Larry Myers
8725 Countryside Plaza
Omaha, Nebraska 68114

RE: MUR 2051
Larry Myers

Dear Mr. Myers:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within thirty days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within 10 days of your receipt of this letter.

Should you have any questions, contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

8704064225

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
Committee
John W. Herdzina, as treasurer

John J. Hughes

12/1/86

Dear Mr. Warin:

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Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Conciliation Agreement

8 7 0 1 0 5 4 3 2 2 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

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Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Larry Myers
8725 Countryside Plaza
Omaha, Nebraska 68114

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Larry Myers

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Should you have any questions, contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

12/11/86

By: Lawrence M. Noble
Deputy General Counsel

87040549229

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
Committee
John W. Herdzina, as treasurer

John J. Hughes

Dear Mr. Warin:

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Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Conciliation Agreement

8 7 0 4 7 5 4 5 2 3 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

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David Newell

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Should you have any questions, contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

87044052931

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Larry Myers
8725 Countryside Plaza
Omaha, Nebraska 68114

RE: MUR 2051
Larry Myers

Dear Mr. Myers:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within thirty days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within 10 days of your receipt of this letter.

Should you have any questions, contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

.CTION COMMISSION

D C 20463

September 29, 1986

MEMOR

TO: CHARLES STEELE
GENERAL COUNSEL

.TION: JONATHAN LEVIN

ROM: OSCELYN A. ANDERSON
COMPLIANCE CLERK
COMPLIANCE BRANCH, REPORTS ANALYSIS DIVISION

SUBJECT: MUR 2051

Please review the attached Request for Additional Information which is to be sent to the Calinger for Congress Committee for the July Quarterly Report. If no response or an inadequate response is received, a Second Notice will be sent.

Any comments which you may have must be forwarded to RAD in writing by 11:00 a.m. on Wednesday, October 1, 1986.

If comments are not received in writing by the above date and time, the RFAI notice will be sent.

If you have any questions, please contact Oscelyn A. Anderson at 376-2490. Thank you.

COMMENTS:

Attachment

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Director
Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 29, 1986

MEMORANDUM

TO: CHARLES STEELE
GENERAL COUNSEL

ATTENTION: JONATHAN LEVIN

FROM: OSCELYN A. ANDERSON
COMPLIANCE CLERK
COMPLIANCE BRANCH, REPORTS ANALYSIS DIVISION

SUBJECT: MUR 2051

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If you have any questions, please contact Oscelyn A. Anderson at 376-2490. Thank you.

COMMENTS:

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-7

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/24/86-6/30/86)

Dear Mr. Herdzina:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced Report of Receipts and Disbursements as required by the Federal Election Campaign Act. You were previously notified of the due date for this report.

It is important that you file this report immediately with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515, or the Secretary of the Senate, 232 Hart Senate Office Building, Washington, DC 20510, as appropriate. A copy of the report should also be filed with the Secretary of State or equivalent state officer of your state.

The failure to file this report may result in an audit or legal enforcement action.

If you have any questions regarding this matter, please contact Libby Cooperman on our toll-free number (800) 424-9530. Our local number is (202) 376-2480.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress Committee	)	
John W. Herdzina, as treasurer	)	
	)	MUR 2051
John J. Hughes	)	
	)	
David Newell	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 23, 1986, do hereby certify that the Commission took the following actions in MUR 2051:

1. Failed in a vote of 3-2 to pass a motion to reject recommendation number 1 in the General Counsel's report dated September 12, 1986, and instead take no further action against John J. Hughes.

   Commissioners Aikens, Elliott, and Josefiak voted affirmatively for the motion; Commissioners Harris and McGarry dissented.

2. Failed in a vote of 2-3 to pass a motion to find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A).

   Commissioners Harris and McGarry voted affirmatively for the motion; Commissioners Aikens, Elliott, and Josefiak dissented.

(continued)

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3. Decided by a vote of 5-0 to close the file as it pertains to John J. Hughes, and direct the Office of General Counsel to send an appropriate letter.

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

4. Decided by a vote of 5-0 to find probable cause to believe that the Calinger for Congress Committee violated 2 U.S.C. § 441a(f).

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

5. Decided by a vote of 5-0 to find no probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A).

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

6. Decided by a vote of 5-0 to approve the conciliation agreement for Calinger for Congress Committee as recommended in the General Counsel's report dated September 12, 1986.

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

7. Decided by a vote of 5-0 to direct the Office of General Counsel to send appropriate letters pursuant to the above actions.

   Commissioners Aikens, Elliott, Harris, Josefiak, and McGarry voted affirmatively; Commissioner McDonald was not present.

Attest:

9-23-86
Date

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

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pkm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 25, 1986

David Newell
4027 Bauman Avenue
Omaha, NE 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

This is to advise you that, after an investigation was conducted, the Commission concluded on September 23 , 1986, that there is no probable cause to believe that you violated the Act. Accordingly the file in this matter, numbered MUR 2051, has been closed as it pertains to you. This matter will become part of the public record within 30 days, after it has been closed with respect to all other respondents involved. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

If you have any questions, contact Jonathan Levin at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, NE 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

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If you have any questions, contact Jonathan Levin at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

87044062739

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 25, 1986

SPECIAL DELIVERY
RETURN RECEIPT REQUESTED

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: MUR 2051
John J. Hughes

Dear Mr. Warin:

On September 23, 1986, the Commission also considered the issue of whether there is probable cause to believe that your client, John L. Hughes, violated 2 U.S.C. § 441a(a)(1)(A). The Commission failed to reach a decision on that issue by four affirmative votes, and the Commission then determined to close the file with respect to Mr. Hughes.

The file in this matter will be made part of the public record within 30 days after this matter is closed with respect to all other respondents involved. Should Mr. Hughes wish to submit any materials to appear on the public record, please have him do so within 10 days of your receipt of this letter. The confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SPECIAL DELIVERY
RETURN RECEIPT REQUESTED

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: MUR 2051
John J. Hughes

Dear Mr. Warin:

8 7 1 4 0 5 4 3 2 1 2

On September 23, 1986, the Commission also considered the issue of whether there is probable cause to believe that your client, John J. Hughes, violated 2 U.S.C. § 441a(a)(1)(A). The Commission failed to reach a decision on that issue by four affirmative votes, and the Commission then determined to close the file with respect to Mr. Hughes.

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If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

JL
9/25/86

Charles N. Steele
General Counsel

9/25/86

87044324

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel RLd

DATE: September 15, 1986

SUBJECT: MUR 2051 - General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of September 23, 1986

Open Session _____

Closed Session XX

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[ ]	Compliance	[X]
Sensitive	[ ]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[X]	Other (see distribution below)	[ ]

SENSITIVE - CIRCULATE ON

BLUE PAPER on agenda 9-23-86

87040054224

SENSITIVE

EXECUTIVE SESSION

RECEIVED
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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of	)	
	)	
Calinger for Congress Committee	)	MUR 2051
John W. Herdzina, as treasurer	)	
	)	
John J. Hughes	)	
	)	
David Newell	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves excessive contributions in the form of direct contributions and loan guarantees by John J. Hughes, David Newell, and Larry Myers to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes and a $10,000 loan from the candidate and Mr. Hughes. The report also disclosed the receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell. In addition, the report disclosed a $100 contribution from Larry and Marianna Myers, bringing their yearly non-loan contribution total to $125, and a $2,000 loan from the candidate and Mr. Myers.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that the non-candidate individuals were considered by the

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treasurer to be "accommodating makers" or "accommodating parties" to the loans. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors, the Committee's 1984 October Quarterly Report (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, 1984, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

On June 26, 1985, the Commission found reason to believe that the Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f), and that John J. Hughes, David Newell, and Larry Myers each violated 2 U.S.C. § 441a(a)(1)(A). The Commission also voted to take no further action with respect to Mr. Myers. On that date, the Commission also approved subpoenas for documents to the Committee, Mr. Hughes, and Mr. Newell.

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All three respondents replied to the reason to believe notifications and the subpoenas. The replies of the Committee and counsel for Mr. Hughes did not contradict the fact that loan guarantees were made. The essence of the Committee's argument was that, since the guarantees were "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Counsel for Mr. Hughes made a similar argument, stating that the loan "had been effectively 'repaid'" and, therefore, no contribution resulted. Counsel also argued (apparently in anticipation of pre-probable cause conciliation) that, in three previous matters involving signatures on bank loan documents, the Commission decided to take no further action, proceeded against the Committee only and not the signatory, or approved a conciliation agreement with a relatively low civil penalty. Both the Committee and Mr. Hughes also submitted documents pertaining to the loans, including repayment checks made out jointly to the candidate and one of the three guarantors. In addition, there was a "Summary of Loan Accounts" listing the loans in chronological order and listing the names with respect to each loan as "Walt Calinger & Dave Newell," "Walt Calinger & Larry Myers," and "Walt Calinger & John Hughes." For a more detailed account of the responses of the Committee and Mr. Hughes, this Office refers the Commission to the General Counsel's Briefs, dated June 4, 1986.

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Mr. Newell stated that he signed a note because of the campaign's urgent need of funds. He stated that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed by the Campaign (sic) from expected incomes." In subsequent correspondence, he stated that he signed as a campaign manager and enclosed a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both signatories listed the campaign headquarters as their address. The note also stated that the instrument was being covered by "Personal Guarantees."

On September 19, 1985, the Commission approved entry into pre-probable cause conciliation with each of the respondents.

On June 4, 1986, this Office sent briefs to Mr. Newell and counsel for Mr. Hughes and the Committee. (In late November, the candidate designated Mr. Hughes' counsel as counsel for the Committee.) The briefs contain this Office's responses to the respondents' arguments.

On July 2, 1985, counsel for Mr. Hughes and the Committee responded to this Office's briefs. Counsel argues again that, because Mr. Hughes is no longer a guarantor of the loan and is no longer liable, no contribution has resulted.

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Counsel also argues that "the Committee's prompt action to rectify the alleged technical violation should inure to respondent's benefit." He urges the Commission "to follow the approach taken by other actions where they were arguably inadvertent technical violations which were followed up by immediate efforts to rectify the error once it was discovered." Counsel refers to a number of MURs in which the Commission made reason to believe findings but took no further action and closed the files.

In MUR 1534, it had been discovered that the Oil, Chemical and Atomic Workers International Union Political and Legislative League Fund ("the Fund") had inadvertently commingled union treasury funds with voluntary funds in amounts totalling over $21,000. While the matter was being pursued in RAD (counsel mistakenly states "[d]uring the MUR proceeding"), the Fund notified the Commission that no further commingling had occurred since the "initial infraction" and that remedial steps were already being implemented.

In MUR 1493, Thompson's People, a principal campaign committee, accepted excessive contributions from the separate segregated funds of the national and local chapters of the United Food and Commercial Workers (UFCW-ABC and Local 1262-ABC). The Commission found reason to believe that UFCW-ABC and Local 1262-ABC violated 2 U.S.C. § 441a(a)(2)(A) and that Thompson's People violated 2 U.S.C. § 441a(f). Because the money had

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been refunded, Thompson's People had terminated and the U.F.C.W. had changed its procedures to avoid making excessive contributions, the Commission took no further action.

In MUR 1517, the Cliff Dickman for Congress Committee accepted loans totalling $24,500 initially endorsed by three individuals. Subsequently, the candidate became the sole endorser of the loans. The Commission found reason to believe that the committee and the initial endorsers had violated the Act, but took no further action and closed the file.

In MUR 895, the Beloit Corporation allegedly mailed a communication to employees not eligible to receive such a communication under 2 U.S.C. § 441b(b)(2)(A). Respondents argued that the receipt by some ineligible employees was due to a lack of communication between those planning the mailing and those actually implementing it. Upon discovering that the communication had been sent to ineligible employees, Beloit promptly initiated an investigation into the matter, considered what, if any, corrective action could appropriately be taken concerning the violation, and took steps to insure that such violations would not occur in the future.

Counsel also argues that discretion should be exercised, as it was with respect to Larry Myers, and the Commission should refrain from pursuing Mr. Hughes further. Counsel states that "[t]here is no suggestion in the pleadings and, indeed, the record is otherwise, that Myers was any less involved than [Mr. Hughes].

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It is evident that neither person was active in securing or negotiating these loans." He proceeds to state that Mr. Hughes "is not an active political leader but rather is a businessman in his local midwestern community."

Counsel maintains that "fairness dictates that no further action be taken." Counsel states that Mr. Hughes is a securities dealer who is obligated to comply with federal and state securities laws and would have to disclose a signed conciliation agreement or civil penalty on filings with state and federal securities commissions. According to counsel, this would jeopardize Mr. Hughes' ability to offer securities in several states and may render him unable to "avail himself of certain exemptions to the securities laws which substantially reduce the expenses and time of a securities offer." Counsel asserts that such a situation would cause Mr. Hughes "significant financial losses."

Counsel also enclosed an affidavit from the candidate, Walter Calinger. Mr. Calinger states that after the campaign manager, Mr. Newell, contacted The Community Bank, the bank indicated to Mr. Calinger that it was willing to lend the money to the candidate "without any preconditions or requirements." Mr. Calinger states that, "on [his] own initiative, [he] asked other citizens of the Second Congressional District to act as guarantors." He states that the $5,000 loan and the $2,000 loan have been repaid completely and that he has repaid half of the $10,000 loan. He maintains that neither Mr. Hughes nor Mr.

Myers was involved in negotiations of these loans nor in any subsequent events pertaining to the loans. Mr. Calinger asserts that he was not aware of the illegality of these arrangements. Mr. Calinger also states that, upon being informed that RAD had inquired as to the guarantees, he requested that the Bank rewrite the notes with the candidate being solely responsible for the loans. With respect to the repayment checks made out jointly to the candidate and an endorser, Mr. Calinger states that the checks were created by the campaign treasurer and that neither Mr. Myers nor Mr. Hughes "had any involvement in these checks and they did not negotiate the amounts or terms of these payments."

On July 14, this Office received a reply brief from Mr. Newell. According to his response, he was employed as campaign manager of the Calinger campaign. After meeting with the campaign fundraising committee, he decided to arrange for a $5,000 loan for the campaign. Mr. Newell states:

> Since I had made the arrangements for the loan I met Mr. Calinger at the Community Bank to sign whatever papers were needed and take the check and deposit it. At the bank I was asked to sign my name to the document which is enclosed. I had no difficulty signing the document where my name was typed because my title as campaign manager was typed in, and the campaign headquarters address was typed in where it said debtor's address. I assumed I was signing in my official capacity as campaign manager. I did not realize what the word personal guarantee meant until Mr. Levine (sic) explained his interpretation to me over the phone during the Summer of 1985.

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Mr. Newell enclosed a letter from the president of The Community Bank confirming this impression. The bank president states:

> I have concluded that the April 27, 1984 note was made on behalf of the Walt Calinger for Congress Committee and that your signature was requested based on your capacity as the Campaign Manager. The personal guarantees referenced in the note were for guarantees which were discussed with Calinger but not received prior to the repayment of the loan on July 27, 1984.

Mr. Newell also discusses the possible reason for the Committee listing him as a guarantor on the reports. He states that "the only explanation I have received as to how the reporting error could have been made has been presented by Mr. Calinger whose instructions to [the treasurer] was (sic) "If in doubt, report it." Mr. Newell speculates that the treasurer may have had some doubt or "was using the other loan agreements as an example."

In order to address the existence of repayment checks made out jointly to the candidate and Mr. Newell, Mr. Newell sent an addendum to his brief stating his lack of knowledge about such checks. He maintains that he cannot understand why such checks were made out nor "can [he] confirm that it was even done."

II. LEGAL ANALYSIS

Counsel for Mr. Hughes and the Committee refers to a number of past matters in presenting his argument that the Commission should take no further action. The fact that the Commission decided to take no further action in these matters, however, is

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not determinative of whether violations of 2 U.S.C. § 441a were committed or whether the Commission should pursue this matter by proposing a conciliation agreement in this case. In fact, three out of the four matters cited in which the Commission took no further action involve very different fact patterns than this matter.

In the present matter, the rewriting of the notes did not occur until after RAD notified the Committee, citing apparently excessive contributions. In MUR 1534, the commingling violation being investigated was disclosed by the Committee without first having been discovered by the Commission. In MUR 895, respondent Beloit Corporation took corrective and preventive action prior to the filing of a complaint.

The excessive amount in this matter totalled $5,062.50, i.e., $5,000 in excessive contributions from Mr. Hughes and $62.50 from Mr. Myers. In MUR 1493, the excessive contributions involved totalled only $500 in excess of the applicable $5,000 limit of 2 U.S.C. § 441a(a)(2)(A).

Counsel states that this Office should exercise discretion and refrain from proceeding against Mr. Hughes just as it refrained from pursuing an investigation as to Mr. Myers. Mr. Myers, however, exceeded the limit of 2 U.S.C. § 441a(a)(1)(A) by only $62.50 while Mr. Hughes exceeded the limit by the significantly greater total of $5,000.

Counsel also states that this Office should not proceed against Mr. Hughes because a signed conciliation agreement or

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civil penalty may create difficulties for the respondent as a securities dealer. According to counsel, this Office should refrain from proceeding against a respondent because the penalty will have to be disclosed elsewhere and may cause difficulties in areas not under the control of the Commission. Because of the nature and deterrent purpose of conciliation agreements, however, this situation is often attendant to such settlements.

The statements presented in Mr. Calinger's affidavit do not deny that the endorsements took place. They merely contend that the guarantees were not made with intent to violate the Act and that Mr. Hughes and Mr. Myers were not deeply involved in the loan transactions.

Mr. Newell's response indicates that he signed the note for the $5,000 loan as an agent of the Committee, rather than as a co-maker. The General Counsel's Brief, in making the argument that Mr. Newell was a guarantor of the loan, stated that in considering the type of signature used by Mr. Newell, parol evidence, i.e., outside or extrinsic evidence, could be used to "prove signature by the agent in his representative capacity," according to the official comment to UCC 3-403. The extrinsic evidence available at that time indicated that Mr. Newell was considered by the Committee to have been a guarantor. The explanations and additional evidence presented by Mr. Newell in reply to the General Counsel's Brief indicate, however, that Mr. Newell was signing as the campaign manager of the Committee, not as a guarantor. Mr. Newell has provided an explanation as to

why Committee reports and documents characterized him as a co-maker or guarantor. In addition, Mr. Newell has stated that he did not even know of checks sent by the Committee indicating repayment to "Walter Calinger and David Newell."

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) of Title 2 states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." Based on the foregoing analysis, this Office recommends that the Commission find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A) and that Calinger for Congress and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f). This Office also recommends that the Commission find no probable cause to believe that David Newell violated 2 U.S.C. §441a(a)(1)(A).

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IV. RECOMMENDATIONS

1. Find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A).

2. Find probable cause to believe that the Calinger for Congress Committee violated 2 U.S.C. § 441a(f).

3. Find no probable cause to believe that David Newell violated 2 U.S.C. §441a(a)(1)(A).

4. Approve the attached conciliation agreements.

5. Approve the attached letters.

12 Sept 1986
Date

Charles N. Steele
General Counsel

Attachments
1. Brief from counsel for John Hughes and the Committee
2. Brief of David Newell
3. Proposed letter to counsel for Mr. Hughes and the Committee with proposed conciliation agreements
4. Proposed letter to David Newell

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
John Hughes	)	MUR 2051

RESPONDENT'S REPLY BRIEF

INTRODUCTION

Approximately ten months after Respondent filed its initial brief before the Federal Election Commission ("Commission") and after repeated inquiries by Respondent regarding the status of the matter, the General Counsel filed its brief in this matter on June 3, 1986. For several compelling reasons, the Commission should find that there is no probable cause that John J. Hughes violated 2 U.S.C. § 441(a)(1)(A).

Initially, this matter should be closed without any finding because the General Counsel has not pursued this matter in a timely fashion. The General Counsel has meandered around this matter for more than sixteen months. The disclosure which forms the basis of the purported violation occurred in November 1984. The Commission entered a "reason to believe" finding on July 17, 1985. On August

13, 1985, Respondent filed his brief. Nothing has happened between August 1985 and June 1986. A respondent should not be subject to sanctions and left accused without resolution at the whims of the General Counsel.1/

Respondent repeatedly made inquiries to the General Counsel, see exhibits 1 and 2, but the General Counsel failed to provide any response either in writing or orally. This leisurely approach to an enforcement practice should not be accepted by the Commission. For this reason alone, the Commission should close this matter without findings. This approach, despite the repeated urging of Respondent's counsel, has been prejudicial to the Respondent because he has been accused but the matter remained dormant. In addition, the Commission should not find probable cause because the Respondent's co-signature is not a violation of the statutory provisions. Moreover, the exercise of discretion by the General Counsel in selecting to pursue Respondent and failing to pursue a probable cause finding against an identically situated individual is abusive. Finally, the facts and circumstances surrounding this matter compel a finding of no probable cause against Respondent

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1/ It is ironic that Respondent is given strict time limits within which to respond and the General Counsel, either on its own accord or by the Commission's approval, did not respond for ten (10) months.

because a probable cause finding in this technical matter in which no harm has been incurred would be unfair, unjust and not within the spirit of the Federal Election laws.

I. STATEMENT OF CASE

Both the General Counsel and Respondent have previously outlined the statement of the case;2/ however, some aspects of the record should be amplified. Throughout the General Counsel's brief there is reference to the notes being destroyed. In fact, the Bank very simply rewrote the loans to the Calinger for Congress Committee and accordingly there cannot be anything sinister about the remaking of the notes. The use of the word "destroyed" suggests covert and illegal acts which is simply not the circumstances here. See Affidavit of Walter Calinger at ¶ 7, attached hereto as Exhibit 4. In addition, while the statement of facts in the General Counsel's brief does not differ in material respect from that of Respondent's, two significant matters must be pointed out:

1. The Committee for the candidate has repaid one-half of the $10,000 loan and there has been no default on that loan; See Affidavit of Walter Calinger at ¶¶ 5 and 8;

2/ Respondent's earlier Brief is incorporated here by reference and attached as Exhibit 3 to this brief.

2. The General Counsel goes to great pains to suggest that even as an "accommodating maker," Respondent is still liable, as a technical legal matter. This argument overlooks the critical facts of this loan. In the circumstances of this case, Respondent cannot be liable because the loan documents do not exist as it was originally created and Respondent does not currently have any guarantor relationship with the Bank. Therefore, Respondent cannot be liable. Accordingly, there cannot be a statutory violation.

II. FAIRNESS DICTATES THAT NO FURTHER ACTION BE TAKEN

Respondent incorporates by reference his earlier brief on these matters. In addition, to the issues raised in that brief, the Respondent urges the Commission not to make a probable cause finding in this matter because the imposition of penalties would result in extreme hardship to Respondent.

The Respondent is a businessman active in making securities offerings throughout the United States. As a result of being a principal in several corporations and partnerships which make securities offerings, the Respondent is required to comply with both federal and state securities laws. If the Commission were to impose a civil fine or a conciliation agreement upon Respondent, Respondent might well

have to disclose this information on its filings with state and federal securities commissions, thereby jeopardizing his status in several states and possibly excluding him from participating in the offering of securities in several states. Moreover, he will likely be unable to avail himself of certain exemptions to the securities laws which substantially reduce the expenses and time of a securities offer. Obviously, any such response to action by the FEC would cause significant financial losses by Respondent.

Consequently, imposition by the Commission of fines or of a conciliation agreement could have significant effects on Respondent and may impact on the manner in which he pursues his livelihood. Such a result far exceeds those warranted by the arguable violation in this matter. Accordingly, we urge the Commission to close this matter without any findings.

III. THE EXERCISE OF DISCRETION MANDATES THAT RESPONDENT BE TREATED FAIRLY

The General Counsel has already exercised its discretion and apparently decided not to pursue Mr. Lawrence Myers, a guarantor in the amount of $2,000 to this very campaign. The only distinguishing circumstance between Myers and the Respondent is the amount of the contribution. ($2,000 v. $10,000). There is no suggestion inn the pleadings and, indeed, the record is otherwise (See Affidavit of Walter Calinger at ¶ 9.) that Myers was any less involved than

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Respondent. It is evident that neither person was active in securing or negotiating these loans. While the General Counsel was unwilling to discuss its decision not to pursue the Myers matter, it is evident that such an exercise of discretion was fully warranted. We ask for similar consideration regarding this matter in light of the identical same situation. Respondent is not an active political leader but rather is a businessman in his local midwestern community. He has not stood for elective office, he has not held any position in any of the local or national parties, and he is not perceived to be a political insider. We ask the Commission to properly exercise its discretion and make no findings in this matter.

IV. THE COMMITTEE'S PROMPT ACTION TO RECTIFY THE ALLEGED TECHNICAL VIOLATION SHOULD INURE TO RESPONDENT'S BENEFIT

We urge the Commission to follow the approach taken by other actions where they were arguably inadvertent technical violations which were followed up by immediate efforts to rectify the error once it was discovered.

In several MURs involving inadvertent violations and immediate good-faith attempts to rectify the errors, the Commission took no further action against the respondents beyond a "reason to believe" finding, and closed the files.

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In MUR 1534, the Commission discovered through the RFAI filings that the Oil, Chemical and Atomic Workers Internatinal Union Political and Legislative League Fund ("Fund") had inadvertently comingled union treasury funds with voluntary funds in amounts approaching $22,000 in contravention of 2 U.S.C. § 441b. During the MUR proceeding, the Fund notified the Commission that since the discovery of the initial infraction, no further comingling had occurred. In addition, the Fund further noted that a new "voluntary" account was opened into which contributions had been deposited, and that the previous voluntary account which contained the comingled amounts had been closed out, the funds having been transferred to an involuntary account. Finally, the Fund informed the Commission that administrative and accounting procedures were being changed and revised in order to alleviate the current problems and guard against problems in the future.

With respect to the above, the General Counsel's Recommendation commented that:

> In this case, the subject funds have now been segregated and voluntary compliance has been achieved. We believe that since the [Fund] has corrected its accounting problems and such violations are not likely to occur in the future, the Commission should find reason to believe and close the file.

The Commission followed the General Counsel's recommendation by a 6-0 vote.

1 - p. 7 of 78

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In MUR 1493, Thompson's People, the principal campaign committee of former Congressman Frank Thompson, Jr., accepted excessive contributions from the separate segregated funds of the national and local chapters of United Food and Commercial Workers ("U.F.C.W."). The Commission's General Counsel, having recommended a "reason to believe" finding, stated:

> [H]owever, because the money has been refunded, Thompson's People terminated over a year ago, and the U.F.C.W. has changed its procedures to avoid making excessive contributions, it is recommended that no further action be taken.

The Commission, following the General Counsel's recommendation, found reason to believe and closed the file by a vote of 5-1. The reasonableness of the Commission's decision is apparent. We urge the Commission to adopt a similarly reasonable conclusion in this matter where the Respondent was unwittingly inculpated.

The Commission has taken other action that has implications for its decision in this matter. In MUR 1517, the Cliff Dickman for Congress Committee, relying on erroneous legal advice, accepted loans totalling $20,500, endorsed by three individuals, which resulted in their making excessive contributions. The loans, similar to the loans in the instant matter, were later refinanced. The Commission found reason to believe that the committee had violated the Act, but took no further action and closed the file. The

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Commission followed the General Counsel's recommendation by a vote of 5-1. It is apparent that no action was taken against the three individuals in this matter. Similarly, no action should be taken against Respondent for this inadvertent violation in which the Committee and the candidate, after becoming aware of the violation, rectified the matter with the Bank. See Affidavit of Walter Calinger at ¶ 7.

In MUR 895, it was alleged that a mailing by the Beloit Corporation had been sent to ineligible employees, thereby violating 2 U.S.C. § 441b. Upon investigation, the facts revealed that Beloit had violated the provision. However, the proof submitted showed that the cause of the incorrect mailing was due to a lack of communication during the period between those planning the mailing and those actually implementing it. Upon discovering that the communication had been sent to ineligible employees, Beloit: A) promptly initiated an investigation into the matter; B) considered what, if any, corrective action could appropriately be taken concerning the violation; and C) took steps to insure that such violations would not occur in the future. Although the Commission made a final determination that Beloit had violated the statute, it took no further action and closed the file after considering the circumstances of the case outlined above. This outcome would be a sensible approach regarding Respondent, in which no harm or injury incurred to anyone.

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The instant case involves similar considerations of a good-faith attempt to comply with the Act and prompt efforts to correct inadvertent violations upon the discovery of the purported violation. See Affidavit of Walter Calinger at ¶ 6 ("at no time did I understand or realize that these arrangements [Respondent's guarantee] arguably may have violated any Federal Election Commission ("FEC") regulations or campaign laws." The Committee and the candidate contacted the Bank, rewrote the loans excluding any guarantee. This was all accomplished without even the knowledge of the Respondent. Finally, unlike some recent matters before the Commission in which the mere size of the loans suggest that repayment will be extremely unlikely,

this loan is being regularly repaid by the candidate. Very simply, there has been no default.

V. CONCLUSION

As the affidavit of the candidate clearly elucidates, the Respondent was completely uninvolved in the processing, negotiations and securing of the loan and accompanying guarantee. The Bank did not require the guarantee and readily acceded to the candidate's request to have a unsecured, nonguaranteed loan. We urge the Commission to exercise its good judgment and not make a probable cause

1 - p. 10 of 78

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finding against the Respondent for this unfortunate circumstance in which he was not the protagonist. We submit that substantial compliance has already been achieved in this case, and respectfully request that the Commission take no further action in this matter and close the file.

Dated: July 2, 1986

Respectfully submitted,

KUTAK ROCK & CAMPBELL

F. Joseph Warin

F. Joseph Warin

CERTIFICATE OF FILING

The undersigned hereby certifies that, pursuant to 11 C.F.R. § 111.16(c) (1985), ten (10) copies of this Respondent's Reply Brief have been filed with the General Counsel, Federal Election Commission, 1325 "K" Street, N.W., Washington, D.C. 20463, on this 2nd day of July, 1986.

F. Joseph Warin

F. Joseph Warin

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1- p. 11 of 78

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ATLANTA
DENVER
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January 14, 1986

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR #2051

Dear Jonathan:

In late December we spoke about an opportunity to meet and negotiate a resolution of this matter. We are eager to undertake those negotiations to reach a fair and equitable resolution with the Committee.

Please advise me when it would be convenient to meet with you.

Sincerely,

F. Joseph Warin

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1 - p. 12 of 78

EXHIBIT 1

KUTAK ROCK & CAMPBELL
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1101 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

February 11, 1986

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR #2051

Dear Mr. Levin:

I am confident that your schedule has been as hectic as mine over the last several weeks. You will recall that I last wrote and asked for an opportunity to review your brief and to engage in discussions to resolve this dispute. I have not learned of any new developments from your office so I presume that everything is fine.

Please call me if there are any new developments.

Sincerely,

F. Joseph Warin

jjb

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1- p. 13 of 78

EXHIBIT 2

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

REPLY OF RESPONDENT

INTRODUCTION

On June 26, 1985, the Federal Election Commission determined that there was reason to believe that John Hughes had violated § 441a(a)(1)(A) of the Federal Election Campaign Act of 1971 ("1971") Act which limits campaign contributions to any candidate to a $1,000 maximum per donor. On July 18, 1985, Mr. Hughes was notified of the Commission's determination. As provided for by § 437g(3) of the 1971 Act, Mr Hughes respectfully submits this Reply in support of his contention that as a matter of law and equity this investigation should be dismissed without any findings of probable cause. This Reply also replies to the General Counsel's Factual and Legal Analysis.

EXHIBIT 3

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I. STATEMENT OF FACTS

This dispute arises in connection with the campaign of Walter M. Calinger. In May, 1984, Mr. Calinger ran for a seat in the United States House of Representatives from the Second Congressional District of Nebraska, a district which encompasses principally the greater metropolitan Omaha area. Mr. Calinger was defeated in his bid for the Democratic nomination by Thomas Cavanaugh who was himself later defeated in the general election by Republican Harold Daub.

Late in the primary, Mr. Calinger contacted respondent John Hughes, an Omaha businessman, to elicit his financial support. Although Mr. Hughes had never run for political office, directed a political campaign or otherwise taken a controlling role in the political process, his position in the business community had made him particularly attractive as a potential contributor. On May 2,1984, Mr. Calinger's efforts of persuasion were successful and he received from Mr. Hughes a contribution of $1,000. This was the only choate, intentional contribution Mr. Hughes made to the Calinger campaign. This May 2, 1984 contribution did not, therefore, constitute nor does the Commission now allege that it constitutes a violation of the federal election laws.

1- p. 15 of 78

A few days later as the campaign drew to a close, the Calinger Committee determined that it needed additional broadcast and print media exposure. To finance this eleventh hour expense, the candidate made arrangements to take out several personal loans from The Community Bank, located in Omaha, Nebraska. He telephoned Mr. Hughes, explained this emergency need, and requested that Mr. Hughes co-sign a loan of $10,000 from the bank. During this conversation, Mr. Calinger emphasized that several other contributors had likewise been asked to co-sign the loan. Consequently and completely unaware that he was being asked by a respected city councilman, now-candidate for the Congress of the United States, to violate the federal election laws, Mr. Hughes agreed to co-sign.*/ Soon thereafter, on May 10, 1985, Mr. Hughes received the loan document which he signed and returned. It contained no request for credit references, no request for a salary declaration, and no request for a declaration of personal net worth. It did not inquire whether Mr. Hughes had any property to set as collateral and it did not request that he declare any. It did not request personal or character references. In its appearance, in its treatment by The Community Bank and in its matter-of-fact

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*/ It is evident from the record that Mr. Callinger did not have knowledge of a violation or an intent to violate the law.

1-p. 16 of 78

description by the candidate, the loan document which Mr. Hughes signed appeared to him as a mere cosmetic formality, certainly nothing to which his capable and perceptive business savvy would alert him as potentially dangerous.

The Calinger for Congress Committee Treasurer, John Herdzina, dutifully reported in the Committee's July Quarterly Report the circumstances and financial value of this loan and three others for which Mr. Calinger had arranged co-signators. Subsequently, on October 16, 1984, the Reports Analysts Division notified the Treasurer that a problem had been discovered in the Committee's Schedule C filing which had clearly and overtly listed the loans. The Commission observed that the Calinger Committee's Schedule C appeared to exceed the lawful contribution ceiling by naming only two endorsers of the $10,000 loan. The Commission explained that the $1,000 per donor limit of 2 U.S.C. § 441a(a)(1)(A) extended to the guaranteeing or endorsing of loans. The letter advised that if this $1,000 limit was exceeded by any of the Calinger contributors, the Committee should refund to the donors the amount accepted in excess of $1,000. The treasurer heeded the Commission's advice and informed The Community Bank of the Commission's characterization of the loans as impermissible contributions. After apparently reaching an agreement with

1-p. 17 of 78

the treasurer to eliminate Mr. Hughes' name, the bank promptly retired the guarantee of Mr. Hughes and confirmed that the loan was "now in the name of Walter M. Calinger alone and [is] unsecured and not guaranteed." Exhibit A, Letter of December 21, 1984 from The Community Bank to Walter Calinger. See Exhibit B, Redrafted Loan Document. This new circumstance was communicated to the Commission and an amended July Quarterly report was filed naming Mr. Calinger as the sole endorser of the $10,000 loan. It was only at this point, seven months after the campaign loss, that the Committee informed Mr. Hughes that "some problem" had developed with the co-signing and that therefore the loan had been redrawn retiring Mr. Hughes' endorsement.

Several months passed before the respondent heard anything about this matter. The next communication Mr. Hughes had concerning the loan was the Commission's July 18, 1985 notice announcing that it had determined that there was reason to believe that he had violated the federal elections laws.

1-p 18 of 78

II. ARGUMENT

A. JOHN HUGHES' CO-SIGNATURE CAN NOT CONSTITUTE A VIOLATION OF 2 U.S.C. § 441a(a)(1)(A) BECAUSE THERE HAS BEEN NO LOAN DEFAULT AND HE NOW HAS NO LIABILITY ON THE NOTE

The Federal Election Campaign Act of 1971 defines the term contribution as "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." 2 U.S.C. § 441a(a)(1)(A) (1985).

Pursuant to this definition, Mr. Hughes has, to date, donated $1,000 to the Calinger for Congress Committee, a legally-acceptable contribution under the election laws. He has not given the Committee any further monies. He has provided the Committee with no illegal subscription, given no personal loan, money advance or deposit, or donated anything else of value.

Nevertheless, the Commission has chosen to characterize Mr. Hughes' co-signature on the $10,000 loan as a personal contribution to the Calinger Committee of half that amount, $5,000, an amount exceeding the $1,000 per donor ceiling of § 441a(a)(a)(A). The Commission's characterization unjustly prejudices Mr. Hughes' sterling reputation in Omaha and

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blemishes his integrity within his professional community. It is definitionally improper and unwarranted in light of the circumstances and the facts.

The Commission's characterization of Mr. Hughes' involvement with the loan cannot be reconciled with either the statutory or regulatory provisions governing the definition of contribution. The General Counsel asserts a violation of the $1,000 ceiling by citing to 2 U.S.C. § 431(8)(B)(vii)(I) which provides that a bank loan "shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." Exhibit C, General Counsel's Factual and Legal Analysis, MUR No. 2051, p. 2 (July 18, 1985). Thus, the General Counsel concludes that Mr. Hughes served as the sole co-maker of the $10,000 loan, had therefore contributed half that amount to the Calinger campaign, and consequently had exceeded the $1,000 per donor ceiling. Id. at p. 3.

The statute on which the Commission relies, however, calculates an endorser's contribution not by the amount of the loan, but rather by the amount of "the unpaid balance." 2 U.S.C. § 431(8)(B)(vii)(I) (1985). The significance of this statutory distinction must not be lost on the Commission. Unlike the characterization offered by the

1-p. 20 of 78

General Counsel which determined Mr. Hughes' contribution as a proportion of the amount of the loan, the proper characterization of Mr. Hughes' contribution as calculated under the statutory provision is determined as a proportion of the amount of the loan's unpaid balance. The federal elections regulations fully support this interpretation. Title II of the Code of Federal Regulations provides that a loan is only a contribution "to the extent that it remains unpaid." 11 C.F.R. § 100.7(a)(1)(i)(B) (1985) (emphasis added). If, conversely, the loan is repaid, it "is no longer a contribution." Id. Furthermore, "[a]ny reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor... ." 11 C.F.R. § 100.7(a)(1)(i)(C) (1985).

Under such a calculation scheme, Mr. Hughes' "contribution" through his involvement with this $10,000 loan would decrease as his liability decreases. Thus, assuming but not conceding that Mr. Hughes' co-signature constituted an actual guarantee of the $10,000 loan, his personal liability would be $10,000 on default of the loan. As the loan is repaid, Mr. Hughes' personal liability decreases and, in direct proportion to this liability, his imputed contribution decreases as well. According to the federal regulation, if the loan is completely repaid, thus removing

1- p. 21 of 78

all personal liability to the guarantor, the Commission would find that there was no longer any attributable contribution amount from the Hughes' loan.

This reasoning is indistinguishable from the facts of this present loan. When Mr. Hughes' co-signature was removed from the $10,000 loan, his personal liability was entirely and thoroughly extinguished as well. For the purposes of Mr. Hughes' position, when The Community Bank retired the original loan document and redrafted it without his name, the loan for which he was liable had been effectively "repaid". There is, thus, no contribution within the meaning of 2 U.S.C. § 431(8)(B) and no violation of the federal election laws under 2 U.S.C. § 441a(a)(1)(A).

A second definitional consideration also mitigates against a finding of violation. As defined in the statute, "contribution" involves the donation of "anything of value" to a political candidate. 2 U.S.C. § 437(8)(A)(i) (1985). Such a definition is both cogent and comprehensible. Under the federal election laws, things given candidates which have no value will not be accountable to either the donor or the recipient as a contribution.

The Hughes co-signature is precisely such a valueless addition. The evidence demonstrates that none of the parties accorded any value whatsoever to the co-signature. Certainly

1 - p. 22 of 78

the bank can not be said to have valued the co-signature for a surety purpose. It requested no confirming information that Mr. Hughes was adequately capitalized to insure the loan. No debt references, salary statements or banking balances were ever demanded. The bank merely sent Mr. Hughes the document and filed it when it was returned. Upon being notified by the Calinger Committee of a potential FEC problem, the bank showed little concern or hesitation in retiring the original note and drafting it anew without the second guarantee it had had before. In sum, The Community Bank treated the Hughes co-signature for what it was: a meaningless addition to an otherwise completely secure debt.

Neither of the co-signers held the document in any esteem. Mr. Calinger explained it over the telephone to Mr. Hughes as though the co-signing was an incidental formality and, considering the treatment of the document by the bank, Mr. Hughes could have no reason to doubt this characterization. Given this perception of the loan by all involved parties and the almost matter-of-fact removal of the Hughes name from the document by the bank, the Commission has every reason to find that the co-signature did not satisfy the "anything of value" requisite of § 431(8)(A)(i).

1-p. 23 of 78

B. JOHN HUGHES IS A LAW-ABIDING, WELL-MEANING CITIZEN OF OMAHA. IF ANY PROVISION OF THE FEDERAL ELECTION LAWS HAS BEEN INFRINGED, JOHN HUGHES IS PROPERLY CHARACTERIZED AS NOTHING MORE THAN AN UNWITTING VICTIM

John Hughes is neither a politician nor a political activist. He is a respected and accomplished midwestern businessman. His interest in the political spectrum is probably identical to that of his Omaha friends and neighbors. His political profile is low, perhaps only existent at all because his financial successes have made him a prime target for prospective candidates.

To John Hughes, The Calinger campaign was no different. Mr. Hughes played no prominent role in the campaign. He neither brainstormed with the candidate on any regular basis, nor engineered campaign strategy. Aside from his contribution, Mr. Hughes' involvement with the Calinger for Congress effort was modest and obscure.

In late April and early May of 1984, Mr. Hughes was approached by the candidate who came seeking a contribution, which he received. Originally impressed by Mr. Calinger and his work on the city council, Mr. Hughes was sympathetic to the candidate's urgent plea for last-minute help during the final week of the Calinger campaign. Mr. Hughes had no

1- p. 24 of 78

reason to question the candidate's motives. The campaign was a lively and intriguing one. Mr. Calinger's opponent, Thomas Cavanaugh, was the younger brother of John Cavanaugh, the congressional district's popular representative from 1977 to 1981. Thomas was unable, however, to capitalize on his older brother's popularity because family disputes had kept John from endorsing his brother early in the campaign. Mr. Calinger, on the other hand, was twelve years older than Cavanaugh and far and away the more experienced politician, campaigning from his post on the Omaha city council. The candidate's anxious appeal to Mr. Hughes at this point in a very hopeful campaign appeared completely harmless. Seen in the broader picture, the candidate's request was for an apparently meaningless co-signature on a note signed by a respected and widely-known local public figure issued from a bank which seemed completely uninterested in establishing or confirming the co-signer's credit worthiness.

Mr. Hughes' unwitting involvement with the loan is underscored by the circumstances surrounding the retirement of the endorsement. When the Calinger Committee Treasurer learned of the Commission's characterization of Mr. Hughes' co-signature, he corrected the concern and purged the guarantee--all without Mr. Hughes' knowledge or consent. When he was informed that there may have been a problem with

1-p. 25 of 78

the guarantee, that the loan had been redrafted without his signature, and that his endorsement and liability had been removed, Mr. Hughes could do little more than sigh. The routine retirement of the co-signature reinforced its meaninglessness.

Mr. Hughes had no intent to violate the federal election laws. He was unaware that the loan he had signed had any significance whatsoever. Financially, he was undisputably correct. He has never been the subject of a Commission review or investigation and, had he even been informed of the Commission's concerns, he would undoubtedly had done what the Calinger Committee treasurer did for him: correct the problem. In fact, but for the good faith reporting of Mr. Hughes' co-signature by the Treasurer, the Commission might not have even discovered the loan at all. This investigation seems to leave one with the impression that even when one complies with the election regulations scrupulously, the Commission will not refrain from requesting punishment. He has done nothing to conceal the facts from the Commission. He has not, nor does the General Counsel contend that he has, deceived the Commission or misled it in any way. To the contrary, he has cooperated with the Commission to the best of his abilities and stands ready to continue to do so. If this investigation is a search for a culpable actor, the

1 - p. 26 of 78

Commission would do well to shift its attention to the campaign committee and away from Mr. Hughes who was an unwitting participant. Mr. Hughes was acting appropriately on the information provided him. His assistance was being solicited by a public figure in one of the midwest's largest cities. He was not informed by those charged to know that the co-signing of a note under the circumstances described above would constitute an unlawful contribution in violation of federal law. He was inaccurately told that a variety of other guarantors would join him on the note, that his was not to be the only endorsement. He was kept completely unaware of the developing controversy with the Commission and he was not consulted prior to the destruction of his guarantee. Considering the candidate's prestige in the community and the candidate's staff's expertise in the elections arena, Mr. Hughes understandably felt confident in relying on the statements he received.

It would appear that the culpable party here is the knowing party. Information was clearly either intentionally or negligently misrepresented to Mr. Hughes by those individuals privy to the full story. He was persuaded into this dilemma by those legally forbidden to solicit more than $1,000 from each contributor. Parenthetically, the reports and records are replete with information that neither the

1-p. 27 of 78

Committee nor the candidate knew that the co-signature arguably constituted an election violation. Those who convinced Mr Hughes to co-sign this loan were responsible to know the technical provisions and subprovisions of statutes and regulations that take nearly a full line of a printed page to cite. It would be tragically unfair and improper for the Commission's search for the blameworthy to end here at the door of the unwitting and the misinformed. We urge the Commission, therefore, to abandon this investigation.

C. FINDING JOHN HUGHES IN VIOLATION OF THE ELECTION LAWS CAN NOT BE RECONCILED WITH THE COMMISSION'S HISTORICAL TREATMENT OF SIMILAR CIRCUMSTANCES

The Commission has apparently only thrice before confronted possible violations of 2 U.S.C. § 441a(a)(1)(A) as defined by 2 U.S.C. § 431(8)(B)(vii)(I) or 11 C.F.R. § 100.7(a)(1)(i)(C). See In re Citizens Comm. for Ernest F. Hollings, MUR No. 1768 (1985); In re Passaic County Democratic Comm., MUR No. 1047 (1982); In re Friends of Roger Jepsen, MUR No. 1042 (1980). The Commission's treatment of the respondents in these investigations and the ensuing resolution of these matters support Mr. Hughes' petition that this current investigation be closed and his name be cleared.

1-p 28 of 78

In the earliest matter, Jepsen, the Commission investigated the receipt by the Friends of Roger Jepsen of a $35,000 loan signed by the senatorial candidate Jepsen and co-signed by his wife. The General Counsel recommended, and the Commission subsequently agreed, that Mrs. Jepsen's co-signature violated the prohibition of § 441a(a)(1)(A) against the making of excessive contributions. Exhibit D, General Counsel's Report, In re Friends of Roger Jepsen, MUR 1042, p. 2 (1980). During the ensuing investigation, the Commission learned that Mrs. Jepsen's signature on the loan was "simply a formality requested by the bank". Id. at 4. The General Counsel thus subsequently revised its recommendation to urge that no further action be taken, concluding that "[e]ven if Mrs. Jepsen's signature technically made her a party to the note, her participation in the transaction was minimal." Id. at 6 (emphasis added).

The circumstances in Jepsen mirror those surrounding the Hughes loan. Mr. Hughes' signature can not be seriously viewed as anything more than "simply a formally requested by the bank." The facts clearly demonstrate that the bank did not take the co-signature seriously or give it any greater weight than a "formality" status. Moreover, even if the Commission determines that the co-signing technically made Mr. Hughes a party to the note, his participation in the

transaction was decidedly minimal. In fact, the circumstances of this loan even further buttress the Jepsen logic. In Jepsen, the offending signature was not removed. In this case, as soon as the parties discovered that the signature concerned the Commission, they had the bank retire it. In this manner, the parties evidenced a measure of good will and cooperation which only underscores the unwitting and unintentional nature of the technical violation.

In the Passaic County matter, the Commission fined the County Democratic Committee $1,500 for violating 2 U.S.C. § 441a(f) by accepting excessive campaign contributions. Exhibit E, Conciliation Agreement, In re Passaic County Democratic Comm., MUR 1047, p.8 (1982). The Commission determined that Mr. Robert Angele had contributed a $12,000 loan, which was endorsed by Mrs. Angele, to the Democratic Committee. Exhibit F, General Counsel's Report, In re Passaic County Democratic Comm., MUR 1047, p.9 (1982). The General Counsel concluded that "this loan constitutes a $6,000.00 contribution from each of the Angeles" and, more conclusively that each of the contributions "exceeds lawful contribution limitations." Id. at 10.

On the facts, the Angeles are far more culpable than John Hughes. They were not pressured into making their loan by a telephoning candidate. In fact, they made the loan to

1- p 30 of 78

an impersonal political committee. Their loan was not co-signed by the candidate himself as was the case with the Hughes loan. They were not told that others would be co-signing the loan nor did the bank treat their loan in the casual manner that The Community Bank did here. Presumably, the Angeles had to answer at least a few financial inquiries into their credit worthiness. Mr. Hughes, conversely, had to answer none. In both form and substance, the Angeles did more intentionally and deliberately to violate the election laws than Mr. Hughes could ever be imputed to have done. Yet it appears from an investigation of the FEC records that neither the Commission nor the General Counsel ever investigated the Angeles or made any other attempt to hold them accountable for their election law violation. It would be inapposite for this Commission to excuse the acts of those more blameworthy than John Hughes and then prosecute Mr. Hughes for dramatically less intentional actions. Such a turnabout can not be comprehensibly reconciled with the integrity of the Federal Election Commission or the dictates of simple fairness.

Finally, in the Hollings matter, the treasurer of the candidate's senatorial election committee was found in violation of § 441a(a)(1) for endorsing a loan which constituted an excessive contribution to the same candidate's

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presidential election committee. Exhibit G, Conciliation Agreement, In re Citizens Comm. for Ernest F. Hollings, MUR 1768, p.2 (1985). Although the Commission properly and fairly fined the violators for this offense, the facts of Hollings are readily distinguishable. First, there was a strikingly significant danger of election abuse in this loan guarantee arrangement. The guarantor of the loan was the candidate's own senatorial election committee and the assets used for collateral were the donations of those who had supported Mr. Hollings for Senator. Clearly this is a certain abuse of the senate committee's duty to use the contributions it received for the purposes for which they were intended. It takes no great leap of faith to imagine that some of the contributors to Mr. Hollings' senatorial campaign would not have had any desire to support his race for the presidency. One would presume that contributors donate money to a campaign to get an officeholder who will champion their causes--at home. The distance which necessarily develops between a president and his previous local constituency certainly would defeat this goal. The loan also smacks of abuse because not only was the candidate which each committee supported the same, but the treasurer of each was as well.

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Second, the involved party, the committee treasurer, was an individual who had greater access to and far more familiarity with the provisions of the various election statutes and regulations. When a committee treasurer, charged to know each of these rules intimately, violates the election laws there is undeniable culpability.

Third, the treasurer's endorsement was done intentionally and with deliberation. Unlike Mr. Hughes, the Hollings violation can not be characterized as unwitting.

Fourth, the size of the contribution attributed to the Hollings loan dwarfs the Hughes loan. Section 100.7(a)(1)(i)(c) of Title 11 of the Code of Federal Regulations provides that the "loan shall be considered a loan [and thus a contribution] by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." The loan in Hollings was for $35,000 and only the Citizens Committee for Ernest F. Hollings endorsed it. Thus, the size of the contribution is $35,000 divided by the number of endorsers (1) for a total "contribution" of $35,000. Mr. Hughes, by contrast, was a co-signer of a $10,000 which calculates to a "contribution" of $5,000. Thus, the culpability of Mr. Hughes is one-seventh that of the Citizens Committee in the Hollings case.

1-p. 33 of 78

From every perspective, the Commission's prior treatment of 2 U.S.C. § 441a(a)(1)(A) as defined by 2 U.S.C. § 431(8)(B)(vii)(I) and 11 C.F.R. § 100.7(a)(1)(i)(C) supports this petition for a cessation of this inquiry. The unwitting and unintentional consequences of Mr. Hughes' actions do not need disciplining. He intended no wrong, his one misstep has been entirely rectified, and the Commission can rest assured that this error will never be repeated again.

D. IF ANY VIOLATION OF THE ELECTION LAWS HAS OCCURRED, IT HAS NOW BEEN CORRECTED. THIS PENDING INVESTIGATION INTO JOHN HUGHES' INVOLVEMENT, THEREFORE, IS UNNECESSARY AND LEGALLY MOOT

As has been previously established, the Commission has voiced no concern regarding Mr. Hughes' initial $1,000 contribution to the Calinger for Congress Committee. There are no irregularities concerning this donation and the $1,000 amount is entirely lawful pursuant to 2 U.S.C. § 441a(a)(a)(A).

The Commission's sole concern regards Mr. Hughes' co-signature. If the Commission determine, contrary to the terms of the elections statutes and regulations and contrary to the dictates of fairness and equity, that the co-signature

1-p. 34 of 78

constituted a violation of § 441a(a)(1)(A), the error now has been remedied. Upon discovering the technical concern of the Commission, the Calinger Committee promptly corrected the problem. Mr. Hughes' guarantee has been completely retired and his liability on the banknote has been unequivocally removed. He now stands as he has always stood regarding the Calinger campaign: he is the civic-minded contributor of $1,000 to the political race of a local Omaha public official. There is nothing more. Having rectified this potential violation, the Calinger Committee made further review of Mr. Hughes' involvement unnecessary and legally moot.

CONCLUSION

For the reasons expressed above, it is respectfully requested that the members of the Federal Election Commission vote to dismiss this investigation by finding that there is no probable cause to believe that Mr. John J. Hughes has committed any violation of the Federal Election Campaign Act of 1971 or of any provision of Title 2 of the United States Code or of Title 11 of the Code of Federal Regulations.

1-p. 35 of 78

Dated: August 13, 1985

Respectfully submitted,

KUTAK ROCK & CAMPBELL
Attorneys for Respondent
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 828-2400

F. Joseph Warin

F. Joseph Warin, Esquire

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1-p. 36 of 78

CERTIFICATE OF FILING

The undersigned hereby certifies that, pursuant to 11 C.F.R. § 111.16(c) (1985), ten (10) copies of this Reply of Respondent have been filed with the Commission Secretary and three (3) copies have been filed with the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, on this 13th day of August, 1985.

F. Joseph Spaeth

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1-p. 37 of 78

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT A

Letter of December 21, 1984 from
The Community Bank to Walter Caliger

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THE COMMUNITY BANK

December 21, 1984

Mr. Walter M. Calinger
1450 South 11 Street
Omaha, NE 68108

RE: Commercial Loan - Walt Calinger for Congress

Dear Mr. Calinger:

The three loans totaling $17,000 guaranteed by John Hughes, David Newell, and Larry Myers now stand in the following position:

1. The guarantees of John Hughes, David Newell, and Larry Myers have been destroyed and are no longer valid.

2. All the loans are now in the name of Walter M. Calinger only and are unsecured and not guaranteed.

The $5,000 loan and the $2,000 loan have been paid in full and $2,000 has been paid on the principal on the $10,000 loan.

Very truly,

Leon E. Evans, Jr. (spw)

Leon E. Evans, Jr.
PRESIDENT

spw

1-p.39 of 78

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

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EXHIBIT B

Redrafted Loan Document

Note No. 84-01831 Date May 10, 1984

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name Walt Calinger for Congress

Debtor's Address 1407 S. 13th St., Omaha, Ne. 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over reg prime %	$	$ 10,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
Demand		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $_____.

An additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

COMMUNITY BANK OF NEBRASKA
OMAHA, NEBRASKA
12-21-84
PAID BY RENEWAL

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you want the insurance from creditor you will pay $_____.

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated _____, 19____ covering the following property:

Personal Guarantee

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☒ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over regional prime

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: _____

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method:

ADDITIONAL CHARGES Official fees and taxes $_____

Other _____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of COMMUNITY BANK OF NEBRASKA,

Ten Thousand and 00/100---------- Dollars ($ 10,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $_____, ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

1-p. 41 of 78

Purpose of Loan Campaign Expenses

Walter Calinger for Congress

Debtor's Signature Walter M. Calinger Debtor's Address _____

Walter M. Calinger

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT C

General Counsel's Factual and Legal Analysis,
In re John J. Hughes,
MUR No. 2051 (1985)

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 2051

RESPONDENT John Hughes

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of the General Counsel by the Reports Analysis Division (RAD) and involves an allegation that John Hughes made contributions exceeding the limitation of 2 U.S.C. § 441a(a)(1)(A) to the Calinger for Congress Committee ("the Committee").

FACTUAL BASIS AND LEGAL ANALYSIS

Schedule A of the 1984 July Quarterly Report of the Committee disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to [the matter of the contribution] immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loan as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for the loan was listed as ten per cent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

circumstances of the loan. The treasurer stated that Mr. Hughes was an "accommodating maker" or "accommodating party" to the loan. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Note and the guarantee of Mr. Hughes was destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the

bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, has contributed half the amount of the loan. He has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A).

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

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EXHIBIT D

General Counsel's Report,
In re Friends of Roger Jepsen,
MUR No. 1042 (1980)

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION
April 22, 1980

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In the Matter of)
) MUR 1042
Friends of Roger Jepsen)
Dee Jepsen)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves the receipt by the Friends of Roger Jepsen (the Committee) of a $35,000 loan from the candidate, Roger Jepsen, in connection with the Republican Senatorial Primary in Iowa. On its 10 Day Pre-Primary Report for 1978, the Committee reported the receipt of a loan of $35,000 from the candidate on April 27, 1978. The note for this loan was due on demand with nine per cent annual interest. The amended version of this report also indicated that the origin of this loan was a $35,000 loan from the Security State Trust and Savings Bank to Roger and Dee Jepsen (the candidate's wife) on April 27, 1978. For this loan, the principal was due on demand with interest at nine per cent payable semi-annually.

Based on this information, the Reports Analysis Division (RAD) decided to seek more information as to the circumstances of the bank loan and as to the possibility that Mrs. Jepsen's actions with respect to the loan placed the Committee and her

in violation of the 2 U.S.C. § 441a limits on contributions to a candidate's authorized political committee.

On June 8, 1979, after receipt of a response from the Committee Treasurer, Mr. John Henss, to a surface violation letter, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting the loan. On June 14, 1979, Mr. Henss responded in writing that:

> ...it is normal procedure for a bank in making a loan to any individual to require the individual's spouse to sign the loan along with the borrower. The funds loaned by Roger Jepsen to Friends of Roger Jepsen were assets under the joint dominion and common control of Roger and Dee Jepsen.

Mr. Henss included a copy of the Committee's repayment note to Roger Jepsen. On June 25, Mr. Henss submitted an additional statement that "the loan was obtained on the basis of known assets, familiar to the bank, under the joint dominion and common control of Mr. and Mrs. Jepsen."

These responses were not considered adequate and, on October 4, 1979, RAD referred the matter to the Office of General Counsel (OGC). On February 5, 1980, the Commission found reason to believe that Dee Jepsen had violated the 2 U.S.C. § 441a(a)(1)(A) prohibition against making excessive contributions to a candidate's authorized political committee. The Commission notified the respondent and Senator Jepsen of this finding and

enclosed a list of questions as to the ownership of the assets serving as a basis for the bank loan.

On March 19, the Office of General Counsel received a written response from Senator Jepsen stating that Mrs. Jepsen's participation in the transaction was negligible, and that the loan was to him alone based on his assets. (See Attachment) Senator Jepsen provided copies of loan-related documents, pursuant to the Commission's request, and used them to support his answers.

Senator Jepsen noted that the bank's ledger card and the note indicate the loan to be unsecured. He also stated that all of the assets totalling $190,500.50 listed in the loan application were acquired by him with his "own efforts and earnings," except an item of real estate designated "farm trust" of which his share is $40,000. He stated that the only property owned by his wife and him jointly was their home valued at $130,000 with a $30,000 mortgage still payable. He concluded this summary of his assets by stating that "those other personal assets, over which [he] had complete control, give ample coverage to the loan and justified the transaction by the bank in its ordinary course of business."

Senator Jepsen went on to discuss Mrs. Jepsen's lack of participation in the loan transaction by pointing to the fact that the list of assets was signed by him alone with no indication of a co-maker. He also pointed out that the bank's ledger card indicates the absence of a co-maker or endorser

and that the loan extension agreement was signed only by him. He stated that Mrs. Jepsen's signature on the note was "simply a formality requested by the bank." and not an indication that she was a co-maker or endorser. Senator Jepsen also indicated that the bank did not issue a check for the proceeds of the loan, but established a bank account in his name only and, at his direction, transferred the full amount he had borrowed to the Committee.

LEGAL ANALYSIS

2 U.S.C. § 441a(a)(1)(A) prohibits any person from making contributions aggregating in excess of $1,000 to an authorized committee of a candidate with respect to a federal election. 2 U.S.C. § 441a(f) prohibits a political committee from knowingly accepting such contributions. The term "contribution" includes loans. 2 U.S.C. § 431(8)(A)(i), formerly 2 U.S.C. § 431(e)(1). While there is no limit on the amount of personal funds a candidate may contribute to his own campaign, the term "personal funds," consistent with the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 52-54 (1976), is defined by the regulations. Assets of an immediate family member of a candidate are considered "personal funds" of the candidate only if they were "... assets to which at the time he ... became a candidate the candidate had legal and rightful title, or ... the right of benefical enjoyment, under applicable State law, and which the candidate had legal right of access to or control over ..." 11 C.F.R. § 110.10(b)(1), Advisory Opinions 76-26, 76-74.

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In this matter, the $35,000 which the Committee listed as a loan from Roger Jepsen originated as a bank loan to Senator Jepsen. The Committee Treasurer's statements that the loan was "obtained on the basis of known assets... under the joint dominion and control of Mr. and Mrs. Jepsen" raised the possibility that assets of Mrs. Jepsen's exceeding $1,000 in value and not within the definition of "personal funds" of Senator Jepsen were used as security for the loan, in violation of 2 U.S.C. § 441a(a)(1)(A). However, the loan was unsecured as indicated by the bank's ledger card and the note.

Senator Jepsen has indicated that the bank gave this loan after obtaining complete information as to his assets and liabilities. The loan application submitted to the bank lists Senator Jepsen's net assets totalling $190,000. The only asset in which there is any evidence of an interest on Mrs. Jepsen's part is the Jepsen's home which was valued at $130,000 with a mortgage liability of $30,000. Thus, Senator Jepsen's assets apart from his wife's interest in the home substantially exceeded the amount of the loan.

Mrs. Jepsen's signature on the note raises the question as to whether or not she was a co-maker, guarantor, or endorser and, therefore, a contributor according to 11 C.F.R. § 100.7(a)(1)(i), formerly 11 C.F.R. § 100.4(a)(1)(i). The capacity that she has assumed on the note is ambiguous. The ambiguity may be interpreted to indicate she was an endorser. 1/ However, the line on the bank ledger

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1/ Iowa Code Annotated § 554.3402 states: "Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement."

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card asking for the signature of "Co-maker, Endorser, Description of Collateral or Security Pledged" is left blank. Furthermore, Mrs. Jepsen's signature does not appear on any other instruments. The loan application listing assets and liabilities has only Senator Jepsen's signature with the second signature left blank. The co-debtor signature line on the loan extension agreement is left blank. The account to which the funds were transferred was stated to be in the name of Roger Jepsen alone. Even if Mrs. Jepsen's signature technically made her a party to the note, her participation in the transaction was minimal. While it would seem that Mrs. Jepsen's signature appeared on the note because of her co-ownership of the house, the assets of Senator Jepsen alone were amply sufficient to cover re-payment of the loan and the bank chose not to deal in any further way with Mrs. Jepsen.

Therefore, the General Counsel recommends that the Commission take no further action and close the file in this matter.

III. GENERAL COUNSEL'S RECOMMENDATION

1. Take no further action.
2. Close the file.
3. Send the attached letters.

23 May 1980
Date

Charles N. Steele
General Counsel

1-p. 52 of 78

Attachments

Letter and Documents from Respondent

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT E

Conciliation Agreement,
In re Passaic County Democratic Committee,
MUR No. 1047 (1982)

9707064311

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Passaic County Democratic Committee	)	MUR 1047
	)	

CONCILIATION AGREEMENT

The Federal Election Commission (hereinafter the "Commission") initiated this matter pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities and found reason to believe that the Passaic County Democratic Committee ("Respondent" or the "Committee") violated 2 U.S.C. §§ 433, 434, 441a(f), 441b(a) and 11 C.F.R. § 102.6 (presently § 102.5) and § 104.12 (formerly § 104.10 */).

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A) do hereby agree as follows:

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

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

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

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

1- p. 54 of 78

*/ Prior to the 1979 Amendments.

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A. Respondent, Passaic County Democratic Committee (the "Committee") is a political committee pursuant to 2 U.S.C. § 431(4).

B. Failure to Register Timely

1. 2 U.S.C. § 433 requires committees which receive contributions or make expenditures in connection with federal elections exceeding $1,000.00 in a calendar year to register with the Commission 10 days after such receipts or expenditures.

2. The Committee initially registered with the Commission on July 10, 1978.

3. The Committee made expenditures for federal and non-federal primary election expenses aggregating $8,160.00 in June, 1978 from its Election 1 (18-3584-1) and Regular (10-1620-5) accounts.

4. The 1978 primary ballot included two federal offices as well as other non-Federal offices; accordingly, the expenditures apportioned for federal candidates exceeded $1,000.00.

5. The Committee should have registered ten days after making these expenditures.

6. The Committee filed a termination report on November 20, 1978.

7. The Committee re-registered with the Commission on August 20, 1980.

8. The Committee expended at least $13,150.00 on May 30 and 31, 1980 for primary election expenses from its Regular (10-1620-5) account.

9. The 1980 ballot included four federal offices as well as other non-federal offices; accordingly the expenditures apportioned for federal elections exceeded $1,000.00.

10. The Committee should have re-registered ten days after making these expenditures.

C. Failure to Report Receipts and Disbursements

1. 2 U.S.C. § 434 requires political committees to report its total receipts and disbursements.

2. The Committee made expenditures in connection with federal elections from two accounts in 1978, Regular (10-1620-5) and Election 1 (18-3584-1) accounts, and from two accounts in 1980, Regular (10-1620-5) and Election 2 (10-4434-5) accounts.

3. The Committee reported the activity of its Election 1 (18-3504-1) account and its Regular (10-1620-5) account from July 1, 1978 until November 20, 1978, at which time the Committee filed a termination report.

4. The Committee made expenditures in connection with federal elections in June 1978 which were not reported to the Commission.

5. The Committee made expenditures in connection with federal elections in the 1980 primary election

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from its Regular (10-1620-5) account in May 1980 which were not reported to the Commission.

6. The Committee's reports disclosed payments aggregating $694.77 for administrative costs related to federal election activities in 1980.

7. Administrative costs attributable to 1980 federal elections were in the amount of $7,964.41.

8. The Committee should have reported and accounted for the proper amount ($7,964.41) in its reports for 1980 federal election activities to the Commission.

D. Acceptance and Use of Contributions from Impermissible Sources

1. 2 U.S.C. § 441b(a) makes it unlawful for political committees to accept contributions from corporations or labor organizations in connection with federal elections.

2. In 1978, the Committee received $4,745.00 from corporations and $100.00 from labor organizations which were deposited in its Regular (10-1620-5) account and from which expenditures for federal elections were made.

3. In 1980, the Committee received $2,020.00 from corporations and $1,300.00 from labor organizations which were deposited in its Regular (10-1620-5) account and from which expenditures for federal elections were made.

4. 11 C.F.R. § 102.6 (presently § 102.5) requires political committees which finance activities in connection with both federal and non-federal elections to either establish a

separate federal campaign committee which shall register as a political committee or establish a single committee with a single account to make contributions to Federal and non-Federal candidates, but only if all contributions received are permissible under the Federal Election Campaign Act (the "Act").

5. The Committee did not establish its accounts pursuant to 11 C.F.R. § 102.6 (presently § 102.5), but rather established numerous accounts from which expenditures for both federal and non-federal election activities were made. These accounts contained funds not permissible under the Act.

6. 11 C.F.R. § 102.6 (presently § 102.5) also prohibits the transferring of monies from an account not specifically designated for federal elections to an account used to finance federal election activities.

7. The Committee transferred monies in 1978 and 1980 from its Regular (10-1620-5) account, which was not specifically designated for federal elections and which contained prohibited contributions, to its Election 1 (18-3584-1) and Election 2 (10-4434-5) accounts from which expenditures for federal elections were made. These transfers are as follows:

FROM	TO	AMOUNT	DATE OF TRANSFER
Regular	Election 1	$19,700.00	11/01/78
	Total:	$19,700.00	
Regular	Election 2	$ 4,000.00	09/10/80
		$ 8,830.00	10/27/80
		$ 2,000.00	10/30/80
		$ 1,900.00	11/12/80
	Total:	$16,730.00	

E. Failure to Disclose Cash on Hand

1. 2 U.S.C. § 434 and 11 C.F.R. § 104.12 require political committees to disclose the source of its cash on hand.

2. The Committee reported a balance of $2,692.00 as its cash on hand upon registering in 1978.

3. The Committee failed to adequately disclose the origin of this opening balance in its reports.

4. The Committee reported a balance of $1,619.51 upon its re-registration in 1980.

5. The Committee failed to adequately disclose the source of this opening balance in its reports.

F. Inclusion of Monies from Impermissible Sources within Cash on Hand

1. 11 C.F.R. § 104.12 (formerly § 104.10) makes it unlawful for political committees to include within its cash on hand any contributions from sources prohibited by 2 U.S.C. § 441b.

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2. The Committee's cash on hand in 1978 and 1980 contained monies from prohibited sources.

G. Acceptance of Excessive Contributions

1. 2 U.S.C. § 441a(f) makes it unlawful for multicandidate political committees to knowingly accept contributions from individuals exceeding an aggregate of $5,000.00 in any calendar year. (See 2 U.S.C. § 441a(a)).

2. 11 C.F.R. § 100.7(a)(1)(i)(C) states that a loan is a contribution by each endorser or guarantor, and that each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement.

3. The Committee received a $12,000.00 loan endorsed by Mr. Robert Angele and his wife, Lucy Angele, in its Election 2 (10-4434-5) account on October 17, 1980.

4. The $12,000.00 loan constitutes a $6,000.00 contribution from each of the Angeles.

5. Each contribution exceeds the limitations set forth in 2 U.S.C. § 441a(a) by $1,000.00.

V. Respondent agrees that it violated:

1. 2 U.S.C. § 433 by failing to register timely in 1978 and in 1980.

2. 2 U.S.C. § 434 by failing to report its total receipts and disbursements in 1978 and 1980, including administrative costs in 1980.

3. 2 U.S.C. § 441b(a) by accepting contributions from corporations and labor organizations in connection with federal elections in 1978 and 1980.

4. 11 C.F.R. § 102.6 (presently § 102.5) by failing to establish committees in accordance with this provision, and by transferring funds from an account not designated for federal election activities and which contained prohibited funds to an account used to finance federal election activites.

5. 11 C.F.R. § 104.12 (formerly § 104.10) by failing to disclose the source of its cash on hand in 1978 and 1980; and by including within its cash on hand monies not permitted by the Act.

6. 2 U.S.C. § 441a(f) by receiving contributions in excess of limitations set forth by 2 U.S.C. § 441a(a).

VI. Respondent will pay a civil penalty to the treasurer of the United States in the amount of one thousand and five hundred dollars ($1,500.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

civil action for relief in the United States District Court for the District of Columbia.

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

X. It is agreed that respondent shall have no more than ninety (90) days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

DATE: Sept. 16, 1982

Charles N. Steele
General Counsel

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

DATE: Aug. 27, 1982

Passaic County Democratic Committee

BY: William J. Pascrell Jr.

ITS: Chairman

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

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EXHIBIT F

General Counsel's Report,
In re Passaic County Democratic Committee,
MUR No. 1047 (1982)

NOTE: Pages 5-8 were inadvertently not copied. The document in its entirety is located in the FEC library. The deleted pages are not relevant to this Reply.

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

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In the Matter of	)	
	)	MUR 1047
Passaic County Democratic Committee	)	
	)	

GENERAL COUNSEL'S REPORT

I. Background

On July 14, 1981, the Commission voted to audit the Passaic County Democratic Committee (the "Committee") pursuant to 2 U.S.C. § 437g. Prior to the audit, the Commission had found reason to believe that the Committee had violated certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, on February 8, 1980, the Commission had found reason to believe that the Committee violated 2 U.S.C. § 433, 11 C.F.R. § 102.6(b) 1/ and 2 U.S.C. § 441b(a) by transferring funds from accounts established for non-federal elections which contained corporate monies to its account designated for federal election activities. Additionally, on July 14, 1981, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434, 11 C.F.R. § 104.12 by failing to disclose the source of its cash on hand in 1978 and 1980; 2 U.S.C. § 441a(f) by receiving a contribution

1/ This cite refers to the regulations in effect at the date that the activity in question took place, namely, the regulations prior to the January 1, 1981 revisions. This provision is presently 11 C.F.R. § 102.5(a).

in excess of limitations set forth by 2 U.S.C. § 441a(a); and 2 U.S.C. § 434 by failing to disclose receipts and expenditures for administrative costs in its 1980 reports.

The Commission and the Committee had been engaged in informal conciliation from November 13, 1980 to July 19, 1981, at which time the Commission suspended the conciliation proceedings until the audit results were available. The audit was completed on January 15, 1982. 2/ The Audit Division forwarded a report to this office on March 4, 1982.

This report will analyze the information obtained from the audit regarding the Committee's general financial activities. This report will also discuss information relating to previous reason to believe findings, and will recommend additional reason to believe findings.

II. Overview: the Committee's General Financial Activities

The most notable fact evidenced by the audit is that the Committee is primarily a state and local committee. The audit work papers show that the Committee's financial activities focused on non-federal party elections. In fact, the Committee never made a direct contribution to any federal candidate. The Committee did however pay for billboards and get-out-the-vote

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2/ The audit was initially scheduled for early November, however, due to problems of coordination with Committee personnel, the audit had to be rescheduled for December 7, 1981. Moreover, due to further problems of coordination with the Committee, the audit was temporarily suspended from December 14 through January 4, 1982.

activities which indirectly supported certain federal candidates whose names appeared on the billboards or ballots. The Committee was therefore required to allocate to federal elections a weighted portion of these expenditures.

The audit disclosed that the Committee had an aggregate of eight accounts 3/ during the audit period; however, expenditures for federal elections were only made from three of these accounts. 4/ Attached for the Commission's reference is a flow chart illustrating the relationship of these accounts (see Attachment 1).

The total amount expended for federal elections only constituted a small percentage of the Commitee's activities. The audit work papers show that from January, 1978 through December, 1981 (hereinafter referred to as the "audit period") 5/ an aggregate of $52,251.04 was attributable to federal election

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3/ The Committee had four "Election" accounts, one "Regular" account, and three "Office" accounts. The label "Election" does not necessary refer to an account established for federal elections. This is evident from the fact that certain "Election" accounts were very active in 1979 and 1981 when no expenditures were made for federal elections.

4/ These three accounts were not all active simultaneously. Also, all three accounts were with the same bank. The Committee drew from the Election 1 account in 1978; the Election 2 account in 1980; and the Regular account in 1978 and 1980. The numerics assigned to these accounts are by this office for reference purposes.

5/ All figures and comments relate to the audit period unless otherwise specified.

activities, whereas the aggregate amount expended was $385,009.68. Thus, the amount of the expenditures attributable to federal elections comprise 13.6% 6/ of the Committee's total financial activity. Also, certain federal candidates reimbursed the Committee for expenditures made on their behalf. Specifically, the principal campaign committee of Congressman Robert A. Roe, repaid the Committee $10,780.00. Likewise, the Carter-Mondale Re-Election Committee, Inc. repaid the Committee $1,436.33. The balance of contributions received from federally registered committees was $2,127.00. 7/

The Committee received an aggregate of $405,010.00 in all eight of its accounts. Of this amount, $50,755.00 were verified as corporate contributions; 8/ $4,870.00 were contributions from labor organizations and local government groups; and $55,868.01 were contributions from unregistered committees. 9/ As noted,

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6/ Additionally, this percentage results after using an allocation formula (approved by the Commission in AO 1976-72) which applies proportionately more weight to federal candidates.

7/ These contributions are as follows: $1,300.00 and $700.00 from the Women's Division of the Passaic County Democratic Club on October 4, 1978 and October 23, 1979, respectively; and $127.00 from the New Jersey Democratic State Committee, Federal Election Account, on October 8, 1980.

8/ The Office of General Counsel sent to the New Jersey State Corporate Division a list of all contributing entities in the Committee's ledger which might have been incorporated. The "corporate contributions" referred to in this report are the contribuitons from those entities the Corporate Division has documented as incorporated.

9/ New Jersey election law permits the receipt and use of all of these contributions for its elections.

the Committee only received $14,370.33 from federally registered committees, of which $12,216.33 were reimbursed. Thus, the audit work papers demonstrate that the Committee's primary concern was non-federal elections. 10/

III. Previous Reason to Believe Findings

A. Use of Impermissible Funds in connection with Federal Elections

On February 8, 1980, the Commission found reason to believe that the Passaic County Democratic Committee violated 2 U.S.C. § 433, 11 C.F.R. § 102.6 and 2 U.S.C. § 441b by transferring monies from an account containing corporate contributions to an account from which expenditures for federal elections were made.

2 U.S.C. § 441b(a) prohibits political committees from accepting and using contributions from corporations and labor organizations in connection with federal elections. In order to ensure that political committees do not commingle these prohibited monies with funds permitted for use in federal elections -- especially in states which permit the use of corporate and labor contributions for state and local elections -

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10/ It should also be noted that had the Committee been knowledgeable of federal election laws and established separate federal and non-federal accounts in accordance with 11 C.F.R. § 102.6, the Committee lawfully could have used corporate and labor contributions to finance those expenditures allocated to state and local candidates in connection with its partisan and get-out-the-vote drives pursuant to AO 1978-10. These drives comprised a good portion of the Committee's activities.

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about the origin of its $1,619.57 beginning balance, the Committee explained that this amount was the residual of its 1979 Election account which was transferred to the 1980 Election account. Inasmuch as the last deposit into its 1979 Election account was a $23,000.00 transfer from its Regular Account which contained corporate and labor monies, the 1980 cash on hand apparently contained funds prohibited by 2 U.S.C. § 441b. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 104.12 by including monies from corporations and labor organizations within its cash on hand in 1978 and 1980.

C. Receipt of Excessive Contribution

On July 14, 1981, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by receiving a contribution in excess of limitations set forth by 2 U.S.C. § 441a(a). 15/ The Commission based this finding on a report which disclosed a $12,000.00 loan from the Jefferson National Bank on October 17, 1980, which was endorsed by Robert Angele. Since the Committee's reports only disclosed one person as the endorser, it appeared that the entire amount of the loan may have been a contribution from Mr. Angele.

15/ 2 U.S.C. § 441a(a)(1)(C) prohibits individuals from contributing in excess of $5,000.00 per calendar year to state party committees. 2 U.S.C. § 441a(f) prohibits committees from receiving contributions in excess of the limitations set forth by 2 U.S.C. § 441a(a).

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The audit disclosed that the loan was in fact endorsed by Mr. Robert Angele and his wife, Lucy Angele. 16/ The loan was deposited in the Committee's Election 2 account.

11 C.F.R. § 100.7(a)(1)(i)(C) states that a loan is a contribution by each endorser or guarantor, and that each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable. 17/ Accordingly, this loan constitutes a $6,000.00 contribution from each of the Angeles. Each of these contributions exceeds lawful contribution limitations by $1,000.00. 18/ The audit therefore confirms this reason to believe finding, however, the audit also reveals that the Committee accepted not one, but rather two excessive contributions.

16/ It remains unclear to whom the loan check was made payable, however, bank records show that the loan and interest ($12,312.00) were repaid by a February 10, 1981 check drawn on the Committee's Election 3 account.

17/ Moreover, (former) 11 C.F.R. § 102.6 sets forth that all contributions deposited into an account from which both federal and non-federal expenditures are made are subject to the contribution limitations of the act regardless of whether such contributions are for use in connection with federal or non-federal elections. Thus, the loan, regardless of whether the Angeles intended it to finance non-federal elections, is subject to the Act's contribution limitations.

18/ The audit report notes that the Audit Division's review of receipts records for the period audited revealed no other contributions from either Robert or Lucy Angele.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT G

Conciliation Agreement,
In re Citizens Committee for Ernest F. Hollings,
MUR No. 1768 (1985)

87044543297

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Citizens Committee For Ernest F. Hollings by its treasurer, Rene Debacker	)	MUR 1768

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Citizens Committee for Ernest F. Hollings by its treasurer, Rene Debacker ("Respondent"), violated 2 U.S.C. § 441a(a) by making an excessive contribution and 2 U.S.C. § 434(b) for failing to report the contribution.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

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

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

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

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

1. Respondent, Citizens Committee for Ernest F. Hollings, is the authorized political committee of Senator Ernest F. Hollings.

2. Respondent, Rene Debacker, is the treasurer of the Citizens Committee for Ernest F. Hollings.

3. Respondent Citizens Committee For Ernest F. Hollings by its treasurer Rene Debacker guaranteed a $35,000 bank loan to Hollings For President, Inc.

4. The loan was repaid in 31 days.

5. This guarantee of a loan was an excessive contribution (hereinafter "excessive contribution").

6. Respondent Citizens Committee for Ernest F. Hollings by its treasurer Rene Debacker violated 2 U.S.C. §441a(a)(1) by making that excessive contribution in the amount of $34,000 to Hollings For President, Inc.

7. Although Hollings For President, Inc., by its treasurer Rene Debacker disclosed the bank loan in a timely manner, the Respondent Citizens Committee by its treasurer Rene Debacker violated 2 U.S.C. § 434(b) by failing to report that excessive contribution to Hollings for President, Inc.

V. Respondent Citizens Committee for Ernest F. Hollings will pay a civil penalty to the Treasurer of the United States in the amount of Two Thousand Dollars ($2,000), pursuant to 2 U.S.C. §437g(a)(4)(A).

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

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

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

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

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

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

March 25, 1985
Date

FOR THE RESPONDENT:

For Respondent Citizens Committee
for Ernest F. Hollings
By Rene Debacker, Treasurer

Feb 26, 1985

9704043332

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress Committee	)	MUR 2051
John W. Herdzina,	)	
as treasurer	)	

CITY OF OMAHA :
: SS:
STATE OF NEBRASKA :

AFFIDAVIT OF WALTER CALINGER

WALTER CALINGER, being duly sworn, deposes and says:

1. In the Spring of 1984, I was a candidate in the Nebraska Democratic Party's primary for the position of United States Representative for the Second Congressional District.

2. In an effort to comply with all provisions of the federal campaign laws, I formed the Calinger for Congress Committee ("The Committee"). The Committee was duly authorized to contract for services on my behalf and, indeed, throughout the campaign, the Committee did so.

1-p. 75 of 78

EXHIBIT 4

3. During the campaign, I decided to invest additional monies into the primary election. To that end, my campaign manager, David Newell, contacted The Community Bank ("Bank") who indicated to me that it was willing to lend the money to me without any preconditions or requirements. Specifically, the Bank did not require that I obtain any guarantees for the loans.

4. On my own initiative, I asked other citizens of the Second Congressional District to act as guarantors. When I asked these individuals to act as guarantors, I believed that it was perfectly legal to have these individuals function in that capacity. When these loans were obtained, the campaign was not financially destitute or desperate. The decision to secure these monies was part of a strategic campaign plan.

5. My campaign manager, David Newell, negotiated the first loan of $5,000 on behalf of the campaign. I asked Lawrence Myers and John Hughes to act as guarantors for loans in the amounts of $2,000 and $10,000 respectively. The first two loans have been repaid completely by the Committee or me. I have repaid one half, $5,000, of the $10,000 loan. Neither Lawrence Myers nor John Hughes was involved in the negotiations of these loans with the Bank.

6. At no time did I understand or realize that these arrangements arguably may have violated any Federal Election Commission ("FEC") regulations or campaign laws.

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7. When the campaign treasurer informed me that the Reports Analysis Division ("RAD") of the Federal Election Commission asked questions about the guarantees, I directed him to take immediate action. Throughout the history of the Committee, we have attempted to comply with all aspects of the regulations. The guarantees were disclosed by my treasurer in routine filings with the Commission. I informed the bank that the guarantors' theoretical obligations, which was merely cosmetic, were arguably not permissible by the FEC. At my request, the Bank immediately rewrote the notes and agreed that I would be solely responsible for the loans. At the direction of an employee of the FEC, the guarantees were "destroyed." The campaign was told that both guarantees and loan documents that might be extant which indicated other than sole responsibility of candidate should be changed and/or destroyed so as to make the candidate solely responsible for any loan amounts. The campaign complied with the directions of the FEC.

8. There has been no defaults associated with the loans. I make regular payments on the one remaining loan. I plan to continue to make these payments until the loan is completely repaid.

9. Neither Lawrence Myers nor John Hughes has had any involvement with the Bank throughout the history of this loan. The checks for repayment of these loans by the

Committee which were made out to "Walter Calinger and John Hughes," were created by the campaign treasurer. Neither Lawrence Myers nor John Hughes had any involvement in these checks and they did not negotiate the amounts or terms of these payments.

Dated:

Walter Calinger

Walter Calinger

Sworn to and subscribed before me this 1st day of July, 1986

Carol D. Borgh

NOTARY PUBLIC

My Commission

GENERAL NOTARY-State of Nebraska
CAROL D. BORGH
My Commission Expires Aug. 8, 1988

8704063336

1-p. 78 of 78

86 JUL 14 AM 11:39

J. Levin

July 8, 1986

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

86 JUL 14 P4:28

Dear Mr. Steele:

In response to your letter dated June 4, 1986 I have prepared a brief for the Federal Election Commission to review: Regarding MUR 2051 in the Case of David R. Newell, Campaign Manager for the Calinger for Congress Campaign.

At this writing I have yet to hire an attorney to represent me in this matter.

It is my hope that my brief will convince the Commission that justice would best be served if this matter was dismissed by the F.E.C.

Because of the tight time frame imposed by the F.E.C. Council, I am unable to enclose a clarifying letter from the Community Bank of Nebraska. This will be forwarded to you as soon as I receive it.

Sincerely,

David R. Newell

DRN:fb
Encl.

8704043337

Attachment 2 - p. 1 of 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
David Newell	)	

DAVID R. NEWELL'S BRIEF

Six weeks prior to the primary in Nebraska in 1984 I was employed by the Calinger for Congress Campaign as the Campaign Manager for a fee of $200 a week. My selection was based simply on my availability and knowledge of the Congressional District. Nebraska'a Second District is a five county area in Eastern Nebraska, the primary city being Omaha, my home town.

While I have had considerable campaign experience I had not previously been responsibly active in a Federal Election prior to this experience. The position of Campaign Manager had previously been unfilled, in part because Mr. Calinger was unopposed until the last minute filing (eight weeks prior to the primary) by Thomas Cavanaugh, a well known brother of a former Congressman.

During the two weeks prior to the beginning of my employment I negotiated the conditions of employment with Mr. Calinger. At that time I was assured that fund raising and campaign reporting would not be areas of primary responsibility of mine. I was assured that there was a well established Fund Raising Committee and a Campaign Treasurer who had, and would continue to be responsible in these areas.

During the first week of the campaign I was occupied by evaluating staff, rewriting the campaign plan and developing a campaign organization for a contested primary. During these activities the campaign's fund raising activities and cash on hand became an obvious concern of mine. After meeting with the Campaign Fund Raising Committee and the candidate we agreed on the need to borrow $5,000 to meet our cash flow needs. It was also agreed to pick up our fund raising activities.

At this point it is important to note that the Campaign Treasurer was not a member of the Fund Raising Committee. It was suggested by the candidate and the Fund Raising Committee that I contact the Community Bank to arrange a loan for the campaign of $5,000. Since I had made the arrangements for the loan I met Mr. Calinger at the Community Bank to sign whatever papers were needed and take the check and deposit it. At the bank I was asked to sign my name to the document which is enclosed. I had no difficulty signing the document where my name was typed because my title as campaign manager was typed in, and the campaign headquarters address was typed in where it said debror's address. I assumed I was signing in my official capacity as campaign manager. I did not realize what the word personal guarantee meant until Mr. Levine explained his interpretation to me over the phone during the Summer of 1985.

I have asked the Community Bank to provide me with a clarifying letter to this effect and I believe this will be forthcoming. From my personal conversation with the Bank President, Mr. Leon Evans, who has begged for some additional time to reconstruct the details. I can at least say his impression is similar to mine.

Mr. Hertzina, the campaign treasurer, was an unpaid volunteer and an attorney whom I first met over the phone for a short 20 minute briefing on the do's and dont's of record keeping. I met him only briefly once during the campaign when he came by to secure Mr. Calinger's signature for the reports he prepared. The office manager worked with him exclusively, and always at his law office. My only explanation of his report is to suggest that he made the same assumption that the legal staff for the F.E.C. did.

This mistake is difficult for me to understand, in re-reading the form it seems even more clear to at least me that the loan was made to "Walt Calinger for Congress", address 1407 So. 13 St., Omaha NE 68108 and later signed by the candidate and the campaign manager at the same address.

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The only explanation I have received as to how this reporting error could have been made has been presented by Mr. Calinger whose instructions to Mr. Hertzina was "If in doubt, report it." Mr. Hertzina must of had some doubt or was using the other loan agreements as an example. To most who read it the document seems clear in both intent and purpose.

My last point is simply for perspective. I am not a man of means, a truth which at the time was widely known. I had just announced I would not run for re-election to the State Legislature, a job which pays $400 a month because I no longer could afford to serve. No thoughtful banker would have insisted or allowed me to be a co-maker of a loan for $5,000.00.

July 8, 1986
DATE

Dave Newell
DAVID R. NEWELL

3704063310

Note No. 04-01023 Date [illegible]

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name WALT CALINGER FOR CONGRESS

Debtor's Address 1407 S. 13 St. - Omaha, NE 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE (The cost of my credit as a yearly rate.)	FINANCE CHARGE (The dollar amount the credit will cost me.)	Amount Financed (The amount of credit provided to me or on my behalf.)	Total of Payments (The amount I will have paid after I have made all payments as scheduled.)
2% over Regional Prime %	$	$ 5,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ I do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
DEMAND		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $_____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $_____.

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated April 27, 19 84 covering the following property Personal Guarantees

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☐ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over Regional Prime %.

PREPAYMENT If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: NA

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method.

ADDITIONAL CHARGES Official fees and taxes $_____

Other_____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of COMMUNITY BANK OF NEBRASKA, Five Thousand and 00/100 Dollars ($ $5,000.00)

on Demand, 19_____ at creditor's office and also to pay ☐ a minimum loan fee of $_____ ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over Regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

2-p 5 of 8

Purpose of Loan Campaign Expenses

Debtor's Signature X [signature] DAVID NEWELL, Campaign Manager Debtor's Address 1407 S. 13 St - Omaha, NE 68108

Debtor's Signature [signature] WALT CALINGER, Candidate Debtor's Address 1407 S. 13 St. - Omaha, NE 68108

NF260-828 Single Payment or Demand Note

THE COMMUNITY BANK

July 11, 1986

David Newell
4027 Bauman
Omaha, NE 68112

Dear Mr. Newell,

As you have requested I have reviewed the circumstances involving the loan extended to the Walt Calinger for Congress Campaign Committee dated April 27, 1984.

Since there has been considerable confusion regarding the committee's transactions please understand that my conclusions are based on my recollections and the reviewing of this file.

I have concluded that the April 27, 1984 note was made on behalf of the Walt Calinger for Congress Committee and that your signature was requested based on your capacity as the Campaign Manager. The personal guarantees referenced in the note were for guarantees which were discussed with Calinger but not received prior to the repayment of the loan on July 27, 1984.

Subsequent to the repayment of this note there has been massive confusion amoung the various parties we've discussed this matter with. I hope this will assist you in resolving this matter which has been extremely time consuming and frustrating.

Very truly,

Leon E. Evans, Jr.
President

LEE/tln

2-p. 6 of 8

We Are Community
5180 Ames Ave./Omaha, Nebraska 68104/(402) 455-0900
343 No. 114th Street/Omaha, Nebraska 68154/(402) 330-2282

GCC# 1015

86 JUL 23 A10:51

July 17, 1986

86 JUL 23 P3:30

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 2051

Dear Mr. Steele:

In response to a request from Jonathan Levin, the attorney assigned to this matter, I have enclosed an addendum to my brief submitted July 8, 1986.

The addendum is intended to respond to the issue raised by the re-payment checks issued by the committee.

I hope that my response to that concern will be clarifying and satisfactory.

Sincerely,

Dave Newell

Dave Newell
4027 Bauman
Omaha, NE 68112

Encl.
DN:fb

2-p 7 of 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
David Newell	)	

ADDENDUM TO DAVID R. NEWELL'S BRIEF

In regards to the repayment checks issued by the Committee which were supposedly made out to David Newell and Walter Calinger. Of this matter I have no knowledge what-so-ever. I cannot understand why this was done, nor can I confirm that it was even done.

My employment with the Committee for Walt Calinger was terminated May 20, 1984. Following that date I had no contact with the Committee or its' officers for any reason until the Spring of 1985 when the Federal Election Commission's investigation required me to discuss that matter with Mr. Calinger.

I do not have any knowledge of how the money was raised, paid back, or reported what-so-ever. I did not see, nor endorse, nor have any knowledge of this matter!

July 17, 1985 — DATE

David R. Newell — David R. Newell

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
John J. Hughes
Calinger for Congress
Committee
John W. Herdzina, as treasurer

Dear Mr. Warin:

On , 1986, the Commission determined that there is probable cause to believe that your client, John J. Hughes, committed a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection with a loan guarantee for the Calinger for Congress Committee in excess of $1,000. On that date, the Commission also determined that there is probable cause to believe that your clients, the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f), another provision of the Act, in connection with the acceptance of excessive contributions and loan guarantees from Mr. Hughes and from Larry Myers.

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 conciliation agreements that this Office is prepared to recommend to the Commission in settlement of this matter. If your clients agree with the provisions of the enclosed agreements, please have them sign and return them along with the civil penalties to the Commission within ten days. I will then recommend that the Commission approve the agreements. Please have the checks for the civil penalties made payable to the U.S. Treasurer.

If you have any questions or suggestions for changes in the enclosed conciliation agreements, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreements (2)

87074634345

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, NE 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

This is to advise you that, after an investigation was conducted, the Commission concluded on , 1986, that there is no probable cause to believe that you violated the Act. Accordingly the file in this matter, numbered MUR 2051, has been closed as it pertains to you. This matter will become part of the public record within 30 days, after it has been closed with respect to all other respondents involved. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

If you have any questions, contact Jonathan Levin at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Attachment 4

87040643347

RECEIVED AT THE FEC
GCC# 1015
86 JUL 23 A10:51

July 17, 1986

RECEIVED
86 JUL 23 P3:30
GENERAL COUNSEL

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

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Dave Newell

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4027 Bauman
Omaha, NE 68112

Encl.
DN:fb

8 7 0 4 0 4 3 3 4 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
David Newell	)	

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July 17, 1985 — DATE

David Newell — David R. Newell

9 7 0 4 0 4 5 3 4 9

027 Bauman
Omaha, NE 68112

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

ATN: Mr. Jonathan Levi

RECEIVED THE FEC
86 JUL 14 AM : 39

CCM-934

July 8, 1986

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

86 JUL 14 P4: 28
GENERAL COUNSEL

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DRN:fb
Encl.

8704043351

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
David Newell	)	

DAVID R. NEWELL'S BRIEF

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9 7 0 4 0 6 4 3 3 5 2

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Mr. Hertzina, the campaign treasurer, was an unpaid volunteer and an attorney whom I first met over the phone for a short 20 minute briefing on the do's and dont's of record keeping. I met him only briefly once during the campaign when he came by to secure Mr. Calinger's signature for the reports he prepared. The office manager worked with him exclusively, and always at his law office. My only explanation of his report is to suggest that he made the same assumption that the legal staff for the F.E.C. did.

This mistake is difficult for me to understand, in re-reading the form it seems even more clear to at least me that the loan was made to "Walt Calinger for Congress", address 1407 So. 13 St., Omaha NE 68108 and later signed by the candidate and the campaign manager at the same address.

The only explanation I have received as to how this reporting error could have been made has been presented by Mr. Calinger whose instructions to Mr. Hertzina was "If in doubt, report it." Mr. Hertzina must of had some doubt or was using the other loan agreements as an example. To most who read it the document seems clear in both intent and purpose.

My last point is simply for perspective. I am not a man of means, a truth which at the time was widely known. I had just announced I would not run for re-election to the State Legislature, a job which pays $400 a month because I no longer could afford to serve. No thoughtful banker would have insisted or allowed me to be a co-maker of a loan for $5,000.00.

July 8, 1986
DATE

Dave Newell
DAVID R. NEWELL

87 0 4 0 6 4 3 3 4

Note No. 84-01025 Date April 27, 1984

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name WALT CALINGER FOR CONGRESS

Debtor's Address 1407 S. 13 St. - Omaha, NE 68108

The following disclosures are being made as required by the Truth-In-Lending Act and the Truth-In-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over Regional Prime %	$	$ 5,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ I do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
DEMAND		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above ____%. The maximum interest rate increase at one time will be ____%. The rate will not increase more than once ☐ every year; ☐ ____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by ____% in ☐ one year; ☐ ____, ☐ your regular payments will increase to $____; ☐ you will have to make ____ additional payments; ☐ your final payment will increase by $____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $____

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $____

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated April 27, 19 84 covering the following property Personal Guarantees

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☐ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over Regional Prime %.

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: NA

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method.

ADDITIONAL CHARGES Official fees and taxes $____

Other ____ $____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of COMMUNITY BANK OF NEBRASKA,

Five Thousand and 00/100 Dollars ($ $5,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $____ ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over Regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ ____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Debtor's Signature X [signature] DAVID NEWELL, Campaign Manager — Debtor's Address 1407 S. 13 St - Omaha, NE 68108

Debtor's Signature [signature] WALT CALINGER, Candidate — Debtor's Address 1407 S. 13 St. - Omaha, NE 68108

NF260-828 Single Payment or Demand Note

8704043

THE COMMUNITY BANK

July 11, 1986

David Newell
4027 Bauman
Omaha, NE 68112

Dear Mr. Newell,

As you have requested I have reviewed the circumstances involving the loan extended to the Walt Calinger for Congress Campaign Committee dated April 27, 1984.

Since there has been considerable confusion regarding the committee's transactions please understand that my conclusions are based on my recollections and the reviewing of this file.

I have concluded that the April 27, 1984 note was made on behalf of the Walt Calinger for Congress Committee and that your signature was requested based on your capacity as the Campaign Manager. The personal guarantees referenced in the note were for guarantees which were discussed with Calinger but not received prior to the repayment of the loan on July 27, 1984.

Subsequent to the repayment of this note there has been massive confusion amoung the various parties we've discussed this matter with. I hope this will assist you in resolving this matter which has been extremely time consuming and frustrating.

Very truly,

Leon E. Evans, Jr.
President

LEE/tln

We Are Community
5180 Ames Ave./Omaha, Nebraska 68104/(402) 455-0900
343 No. 114th Street/Omaha, Nebraska 68154/(402) 330-2282
Member F.D.I.C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 8, 1986

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as
treasurer

Dear Mr. Warin:

This is in response to your letter, dated July 2, 1986, questioning whether the brief addressed to Calinger for Congress ("the Committee") was sent to you as counsel for the Committee. According to the enclosed letters sent by you on November 25, 1985, you have been counsel for the Committee since that time. Accordingly, the brief was sent to you in that capacity and any response on behalf of the Committee is overdue.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Letters from F. Joseph Warin and Walter M. Calinger

8704063357

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

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Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Letters from F. Joseph Warin and Walter M. Calinger

87044636

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as
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Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Letters from F. Joseph Warin and Walter M. Calinger

87044435 9

CCO 800

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
NEW YORK
OMAHA

July 2, 1986

HAND DELIVERED

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

Re: MUR #2051

Dear Jonathan:

Enclosed please find a copy of our briefs in the above-styled matter. In reviewing our file, it appears that we were also served with a copy of the MUR regarding the Calinger for Congress Committee, John W. Herdzina, as treasurer. You will recall in our conversation on Friday that I mentioned to you that I understood the Committee had been cited. In my conversations with Mr. Calinger, I understand the Committee has not received any correspondence from you regarding this matter. If you are intending to serve me as counsel for the Committee, please so advise. I understand that Mr. Newell will be responding on July 9, 1986. I am available during the week to discuss this matter.

Sincerely,

F. Joseph Warin

jjb

Enclosure

86 JUL 2 P5:18

GENERAL COUNSEL
RECEIVED

8704043360

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
John Hughes	)	MUR 2051

RESPONDENT'S REPLY BRIEF

INTRODUCTION

Approximately ten months after Respondent filed its initial brief before the Federal Election Commission ("Commission") and after repeated inquiries by Respondent regarding the status of the matter, the General Counsel filed its brief in this matter on June 3, 1986. For several compelling reasons, the Commission should find that there is no probable cause that John J. Hughes violated 2 U.S.C. § 441(a)(1)(A).

Initially, this matter should be closed without any finding because the General Counsel has not pursued this matter in a timely fashion. The General Counsel has meandered around this matter for more than sixteen months. The disclosure which forms the basis of the purported violation occurred in November 1984. The Commission entered a "reason to believe" finding on July 17, 1985. On August

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13, 1985, Respondent filed his brief. Nothing has happened between August 1985 and June 1986. A respondent should not be subject to sanctions and left accused without resolution at the whims of the General Counsel.1/

Respondent repeatedly made inquiries to the General Counsel, see exhibits 1 and 2, but the General Counsel failed to provide any response either in writing or orally. This leisurely approach to an enforcement practice should not be accepted by the Commission. For this reason alone, the Commission should close this matter without findings. This approach, despite the repeated urging of Respondent's counsel, has been prejudicial to the Respondent because he has been accused but the matter remained dormant. In addition, the Commission should not find probable cause because the Respondent's co-signature is not a violation of the statutory provisions. Moreover, the exercise of discretion by the General Counsel in selecting to pursue Respondent and failing to pursue a probable cause finding against an identically situated individual is abusive. Finally, the facts and circumstances surrounding this matter compel a finding of no probable cause against Respondent

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1/ It is ironic that Respondent is given strict time limits within which to respond and the General Counsel, either on its own accord or by the Commission's approval, did not respond for ten (10) months.

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because a probable cause finding in this technical matter in which no harm has been incurred would be unfair, unjust and not within the spirit of the Federal Election laws.

I. STATEMENT OF CASE

Both the General Counsel and Respondent have previously outlined the statement of the case;2/ however, some aspects of the record should be amplified. Throughout the General Counsel's brief there is reference to the notes being destroyed. In fact, the Bank very simply rewrote the loans to the Calinger for Congress Committee and accordingly there cannot be anything sinister about the remaking of the notes. The use of the word "destroyed" suggests covert and illegal acts which is simply not the circumstances here. See Affidavit of Walter Calinger at ¶ 7, attached hereto as Exhibit 4. In addition, while the statement of facts in the General Counsel's brief does not differ in material respect from that of Respondent's, two significant matters must be pointed out:

1. The Committee for the candidate has repaid one-half of the $10,000 loan and there has been no default on that loan; See Affidavit of Walter Calinger at ¶¶ 5 and 8;

2/ Respondent's earlier Brief is incorporated here by reference and attached as Exhibit 3 to this brief.

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2. The General Counsel goes to great pains to suggest that even as an "accommodating maker," Respondent is still liable, as a technical legal matter. This argument overlooks the critical facts of this loan. In the circumstances of this case, Respondent cannot be liable because the loan documents do not exist as it was originally created and Respondent does not currently have any guarantor relationship with the Bank. Therefore, Respondent cannot be liable. Accordingly, there cannot be a statutory violation.

II. FAIRNESS DICTATES THAT NO FURTHER ACTION BE TAKEN

Respondent incorporates by reference his earlier brief on these matters. In addition, to the issues raised in that brief, the Respondent urges the Commission not to make a probable cause finding in this matter because the imposition of penalties would result in extreme hardship to Respondent.

The Respondent is a businessman active in making securities offerings throughout the United States. As a result of being a principal in several corporations and partnerships which make securities offerings, the Respondent is required to comply with both federal and state securities laws. If the Commission were to impose a civil fine or a conciliation agreement upon Respondent, Respondent might well

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have to disclose this information on its filings with state and federal securities commissions, thereby jeopardizing his status in several states and possibly excluding him from participating in the offering of securities in several states. Moreover, he will likely be unable to avail himself of certain exemptions to the securities laws which substantially reduce the expenses and time of a securities offer. Obviously, any such response to action by the FEC would cause significant financial losses by Respondent.

Consequently, imposition by the Commission of fines or of a conciliation agreement could have significant effects on Respondent and may impact on the manner in which he pursues his livelihood. Such a result far exceeds those warranted by the arguable violation in this matter. Accordingly, we urge the Commission to close this matter without any findings.

III. THE EXERCISE OF DISCRETION MANDATES THAT RESPONDENT BE TREATED FAIRLY

The General Counsel has already exercised its discretion and apparently decided not to pursue Mr. Lawrence Myers, a guarantor in the amount of $2,000 to this very campaign. The only distinguishing circumstance between Myers and the Respondent is the amount of the contribution. ($2,000 v. $10,000). There is no suggestion inn the pleadings and, indeed, the record is otherwise (See Affidavit of Walter Calinger at ¶ 9.) that Myers was any less involved than

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Respondent. It is evident that neither person was active in securing or negotiating these loans. While the General Counsel was unwilling to discuss its decision not to pursue the Myers matter, it is evident that such an exercise of discretion was fully warranted. We ask for similar consideration regarding this matter in light of the identical same situation. Respondent is not an active political leader but rather is a businessman in his local midwestern community. He has not stood for elective office, he has not held any position in any of the local or national parties, and he is not perceived to be a political insider. We ask the Commission to properly exercise its discretion and make no findings in this matter.

IV. THE COMMITTEE'S PROMPT ACTION TO RECTIFY THE ALLEGED TECHNICAL VIOLATION SHOULD INURE TO RESPONDENT'S BENEFIT

We urge the Commission to follow the approach taken by other actions where they were arguably inadvertent technical violations which were followed up by immediate efforts to rectify the error once it was discovered.

In several MURs involving inadvertent violations and immediate good-faith attempts to rectify the errors, the Commission took no further action against the respondents beyond a "reason to believe" finding, and closed the files.

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In MUR 1534, the Commission discovered through the RFAI filings that the Oil, Chemical and Atomic Workers Internatinal Union Political and Legislative League Fund ("Fund") had inadvertently comingled union treasury funds with voluntary funds in amounts approaching $22,000 in contravention of 2 U.S.C. § 441b. During the MUR proceeding, the Fund notified the Commission that since the discovery of the initial infraction, no further comingling had occurred. In addition, the Fund further noted that a new "voluntary" account was opened into which contributions had been deposited, and that the previous voluntary account which contained the comingled amounts had been closed out, the funds having been transferred to an involuntary account. Finally, the Fund informed the Commission that administrative and accounting procedures were being changed and revised in order to alleviate the current problems and guard against problems in the future.

With respect to the above, the General Counsel's Recommendation commented that:

> In this case, the subject funds have now been segregated and voluntary compliance has been achieved. We believe that since the [Fund] has corrected its accounting problems and such violations are not likely to occur in the future, the Commission should find reason to believe and close the file.

The Commission followed the General Counsel's recommendation by a 6-0 vote.

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In MUR 1493, Thompson's People, the principal campaign committee of former Congressman Frank Thompson, Jr., accepted excessive contributions from the separate segregated funds of the national and local chapters of United Food and Commercial Workers ("U.F.C.W."). The Commission's General Counsel, having recommended a "reason to believe" finding, stated:

> [H]owever, because the money has been refunded, Thompson's People terminated over a year ago, and the U.F.C.W. has changed its procedures to avoid making excessive contributions, it is recommended that no further action be taken.

The Commission, following the General Counsel's recommendation, found reason to believe and closed the file by a vote of 5-1. The reasonableness of the Commission's decision is apparent. We urge the Commission to adopt a similarly reasonable conclusion in this matter where the Respondent was unwittingly inculpated.

The Commission has taken other action that has implications for its decision in this matter. In MUR 1517, the Cliff Dickman for Congress Committee, relying on erroneous legal advice, accepted loans totalling $20,500, endorsed by three individuals, which resulted in their making excessive contributions. The loans, similar to the loans in the instant matter, were later refinanced. The Commission found reason to believe that the committee had violated the Act, but took no further action and closed the file. The

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Commission followed the General Counsel's recommendation by a vote of 5-1. It is apparent that no action was taken against the three individuals in this matter. Similarly, no action should be taken against Respondent for this inadvertent violation in which the Committee and the candidate, after becoming aware of the violation, rectified the matter with the Bank. See Affidavit of Walter Calinger at ¶ 7.

In MUR 895, it was alleged that a mailing by the Beloit Corporation had been sent to ineligible employees, thereby violating 2 U.S.C. § 441b. Upon investigation, the facts revealed that Beloit had violated the provision. However, the proof submitted showed that the cause of the incorrect mailing was due to a lack of communication during the period between those planning the mailing and those actually implementing it. Upon discovering that the communication had been sent to ineligible employees, Beloit: A) promptly initiated an investigation into the matter; B) considered what, if any, corrective action could appropriately be taken concerning the violation; and C) took steps to insure that such violations would not occur in the future. Although the Commission made a final determination that Beloit had violated the statute, it took no further action and closed the file after considering the circumstances of the case outlined above. This outcome would be a sensible approach regarding Respondent, in which no harm or injury incurred to anyone.

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The instant case involves similar considerations of a good-faith attempt to comply with the Act and prompt efforts to correct inadvertent violations upon the discovery of the purported violation. See Affidavit of Walter Calinger at ¶ 6 ("at no time did I understand or realize that these arrangements [Respondent's guarantee] arguably may have violated any Federal Election Commission ("FEC") regulations or campaign laws." The Committee and the candidate contacted the Bank, rewrote the loans excluding any guarantee. This was all accomplished without even the knowledge of the Respondent. Finally, unlike some recent matters before the Commission in which the mere size of the loans suggest that repayment will be extremely unlikely,

this loan is being regularly repaid by the candidate. Very simply, there has been no default.

V. CONCLUSION

As the affidavit of the candidate clearly elucidates, the Respondent was completely uninvolved in the processing, negotiations and securing of the loan and accompanying guarantee. The Bank did not require the guarantee and readily acceded to the candidate's request to have a unsecured, nonguaranteed loan. We urge the Commission to exercise its good judgment and not make a probable cause

finding against the Respondent for this unfortunate circumstance in which he was not the protagonist. We submit that substantial compliance has already been achieved in this case, and respectfully request that the Commission take no further action in this matter and close the file.

Dated: July 2, 1986

Respectfully submitted,

KUTAK ROCK & CAMPBELL

F. Joseph Warin

F. Joseph Warin

CERTIFICATE OF FILING

The undersigned hereby certifies that, pursuant to 11 C.F.R. § 111.16(c) (1985), ten (10) copies of this Respondent's Reply Brief have been filed with the General Counsel, Federal Election Commission, 1325 "K" Street, N.W., Washington, D.C. 20463, on this 2nd day of July, 1986.

F. Joseph Warin

F. Joseph Warin

9704064371

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 828-2400

ATLANTA
DENVER
NEW YORK
OMAHA

January 14, 1986

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR #2051

Dear Jonathan:

In late December we spoke about an opportunity to meet and negotiate a resolution of this matter. We are eager to undertake those negotiations to reach a fair and equitable resolution with the Committee.

Please advise me when it would be convenient to meet with you.

Sincerely,

F. Joseph Warin

jjb

8704063372

EXHIBIT 1

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

February 11, 1986

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR #2051

Dear Mr. Levin:

I am confident that your schedule has been as hectic as mine over the last several weeks. You will recall that I last wrote and asked for an opportunity to review your brief and to engage in discussions to resolve this dispute. I have not learned of any new developments from your office so I presume that everything is fine.

Please call me if there are any new developments.

Sincerely,

F. Joseph Warin

jjb

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EXHIBIT 2

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

REPLY OF RESPONDENT

INTRODUCTION

On June 26, 1985, the Federal Election Commission determined that there was reason to believe that John Hughes had violated § 441a(a)(1)(A) of the Federal Election Campaign Act of 1971 ("1971") Act which limits campaign contributions to any candidate to a $1,000 maximum per donor. On July 18, 1985, Mr. Hughes was notified of the Commission's determination. As provided for by § 437g(3) of the 1971 Act, Mr Hughes respectfully submits this Reply in support of his contention that as a matter of law and equity this investigation should be dismissed without any findings of probable cause. This Reply also replies to the General Counsel's Factual and Legal Analysis.

EXHIBIT 3

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I. STATEMENT OF FACTS

This dispute arises in connection with the campaign of Walter M. Calinger. In May, 1984, Mr. Calinger ran for a seat in the United States House of Representatives from the Second Congressional District of Nebraska, a district which encompasses principally the greater metropolitan Omaha area. Mr. Calinger was defeated in his bid for the Democratic nomination by Thomas Cavanaugh who was himself later defeated in the general election by Republican Harold Daub.

Late in the primary, Mr. Calinger contacted respondent John Hughes, an Omaha businessman, to elicit his financial support. Although Mr. Hughes had never run for political office, directed a political campaign or otherwise taken a controlling role in the political process, his position in the business community had made him particularly attractive as a potential contributor. On May 2,1984, Mr. Calinger's efforts of persuasion were successful and he received from Mr. Hughes a contribution of $1,000. This was the only choate, intentional contribution Mr. Hughes made to the Calinger campaign. This May 2, 1984 contribution did not, therefore, constitute nor does the Commission now allege that it constitutes a violation of the federal election laws.

A few days later as the campaign drew to a close, the Calinger Committee determined that it needed additional broadcast and print media exposure. To finance this eleventh hour expense, the candidate made arrangements to take out several personal loans from The Community Bank, located in Omaha, Nebraska. He telephoned Mr. Hughes, explained this emergency need, and requested that Mr. Hughes co-sign a loan of $10,000 from the bank. During this conversation, Mr. Calinger emphasized that several other contributors had likewise been asked to co-sign the loan. Consequently and completely unaware that he was being asked by a respected city councilman, now-candidate for the Congress of the United States, to violate the federal election laws, Mr. Hughes agreed to co-sign.*/ Soon thereafter, on May 10, 1985, Mr. Hughes received the loan document which he signed and returned. It contained no request for credit references, no request for a salary declaration, and no request for a declaration of personal net worth. It did not inquire whether Mr. Hughes had any property to set as collateral and it did not request that he declare any. It did not request personal or character references. In its appearance, in its treatment by The Community Bank and in its matter-of-fact

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*/ It is evident from the record that Mr. Callinger did not have knowledge of a violation or an intent to violate the law.

description by the candidate, the loan document which Mr. Hughes signed appeared to him as a mere cosmetic formality, certainly nothing to which his capable and perceptive business savvy would alert him as potentially dangerous.

The Calinger for Congress Committee Treasurer, John Herdzina, dutifully reported in the Committee's July Quarterly Report the circumstances and financial value of this loan and three others for which Mr. Calinger had arranged co-signators. Subsequently, on October 16, 1984, the Reports Analysts Division notified the Treasurer that a problem had been discovered in the Committee's Schedule C filing which had clearly and overtly listed the loans. The Commission observed that the Calinger Committee's Schedule C appeared to exceed the lawful contribution ceiling by naming only two endorsers of the $10,000 loan. The Commission explained that the $1,000 per donor limit of 2 U.S.C. § 441a(a)(1)(A) extended to the guaranteeing or endorsing of loans. The letter advised that if this $1,000 limit was exceeded by any of the Calinger contributors, the Committee should refund to the donors the amount accepted in excess of $1,000. The treasurer heeded the Commission's advice and informed The Community Bank of the Commission's characterization of the loans as impermissible contributions. After apparently reaching an agreement with

the treasurer to eliminate Mr. Hughes' name, the bank promptly retired the guarantee of Mr. Hughes and confirmed that the loan was "now in the name of Walter M. Calinger alone and [is] unsecured and not guaranteed." Exhibit A, Letter of December 21, 1984 from The Community Bank to Walter Calinger. See Exhibit B, Redrafted Loan Document. This new circumstance was communicated to the Commission and an amended July Quarterly report was filed naming Mr. Calinger as the sole endorser of the $10,000 loan. It was only at this point, seven months after the campaign loss, that the Committee informed Mr. Hughes that "some problem" had developed with the co-signing and that therefore the loan had been redrawn retiring Mr. Hughes' endorsement.

Several months passed before the respondent heard anything about this matter. The next communication Mr. Hughes had concerning the loan was the Commission's July 18, 1985 notice announcing that it had determined that there was reason to believe that he had violated the federal elections laws.

II. ARGUMENT

A. JOHN HUGHES' CO-SIGNATURE CAN NOT CONSTITUTE A VIOLATION OF 2 U.S.C. § 441a(a)(1)(A) BECAUSE THERE HAS BEEN NO LOAN DEFAULT AND HE NOW HAS NO LIABILITY ON THE NOTE

The Federal Election Campaign Act of 1971 defines the term contribution as "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." 2 U.S.C. § 441a(a)(1)(A) (1985).

Pursuant to this definition, Mr. Hughes has, to date, donated $1,000 to the Calinger for Congress Committee, a legally-acceptable contribution under the election laws. He has not given the Committee any further monies. He has provided the Committee with no illegal subscription, given no personal loan, money advance or deposit, or donated anything else of value.

Nevertheless, the Commission has chosen to characterize Mr. Hughes' co-signature on the $10,000 loan as a personal contribution to the Calinger Committee of half that amount, $5,000, an amount exceeding the $1,000 per donor ceiling of § 441a(a)(a)(A). The Commission's characterization unjustly prejudices Mr. Hughes' sterling reputation in Omaha and

blemishes his integrity within his professional community. It is definitionally improper and unwarranted in light of the circumstances and the facts.

The Commission's characterization of Mr. Hughes' involvement with the loan cannot be reconciled with either the statutory or regulatory provisions governing the definition of contribution. The General Counsel asserts a violation of the $1,000 ceiling by citing to 2 U.S.C. § 431(8)(B)(vii)(I) which provides that a bank loan "shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." Exhibit C, General Counsel's Factual and Legal Analysis, MUR No. 2051, p. 2 (July 18, 1985). Thus, the General Counsel concludes that Mr. Hughes served as the sole co-maker of the $10,000 loan, had therefore contributed half that amount to the Calinger campaign, and consequently had exceeded the $1,000 per donor ceiling. Id. at p. 3.

The statute on which the Commission relies, however, calculates an endorser's contribution not by the amount of the loan, but rather by the amount of "the unpaid balance." 2 U.S.C. § 431(8)(B)(vii)(I) (1985). The significance of this statutory distinction must not be lost on the Commission. Unlike the characterization offered by the

General Counsel which determined Mr. Hughes' contribution as a proportion of the amount of the loan, the proper characterization of Mr. Hughes' contribution as calculated under the statutory provision is determined as a proportion of the amount of the loan's unpaid balance. The federal elections regulations fully support this interpretation. Title II of the Code of Federal Regulations provides that a loan is only a contribution "to the extent that it remains unpaid." 11 C.F.R. § 100.7(a)(1)(i)(B) (1985) (emphasis added). If, conversely, the loan is repaid, it "is no longer a contribution." Id. Furthermore, "[a]ny reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor... ." 11 C.F.R. § 100.7(a)(1)(i)(C) (1985).

Under such a calculation scheme, Mr. Hughes' "contribution" through his involvement with this $10,000 loan would decrease as his liability decreases. Thus, assuming but not conceding that Mr. Hughes' co-signature constituted an actual guarantee of the $10,000 loan, his personal liability would be $10,000 on default of the loan. As the loan is repaid, Mr. Hughes' personal liability decreases and, in direct proportion to this liability, his imputed contribution decreases as well. According to the federal regulation, if the loan is completely repaid, thus removing

all personal liability to the guarantor, the Commission would find that there was no longer any attributable contribution amount from the Hughes' loan.

This reasoning is indistinguishable from the facts of this present loan. When Mr. Hughes' co-signature was removed from the $10,000 loan, his personal liability was entirely and thoroughly extinguished as well. For the purposes of Mr. Hughes' position, when The Community Bank retired the original loan document and redrafted it without his name, the loan for which he was liable had been effectively "repaid". There is, thus, no contribution within the meaning of 2 U.S.C. § 431(8)(B) and no violation of the federal election laws under 2 U.S.C. § 441a(a)(1)(A).

A second definitional consideration also mitigates against a finding of violation. As defined in the statute, "contribution" involves the donation of "anything of value" to a political candidate. 2 U.S.C. § 437(8)(A)(i) (1985). Such a definition is both cogent and comprehensible. Under the federal election laws, things given candidates which have no value will not be accountable to either the donor or the recipient as a contribution.

The Hughes co-signature is precisely such a valueless addition. The evidence demonstrates that none of the parties accorded any value whatsoever to the co-signature. Certainly

the bank can not be said to have valued the co-signature for a surety purpose. It requested no confirming information that Mr. Hughes was adequately capitalized to insure the loan. No debt references, salary statements or banking balances were ever demanded. The bank merely sent Mr. Hughes the document and filed it when it was returned. Upon being notified by the Calinger Committee of a potential FEC problem, the bank showed little concern or hesitation in retiring the original note and drafting it anew without the second guarantee it had had before. In sum, The Community Bank treated the Hughes co-signature for what it was: a meaningless addition to an otherwise completely secure debt.

Neither of the co-signers held the document in any esteem. Mr. Calinger explained it over the telephone to Mr. Hughes as though the co-signing was an incidental formality and, considering the treatment of the document by the bank, Mr. Hughes could have no reason to doubt this characterization. Given this perception of the loan by all involved parties and the almost matter-of-fact removal of the Hughes name from the document by the bank, the Commission has every reason to find that the co-signature did not satisfy the "anything of value" requisite of § 431(8)(A)(i).

B. JOHN HUGHES IS A LAW-ABIDING, WELL-MEANING CITIZEN OF OMAHA. IF ANY PROVISION OF THE FEDERAL ELECTION LAWS HAS BEEN INFRINGED, JOHN HUGHES IS PROPERLY CHARACTERIZED AS NOTHING MORE THAN AN UNWITTING VICTIM

John Hughes is neither a politician nor a political activist. He is a respected and accomplished midwestern businessman. His interest in the political spectrum is probably identical to that of his Omaha friends and neighbors. His political profile is low, perhaps only existent at all because his financial successes have made him a prime target for prospective candidates.

To John Hughes, The Calinger campaign was no different. Mr. Hughes played no prominent role in the campaign. He neither brainstormed with the candidate on any regular basis, nor engineered campaign strategy. Aside from his contribution, Mr. Hughes' involvement with the Calinger for Congress effort was modest and obscure.

In late April and early May of 1984, Mr. Hughes was approached by the candidate who came seeking a contribution, which he received. Originally impressed by Mr. Calinger and his work on the city council, Mr. Hughes was sympathetic to the candidate's urgent plea for last-minute help during the final week of the Calinger campaign. Mr. Hughes had no

reason to question the candidate's motives. The campaign was a lively and intriguing one. Mr. Calinger's opponent, Thomas Cavanaugh, was the younger brother of John Cavanaugh, the congressional district's popular representative from 1977 to 1981. Thomas was unable, however, to capitalize on his older brother's popularity because family disputes had kept John from endorsing his brother early in the campaign. Mr. Calinger, on the other hand, was twelve years older than Cavanaugh and far and away the more experienced politician, campaigning from his post on the Omaha city council. The candidate's anxious appeal to Mr. Hughes at this point in a very hopeful campaign appeared completely harmless. Seen in the broader picture, the candidate's request was for an apparently meaningless co-signature on a note signed by a respected and widely-known local public figure issued from a bank which seemed completely uninterested in establishing or confirming the co-signer's credit worthiness.

Mr. Hughes' unwitting involvement with the loan is underscored by the circumstances surrounding the retirement of the endorsement. When the Calinger Committee Treasurer learned of the Commission's characterization of Mr. Hughes' co-signature, he corrected the concern and purged the guarantee--all without Mr. Hughes' knowledge or consent. When he was informed that there may have been a problem with

the guarantee, that the loan had been redrafted without his signature, and that his endorsement and liability had been removed, Mr. Hughes could do little more than sigh. The routine retirement of the co-signature reinforced its meaninglessness.

Mr. Hughes had no intent to violate the federal election laws. He was unaware that the loan he had signed had any significance whatsoever. Financially, he was undisputably correct. He has never been the subject of a Commission review or investigation and, had he even been informed of the Commission's concerns, he would undoubtedly had done what the Calinger Committee treasurer did for him: correct the problem. In fact, but for the good faith reporting of Mr. Hughes' co-signature by the Treasurer, the Commission might not have even discovered the loan at all. This investigation seems to leave one with the impression that even when one complies with the election regulations scrupulously, the Commission will not refrain from requesting punishment. He has done nothing to conceal the facts from the Commission. He has not, nor does the General Counsel contend that he has, deceived the Commission or misled it in any way. To the contrary, he has cooperated with the Commission to the best of his abilities and stands ready to continue to do so. If this investigation is a search for a culpable actor, the

Commission would do well to shift its attention to the campaign committee and away from Mr. Hughes who was an unwitting participant. Mr. Hughes was acting appropriately on the information provided him. His assistance was being solicited by a public figure in one of the midwest's largest cities. He was not informed by those charged to know that the co-signing of a note under the circumstances described above would constitute an unlawful contribution in violation of federal law. He was inaccurately told that a variety of other guarantors would join him on the note, that his was not to be the only endorsement. He was kept completely unaware of the developing controversy with the Commission and he was not consulted prior to the destruction of his guarantee. Considering the candidate's prestige in the community and the candidate's staff's expertise in the elections arena, Mr. Hughes understandably felt confident in relying on the statements he received.

It would appear that the culpable party here is the knowing party. Information was clearly either intentionally or negligently misrepresented to Mr. Hughes by those individuals privy to the full story. He was persuaded into this dilemma by those legally forbidden to solicit more than $1,000 from each contributor. Parenthetically, the reports and records are replete with information that neither the

Committee nor the candidate knew that the co-signature arguably constituted an election violation. Those who convinced Mr Hughes to co-sign this loan were responsible to know the technical provisions and subprovisions of statutes and regulations that take nearly a full line of a printed page to cite. It would be tragically unfair and improper for the Commission's search for the blameworthy to end here at the door of the unwitting and the misinformed. We urge the Commission, therefore, to abandon this investigation.

C. FINDING JOHN HUGHES IN VIOLATION OF THE ELECTION LAWS CAN NOT BE RECONCILED WITH THE COMMISSION'S HISTORICAL TREATMENT OF SIMILAR CIRCUMSTANCES

The Commission has apparently only thrice before confronted possible violations of 2 U.S.C. § 441a(a)(1)(A) as defined by 2 U.S.C. § 431(8)(B)(vii)(I) or 11 C.F.R. § 100.7(a)(1)(i)(C). See In re Citizens Comm. for Ernest F. Hollings, MUR No. 1768 (1985); In re Passaic County Democratic Comm., MUR No. 1047 (1982); In re Friends of Roger Jepsen, MUR No. 1042 (1980). The Commission's treatment of the respondents in these investigations and the ensuing resolution of these matters support Mr. Hughes' petition that this current investigation be closed and his name be cleared.

In the earliest matter, Jepsen, the Commission investigated the receipt by the Friends of Roger Jepsen of a $35,000 loan signed by the senatorial candidate Jepsen and co-signed by his wife. The General Counsel recommended, and the Commission subsequently agreed, that Mrs. Jepsen's co-signature violated the prohibition of § 441a(a)(1)(A) against the making of excessive contributions. Exhibit D, General Counsel's Report, In re Friends of Roger Jepsen, MUR 1042, p. 2 (1980). During the ensuing investigation, the Commission learned that Mrs. Jepsen's signature on the loan was "simply a formality requested by the bank". Id. at 4. The General Counsel thus subsequently revised its recommendation to urge that no further action be taken, concluding that "[e]ven if Mrs. Jepsen's signature technically made her a party to the note, her participation in the transaction was minimal." Id. at 6 (emphasis added).

The circumstances in Jepsen mirror those surrounding the Hughes loan. Mr. Hughes' signature can not be seriously viewed as anything more than "simply a formally requested by the bank." The facts clearly demonstrate that the bank did not take the co-signature seriously or give it any greater weight than a "formality" status. Moreover, even if the Commission determines that the co-signing technically made Mr. Hughes a party to the note, his participation in the

transaction was decidedly minimal. In fact, the circumstances of this loan even further buttress the Jepsen logic. In Jepsen, the offending signature was not removed. In this case, as soon as the parties discovered that the signature concerned the Commission, they had the bank retire it. In this manner, the parties evidenced a measure of good will and cooperation which only underscores the unwitting and unintentional nature of the technical violation.

In the Passaic County matter, the Commission fined the County Democratic Committee $1,500 for violating 2 U.S.C. § 441a(f) by accepting excessive campaign contributions. Exhibit E, Conciliation Agreement, In re Passaic County Democratic Comm., MUR 1047, p.8 (1982). The Commission determined that Mr. Robert Angele had contributed a $12,000 loan, which was endorsed by Mrs. Angele, to the Democratic Committee. Exhibit F, General Counsel's Report, In re Passaic County Democratic Comm., MUR 1047, p.9 (1982). The General Counsel concluded that "this loan constitutes a $6,000.00 contribution from each of the Angeles" and, more conclusively that each of the contributions "exceeds lawful contribution limitations." Id. at 10.

On the facts, the Angeles are far more culpable than John Hughes. They were not pressured into making their loan by a telephoning candidate. In fact, they made the loan to

an impersonal political committee. Their loan was not co-signed by the candidate himself as was the case with the Hughes loan. They were not told that others would be co-signing the loan nor did the bank treat their loan in the casual manner that The Community Bank did here. Presumably, the Angeles had to answer at least a few financial inquiries into their credit worthiness. Mr. Hughes, conversely, had to answer none. In both form and substance, the Angeles did more intentionally and deliberately to violate the election laws than Mr. Hughes could ever be imputed to have done. Yet it appears from an investigation of the FEC records that neither the Commission nor the General Counsel ever investigated the Angeles or made any other attempt to hold them accountable for their election law violation. It would be inapposite for this Commission to excuse the acts of those more blameworthy than John Hughes and then prosecute Mr. Hughes for dramatically less intentional actions. Such a turnabout can not be comprehensibly reconciled with the integrity of the Federal Election Commission or the dictates of simple fairness.

Finally, in the Hollings matter, the treasurer of the candidate's senatorial election committee was found in violation of § 441a(a)(1) for endorsing a loan which constituted an excessive contribution to the same candidate's

presidential election committee. Exhibit G, Conciliation Agreement, In re Citizens Comm. for Ernest F. Hollings, MUR 1768, p.2 (1985). Although the Commission properly and fairly fined the violators for this offense, the facts of Hollings are readily distinguishable. First, there was a strikingly significant danger of election abuse in this loan guarantee arrangement. The guarantor of the loan was the candidate's own senatorial election committee and the assets used for collateral were the donations of those who had supported Mr. Hollings for Senator. Clearly this is a certain abuse of the senate committee's duty to use the contributions it received for the purposes for which they were intended. It takes no great leap of faith to imagine that some of the contributors to Mr. Hollings' senatorial campaign would not have had any desire to support his race for the presidency. One would presume that contributors donate money to a campaign to get an officeholder who will champion their causes--at home. The distance which necessarily develops between a president and his previous local constituency certainly would defeat this goal. The loan also smacks of abuse because not only was the candidate which each committee supported the same, but the treasurer of each was as well.

Second, the involved party, the committee treasurer, was an individual who had greater access to and far more familiarity with the provisions of the various election statutes and regulations. When a committee treasurer, charged to know each of these rules intimately, violates the election laws there is undeniable culpability.

Third, the treasurer's endorsement was done intentionally and with deliberation. Unlike Mr. Hughes, the Hollings violation can not be characterized as unwitting.

Fourth, the size of the contribution attributed to the Hollings loan dwarfs the Hughes loan. Section 100.7(a)(1)(i)(c) of Title 11 of the Code of Federal Regulations provides that the "loan shall be considered a loan [and thus a contribution] by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." The loan in Hollings was for $35,000 and only the Citizens Committee for Ernest F. Hollings endorsed it. Thus, the size of the contribution is $35,000 divided by the number of endorsers (1) for a total "contribution" of $35,000. Mr. Hughes, by contrast, was a co-signer of a $10,000 which calculates to a "contribution" of $5,000. Thus, the culpability of Mr. Hughes is one-seventh that of the Citizens Committee in the Hollings case.

From every perspective, the Commission's prior treatment of 2 U.S.C. § 441a(a)(1)(A) as defined by 2 U.S.C. § 431(8)(B)(vii)(I) and 11 C.F.R. § 100.7(a)(1)(i)(C) supports this petition for a cessation of this inquiry. The unwitting and unintentional consequences of Mr. Hughes' actions do not need disciplining. He intended no wrong, his one misstep has been entirely rectified, and the Commission can rest assured that this error will never be repeated again.

D. <u>IF ANY VIOLATION OF THE ELECTION LAWS HAS OCCURRED, IT HAS NOW BEEN CORRECTED. THIS PENDING INVESTIGATION INTO JOHN HUGHES' INVOLVEMENT, THEREFORE, IS UNNECESSARY AND LEGALLY MOOT</u>

As has been previously established, the Commission has voiced no concern regarding Mr. Hughes' initial $1,000 contribution to the Calinger for Congress Committee. There are no irregularities concerning this donation and the $1,000 amount is entirely lawful pursuant to 2 U.S.C. § 441a(a)(a)(A).

The Commission's sole concern regards Mr. Hughes' co-signature. If the Commission determine, contrary to the terms of the elections statutes and regulations and contrary to the dictates of fairness and equity, that the co-signature

constituted a violation of § 441a(a)(1)(A), the error now has been remedied. Upon discovering the technical concern of the Commission, the Calinger Committee promptly corrected the problem. Mr. Hughes' guarantee has been completely retired and his liability on the banknote has been unequivocally removed. He now stands as he has always stood regarding the Calinger campaign: he is the civic-minded contributor of $1,000 to the political race of a local Omaha public official. There is nothing more. Having rectified this potential violation, the Calinger Committee made further review of Mr. Hughes' involvement unnecessary and legally moot.

CONCLUSION

For the reasons expressed above, it is respectfully requested that the members of the Federal Election Commission vote to dismiss this investigation by finding that there is no probable cause to believe that Mr. John J. Hughes has committed any violation of the Federal Election Campaign Act of 1971 or of any provision of Title 2 of the United States Code or of Title 11 of the Code of Federal Regulations.

Dated: August 13, 1985

Respectfully submitted,

KUTAK ROCK & CAMPBELL
Attorneys for Respondent
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 828-2400

F. Joseph Warin

F. Joseph Warin, Esquire

87040463396

CERTIFICATE OF FILING

The undersigned hereby certifies that, pursuant to 11 C.F.R. § 111.16(c) (1985), ten (10) copies of this Reply of Respondent have been filed with the Commission Secretary and three (3) copies have been filed with the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, on this 13th day of August, 1985.

F. Joseph Sperry

8704063397

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

9704064398

EXHIBIT A

Letter of December 21, 1984 from
The Community Bank to Walter Caliger

THE COMMUNITY BANK

December 21, 1984

Mr. Walter M. Calinger
1450 South 11 Street
Omaha, NE 68108

RE: Commercial Loan - Walt Calinger for Congress

Dear Mr. Calinger:

The three loans totaling $17,000 guaranteed by John Hughes, David Newell, and Larry Myers now stand in the following position:

1. The guarantees of John Hughes, David Newell, and Larry Myers have been destroyed and are no longer valid.

2. All the loans are now in the name of Walter M. Calinger only and are unsecured and not guaranteed.

The $5,000 loan and the $2,000 loan have been paid in full and $2,000 has been paid on the principal on the $10,000 loan.

Very truly,

Leon E. Evans, Jr. (spw)

Leon E. Evans, Jr.
PRESIDENT

spw

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

9704064400

EXHIBIT B

Redrafted Loan Document

Note No. 84-01831 May 10, 1984

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name Walt Calinger for Congress

Debtor's Address 1407 S. 13th St., Omaha, Ne. 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over reg prime %	$	$ 10,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
Demand		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $_____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

COMMUNITY BANK OF NEBRASKA
OMAHA, NEBRASKA
12-21-84
PAID BY RENEWAL

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you obtain the insurance from creditor you will pay $_____.

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated _____, 19____ covering the following property:

Personal Guarantee

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☒ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over regional prime

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: _____

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method:

ADDITIONAL CHARGES Official fees and taxes $_____

Other _____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of **COMMUNITY BANK OF NEBRASKA,**

Ten Thousand and 00/100---------- Dollars ($ 10,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $_____, ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Walter Calinger for Congress

Debtor's Signature Walter M. Calinger Debtor's Address _____

Walter M. Calinger

Debtor's Signature _____ Debtor's Address _____

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT C

General Counsel's Factual and Legal Analysis,
In re John J. Hughes,
MUR No. 2051 (1985)

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GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 2051

RESPONDENT John Hughes

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of the General Counsel by the Reports Analysis Division (RAD) and involves an allegation that John Hughes made contributions exceeding the limitation of 2 U.S.C. § 441a(a)(1)(A) to the Calinger for Congress Committee ("the Committee").

FACTUAL BASIS AND LEGAL ANALYSIS

Schedule A of the 1984 July Quarterly Report of the Committee disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to [the matter of the contribution] immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loan as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for the loan was listed as ten per cent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

circumstances of the loan. The treasurer stated that Mr. Hughes was an "accommodating maker" or "accommodating party" to the loan. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Note and the guarantee of Mr. Hughes was destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the

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bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, has contributed half the amount of the loan. He has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT D

General Counsel's Report,
In re Friends of Roger Jepsen,
MUR No. 1042 (1980)

8704054406

RECEIVED
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION
April 22, 1980

80 MAY 27 P5: 02

In the Matter of	)	
	)	MUR 1042
Friends of Roger Jepsen	)	
Dee Jepsen	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves the receipt by the Friends of Roger Jepsen (the Committee) of a $35,000 loan from the candidate, Roger Jepsen, in connection with the Republican Senatorial Primary in Iowa. On its 10 Day Pre-Primary Report for 1978, the Committee reported the receipt of a loan of $35,000 from the candidate on April 27, 1978. The note for this loan was due on demand with nine per cent annual interest. The amended version of this report also indicated that the origin of this loan was a $35,000 loan from the Security State Trust and Savings Bank to Roger and Dee Jepsen (the candidate's wife) on April 27, 1978. For this loan, the principal was due on demand with interest at nine per cent payable semi-annually.

Based on this information, the Reports Analysis Division (RAD) decided to seek more information as to the circumstances of the bank loan and as to the possibility that Mrs. Jepsen's actions with respect to the loan placed the Committee and her

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in violation of the 2 U.S.C. § 441a limits on contributions to a candidate's authorized political committee.

On June 8, 1979, after receipt of a response from the Committee Treasurer, Mr. John Henss, to a surface violation letter, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting the loan. On June 14, 1979, Mr. Henss responded in writing that:

> ...it is normal procedure for a bank in making a loan to any individual to require the individual's spouse to sign the loan along with the borrower. The funds loaned by Roger Jepsen to Friends of Roger Jepsen were assets under the joint dominion and common control of Roger and Dee Jepsen.

Mr. Henss included a copy of the Committee's repayment note to Roger Jepsen. On June 25, Mr. Henss submitted an additional statement that "the loan was obtained on the basis of known assets, familiar to the bank, under the joint dominion and common control of Mr. and Mrs. Jepsen."

These responses were not considered adequate and, on October 4, 1979, RAD referred the matter to the Office of General Counsel (OGC). On February 5, 1980, the Commission found reason to believe that Dee Jepsen had violated the 2 U.S.C. § 441a(a)(1)(A) prohibition against making excessive contributions to a candidate's authorized political committee. The Commission notified the respondent and Senator Jepsen of this finding and

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enclosed a list of questions as to the ownership of the assets serving as a basis for the bank loan.

On March 19, the Office of General Counsel received a written response from Senator Jepsen stating that Mrs. Jepsen's participation in the transaction was negligible, and that the loan was to him alone based on his assets. (See Attachment) Senator Jepsen provided copies of loan-related documents, pursuant to the Commission's request, and used them to support his answers.

Senator Jepsen noted that the bank's ledger card and the note indicate the loan to be unsecured. He also stated that all of the assets totalling $190,500.50 listed in the loan application were acquired by him with his "own efforts and earnings," except an item of real estate designated "farm trust" of which his share is $40,000. He stated that the only property owned by his wife and him jointly was their home valued at $130,000 with a $30,000 mortgage still payable. He concluded this summary of his assets by stating that "those other personal assets, over which [he] had complete control, give ample coverage to the loan and justified the transaction by the bank in its ordinary course of business."

Senator Jepsen went on to discuss Mrs. Jepsen's lack of participation in the loan transaction by pointing to the fact that the list of assets was signed by him alone with no indication of a co-maker. He also pointed out that the bank's ledger card indicates the absence of a co-maker or endorser

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and that the loan extension agreement was signed only by him. He stated that Mrs. Jepsen's signature on the note was "simply a formality requested by the bank." and not an indication that she was a co-maker or endorser. Senator Jepsen also indicated that the bank did not issue a check for the proceeds of the loan, but established a bank account in his name only and, at his direction, transferred the full amount he had borrowed to the Committee.

LEGAL ANALYSIS

2 U.S.C. § 441a(a)(1)(A) prohibits any person from making contributions aggregating in excess of $1,000 to an authorized committee of a candidate with respect to a federal election. 2 U.S.C. § 441a(f) prohibits a political committee from knowingly accepting such contributions. The term "contribution" includes loans. 2 U.S.C. § 431(8)(A)(i), formerly 2 U.S.C. § 431(e)(1). While there is no limit on the amount of personal funds a candidate may contribute to his own campaign, the term "personal funds," consistent with the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 52-54 (1976), is defined by the regulations. Assets of an immediate family member of a candidate are considered "personal funds" of the candidate only if they were "... assets to which at the time he ... became a candidate the candidate had legal and rightful title, or ... the right of benefical enjoyment, under applicable State law, and which the candidate had legal right of access to or control over ..." 11 C.F.R. § 110.10(b)(1), Advisory Opinions 76-26, 76-74.

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In this matter, the $35,000 which the Committee listed as a loan from Roger Jepsen originated as a bank loan to Senator Jepsen. The Committee Treasurer's statements that the loan was "obtained on the basis of known assets... under the joint dominion and control of Mr. and Mrs. Jepsen" raised the possibility that assets of Mrs. Jepsen's exceeding $1,000 in value and not within the definition of "personal funds" of Senator Jepsen were used as security for the loan, in violation of 2 U.S.C. § 441a(a)(1)(A). However, the loan was unsecured as indicated by the bank's ledger card and the note.

Senator Jepsen has indicated that the bank gave this loan after obtaining complete information as to his assets and liabilities. The loan application submitted to the bank lists Senator Jepsen's net assets totalling $190,000. The only asset in which there is any evidence of an interest on Mrs. Jepsen's part is the Jepsen's home which was valued at $130,000 with a mortgage liability of $30,000. Thus, Senator Jepsen's assets apart from his wife's interest in the home substantially exceeded the amount of the loan.

Mrs. Jepsen's signature on the note raises the question as to whether or not she was a co-maker, guarantor, or endorser and, therefore, a contributor according to 11 C.F.R. § 100.7(a)(1)(i), formerly 11 C.F.R. § 100.4(a)(1)(i). The capacity that she has assumed on the note is ambiguous. The ambiguity may be interpreted to indicate she was an endorser. 1/ However, the line on the bank ledger

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1/ Iowa Code Annotated § 554.3402 states: "Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement."

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card asking for the signature of "Co-maker, Endorser, Description of Collateral or Security Pledged" is left blank. Furthermore, Mrs. Jepsen's signature does not appear on any other instruments. The loan application listing assets and liabilities has only Senator Jepsen's signature with the second signature left blank. The co-debtor signature line on the loan extension agreement is left blank. The account to which the funds were transferred was stated to be in the name of Roger Jepsen alone. Even if Mrs. Jepsen's signature technically made her a party to the note, her participation in the transaction was minimal. While it would seem that Mrs. Jepsen's signature appeared on the note because of her co-ownership of the house, the assets of Senator Jepsen alone were amply sufficient to cover re-payment of the loan and the bank chose not to deal in any further way with Mrs. Jepsen.

Therefore, the General Counsel recommends that the Commission take no further action and close the file in this matter.

III. GENERAL COUNSEL'S RECOMMENDATION

1. Take no further action.
2. Close the file.
3. Send the attached letters.

23 May 1980
Date

Charles N. Steele
General Counsel

Attachments

Letter and Documents from Respondent
Letters to Respondents (2)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT E

Conciliation Agreement,
In re Passaic County Democratic Committee,
MUR No. 1047 (1982)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Passaic County Democratic Committee	)	MUR 1047
	)	

CONCILIATION AGREEMENT

The Federal Election Commission (hereinafter the "Commission") initiated this matter pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities and found reason to believe that the Passaic County Democratic Committee ("Respondent" or the "Committee") violated 2 U.S.C. §§ 433, 434, 441a(f), 441b(a) and 11 C.F.R. § 102.6 (presently § 102.5) and § 104.12 (formerly § 104.10 */).

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A) do hereby agree as follows:

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

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

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

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

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*/ Prior to the 1979 Amendments.

A. Respondent, Passaic County Democratic Committee (the "Committee") is a political committee pursuant to 2 U.S.C. § 431(4).

B. Failure to Register Timely

1. 2 U.S.C. § 433 requires committees which receive contributions or make expenditures in connection with federal elections exceeding $1,000.00 in a calendar year to register with the Commission 10 days after such receipts or expenditures.

2. The Committee initially registered with the Commission on July 10, 1978.

3. The Committee made expenditures for federal and non-federal primary election expenses aggregating $8,160.00 in June, 1978 from its Election 1 (18-3584-1) and Regular (10-1620-5) accounts.

4. The 1978 primary ballot included two federal offices as well as other non-Federal offices; accordingly, the expenditures apportioned for federal candidates exceeded $1,000.00.

5. The Committee should have registered ten days after making these expenditures.

6. The Committee filed a termination report on November 20, 1978.

7. The Committee re-registered with the Commission on August 20, 1980.

8. The Committee expended at least $13,150.00 on May 30 and 31, 1980 for primary election expenses from its Regular (10-1620-5) account.

9. The 1980 ballot included four federal offices as well as other non-federal offices; accordingly the expenditures apportioned for federal elections exceeded $1,000.00.

10. The Committee should have re-registered ten days after making these expenditures.

C. Failure to Report Receipts and Disbursements

1. 2 U.S.C. § 434 requires political committees to report its total receipts and disbursements.

2. The Committee made expenditures in connection with federal elections from two accounts in 1978, Regular (10-1620-5) and Election 1 (18-3584-1) accounts, and from two accounts in 1980, Regular (10-1620-5) and Election 2 (10-4434-5) accounts.

3. The Committee reported the activity of its Election 1 (18-3504-1) account and its Regular (10-1620-5) account from July 1, 1978 until November 20, 1978, at which time the Committee filed a termination report.

4. The Committee made expenditures in connection with federal elections in June 1978 which were not reported to the Commission.

5. The Committee made expenditures in connection with federal elections in the 1980 primary election

from its Regular (10-1620-5) account in May 1980 which were not reported to the Commission.

6. The Committee's reports disclosed payments aggregating $694.77 for administrative costs related to federal election activities in 1980.

7. Administrative costs attributable to 1980 federal elections were in the amount of $7,964.41.

8. The Committee should have reported and accounted for the proper amount ($7,964.41) in its reports for 1980 federal election activities to the Commission.

D. Acceptance and Use of Contributions from Impermissible Sources

1. 2 U.S.C. § 441b(a) makes it unlawful for political committees to accept contributions from corporations or labor organizations in connection with federal elections.

2. In 1978, the Committee received $4,745.00 from corporations and $100.00 from labor organizations which were deposited in its Regular (10-1620-5) account and from which expenditures for federal elections were made.

3. In 1980, the Committee received $2,020.00 from corporations and $1,300.00 from labor organizations which were deposited in its Regular (10-1620-5) account and from which expenditures for federal elections were made.

4. 11 C.F.R. § 102.6 (presently § 102.5) requires political committees which finance activities in connection with both federal and non-federal elections to either establish a

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separate federal campaign committee which shall register as a political committee or establish a single committee with a single account to make contributions to Federal and non-Federal candidates, but only if all contributions received are permissible under the Federal Election Campaign Act (the "Act").

5. The Committee did not establish its accounts pursuant to 11 C.F.R. § 102.6 (presently § 102.5), but rather established numerous accounts from which expenditures for both federal and non-federal election activities were made. These accounts contained funds not permissible under the Act.

6. 11 C.F.R. § 102.6 (presently § 102.5) also prohibits the transferring of monies from an account not specifically designated for federal elections to an account used to finance federal election activities.

7. The Committee transferred monies in 1978 and 1980 from its Regular (10-1620-5) account, which was not specifically designated for federal elections and which contained prohibited contributions, to its Election 1 (18-3584-1) and Election 2 (10-4434-5) accounts from which expenditures for federal elections were made. These transfers are as follows:

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FROM	TO	AMOUNT	DATE OF TRANSFER
Regular	Election 1	$19,700.00	11/01/78
	Total:	$19,700.00	
Regular	Election 2	$ 4,000.00	09/10/80
		$ 8,830.00	10/27/80
		$ 2,000.00	10/30/80
		$ 1,900.00	11/12/80
	Total:	$16,730.00	

E. Failure to Disclose Cash on Hand

1. 2 U.S.C. § 434 and 11 C.F.R. § 104.12 require political committees to disclose the source of its cash on hand.

2. The Committee reported a balance of $2,692.00 as its cash on hand upon registering in 1978.

3. The Committee failed to adequately disclose the origin of this opening balance in its reports.

4. The Committee reported a balance of $1,619.51 upon its re-registration in 1980.

5. The Committee failed to adequately disclose the source of this opening balance in its reports.

F. Inclusion of Monies from Impermissible Sources within Cash on Hand

1. 11 C.F.R. § 104.12 (formerly § 104.10) makes it unlawful for political committees to include within its cash on hand any contributions from sources prohibited by 2 U.S.C. § 441b.

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2. The Committee's cash on hand in 1978 and 1980 contained monies from prohibited sources.

G. Acceptance of Excessive Contributions

1. 2 U.S.C. § 441a(f) makes it unlawful for multicandidate political committees to knowingly accept contributions from individuals exceeding an aggregate of $5,000.00 in any calendar year. (See 2 U.S.C. § 441a(a)).

2. 11 C.F.R. § 100.7(a)(1)(i)(C) states that a loan is a contribution by each endorser or guarantor, and that each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement.

3. The Committee received a $12,000.00 loan endorsed by Mr. Robert Angele and his wife, Lucy Angele, in its Election 2 (10-4434-5) account on October 17, 1980.

4. The $12,000.00 loan constitutes a $6,000.00 contribution from each of the Angeles.

5. Each contribution exceeds the limitations set forth in 2 U.S.C. § 441a(a) by $1,000.00.

V. Respondent agrees that it violated:

1. 2 U.S.C. § 433 by failing to register timely in 1978 and in 1980.

2. 2 U.S.C. § 434 by failing to report its total receipts and disbursements in 1978 and 1980, including administrative costs in 1980.

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3. 2 U.S.C. § 441b(a) by accepting contributions from corporations and labor organizations in connection with federal elections in 1978 and 1980.

4. 11 C.F.R. § 102.6 (presently § 102.5) by failing to establish committees in accordance with this provision, and by transferring funds from an account not designated for federal election activities and which contained prohibited funds to an account used to finance federal election activites.

5. 11 C.F.R. § 104.12 (formerly § 104.10) by failing to disclose the source of its cash on hand in 1978 and 1980; and by including within its cash on hand monies not permitted by the Act.

6. 2 U.S.C. § 441a(f) by receiving contributions in excess of limitations set forth by 2 U.S.C. § 441a(a).

VI. Respondent will pay a civil penalty to the treasurer of the United States in the amount of one thousand and five hundred dollars ($1,500.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

civil action for relief in the United States District Court for the District of Columbia.

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

X. It is agreed that respondent shall have no more than ninety (90) days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

DATE: Sept. 16, 1982

Charles N. Steele
General Counsel

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

DATE: Aug. 27, 1982

Passaic County Democratic Committee

BY: William J. Pascrell Jr.

ITS: Chairman

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

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EXHIBIT F

General Counsel's Report,
In re Passaic County Democratic Committee,
MUR No. 1047 (1982)

NOTE: Pages 5-8 were inadvertently not copied. The document in its entirety is located in the FEC library. The deleted pages are not relevant to this Reply.

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OF THE
COMMISSION SECRETARY

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In the Matter of	)	
	)	MUR 1047
Passaic County Democratic Committee	)	
	)	

GENERAL COUNSEL'S REPORT

I. Background

On July 14, 1981, the Commission voted to audit the Passaic County Democratic Committee (the "Committee") pursuant to 2 U.S.C. § 437g. Prior to the audit, the Commission had found reason to believe that the Committee had violated certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, on February 8, 1980, the Commission had found reason to believe that the Committee violated 2 U.S.C. § 433, 11 C.F.R. § 102.6(b) 1/ and 2 U.S.C. § 441b(a) by transferring funds from accounts established for non-federal elections which contained corporate monies to its account designated for federal election activities. Additionally, on July 14, 1981, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434, 11 C.F.R. § 104.12 by failing to disclose the source of its cash on hand in 1978 and 1980; 2 U.S.C. § 441a(f) by receiving a contribution

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1/ This cite refers to the regulations in effect at the date that the activity in question took place, namely, the regulations prior to the January 1, 1981 revisions. This provision is presently 11 C.F.R. § 102.5(a).

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in excess of limitations set forth by 2 U.S.C. § 441a(a); and 2 U.S.C. § 434 by failing to disclose receipts and expenditures for administrative costs in its 1980 reports.

The Commission and the Committee had been engaged in informal conciliation from November 13, 1980 to July 19, 1981, at which time the Commission suspended the conciliation proceedings until the audit results were available. The audit was completed on January 15, 1982. 2/ The Audit Division forwarded a report to this office on March 4, 1982.

This report will analyze the information obtained from the audit regarding the Committee's general financial activities. This report will also discuss information relating to previous reason to believe findings, and will recommend additional reason to believe findings.

II. Overview: the Committee's General Financial Activities

The most notable fact evidenced by the audit is that the Committee is primarily a state and local committee. The audit work papers show that the Committee's financial activities focused on non-federal party elections. In fact, the Committee never made a direct contribution to any federal candidate. The Committee did however pay for billboards and get-out-the-vote

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2/ The audit was initially scheduled for early November, however, due to problems of coordination with Committee personnel, the audit had to be rescheduled for December 7, 1981. Moreover, due to further problems of coordination with the Committee, the audit was temporarily suspended from December 14 through January 4, 1982.

activities which indirectly supported certain federal candidates whose names appeared on the billboards or ballots. The Committee was therefore required to allocate to federal elections a weighted portion of these expenditures.

The audit disclosed that the Committee had an aggregate of eight accounts 3/ during the audit period; however, expenditures for federal elections were only made from three of these accounts. 4/ Attached for the Commission's reference is a flow chart illustrating the relationship of these accounts (see Attachment 1).

The total amount expended for federal elections only constituted a small percentage of the Commitee's activities. The audit work papers show that from January, 1978 through December, 1981 (hereinafter referred to as the "audit period") 5/ an aggregate of $52,251.04 was attributable to federal election

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3/ The Committee had four "Election" accounts, one "Regular" account, and three "Office" accounts. The label "Election" does not necessary refer to an account established for federal elections. This is evident from the fact that certain "Election" accounts were very active in 1979 and 1981 when no expenditures were made for federal elections.

4/ These three accounts were not all active simultaneously. Also, all three accounts were with the same bank. The Committee drew from the Election 1 account in 1978; the Election 2 account in 1980; and the Regular account in 1978 and 1980. The numerics assigned to these accounts are by this office for reference purposes.

5/ All figures and comments relate to the audit period unless otherwise specified.

activities, whereas the aggregate amount expended was $385,009.68. Thus, the amount of the expenditures attributable to federal elections comprise 13.6% 6/ of the Committee's total financial activity. Also, certain federal candidates reimbursed the Committee for expenditures made on their behalf. Specifically, the principal campaign committee of Congressman Robert A. Roe, repaid the Committee $10,780.00. Likewise, the Carter-Mondale Re-Election Committee, Inc. repaid the Committee $1,436.33. The balance of contributions received from federally registered committees was $2,127.00. 7/

The Committee received an aggregate of $405,010.00 in all eight of its accounts. Of this amount, $50,755.00 were verified as corporate contributions; 8/ $4,870.00 were contributions from labor organizations and local government groups; and $55,868.01 were contributions from unregistered committees. 9/ As noted,

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6/ Additionally, this percentage results after using an allocation formula (approved by the Commission in AO 1976-72) which applies proportionately more weight to federal candidates.

7/ These contributions are as follows: $1,300.00 and $700.00 from the Women's Division of the Passaic County Democratic Club on October 4, 1978 and October 23, 1979, respectively; and $127.00 from the New Jersey Democratic State Committee, Federal Election Account, on October 8, 1980.

8/ The Office of General Counsel sent to the New Jersey State Corporate Division a list of all contributing entities in the Committee's ledger which might have been incorporated. The "corporate contributions" referred to in this report are the contribuitons from those entities the Corporate Division has documented as incorporated.

9/ New Jersey election law permits the receipt and use of all of these contributions for its elections.

the Committee only received $14,370.33 from federally registered committees, of which $12,216.33 were reimbursed. Thus, the audit work papers demonstrate that the Committee's primary concern was non-federal elections. 10/

III. Previous Reason to Believe Findings

A. Use of Impermissible Funds in connection with Federal Elections

On February 8, 1980, the Commission found reason to believe that the Passaic County Democratic Committee violated 2 U.S.C. § 433, 11 C.F.R. § 102.6 and 2 U.S.C. § 441b by transferring monies from an account containing corporate contributions to an account from which expenditures for federal elections were made.

2 U.S.C. § 441b(a) prohibits political committees from accepting and using contributions from corporations and labor organizations in connection with federal elections. In order to ensure that political committees do not commingle these prohibited monies with funds permitted for use in federal elections -- especially in states which permit the use of corporate and labor contributions for state and local elections -

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10/ It should also be noted that had the Committee been knowledgeable of federal election laws and established separate federal and non-federal accounts in accordance with 11 C.F.R. § 102.6, the Committee lawfully could have used corporate and labor contributions to finance those expenditures allocated to state and local candidates in connection with its partisan and get-out-the-vote drives pursuant to AO 1978-10. These drives comprised a good portion of the Committee's activities.

about the origin of its $1,619.57 beginning balance, the Committee explained that this amount was the residual of its 1979 Election account which was transferred to the 1980 Election account. Inasmuch as the last deposit into its 1979 Election account was a $23,000.00 transfer from its Regular Account which contained corporate and labor monies, the 1980 cash on hand apparently contained funds prohibited by 2 U.S.C. § 441b. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 104.12 by including monies from corporations and labor organizations within its cash on hand in 1978 and 1980.

C. Receipt of Excessive Contribution

On July 14, 1981, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by receiving a contribution in excess of limitations set forth by 2 U.S.C. § 441a(a). 15/ The Commission based this finding on a report which disclosed a $12,000.00 loan from the Jefferson National Bank on October 17, 1980, which was endorsed by Robert Angele. Since the Committee's reports only disclosed one person as the endorser, it appeared that the entire amount of the loan may have been a contribution from Mr. Angele.

15/ 2 U.S.C. § 441a(a)(1)(C) prohibits individuals from contributing in excess of $5,000.00 per calendar year to state party committees. 2 U.S.C. § 441a(f) prohibits committees from receiving contributions in excess of the limitations set forth by 2 U.S.C. § 441a(a).

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The audit disclosed that the loan was in fact endorsed by Mr. Robert Angele and his wife, Lucy Angele. 16/ The loan was deposited in the Committee's Election 2 account.

11 C.F.R. § 100.7(a)(1)(i)(C) states that a loan is a contribution by each endorser or guarantor, and that each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable. 17/ Accordingly, this loan constitutes a $6,000.00 contribution from each of the Angeles. Each of these contributions exceeds lawful contribution limitations by $1,000.00. 18/ The audit therefore confirms this reason to believe finding, however, the audit also reveals that the Committee accepted not one, but rather two excessive contributions.

16/ It remains unclear to whom the loan check was made payable, however, bank records show that the loan and interest ($12,312.00) were repaid by a February 10, 1981 check drawn on the Committee's Election 3 account.

17/ Moreover, (former) 11 C.F.R. § 102.6 sets forth that all contributions deposited into an account from which both federal and non-federal expenditures are made are subject to the contribution limitations of the act regardless of whether such contributions are for use in connection with federal or non-federal elections. Thus, the loan, regardless of whether the Angeles intended it to finance non-federal elections, is subject to the Act's contribution limitations.

18/ The audit report notes that the Audit Division's review of receipts records for the period audited revealed no other contributions from either Robert or Lucy Angele.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT G

Conciliation Agreement,
In re Citizens Committee for Ernest F. Hollings,
MUR No. 1768 (1985)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Citizens Committee For Ernest F. Hollings by its treasurer, Rene Debacker	)	MUR 1768

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Citizens Committee for Ernest F. Hollings by its treasurer, Rene Debacker ("Respondent"), violated 2 U.S.C. § 441a(a) by making an excessive contribution and 2 U.S.C. § 434(b) for failing to report the contribution.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

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

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

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

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

1. Respondent, Citizens Committee for Ernest F. Hollings, is the authorized political committee of Senator Ernest F. Hollings.

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2. Respondent, Rene Debacker, is the treasurer of the Citizens Committee for Ernest F. Hollings.

3. Respondent Citizens Committee For Ernest F. Hollings by its treasurer Rene Debacker guaranteed a $35,000 bank loan to Hollings For President, Inc.

4. The loan was repaid in 31 days.

5. This guarantee of a loan was an excessive contribution (hereinafter "excessive contribution").

6. Respondent Citizens Committee for Ernest F. Hollings by its treasurer Rene Debacker violated 2 U.S.C. §441a(a)(1) by making that excessive contribution in the amount of $34,000 to Hollings For President, Inc.

7. Although Hollings For President, Inc., by its treasurer Rene Debacker disclosed the bank loan in a timely manner, the Respondent Citizens Committee by its treasurer Rene Debacker violated 2 U.S.C. § 434(b) by failing to report that excessive contribution to Hollings for President, Inc.

V. Respondent Citizens Committee for Ernest F. Hollings will pay a civil penalty to the Treasurer of the United States in the amount of Two Thousand Dollars ($2,000), pursuant to 2 U.S.C. §437g(a)(4)(A).

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

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

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

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

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

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

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

March 25, 1985
Date

FOR THE RESPONDENT:

Rene Debacker

Feb 26, 1985

For Respondent Citizens Committee
for Ernest F. Hollings
By Rene Debacker, Treasurer

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress Committee	)	MUR 2051
John W. Herdzina,	)	
as treasurer	)	

CITY OF OMAHA :
: SS:
STATE OF NEBRASKA :

8704064435

AFFIDAVIT OF WALTER CALINGER

WALTER CALINGER, being duly sworn, deposes and says:

1. In the Spring of 1984, I was a candidate in the Nebraska Democratic Party's primary for the position of United States Representative for the Second Congressional District.

2. In an effort to comply with all provisions of the federal campaign laws, I formed the Calinger for Congress Committee ("The Committee"). The Committee was duly authorized to contract for services on my behalf and, indeed, throughout the campaign, the Committee did so.

EXHIBIT 4

3. During the campaign, I decided to invest additional monies into the primary election. To that end, my campaign manager, David Newell, contacted The Community Bank ("Bank") who indicated to me that it was willing to lend the money to me without any preconditions or requirements. Specifically, the Bank did not require that I obtain any guarantees for the loans.

4. On my own initiative, I asked other citizens of the Second Congressional District to act as guarantors. When I asked these individuals to act as guarantors, I believed that it was perfectly legal to have these individuals function in that capacity. When these loans were obtained, the campaign was not financially destitute or desperate. The decision to secure these monies was part of a strategic campaign plan.

5. My campaign manager, David Newell, negotiated the first loan of $5,000 on behalf of the campaign. I asked Lawrence Myers and John Hughes to act as guarantors for loans in the amounts of $2,000 and $10,000 respectively. The first two loans have been repaid completely by the Committee or me. I have repaid one half, $5,000, of the $10,000 loan. Neither Lawrence Myers nor John Hughes was involved in the negotiations of these loans with the Bank.

6. At no time did I understand or realize that these arrangements arguably may have violated any Federal Election Commission ("FEC") regulations or campaign laws.

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7. When the campaign treasurer informed me that the Reports Analysis Division ("RAD") of the Federal Election Commission asked questions about the guarantees, I directed him to take immediate action. Throughout the history of the Committee, we have attempted to comply with all aspects of the regulations. The guarantees were disclosed by my treasurer in routine filings with the Commission. I informed the bank that the guarantors' theoretical obligations, which was merely cosmetic, were arguably not permissible by the FEC. At my request, the Bank immediately rewrote the notes and agreed that I would be solely responsible for the loans. At the direction of an employee of the FEC, the guarantees were "destroyed." The campaign was told that both guarantees and loan documents that might be extant which indicated other than sole responsibility of candidate should be changed and/or destroyed so as to make the candidate solely responsible for any loan amounts. The campaign complied with the directions of the FEC.

8. There has been no defaults associated with the loans. I make regular payments on the one remaining loan. I plan to continue to make these payments until the loan is completely repaid.

9. Neither Lawrence Myers nor John Hughes has had any involvement with the Bank throughout the history of this loan. The checks for repayment of these loans by the

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Committee which were made out to "Walter Calinger and John Hughes," were created by the campaign treasurer. Neither Lawrence Myers nor John Hughes had any involvement in these checks and they did not negotiate the amounts or terms of these payments.

Dated:

Walter Calinger

Walter Calinger

Sworn to and subscribed before me this 1st day of July, 1986

Carol D. Dorsch

NOTARY PUBLIC

My Commission Expires

GENERAL NOTARY-State of Nebraska
CAROL D. DORSCH
My Comm. Exp. Aug. 6, 1988

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 26, 1986

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

Pursuant to your letter dated June 17, 1986, this Office is granting you an extension of time in which to file a reply brief in the above-captioned matter. The reply brief is now due on July 9, 1986.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

87044579

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

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Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

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RECEIVED AT THE FEC
GCC # 2051
86 JUN 23 P12:09

June 17, 1986

Charles N. Steele
General Counsel
Federal Election Commission
Washington D.C. 20463

Re: Mur 2051
David Newell

86 JUN 23 P12:08
GENERAL

Dear Mr. Steele,

In response to your letter dated June 4, 1986, informing me of your plans to proceed to the Commission with your findings of "probable cause," I would like to officially request the extension of an additional twenty (20) days.

Presently, I have contacted the Community Bank of Nebraska requesting a clarifying letter which I hope will be supportive of my position. In addition, my arguments need to be refined, and an attorney must be consulted since Mr. Calinger is unable to give time to my defense.

I am assuming that this request for an extension will be granted, and that my new deadline will be July 5, 1986.

Sincerely,

Dave Newell

David R. Newell
4027 Dauman
Omaha, Nebraska 68112

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NATIONAL
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1986

JUN 23 P12:09

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 19, 1986

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer
John Hughes

Dear Mr. Warin:

Pursuant to your letter dated June 16, 1986, this Office is granting you an extension of time in which to file reply briefs in the above-captioned matter. The reply briefs are now due on June 30, 1986.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

8704064143

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as
treasurer
John Hughes

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If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

8704064444

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer
John Hughes

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If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

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RECEIVED AT THE FEC
GCC 783
86 JUN 17 A10:52

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
NEW YORK
OMAHA

June 16, 1986

Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer

Dear Mr. Steele:

We received your letter dated June 4, 1986. Please be advised that this is the first communication that we have received from your office since September 1985. Despite repeated inquiries to the attorney handling the matter, we received no additional information on its status.

By this letter, we request an extension of time to confer with you and, if necessary, respond in writing to the allegations put forward in your briefs. This request is necessary because I have been out of town for two weeks.

If this request is dishonored, please advise me in writing.

I look forward to discussing this matter with you and resolving it in an amicable manner.

Sincerely,

F. Joseph Warin

F. Joseph Warin

jjb

cc: John Hughes

86 JUN 17 A11:46
GENERAL COUNSEL
RECEIVED

KUTAK ROCK & CAMPBELL

A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

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Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1324 "K" Street, N.W.
Washington, D.C. 2[illegible]

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer

Dear Mr. Warin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, had violated 2 U.S.C. § 441a(a)(f) and that John J. Hughes had violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 are briefs stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission briefs (10 copies if possible) stating your position on the issues and replying to the briefs of the General Counsel. (Three copies of such briefs should also be forwarded to the Office of General Counsel, if possible.) The General Counsel's briefs and any briefs 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 responsive briefs within 15 days, you may submit a written request to the Commission for an extension of time in which to file the briefs. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

27040364451

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

37044056

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

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Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

87040645455

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress Committee	)	MUR 2051
John W. Herdzina,	)	
as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves excessive contributions in the form of direct contributions and loan guarantees by John Hughes, David Newell, and Larry Myers to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes and a $10,000 loan from the candidate and Mr. Hughes. The report also disclosed the receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell. In addition, the report disclosed a $100 contribution from Larry and Marianna Myers, bringing their yearly non-loan contribution total to $125, and a $2,000 loan from the candidate and Mr. Myers.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that the non-candidate individuals were considered by the treasurer to be "accommodating makers" or "accommodating parties" to the loans. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered

"guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors, the Committee's 1984 October Quarterly Report (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, 1984, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid. 1/

On June 26, 1985, the Commission found reason to believe that the Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f). On that date, the Commission also approved a subpoena for documents pertaining to the bank loans.

On August 6, 1985, this Office received a response from Mr. Herdzina along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantees were "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors

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1/ According to the last report filed by the Committee, the 1985 Year End Report, $3,058 had been repaid.

were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally, Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loans and the guarantees were destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantees on November 1, 1984, he rectified the situation. He complains that the letter from RAD did not state "clearly" that the guarantees appeared to be in violation and the implication of his response appears to be that any delay in cancelling the guarantees occurred because he had to infer that a violation was being alleged.

Mr. Herdzina also submitted documents pertaining to the loans. This included a "Summary of Loan Accounts" listing the loans in chronological order and listing the names with respect to each loan as "Walt Calinger & Dave Newell," "Walt Calinger & Larry Myers," and "Walt Calinger & John Hughes." In addition, there were copies of checks drawn on the Committee's account made out to "Walter Calinger and Dave Newell," "Walter Calinger and Larry Myers," "Walter Calinger and John Hughes," or "Walter Calinger." These checks were for repayment of the loan interest, the loan principal, or both. Checks were made to "Walter Calinger and Dave Newell" and "Walter Calinger and Larry Myers" in July and September, 1984. Checks were made payable to

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"Walter Calinger and John Hughes" on September 21 and November 9, 1984. Checks made payable to Walter Calinger alone were signed on December 29, 1984, and March 29 and July 13, 1985.

This Office received correspondence from counsel for John Hughes on August 13, 1985. Counsel for Mr. Hughes states that the Committee asked Mr. Hughes to co-sign the $10,000 loan because of an urgent need of funds just prior to the primary. Counsel states that Mr. Calinger "emphasized that several other contributors had likewise been asked to co-sign the loan." Counsel further states that, when Mr. Hughes received the loan document to sign, there was no request for credit, salary, or property information, or for references, and that therefore, he thought that the document he signed was "a mere cosmetic formality."

Mr. Hughes' counsel presents an argument similar to that of Mr. Herdzina, contending that because his guarantor status was terminated and the loan documents were redrafted without his signature, the loan "had been effectively 'repaid'" and no contribution on his part resulted. Counsel also maintains that, under the circumstances of the loan, Mr. Hughes' signature did not constitute "anything of value," and that "[t]he evidence demonstrates that none of the parties accorded any value whatsoever to the co-signature."

Counsel compares this matter with three past matters involving signatures on bank loan documents in support of an argument that the Commission should take no further action

against his client. These matters were MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings).

Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the final General Counsel's Report in MUR 1042, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. Counsel cites other factors to distinguish MUR 2051 from the two other matters, matters in which civil penalties were agreed upon. Counsel argues that, in MUR 1047, the contributors "[p]resumably" "had to answer at least a few financial inquiries into their credit worthiness" and that MUR 1047 involved more of an intent by the contributors to violate the Act. Counsel argues that, in MUR 1768, the guarantor was Senator Hollings' Senatorial campaign committee and the guarantor, therefore, was far more familiar with the requirements of the Act, but still used contributor funds for a purpose for which they were not intended. Counsel also states that the endorsement in MUR 1768 was made "intentionally and with deliberation" and that it involved far more money ($35,000) than Mr. Hughes' contribution.

In the process of making these arguments, counsel for Mr. Hughes also made statements against the interest of the Committee. Counsel argues that, in examining the loan transaction, the Commission should concentrate on the Committee, i.e., the party that did not present full information to the

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contributor as to the legal consequences of the signature. In comparing this matter with MUR 1047, counsel states that, in that MUR, the signatories "were not pressured into making their loan by a telephoning candidate," and they "were not told that others would be co-signing the loan."

In correspondence received by the Commission on August 12, 1985, David Newell also states that he signed a note because of the campaign's urgent need of funds. He states that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed by the Campaign (sic) from expected incomes." In subsequent correspondence, he states that he signed as a campaign manager and enclosed a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both signatories listed the campaign headquarters as their address. Mr. Newell fails to point out that the note stated that it was being covered by "Personal Guarantees."

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I)

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provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed the individuals as guarantors does not negate the original violation. The treasurer has posed the defense that the non-candidate signatories were not really contributors because they were "accommodating makers." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, the non-candidate individuals, as the sole co-makers with the candidate on the loans, would have contributed half the amount of the loans and would have exceeded the $1,000 limit.

The argument that the obligation of the signatories was terminated as of December 21, 1984, does not negate the original

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violation. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantees as contributions. By co-signing the loan notes, Mr. Hughes, Mr. Myers, and Mr. Newell made funds available to the Committee.

The argument is also made that the signatures were mere cosmetic formalities and that the bank did not ask the signatories for other information. The bank, nevertheless, did ask for the signatures of Messrs. Hughes, Myers, and Newell. Secondly, the assertions of a lack of participation by these men is belied by the issuance of Committee repayment checks to them and the reports of the Committee which refer to them as co-makers on the loan.

Replies have also been received comparing this matter with three other MURs. These MURs, however, do not negate the culpability of the Committee in this matter. As to MUR 1042, this Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's spouse. This involves the important additional issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(a)(1)(C) and 110.10(b)(3). The contentions that the contributors in MUR 1047 may have had to answer some financial inquiries and may have had greater intent to violate the Act do not negate the fact that the Calinger for Congress Committee obtained co-signatures for loans and, thereby, appears

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to have violated the Act. The added factors cited in Mr. Hughes' response with respect to MUR 1768, i.e., the familiarity of the Hollings Senatorial committee with the requirements of the Act and a use of funds not intended by contributors to Senator Hollings' Senatorial campaign, do not bear relevance to the fact that the Calinger for Congress Committee also appears to have violated the Act. In those matters, the Commission did not make any determination as to intent, i.e., whether or not the violations were knowing and willful, and no recommendation as to intent is being made by this Office in this matter.

Mr. Newell argues that his signature did not constitute a personal guarantee and that he was merely signing as a representative of the Committee. All of the documents submitted in this matter, however, indicate otherwise. Section 3-403(2)(b) of the Nebraska Uniform Commercial Code states:

> (2) An authorized represenative who signs his own name to an instrument
>
> > (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Neb. UCC 3-403(2)(b). The official comment to UCC 3-403, in interpreting subsection (2)(b), addresses the type of situation pertaining to the note signed by Mr. Newell. Using the example of a signature of "Arthur Adams, Agent" (exampled d of comment 3), the comment states that, in such a case, "the section admits

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parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity." In this matter, all of the parol evidence, i.e., outside or extrinsic evidence, indicates that Mr. Newell was personally guaranteeing repayment of the loan. The note itself refers to "Personal Guarantees." The repayment checks issued by the Committee were made out to "Walter Calinger and David Newell." Finally, as stated before, the Committee has reported Mr. Newell as one of the makers of a $5,000 loan to the Committee.

Based on the foregoing analysis, it appears that the Committee accepted excessive contributions from Mr. Hughes in the form of a $1,000 direct contribution and a $5,000 portion of a bank loan, from Mr. Newell in the form of $80 in direct contributions and a $2,500 portion of a bank loan, and Mr. Myers in the form of $62.50 in direct contributions and a $1,000 portion of a bank loan. The excessive portions of these contributions, thus, totalled $6,642.50. The General Counsel therefore, recommends that the Commission find probable cause to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

III. RECOMMENDATION

1. Find probable cause to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

Date

Charles N. Steele
General Counsel

87044345

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
John J. Hughes	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an excessive contribution, in the form of a direct contribution and a loan guarantee, by John Hughes to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes on May 2, 1984, and a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that this loan was a bank loan and that Mr. Hughes was considered by the Committee treasurer to be an "accommodating make[r]" or an "accommodating part[y]" to the loan. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote" the loan note, and the guarantee of Mr. Hughes was "destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October report (which was not received until

January, 1985) revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid. The Committee's 1985 April Quarterly disclosed that $3,058.24 had been repaid in toto.

On June 26, 1985, the Commission found reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A). On that date, the Commission also approved a subpoena for documents pertaining to the loan. On August 13, 1985, this Office received a response and documents from counsel for John Hughes.

Counsel for Mr. Hughes states that the Committee asked Mr. Hughes to co-sign the $10,000 loan because of an urgent need of funds just prior to the primary. Counsel states that Mr. Calinger "emphasized that several other contributors had likewise been asked to co-sign the loan." Counsel further states that, when Mr. Hughes received the loan document to sign, there was no request for credit, salary, or property information, or for references, and that therefore, he thought that the document he signed was "a mere cosmetic formality."

Counsel contends that because Mr. Hughes guarantor status was terminated and the loan documents were redrafted without his signature, the loan "had been effectively 'repaid'" and no contribution on his part resulted. Counsel also maintains that, under the circumstances of the loan, Mr. Hughes' signature did not constitute "anything of value," and that "[t]he evidence

demonstrates that none of the parties accorded any value whatsoever to the co-signature."

Counsel compares this matter with three past matters involving signatures on bank loan documents in support of an argument that the Commission should take no further action against his client. These matters were MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings).

Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the final General Counsel's Report in MUR 1042, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. Counsel cites other factors to distinguish MUR 2051 from the two other matters, matters in which civil penalties were agreed upon. Counsel argues that, in MUR 1047, a matter in which the contributors were not made respondents, the contributors "[p]resumably" "had to answer at least a few financial inquiries into their credit worthiness." Counsel also argues that MUR 1047 involved more of an intent by the contributors to violate the Act, even though the Commission proceeded only against the Committee. Counsel states that, in MUR 1047, the signatories "were not pressured into making their loan by a telephoning candidate" and they "were not told that others would be co-signing the loan." Counsel argues that, in MUR 1768, the guarantor was Senator Hollings' Senatorial campaign

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committee and that the guarantor was, therefore, far more familiar with the requirements of the Act but still used contributor funds for a purpose for which they were not intended. Counsel also states that the endorsement in MUR 1768 "was done intentionally and with deliberation" and that it involved far more money ($35,000) than Mr. Hughes' contribution.

On August 6, 1985, this Office received correspondence from John W. Herdzina, treasurer of the Calinger for Congress Committee, along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantee was "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loan and the guarantee was destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantee on November 1, 1984, he rectified the situation. He complains that the letter from RAD did not state "clearly" that the guarantee appeared to be in violation, and the implication of his response appears to be that any delay in cancelling the guarantee occurred because he had to infer that a violation was being alleged.

Among the documents submitted by Mr. Herdzina were copies of

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checks drawn on the Committee's account and made out to "Walter Calinger and John Hughes" for payment of the interest and/or principal on the loan. The checks were made out for $288.30 on July 17, 1984, $252.60 on September 21, 1984, and $2,244.31 on November 9, 1984.

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000.

Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer of the Committee has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of an individual under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the

capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, would have contributed half the amount of the loan, and would have exceeded the $1,000 limit.

The argument that the obligation of Mr. Hughes was terminated as of December 21, 1984, does not negate the original violation. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantee as a contribution. By co-signing the loan note, Mr. Hughes made funds available to the Committee.

The argument is also made that the signature was a mere cosmetic formality and the the bank did not ask Mr. Hughes for other information. The bank, nevertheless, did ask for Mr. Hughes's signature. Secondly, the assertions of a lack of participation by Mr. Hughes is belied by the issuance of Committee repayment checks to him and by the reports of the Committee which refer to him as a co-maker on the loan.

Mr. Hughes has also compared this matter with three other MURs. These MURs, however, do not negate the culpability of Mr. Hughes in this matter. As to MUR 1042, this Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's

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spouse. This involves the important additonal issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(l)(l)(C) and 110.10(b)(3). MUR 1047 involved an audit of a county committee with the investigation of many apparent violations by that committee. The fact that this Office did not pursue certain violations by individuals in that matter and the alleged existence of intent by the contributors in that matter do not negate the existence of a violation of 2 U.S.C. § 441a(a)(1)(A) in this matter. The added factors cited in Mr. Hughes' response with respect to MUR 1768, i.e., the familiarity of the Hollings Senatorial committee with the requirements of the Act and a use of funds not intended by contributors to Senator Holling's Senatorial campaign, also do not bear relevance to the fact that John Hughes appears to have made an excessive contribution in violation of 2 U.S.C. § 441a(a)(1)(A). In MUR 1047 and 1768, the Commission did not make any determination as to intent, i.e., whether or not the violations were knowing and willful, and no recommendation as to intent is being made by this Office in this matter.

Based on the foregoing analysis, the General Counsel recommends that the Commission find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A) by making $6,000 in contributions to the Calinger for Congress Committee.

III. RECOMMENDATION

1. Find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A).

Date

Charles N. Steele
General Counsel

8704064474

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
David Newell	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an excessive contribution in the form of a direct contribution and a loan guarantee by David Newell to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that Mr. Newell was considered by the treasurer to be an "accommodating make[r]" or an "accommodating part[y]" to the loan. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes," and the guarantee of Mr. Newell was "destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed Mr. Newell as a loan guarantor,

the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of July 27, 1984, the Committee had repaid the full amount of the principal of the loan with interest.

On June 26, 1985, the Commission found reason to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A). On that date, the Commission also approved a subpoena for documents pertaining to the bank loan.

On August 12, 1985, this Office received a response from Mr. Newell. Mr. Newell states that he signed a note because of the campaign's shortage of funds. He states that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed (sic) by the Campaign (sic) from expected incomes." In subsequent correspondence received on October 18, he states that he signed as a campaign manager and sent a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both men listed the campaign headquarters as their address. Mr. Newell fails to point out that the note document states that the note was being covered by "Personal Guarantees."

On August 6, 1985, this Office received correspondence from John Hedzina, treasurer of the Calinger for Congree Committee, along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantee was "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were

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concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally, Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loan and the guarantee was destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantee on November 1, 1984, he rectified the situation. Mr. Herdzina complains that the letter did not state "clearly" that the guarantee appeared to be in violation and the implication of his response appears to be that any delay in cancelling the guarantee occurred because he had to infer that a violation was being alleged.

Among the documents submitted by Mr. Herdzina were copies of checks drawn on the Committee's account and made out to "Walter Calinger and Dave Newell." The checks were made out for $2,500 on July 17, 1984, and $2,512.12 on July 27, 1984.

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the

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unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Newell has served as a guarantor for an amount which exceeds the § 441a(a)(1)(A) limit. The treasurer of the Committee has posed the defense that Mr. Newell was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of an individual under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, Mr. Newell, as the sole co-maker with the candidate on the $5,000 loan, would have contributed half the amount of the loan, and would have exceeded the $1,000 limit.

The argument that the loan obligation was terminated as of December 21, 1984, (or for that matter, that the loan was repaid as of July 27, 1984) does not negate the original violation. The funds were available from May 10 to July 27. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantees as contribution. By co-signing the loan note, Mr. Newell made funds available to the Committee.

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Mr. Newell argues that his signature did not constitute a personal guarantee and that he was merely signing as a representative of the Committee. All of the documents submitted in this matter, however, indicate otherwise. Section 3-403(2)(b) of the Nebraska Uniform Commercial Code states:

> (2) An authorized representative who signs his own name to an instrument
>
> (b) except as otherwise estabished between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Neb. UCC 3-403(2)(b). The official comment to UCC 3-403, in interpreting subsection (2)(b), addresses the type of situation pertaining to the note signed by Mr. Newell. Using the example of a signature of "Arthur Adams, Agent" (exampled d of comment 3), the comment states that, in such a case, "the section admits parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity." In this matter, all of the parol evidence, i.e., outside or extrinsic evience, indicates that Mr. Newell was personally guaranteeing repayment of the loan. The note itself refers to "Personal Guarantees." The repayment checks issued by the Committee were made out to "Walter Calinger and David Newell." Finally, the Committee reported Mr. Newell as one of the makers of a $5,000 loan to the Committee.

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Based on the foregoing analysis, the General Counsel recommends that the Commission find probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A) by making $2,580 in contributions to the Calinger for Congress Committee.

III. **RECOMMENDATION**

1. Find probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A).

Date

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer

Dear Mr. Warin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, had violated 2 U.S.C. § 441a(a)(f) and that John J. Hughes had violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 are briefs stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission briefs (10 copies if possible) stating your position on the issues and replying to the briefs of the General Counsel. (Three copies of such briefs should also be forwarded to the Office of General Counsel, if possible.) The General Counsel's briefs and any briefs 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 responsive briefs within 15 days, you may submit a written request to the Commission for an extension of time in which to file the briefs. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

Attachment 2 - p 1 of 4

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 the brief. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 4, 1986

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 the brief. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
David Newell	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an excessive contribution in the form of a direct contribution and a loan guarantee by David Newell to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that Mr. Newell was considered by the treasurer to be an "accommodating make[r]" or an "accommodating part[y]" to the loan. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes," and the guarantee of Mr. Newell was "destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed Mr. Newell as a loan guarantor,

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the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of July 27, 1984, the Committee had repaid the full amount of the principal of the loan with interest.

On June 26, 1985, the Commission found reason to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A). On that date, the Commission also approved a subpoena for documents pertaining to the bank loan.

On August 12, 1985, this Office received a response from Mr. Newell. Mr. Newell states that he signed a note because of the campaign's shortage of funds. He states that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed (sic) by the Campaign (sic) from expected incomes." In subsequent correspondence received on October 18, he states that he signed as a campaign manager and sent a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both men listed the campaign headquarters as their address. Mr. Newell fails to point out that the note document states that the note was being covered by "Personal Guarantees."

On August 6, 1985, this Office received correspondence from John Hedzina, treasurer of the Calinger for Congree Committee, along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantee was "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were

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concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally, Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loan and the guarantee was destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantee on November 1, 1984, he rectified the situation. Mr. Herdzina complains that the letter did not state "clearly" that the guarantee appeared to be in violation and the implication of his response appears to be that any delay in cancelling the guarantee occurred because he had to infer that a violation was being alleged.

Among the documents submitted by Mr. Herdzina were copies of checks drawn on the Committee's account and made out to "Walter Calinger and Dave Newell." The checks were made out for $2,500 on July 17, 1984, and $2,512.12 on July 27, 1984.

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the

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unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Newell has served as a guarantor for an amount which exceeds the § 441a(a)(1)(A) limit. The treasurer of the Committee has posed the defense that Mr. Newell was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of an individual under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, Mr. Newell, as the sole co-maker with the candidate on the $5,000 loan, would have contributed half the amount of the loan, and would have exceeded the $1,000 limit.

The argument that the loan obligation was terminated as of December 21, 1984, (or for that matter, that the loan was repaid as of July 27, 1984) does not negate the original violation. The funds were available from May 10 to July 27. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantees as contribution. By co-signing the loan note, Mr. Newell made funds available to the Committee.

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Mr. Newell argues that his signature did not constitute a personal guarantee and that he was merely signing as a representative of the Committee. All of the documents submitted in this matter, however, indicate otherwise. Section 3-403(2)(b) of the Nebraska Uniform Commercial Code states:

> (2) An authorized representative who signs his own name to an instrument
>
> (b) except as otherwise estabished between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Neb. UCC 3-403(2)(b). The official comment to UCC 3-403, in interpreting subsection (2)(b), addresses the type of situation pertaining to the note signed by Mr. Newell. Using the example of a signature of "Arthur Adams, Agent" (exampled d of comment 3), the comment states that, in such a case, "the section admits parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity." In this matter, all of the parol evidence, i.e., outside or extrinsic evience, indicates that Mr. Newell was personally guaranteeing repayment of the loan. The note itself refers to "Personal Guarantees." The repayment checks issued by the Committee were made out to "Walter Calinger and David Newell." Finally, the Committee reported Mr. Newell as one of the makers of a $5,000 loan to the Committee.

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Based on the foregoing analysis, the General Counsel recommends that the Commission find probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A) by making $2,580 in contributions to the Calinger for Congress Committee.

III. RECOMMENDATION

1. Find probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A).

3 June 1986
Date

Charles N. Steele
General Counsel

87044354092

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 4, 1986

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer

Dear Mr. Warin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, had violated 2 U.S.C. § 441a(a)(f) and that John J. Hughes had violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 are briefs stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission briefs (10 copies if possible) stating your position on the issues and replying to the briefs of the General Counsel. (Three copies of such briefs should also be forwarded to the Office of General Counsel, if possible.) The General Counsel's briefs and any briefs 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 responsive briefs within 15 days, you may submit a written request to the Commission for an extension of time in which to file the briefs. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

87044444024

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress Committee	)	MUR 2051
John W. Herdzina,	)	
as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves excessive contributions in the form of direct contributions and loan guarantees by John Hughes, David Newell, and Larry Myers to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes and a $10,000 loan from the candidate and Mr. Hughes. The report also disclosed the receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell. In addition, the report disclosed a $100 contribution from Larry and Marianna Myers, bringing their yearly non-loan contribution total to $125, and a $2,000 loan from the candidate and Mr. Myers.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that the non-candidate individuals were considered by the treasurer to be "accommodating makers" or "accommodating parties" to the loans. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered

"guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors, the Committee's 1984 October Quarterly Report (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, 1984, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid. 1/

On June 26, 1985, the Commission found reason to believe that the Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f). On that date, the Commission also approved a subpoena for documents pertaining to the bank loans.

On August 6, 1985, this Office received a response from Mr. Herdzina along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantees were "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors

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1/ According to the last report filed by the Committee, the 1985 Year End Report, $3,058 had been repaid.

were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally, Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loans and the guarantees were destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantees on November 1, 1984, he rectified the situation. He complains that the letter from RAD did not state "clearly" that the guarantees appeared to be in violation and the implication of his response appears to be that any delay in cancelling the guarantees occurred because he had to infer that a violation was being alleged.

Mr. Herdzina also submitted documents pertaining to the loans. This included a "Summary of Loan Accounts" listing the loans in chronological order and listing the names with respect to each loan as "Walt Calinger & Dave Newell," "Walt Calinger & Larry Myers," and "Walt Calinger & John Hughes." In addition, there were copies of checks drawn on the Committee's account made out to "Walter Calinger and Dave Newell," "Walter Calinger and Larry Myers," "Walter Calinger and John Hughes," or "Walter Calinger." These checks were for repayment of the loan interest, the loan principal, or both. Checks were made to "Walter Calinger and Dave Newell" and "Walter Calinger and Larry Myers" in July and September, 1984. Checks were made payable to

"Walter Calinger and John Hughes" on September 21 and November 9, 1984. Checks made payable to Walter Calinger alone were signed on December 29, 1984, and March 29 and July 13, 1985.

This Office received correspondence from counsel for John Hughes on August 13, 1985. Counsel for Mr. Hughes states that the Committee asked Mr. Hughes to co-sign the $10,000 loan because of an urgent need of funds just prior to the primary. Counsel states that Mr. Calinger "emphasized that several other contributors had likewise been asked to co-sign the loan." Counsel further states that, when Mr. Hughes received the loan document to sign, there was no request for credit, salary, or property information, or for references, and that therefore, he thought that the document he signed was "a mere cosmetic formality."

Mr. Hughes' counsel presents an argument similar to that of Mr. Herdzina, contending that because his guarantor status was terminated and the loan documents were redrafted without his signature, the loan "had been effectively 'repaid'" and no contribution on his part resulted. Counsel also maintains that, under the circumstances of the loan, Mr. Hughes' signature did not constitute "anything of value," and that "[t]he evidence demonstrates that none of the parties accorded any value whatsoever to the co-signature."

Counsel compares this matter with three past matters involving signatures on bank loan documents in support of an argument that the Commission should take no further action

against his client. These matters were MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings).

Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the final General Counsel's Report in MUR 1042, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. Counsel cites other factors to distinguish MUR 2051 from the two other matters, matters in which civil penalties were agreed upon. Counsel argues that, in MUR 1047, the contributors "[p]resumably" "had to answer at least a few financial inquiries into their credit worthiness" and that MUR 1047 involved more of an intent by the contributors to violate the Act. Counsel argues that, in MUR 1768, the guarantor was Senator Hollings' Senatorial campaign committee and the guarantor, therefore, was far more familiar with the requirements of the Act, but still used contributor funds for a purpose for which they were not intended. Counsel also states that the endorsement in MUR 1768 was made "intentionally and with deliberation" and that it involved far more money ($35,000) than Mr. Hughes' contribution.

In the process of making these arguments, counsel for Mr. Hughes also made statements against the interest of the Committee. Counsel argues that, in examining the loan transaction, the Commission should concentrate on the Committee, i.e., the party that did not present full information to the

contributor as to the legal consequences of the signature. In comparing this matter with MUR 1047, counsel states that, in that MUR, the signatories "were not pressured into making their loan by a telephoning candidate," and they "were not told that others would be co-signing the loan."

In correspondence received by the Commission on August 12, 1985, David Newell also states that he signed a note because of the campaign's urgent need of funds. He states that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed by the Campaign (sic) from expected incomes." In subsequent correspondence, he states that he signed as a campaign manager and enclosed a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both signatories listed the campaign headquarters as their address. Mr. Newell fails to point out that the note stated that it was being covered by "Personal Guarantees."

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I)

provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed the individuals as guarantors does not negate the original violation. The treasurer has posed the defense that the non-candidate signatories were not really contributors because they were "accommodating makers." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, the non-candidate individuals, as the sole co-makers with the candidate on the loans, would have contributed half the amount of the loans and would have exceeded the $1,000 limit.

The argument that the obligation of the signatories was terminated as of December 21, 1984, does not negate the original

violation. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantees as contributions. By co-signing the loan notes, Mr. Hughes, Mr. Myers, and Mr. Newell made funds available to the Committee.

The argument is also made that the signatures were mere cosmetic formalities and that the bank did not ask the signatories for other information. The bank, nevertheless, did ask for the signatures of Messrs. Hughes, Myers, and Newell. Secondly, the assertions of a lack of participation by these men is belied by the issuance of Committee repayment checks to them and the reports of the Committee which refer to them as co-makers on the loan.

Replies have also been received comparing this matter with three other MURs. These MURs, however, do not negate the culpability of the Committee in this matter. As to MUR 1042, this Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's spouse. This involves the important additional issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(a)(1)(C) and 110.10(b)(3). The contentions that the contributors in MUR 1047 may have had to answer some financial inquiries and may have had greater intent to violate the Act do not negate the fact that the Calinger for Congress Committee obtained co-signatures for loans and, thereby, appears

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to have violated the Act. The added factors cited in Mr. Hughes' response with respect to MUR 1768, i.e., the familiarity of the Hollings Senatorial committee with the requirements of the Act and a use of funds not intended by contributors to Senator Hollings' Senatorial campaign, do not bear relevance to the fact that the Calinger for Congress Committee also appears to have violated the Act. In those matters, the Commission did not make any determination as to intent, i.e., whether or not the violations were knowing and willful, and no recommendation as to intent is being made by this Office in this matter.

Mr. Newell argues that his signature did not constitute a personal guarantee and that he was merely signing as a representative of the Committee. All of the documents submitted in this matter, however, indicate otherwise. Section 3-403(2)(b) of the Nebraska Uniform Commercial Code states:

> (2) An authorized represenative who signs his own name to an instrument
>
> > (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Neb. UCC 3-403(2)(b). The official comment to UCC 3-403, in interpreting subsection (2)(b), addresses the type of situation pertaining to the note signed by Mr. Newell. Using the example of a signature of "Arthur Adams, Agent" (exampled d of comment 3), the comment states that, in such a case, "the section admits

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parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity." In this matter, all of the parol evidence, i.e., outside or extrinsic evidence, indicates that Mr. Newell was personally guaranteeing repayment of the loan. The note itself refers to "Personal Guarantees." The repayment checks issued by the Committee were made out to "Walter Calinger and David Newell." Finally, as stated before, the Committee has reported Mr. Newell as one of the makers of a $5,000 loan to the Committee.

Based on the foregoing analysis, it appears that the Committee accepted excessive contributions from Mr. Hughes in the form of a $1,000 direct contribution and a $5,000 portion of a bank loan, from Mr. Newell in the form of $80 in direct contributions and a $2,500 portion of a bank loan, and Mr. Myers in the form of $62.50 in direct contributions and a $1,000 portion of a bank loan. The excessive portions of these contributions, thus, totalled $6,642.50. The General Counsel therefore, recommends that the Commission find probable cause to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

III. RECOMMENDATION

1. Find probable cause to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

3 June 1986
Date

Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
John J. Hughes	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an excessive contribution, in the form of a direct contribution and a loan guarantee, by John Hughes to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes on May 2, 1984, and a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that this loan was a bank loan and that Mr. Hughes was considered by the Committee treasurer to be an "accommodating make[r]" or an "accommodating part[y]" to the loan. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote" the loan note, and the guarantee of Mr. Hughes was "destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October report (which was not received until

January, 1985) revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid. The Committee's 1985 April Quarterly disclosed that $3,058.24 had been repaid in toto.

On June 26, 1985, the Commission found reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A). On that date, the Commission also approved a subpoena for documents pertaining to the loan. On August 13, 1985, this Office received a response and documents from counsel for John Hughes.

Counsel for Mr. Hughes states that the Committee asked Mr. Hughes to co-sign the $10,000 loan because of an urgent need of funds just prior to the primary. Counsel states that Mr. Calinger "emphasized that several other contributors had likewise been asked to co-sign the loan." Counsel further states that, when Mr. Hughes received the loan document to sign, there was no request for credit, salary, or property information, or for references, and that therefore, he thought that the document he signed was "a mere cosmetic formality."

Counsel contends that because Mr. Hughes guarantor status was terminated and the loan documents were redrafted without his signature, the loan "had been effectively 'repaid'" and no contribution on his part resulted. Counsel also maintains that, under the circumstances of the loan, Mr. Hughes' signature did not constitute "anything of value," and that "[t]he evidence

demonstrates that none of the parties accorded any value whatsoever to the co-signature."

Counsel compares this matter with three past matters involving signatures on bank loan documents in support of an argument that the Commission should take no further action against his client. These matters were MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings).

Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the final General Counsel's Report in MUR 1042, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. Counsel cites other factors to distinguish MUR 2051 from the two other matters, matters in which civil penalties were agreed upon. Counsel argues that, in MUR 1047, a matter in which the contributors were not made respondents, the contributors "[p]resumably" "had to answer at least a few financial inquiries into their credit worthiness." Counsel also argues that MUR 1047 involved more of an intent by the contributors to violate the Act, even though the Commission proceeded only against the Committee. Counsel states that, in MUR 1047, the signatories "were not pressured into making their loan by a telephoning candidate" and they "were not told that others would be co-signing the loan." Counsel argues that, in MUR 1768, the guarantor was Senator Hollings' Senatorial campaign

committee and that the guarantor was, therefore, far more familiar with the requirements of the Act but still used contributor funds for a purpose for which they were not intended. Counsel also states that the endorsement in MUR 1768 "was done intentionally and with deliberation" and that it involved far more money ($35,000) than Mr. Hughes' contribution.

On August 6, 1985, this Office received correspondence from John W. Herdzina, treasurer of the Calinger for Congress Committee, along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantee was "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loan and the guarantee was destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantee on November 1, 1984, he rectified the situation. He complains that the letter from RAD did not state "clearly" that the guarantee appeared to be in violation, and the implication of his response appears to be that any delay in cancelling the guarantee occurred because he had to infer that a violation was being alleged.

Among the documents submitted by Mr. Herdzina were copies of

checks drawn on the Committee's account and made out to "Walter Calinger and John Hughes" for payment of the interest and/or principal on the loan. The checks were made out for $288.30 on July 17, 1984, $252.60 on September 21, 1984, and $2,244.31 on November 9, 1984.

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000.

Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer of the Committee has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of an individual under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the

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capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, would have contributed half the amount of the loan, and would have exceeded the $1,000 limit.

The argument that the obligation of Mr. Hughes was terminated as of December 21, 1984, does not negate the original violation. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantee as a contribution. By co-signing the loan note, Mr. Hughes made funds available to the Committee.

The argument is also made that the signature was a mere cosmetic formality and the the bank did not ask Mr. Hughes for other information. The bank, nevertheless, did ask for Mr. Hughes's signature. Secondly, the assertions of a lack of participation by Mr. Hughes is belied by the issuance of Committee repayment checks to him and by the reports of the Committee which refer to him as a co-maker on the loan.

Mr. Hughes has also compared this matter with three other MURs. These MURs, however, do not negate the culpability of Mr. Hughes in this matter. As to MUR 1042, this Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's

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spouse. This involves the important additonal issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(1)(1)(C) and 110.10(b)(3). MUR 1047 involved an audit of a county committee with the investigation of many apparent violations by that committee. The fact that this Office did not pursue certain violations by individuals in that matter and the alleged existence of intent by the contributors in that matter do not negate the existence of a violation of 2 U.S.C. § 441a(a)(1)(A) in this matter. The added factors cited in Mr. Hughes' response with respect to MUR 1768, i.e., the familiarity of the Hollings Senatorial committee with the requirements of the Act and a use of funds not intended by contributors to Senator Holling's Senatorial campaign, also do not bear relevance to the fact that John Hughes appears to have made an excessive contribution in violation of 2 U.S.C. § 441a(a)(1)(A). In MUR 1047 and 1768, the Commission did not make any determination as to intent, i.e., whether or not the violations were knowing and willful, and no recommendation as to intent is being made by this Office in this matter.

Based on the foregoing analysis, the General Counsel recommends that the Commission find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A) by making $6,000 in contributions to the Calinger for Congress Committee.

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III. RECOMMENDATION

1. Find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A).

3 June 1986
Date

Charles N. Steele
General Counsel

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SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/ ARNITA D. HESSION ADH.

DATE: JUNE 5, 1986

SUBJECT: MUR 2051 - Memorandum to the Commission

The attached has been circulated for your information.

Attachment

87040345514

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

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June 4, 1986

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 2051

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of these briefs and letters notifying the respondents of the General Counsel's intent to recommend to the Commission findings of probable cause to believe were mailed on June 4 , 1986. Following receipt of the respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments

1. Briefs
2. Letters to respondents

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

June 4, 1986

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer

Dear Mr. Warin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, had violated 2 U.S.C. § 441a(a)(f) and that John J. Hughes had violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 are briefs stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission briefs (10 copies if possible) stating your position on the issues and replying to the briefs of the General Counsel. (Three copies of such briefs should also be forwarded to the Office of General Counsel, if possible.) The General Counsel's briefs and any briefs 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 responsive briefs within 15 days, you may submit a written request to the Commission for an extension of time in which to file the briefs. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress Committee	)	MUR 2051
John W. Herdzina,	)	
as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves excessive contributions in the form of direct contributions and loan guarantees by John Hughes, David Newell, and Larry Myers to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes and a $10,000 loan from the candidate and Mr. Hughes. The report also disclosed the receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell. In addition, the report disclosed a $100 contribution from Larry and Marianna Myers, bringing their yearly non-loan contribution total to $125, and a $2,000 loan from the candidate and Mr. Myers.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that the non-candidate individuals were considered by the treasurer to be "accommodating makers" or "accommodating parties" to the loans. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered

"guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors, the Committee's 1984 October Quarterly Report (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, 1984, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid. 1/

On June 26, 1985, the Commission found reason to believe that the Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f). On that date, the Commission also approved a subpoena for documents pertaining to the bank loans.

On August 6, 1985, this Office received a response from Mr. Herdzina along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantees were "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors

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1/ According to the last report filed by the Committee, the 1985 Year End Report, $3,058 had been repaid.

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were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally, Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loans and the guarantees were destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantees on November 1, 1984, he rectified the situation. He complains that the letter from RAD did not state "clearly" that the guarantees appeared to be in violation and the implication of his response appears to be that any delay in cancelling the guarantees occurred because he had to infer that a violation was being alleged.

Mr. Herdzina also submitted documents pertaining to the loans. This included a "Summary of Loan Accounts" listing the loans in chronological order and listing the names with respect to each loan as "Walt Calinger & Dave Newell," "Walt Calinger & Larry Myers," and "Walt Calinger & John Hughes." In addition, there were copies of checks drawn on the Committee's account made out to "Walter Calinger and Dave Newell," "Walter Calinger and Larry Myers," "Walter Calinger and John Hughes," or "Walter Calinger." These checks were for repayment of the loan interest, the loan principal, or both. Checks were made to "Walter Calinger and Dave Newell" and "Walter Calinger and Larry Myers" in July and September, 1984. Checks were made payable to

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"Walter Calinger and John Hughes" on September 21 and November 9, 1984. Checks made payable to Walter Calinger alone were signed on December 29, 1984, and March 29 and July 13, 1985.

This Office received correspondence from counsel for John Hughes on August 13, 1985. Counsel for Mr. Hughes states that the Committee asked Mr. Hughes to co-sign the $10,000 loan because of an urgent need of funds just prior to the primary. Counsel states that Mr. Calinger "emphasized that several other contributors had likewise been asked to co-sign the loan." Counsel further states that, when Mr. Hughes received the loan document to sign, there was no request for credit, salary, or property information, or for references, and that therefore, he thought that the document he signed was "a mere cosmetic formality."

Mr. Hughes' counsel presents an argument similar to that of Mr. Herdzina, contending that because his guarantor status was terminated and the loan documents were redrafted without his signature, the loan "had been effectively 'repaid'" and no contribution on his part resulted. Counsel also maintains that, under the circumstances of the loan, Mr. Hughes' signature did not constitute "anything of value," and that "[t]he evidence demonstrates that none of the parties accorded any value whatsoever to the co-signature."

Counsel compares this matter with three past matters involving signatures on bank loan documents in support of an argument that the Commission should take no further action

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against his client. These matters were MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings).

Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the final General Counsel's Report in MUR 1042, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. Counsel cites other factors to distinguish MUR 2051 from the two other matters, matters in which civil penalties were agreed upon. Counsel argues that, in MUR 1047, the contributors "[p]resumably" "had to answer at least a few financial inquiries into their credit worthiness" and that MUR 1047 involved more of an intent by the contributors to violate the Act. Counsel argues that, in MUR 1768, the guarantor was Senator Hollings' Senatorial campaign committee and the guarantor, therefore, was far more familiar with the requirements of the Act, but still used contributor funds for a purpose for which they were not intended. Counsel also states that the endorsement in MUR 1768 was made "intentionally and with deliberation" and that it involved far more money ($35,000) than Mr. Hughes' contribution.

In the process of making these arguments, counsel for Mr. Hughes also made statements against the interest of the Committee. Counsel argues that, in examining the loan transaction, the Commission should concentrate on the Committee, i.e., the party that did not present full information to the

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contributor as to the legal consequences of the signature. In comparing this matter with MUR 1047, counsel states that, in that MUR, the signatories "were not pressured into making their loan by a telephoning candidate," and they "were not told that others would be co-signing the loan."

In correspondence received by the Commission on August 12, 1985, David Newell also states that he signed a note because of the campaign's urgent need of funds. He states that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed by the Campaign (sic) from expected incomes." In subsequent correspondence, he states that he signed as a campaign manager and enclosed a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both signatories listed the campaign headquarters as their address. Mr. Newell fails to point out that the note stated that it was being covered by "Personal Guarantees."

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I)

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provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed the individuals as guarantors does not negate the original violation. The treasurer has posed the defense that the non-candidate signatories were not really contributors because they were "accommodating makers." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, the non-candidate individuals, as the sole co-makers with the candidate on the loans, would have contributed half the amount of the loans and would have exceeded the $1,000 limit.

The argument that the obligation of the signatories was terminated as of December 21, 1984, does not negate the original

violation. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantees as contributions. By co-signing the loan notes, Mr. Hughes, Mr. Myers, and Mr. Newell made funds available to the Committee.

The argument is also made that the signatures were mere cosmetic formalities and that the bank did not ask the signatories for other information. The bank, nevertheless, did ask for the signatures of Messrs. Hughes, Myers, and Newell. Secondly, the assertions of a lack of participation by these men is belied by the issuance of Committee repayment checks to them and the reports of the Committee which refer to them as co-makers on the loan.

Replies have also been received comparing this matter with three other MURs. These MURs, however, do not negate the culpability of the Committee in this matter. As to MUR 1042, this Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's spouse. This involves the important additional issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(a)(1)(C) and 110.10(b)(3). The contentions that the contributors in MUR 1047 may have had to answer some financial inquiries and may have had greater intent to violate the Act do not negate the fact that the Calinger for Congress Committee obtained co-signatures for loans and, thereby, appears

to have violated the Act. The added factors cited in Mr. Hughes' response with respect to MUR 1768, i.e., the familiarity of the Hollings Senatorial committee with the requirements of the Act and a use of funds not intended by contributors to Senator Hollings' Senatorial campaign, do not bear relevance to the fact that the Calinger for Congress Committee also appears to have violated the Act. In those matters, the Commission did not make any determination as to intent, i.e., whether or not the violations were knowing and willful, and no recommendation as to intent is being made by this Office in this matter.

Mr. Newell argues that his signature did not constitute a personal guarantee and that he was merely signing as a representative of the Committee. All of the documents submitted in this matter, however, indicate otherwise. Section 3-403(2)(b) of the Nebraska Uniform Commercial Code states:

> (2) An authorized represenative who signs his own name to an instrument
>
> > (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Neb. UCC 3-403(2)(b). The official comment to UCC 3-403, in interpreting subsection (2)(b), addresses the type of situation pertaining to the note signed by Mr. Newell. Using the example of a signature of "Arthur Adams, Agent" (exampled d of comment 3), the comment states that, in such a case, "the section admits

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parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity." In this matter, all of the parol evidence, i.e., outside or extrinsic evidence, indicates that Mr. Newell was personally guaranteeing repayment of the loan. The note itself refers to "Personal Guarantees." The repayment checks issued by the Committee were made out to "Walter Calinger and David Newell." Finally, as stated before, the Committee has reported Mr. Newell as one of the makers of a $5,000 loan to the Committee.

Based on the foregoing analysis, it appears that the Committee accepted excessive contributions from Mr. Hughes in the form of a $1,000 direct contribution and a $5,000 portion of a bank loan, from Mr. Newell in the form of $80 in direct contributions and a $2,500 portion of a bank loan, and Mr. Myers in the form of $62.50 in direct contributions and a $1,000 portion of a bank loan. The excessive portions of these contributions, thus, totalled $6,642.50. The General Counsel therefore, recommends that the Commission find probable cause to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

III. RECOMMENDATION

1. Find probable cause to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

3 June 1988
Date

Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
John J. Hughes	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an excessive contribution, in the form of a direct contribution and a loan guarantee, by John Hughes to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes on May 2, 1984, and a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that this loan was a bank loan and that Mr. Hughes was considered by the Committee treasurer to be an "accommodating make[r]" or an "accommodating part[y]" to the loan. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote" the loan note, and the guarantee of Mr. Hughes was "destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October report (which was not received until

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January, 1985) revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid. The Committee's 1985 April Quarterly disclosed that $3,058.24 had been repaid in toto.

On June 26, 1985, the Commission found reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A). On that date, the Commission also approved a subpoena for documents pertaining to the loan. On August 13, 1985, this Office received a response and documents from counsel for John Hughes.

Counsel for Mr. Hughes states that the Committee asked Mr. Hughes to co-sign the $10,000 loan because of an urgent need of funds just prior to the primary. Counsel states that Mr. Calinger "emphasized that several other contributors had likewise been asked to co-sign the loan." Counsel further states that, when Mr. Hughes received the loan document to sign, there was no request for credit, salary, or property information, or for references, and that therefore, he thought that the document he signed was "a mere cosmetic formality."

Counsel contends that because Mr. Hughes guarantor status was terminated and the loan documents were redrafted without his signature, the loan "had been effectively 'repaid'" and no contribution on his part resulted. Counsel also maintains that, under the circumstances of the loan, Mr. Hughes' signature did not constitute "anything of value," and that "[t]he evidence

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demonstrates that none of the parties accorded any value whatsoever to the co-signature."

Counsel compares this matter with three past matters involving signatures on bank loan documents in support of an argument that the Commission should take no further action against his client. These matters were MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings).

Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the final General Counsel's Report in MUR 1042, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. Counsel cites other factors to distinguish MUR 2051 from the two other matters, matters in which civil penalties were agreed upon. Counsel argues that, in MUR 1047, a matter in which the contributors were not made respondents, the contributors "[p]resumably" "had to answer at least a few financial inquiries into their credit worthiness." Counsel also argues that MUR 1047 involved more of an intent by the contributors to violate the Act, even though the Commission proceeded only against the Committee. Counsel states that, in MUR 1047, the signatories "were not pressured into making their loan by a telephoning candidate" and they "were not told that others would be co-signing the loan." Counsel argues that, in MUR 1768, the guarantor was Senator Hollings' Senatorial campaign

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committee and that the guarantor was, therefore, far more familiar with the requirements of the Act but still used contributor funds for a purpose for which they were not intended. Counsel also states that the endorsement in MUR 1768 "was done intentionally and with deliberation" and that it involved far more money ($35,000) than Mr. Hughes' contribution.

On August 6, 1985, this Office received correspondence from John W. Herdzina, treasurer of the Calinger for Congress Committee, along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantee was "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loan and the guarantee was destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantee on November 1, 1984, he rectified the situation. He complains that the letter from RAD did not state "clearly" that the guarantee appeared to be in violation, and the implication of his response appears to be that any delay in cancelling the guarantee occurred because he had to infer that a violation was being alleged.

Among the documents submitted by Mr. Herdzina were copies of

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checks drawn on the Committee's account and made out to "Walter Calinger and John Hughes" for payment of the interest and/or principal on the loan. The checks were made out for $288.30 on July 17, 1984, $252.60 on September 21, 1984, and $2,244.31 on November 9, 1984.

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000.

Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer of the Committee has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of an individual under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the

capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, would have contributed half the amount of the loan, and would have exceeded the $1,000 limit.

The argument that the obligation of Mr. Hughes was terminated as of December 21, 1984, does not negate the original violation. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantee as a contribution. By co-signing the loan note, Mr. Hughes made funds available to the Committee.

The argument is also made that the signature was a mere cosmetic formality and the the bank did not ask Mr. Hughes for other information. The bank, nevertheless, did ask for Mr. Hughes's signature. Secondly, the assertions of a lack of participation by Mr. Hughes is belied by the issuance of Committee repayment checks to him and by the reports of the Committee which refer to him as a co-maker on the loan.

Mr. Hughes has also compared this matter with three other MURs. These MURs, however, do not negate the culpability of Mr. Hughes in this matter. As to MUR 1042, this Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's

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spouse. This involves the important additonal issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(1)(1)(C) and 110.10(b)(3). MUR 1047 involved an audit of a county committee with the investigation of many apparent violations by that committee. The fact that this Office did not pursue certain violations by individuals in that matter and the alleged existence of intent by the contributors in that matter do not negate the existence of a violation of 2 U.S.C. § 441a(a)(1)(A) in this matter. The added factors cited in Mr. Hughes' response with respect to MUR 1768, i.e., the familiarity of the Hollings Senatorial committee with the requirements of the Act and a use of funds not intended by contributors to Senator Holling's Senatorial campaign, also do not bear relevance to the fact that John Hughes appears to have made an excessive contribution in violation of 2 U.S.C. § 441a(a)(1)(A). In MUR 1047 and 1768, the Commission did not make any determination as to intent, i.e., whether or not the violations were knowing and willful, and no recommendation as to intent is being made by this Office in this matter.

Based on the foregoing analysis, the General Counsel recommends that the Commission find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A) by making $6,000 in contributions to the Calinger for Congress Committee.

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III. RECOMMENDATION

1. Find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A).

3 June 1986
Date

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 4, 1986

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 the brief. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
David Newell	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an excessive contribution in the form of a direct contribution and a loan guarantee by David Newell to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that Mr. Newell was considered by the treasurer to be an "accommodating make[r]" or an "accommodating part[y]" to the loan. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes," and the guarantee of Mr. Newell was "destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed Mr. Newell as a loan guarantor,

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the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of July 27, 1984, the Committee had repaid the full amount of the principal of the loan with interest.

On June 26, 1985, the Commission found reason to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A). On that date, the Commission also approved a subpoena for documents pertaining to the bank loan.

On August 12, 1985, this Office received a response from Mr. Newell. Mr. Newell states that he signed a note because of the campaign's shortage of funds. He states that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed (sic) by the Campaign (sic) from expected incomes." In subsequent correspondence received on October 18, he states that he signed as a campaign manager and sent a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both men listed the campaign headquarters as their address. Mr. Newell fails to point out that the note document states that the note was being covered by "Personal Guarantees."

On August 6, 1985, this Office received correspondence from John Hedzina, treasurer of the Calinger for Congree Committee, along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantee was "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were

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concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally, Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loan and the guarantee was destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantee on November 1, 1984, he rectified the situation. Mr. Herdzina complains that the letter did not state "clearly" that the guarantee appeared to be in violation and the implication of his response appears to be that any delay in cancelling the guarantee occurred because he had to infer that a violation was being alleged.

Among the documents submitted by Mr. Herdzina were copies of checks drawn on the Committee's account and made out to "Walter Calinger and Dave Newell." The checks were made out for $2,500 on July 17, 1984, and $2,512.12 on July 27, 1984.

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the

unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Newell has served as a guarantor for an amount which exceeds the § 441a(a)(1)(A) limit. The treasurer of the Committee has posed the defense that Mr. Newell was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of an individual under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, Mr. Newell, as the sole co-maker with the candidate on the $5,000 loan, would have contributed half the amount of the loan, and would have exceeded the $1,000 limit.

The argument that the loan obligation was terminated as of December 21, 1984, (or for that matter, that the loan was repaid as of July 27, 1984) does not negate the original violation. The funds were available from May 10 to July 27. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantees as contribution. By co-signing the loan note, Mr. Newell made funds available to the Committee.

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Mr. Newell argues that his signature did not constitute a personal guarantee and that he was merely signing as a representative of the Committee. All of the documents submitted in this matter, however, indicate otherwise. Section 3-403(2)(b) of the Nebraska Uniform Commercial Code states:

> (2) An authorized representative who signs his own name to an instrument
>
> (b) except as otherwise estabished between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Neb. UCC 3-403(2)(b). The official comment to UCC 3-403, in interpreting subsection (2)(b), addresses the type of situation pertaining to the note signed by Mr. Newell. Using the example of a signature of "Arthur Adams, Agent" (exampled d of comment 3), the comment states that, in such a case, "the section admits parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity." In this matter, all of the parol evidence, i.e., outside or extrinsic evience, indicates that Mr. Newell was personally guaranteeing repayment of the loan. The note itself refers to "Personal Guarantees." The repayment checks issued by the Committee were made out to "Walter Calinger and David Newell." Finally, the Committee reported Mr. Newell as one of the makers of a $5,000 loan to the Committee.

Based on the foregoing analysis, the General Counsel recommends that the Commission find probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A) by making $2,580 in contributions to the Calinger for Congress Committee.

III. RECOMMENDATION

1. Find probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A).

3 June 1986
Date

Charles N. Steele
General Counsel

87040345544

OGC Docket

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/ ARNITA D. HESSION

DATE: JUNE 5, 1986

SUBJECT: MUR 2051 - Memorandum to the Commission

The attached has been circulated for your information.

Attachment

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

'86 JUN 4 P1:50

June 4, 1986

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 2051

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of these briefs and letters notifying the respondents of the General Counsel's intent to recommend to the Commission findings of probable cause to believe were mailed on June 4 , 1986. Following receipt of the respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments

1. Briefs
2. Letters to respondents

9704045

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

June 4, 1986

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer

Dear Mr. Warin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, had violated 2 U.S.C. § 441a(a)(f) and that John J. Hughes had violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 are briefs stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission briefs (10 copies if possible) stating your position on the issues and replying to the briefs of the General Counsel. (Three copies of such briefs should also be forwarded to the Office of General Counsel, if possible.) The General Counsel's briefs and any briefs 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 responsive briefs within 15 days, you may submit a written request to the Commission for an extension of time in which to file the briefs. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

87044354548

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress Committee	)	MUR 2051
John W. Herdzina,	)	
as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves excessive contributions in the form of direct contributions and loan guarantees by John Hughes, David Newell, and Larry Myers to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes and a $10,000 loan from the candidate and Mr. Hughes. The report also disclosed the receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell. In addition, the report disclosed a $100 contribution from Larry and Marianna Myers, bringing their yearly non-loan contribution total to $125, and a $2,000 loan from the candidate and Mr. Myers.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that the non-candidate individuals were considered by the treasurer to be "accommodating makers" or "accommodating parties" to the loans. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered

"guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors, the Committee's 1984 October Quarterly Report (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, 1984, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid. 1/

On June 26, 1985, the Commission found reason to believe that the Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f). On that date, the Commission also approved a subpoena for documents pertaining to the bank loans.

On August 6, 1985, this Office received a response from Mr. Herdzina along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantees were "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors

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1/ According to the last report filed by the Committee, the 1985 Year End Report, $3,058 had been repaid.

were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally, Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loans and the guarantees were destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantees on November 1, 1984, he rectified the situation. He complains that the letter from RAD did not state "clearly" that the guarantees appeared to be in violation and the implication of his response appears to be that any delay in cancelling the guarantees occurred because he had to infer that a violation was being alleged.

Mr. Herdzina also submitted documents pertaining to the loans. This included a "Summary of Loan Accounts" listing the loans in chronological order and listing the names with respect to each loan as "Walt Calinger & Dave Newell," "Walt Calinger & Larry Myers," and "Walt Calinger & John Hughes." In addition, there were copies of checks drawn on the Committee's account made out to "Walter Calinger and Dave Newell," "Walter Calinger and Larry Myers," "Walter Calinger and John Hughes," or "Walter Calinger." These checks were for repayment of the loan interest, the loan principal, or both. Checks were made to "Walter Calinger and Dave Newell" and "Walter Calinger and Larry Myers" in July and September, 1984. Checks were made payable to

"Walter Calinger and John Hughes" on September 21 and November 9, 1984. Checks made payable to Walter Calinger alone were signed on December 29, 1984, and March 29 and July 13, 1985.

This Office received correspondence from counsel for John Hughes on August 13, 1985. Counsel for Mr. Hughes states that the Committee asked Mr. Hughes to co-sign the $10,000 loan because of an urgent need of funds just prior to the primary. Counsel states that Mr. Calinger "emphasized that several other contributors had likewise been asked to co-sign the loan." Counsel further states that, when Mr. Hughes received the loan document to sign, there was no request for credit, salary, or property information, or for references, and that therefore, he thought that the document he signed was "a mere cosmetic formality."

Mr. Hughes' counsel presents an argument similar to that of Mr. Herdzina, contending that because his guarantor status was terminated and the loan documents were redrafted without his signature, the loan "had been effectively 'repaid'" and no contribution on his part resulted. Counsel also maintains that, under the circumstances of the loan, Mr. Hughes' signature did not constitute "anything of value," and that "[t]he evidence demonstrates that none of the parties accorded any value whatsoever to the co-signature."

Counsel compares this matter with three past matters involving signatures on bank loan documents in support of an argument that the Commission should take no further action

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against his client. These matters were MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings).

Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the final General Counsel's Report in MUR 1042, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. Counsel cites other factors to distinguish MUR 2051 from the two other matters, matters in which civil penalties were agreed upon. Counsel argues that, in MUR 1047, the contributors "[p]resumably" "had to answer at least a few financial inquiries into their credit worthiness" and that MUR 1047 involved more of an intent by the contributors to violate the Act. Counsel argues that, in MUR 1768, the guarantor was Senator Hollings' Senatorial campaign committee and the guarantor, therefore, was far more familiar with the requirements of the Act, but still used contributor funds for a purpose for which they were not intended. Counsel also states that the endorsement in MUR 1768 was made "intentionally and with deliberation" and that it involved far more money ($35,000) than Mr. Hughes' contribution.

In the process of making these arguments, counsel for Mr. Hughes also made statements against the interest of the Committee. Counsel argues that, in examining the loan transaction, the Commission should concentrate on the Committee, i.e., the party that did not present full information to the

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contributor as to the legal consequences of the signature. In comparing this matter with MUR 1047, counsel states that, in that MUR, the signatories "were not pressured into making their loan by a telephoning candidate," and they "were not told that others would be co-signing the loan."

In correspondence received by the Commission on August 12, 1985, David Newell also states that he signed a note because of the campaign's urgent need of funds. He states that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed by the Campaign (sic) from expected incomes." In subsequent correspondence, he states that he signed as a campaign manager and enclosed a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both signatories listed the campaign headquarters as their address. Mr. Newell fails to point out that the note stated that it was being covered by "Personal Guarantees."

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I)

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provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed the individuals as guarantors does not negate the original violation. The treasurer has posed the defense that the non-candidate signatories were not really contributors because they were "accommodating makers." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, the non-candidate individuals, as the sole co-makers with the candidate on the loans, would have contributed half the amount of the loans and would have exceeded the $1,000 limit.

The argument that the obligation of the signatories was terminated as of December 21, 1984, does not negate the original

violation. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantees as contributions. By co-signing the loan notes, Mr. Hughes, Mr. Myers, and Mr. Newell made funds available to the Committee.

The argument is also made that the signatures were mere cosmetic formalities and that the bank did not ask the signatories for other information. The bank, nevertheless, did ask for the signatures of Messrs. Hughes, Myers, and Newell. Secondly, the assertions of a lack of participation by these men is belied by the issuance of Committee repayment checks to them and the reports of the Committee which refer to them as co-makers on the loan.

Replies have also been received comparing this matter with three other MURs. These MURs, however, do not negate the culpability of the Committee in this matter. As to MUR 1042, this Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's spouse. This involves the important additional issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(a)(1)(C) and 110.10(b)(3). The contentions that the contributors in MUR 1047 may have had to answer some financial inquiries and may have had greater intent to violate the Act do not negate the fact that the Calinger for Congress Committee obtained co-signatures for loans and, thereby, appears

to have violated the Act. The added factors cited in Mr. Hughes' response with respect to MUR 1768, i.e., the familiarity of the Hollings Senatorial committee with the requirements of the Act and a use of funds not intended by contributors to Senator Hollings' Senatorial campaign, do not bear relevance to the fact that the Calinger for Congress Committee also appears to have violated the Act. In those matters, the Commission did not make any determination as to intent, i.e., whether or not the violations were knowing and willful, and no recommendation as to intent is being made by this Office in this matter.

Mr. Newell argues that his signature did not constitute a personal guarantee and that he was merely signing as a representative of the Committee. All of the documents submitted in this matter, however, indicate otherwise. Section 3-403(2)(b) of the Nebraska Uniform Commercial Code states:

> (2) An authorized represenative who signs his own name to an instrument
>
> > (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Neb. UCC 3-403(2)(b). The official comment to UCC 3-403, in interpreting subsection (2)(b), addresses the type of situation pertaining to the note signed by Mr. Newell. Using the example of a signature of "Arthur Adams, Agent" (exampled d of comment 3), the comment states that, in such a case, "the section admits

parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity." In this matter, all of the parol evidence, i.e., outside or extrinsic evidence, indicates that Mr. Newell was personally guaranteeing repayment of the loan. The note itself refers to "Personal Guarantees." The repayment checks issued by the Committee were made out to "Walter Calinger and David Newell." Finally, as stated before, the Committee has reported Mr. Newell as one of the makers of a $5,000 loan to the Committee.

Based on the foregoing analysis, it appears that the Committee accepted excessive contributions from Mr. Hughes in the form of a $1,000 direct contribution and a $5,000 portion of a bank loan, from Mr. Newell in the form of $80 in direct contributions and a $2,500 portion of a bank loan, and Mr. Myers in the form of $62.50 in direct contributions and a $1,000 portion of a bank loan. The excessive portions of these contributions, thus, totalled $6,642.50. The General Counsel therefore, recommends that the Commission find probable cause to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

III. RECOMMENDATION

1. Find probable cause to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

3 June 1988
Date

Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
John J. Hughes	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an excessive contribution, in the form of a direct contribution and a loan guarantee, by John Hughes to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes on May 2, 1984, and a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that this loan was a bank loan and that Mr. Hughes was considered by the Committee treasurer to be an "accommodating make[r]" or an "accommodating part[y]" to the loan. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote" the loan note, and the guarantee of Mr. Hughes was "destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October report (which was not received until

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January, 1985) revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid. The Committee's 1985 April Quarterly disclosed that $3,058.24 had been repaid in toto.

On June 26, 1985, the Commission found reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A). On that date, the Commission also approved a subpoena for documents pertaining to the loan. On August 13, 1985, this Office received a response and documents from counsel for John Hughes.

Counsel for Mr. Hughes states that the Committee asked Mr. Hughes to co-sign the $10,000 loan because of an urgent need of funds just prior to the primary. Counsel states that Mr. Calinger "emphasized that several other contributors had likewise been asked to co-sign the loan." Counsel further states that, when Mr. Hughes received the loan document to sign, there was no request for credit, salary, or property information, or for references, and that therefore, he thought that the document he signed was "a mere cosmetic formality."

Counsel contends that because Mr. Hughes guarantor status was terminated and the loan documents were redrafted without his signature, the loan "had been effectively 'repaid'" and no contribution on his part resulted. Counsel also maintains that, under the circumstances of the loan, Mr. Hughes' signature did not constitute "anything of value," and that "[t]he evidence

demonstrates that none of the parties accorded any value whatsoever to the co-signature."

Counsel compares this matter with three past matters involving signatures on bank loan documents in support of an argument that the Commission should take no further action against his client. These matters were MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings).

Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the final General Counsel's Report in MUR 1042, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. Counsel cites other factors to distinguish MUR 2051 from the two other matters, matters in which civil penalties were agreed upon. Counsel argues that, in MUR 1047, a matter in which the contributors were not made respondents, the contributors "[p]resumably" "had to answer at least a few financial inquiries into their credit worthiness." Counsel also argues that MUR 1047 involved more of an intent by the contributors to violate the Act, even though the Commission proceeded only against the Committee. Counsel states that, in MUR 1047, the signatories "were not pressured into making their loan by a telephoning candidate" and they "were not told that others would be co-signing the loan." Counsel argues that, in MUR 1768, the guarantor was Senator Hollings' Senatorial campaign

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committee and that the guarantor was, therefore, far more familiar with the requirements of the Act but still used contributor funds for a purpose for which they were not intended. Counsel also states that the endorsement in MUR 1768 "was done intentionally and with deliberation" and that it involved far more money ($35,000) than Mr. Hughes' contribution.

On August 6, 1985, this Office received correspondence from John W. Herdzina, treasurer of the Calinger for Congress Committee, along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantee was "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loan and the guarantee was destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantee on November 1, 1984, he rectified the situation. He complains that the letter from RAD did not state "clearly" that the guarantee appeared to be in violation, and the implication of his response appears to be that any delay in cancelling the guarantee occurred because he had to infer that a violation was being alleged.

Among the documents submitted by Mr. Herdzina were copies of

checks drawn on the Committee's account and made out to "Walter Calinger and John Hughes" for payment of the interest and/or principal on the loan. The checks were made out for $288.30 on July 17, 1984, $252.60 on September 21, 1984, and $2,244.31 on November 9, 1984.

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000.

Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer of the Committee has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of an individual under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the

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capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, would have contributed half the amount of the loan, and would have exceeded the $1,000 limit.

The argument that the obligation of Mr. Hughes was terminated as of December 21, 1984, does not negate the original violation. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantee as a contribution. By co-signing the loan note, Mr. Hughes made funds available to the Committee.

The argument is also made that the signature was a mere cosmetic formality and the the bank did not ask Mr. Hughes for other information. The bank, nevertheless, did ask for Mr. Hughes's signature. Secondly, the assertions of a lack of participation by Mr. Hughes is belied by the issuance of Committee repayment checks to him and by the reports of the Committee which refer to him as a co-maker on the loan.

Mr. Hughes has also compared this matter with three other MURs. These MURs, however, do not negate the culpability of Mr. Hughes in this matter. As to MUR 1042, this Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's

spouse. This involves the important additonal issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(1)(1)(C) and 110.10(b)(3). MUR 1047 involved an audit of a county committee with the investigation of many apparent violations by that committee. The fact that this Office did not pursue certain violations by individuals in that matter and the alleged existence of intent by the contributors in that matter do not negate the existence of a violation of 2 U.S.C. § 441a(a)(1)(A) in this matter. The added factors cited in Mr. Hughes' response with respect to MUR 1768, i.e., the familiarity of the Hollings Senatorial committee with the requirements of the Act and a use of funds not intended by contributors to Senator Holling's Senatorial campaign, also do not bear relevance to the fact that John Hughes appears to have made an excessive contribution in violation of 2 U.S.C. § 441a(a)(1)(A). In MUR 1047 and 1768, the Commission did not make any determination as to intent, i.e., whether or not the violations were knowing and willful, and no recommendation as to intent is being made by this Office in this matter.

Based on the foregoing analysis, the General Counsel recommends that the Commission find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A) by making $6,000 in contributions to the Calinger for Congress Committee.

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III. RECOMMENDATION

1. Find probable cause to believe that John J. Hughes violated 2 U.S.C. § 441a(a)(1)(A).

3 June 1986
Date

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 4, 1986

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by you, the Federal Election Commission, on June 26, 1985, found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in 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 the brief. The Commission will not grant any exensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the 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.

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Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
David Newell	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an excessive contribution in the form of a direct contribution and a loan guarantee by David Newell to the Calinger for Congress Committee ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that Mr. Newell was considered by the treasurer to be an "accommodating make[r]" or an "accommodating part[y]" to the loan. The treasurer stated to RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes," and the guarantee of Mr. Newell was "destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed Mr. Newell as a loan guarantor,

the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of July 27, 1984, the Committee had repaid the full amount of the principal of the loan with interest.

On June 26, 1985, the Commission found reason to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A). On that date, the Commission also approved a subpoena for documents pertaining to the bank loan.

On August 12, 1985, this Office received a response from Mr. Newell. Mr. Newell states that he signed a note because of the campaign's shortage of funds. He states that he "never intended to personally guarantee that note and as an employee of the Campaign (sic), [he] intended only to see that the debt was repayed (sic) by the Campaign (sic) from expected incomes." In subsequent correspondence received on October 18, he states that he signed as a campaign manager and sent a copy of the note showing his signature as "David Newell, Campaign Manager," along with the signature of "Walt Calinger, Candidate." Both men listed the campaign headquarters as their address. Mr. Newell fails to point out that the note document states that the note was being covered by "Personal Guarantees."

On August 6, 1985, this Office received correspondence from John Hedzina, treasurer of the Calinger for Congree Committee, along with documents pertaining to the loan. Mr. Herdzina argues that, since the guarantee was "destroyed" as of December 21, 1984, "the loan was repaid as far as the guarantors were

concerned" and "[a]t that point in time the guarantee no longer counts against the guarantor's contribution limit." Additionally, Mr. Herdzina argues that the Committee had complied with the requirements of 11 C.F.R. § 103.3(b) because the Committee fully disclosed the loan and the guarantee was destroyed "shortly after" the Reports Analysis Division informed the Committee of the illegality of the loans. Mr. Herdzina states that, shortly after he received a notice from RAD with respect to the loan guarantee on November 1, 1984, he rectified the situation. Mr. Herdzina complains that the letter did not state "clearly" that the guarantee appeared to be in violation and the implication of his response appears to be that any delay in cancelling the guarantee occurred because he had to infer that a violation was being alleged.

Among the documents submitted by Mr. Herdzina were copies of checks drawn on the Committee's account and made out to "Walter Calinger and Dave Newell." The checks were made out for $2,500 on July 17, 1984, and $2,512.12 on July 27, 1984.

II. LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the

unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Newell has served as a guarantor for an amount which exceeds the § 441a(a)(1)(A) limit. The treasurer of the Committee has posed the defense that Mr. Newell was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of an individual under the Act. An accommodation party "is one who signs the instrument in any capacity for the purpose of lending his name to another party to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor). . . ." Under the Act, therefore, Mr. Newell, as the sole co-maker with the candidate on the $5,000 loan, would have contributed half the amount of the loan, and would have exceeded the $1,000 limit.

The argument that the loan obligation was terminated as of December 21, 1984, (or for that matter, that the loan was repaid as of July 27, 1984) does not negate the original violation. The funds were available from May 10 to July 27. The fact that the Committee received loans at a time of urgent need exemplifies the underlying basis for considering the guarantees as contribution. By co-signing the loan note, Mr. Newell made funds available to the Committee.

Mr. Newell argues that his signature did not constitute a personal guarantee and that he was merely signing as a representative of the Committee. All of the documents submitted in this matter, however, indicate otherwise. Section 3-403(2)(b) of the Nebraska Uniform Commercial Code states:

> (2) An authorized representative who signs his own name to an instrument
>
> (b) except as otherwise estabished between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Neb. UCC 3-403(2)(b). The official comment to UCC 3-403, in interpreting subsection (2)(b), addresses the type of situation pertaining to the note signed by Mr. Newell. Using the example of a signature of "Arthur Adams, Agent" (exampled d of comment 3), the comment states that, in such a case, "the section admits parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity." In this matter, all of the parol evidence, i.e., outside or extrinsic evience, indicates that Mr. Newell was personally guaranteeing repayment of the loan. The note itself refers to "Personal Guarantees." The repayment checks issued by the Committee were made out to "Walter Calinger and David Newell." Finally, the Committee reported Mr. Newell as one of the makers of a $5,000 loan to the Committee.

Based on the foregoing analysis, the General Counsel recommends that the Commission find probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A) by making $2,580 in contributions to the Calinger for Congress Committee.

III. RECOMMENDATION

1. Find probable cause to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A).

3 June 1986
Date

Charles N. Steele
General Counsel

8 7 0 1 0 3 4 1 5 7 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel Rd

DATE: June 2, 1986

SUBJECT: MUR 2051 - General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[ ]	Compliance	[X]
Sensitive	[ ]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[X]	Status Sheets	[ ]
Sensitive	[X]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

9704043576

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Calinger for Congress Committee John W. Herdzina, as treasurer	)	MUR 2051
	)	
John Hughes	)	
	)	
David Newell	)	

86 JUN 2 A 8:35

GENERAL COUNSEL'S REPORT

Based on the assessment of the information presently available, the Office of the General Counsel is prepared to close the investigation in this matter as to Calinger for Congress and John W. Herdzina, as treasurer, John Hughes, and David Newell.

30 May 1986
Date

Charles N. Steele
General Counsel

8704065577

GCCH 9718
86 FEB 12 P2:30

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

February 11, 1986

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

86 FEB 12 P3:11

Re: MUR #2051

Dear Mr. Levin:

I am confident that your schedule has been as hectic as mine over the last several weeks. You will recall that I last wrote and asked for an opportunity to review your brief and to engage in discussions to resolve this dispute. I have not learned of any new developments from your office so I presume that everything is fine.

Please call me if there are any new developments.

Sincerely,

F. Joseph Warin

jjb

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COA ~~1179~~ 9530

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
NEW YORK
OMAHA

January 14, 1986

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR #2051

Dear Jonathan:

In late December we spoke about an opportunity to meet and negotiate a resolution of this matter. We are eager to undertake those negotiations to reach a fair and equitable resolution with the Committee.

Please advise me when it would be convenient to meet with you.

Sincerely,

F. Joseph Warin

jjb

TAK ROCK & CAMPBELL
A PARTNERSHIP
NCLUDING PROFESSIONAL CORPORATIONS
IOT CONNECTICUT AVENUE N.W.
WASHINGTON, D.C. 20036

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

RECEIVED BY THE FEC
GCC #9077
85 NOV 29 A8:54

November 25, 1985

HAND DELIVERED

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR 2051

Dear Jonathan:

Enclosed please find a letter to you from Walt Calinger giving me authority to represent both Mr. Calinger and his campaign committee's interest. In light of this new development, I would appreciate your checking your schedule so that I may schedule an appointment at the earliest possible time so that we can discuss a resolution of the entire matter.

Sincerely,

F. Joseph Warin

jjb

Enclosure

9704045981

November 21, 1985

Jonathan Levin
c/o F. Joseph Warin
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Levin:

This is to inform you that Mr. Warin is representing the interests of the Calinger for Congress Campaign Committee and myself in issues currently before the Federal Election Commission.

Sincerely,

Walter M. Calinger

Walter M. Calinger

GCC #9056

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

November 25, 1985

HAND DELIVERED

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR 2051

Dear Jonathan:

Enclosed please find a letter to you from Walt Calinger giving me authority to represent both Mr. Calinger and his campaign committee's interest. In light of this new development, I would appreciate your checking your schedule so that I may schedule an appointment at the earliest possible time so that we can discuss a resolution of the entire matter.

Sincerely,

F. Joseph Warin

jjb

Enclosure

3 7 0 4 0 1 4 4 5 9 0

PM 2:50

November 21, 1985

Jonathan Levin
c/o F. Joseph Warin
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Levin:

This is to inform you that Mr. Warin is representing the interests of the Calinger for Congress Campaign Committee and myself in issues currently before the Federal Election Commission.

Sincerely,

Walter M. Calinger

Walter M. Calinger

87104584

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress	)	MUR 2051
John W. Herdzina, as treasurer	)	
John Hughes	)	
David Newell	)	

85 NOV 15 P4:26

GENERAL COUNSEL'S REPORT

This matter involves excessive contributions in the form of direct contributions and loan guarantees by John Hughes and David Newell to Calinger for Congress ("the Committee") in connection with the Democratic primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes and a $10,000 loan from the candidate and Mr. Hughes. The report also disclosed the receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell.

On June 26, 1985, the Commission found reason to believe that Mr. Hughes and Mr. Newell violated 2 U.S.C. § 441a(a)(1)(A) and that the Committee violated 2 U.S.C. § 441a(f). In addition, the Commission approved subponeas to the Committee, Mr. Hughes, and Mr. Newell asking for documents pertaining to bank loans.

When the respondents responded to the subpoenas, they also requested pre-probable cause conciliation. On September 19, the Commission approved entry into pre-probable cause conciliation

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Charles N. Steele
General Counsel

November 14, 1985
Date

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

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2051
Calinger for Congress	)	
John W. Herdzina, as treasurer	)	
John Hughes	)	
David Newell	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 19, 1985, the Commission decided by a vote of 5-0 to take the following actions in MUR 2051:

1. Enter into pre-probable cause conciliation with Calinger for Congress and John W. Herdzina, as treasurer.

2. Enter into pre-probable cause conciliation with John Hughes.

3. Enter into pre-probable cause conciliation with David Newell.

4. Approve the conciliation proposals submitted with the General Counsel's Report signed September 12, 1985.

5. Approve the letters attached to the General Counsel's Report signed September 12, 1985.

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

Attest:

9-19-85
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: September 24, 1985

SUBJECT: MUR 2051 - General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[X]	Compliance	[X]
Sensitive	[X]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

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OFFICE OF THE FEC
COMMISSION SECRETARY
85 SEP 16 P 3:46

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Calinger for Congress	)	MUR 2051
John W. Herdzina, as treasurer	)	
John Hughes	)	
David Newell	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves excessive contributions in the form of direct contributions and loan guarantees by John Hughes, David Newell, and Larry Myers to Calinger for Congress ("the Committee") in connection with the Democratic Party primary election for the House seat in the Second District of Nebraska. The Committee's 1984 July Quarterly Report disclosed the receipt of a $1,000 contribution from Mr. Hughes and a $10,000 loan from the candidate and Mr. Hughes. The report also disclosed the receipt of a $5 contribution from David Newell, bringing Mr. Newell's yearly non-loan contribution total to $80, and a $5,000 loan from the candidate and Mr. Newell. In addition, the report disclosed a $100 contribution from Larry and Marianna Myers, bringing their yearly non-loan contribution total to $125, and a $2,000 loan from the candidate and Mr. Myers.

Communications between the Reports Analysis Division (RAD) and the Committee revealed that these loans were bank loans and that the non-candidate individuals were considered by the treasurer to be "accommodating makers" or "accommodating parties" to the loans. The treasurer informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank

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"rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

Although none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

On June 26, 1985, the Commission found reason to believe that Mr. Hughes and Mr. Newell violated 2 U.S.C. § 441a(a)(1)(A) and that the Committee violated 2 U.S.C. § 441a(f). The Committee also found reason to believe that Mr. Myers violated 2 U.S.C. § 441a(a)(1)(A) but determined to take no further action with respect to him. In addition, the Commission approved subpoenas to the Committee, Mr. Hughes, and Mr. Newell asking for documents pertaining to the bank loans.

This Office has received responses and documents from the Committee and counsel for Mr. Hughes. This Office has also received a response from Mr. Newell but has received no documents from him; he maintains that there are none in his possession. (See Attachments 1, 2, and 3).

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Mr. Hughes and Mr. Newell have presented similar accounts of the circumstances of their guarantees. Both accounts refer to the Committee's urgent need for funds just prior to the primary. Mr. Hughes states that he was told that "several other contributors" had been asked to co-sign the loan, that, when the bank sent him the loan forms, it requested no information from Mr. Hughes, and that Mr. Hughes, therefore, assumed his signature to be "a mere cosmetic formality." Mr. Newell, the campaign manager, states that he signed with the understanding that the funds would be paid by the Committee's planned fundraising activities and "that this note was the first note to be repaid." Both respondents deny any intention to violate the Act.

Mr. Herdzina argued that, since the guarantees were "destroyed" as of December 21, 1984, the guarantee no longer counted against the contribution limit "at that point in time."

In addition to a description of the circumstances of the loan, counsel for Mr. Hughes presents an argument that the Commission should take no further action in this matter by comparing this matter with three past matters, MUR 1042 (Friends of Roger Jepsen), MUR 1047 (Passaic County Democratic Committee), and MUR 1768 (Citizens Committee for Ernest F. Hollings). Counsel claims that MUR 1042, in which the Commission took no further action after a reason to believe finding, was directly analogous to this matter because, according to the General Counsel's Report, the endorser, Mrs. Jepsen, participated only minimally in the loan transaction. With regard to the the other

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matters, in which the Commission levied civil penalties, counsel distinguishes these matters from MUR 2051 by citing a number of factors. Among these were that MUR 1047 involved no pressure on the endorsers, that the Commission only held the committee and not the endorser accountable in MUR 1047, that the endorser in MUR 1768 was far more familiar with the requirements of the Act and the regulations and behaved in a deliberate manner, and that the size of the contribution in MUR 1768 was much greater than the size of Mr. Hughes' contribution.

The documents submitted by the Committee include checks issued by the Committee for loan repayments to "Walter Calinger and Dave Newell" and to "Walter Calinger and John Hughes." It appears that the Committee repayments to Mr. Calinger and Mr. Newell together were complete as of July 27, 1984. It appears that, as of November 9, 1984, $2,785.21 had been paid by the Committee to Mr. Calinger and Mr. Hughes. According to the Committee's 1984 Year End Report, received on April 3, 1985, and its 1985 April Quarterly Report, received on July 23, 1985, $3,058.24 has been repaid by the Committee to the bank on the loan co-signed by Mr. Hughes.

In addition to presenting a defense to the reason to believe findings, each of the respondents has requested pre-probable cause conciliation.

II. LEGAL ANALYSIS

Respondents admit that they were co-makers on loans to the Committee. Their argument in defense of their actions, i.e., that the signatures were required merely so that the Committee could obtain a loan at a time of urgent need, exemplifies the underlying basis for considering a loan guarantee as a contribution. By co-signing on the loans, Mr. Hughes and Mr. Newell made funds available to the Committee.

The argument by counsel for Mr. Hughes that this matter was directly analogous to the Jepsen matter is in error. This Office's determination of the significance of Mrs. Jepsen's signature was based largely on the fact that Mrs. Jepsen was the candidate's spouse. This involves the important additional issue of loans to candidates based on property owned jointly with a spouse and was addressed in regulations promulgated subsequently at 11 C.F.R. §§ 100.7(a)(1)(C) and 110.10(b)(3).

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IV. RECOMMENDATION

1. Enter into pre-probable cause conciliation with Calinger for Congress and John W. Herdzina, as treasurer.
2. Enter into pre-probable cause conciliation with John Hughes.
3. Enter into pre-probable cause conciliation with David Newell.
4. Approve the attached conciliation proposals.
5. Approve the attached letters.

Charles N. Steele
General Counsel

September 12, 1985
Date

BY: Kenneth A. Gross
Associate General Counsel

Attachments

1. Response and documents from the Committee
2. Response and documents from counsel for John Hughes
3. Response from David Newell
4. Letter and conciliation proposal to the Committee
5. Letter and consiliation proposal to counsel for John Hughes
6. Letter and conciliation proposal to David Newell

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Attachments

1. Response and documents from the Committee
2. Response and documents from counsel for John Hughes
3. Response from David Newell
4. Letter and conciliation proposal to the Committee
5. Letter and consiliation proposal to counsel for John Hughes
6. Letter and conciliation proposal to David Newell

87040445596

GCC #8220

85 AUG 6 AM 11:48

August 3, 1985

Mr. Johnathon Levin
Attorney at Law
Office of the General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

85 AUG 6 P1:44

Re: MUR 2051
Calinger for Congress Committee
John W. Herdzina, Treasurer

Dear Mr. Levin:

Thank you for your telephone call and the information concerning procedural matters before the Federal Election Commission.

Pursuant to the subpoena, I was to produce all written materials in my possession including notes, security agreements and checks pertaining to bank loans in 1984 to Walter Calinger and John Hughes, Walter Calinger and David Newell, and Walter Calinger and Larry Myers, and pertaining to the subsequent renegotiation of all of these loans in 1984. I have enclosed herein copies of all of such documents in my possession. I am not enclosing herein copies of any of the reports which have been previously filed with the appropriate agencies.

In connection with the general counsel's factual and legal analysis, I have reviewed the 1984 July quarterly report of the Committee. Apparently I misunderstand the statement in the Analysis which states that the report itemizes $9,642 in contributions, some of which is in the form of loans or loan guarantees from three individuals. I do not see where loans are listed in Schedule A or on the detailed summary page under contributions. I have always tried to patently set out loans to the Committee under the proper form and schedule.

Personally, I do not see much doubt but that "...each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the §441a(a)(1)(A) limit." In fact, except for Mr. Myers, the guarantee of the contributions alone, without being combined with other contributions, exceed the §441 limit. Accordingly, the undersigned and Committee has no real dispute with the basic factual analysis of the general counsel. Dispute certainly does arise in connection with the legal analysis. In part, the

Attachment 1 - p. 1 of 58

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analysis states: "The fact that, as of December 21, the Bank removed the individuals as guarantors does not negate the original violation."

First of all, a loan is considered a contribution only to the extent of the outstanding balance. Once the undersigned and the Committee was informed that a potential illegal contribution, via a loan guarantee, was in existence, action was taken to correct the situation. The guarantees of John Hughes, David Newell and Larry Myers were destroyed by the Community Bank and all the loans were placed in the name of Walter Calinger only. Thus, once the guarantees were destroyed, the loan was repaid as far as the guarantors were concerned. At that point in time the guarantee no longer counts against the guarantor's contribution limit. 100.7(a)(1)(i)(C).

In addition to the foregoing, it is my interpretation of §103.3(b) that a contribution which appears to be illegal must, within ten days, either be returned to the contributor or deposited in the campaign depository giving a statement to the FEC on the next report that the legality of the contribution is in question. Certainly, the fact that the loans had been made and guaranteed was patently set forth on Schedule C in the July 15, 1984 quarterly report. Accordingly, the statement noting that the legality of the contribution was in question was more than clearly set forth, even though by coincidence, in the report. It is my further understanding from reading §103.3(b) that if within a reasonable time the treasurer determines that the "contribution" is illegal he or she must return such contribution and report the refund. Shortly after the undersigned and the Committee was informed that the loan guarantees were illegal contributions the contributions were refunded, i.e., the guarantees were destroyed. Accordingly §103.3(b) had been complied with by the undersigned and the Committee.

Interestly enough, on or about November 1, 1984, the undersigned received an October 16, 1984 letter from Noriega E. James (copy enclosed) pertaining to Schedule C of the July quarterly report. I believe you can see from reading Mr. James' letter, he did not state the guarantees are in violation of the Federal Election Act. Mr. James obviously read the July quarterly report and saw that the guarantees appeared to exceed the limit set forth in the Act. However, he did not state that fact clearly to the undersigned. Moreover, he stated in his letter: "if the contribution(s) in question was incorrectly reported and/or you have additional information regarding the contributor(s), you <u>may wish</u> to submit documentation for the public record. Please amend your report with clarifying information." Personally, I feel Mr. James mishandled the situation by being subtle and should have

blatantly related to the undersigned the obvious alleged violation of the Act and that the undersigned and the Committee should rectify same by complying with §103.3(b). I also feel that Mr. James not only had an obligation to point out potential illegalities, but also to point out those sections of the Act which allow for a treasurer and his committee to "nip the problem in the bud" and rectify same.

The Act requires political committees to register and disclose their campaign receipts and disbursements. Obviously, the purpose of this is to make sure that the committees abide by certain contribution limits and prohibitions. The fact is that the undersigned wholly and completely disclosed the loans in question in the July quarterly report. That in and of itself proves compliance with the intent and purpose of the Act. The fact that Mr. James picked out the loans as a violation of the Act merely shows that he was doing his job. Mr. James, or any one else aware of each and every rule of the Act, could see the loan problems immediately. He did not have to dig out hidden facts of any nature. Once the undersigned and the Committee were informed by Mr. James that he had performed his job efficiently and correctly and Mr. James pointed out the problem to the undersigned, the problem was rectified. The undersigned does not contend that because as of December 21, 1984 the Bank removed the individuals as guarantors that the original alleged violation was void ab initio. The undersigned does, however, vigorously contend that the fact the full disclosure was made to the Commission in the July quarterly report, the fact that Mr. James discovered (as he should have) an alleged violation, the fact that the alleged violation was reported to the undersigned, and the fact that the violation was promptly corrected, complies with the remedying sections of the Act.

It is impossible for me to set forth in this short letter the facts and feelings that the undersigned and the Committee have which should convince your office that no action should be taken against myself or the Committee. I am interested in pursuing a pre-probable cause conciliation.

Very truly yours,

John W. Herdzina
Treasurer
Calinger for Congress Committee

JWH:kjs
Enc.

9704054599

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name Walt Calinger for Congress

Debtor's Address 1407 S. 13th St., Omaha, Ne. 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over Regional prime %	$	$ 2,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ I do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
Demand		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability Insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $_____.

As additional Credit Life Insurance becomes available through the reduction of the indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium		Signature
Credit Life		I want credit life insurance	
Credit Disability		I want credit disability insurance	
Credit Life and Disability		I want credit life and disability insurance	

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $_____.

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated _____, 19____ covering the following property:

Personal Guarantees

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☒ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over regional prime

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: _____

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method.

ADDITIONAL CHARGES Official fees and taxes $_____

Other _____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of COMMUNITY BANK OF NEBRASKA,

Two Thousand and 00/100---------- Dollars ($ 2,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $_____ ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Debtor's Signature Walter M. Calinger — Debtor's Address 1407 S. 13th St., Omaha, Ne 68108

Walter M. Calinger

Debtor's Signature _____ Debtor's Address _____

NF260-828 Single Payment or Demand Note

1-p. 4 of 58

Creditor COMMUNITY BANK OF NEBRASKA

Debtor's Name WALT CALINGER FOR CONGRESS

Debtor's Address 1407 S. 13 St. - Omaha, NE 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over Regional Prime %	$	$ 5,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ I do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
DEMAND		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $ _____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $ _____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $ _____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $ _____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $ _____.

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated April 27, 19 84 covering the following property: Personal Guarantees

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☐ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2 % over Regional Prime %.

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: NA

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method:

ADDITIONAL CHARGES Official fees and taxes $ _____

Other _____ $ _____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of COMMUNITY BANK OF NEBRASKA,

Five Thousand and 00/100 Dollars ($ $5,000.00)

on Demand, 19 _____ at creditor's office and also to pay ☐ a minimum loan fee of $ _____ ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over Regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Debtor's Signature X [signature] DAVID NEWELL, Campaign Manager — Debtor's Address 1407 S. 13 St - Omaha, NE 68108

Debtor's Signature [signature] WALT CALINGER, Candidate — Debtor's Address 1407 S. 13 St. - Omaha, NE 68108

NF260-828 Single Payment or Demand Note

1- p. 5 of 58

WALT CALINGER FOR CONGRESS

SUMMARY OF LOAN ACCOUNTS

June 29, 1984

	Date of Loan	Amount of Loan	Interest Rate	Per Diem	Payoff Balance
1	4-27-84	$ 5,000	14.75	2.02	$ 5,127.29
2	5-05-84	2,000	14.75	.81	2,044.45
3	5-10-84	10,000	15.25	4.18	10,208.90

1 Walt Calinger & Dave Newell
2 " " & Larry Myers
3 " " & John Hughes

FILE COPY

July 23, 1985

Certified Mail No. P 014 044 163
Return Receipt Requested

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

Re: MUR 2051
Calinger for Congress Committee
John W. Herdzina, as treasurer

Dear Sir or Madam:

On this 23rd day of July, 1985 I received a letter from John W. McGarry concerning possible violation to USC Section 441a(f). I also received on this day a Subpoena to Produce Documents together with a description of preliminary procedures for processing possible violations discovered by the Federal Election Commission. First of all, in connection with the Subpoena, I will be glad to produce any and all records which I have in my possession concerning the Calinger for Congress Committee. However, it is my understanding that if I request a desire to enter into negotiations directed towards reaching a conciliation agreement, and should you be kind enough to grant same, the time limit involved in the Subpoena would be stayed. If this is incorrect please inform me and I will immediately produce the documents.

I am optimistic that I can demonstrate to you that no action should be taken against myself or the Committee. I am interested in pursuing a pre-probable cause conciliation. I desire to enter negotiations directed towards reaching a conciliation agreement. If there is a problem with the reports or the content thereof I certainly wish to work with your office in attempting to correct such problem or prevent any future problem. I prefer to do this by informal methods of conference conciliation and persuasion.

If anything further is needed in connection with this request please let me know immediately.

Very truly yours,

cc: Ms. Marjorie W. Emmons
Mr. Walter Calinger

John W. Herdzina, Treasurer
Calinger for Congress Committee
8712 West Dodge Road, Suite 300
Omaha, Nebraska 68114

1-p. 7 of 58

PLEASE NOTE THE ADDRESS CHANGE

FEDERAL ELECTION COMMISSION 202-523-4089
WASHINGTON, D.C. 20463

July 18, 1985

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, Nebraska 68108

RE: MUR 2051
Calinger for Congress Committee
John W. Herdzina, as treasurer

Dear Mr. Herdzina:

On June 26 , 1985, the Federal Election Commission determined that there is reason to believe that the Calinger for Congress Committee and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and your committee. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit such materials along with your response to the enclosed Subpoena to Produce Documents.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. It is required that you submit the information under oath and that you do so within ten days of your receipt of this letter and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Subpoena to Produce Documents
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

In the Matter of)
)
) MUR 2051

SUBPOENA TO PRODUCE DOCUMENTS

To: John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, Nebraska 68108

PURSUANT to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby subpoenas all written materials in your possession, including, but not limited to, notes, security agreements and checks, pertaining to bank loans in 1984 to Walter Calinger and John Hughes, Walter Calinger and David Newell, and Walter Calinger and Larry Myers, and pertaining to the subsequent re-negotiation of all of these loans in 1984.

Notice is given that these materials must be submitted to the Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. within ten days of your receipt of this subpoena. Legible copies which, where applicable, show both sides of documents, may be substituted for originals.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 17th day of July, 1985.

John Warren McGarry
John Warren McGarry
Chairman

ATTEST:

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 2051

RESPONDENT Calinger for Congress Committee
John W. Herdzina, as treasurer

SUMMARY OF ALLEGATIONS

The Calinger for Congress Committee, the principal campaign committee of Walter M. Calinger for election to the House of Representatives from the Second District of Nebraska, was referred by the Reports Analysis Division (RAD) to the Office of the General Counsel for the receipt of excessive contributions from three individuals.

FACTUAL BASIS AND LEGAL ANALYSIS

The 1984 July Quarterly Report of the Calinger for Congress Committee ("the Committee") itemized $9,642 in contributions, some in the form of loans or loan guarantees from three individuals. These contributions were designated for the primary, resulting in the receipt by the Committee of apparent excessive contributions.

Schedule A of the report disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

Schedule A also disclosed a $5 contribution from David Newell on May 10, 1984, bringing his yearly non-loan contribution total to $80. Schedule C of the same report disclosed the receipt of $5,000 from the candidate and Mr. Newell on April 27, 1984, due on demand at 15.75% interest.

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Schedule A also disclosed the receipt of a $100 contribution on April 26, 1984, from Larry and Mariana Myers, bringing their yearly non-loan contribution total to $125. Schedule C disclosed a $2,000 loan to the Committee from the candidate and Mr. Myers on May 5, 1984, due on demand at 15.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to these matters immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loans as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for each loan was listed as ten percent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new circumstances of the loans. The treasurer stated that the non-candidate individuals were "accommodating makers" or "accommodating parties" to the loans. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors,

the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed the individuals as guarantors does not negate the original violation. The treasurer has posed the defense that the non-candidate signatories were not really contributors because they were "accommodating makers." This is of no significance in determining the status of the individuals under

the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, the non-candidate individuals, as the sole co-makers with the candidate on the loans, have contributed half the amount of the loans. The Committee, therefore, has accepted contributions in excess of $1,000 from each individual. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

3704046 10

DESCRIPTION OF PRELIMINARY PROCEDURES FOR PROCESSING POSSIBLE VIOLATIONS DISCOVERED BY THE FEDERAL ELECTION COMMISSION

Possible violations discovered during the normal course of the Commission's supervisory responsibilities shall be referred to the Enforcement Division of the Office of General Counsel where they are assigned a MUR (Matter Under Review) number, and assigned to a staff member.

Following review of the information which generated the MUR, a recommendation on how to proceed on the matter, which shall include preliminary legal and factual analysis, and any information compiled from materials available to the Commission shall be submitted to the Commission. This initial report shall recommend either: (a) that the Commission find reason to believe that a possible violation of the Federal Election Campaign Act (FECA) may have occurred or is about to occur and that the Commission conduct an investigation of the matter; or (b) that the Commission find no reason to believe that a possible violation of the FECA has occurred and that the Commission close the file on the matter.

Thereafter, if the Commission decides by an affirmative vote of four (4) Commissioners that there is reason to believe that a violation of the Federal Election Campaign Act (FECA) has been committed or is about to be committed, the Office of the General Counsel shall open an investigation into the matter. Upon notification of the Commission's finding(s), within 15 days a respondent(s) may submit any factual or legal materials relevant to the allegations. During the investigation, the Commission shall have the power to subpoena documents, to subpoena individuals to appear for depositions, and to order answers to interrogatories. The respondent(s) may be contacted more than once by the Commission in its investigation.

If, during this period of investigation, the respondent(s) indicate a desire to enter into conciliation, the Office of General Counsel staff may begin the conciliation process prior to a finding of probable cause to believe a violation has been committed. Conciliation is an informal method of conference and persuasion to endeavor to correct or prevent a violation of the Federal Election Campaign Act (FECA). Most often, the result of conciliation is an agreement signed by the Commission and the respondent(s). The Conciliation Agreement must be adopted by four votes of the Commission before it becomes final. After signature by the Commission and the respondent(s), the Commission shall make public the Conciliation Agreement.

[If the investigation warrants], and no conciliation agreement is entered into prior to a probable cause to believe finding, the General Counsel must notify the respondent(s) of his intent to proceed to a vote on probable cause to believe that a violation of the Federal Election Campaign Act (FECA) has been committed or is about to be committed. Included with the notification to the respondent(s) shall be a brief setting forth the position of the General Counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, the respondent(s) may submit a brief posing the position of respondent(s) and replying to the brief of the General Counsel. Both briefs will then be filed with the Commission Secretary and will be considered by the Commission. Thereafter, if the Commission determines by an affirmative vote of four (4) Commissioners, that there is probable cause to believe that a violation of the FECA has been committed or is about to be committed conciliation must be undertaken for a period of at least 30 days but not more than 90 days. If the Commission is unable to correct or prevent any violation of the FECA through conciliation the Office of General Counsel may recommend that the Commission file a civil suit against the respondent(s) to enforce the Federal Election Campaign Act (FECA). Thereafter, the Commission may, upon an affirmative vote of four (4) Commissioners, institute civil action for relief in the District Court of the United States.

See 2 U.S.C. § 437g, 11 C.F.R. Part 111.

November 1980

STATEMENT OF DESIGNATION OF COUNSEL

MUR _____

NAME OF COUNSEL: _____

ADDRESS: _____

_____

_____

TELEPHONE: _____

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

_____ _____

Date Signature

RESPONDENT'S NAME: _____

ADDRESS: _____

_____

_____

HOME PHONE: _____

BUSINESS PHONE: _____

3704043613

Omaha 68137

8712 West Dodge Road
392-1250 Omaha, Nebraska 68114

Dear Julie:

Enclosed please find the deposit summary and receipts + disbursements for January thru March for the quarterly report. If you need any additional info please contact me immediately.

Also, any update on the ~92.73 ?

John...

97 04 06 14

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
8712 WEST DODGE ROAD
SUITE 300
OMAHA, NEBRASKA 68114
TELEPHONE 392-1250
AREA CODE 402

AK&C
FILE COPY

MILTON R. ABRAHAMS
BEN E. KASLOW
FREDERICK S. CASSMAN
HOWARD J. KASLOW
FRANK F. POSPISHIL
WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY S. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON
TERRENCE P. MAHER

April 25, 1985

Ms. Julie Gomez
12206 Orchard
Omaha, Nebraska 68137

Dear Julie:

Enclosed please find a letter of April 18, 1985 and a copy of the letter dated March 26, 1985, from the Federal Election Commission. I do not understand how the March 26 letter got side-lined, but apparently it did. As you can see from the April 18 letter, the FEC may be a bit perturbed at my failure to respond earlier. Would you please check the referenced entries and make out an amended filing. I am sure the only amendments that need be made are the pages in concern.

If you have any questions, please do not hesitate to call me.

Very truly yours,

John W. Herdzina
For the Firm

JWH:kjs
Enc.
cc: Walter Calinger

8 7 0 4 0 5 4 3 6 1 5

April 25, 1985

Federal Election Commission
Washington, D.C. 20463

ATTN: Noriega E. James
Reports Analyst
Reports Analysis Division

Re: Identification No. 108367
C00175281

Dear Mr. James:

In connection with your letter of April 18, 1985, an explanation of the $-92.73 is forthcoming. Thank you for your patience.

Very truly yours,

John W. Herdzina

JWH:kjs

cc: John D. Gibson
Assistant Staff Director
Reports Analysis Division

37040543516

WALTER M. CALINGER
ATTORNEY AT LAW
1407 SOUTH 13TH STREET
OMAHA, NEBRASKA 68108
TELEPHONE
(402) 249-5357

June 17, 1985

Julie Gomez
12206 Orchard
Omaha, NE 68137

RE: Federal Election Commission

Dear Julie:

Enclosed please find a copy of the Report covering the period from July 1, 1984 to September 30, 1984.

John Herdzina sent you a letter previously regarding amendments that needed to be made regarding this report.

Please try to get this report amended and sent out this week, as there is little or no time left before further measures will be taken by the Federal Election Commission.

I understand that you are extremely busy, but your help in completing the attached would be most appreciated.

Sincerely yours,

Loretta Ethridge
Secretary to Walter M. Calinger

Enclosures

9704036517

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-3

April 18, 1985

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

This letter is to inform you that as of April 17, 1985, the Commission has not received your response to our request for additional information, dated March 26, 1985. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

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

If you should have any questions related to this matter, please contact Noriega James on our toll-free number (800) 424-9530 or our local number (202) 523-4048.

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On the Detailed Summary Page, Line 11(a) Column A minus the unitemized receipts equals $-92.73. The total of all entries itemized on Schedule A for Line 11(a) equals $5,850.00. These totals should be the same. Please explain the discrepancy and amend your report(s) accordingly. (11 CFR 104.3(a))

-Your report was not signed. Please amend this filing to include the original signature of the treasurer or the designated assistant treasurer. (2 U.S.C. 434(a))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James
Reports Analyst
Reports Analysis Division

1-p. 23 of 58

8704065519

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

MAR 26

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On the Detailed Summary Page, Line 11(a) Column A minus the unitemized receipts equals $-92.73. The total of all entries itemized on Schedule A for Line 11(a) equals $5,850.00. These totals should be the same. Please explain the discrepancy and amend your report(s) accordingly. (11 CFR 104.3(a))

-Your report was not signed. Please amend this filing to include the original signature of the treasurer or the designated assistant treasurer. (2 U.S.C. 434(a))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James

Noriega E. James
Reports Analyst
Reports Analysis Division

1-p. 24 of 58

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
1175 WOODMEN TOWER
OMAHA, NEBRASKA 68102-2083
TELEPHONE 341-4334
AREA CODE 402

FILE COPY

MILTON R. ABRAHAMS
BEN E. KASLOW
FREDERICK S. CASSMAN
HOWARD J. KASLOW
FRANK F. POSPISHIL
WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON

December 31, 1984

Federal Election Commission
Washington, D.C. 20463
ATTN: Noriega E. James
Reports Analyst

Re: Walter Calinger
Identification No. C00175281
Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. James:

The undersigned is the Treasurer of the Calinger for Congress committee. Mr. Calinger did not win the primary election.

Pursuant to your letter of October 16, 1984, I am enclosing herein the Amended Schedule C in regard to "Loans". I am sending a copy of the Amended Schedule C together with this letter to the Clerk of the House of Representatives and to the Nebraska Secretary of State.

Very truly yours,

John W. Herdzina

JWH:kjs

87010546921

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On the Detailed Summary Page, Line 11(a) Column A minus the unitemized receipts equals $-92.73. The total of all entries itemized on Schedule A for Line 11(a) equals $5,850.00. These totals should be the same. Please explain the discrepancy and amend your report(s) accordingly. (11 CFR 104.3(a))

-Your report was not signed. Please amend this filing to include the original signature of the treasurer or the designated assistant treasurer. (2 U.S.C. 434(a))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James
Reports Analyst
Reports Analysis Division

1-p. 26 of 58

REPORTS OF RECEIPTS AND DISBURSEMENTS
For Authorized Committee

(Summary Page)

ALIGN AREA | ALIGN AREA

1. Name of Committee (in Full): Calinger For Congress
2. FEC Identification Number: 108367
Address (Number and Street): 1407 South 13th Street
3. Is this Report an Amendment? [X] YES [ ] NO
City, State and Zip Code
[ ] Check if address is different than previously reported.

4. TYPE OF REPORT

[ ] April 15 Quarterly Report
[ ] July 15 Quarterly Report
[X] October 15 Quarterly Report
[ ] January 31 Year End Report
[ ] July 31 Mid Year Report (Non-election Year Only)
[ ] Twelfth day report preceding _____ (Type of Election) election on _____ in the State of _____
[ ] Thirtieth day report following the General Election on _____ in the State of _____
[ ] Termination Report

This report contains activity for — [X] Primary Election [ ] General Election [ ] Special Election [ ] Runoff Election

SUMMARY

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
5. Covering Period 7/1/84 through 9/30/84		
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (From Line 11 (e))	$ 8,005.59	$ 34,166.82
(b) Total Contribution Refunds (from Line 20 (d))	0.00	1,000.00
(c) Net Contributions (other than loans) (subtract Line 6 (b) from 6 (a))	8,005.59	33,166.82
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17)	499.01	43,618.02
(b) Total Offsets to Operating Expenditures (from Line 14)	0.00	221.46
(c) Net Operating Expenditures (Subtract Line 7 (b) from 7 (a))	499.01	43,396.56
8. Cash on Hand at Close of Reporting Period (from Line 27)	3,881.40	
9. Debts and Obligations Owed TO The Committee (Itemize all on Schedule C or Schedule D)	0.00	
10. Debts and Obligations Owed BY The Committee (Itemize all on Schedule C or Schedule D)	14,186.07	

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

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

John W. Herdzina
Type or Print Name of Treasurer

John W. Herdzina
SIGNATURE OF TREASURER

7-23-85
Date

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

1-p.27 of 58

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used.

FEC FORM 3 (3/80)

9704054625

of Receipts and Disbursements
(Page 2, FEC FORM 3)

Name of Committee (in Full): Calinger For Congress Committee

Report Covering the Period: From: 7/1/84 To: 9/30/84

	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date	
I. RECEIPTS			
11. CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees (Memo Entry Unitemized $ 1,557.00)	$ 7,407.00	$ 32,223.73	11 (a)
(b) Political Party Committees	0.00	0.00	11 (b)
(c) Other Political Committees	598.59	1,943.09	11 (c)
(d) The Candidate	0.00	0.00	11 (d)
(e) TOTAL CONTRIBUTIONS (other than loans (add 11(a), 11(b), 11(c) and 11(d).	$ 8,005.59	$ 34,166.82	11 (e)
12. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES	0.00	203.75	12
13. LOANS:			
(a) Made or Guaranteed by the Candidate	0.00	$ 22,000.00	13 (a)
(b) All Other Loans	0.00	0.00	13 (b)
(c) TOTAL LOANS (add 13 (a) and 13 (b))	0.00	22,000.00	13 (c)
14. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)	0.00	221.46	14
15. OTHER RECEIPTS (Dividends, Interest, etc.)	0.00	0.00	15
16. TOTAL RECEIPTS (add 11 (e), 12, 13 (c), 14 and 15)	$ 8,005.59	$ 56,592.03	16
II. DISBURSEMENTS			
17. OPERATING EXPENDITURES	499.01	$ 43,618.02	17
18. TRANSFERS TO OTHER AUTHORIZED COMMITTEES	0.00	0.00	18
19. LOAN REPAYMENTS:			
(a) Of Loans Made or Guaranteed by the Candidate	8,092.61	8,092.61	19 (a)
(b) Of All Other Loans	0.00	0.00	19 (b)
(c) TOTAL LOAN REPAYMENTS (add 19 (a) and 19 (b))	8,092.61	8,092.61	19 (c)
20. REFUNDS OF CONTRIBUTIONS TO:			
(a) Individuals/Persons Other Than Political Committees	0.00	1,000.00	20 (a)
(b) Political Party Committees	0.00	0.00	20 (b)
(c) Other Political Committees	0.00	0.00	20 (c)
(d) TOTAL CONTRIBUTION REFUNDS (add 20 (a), 20 (b), and 20 (c))	0.00	1,000.00	20 (d)
21. OTHER DISBURSEMENTS	0.00	0.00	21
22. TOTAL DISBURSEMENTS (add 17, 18, 19 (c), 20 (d) and 21)	$ 8,591.62	$ 52,710.63	22

III. CASH SUMMARY

23. CASH ON HAND AT BEGINNING OF REPORTING PERIOD	$ 4,467.43	23
24. TOTAL RECEIPTS THIS PERIOD (From Line 16)	$ 8,005.59	24
25. SUBTOTAL (Add Line 23 and Line 24)	$ 12,473.02	25
26. TOTAL DISBURSEMENTS THIS PERIOD (From Line 22)	$ 8,591.62	26
27. CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (Subtract Line 26 from 25)	$ 3,881.40	27

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-7

March 1, 1985

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: 1984 Year End Report (Period Ending 12/31/84)

Dear Mr. Herdzina:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced Report of Receipts and Disbursements as required by the Federal Election Campaign Act. You were previously notified of the due date for this report.

It is important that you file this report immediately with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515, or the Secretary of the Senate, 232 Hart Senate Office Building, Washington, DC 20510, as appropriate. A copy of the report should also be filed with the Secretary of State or equivalent state officer of your state.

The failure to file this report may result in an audit or legal enforcement action.

If you have any questions regarding this matter, please contact Noriega E. James on our toll-free number (800) 424-9530. Our local number is (202) 523-4048.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

1-p. 29 of 58

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
8712 WEST DODGE ROAD
SUITE 300
OMAHA, NEBRASKA 68114
TELEPHONE 392-1250
AREA CODE 402

MILTON R. ABRAHAMS
BEN E. KASLOW
FREDERICK S. CASSMAN
HOWARD J. KASLOW
FRANK F. POSPISHIL
WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON
TERRENCE P. MAHER

AK&C
FILE COPY

February 18, 1985

Federal Election Commission
Washington, D.C. 20463
ATTN: Noriega E. James
Reports Analyst

Re: Walter Calinger
Identification No. C00175281
Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. James:

As you requested I filed the Amended Schedule C in regard to "Loans". Subsequently you asked for additional information in connection with the signators on the loans. I inquired of The Community Bank pursuant to your letter. I was always under the impression that the individuals (Hughes, Newell and Myers) were merely accommodating makers pursuant to the Uniform Commercial Code for the State of Nebraska. The letter I received from The Community Bank states that some of the loans (totalling $17,000) were guaranteed. I informed The Community Bank through Mr. Calinger that it was the position of the Federal Election Commission that guarantees were the same as contributions. Accordingly, The Community Bank rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed. I am enclosing herein a copy of the December 21, 1984 letter from The Community Bank.

Thank you for your patience in this matter.

Very truly yours,

John W. Herdzina
Treasurer
Calinger for Congress Committee

JWH/kjs
Enc.
cc: Walter Calinger

1-p. 30 of 58

THE COMMUNITY BANK

December 21, 1984

Mr. Walter M. Calinger
1450 South 11 Street
Omaha, NE 68108

RE: Commercial Loan - Walt Calinger for Congress

Dear Mr. Calinger:

The three loans totaling $17,000 guaranteed by John Hughes, David Newell, and Larry Myers now stand in the following position:

1. The guarantees of John Hughes, David Newell, and Larry Myers have been destroyed and are no longer valid.

2. All the loans are now in the name of Walter M. Calinger only and are unsecured and not guaranteed.

The $5,000 loan and the $2,000 loan have been paid in full and $2,000 has been paid on the principal on the $10,000 loan.

Very truly,

Leon E. Evans, Jr. (spw)

Leon E. Evans, Jr.
PRESIDENT

spw

1-p. 31 of 58

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor: Community Bank of Nebraska

Debtor's Name: Walter M. Calinger

Debtor's Address: 1450 S. 11 st, Omaha, Ne 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
Base plus .1 %	$	$ 8,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ I do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
1 (one)	8,000.00 plus int.	March 21, 1985 (90 days)

INTEREST RATE

A. ☒ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above base plus one. The maximum interest rate increase at one time will be base plus1 %. The rate will not increase more than once ☐ every year; ☐ calender Quarterly. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, If the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability Insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $_____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $_____.

SECURITY INTEREST

A. ☐ This loan is covered by a security agreement dated _____, 19____ covering the following property:

_____

B. ☒ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☐ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is base plus 1 %.

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: N/A

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method:

ADDITIONAL CHARGES Official fees and taxes $_____

Other _____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of Community Bank of Nebraska (plus Interest) Eight Thousand and 00/100 Dollars ($ 8,000.00 plusint) on March 21, 19 85 at creditor's office and also to pay ☐ a minimum loan fee of $_____, ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of base plus 1 %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan renewel of 84-01831

Debtor's Signature X Walter M. Calinger — Debtor's Address 1450 S. 11 st, Omaha, Ne 68108

Debtor's Signature _____ — Debtor's Address _____

NF260-828 Single Payment or Demand Note

1-p. 32 of 58

3 7 0 4 0 6 4 3 6 5 2 7

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name Walt Calinger for Congress

Debtor's Address 1407 S. 13th St., Omaha, Ne. 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over reg prime ____%	$	$ 10,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
Demand		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above ____%. The maximum interest rate increase at one time will be ____%. The rate will not increase more than once ☐ every year; ☐ ____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by ____% in ☐ one year; ☐ ____, ☐ your regular payments will increase to $ ____; ☐ you will have to make ____ additional payments; ☐ your final payment will increase by $ ____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $ ____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $ ____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

COMMUNITY BANK OF NEBRASKA
OMAHA, NEBRASKA
12-21-84
PAID BY RENEWAL

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you obtain the insurance from creditor you will pay $ ____.

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated ____, 19____ covering the following property:

Personal Guarantee

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☒ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over regional prime

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: ____

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method:

ADDITIONAL CHARGES Official fees and taxes $ ____

Other ____ $ ____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of COMMUNITY BANK OF NEBRASKA,

Ten Thousand and 00/100---------- Dollars ($ 10,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $ ____, ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ ____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Walter Calinger for Congress

Debtor's Signature X Walter M. Calinger Debtor's Address ____

Walter M. Calinger

Debtor's Signature ____ Debtor's Address ____

NF260-828 Single Payment or Demand Note

1-p. 34 of 58

(Revised 3/80)

LOANS

Name of Committee (In Full)
Calinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Calinger 1450 So. 11th Str. Omaha, NE 68108 Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5000.00

Terms: Date Incurred 1/4/84 Date Due Demand Interest Rate 10 % (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Calinger (same as above) David Newell Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5,000.00

Terms: Date Incurred 4/27/84 Date Due Demand Interest Rate 14.75 (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional): $10,000.00

TOTALS This Period (last page in this line only) 1-p.35 of 58

Carry outstanding balance only to LINE 2, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

Name of Committee (in Full)
Collinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Collinger Larry Myers Election: ☒ Primary ☐ General ☐ Other (specify):	$2000.00	-0-	$2,000.00

Terms: Date Incurred 5/5/04 Date Due Demand Interest Rate 15.75 % (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Collinger John Hughes Election: ☒ Primary ☐ General ☐ Other (specify):	$10,000.00	-0-	$10,000.00

Terms: Date Incurred 5/10/04 Date Due Demand Interest Rate 15.75 % (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional)	$12,000.00
TOTALS This Period (last page on this line only) 1-p.36 of 58	$22,000.00

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

Although the Commission may take further legal steps concerning the acceptance of an excessive contribution(s), prompt action by you to refund the excessive amount will be taken into consideration.

-Please provide a Schedule A to support the amount reported on Line 13(a) of the Detailed Summary Page. Each person who makes a loan to your committee or to the candidate acting as an agent of the committee, must be reported on Schedule A and Schedule C. The itemization on Schedule A must include the person's full name, mailing address, and zip code, along with the name of his/her employer, the date of the contribution/loan and the aggregate year-to-date amount of contributions made by the person. (11 CFR 104.3(a)(4)(iv))

-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used his/her personal funds or borrowed the money from a lending institution, or any other source. If the candidate borrowed funds from a lending institution or any other source, please provide the name of the lending institution and the complete terms of the loan. If the loan(s) was from personal funds, please acknowledge that fact in an amendment to this report. Further, it is important to note that "personal funds" is strictly defined by Commission regulations and may be found in 11 CFR 110.10. (11 CFR 100.7(a)(1) and 104.3(d))

-On Schedule B of this report, you have reported disbursements for which you have failed to include either the date, amount, address, or purpose. Please amend your report to include the missing information for each of these entries. (11 CFR 104.3(b)(4))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James

Noriega E. James
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

OCT 16 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule C of your report (pertinent portion attached) discloses a contribution(s) which appears to exceed the limits set forth in the Act. An individual or a political committee other than a multicandidate committee may not make contributions to a candidate for Federal office in excess of $1,000 per election. If you have received a contribution(s) which exceeds the limits, the Commission recommends that you refund to the donor(s) the amount in excess of $1,000. The Commission should be notified in writing if a refund is necessary. In addition, any refund should appear on Line 20 of the Detailed Summary Page of your next report. (2 U.S.C. 441a(a) and (f))

The term "contribution" includes 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.

Schedule C of your report fails to indicate the amount of the loan guaranteed or endorsed by each individual. Federal Regulations provide that in the event that the amount endorsed or guaranteed by each individual is not stated, each endorser or guarantor shall be liable proportionately to the number of endorsers or guarantors of the loan. (11 CFR 100.7(a)(1)(i)(B))

If the contribution(s) in question was incorrectly reported and/or you have additional information regarding the contributor(s), you may wish to submit documentation for the public record. Please amend your report with the clarifying information.

1-p. 38 of 58

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
1175 WOODMEN TOWER
OMAHA, NEBRASKA 68102-2083
TELEPHONE 341-4334
AREA CODE 402

AK&C
FILE COPY

MILTON R. ABRAHAMS
BEN E. KASLOW
FREDERICK B. CASSMAN
HOWARD J. KASLOW
FRANK F. POSPISHIL
WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON

November 23, 1984

Federal Election Commission
Washington, D.C. 20463

ATTN: Don D. Gibson
Reports Analysis Division

Re: Identification No. C00175281

Dear Mr. Gibson:

I am now in receipt of your letters dated November 8 and November 14, 1984, in connection with the July Quarterly Report and October Quarterly Report. Please understand that I was not ignoring your letters. I am sorry for the delay in responding to you.

I am sure you have had experience in the past, where once a primary election is over and a candidate loses, the candidate's staff dissipates. I am not using this as an excuse but merely to let you know the reason for the delay. I did not receive your letters until November 19, 1984. The letters had been held up at the old campaign headquarters. I will tend to these matters immediately.

Very truly yours,

John W. Herdzina
Treasurer
Calinger for Congress Committee

JWH:kjs
cc: Julie Gomez

SCHEDULE C
(Revised 3/80)

LOANS

LINE NUMBER 13A
(Use separate schedules for each numbered line)

Name of Committee (in Full)
Collinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5180 Ames Omaha, NE Election: X Primary ☐ General ☐ Other (specify):	$2000.00	0	$2000.00

Terms: Date Incurred 5/5/84 Date Due Demand Interest Rate 10 %(apr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code Walter M. Collinger 1450 So. 11 Str. Omaha, NE 68108	Name of Employer SELF Occupation Lawyer Amount Guaranteed Outstanding: $ 2000.00	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding: $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding: $	

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5180 Ames Omaha, NE Election: X Primary ☐ General ☐ Other (specify):	$10,000.00	-0-	$10,000.00

Terms: Date Incurred 5/10/84 Date Due Demand Interest Rate 10 %(apr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code Walter M. Collinger 1450 So. 11 Str. Omaha, NE 68108	Name of Employer SELF Occupation Lawyer Amount Guaranteed Outstanding: $ 10,000.00	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding: $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding: $	

SUBTOTALS This Period This Page (optional)	$12,000.00
TOTALS This Period (last page in this line only) 1 - p. 40 of 58	$22,000.00

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

87074 5 5 3 0

SCHEDULE C
(Revised 3/80)

LOANS

LINE NUMBER 13A
(Use separate schedules for each numbered line)

Name of Committee (in Full)
Colinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
WALTER COLINGER 1450 So. 11 Th Omaha 68108 Election: ☒Primary ☐General ☐Other (specify):	$5,000.00	-0-	$5000.00

Terms: Date Incurred 1/4/84 Date Due Demand Interest Rate 10 %(apr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding
Walter M. Colinger 1450 So. 11 Str. Omaha, NE 68108	SELF	Lawyer	$ 5000.00
2. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding: $
3. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding: $

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5180 Ames Omaha, NE Election: ☒Primary ☐General ☐Other (specify):	$5,000.00	-0-	$5000.00

Terms: Date Incurred 4/27/84 Date Due Demand Interest Rate 10 %(apr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding
Walter M. Colinger 1450 So. 11 Str. Omaha, NE 68108	SELF	Lawyer	$ 5000.00
2. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding: $
3. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding: $

SUBTOTALS This Period This Page (optional) . . . . . $ 10,000.00

TOTALS This Period (last page in this line only) . . . . . 1-p.41 of 58

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

18 7 1 4 0 5 4 5 5 3 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-3

November 8, 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. Herdzina:

This letter is to inform you that as of November 7, 1984, the Commission has not received your response to our request for additional information, dated October 16, 1984. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

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

If you should have any questions related to this matter, please contact Noriega James on our toll-free number (800) 424-9530 or our local number (202) 523-4048.

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-7

November 14, 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 So. 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced Report of Receipts and Disbursements as required by the Federal Election Campaign Act. You were previously notified of the due date for this report.

It is important that you file this report immediately with the Federal Election Commission, 1325 K Street, NW, Washington, DC 20463 (or with the Clerk of the House or the Secretary of the Senate, as appropriate). A copy of the report or its relevant portions should also be filed with the Secretary of State or equivalent state officer (see 11 CFR 108.2, 108.3, 108.4).

The failure to file this report may result in an audit or legal enforcement action.

If you have any questions regarding this matter, please contact Noriega James on our toll-free number (800) 424-9530. Our local number is (202) 523-4048.

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

1-p. 43 of 58

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

OCT 16 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule C of your report (pertinent portion attached) discloses a contribution(s) which appears to exceed the limits set forth in the Act. An individual or a political committee other than a multicandidate committee may not make contributions to a candidate for Federal office in excess of $1,000 per election. If you have received a contribution(s) which exceeds the limits, the Commission recommends that you refund to the donor(s) the amount in excess of $1,000. The Commission should be notified in writing if a refund is necessary. In addition, any refund should appear on Line 20 of the Detailed Summary Page of your next report. (2 U.S.C. 441a(a) and (f))

The term "contribution" includes 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.

Schedule C of your report fails to indicate the amount of the loan guaranteed or endorsed by each individual. Federal Regulations provide that in the event that the amount endorsed or guaranteed by each individual is not stated, each endorser or guarantor shall be liable proportionately to the number of endorsers or guarantors of the loan. (11 CFR 100.7(a)(1)(i)(B))

If the contribution(s) in question was incorrectly reported and/or you have additional information regarding the contributor(s), you may wish to submit documentation for the public record. Please amend your report with the clarifying information.

Although the Commission may take further legal steps concerning the acceptance of an excessive contribution(s), prompt action by you to refund the excessive amount will be taken into consideration.

-Please provide a Schedule A to support the amount reported on Line 13(a) of the Detailed Summary Page. Each person who makes a loan to your committee or to the candidate acting as an agent of the committee, must be reported on Schedule A and Schedule C. The itemization on Schedule A must include the person's full name, mailing address, and zip code, along with the name of his/her employer, the date of the contribution/loan and the aggregate year-to-date amount of contributions made by the person. (11 CFR 104.3(a)(4)(iv))

-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used his/her personal funds or borrowed the money from a lending institution, or any other source. If the candidate borrowed funds from a lending institution or any other source, please provide the name of the lending institution and the complete terms of the loan. If the loan(s) was from personal funds, please acknowledge that fact in an amendment to this report. Further, it is important to note that "personal funds" is strictly defined by Commission regulations and may be found in 11 CFR 110.10. (11 CFR 100.7(a)(1) and 104.3(d))

-On Schedule B of this report, you have reported disbursements for which you have failed to include either the date, amount, address, or purpose. Please amend your report to include the missing information for each of these entries. (11 CFR 104.3(b)(4))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Need Schedule A & B

Noriega E. James
Reports Analyst
Reports Analysis Division

1-p. 45 of 58

(Revised 3/80)

LOANS

(Use separate schedules for each member bank loan)

Name of Committee (In Full)
Collinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Collinger Larry Myers	$2000.00	-0-	$2,000.00

Election: X Primary ☐ General ☐ Other (specify):

Terms: Date Incurred 5/5/84 Date Due Demand Interest Rate 15.75 % (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Collinger John Hughes	$10,000.00	-0-	$10,000.00

Election: X Primary ☐ General ☐ Other (specify):

Terms: Date Incurred 5/10/84 Date Due Demand Interest Rate 15.75 % (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional) $12,000.00

TOTALS This Period (last page in this line only) . . . . . 1-p. 46 of 58 $22,000.00

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

1 7 8 5 3 5 9 4 4 4 8

SCHEDULE C
(Revised 3/80)

LOANS

(Use separate schedule for each numbered line)

Name of Committee (In Full)
Calinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Calinger 1450 So. 11th Str. Omaha, NE 68108 Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5000.00

Terms: Date Incurred 1/21/84 Date Due Demand Interest Rate 10 % (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Calinger (same as above) David Newell Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5,000.00

Terms: Date Incurred 4/27/84 Date Due Demand Interest Rate 10% (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional)	$10,000.00
TOTALS This Period (on page in this line only) 1-p.47 of 58	

Transfer Subtotals only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

13 74 2 41 0 0 0 0 , 0 5 0 9 1 5 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 8 1984

RQ-7

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/1/84-6/30/84)

Dear Mr. Herdzina:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced Report of Receipts and Disbursements as required by the Federal Election Campaign Act. You were previously notified of the due date for this report.

It is important that you file this report immediately with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515, or the Secretary of the Senate, Office of Public Records, 119 D Street, NE, Washington, DC 20510, as appropriate. A copy of the report should also be filed with the Secretary of State or equivalent state officer of your state.

The failure to file this report may result in an audit or legal enforcement action.

If you have any questions regarding this matter, please contact Noriega E. James on our toll-free number (800) 424-9530. Our local number is (202) 523-4048.

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

1-p.48 of 58

Memo from . . .

JOHN W. HERDZINA
8712 West Dodge Road
Suite 300
Omaha, Nebraska 68114
392-1250

8-6-85

Dear Jon:

This is in re MUR 2051.

Mr. Odinger is still reviewing his file.

John---

JOHN W. HERDZINA

Omaha, Nebraska

05233

GCC# 8277

Check No.	Date
1202	7/17/84
1203	7/17
1204	7/17
1205	7/17
1206	7/27
1210	7/27
1212	9/21/84
1213	9/21
1216	11/9
1218	12/29
1221	3/29/85
1223	7/13/85

Don't have canceled checks on there nor have the bank statements.

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1202

7/17 1984

27-21
1040

PAY TO THE ORDER OF Walter Calinger and Dave Newell $ 165.68

One hundred sixty-five and 68/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

Int. on loan

John M. Hankins

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1203

7/17 1984

27-21
1040

PAY TO THE ORDER OF Walter Calinger and Larry Myers $ 59.82

Fifty-Nine dollars and 82/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

Int. on loan

John M. Hankins

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

12[illegible]

7/17 1984

27-21
1040

PAY TO THE ORDER OF Walter Calinger and John Hughes $ 288.30

Two hundred Eighty-Eight and 30/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

Int. on loan

John M. Hughes

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1205

7/17 1984

27-21
1040

PAY TO THE ORDER OF Walter Calinger and Dave Newell $ 2500.00

Twenty-five hundred dollars and 00/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

Payment on Principal Bal.

John M. Hughes

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1207

7-27 1984

27-21
1040

PAY TO THE ORDER OF Walter Calinger & Dave Newell $ 2512.12

Two Thousand Five Hundred Twelve & 12/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

4-27-84
Loan payment $2500

John M. Hughes

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1210

7-27 1984

27-2
1040

TO THE ORDER OF Walter Calinger and Larry Myers $ 511.22

Five Hundred Eleven & 22/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

1-p.51 of 58

Loan repayment re 5-5-84 $2000

John W. Hudgins

1407 S. 13[redacted]
OMAHA, [redacted]

9/21[redacted]

PAY TO THE ORDER OF Walt Calinger - Lary Myers $ 1,529.79

One thousand five hundred twenty-nine and 79/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO

John W. Hughes

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1213

9/21 1984

PAY TO THE ORDER OF Walt Calinger - John Hughes $ 252.60

Two hundred fifty-two dollars and 60/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Int. on loan

John W. Hughes

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1216

11-9 1984

PAY TO THE ORDER OF Walt Calinger and John Hughes $ 2244.31

Two Thousand Two Hundred Forty-Four & 31/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Int. on loan

John W. Hughes

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1218

12-29 1984

27-21
1040

PAY TO THE ORDER OF Walter Calinger $ 147.29

One Hundred Forty Seven & 29/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

Interest Pmt 12-21-84

John W. Bender

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1221

3/29 1985

27-21
1040

PAY TO THE ORDER OF Walter Calinger $ 252.71

Two hundred fifty two dollars and 71/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

1-p. 52 of 58

Loan Repay

John W. Bender

RECEIVED AT THE FEC
GCC# 8280
85 AUG 12 AM : 58

WALTER M. CALINGER
ATTORNEY AT LAW
1407 SOUTH 13TH STREET
OMAHA, NEBRASKA 68108

TO Mr. Johnathon Levin
Attorney at Law
Office of the General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

DATE August 8, 1985

SUBJECT MUR2051
Calinger for Congress
Committee
John W. Herdzina, Treasurer

Dear Mr. Levin:

John Herdzina, Treasurer for Calinger for Congress Committee, contacted me today and asked that I send you a copy of check #1223.

Therefore, enclosed is the copy of the cancelled check as requested.

Sincerely yours,

Loretta Ethridge
Secretary to Walter Calinger

Item # M.L5N72 © Wheeler Group Inc. 1982

FOLD AT (—) TO FIT DRAWING BOARD ENVELOPE

1223

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE [illegible]

7/13 19[illegible]

PAY TO THE ORDER OF Walter Calinger $ 251.50

Two hundred fifty-One dollars and 50/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Loan Repay-Interest John M. Hawkins

3704046553

JY 85 26

JY 85 25

1- p. 54 of 58

GCC# 8338

RECEIVED AT THE FEC

85 AUG 19 P 2:05

WALTER M. CALINGER

ATTORNEY AT LAW

1407 SOUTH 13TH STREET

OMAHA, NEBRASKA 68108

TO Mr. Johnathon Levin
Attorney at Law
Office of the General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

DATE August 15, 1985

SUBJECT MUR2051
Calinger for Congress,
John W. Herdzina, Treasurer

AUG 19 P 3:46

Enclosed please find 3 promissory notes dated December 21, 1984.

Sincerely,

Walter Calinger

Walter M. Calinger

1-p. 55 of 58

FOLD AT (--) TO FIT DRAWING BOARD ENVELOPE # EW10P

RECEIVED AT THE FEC

85 AUG 19 P2:15

PROMISSORY NOTE
(Note No. 018310)

$10,000.00

Omaha, Nebraska

Dated: December 21, 1984

FOR VALUE RECEIVED, the undersigned promises to pay to Walter Calinger, the principal sum of Ten Thousand Dollars ($10,000.00) with interest from the date hereof at the rate of 15.25% per annum, payable on demand.

All payments herein are payable at the office of Walter Calinger, 1407 South 13th Street, OMaha, Nebraska 68108 or at such other place as the holder hereof may designate in writing.

CALINGER FOR CONGRESS COMMITTEE

By: _____
John W. Herdzina, Treasurer

18704346655

PROMISSORY NOTE
(Note No. 018230)

$5,000.00 Omaha, Nebraska

Dated: December 21, 1984

FOR VALUE RECEIVED, the undersigned promises to pay to Walter Calinger the principal sum of Five Thousand Dollars ($5,000.00) with interest from the date hereof at the rate of 14.75% per annum, payable on demand.

All payments herein are payable at the office of Walter Calinger, 1407 South 13th Street, Omaha, Nebraska 68108 or at such other place as the holder hereof may designate in writing.

CALINGER FOR CONGRESS COMMITTEE

BY: _____
John W. Herdzina, Treasurer

87040465 5

PROMISSORY NOTE
(Note No. 018300)

$2,000.00 Omaha, Nebraska

Dated: December 21, 1984

FOR VALUE RECEIVED, the undersigned promises to pay to Walter Calinger, the principal sum of Two Thousand Dollars ($2,000.00) with interest from the date hereof at the rate of 14.75% per annum, payable on demand.

All payments herein are payable at the office of Walter Calinger, 1407 South 13th Street, Omaha, Nebraska 68108 or at such other place as the holder hereof may designate in writing.

CALINGER FOR CONGRESS COMMITTEE

BY: _____
John W. Herdzina, Treasurer

87040346657

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

'85 AUG 13 P6:14

August 13, 1985

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

Re: MUR 2051, John J. Hughes

Dear Jon:

I would like to take a moment to bring you up to date on where we stand in this matter. This afternoon, we have filed our Reply of Respondent which sets forth Mr. Hughes' position on the factual and legal issues of the case as provided for by 11 C.F.R. § 111.16(c).

It is also our intention at this time to formally request pre-probable cause conciliation pursuant to 11 C.F.R. § 111.18(d). In so doing, I am under the belief that this request will not be deemed by the General Counsel as in any prejudicing the conclusions and positions taken by Mr. Hughes in his Reply of Respondent.

Thank you for your time. I anxiously look forward to quickly resolving this matter.

Sincerely yours,

F. Joseph Warin
Attorney for Respondent

8704045658

Attachment 2 - p. 1 of 63

GCC# 8296

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

August 13, 1985

AUG 13 P4:50

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR No. 2051

Dear Jon:

Enclosed please find our response to the allegation against John Hughes.

I look forward to resolving this dispute.

Sincerely,

F. Joseph Warin

jjb

Enclosure

8704046559

2 - p. 2 of 63

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

REPLY OF RESPONDENT

INTRODUCTION

On June 26, 1985, the Federal Election Commission determined that there was reason to believe that John Hughes had violated § 441a(a)(1)(A) of the Federal Election Campaign Act of 1971 ("1971") Act which limits campaign contributions to any candidate to a $1,000 maximum per donor. On July 18, 1985, Mr. Hughes was notified of the Commission's determination. As provided for by § 437g(3) of the 1971 Act, Mr Hughes respectfully submits this Reply in support of his contention that as a matter of law and equity this investigation should be dismissed without any findings of probable cause. This Reply also replies to the General Counsel's Factual and Legal Analysis.

9704043650

I. STATEMENT OF FACTS

This dispute arises in connection with the campaign of Walter M. Calinger. In May, 1984, Mr. Calinger ran for a seat in the United States House of Representatives from the Second Congressional District of Nebraska, a district which encompasses principally the greater metropolitan Omaha area. Mr. Calinger was defeated in his bid for the Democratic nomination by Thomas Cavanaugh who was himself later defeated in the general election by Republican Harold Daub.

Late in the primary, Mr. Calinger contacted respondent John Hughes, an Omaha businessman, to elicit his financial support. Although Mr. Hughes had never run for political office, directed a political campaign or otherwise taken a controlling role in the political process, his position in the business community had made him particularly attractive as a potential contributor. On May 2,1984, Mr. Calinger's efforts of persuasion were successful and he received from Mr. Hughes a contribution of $1,000. This was the only choate, intentional contribution Mr. Hughes made to the Calinger campaign. This May 2, 1984 contribution did not, therefore, constitute nor does the Commission now allege that it constitutes a violation of the federal election laws.

2-p. 4 of 63

A few days later as the campaign drew to a close, the Calinger Committee determined that it needed additional broadcast and print media exposure. To finance this eleventh hour expense, the candidate made arrangements to take out several personal loans from The Community Bank, located in Omaha, Nebraska. He telephoned Mr. Hughes, explained this emergency need, and requested that Mr. Hughes co-sign a loan of $10,000 from the bank. During this conversation, Mr. Calinger emphasized that several other contributors had likewise been asked to co-sign the loan. Consequently and completely unaware that he was being asked by a respected city councilman, now-candidate for the Congress of the United States, to violate the federal election laws, Mr. Hughes agreed to co-sign.*/ Soon thereafter, on May 10, 1985, Mr. Hughes received the loan document which he signed and returned. It contained no request for credit references, no request for a salary declaration, and no request for a declaration of personal net worth. It did not inquire whether Mr. Hughes had any property to set as collateral and it did not request that he declare any. It did not request personal or character references. In its appearance, in its treatment by The Community Bank and in its matter-of-fact

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*/ It is evident from the record that Mr. Callinger did not have knowledge of a violation or an intent to violate the law.

2-p.5 of 63

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description by the candidate, the loan document which Mr. Hughes signed appeared to him as a mere cosmetic formality, certainly nothing to which his capable and perceptive business savvy would alert him as potentially dangerous.

The Calinger for Congress Committee Treasurer, John Herdzina, dutifully reported in the Committee's July Quarterly Report the circumstances and financial value of this loan and three others for which Mr. Calinger had arranged co-signators. Subsequently, on October 16, 1984, the Reports Analysts Division notified the Treasurer that a problem had been discovered in the Committee's Schedule C filing which had clearly and overtly listed the loans. The Commission observed that the Calinger Committee's Schedule C appeared to exceed the lawful contribution ceiling by naming only two endorsers of the $10,000 loan. The Commission explained that the $1,000 per donor limit of 2 U.S.C. § 441a(a)(1)(A) extended to the guaranteeing or endorsing of loans. The letter advised that if this $1,000 limit was exceeded by any of the Calinger contributors, the Committee should refund to the donors the amount accepted in excess of $1,000. The treasurer heeded the Commission's advice and informed The Community Bank of the Commission's characterization of the loans as impermissible contributions. After apparently reaching an agreement with

2-p.6 of 63

the treasurer to eliminate Mr. Hughes' name, the bank promptly retired the guarantee of Mr. Hughes and confirmed that the loan was "now in the name of Walter M. Calinger alone and [is] unsecured and not guaranteed." Exhibit A, Letter of December 21, 1984 from The Community Bank to Walter Calinger. See Exhibit B, Redrafted Loan Document. This new circumstance was communicated to the Commission and an amended July Quarterly report was filed naming Mr. Calinger as the sole endorser of the $10,000 loan. It was only at this point, seven months after the campaign loss, that the Committee informed Mr. Hughes that "some problem" had developed with the co-signing and that therefore the loan had been redrawn retiring Mr. Hughes' endorsement.

Several months passed before the respondent heard anything about this matter. The next communication Mr. Hughes had concerning the loan was the Commission's July 18, 1985 notice announcing that it had determined that there was reason to believe that he had violated the federal elections laws.

2-p. 7 of 63

II. ARGUMENT

A. JOHN HUGHES' CO-SIGNATURE CAN NOT CONSTITUTE A VIOLATION OF 2 U.S.C. § 441a(a)(1)(A) BECAUSE THERE HAS BEEN NO LOAN DEFAULT AND HE NOW HAS NO LIABILITY ON THE NOTE

The Federal Election Campaign Act of 1971 defines the term contribution as "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." 2 U.S.C. § 441a(a)(1)(A) (1985).

Pursuant to this definition, Mr. Hughes has, to date, donated $1,000 to the Calinger for Congress Committee, a legally-acceptable contribution under the election laws. He has not given the Committee any further monies. He has provided the Committee with no illegal subscription, given no personal loan, money advance or deposit, or donated anything else of value.

Nevertheless, the Commission has chosen to characterize Mr. Hughes' co-signature on the $10,000 loan as a personal contribution to the Calinger Committee of half that amount, $5,000, an amount exceeding the $1,000 per donor ceiling of § 441a(a)(a)(A). The Commission's characterization unjustly prejudices Mr. Hughes' sterling reputation in Omaha and

2-p. 8 of 63

blemishes his integrity within his professional community. It is definitionally improper and unwarranted in light of the circumstances and the facts.

The Commission's characterization of Mr. Hughes' involvement with the loan cannot be reconciled with either the statutory or regulatory provisions governing the definition of contribution. The General Counsel asserts a violation of the $1,000 ceiling by citing to 2 U.S.C. § 431(8)(B)(vii)(I) which provides that a bank loan "shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." Exhibit C, General Counsel's Factual and Legal Analysis, MUR No. 2051, p. 2 (July 18, 1985). Thus, the General Counsel concludes that Mr. Hughes served as the sole co-maker of the $10,000 loan, had therefore contributed half that amount to the Calinger campaign, and consequently had exceeded the $1,000 per donor ceiling. Id. at p. 3.

The statute on which the Commission relies, however, calculates an endorser's contribution not by the amount of the loan, but rather by the amount of "the unpaid balance." 2 U.S.C. § 431(8)(B)(vii)(I) (1985). The significance of this statutory distinction must not be lost on the Commission. Unlike the characterization offered by the

2-p. 9 of 63

General Counsel which determined Mr. Hughes' contribution as a proportion of the amount of the loan, the proper characterization of Mr. Hughes' contribution as calculated under the statutory provision is determined as a proportion of the amount of the loan's unpaid balance. The federal elections regulations fully support this interpretation. Title II of the Code of Federal Regulations provides that a loan is only a contribution "to the extent that it remains unpaid." 11 C.F.R. § 100.7(a)(1)(i)(B) (1985) (emphasis added). If, conversely, the loan is repaid, it "is no longer a contribution." Id. Furthermore, "[a]ny reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor... ." 11 C.F.R. § 100.7(a)(1)(i)(C) (1985).

Under such a calculation scheme, Mr. Hughes' "contribution" through his involvement with this $10,000 loan would decrease as his liability decreases. Thus, assuming but not conceding that Mr. Hughes' co-signature constituted an actual guarantee of the $10,000 loan, his personal liability would be $10,000 on default of the loan. As the loan is repaid, Mr. Hughes' personal liability decreases and, in direct proportion to this liability, his imputed contribution decreases as well. According to the federal regulation, if the loan is completely repaid, thus removing

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all personal liability to the guarantor, the Commission would find that there was no longer any attributable contribution amount from the Hughes' loan.

This reasoning is indistinguishable from the facts of this present loan. When Mr. Hughes' co-signature was removed from the $10,000 loan, his personal liability was entirely and thoroughly extinguished as well. For the purposes of Mr. Hughes' position, when The Community Bank retired the original loan document and redrafted it without his name, the loan for which he was liable had been effectively "repaid". There is, thus, no contribution within the meaning of 2 U.S.C. § 431(8)(B) and no violation of the federal election laws under 2 U.S.C. § 441a(a)(1)(A).

A second definitional consideration also mitigates against a finding of violation. As defined in the statute, "contribution" involves the donation of "anything of value" to a political candidate. 2 U.S.C. § 437(8)(A)(i) (1985). Such a definition is both cogent and comprehensible. Under the federal election laws, things given candidates which have no value will not be accountable to either the donor or the recipient as a contribution.

The Hughes co-signature is precisely such a valueless addition. The evidence demonstrates that none of the parties accorded any value whatsoever to the co-signature. Certainly

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the bank can not be said to have valued the co-signature for a surety purpose. It requested no confirming information that Mr. Hughes was adequately capitalized to insure the loan. No debt references, salary statements or banking balances were ever demanded. The bank merely sent Mr. Hughes the document and filed it when it was returned. Upon being notified by the Calinger Committee of a potential FEC problem, the bank showed little concern or hesitation in retiring the original note and drafting it anew without the second guarantee it had had before. In sum, The Community Bank treated the Hughes co-signature for what it was: a meaningless addition to an otherwise completely secure debt.

Neither of the co-signers held the document in any esteem. Mr. Calinger explained it over the telephone to Mr. Hughes as though the co-signing was an incidental formality and, considering the treatment of the document by the bank, Mr. Hughes could have no reason to doubt this characterization. Given this perception of the loan by all involved parties and the almost matter-of-fact removal of the Hughes name from the document by the bank, the Commission has every reason to find that the co-signature did not satisfy the "anything of value" requisite of § 431(8)(A)(i).

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B. JOHN HUGHES IS A LAW-ABIDING, WELL-MEANING CITIZEN OF OMAHA. IF ANY PROVISION OF THE FEDERAL ELECTION LAWS HAS BEEN INFRINGED, JOHN HUGHES IS PROPERLY CHARACTERIZED AS NOTHING MORE THAN AN UNWITTING VICTIM

John Hughes is neither a politician nor a political activist. He is a respected and accomplished midwestern businessman. His interest in the political spectrum is probably identical to that of his Omaha friends and neighbors. His political profile is low, perhaps only existent at all because his financial successes have made him a prime target for prospective candidates.

To John Hughes, The Calinger campaign was no different. Mr. Hughes played no prominent role in the campaign. He neither brainstormed with the candidate on any regular basis, nor engineered campaign strategy. Aside from his contribution, Mr. Hughes' involvement with the Calinger for Congress effort was modest and obscure.

In late April and early May of 1984, Mr. Hughes was approached by the candidate who came seeking a contribution, which he received. Originally impressed by Mr. Calinger and his work on the city council, Mr. Hughes was sympathetic to the candidate's urgent plea for last-minute help during the final week of the Calinger campaign. Mr. Hughes had no

2 - p. 13 of 63

reason to question the candidate's motives. The campaign was a lively and intriguing one. Mr. Calinger's opponent, Thomas Cavanaugh, was the younger brother of John Cavanaugh, the congressional district's popular representative from 1977 to 1981. Thomas was unable, however, to capitalize on his older brother's popularity because family disputes had kept John from endorsing his brother early in the campaign. Mr. Calinger, on the other hand, was twelve years older than Cavanaugh and far and away the more experienced politician, campaigning from his post on the Omaha city council. The candidate's anxious appeal to Mr. Hughes at this point in a very hopeful campaign appeared completely harmless. Seen in the broader picture, the candidate's request was for an apparently meaningless co-signature on a note signed by a respected and widely-known local public figure issued from a bank which seemed completely uninterested in establishing or confirming the co-signer's credit worthiness.

Mr. Hughes' unwitting involvement with the loan is underscored by the circumstances surrounding the retirement of the endorsement. When the Calinger Committee Treasurer learned of the Commission's characterization of Mr. Hughes' co-signature, he corrected the concern and purged the guarantee--all without Mr. Hughes' knowledge or consent. When he was informed that there may have been a problem with

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the guarantee, that the loan had been redrafted without his signature, and that his endorsement and liability had been removed, Mr. Hughes could do little more than sigh. The routine retirement of the co-signature reinforced its meaninglessness.

Mr. Hughes had no intent to violate the federal election laws. He was unaware that the loan he had signed had any significance whatsoever. Financially, he was undisputably correct. He has never been the subject of a Commission review or investigation and, had he even been informed of the Commission's concerns, he would undoubtedly had done what the Calinger Committee treasurer did for him: correct the problem. In fact, but for the good faith reporting of Mr. Hughes' co-signature by the Treasurer, the Commission might not have even discovered the loan at all. This investigation seems to leave one with the impression that even when one complies with the election regulations scrupulously, the Commission will not refrain from requesting punishment. He has done nothing to conceal the facts from the Commission. He has not, nor does the General Counsel contend that he has, deceived the Commission or misled it in any way. To the contrary, he has cooperated with the Commission to the best of his abilities and stands ready to continue to do so. If this investigation is a search for a culpable actor, the

2 - p. 15 of 63

Commission would do well to shift its attention to the campaign committee and away from Mr. Hughes who was an unwitting participant. Mr. Hughes was acting appropriately on the information provided him. His assistance was being solicited by a public figure in one of the midwest's largest cities. He was not informed by those charged to know that the co-signing of a note under the circumstances described above would constitute an unlawful contribution in violation of federal law. He was inaccurately told that a variety of other guarantors would join him on the note, that his was not to be the only endorsement. He was kept completely unaware of the developing controversy with the Commission and he was not consulted prior to the destruction of his guarantee. Considering the candidate's prestige in the community and the candidate's staff's expertise in the elections arena, Mr. Hughes understandably felt confident in relying on the statements he received.

It would appear that the culpable party here is the knowing party. Information was clearly either intentionally or negligently misrepresented to Mr. Hughes by those individuals privy to the full story. He was persuaded into this dilemma by those legally forbidden to solicit more than $1,000 from each contributor. Parenthetically, the reports and records are replete with information that neither the

2 - p. 16 of 63

Committee nor the candidate knew that the co-signature arguably constituted an election violation. Those who convinced Mr Hughes to co-sign this loan were responsible to know the technical provisions and subprovisions of statutes and regulations that take nearly a full line of a printed page to cite. It would be tragically unfair and improper for the Commission's search for the blameworthy to end here at the door of the unwitting and the misinformed. We urge the Commission, therefore, to abandon this investigation.

C. FINDING JOHN HUGHES IN VIOLATION OF THE ELECTION LAWS CAN NOT BE RECONCILED WITH THE COMMISSION'S HISTORICAL TREATMENT OF SIMILAR CIRCUMSTANCES

The Commission has apparently only thrice before confronted possible violations of 2 U.S.C. § 441a(a)(1)(A) as defined by 2 U.S.C. § 431(8)(B)(vii)(I) or 11 C.F.R. § 100.7(a)(1)(i)(C). See In re Citizens Comm. for Ernest F. Hollings, MUR No. 1768 (1985); In re Passaic County Democratic Comm., MUR No. 1047 (1982); In re Friends of Roger Jepsen, MUR No. 1042 (1980). The Commission's treatment of the respondents in these investigations and the ensuing resolution of these matters support Mr. Hughes' petition that this current investigation be closed and his name be cleared.

2-p. 17 of 63

In the earliest matter, Jepsen, the Commission investigated the receipt by the Friends of Roger Jepsen of a $35,000 loan signed by the senatorial candidate Jepsen and co-signed by his wife. The General Counsel recommended, and the Commission subsequently agreed, that Mrs. Jepsen's co-signature violated the prohibition of § 441a(a)(1)(A) against the making of excessive contributions. Exhibit D, General Counsel's Report, In re Friends of Roger Jepsen, MUR 1042, p. 2 (1980). During the ensuing investigation, the Commission learned that Mrs. Jepsen's signature on the loan was "simply a formality requested by the bank". Id. at 4. The General Counsel thus subsequently revised its recommendation to urge that no further action be taken, concluding that "[e]ven if Mrs. Jepsen's signature technically made her a party to the note, her participation in the transaction was minimal." Id. at 6 (emphasis added).

The circumstances in Jepsen mirror those surrounding the Hughes loan. Mr. Hughes' signature can not be seriously viewed as anything more than "simply a formally requested by the bank." The facts clearly demonstrate that the bank did not take the co-signature seriously or give it any greater weight than a "formality" status. Moreover, even if the Commission determines that the co-signing technically made Mr. Hughes a party to the note, his participation in the

2-p. 18 of 63

transaction was decidedly minimal. In fact, the circumstances of this loan even further buttress the Jepsen logic. In Jepsen, the offending signature was not removed. In this case, as soon as the parties discovered that the signature concerned the Commission, they had the bank retire it. In this manner, the parties evidenced a measure of good will and cooperation which only underscores the unwitting and unintentional nature of the technical violation.

In the Passaic County matter, the Commission fined the County Democratic Committee $1,500 for violating 2 U.S.C. § 441a(f) by accepting excessive campaign contributions. Exhibit E, Conciliation Agreement, In re Passaic County Democratic Comm., MUR 1047, p.8 (1982). The Commission determined that Mr. Robert Angele had contributed a $12,000 loan, which was endorsed by Mrs. Angele, to the Democratic Committee. Exhibit F, General Counsel's Report, In re Passaic County Democratic Comm., MUR 1047, p.9 (1982). The General Counsel concluded that "this loan constitutes a $6,000.00 contribution from each of the Angeles" and, more conclusively that each of the contributions "exceeds lawful contribution limitations." Id. at 10.

On the facts, the Angeles are far more culpable than John Hughes. They were not pressured into making their loan by a telephoning candidate. In fact, they made the loan to

2 - p. 19 of 63

an impersonal political committee. Their loan was not co-signed by the candidate himself as was the case with the Hughes loan. They were not told that others would be co-signing the loan nor did the bank treat their loan in the casual manner that The Community Bank did here. Presumably, the Angeles had to answer at least a few financial inquiries into their credit worthiness. Mr. Hughes, conversely, had to answer none. In both form and substance, the Angeles did more intentionally and deliberately to violate the election laws than Mr. Hughes could ever be imputed to have done. Yet it appears from an investigation of the FEC records that neither the Commission nor the General Counsel ever investigated the Angeles or made any other attempt to hold them accountable for their election law violation. It would be inapposite for this Commission to excuse the acts of those more blameworthy than John Hughes and then prosecute Mr. Hughes for dramatically less intentional actions. Such a turnabout can not be comprehensibly reconciled with the integrity of the Federal Election Commission or the dictates of simple fairness.

Finally, in the Hollings matter, the treasurer of the candidate's senatorial election committee was found in violation of § 441a(a)(1) for endorsing a loan which constituted an excessive contribution to the same candidate's

2 - p. 20 of 63

presidential election committee. Exhibit G, Conciliation Agreement, In re Citizens Comm. for Ernest F. Hollings, MUR 1768, p.2 (1985). Although the Commission properly and fairly fined the violators for this offense, the facts of Hollings are readily distinguishable. First, there was a strikingly significant danger of election abuse in this loan guarantee arrangement. The guarantor of the loan was the candidate's own senatorial election committee and the assets used for collateral were the donations of those who had supported Mr. Hollings for Senator. Clearly this is a certain abuse of the senate committee's duty to use the contributions it received for the purposes for which they were intended. It takes no great leap of faith to imagine that some of the contributors to Mr. Hollings' senatorial campaign would not have had any desire to support his race for the presidency. One would presume that contributors donate money to a campaign to get an officeholder who will champion their causes--at home. The distance which necessarily develops between a president and his previous local constituency certainly would defeat this goal. The loan also smacks of abuse because not only was the candidate which each committee supported the same, but the treasurer of each was as well.

2-p.21 of 63

Second, the involved party, the committee treasurer, was an individual who had greater access to and far more familiarity with the provisions of the various election statutes and regulations. When a committee treasurer, charged to know each of these rules intimately, violates the election laws there is undeniable culpability.

Third, the treasurer's endorsement was done intentionally and with deliberation. Unlike Mr. Hughes, the Hollings violation can not be characterized as unwitting.

Fourth, the size of the contribution attributed to the Hollings loan dwarfs the Hughes loan. Section 100.7(a)(1)(i)(c) of Title 11 of the Code of Federal Regulations provides that the "loan shall be considered a loan [and thus a contribution] by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." The loan in Hollings was for $35,000 and only the Citizens Committee for Ernest F. Hollings endorsed it. Thus, the size of the contribution is $35,000 divided by the number of endorsers (1) for a total "contribution" of $35,000. Mr. Hughes, by contrast, was a co-signer of a $10,000 which calculates to a "contribution" of $5,000. Thus, the culpability of Mr. Hughes is one-seventh that of the Citizens Committee in the Hollings case.

2 - p. 22 of 63

From every perspective, the Commission's prior treatment of 2 U.S.C. § 441a(a)(1)(A) as defined by 2 U.S.C. § 431(8)(B)(vii)(I) and 11 C.F.R. § 100.7(a)(1)(i)(C) supports this petition for a cessation of this inquiry. The unwitting and unintentional consequences of Mr. Hughes' actions do not need disciplining. He intended no wrong, his one misstep has been entirely rectified, and the Commission can rest assured that this error will never be repeated again.

D. <u>IF ANY VIOLATION OF THE ELECTION LAWS HAS OCCURRED, IT HAS NOW BEEN CORRECTED. THIS PENDING INVESTIGATION INTO JOHN HUGHES' INVOLVEMENT, THEREFORE, IS UNNECESSARY AND LEGALLY MOOT</u>

As has been previously established, the Commission has voiced no concern regarding Mr. Hughes' initial $1,000 contribution to the Calinger for Congress Committee. There are no irregularities concerning this donation and the $1,000 amount is entirely lawful pursuant to 2 U.S.C. § 441a(a)(a)(A).

The Commission's sole concern regards Mr. Hughes' co-signature. If the Commission determine, contrary to the terms of the elections statutes and regulations and contrary to the dictates of fairness and equity, that the co-signature

2-p.23 of 63

constituted a violation of § 441a(a)(1)(A), the error now has been remedied. Upon discovering the technical concern of the Commission, the Calinger Committee promptly corrected the problem. Mr. Hughes' guarantee has been completely retired and his liability on the banknote has been unequivocally removed. He now stands as he has always stood regarding the Calinger campaign: he is the civic-minded contributor of $1,000 to the political race of a local Omaha public official. There is nothing more. Having rectified this potential violation, the Calinger Committee made further review of Mr. Hughes' involvement unnecessary and legally moot.

CONCLUSION

For the reasons expressed above, it is respectfully requested that the members of the Federal Election Commission vote to dismiss this investigation by finding that there is no probable cause to believe that Mr. John J. Hughes has committed any violation of the Federal Election Campaign Act of 1971 or of any provision of Title 2 of the United States Code or of Title 11 of the Code of Federal Regulations.

2-p.24 of 63

Dated: August 13, 1985

Respectfully submitted,

KUTAK ROCK & CAMPBELL
Attorneys for Respondent
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 828-2400

F. Joseph Warin

F. Joseph Warin, Esquire

2-p.25 of 63

CERTIFICATE OF FILING

The undersigned hereby certifies that, pursuant to 11 C.F.R. § 111.16(c) (1985), ten (10) copies of this Reply of Respondent have been filed with the Commission Secretary and three (3) copies have been filed with the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, on this 13th day of August, 1985.

F. Joseph Sprow

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2-p. 26 of 63

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT A

Letter of December 21, 1984 from
The Community Bank to Walter Caliger

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THE COMMUNITY BANK

December 21, 1984

Mr. Walter M. Calinger
1450 South 11 Street
Omaha, NE 68108

RE: Commercial Loan - Walt Calinger for Congress

Dear Mr. Calinger:

The three loans totaling $17,000 guaranteed by John Hughes, David Newell, and Larry Myers now stand in the following position:

1. The guarantees of John Hughes, David Newell, and Larry Myers have been destroyed and are no longer valid.

2. All the loans are now in the name of Walter M. Calinger only and are unsecured and not guaranteed.

The $5,000 loan and the $2,000 loan have been paid in full and $2,000 has been paid on the principal on the $10,000 loan.

Very truly,

Leon E. Evans, Jr. (spw)

Leon E. Evans, Jr.
PRESIDENT

spw

2-p. 28 of 63

We Are Community
5180 Ames Ave./Omaha, Nebraska 68104/(402) 455-0900
Member F.D.I.C.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT B

Redrafted Loan Document

9 7 1 4 0 5 4 5 6 8 5

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name Walt Calinger for Congress

Debtor's Address 1407 S. 13th St., Omaha, Ne. 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over reg prime %	$	$ 10,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
Demand		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $ _____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

COMMUNITY BANK OF NEBRASKA
OMAHA, NEBRASKA
12-21-84
PAID BY RENEWAL

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $_____.

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated _____, 19____ covering the following property:

Personal Guarantee

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☒ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over regional prime

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: _____

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method:

ADDITIONAL CHARGES Official fees and taxes $_____

Other _____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of COMMUNITY BANK OF NEBRASKA,

Ten Thousand and 00/100---------- Dollars ($ 10,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $_____, ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

2-p.30 of 63

Purpose of Loan Campaign Expenses

Walter Calinger for Congress

Debtor's Signature Walter M. Calinger Debtor's Address _____

Walter M. Calinger

Debtor's Signature _____ Debtor's Address _____

NF260-829 Single Payment or Demand Note

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT C

General Counsel's Factual and Legal Analysis,
In re John J. Hughes,
MUR No. 2051 (1985)

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 2051

RESPONDENT John Hughes

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of the General Counsel by the Reports Analysis Division (RAD) and involves an allegation that John Hughes made contributions exceeding the limitation of 2 U.S.C. § 441a(a)(1)(A) to the Calinger for Congress Committee ("the Committee").

FACTUAL BASIS AND LEGAL ANALYSIS

Schedule A of the 1984 July Quarterly Report of the Committee disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to [the matter of the contribution] immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loan as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for the loan was listed as ten per cent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

circumstances of the loan. The treasurer stated that Mr. Hughes was an "accommodating maker" or "accommodating party" to the loan. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Note and the guarantee of Mr. Hughes was destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the

bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, has contributed half the amount of the loan. He has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT D

General Counsel's Report,
In re Friends of Roger Jepsen,
MUR No. 1042 (1980)

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RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION
April 22, 1980

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In the Matter of)
) MUR 1042
Friends of Roger Jepsen)
Dee Jepsen)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves the receipt by the Friends of Roger Jepsen (the Committee) of a $35,000 loan from the candidate, Roger Jepsen, in connection with the Republican Senatorial Primary in Iowa. On its 10 Day Pre-Primary Report for 1978, the Committee reported the receipt of a loan of $35,000 from the candidate on April 27, 1978. The note for this loan was due on demand with nine per cent annual interest. The amended version of this report also indicated that the origin of this loan was a $35,000 loan from the Security State Trust and Savings Bank to Roger and Dee Jepsen (the candidate's wife) on April 27, 1978. For this loan, the principal was due on demand with interest at nine per cent payable semi-annually.

Based on this information, the Reports Analysis Division (RAD) decided to seek more information as to the circumstances of the bank loan and as to the possibility that Mrs. Jepsen's actions with respect to the loan placed the Committee and her

in violation of the 2 U.S.C. § 441a limits on contributions to a candidate's authorized political committee.

On June 8, 1979, after receipt of a response from the Committee Treasurer, Mr. John Henss, to a surface violation letter, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting the loan. On June 14, 1979, Mr. Henss responded in writing that:

> ...it is normal procedure for a bank in making a loan to any individual to require the individual's spouse to sign the loan along with the borrower. The funds loaned by Roger Jepsen to Friends of Roger Jepsen were assets under the joint dominion and common control of Roger and Dee Jepsen.

Mr. Henss included a copy of the Committee's repayment note to Roger Jepsen. On June 25, Mr. Henss submitted an additional statement that "the loan was obtained on the basis of known assets, familiar to the bank, under the joint dominion and common control of Mr. and Mrs. Jepsen."

These responses were not considered adequate and, on October 4, 1979, RAD referred the matter to the Office of General Counsel (OGC). On February 5, 1980, the Commission found reason to believe that Dee Jepsen had violated the 2 U.S.C. § 441a(a)(1)(A) prohibition against making excessive contributions to a candidate's authorized political committee. The Commission notified the respondent and Senator Jepsen of this finding and

enclosed a list of questions as to the ownership of the assets serving as a basis for the bank loan.

On March 19, the Office of General Counsel received a written response from Senator Jepsen stating that Mrs. Jepsen's participation in the transaction was negligible, and that the loan was to him alone based on his assets. (See Attachment) Senator Jepsen provided copies of loan-related documents, pursuant to the Commission's request, and used them to support his answers.

Senator Jepsen noted that the bank's ledger card and the note indicate the loan to be unsecured. He also stated that all of the assets totalling $190,500.50 listed in the loan application were acquired by him with his "own efforts and earnings," except an item of real estate designated "farm trust" of which his share is $40,000. He stated that the only property owned by his wife and him jointly was their home valued at $130,000 with a $30,000 mortgage still payable. He concluded this summary of his assets by stating that "those other personal assets, over which [he] had complete control, give ample coverage to the loan and justified the transaction by the bank in its ordinary course of business."

Senator Jepsen went on to discuss Mrs. Jepsen's lack of participation in the loan transaction by pointing to the fact that the list of assets was signed by him alone with no indication of a co-maker. He also pointed out that the bank's ledger card indicates the absence of a co-maker or endorser

and that the loan extension agreement was signed only by him. He stated that Mrs. Jepsen's signature on the note was "simply a formality requested by the bank." and not an indication that she was a co-maker or endorser. Senator Jepsen also indicated that the bank did not issue a check for the proceeds of the loan, but established a bank account in his name only and, at his direction, transferred the full amount he had borrowed to the Committee.

LEGAL ANALYSIS

2 U.S.C. § 441a(a)(1)(A) prohibits any person from making contributions aggregating in excess of $1,000 to an authorized committee of a candidate with respect to a federal election. 2 U.S.C. § 441a(f) prohibits a political committee from knowingly accepting such contributions. The term "contribution" includes loans. 2 U.S.C. § 431(8)(A)(i), formerly 2 U.S.C. § 431(e)(1). While there is no limit on the amount of personal funds a candidate may contribute to his own campaign, the term "personal funds," consistent with the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 52-54 (1976), is defined by the regulations. Assets of an immediate family member of a candidate are considered "personal funds" of the candidate only if they were "... assets to which at the time he ... became a candidate the candidate had legal and rightful title, or ... the right of benefical enjoyment, under applicable State law, and which the candidate had legal right of access to or control over ..." 11 C.F.R. § 110.10(b)(1), Advisory Opinions 76-26, 76-74.

In this matter, the $35,000 which the Committee listed as a loan from Roger Jepsen originated as a bank loan to Senator Jepsen. The Committee Treasurer's statements that the loan was "obtained on the basis of known assets... under the joint dominion and control of Mr. and Mrs. Jepsen" raised the possibility that assets of Mrs. Jepsen's exceeding $1,000 in value and not within the definition of "personal funds" of Senator Jepsen were used as security for the loan, in violation of 2 U.S.C. § 441a(a)(1)(A). However, the loan was unsecured as indicated by the bank's ledger card and the note.

Senator Jepsen has indicated that the bank gave this loan after obtaining complete information as to his assets and liabilities. The loan application submitted to the bank lists Senator Jepsen's net assets totalling $190,000. The only asset in which there is any evidence of an interest on Mrs. Jepsen's part is the Jepsen's home which was valued at $130,000 with a mortgage liability of $30,000. Thus, Senator Jepsen's assets apart from his wife's interest in the home substantially exceeded the amount of the loan.

Mrs. Jepsen's signature on the note raises the question as to whether or not she was a co-maker, guarantor, or endorser and, therefore, a contributor according to 11 C.F.R. § 100.7(a)(1)(i), formerly 11 C.F.R. § 100.4(a)(1)(i). The capacity that she has assumed on the note is ambiguous. The ambiguity may be interpreted to indicate she was an endorser. 1/ However, the line on the bank ledger

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1/ Iowa Code Annotated § 554.3402 states: "Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement."

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card asking for the signature of "Co-maker, Endorser, Description of Collateral or Security Pledged" is left blank. Furthermore, Mrs. Jepsen's signature does not appear on any other instruments. The loan application listing assets and liabilities has only Senator Jepsen's signature with the second signature left blank. The co-debtor signature line on the loan extension agreement is left blank. The account to which the funds were transferred was stated to be in the name of Roger Jepsen alone. Even if Mrs. Jepsen's signature technically made her a party to the note, her participation in the transaction was minimal. While it would seem that Mrs. Jepsen's signature appeared on the note because of her co-ownership of the house, the assets of Senator Jepsen alone were amply sufficient to cover re-payment of the loan and the bank chose not to deal in any further way with Mrs. Jepsen.

Therefore, the General Counsel recommends that the Commission take no further action and close the file in this matter.

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III. GENERAL COUNSEL'S RECOMMENDATION

1. Take no further action.
2. Close the file.
3. Send the attached letters.

23 May 1980
Date

Charles N. Steele
General Counsel

2-p.41 of 63

Attachments

Letter and Documents from Respondent
Letters to Respondents (2)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT E

Conciliation Agreement,
In re Passaic County Democratic Committee,
MUR No. 1047 (1982)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Passaic County Democratic Committee	)	MUR 1047
	)	

CONCILIATION AGREEMENT

The Federal Election Commission (hereinafter the "Commission") initiated this matter pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities and found reason to believe that the Passaic County Democratic Committee ("Respondent" or the "Committee") violated 2 U.S.C. §§ 433, 434, 441a(f), 441b(a) and 11 C.F.R. § 102.6 (presently § 102.5) and § 104.12 (formerly § 104.10 */).

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A) do hereby agree as follows:

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

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

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

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

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*/ Prior to the 1979 Amendments.

A. Respondent, Passaic County Democratic Committee (the "Committee") is a political committee pursuant to 2 U.S.C. § 431(4).

B. Failure to Register Timely

1. 2 U.S.C. § 433 requires committees which receive contributions or make expenditures in connection with federal elections exceeding $1,000.00 in a calendar year to register with the Commission 10 days after such receipts or expenditures.

2. The Committee initially registered with the Commission on July 10, 1978.

3. The Committee made expenditures for federal and non-federal primary election expenses aggregating $8,160.00 in June, 1978 from its Election 1 (18-3584-1) and Regular (10-1620-5) accounts.

4. The 1978 primary ballot included two federal offices as well as other non-Federal offices; accordingly, the expenditures apportioned for federal candidates exceeded $1,000.00.

5. The Committee should have registered ten days after making these expenditures.

6. The Committee filed a termination report on November 20, 1978.

7. The Committee re-registered with the Commission on August 20, 1980.

8. The Committee expended at least $13,150.00 on May 30 and 31, 1980 for primary election expenses from its Regular (10-1620-5) account.

9. The 1980 ballot included four federal offices as well as other non-federal offices; accordingly the expenditures apportioned for federal elections exceeded $1,000.00.

10. The Committee should have re-registered ten days after making these expenditures.

C. Failure to Report Receipts and Disbursements

1. 2 U.S.C. § 434 requires political committees to report its total receipts and disbursements.

2. The Committee made expenditures in connection with federal elections from two accounts in 1978, Regular (10-1620-5) and Election 1 (18-3584-1) accounts, and from two accounts in 1980, Regular (10-1620-5) and Election 2 (10-4434-5) accounts.

3. The Committee reported the activity of its Election 1 (18-3504-1) account and its Regular (10-1620-5) account from July 1, 1978 until November 20, 1978, at which time the Committee filed a termination report.

4. The Committee made expenditures in connection with federal elections in June 1978 which were not reported to the Commission.

5. The Committee made expenditures in connection with federal elections in the 1980 primary election

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from its Regular (10-1620-5) account in May 1980 which were not reported to the Commission.

6. The Committee's reports disclosed payments aggregating $694.77 for administrative costs related to federal election activities in 1980.

7. Administrative costs attributable to 1980 federal elections were in the amount of $7,964.41.

8. The Committee should have reported and accounted for the proper amount ($7,964.41) in its reports for 1980 federal election activities to the Commission.

D. Acceptance and Use of Contributions from Impermissible Sources

1. 2 U.S.C. § 441b(a) makes it unlawful for political committees to accept contributions from corporations or labor organizations in connection with federal elections.

2. In 1978, the Committee received $4,745.00 from corporations and $100.00 from labor organizations which were deposited in its Regular (10-1620-5) account and from which expenditures for federal elections were made.

3. In 1980, the Committee received $2,020.00 from corporations and $1,300.00 from labor organizations which were deposited in its Regular (10-1620-5) account and from which expenditures for federal elections were made.

4. 11 C.F.R. § 102.6 (presently § 102.5) requires political committees which finance activities in connection with both federal and non-federal elections to either establish a

separate federal campaign committee which shall register as a political committee or establish a single committee with a single account to make contributions to Federal and non-Federal candidates, but only if all contributions received are permissible under the Federal Election Campaign Act (the "Act").

5. The Committee did not establish its accounts pursuant to 11 C.F.R. § 102.6 (presently § 102.5), but rather established numerous accounts from which expenditures for both federal and non-federal election activities were made. These accounts contained funds not permissible under the Act.

6. 11 C.F.R. § 102.6 (presently § 102.5) also prohibits the transferring of monies from an account not specifically designated for federal elections to an account used to finance federal election activities.

7. The Committee transferred monies in 1978 and 1980 from its Regular (10-1620-5) account, which was not specifically designated for federal elections and which contained prohibited contributions, to its Election 1 (18-3584-1) and Election 2 (10-4434-5) accounts from which expenditures for federal elections were made. These transfers are as follows:

FROM	TO	AMOUNT	DATE OF TRANSFER
Regular	Election 1	$19,700.00	11/01/78
	Total:	$19,700.00	
Regular	Election 2	$ 4,000.00	09/10/80
		$ 8,830.00	10/27/80
		$ 2,000.00	10/30/80
		$ 1,900.00	11/12/80
	Total:	$16,730.00	

E. Failure to Disclose Cash on Hand

1. 2 U.S.C. § 434 and 11 C.F.R. § 104.12 require political committees to disclose the source of its cash on hand.

2. The Committee reported a balance of $2,692.00 as its cash on hand upon registering in 1978.

3. The Committee failed to adequately disclose the origin of this opening balance in its reports.

4. The Committee reported a balance of $1,619.51 upon its re-registration in 1980.

5. The Committee failed to adequately disclose the source of this opening balance in its reports.

F. Inclusion of Monies from Impermissible Sources within Cash on Hand

1. 11 C.F.R. § 104.12 (formerly § 104.10) makes it unlawful for political committees to include within its cash on hand any contributions from sources prohibited by 2 U.S.C. § 441b.

2. The Committee's cash on hand in 1978 and 1980 contained monies from prohibited sources.

G. Acceptance of Excessive Contributions

1. 2 U.S.C. § 441a(f) makes it unlawful for multicandidate political committees to knowingly accept contributions from individuals exceeding an aggregate of $5,000.00 in any calendar year. (See 2 U.S.C. § 441a(a)).

2. 11 C.F.R. § 100.7(a)(1)(i)(C) states that a loan is a contribution by each endorser or guarantor, and that each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement.

3. The Committee received a $12,000.00 loan endorsed by Mr. Robert Angele and his wife, Lucy Angele, in its Election 2 (10-4434-5) account on October 17, 1980.

4. The $12,000.00 loan constitutes a $6,000.00 contribution from each of the Angeles.

5. Each contribution exceeds the limitations set forth in 2 U.S.C. § 441a(a) by $1,000.00.

V. Respondent agrees that it violated:

1. 2 U.S.C. § 433 by failing to register timely in 1978 and in 1980.

2. 2 U.S.C. § 434 by failing to report its total receipts and disbursements in 1978 and 1980, including administrative costs in 1980.

3. 2 U.S.C. § 441b(a) by accepting contributions from corporations and labor organizations in connection with federal elections in 1978 and 1980.

4. 11 C.F.R. § 102.6 (presently § 102.5) by failing to establish committees in accordance with this provision, and by transferring funds from an account not designated for federal election activities and which contained prohibited funds to an account used to finance federal election activites.

5. 11 C.F.R. § 104.12 (formerly § 104.10) by failing to disclose the source of its cash on hand in 1978 and 1980; and by including within its cash on hand monies not permitted by the Act.

6. 2 U.S.C. § 441a(f) by receiving contributions in excess of limitations set forth by 2 U.S.C. § 441a(a).

VI. Respondent will pay a civil penalty to the treasurer of the United States in the amount of one thousand and five hundred dollars ($1,500.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

civil action for relief in the United States District Court for the District of Columbia.

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

X. It is agreed that respondent shall have no more than ninety (90) days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

DATE: Sept. 16, 1982

Charles N. Steele
General Counsel

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

DATE: Aug. 27, 1982

Passaic County Democratic Committee

BY: William J. Pascrell Jr.

ITS: Chairman

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT F

General Counsel's Report,
In re Passaic County Democratic Committee,
MUR No. 1047 (1982)

NOTE: Pages 5-8 were inadvertently not copied. The document in its entirety is located in the FEC library. The deleted pages are not relevant to this Reply.

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

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In the Matter of	)	
	)	MUR 1047
Passaic County Democratic Committee	)	
	)	

GENERAL COUNSEL'S REPORT

I. Background

On July 14, 1981, the Commission voted to audit the Passaic County Democratic Committee (the "Committee") pursuant to 2 U.S.C. § 437g. Prior to the audit, the Commission had found reason to believe that the Committee had violated certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, on February 8, 1980, the Commission had found reason to believe that the Committee violated 2 U.S.C. § 433, 11 C.F.R. § 102.6(b) 1/ and 2 U.S.C. § 441b(a) by transferring funds from accounts established for non-federal elections which contained corporate monies to its account designated for federal election activities. Additionally, on July 14, 1981, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434, 11 C.F.R. § 104.12 by failing to disclose the source of its cash on hand in 1978 and 1980; 2 U.S.C. § 441a(f) by receiving a contribution

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1/ This cite refers to the regulations in effect at the date that the activity in question took place, namely, the regulations prior to the January 1, 1981 revisions. This provision is presently 11 C.F.R. § 102.5(a).

in excess of limitations set forth by 2 U.S.C. § 441a(a); and 2 U.S.C. § 434 by failing to disclose receipts and expenditures for administrative costs in its 1980 reports.

The Commission and the Committee had been engaged in informal conciliation from November 13, 1980 to July 19, 1981, at which time the Commission suspended the conciliation proceedings until the audit results were available. The audit was completed on January 15, 1982. 2/ The Audit Division forwarded a report to this office on March 4, 1982.

This report will analyze the information obtained from the audit regarding the Committee's general financial activities. This report will also discuss information relating to previous reason to believe findings, and will recommend additional reason to believe findings.

II. Overview: the Committee's General Financial Activities

The most notable fact evidenced by the audit is that the Committee is primarily a state and local committee. The audit work papers show that the Committee's financial activities focused on non-federal party elections. In fact, the Committee never made a direct contribution to any federal candidate. The Committee did however pay for billboards and get-out-the-vote

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2/ The audit was initially scheduled for early November, however, due to problems of coordination with Committee personnel, the audit had to be rescheduled for December 7, 1981. Moreover, due to further problems of coordination with the Committee, the audit was temporarily suspended from December 14 through January 4, 1982.

activities which indirectly supported certain federal candidates whose names appeared on the billboards or ballots. The Committee was therefore required to allocate to federal elections a weighted portion of these expenditures.

The audit disclosed that the Committee had an aggregate of eight accounts 3/ during the audit period; however, expenditures for federal elections were only made from three of these accounts. 4/ Attached for the Commission's reference is a flow chart illustrating the relationship of these accounts (see Attachment 1).

The total amount expended for federal elections only constituted a small percentage of the Commitee's activities. The audit work papers show that from January, 1978 through December, 1981 (hereinafter referred to as the "audit period") 5/ an aggregate of $52,251.04 was attributable to federal election

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3/ The Committee had four "Election" accounts, one "Regular" account, and three "Office" accounts. The label "Election" does not necessary refer to an account established for federal elections. This is evident from the fact that certain "Election" accounts were very active in 1979 and 1981 when no expenditures were made for federal elections.

4/ These three accounts were not all active simultaneously. Also, all three accounts were with the same bank. The Committee drew from the Election 1 account in 1978; the Election 2 account in 1980; and the Regular account in 1978 and 1980. The numerics assigned to these accounts are by this office for reference purposes.

5/ All figures and comments relate to the audit period unless otherwise specified.

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activities, whereas the aggregate amount expended was $385,009.68. Thus, the amount of the expenditures attributable to federal elections comprise 13.6% 6/ of the Committee's total financial activity. Also, certain federal candidates reimbursed the Committee for expenditures made on their behalf. Specifically, the principal campaign committee of Congressman Robert A. Roe, repaid the Committee $10,780.00. Likewise, the Carter-Mondale Re-Election Committee, Inc. repaid the Committee $1,436.33. The balance of contributions received from federally registered committees was $2,127.00. 7/

The Committee received an aggregate of $405,010.00 in all eight of its accounts. Of this amount, $50,755.00 were verified as corporate contributions; 8/ $4,870.00 were contributions from labor organizations and local government groups; and $55,868.01 were contributions from unregistered committees. 9/ As noted,

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6/ Additionally, this percentage results after using an allocation formula (approved by the Commission in AO 1976-72) which applies proportionately more weight to federal candidates.

7/ These contributions are as follows: $1,300.00 and $700.00 from the Women's Division of the Passaic County Democratic Club on October 4, 1978 and October 23, 1979, respectively; and $127.00 from the New Jersey Democratic State Committee, Federal Election Account, on October 8, 1980.

8/ The Office of General Counsel sent to the New Jersey State Corporate Division a list of all contributing entities in the Committee's ledger which might have been incorporated. The "corporate contributions" referred to in this report are the contribuitons from those entities the Corporate Division has documented as incorporated.

9/ New Jersey election law permits the receipt and use of all of these contributions for its elections.

the Committee only received $14,370.33 from federally registered committees, of which $12,216.33 were reimbursed. Thus, the audit work papers demonstrate that the Committee's primary concern was non-federal elections. 10/

III. Previous Reason to Believe Findings

A. Use of Impermissible Funds in connection with Federal Elections

On February 8, 1980, the Commission found reason to believe that the Passaic County Democratic Committee violated 2 U.S.C. § 433, 11 C.F.R. § 102.6 and 2 U.S.C. § 441b by transferring monies from an account containing corporate contributions to an account from which expenditures for federal elections were made.

2 U.S.C. § 441b(a) prohibits political committees from accepting and using contributions from corporations and labor organizations in connection with federal elections. In order to ensure that political committees do not commingle these prohibited monies with funds permitted for use in federal elections -- especially in states which permit the use of corporate and labor contributions for state and local elections -

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10/ It should also be noted that had the Committee been knowledgeable of federal election laws and established separate federal and non-federal accounts in accordance with 11 C.F.R. § 102.6, the Committee lawfully could have used corporate and labor contributions to finance those expenditures allocated to state and local candidates in connection with its partisan and get-out-the-vote drives pursuant to AO 1978-10. These drives comprised a good portion of the Committee's activities.

about the origin of its $1,619.57 beginning balance, the Committee explained that this amount was the residual of its 1979 Election account which was transferred to the 1980 Election account. Inasmuch as the last deposit into its 1979 Election account was a $23,000.00 transfer from its Regular Account which contained corporate and labor monies, the 1980 cash on hand apparently contained funds prohibited by 2 U.S.C. § 441b. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 104.12 by including monies from corporations and labor organizations within its cash on hand in 1978 and 1980.

C. Receipt of Excessive Contribution

On July 14, 1981, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by receiving a contribution in excess of limitations set forth by 2 U.S.C. § 441a(a). 15/ The Commission based this finding on a report which disclosed a $12,000.00 loan from the Jefferson National Bank on October 17, 1980, which was endorsed by Robert Angele. Since the Committee's reports only disclosed one person as the endorser, it appeared that the entire amount of the loan may have been a contribution from Mr. Angele.

15/ 2 U.S.C. § 441a(a)(1)(C) prohibits individuals from contributing in excess of $5,000.00 per calendar year to state party committees. 2 U.S.C. § 441a(f) prohibits committees from receiving contributions in excess of the limitations set forth by 2 U.S.C. § 441a(a).

The audit disclosed that the loan was in fact endorsed by Mr. Robert Angele and his wife, Lucy Angele. 16/ The loan was deposited in the Committee's Election 2 account.

11 C.F.R. § 100.7(a)(1)(i)(C) states that a loan is a contribution by each endorser or guarantor, and that each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable. 17/ Accordingly, this loan constitutes a $6,000.00 contribution from each of the Angeles. Each of these contributions exceeds lawful contribution limitations by $1,000.00. 18/ The audit therefore confirms this reason to believe finding, however, the audit also reveals that the Committee accepted not one, but rather two excessive contributions.

16/ It remains unclear to whom the loan check was made payable, however, bank records show that the loan and interest ($12,312.00) were repaid by a February 10, 1981 check drawn on the Committee's Election 3 account.

17/ Moreover, (former) 11 C.F.R. § 102.6 sets forth that all contributions deposited into an account from which both federal and non-federal expenditures are made are subject to the contribution limitations of the act regardless of whether such contributions are for use in connection with federal or non-federal elections. Thus, the loan, regardless of whether the Angeles intended it to finance non-federal elections, is subject to the Act's contribution limitations.

18/ The audit report notes that the Audit Division's review of receipts records for the period audited revealed no other contributions from either Robert or Lucy Angele.

3704065715

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT G

Conciliation Agreement,
In re Citizens Committee for Ernest F. Hollings,
MUR No. 1768 (1985)

37044046717

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Citizens Committee For Ernest F. Hollings by its treasurer, Rene Debacker	)	MUR 1768

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Citizens Committee for Ernest F. Hollings by its treasurer, Rene Debacker ("Respondent"), violated 2 U.S.C. § 441a(a) by making an excessive contribution and 2 U.S.C. § 434(b) for failing to report the contribution.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

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

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

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

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

1. Respondent, Citizens Committee for Ernest F. Hollings, is the authorized political committee of Senator Ernest F. Hollings.

2. Respondent, Rene Debacker, is the treasurer of the Citizens Committee for Ernest F. Hollings.

3. Respondent Citizens Committee For Ernest F. Hollings by its treasurer Rene Debacker guaranteed a $35,000 bank loan to Hollings For President, Inc.

4. The loan was repaid in 31 days.

5. This guarantee of a loan was an excessive contribution (hereinafter "excessive contribution").

6. Respondent Citizens Committee for Ernest F. Hollings by its treasurer Rene Debacker violated 2 U.S.C. §441a(a)(1) by making that excessive contribution in the amount of $34,000 to Hollings For President, Inc.

7. Although Hollings For President, Inc., by its treasurer Rene Debacker disclosed the bank loan in a timely manner, the Respondent Citizens Committee by its treasurer Rene Debacker violated 2 U.S.C. § 434(b) by failing to report that excessive contribution to Hollings for President, Inc.

V. Respondent Citizens Committee for Ernest F. Hollings will pay a civil penalty to the Treasurer of the United States in the amount of Two Thousand Dollars ($2,000), pursuant to 2 U.S.C. §437g(a)(4)(A).

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

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

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

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

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

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

March 25, 1985
Date

FOR THE RESPONDENT:

For Respondent Citizens Committee
for Ernest F. Hollings
By Rene Debacker, Treasurer

Feb 26, 1985

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RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

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M2051

Dear Mr. McGarry,

I am responding to your letter of July 18, 1985. Which by the way, I was not in personal receipt of until July 29, 1985 upon my return from a week stay with my family, at my wife's parents home in Ord, Nebraska. Your letter along with all other mail, newspapers, etc. was held by my neighbor Rada Moore for our return. Upon opening your letter, my first act was to contact Mr. Walter Calinger, the Candidate, who I have not yet spoken to about this issue.

On August 8th, I called Jonathan Levin, the attorney from your office assigned to this matter for consultation and advice on how I might proceed. He advised me that my response, whatever it might be, should be posted in today's mail as it shall be!

Let me, at this time, take this opportunity to say that I do not consider myself to be either unsophisticated or naive in the field of politics and campaigns. As a former State Senator and just recently, after a short tenure as State Chairman of the Nebraska Democratic Party, a job which I took after serving as the campaign manager for Walter Calinger losing primary bid, I have had to learn more about the F.E.C. than one normally cares to.

I agreed to sign on to the Calinger Campaign 5 weeks prior to the primary after a mid-campaign readjustment. At that time I asked for and received a short, but practical course on the F.E.C. rules which must be complied with. Needless to say this situation never came-up. Nor did it come up some months later while being briefed by my staff or the attorneys advising the State Democratic Party.

To the matter at hand, shortly after taking over as campaign manager I was faced with what is not, I am told, an uncommon situation. A shortage of funds from which to pay the bills and staff. After discussing the issue with the Candiate, he suggested I make arrangements for a Campaign loan.

In compliance with the request and because of the immediacy of our need, I contacted the treasurer of the campaign who said that it would take some time to collect the Co-Signers necessary for the $20,000 note that the campaign would need to finance the rest of the campaign as planned.

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Attachment 3 - p.1 of 2

I informed him at the time I needed $5,000.00 by the next day to meet the payroll. I was told at that time that Walt could have to negotiate such a loan on behalf of the Campaign himself.

At this time, I must add for clarification that upon taking over the campaign, I rewrote the campaign plan, hurriedly cancelled numerous commitments previously made and renegotiated salaries and lay off a staff member who was leaving town and had to be paid. I did all this with the candidate's reluctant approval and with a personal guarantee that salaries, except for mine, would be paid on time!

The loan was arranged through the Community Bank of Nebraska and with the understanding that the fundraising activities then planned for would repay the note! It was also understood that this note was to be the first note to be repaid.

I signed some forms at the request of the bank. I never intended to personally guarantee that note and as an employee of the Campaign, I intended only to see that the debt was repayed by the Campaign from expected incomes. My understanding at the time that this was Calinger's personal debt taken out in behalf of his campaign to meet personal commitments to myself and the staff to pay salaries on time. I signed as the Campaign Manager and not as a rich man. I am not a rich man, in fact, I reluctantly had to quit politics recently because my wife stopped working last year refusing to continue to support my political habit.

I respectively request preprobable cause conciliation in this matter, in fact, I would prefer that you drop the whole issue recognizing that I was just a cut rate employee and not a high roller.

This statement represents my best efforts to recall the circumstances and events leading up to taking out the loan. The bank's documents may or may not bear out my recollections, you can be sure I will be contacting them.

Sincerely,

Dave Newell

Dave Newell

87040545722

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

John W. Herdzina, Treasurer
Calinger for Congress
1407 South 13th Street
Omaha, Nebraska 68108

RE: MUR 2051
Calinger for Congress
John W. Herdzina, as treasurer

Dear Mr. Herdzina:

On June 26, 1985, the Commission found reason to believe that Calinger for Congress and you, as treasurer, violated 2 U.S.C. § 441(a)(a)(1)(A). At your request, the Commission determined on , 1985, to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved 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. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible. If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Proposal

Attachment 4 - p. 1 of 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

RE: MUR 2051
John Hughes

Dear Mr. Warin:

On June 26, 1985, the Commission found reason to believe that John Hughes violated 2 U.S.C. § 441(a)(a)(1)(A). At your request, the Commission determined on , 1985, to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please have him sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible. If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Proposal

Attachment 5 - p. 1 of 5

87040546724

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR 2051
David Newell

Dear Mr. Newell:

On , 1985, the Commission found reason to believe that you violated 2 U.S.C. § 441(a)(a)(1)(A). At your request, the Commission determined on , 1985, to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved 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. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible. If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Proposal

Attachment 6 - p. 1 of 5

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WALTER M. CALINGER

ATTORNEY AT LAW

1407 SOUTH 13TH STREET

OMAHA, NEBRASKA 68108

Mr. Johnathon Levin
Attorney at Law
Office of the General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

DATE August 15, 1985

SUBJECT MUR2051
Calinger for Congress,
John W. Herdzina, Treasurer

Enclosed please find 3 promissory notes dated December 21, 1984.

Sincerely,

Walter Calinger

Walter M. Calinger

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Whitmore Group Inc 1982

FOLD AT (—) TO FIT DRAWING BOARD ENVELOPE # E

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PROMISSORY NOTE
(Note No. 018310)

$10,000.00

Omaha, Nebraska

Dated: December 21, 1984

FOR VALUE RECEIVED, the undersigned promises to pay to Walter Calinger, the principal sum of Ten Thousand Dollars ($10,000.00) with interest from the date hereof at the rate of 15.25% per annum, payable on demand.

All payments herein are payable at the office of Walter Calinger, 1407 South 13th Street, OMaha, Nebraska 68108 or at such other place as the holder hereof may designate in writing.

CALINGER FOR CONGRESS COMMITTEE

By: _____
John W. Herdzina, Treasurer

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PROMISSORY NOTE
(Note No. 018230)

$5,000.00 Omaha, Nebraska

Dated: December 21, 1984

FOR VALUE RECEIVED, the undersigned promises to pay to Walter Calinger the principal sum of Five Thousand Dollars ($5,000.00) with interest from the date hereof at the rate of 14.75% per annum, payable on demand.

All payments herein are payable at the office of Walter Calinger, 1407 South 13th Street, Omaha, Nebraska 68108 or at such other place as the holder hereof may designate in writing.

CALINGER FOR CONGRESS COMMITTEE

BY: _____
John W. Herdzina, Treasurer

3 7 0 4 0 5 4 3 7 2 8

PROMISSORY NOTE
(Note No. 018300)

$2,000.00 Omaha, Nebraska

Dated: December 21, 1984

FOR VALUE RECEIVED, the undersigned promises to pay to Walter Calinger, the principal sum of Two Thousand Dollars ($2,000.00) with interest from the date hereof at the rate of 14.75% per annum, payable on demand.

All payments herein are payable at the office of Walter Calinger, 1407 South 13th Street, Omaha, Nebraska 68108 or at such other place as the holder hereof may designate in writing.

CALINGER FOR CONGRESS COMMITTEE

BY: _____
John W. Herdzina, Treasurer

GCC#8297

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

August 13, 1985

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

Re: MUR 2051, John J. Hughes

Dear Jon:

I would like to take a moment to bring you up to date on where we stand in this matter. This afternoon, we have filed our Reply of Respondent which sets forth Mr. Hughes' position on the factual and legal issues of the case as provided for by 11 C.F.R. § 111.16(c).

It is also our intention at this time to formally request pre-probable cause conciliation pursuant to 11 C.F.R. § 111.18(d). In so doing, I am under the belief that this request will not be deemed by the General Counsel as in any prejudicing the conclusions and positions taken by Mr. Hughes in his Reply of Respondent.

Thank you for your time. I anxiously look forward to quickly resolving this matter.

Sincerely yours,

F. Joseph Warin
Attorney for Respondent

9704047730

GCC# 8296

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

August 13, 1985

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR No. 2051

Dear Jon:

Enclosed please find our response to the allegation against John Hughes.

I look forward to resolving this dispute.

Sincerely,

F. Joseph Warin

jjb

Enclosure

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

REPLY OF RESPONDENT

INTRODUCTION

On June 26, 1985, the Federal Election Commission determined that there was reason to believe that John Hughes had violated § 441a(a)(1)(A) of the Federal Election Campaign Act of 1971 ("1971") Act which limits campaign contributions to any candidate to a $1,000 maximum per donor. On July 18, 1985, Mr. Hughes was notified of the Commission's determination. As provided for by § 437g(3) of the 1971 Act, Mr Hughes respectfully submits this Reply in support of his contention that as a matter of law and equity this investigation should be dismissed without any findings of probable cause. This Reply also replies to the General Counsel's Factual and Legal Analysis.

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I. STATEMENT OF FACTS

This dispute arises in connection with the campaign of Walter M. Calinger. In May, 1984, Mr. Calinger ran for a seat in the United States House of Representatives from the Second Congressional District of Nebraska, a district which encompasses principally the greater metropolitan Omaha area. Mr. Calinger was defeated in his bid for the Democratic nomination by Thomas Cavanaugh who was himself later defeated in the general election by Republican Harold Daub.

Late in the primary, Mr. Calinger contacted respondent John Hughes, an Omaha businessman, to elicit his financial support. Although Mr. Hughes had never run for political office, directed a political campaign or otherwise taken a controlling role in the political process, his position in the business community had made him particularly attractive as a potential contributor. On May 2,1984, Mr. Calinger's efforts of persuasion were successful and he received from Mr. Hughes a contribution of $1,000. This was the only choate, intentional contribution Mr. Hughes made to the Calinger campaign. This May 2, 1984 contribution did not, therefore, constitute nor does the Commission now allege that it constitutes a violation of the federal election laws.

A few days later as the campaign drew to a close, the Calinger Committee determined that it needed additional broadcast and print media exposure. To finance this eleventh hour expense, the candidate made arrangements to take out several personal loans from The Community Bank, located in Omaha, Nebraska. He telephoned Mr. Hughes, explained this emergency need, and requested that Mr. Hughes co-sign a loan of $10,000 from the bank. During this conversation, Mr. Calinger emphasized that several other contributors had likewise been asked to co-sign the loan. Consequently and completely unaware that he was being asked by a respected city councilman, now-candidate for the Congress of the United States, to violate the federal election laws, Mr. Hughes agreed to co-sign.*/ Soon thereafter, on May 10, 1985, Mr. Hughes received the loan document which he signed and returned. It contained no request for credit references, no request for a salary declaration, and no request for a declaration of personal net worth. It did not inquire whether Mr. Hughes had any property to set as collateral and it did not request that he declare any. It did not request personal or character references. In its appearance, in its treatment by The Community Bank and in its matter-of-fact

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*/ It is evident from the record that Mr. Callinger did not have knowledge of a violation or an intent to violate the law.

description by the candidate, the loan document which Mr. Hughes signed appeared to him as a mere cosmetic formality, certainly nothing to which his capable and perceptive business savvy would alert him as potentially dangerous.

The Calinger for Congress Committee Treasurer, John Herdzina, dutifully reported in the Committee's July Quarterly Report the circumstances and financial value of this loan and three others for which Mr. Calinger had arranged co-signators. Subsequently, on October 16, 1984, the Reports Analysts Division notified the Treasurer that a problem had been discovered in the Committee's Schedule C filing which had clearly and overtly listed the loans. The Commission observed that the Calinger Committee's Schedule C appeared to exceed the lawful contribution ceiling by naming only two endorsers of the $10,000 loan. The Commission explained that the $1,000 per donor limit of 2 U.S.C. § 441a(a)(1)(A) extended to the guaranteeing or endorsing of loans. The letter advised that if this $1,000 limit was exceeded by any of the Calinger contributors, the Committee should refund to the donors the amount accepted in excess of $1,000. The treasurer heeded the Commission's advice and informed The Community Bank of the Commission's characterization of the loans as impermissible contributions. After apparently reaching an agreement with

the treasurer to eliminate Mr. Hughes' name, the bank promptly retired the guarantee of Mr. Hughes and confirmed that the loan was "now in the name of Walter M. Calinger alone and [is] unsecured and not guaranteed." Exhibit A, Letter of December 21, 1984 from The Community Bank to Walter Calinger. See Exhibit B, Redrafted Loan Document. This new circumstance was communicated to the Commission and an amended July Quarterly report was filed naming Mr. Calinger as the sole endorser of the $10,000 loan. It was only at this point, seven months after the campaign loss, that the Committee informed Mr. Hughes that "some problem" had developed with the co-signing and that therefore the loan had been redrawn retiring Mr. Hughes' endorsement.

Several months passed before the respondent heard anything about this matter. The next communication Mr. Hughes had concerning the loan was the Commission's July 18, 1985 notice announcing that it had determined that there was reason to believe that he had violated the federal elections laws.

II. ARGUMENT

A. JOHN HUGHES' CO-SIGNATURE CAN NOT CONSTITUTE A VIOLATION OF 2 U.S.C. § 441a(a)(1)(A) BECAUSE THERE HAS BEEN NO LOAN DEFAULT AND HE NOW HAS NO LIABILITY ON THE NOTE

The Federal Election Campaign Act of 1971 defines the term contribution as "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." 2 U.S.C. § 441a(a)(1)(A) (1985).

Pursuant to this definition, Mr. Hughes has, to date, donated $1,000 to the Calinger for Congress Committee, a legally-acceptable contribution under the election laws. He has not given the Committee any further monies. He has provided the Committee with no illegal subscription, given no personal loan, money advance or deposit, or donated anything else of value.

Nevertheless, the Commission has chosen to characterize Mr. Hughes' co-signature on the $10,000 loan as a personal contribution to the Calinger Committee of half that amount, $5,000, an amount exceeding the $1,000 per donor ceiling of § 441a(a)(a)(A). The Commission's characterization unjustly prejudices Mr. Hughes' sterling reputation in Omaha and

blemishes his integrity within his professional community. It is definitionally improper and unwarranted in light of the circumstances and the facts.

The Commission's characterization of Mr. Hughes' involvement with the loan cannot be reconciled with either the statutory or regulatory provisions governing the definition of contribution. The General Counsel asserts a violation of the $1,000 ceiling by citing to 2 U.S.C. § 431(8)(B)(vii)(I) which provides that a bank loan "shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." Exhibit C, General Counsel's Factual and Legal Analysis, MUR No. 2051, p. 2 (July 18, 1985). Thus, the General Counsel concludes that Mr. Hughes served as the sole co-maker of the $10,000 loan, had therefore contributed half that amount to the Calinger campaign, and consequently had exceeded the $1,000 per donor ceiling. Id. at p. 3.

The statute on which the Commission relies, however, calculates an endorser's contribution not by the amount of the loan, but rather by the amount of "the unpaid balance." 2 U.S.C. § 431(8)(B)(vii)(I) (1985). The significance of this statutory distinction must not be lost on the Commission. Unlike the characterization offered by the

General Counsel which determined Mr. Hughes' contribution as a proportion of the amount of the loan, the proper characterization of Mr. Hughes' contribution as calculated under the statutory provision is determined as a proportion of the amount of the loan's unpaid balance. The federal elections regulations fully support this interpretation. Title II of the Code of Federal Regulations provides that a loan is only a contribution "to the extent that it remains unpaid." 11 C.F.R. § 100.7(a)(1)(i)(B) (1985) (emphasis added). If, conversely, the loan is repaid, it "is no longer a contribution." Id. Furthermore, "[a]ny reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor... ." 11 C.F.R. § 100.7(a)(1)(i)(C) (1985).

Under such a calculation scheme, Mr. Hughes' "contribution" through his involvement with this $10,000 loan would decrease as his liability decreases. Thus, assuming but not conceding that Mr. Hughes' co-signature constituted an actual guarantee of the $10,000 loan, his personal liability would be $10,000 on default of the loan. As the loan is repaid, Mr. Hughes' personal liability decreases and, in direct proportion to this liability, his imputed contribution decreases as well. According to the federal regulation, if the loan is completely repaid, thus removing

all personal liability to the guarantor, the Commission would find that there was no longer any attributable contribution amount from the Hughes' loan.

This reasoning is indistinguishable from the facts of this present loan. When Mr. Hughes' co-signature was removed from the $10,000 loan, his personal liability was entirely and thoroughly extinguished as well. For the purposes of Mr. Hughes' position, when The Community Bank retired the original loan document and redrafted it without his name, the loan for which he was liable had been effectively "repaid". There is, thus, no contribution within the meaning of 2 U.S.C. § 431(8)(B) and no violation of the federal election laws under 2 U.S.C. § 441a(a)(1)(A).

A second definitional consideration also mitigates against a finding of violation. As defined in the statute, "contribution" involves the donation of "anything of value" to a political candidate. 2 U.S.C. § 437(8)(A)(i) (1985). Such a definition is both cogent and comprehensible. Under the federal election laws, things given candidates which have no value will not be accountable to either the donor or the recipient as a contribution.

The Hughes co-signature is precisely such a valueless addition. The evidence demonstrates that none of the parties accorded any value whatsoever to the co-signature. Certainly

the bank can not be said to have valued the co-signature for a surety purpose. It requested no confirming information that Mr. Hughes was adequately capitalized to insure the loan. No debt references, salary statements or banking balances were ever demanded. The bank merely sent Mr. Hughes the document and filed it when it was returned. Upon being notified by the Calinger Committee of a potential FEC problem, the bank showed little concern or hesitation in retiring the original note and drafting it anew without the second guarantee it had had before. In sum, The Community Bank treated the Hughes co-signature for what it was: a meaningless addition to an otherwise completely secure debt.

Neither of the co-signers held the document in any esteem. Mr. Calinger explained it over the telephone to Mr. Hughes as though the co-signing was an incidental formality and, considering the treatment of the document by the bank, Mr. Hughes could have no reason to doubt this characterization. Given this perception of the loan by all involved parties and the almost matter-of-fact removal of the Hughes name from the document by the bank, the Commission has every reason to find that the co-signature did not satisfy the "anything of value" requisite of § 431(8)(A)(i).

B. JOHN HUGHES IS A LAW-ABIDING, WELL-MEANING CITIZEN OF OMAHA. IF ANY PROVISION OF THE FEDERAL ELECTION LAWS HAS BEEN INFRINGED, JOHN HUGHES IS PROPERLY CHARACTERIZED AS NOTHING MORE THAN AN UNWITTING VICTIM

John Hughes is neither a politician nor a political activist. He is a respected and accomplished midwestern businessman. His interest in the political spectrum is probably identical to that of his Omaha friends and neighbors. His political profile is low, perhaps only existent at all because his financial successes have made him a prime target for prospective candidates.

To John Hughes, The Calinger campaign was no different. Mr. Hughes played no prominent role in the campaign. He neither brainstormed with the candidate on any regular basis, nor engineered campaign strategy. Aside from his contribution, Mr. Hughes' involvement with the Calinger for Congress effort was modest and obscure.

In late April and early May of 1984, Mr. Hughes was approached by the candidate who came seeking a contribution, which he received. Originally impressed by Mr. Calinger and his work on the city council, Mr. Hughes was sympathetic to the candidate's urgent plea for last-minute help during the final week of the Calinger campaign. Mr. Hughes had no

reason to question the candidate's motives. The campaign was a lively and intriguing one. Mr. Calinger's opponent, Thomas Cavanaugh, was the younger brother of John Cavanaugh, the congressional district's popular representative from 1977 to 1981. Thomas was unable, however, to capitalize on his older brother's popularity because family disputes had kept John from endorsing his brother early in the campaign. Mr. Calinger, on the other hand, was twelve years older than Cavanaugh and far and away the more experienced politician, campaigning from his post on the Omaha city council. The candidate's anxious appeal to Mr. Hughes at this point in a very hopeful campaign appeared completely harmless. Seen in the broader picture, the candidate's request was for an apparently meaningless co-signature on a note signed by a respected and widely-known local public figure issued from a bank which seemed completely uninterested in establishing or confirming the co-signer's credit worthiness.

Mr. Hughes' unwitting involvement with the loan is underscored by the circumstances surrounding the retirement of the endorsement. When the Calinger Committee Treasurer learned of the Commission's characterization of Mr. Hughes' co-signature, he corrected the concern and purged the guarantee--all without Mr. Hughes' knowledge or consent. When he was informed that there may have been a problem with

the guarantee, that the loan had been redrafted without his signature, and that his endorsement and liability had been removed, Mr. Hughes could do little more than sigh. The routine retirement of the co-signature reinforced its meaninglessness.

Mr. Hughes had no intent to violate the federal election laws. He was unaware that the loan he had signed had any significance whatsoever. Financially, he was undisputably correct. He has never been the subject of a Commission review or investigation and, had he even been informed of the Commission's concerns, he would undoubtedly had done what the Calinger Committee treasurer did for him: correct the problem. In fact, but for the good faith reporting of Mr. Hughes' co-signature by the Treasurer, the Commission might not have even discovered the loan at all. This investigation seems to leave one with the impression that even when one complies with the election regulations scrupulously, the Commission will not refrain from requesting punishment. He has done nothing to conceal the facts from the Commission. He has not, nor does the General Counsel contend that he has, deceived the Commission or misled it in any way. To the contrary, he has cooperated with the Commission to the best of his abilities and stands ready to continue to do so. If this investigation is a search for a culpable actor, the

Commission would do well to shift its attention to the campaign committee and away from Mr. Hughes who was an unwitting participant. Mr. Hughes was acting appropriately on the information provided him. His assistance was being solicited by a public figure in one of the midwest's largest cities. He was not informed by those charged to know that the co-signing of a note under the circumstances described above would constitute an unlawful contribution in violation of federal law. He was inaccurately told that a variety of other guarantors would join him on the note, that his was not to be the only endorsement. He was kept completely unaware of the developing controversy with the Commission and he was not consulted prior to the destruction of his guarantee. Considering the candidate's prestige in the community and the candidate's staff's expertise in the elections arena, Mr. Hughes understandably felt confident in relying on the statements he received.

It would appear that the culpable party here is the knowing party. Information was clearly either intentionally or negligently misrepresented to Mr. Hughes by those individuals privy to the full story. He was persuaded into this dilemma by those legally forbidden to solicit more than $1,000 from each contributor. Parenthetically, the reports and records are replete with information that neither the

Committee nor the candidate knew that the co-signature arguably constituted an election violation. Those who convinced Mr Hughes to co-sign this loan were responsible to know the technical provisions and subprovisions of statutes and regulations that take nearly a full line of a printed page to cite. It would be tragically unfair and improper for the Commission's search for the blameworthy to end here at the door of the unwitting and the misinformed. We urge the Commission, therefore, to abandon this investigation.

C. FINDING JOHN HUGHES IN VIOLATION OF THE ELECTION LAWS CAN NOT BE RECONCILED WITH THE COMMISSION'S HISTORICAL TREATMENT OF SIMILAR CIRCUMSTANCES

The Commission has apparently only thrice before confronted possible violations of 2 U.S.C. § 441a(a)(1)(A) as defined by 2 U.S.C. § 431(8)(B)(vii)(I) or 11 C.F.R. § 100.7(a)(1)(i)(C). See In re Citizens Comm. for Ernest F. Hollings, MUR No. 1768 (1985); In re Passaic County Democratic Comm., MUR No. 1047 (1982); In re Friends of Roger Jepsen, MUR No. 1042 (1980). The Commission's treatment of the respondents in these investigations and the ensuing resolution of these matters support Mr. Hughes' petition that this current investigation be closed and his name be cleared.

In the earliest matter, Jepsen, the Commission investigated the receipt by the Friends of Roger Jepsen of a $35,000 loan signed by the senatorial candidate Jepsen and co-signed by his wife. The General Counsel recommended, and the Commission subsequently agreed, that Mrs. Jepsen's co-signature violated the prohibition of § 441a(a)(1)(A) against the making of excessive contributions. Exhibit D, General Counsel's Report, In re Friends of Roger Jepsen, MUR 1042, p. 2 (1980). During the ensuing investigation, the Commission learned that Mrs. Jepsen's signature on the loan was "simply a formality requested by the bank". Id. at 4. The General Counsel thus subsequently revised its recommendation to urge that no further action be taken, concluding that "[e]ven if Mrs. Jepsen's signature technically made her a party to the note, her participation in the transaction was minimal." Id. at 6 (emphasis added).

The circumstances in Jepsen mirror those surrounding the Hughes loan. Mr. Hughes' signature can not be seriously viewed as anything more than "simply a formally requested by the bank." The facts clearly demonstrate that the bank did not take the co-signature seriously or give it any greater weight than a "formality" status. Moreover, even if the Commission determines that the co-signing technically made Mr. Hughes a party to the note, his participation in the

transaction was decidedly minimal. In fact, the circumstances of this loan even further buttress the Jepsen logic. In Jepsen, the offending signature was not removed. In this case, as soon as the parties discovered that the signature concerned the Commission, they had the bank retire it. In this manner, the parties evidenced a measure of good will and cooperation which only underscores the unwitting and unintentional nature of the technical violation.

In the Passaic County matter, the Commission fined the County Democratic Committee $1,500 for violating 2 U.S.C. § 441a(f) by accepting excessive campaign contributions. Exhibit E, Conciliation Agreement, In re Passaic County Democratic Comm., MUR 1047, p.8 (1982). The Commission determined that Mr. Robert Angele had contributed a $12,000 loan, which was endorsed by Mrs. Angele, to the Democratic Committee. Exhibit F, General Counsel's Report, In re Passaic County Democratic Comm., MUR 1047, p.9 (1982). The General Counsel concluded that "this loan constitutes a $6,000.00 contribution from each of the Angeles" and, more conclusively that each of the contributions "exceeds lawful contribution limitations." Id. at 10.

On the facts, the Angeles are far more culpable than John Hughes. They were not pressured into making their loan by a telephoning candidate. In fact, they made the loan to

an impersonal political committee. Their loan was not co-signed by the candidate himself as was the case with the Hughes loan. They were not told that others would be co-signing the loan nor did the bank treat their loan in the casual manner that The Community Bank did here. Presumably, the Angeles had to answer at least a few financial inquiries into their credit worthiness. Mr. Hughes, conversely, had to answer none. In both form and substance, the Angeles did more intentionally and deliberately to violate the election laws than Mr. Hughes could ever be imputed to have done. Yet it appears from an investigation of the FEC records that neither the Commission nor the General Counsel ever investigated the Angeles or made any other attempt to hold them accountable for their election law violation. It would be inapposite for this Commission to excuse the acts of those more blameworthy than John Hughes and then prosecute Mr. Hughes for dramatically less intentional actions. Such a turnabout can not be comprehensibly reconciled with the integrity of the Federal Election Commission or the dictates of simple fairness.

Finally, in the Hollings matter, the treasurer of the candidate's senatorial election committee was found in violation of § 441a(a)(1) for endorsing a loan which constituted an excessive contribution to the same candidate's

presidential election committee. Exhibit G, Conciliation Agreement, In re Citizens Comm. for Ernest F. Hollings, MUR 1768, p.2 (1985). Although the Commission properly and fairly fined the violators for this offense, the facts of Hollings are readily distinguishable. First, there was a strikingly significant danger of election abuse in this loan guarantee arrangement. The guarantor of the loan was the candidate's own senatorial election committee and the assets used for collateral were the donations of those who had supported Mr. Hollings for Senator. Clearly this is a certain abuse of the senate committee's duty to use the contributions it received for the purposes for which they were intended. It takes no great leap of faith to imagine that some of the contributors to Mr. Hollings' senatorial campaign would not have had any desire to support his race for the presidency. One would presume that contributors donate money to a campaign to get an officeholder who will champion their causes--at home. The distance which necessarily develops between a president and his previous local constituency certainly would defeat this goal. The loan also smacks of abuse because not only was the candidate which each committee supported the same, but the treasurer of each was as well.

Second, the involved party, the committee treasurer, was an individual who had greater access to and far more familiarity with the provisions of the various election statutes and regulations. When a committee treasurer, charged to know each of these rules intimately, violates the election laws there is undeniable culpability.

Third, the treasurer's endorsement was done intentionally and with deliberation. Unlike Mr. Hughes, the Hollings violation can not be characterized as unwitting.

Fourth, the size of the contribution attributed to the Hollings loan dwarfs the Hughes loan. Section 100.7(a)(1)(i)(c) of Title 11 of the Code of Federal Regulations provides that the "loan shall be considered a loan [and thus a contribution] by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." The loan in Hollings was for $35,000 and only the Citizens Committee for Ernest F. Hollings endorsed it. Thus, the size of the contribution is $35,000 divided by the number of endorsers (1) for a total "contribution" of $35,000. Mr. Hughes, by contrast, was a co-signer of a $10,000 which calculates to a "contribution" of $5,000. Thus, the culpability of Mr. Hughes is one-seventh that of the Citizens Committee in the Hollings case.

From every perspective, the Commission's prior treatment of 2 U.S.C. § 441a(a)(1)(A) as defined by 2 U.S.C. § 431(8)(B)(vii)(I) and 11 C.F.R. § 100.7(a)(1)(i)(C) supports this petition for a cessation of this inquiry. The unwitting and unintentional consequences of Mr. Hughes' actions do not need disciplining. He intended no wrong, his one misstep has been entirely rectified, and the Commission can rest assured that this error will never be repeated again.

D. <u>IF ANY VIOLATION OF THE ELECTION LAWS HAS OCCURRED, IT HAS NOW BEEN CORRECTED. THIS PENDING INVESTIGATION INTO JOHN HUGHES' INVOLVEMENT, THEREFORE, IS UNNECESSARY AND LEGALLY MOOT</u>

As has been previously established, the Commission has voiced no concern regarding Mr. Hughes' initial $1,000 contribution to the Calinger for Congress Committee. There are no irregularities concerning this donation and the $1,000 amount is entirely lawful pursuant to 2 U.S.C. § 441a(a)(a)(A).

The Commission's sole concern regards Mr. Hughes' co-signature. If the Commission determine, contrary to the terms of the elections statutes and regulations and contrary to the dictates of fairness and equity, that the co-signature

constituted a violation of § 441a(a)(1)(A), the error now has been remedied. Upon discovering the technical concern of the Commission, the Calinger Committee promptly corrected the problem. Mr. Hughes' guarantee has been completely retired and his liability on the banknote has been unequivocally removed. He now stands as he has always stood regarding the Calinger campaign: he is the civic-minded contributor of $1,000 to the political race of a local Omaha public official. There is nothing more. Having rectified this potential violation, the Calinger Committee made further review of Mr. Hughes' involvement unnecessary and legally moot.

CONCLUSION

For the reasons expressed above, it is respectfully requested that the members of the Federal Election Commission vote to dismiss this investigation by finding that there is no probable cause to believe that Mr. John J. Hughes has committed any violation of the Federal Election Campaign Act of 1971 or of any provision of Title 2 of the United States Code or of Title 11 of the Code of Federal Regulations.

Dated: August 13, 1985

Respectfully submitted,

KUTAK ROCK & CAMPBELL
Attorneys for Respondent
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 828-2400

F. Joseph Warin

F. Joseph Warin, Esquire

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CERTIFICATE OF FILING

The undersigned hereby certifies that, pursuant to 11 C.F.R. § 111.16(c) (1985), ten (10) copies of this Reply of Respondent have been filed with the Commission Secretary and three (3) copies have been filed with the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, on this 13th day of August, 1985.

F. Joseph Spaeth

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT A

Letter of December 21, 1984 from
The Community Bank to Walter Caliger

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THE COMMUNITY BANK

December 21, 1984

Mr. Walter M. Calinger
1450 South 11 Street
Omaha, NE 68108

RE: Commercial Loan - Walt Calinger for Congress

Dear Mr. Calinger:

The three loans totaling $17,000 guaranteed by John Hughes, David Newell, and Larry Myers now stand in the following position:

1. The guarantees of John Hughes, David Newell, and Larry Myers have been destroyed and are no longer valid.

2. All the loans are now in the name of Walter M. Calinger only and are unsecured and not guaranteed.

The $5,000 loan and the $2,000 loan have been paid in full and $2,000 has been paid on the principal on the $10,000 loan.

Very truly,

Leon E. Evans, Jr. (spw)

Leon E. Evans, Jr.
PRESIDENT

spw

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT B

Redrafted Loan Document

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Note No. 84-01831 Date May 10, 1984

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name Walt Calinger for Congress

Debtor's Address 1407 S. 13th St., Omaha, Ne. 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over reg prime %	$	$ 10,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization XX do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
Demand		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. X This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above ____%. The maximum interest rate increase at one time will be ____%. The rate will not increase more than once ☐ every year; ☐ ____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by ____% in ☐ one year; ☐ ____, ☐ your regular payments will increase to $ ____; ☐ you will have to make ____ additional payments; ☐ your final payment will increase by $ ____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $ ____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $ ____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

COMMUNITY BANK OF NEBRASKA
OMAHA, NEBRASKA
12-21-84
PAID BY RENEWAL

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $ ____.

SECURITY INTEREST

A. X This loan is covered by a security agreement dated ____, 19____ covering the following property:

Personal Guarantee

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; X interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over regional prime

PREPAYMENT. If you pay off early, you

☐ may X will not have to pay a penalty, which will be computed as follows: ____

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method.

ADDITIONAL CHARGES Official fees and taxes $ ____

Other ____ $ ____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of **COMMUNITY BANK OF NEBRASKA,**

Ten Thousand and 00/100---------- Dollars ($ 10,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $ ____, X interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ ____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Walter Calinger for Congress

Debtor's Signature x Walter M. Calinger Debtor's Address ____

Walter M. Calinger

Debtor's Signature ____ Debtor's Address ____

NF260-828 Single Payment or Demand Note

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT C

General Counsel's Factual and Legal Analysis,
In re John J. Hughes,
MUR No. 2051 (1985)

87044047760

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 2051

RESPONDENT John Hughes

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of the General Counsel by the Reports Analysis Division (RAD) and involves an allegation that John Hughes made contributions exceeding the limitation of 2 U.S.C. § 441a(a)(1)(A) to the Calinger for Congress Committee ("the Committee").

FACTUAL BASIS AND LEGAL ANALYSIS

Schedule A of the 1984 July Quarterly Report of the Committee disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to [the matter of the contribution] immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loan as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for the loan was listed as ten per cent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

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circumstances of the loan. The treasurer stated that Mr. Hughes was an "accommodating maker" or "accommodating party" to the loan. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Note and the guarantee of Mr. Hughes was destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the

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bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, has contributed half the amount of the loan. He has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT D

General Counsel's Report,
In re Friends of Roger Jepsen,
MUR No. 1042 (1980)

8704045754

BEFORE THE FEDERAL ELECTION COMMISSION
April 22, 1980

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In the Matter of	)	
	)	MUR 1042
Friends of Roger Jepsen	)	
Dee Jepsen	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves the receipt by the Friends of Roger Jepsen (the Committee) of a $35,000 loan from the candidate, Roger Jepsen, in connection with the Republican Senatorial Primary in Iowa. On its 10 Day Pre-Primary Report for 1978, the Committee reported the receipt of a loan of $35,000 from the candidate on April 27, 1978. The note for this loan was due on demand with nine per cent annual interest. The amended version of this report also indicated that the origin of this loan was a $35,000 loan from the Security State Trust and Savings Bank to Roger and Dee Jepsen (the candidate's wife) on April 27, 1978. For this loan, the principal was due on demand with interest at nine per cent payable semi-annually.

Based on this information, the Reports Analysis Division (RAD) decided to seek more information as to the circumstances of the bank loan and as to the possibility that Mrs. Jepsen's actions with respect to the loan placed the Committee and her

in violation of the 2 U.S.C. § 441a limits on contributions to a candidate's authorized political committee.

On June 8, 1979, after receipt of a response from the Committee Treasurer, Mr. John Henss, to a surface violation letter, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting the loan. On June 14, 1979, Mr. Henss responded in writing that:

> ...it is normal procedure for a bank in making a loan to any individual to require the individual's spouse to sign the loan along with the borrower. The funds loaned by Roger Jepsen to Friends of Roger Jepsen were assets under the joint dominion and common control of Roger and Dee Jepsen.

Mr. Henss included a copy of the Committee's repayment note to Roger Jepsen. On June 25, Mr. Henss submitted an additional statement that "the loan was obtained on the basis of known assets, familiar to the bank, under the joint dominion and common control of Mr. and Mrs. Jepsen."

These responses were not considered adequate and, on October 4, 1979, RAD referred the matter to the Office of General Counsel (OGC). On February 5, 1980, the Commission found reason to believe that Dee Jepsen had violated the 2 U.S.C. § 441a(a)(1)(A) prohibition against making excessive contributions to a candidate's authorized political committee. The Commission notified the respondent and Senator Jepsen of this finding and

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enclosed a list of questions as to the ownership of the assets serving as a basis for the bank loan.

On March 19, the Office of General Counsel received a written response from Senator Jepsen stating that Mrs. Jepsen's participation in the transaction was negligible, and that the loan was to him alone based on his assets. (See Attachment) Senator Jepsen provided copies of loan-related documents, pursuant to the Commission's request, and used them to support his answers.

Senator Jepsen noted that the bank's ledger card and the note indicate the loan to be unsecured. He also stated that all of the assets totalling $190,500.50 listed in the loan application were acquired by him with his "own efforts and earnings," except an item of real estate designated "farm trust" of which his share is $40,000. He stated that the only property owned by his wife and him jointly was their home valued at $130,000 with a $30,000 mortgage still payable. He concluded this summary of his assets by stating that "those other personal assets, over which [he] had complete control, give ample coverage to the loan and justified the transaction by the bank in its ordinary course of business."

Senator Jepsen went on to discuss Mrs. Jepsen's lack of participation in the loan transaction by pointing to the fact that the list of assets was signed by him alone with no indication of a co-maker. He also pointed out that the bank's ledger card indicates the absence of a co-maker or endorser

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and that the loan extension agreement was signed only by him. He stated that Mrs. Jepsen's signature on the note was "simply a formality requested by the bank" and not an indication that she was a co-maker or endorser. Senator Jepsen also indicated that the bank did not issue a check for the proceeds of the loan, but established a bank account in his name only and, at his direction, transferred the full amount he had borrowed to the Committee.

LEGAL ANALYSIS

2 U.S.C. § 441a(a)(1)(A) prohibits any person from making contributions aggregating in excess of $1,000 to an authorized committee of a candidate with respect to a federal election. 2 U.S.C. § 441a(f) prohibits a political committee from knowingly accepting such contributions. The term "contribution" includes loans. 2 U.S.C. § 431(8)(A)(i), formerly 2 U.S.C. § 431(e)(1). While there is no limit on the amount of personal funds a candidate may contribute to his own campaign, the term "personal funds," consistent with the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 52-54 (1976), is defined by the regulations. Assets of an immediate family member of a candidate are considered "personal funds" of the candidate only if they were "... assets to which at the time he ... became a candidate the candidate had legal and rightful title, or ... the right of benefical enjoyment, under applicable State law, and which the candidate had legal right of access to or control over ..." 11 C.F.R. § 110.10(b)(1), Advisory Opinions 76-26, 76-74.

In this matter, the $35,000 which the Committee listed as a loan from Roger Jepsen originated as a bank loan to Senator Jepsen. The Committee Treasurer's statements that the loan was "obtained on the basis of known assets... under the joint dominion and control of Mr. and Mrs. Jepsen" raised the possibility that assets of Mrs. Jepsen's exceeding $1,000 in value and not within the definition of "personal funds" of Senator Jepsen were used as security for the loan, in violation of 2 U.S.C. § 441a(a)(1)(A). However, the loan was unsecured as indicated by the bank's ledger card and the note.

Senator Jepsen has indicated that the bank gave this loan after obtaining complete information as to his assets and liabilities. The loan application submitted to the bank lists Senator Jepsen's net assets totalling $190,000. The only asset in which there is any evidence of an interest on Mrs. Jepsen's part is the Jepsen's home which was valued at $130,000 with a mortgage liability of $30,000. Thus, Senator Jepsen's assets apart from his wife's interest in the home substantially exceeded the amount of the loan.

Mrs. Jepsen's signature on the note raises the question as to whether or not she was a co-maker, guarantor, or endorser and, therefore, a contributor according to 11 C.F.R. § 100.7(a)(1)(i), formerly 11 C.F.R. § 100.4(a)(1)(i). The capacity that she has assumed on the note is ambiguous. The ambiguity may be interpreted to indicate she was an endorser. 1/ However, the line on the bank ledger

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1/ Iowa Code Annotated § 554.3402 states: "Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement."

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card asking for the signature of "Co-maker, Endorser, Description of Collateral or Security Pledged" is left blank. Furthermore, Mrs. Jepsen's signature does not appear on any other instruments. The loan application listing assets and liabilities has only Senator Jepsen's signature with the second signature left blank. The co-debtor signature line on the loan extension agreement is left blank. The account to which the funds were transferred was stated to be in the name of Roger Jepsen alone. Even if Mrs. Jepsen's signature technically made her a party to the note, her participation in the transaction was minimal. While it would seem that Mrs. Jepsen's signature appeared on the note because of her co-ownership of the house, the assets of Senator Jepsen alone were amply sufficient to cover re-payment of the loan and the bank chose not to deal in any further way with Mrs. Jepsen.

Therefore, the General Counsel recommends that the Commission take no further action and close the file in this matter.

III. GENERAL COUNSEL'S RECOMMENDATION

1. Take no further action.
2. Close the file.
3. Send the attached letters.

23 May 1980
Date

Charles N. Steele
General Counsel

Attachments

Letter and Documents from Respondent
Letters to Respondents (2)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT E

Conciliation Agreement,
In re Passaic County Democratic Committee,
MUR No. 1047 (1982)

3704047771

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Passaic County Democratic Committee	)	MUR 1047
	)	

CONCILIATION AGREEMENT

The Federal Election Commission (hereinafter the "Commission") initiated this matter pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities and found reason to believe that the Passaic County Democratic Committee ("Respondent" or the "Committee") violated 2 U.S.C. §§ 433, 434, 441a(f), 441b(a) and 11 C.F.R. § 102.6 (presently § 102.5) and § 104.12 (formerly § 104.10 */).

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A) do hereby agree as follows:

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

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

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

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

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*/ Prior to the 1979 Amendments.

A. Respondent, Passaic County Democratic Committee (the "Committee") is a political committee pursuant to 2 U.S.C. § 431(4).

B. Failure to Register Timely

1. 2 U.S.C. § 433 requires committees which receive contributions or make expenditures in connection with federal elections exceeding $1,000.00 in a calendar year to register with the Commission 10 days after such receipts or expenditures.

2. The Committee initially registered with the Commission on July 10, 1978.

3. The Committee made expenditures for federal and non-federal primary election expenses aggregating $8,160.00 in June, 1978 from its Election 1 (18-3584-1) and Regular (10-1620-5) accounts.

4. The 1978 primary ballot included two federal offices as well as other non-Federal offices; accordingly, the expenditures apportioned for federal candidates exceeded $1,000.00.

5. The Committee should have registered ten days after making these expenditures.

6. The Committee filed a termination report on November 20, 1978.

7. The Committee re-registered with the Commission on August 20, 1980.

8. The Committee expended at least $13,150.00 on May 30 and 31, 1980 for primary election expenses from its Regular (10-1620-5) account.

9. The 1980 ballot included four federal offices as well as other non-federal offices; accordingly the expenditures apportioned for federal elections exceeded $1,000.00.

10. The Committee should have re-registered ten days after making these expenditures.

C. Failure to Report Receipts and Disbursements

1. 2 U.S.C. § 434 requires political committees to report its total receipts and disbursements.

2. The Committee made expenditures in connection with federal elections from two accounts in 1978, Regular (10-1620-5) and Election 1 (18-3584-1) accounts, and from two accounts in 1980, Regular (10-1620-5) and Election 2 (10-4434-5) accounts.

3. The Committee reported the activity of its Election 1 (18-3504-1) account and its Regular (10-1620-5) account from July 1, 1978 until November 20, 1978, at which time the Committee filed a termination report.

4. The Committee made expenditures in connection with federal elections in June 1978 which were not reported to the Commission.

5. The Committee made expenditures in connection with federal elections in the 1980 primary election

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from its Regular (10-1620-5) account in May 1980 which were not reported to the Commission.

6. The Committee's reports disclosed payments aggregating $694.77 for administrative costs related to federal election activities in 1980.

7. Administrative costs attributable to 1980 federal elections were in the amount of $7,964.41.

8. The Committee should have reported and accounted for the proper amount ($7,964.41) in its reports for 1980 federal election activities to the Commission.

D. Acceptance and Use of Contributions from Impermissible Sources

1. 2 U.S.C. § 441b(a) makes it unlawful for political committees to accept contributions from corporations or labor organizations in connection with federal elections.

2. In 1978, the Committee received $4,745.00 from corporations and $100.00 from labor organizations which were deposited in its Regular (10-1620-5) account and from which expenditures for federal elections were made.

3. In 1980, the Committee received $2,020.00 from corporations and $1,300.00 from labor organizations which were deposited in its Regular (10-1620-5) account and from which expenditures for federal elections were made.

4. 11 C.F.R. § 102.6 (presently § 102.5) requires political committees which finance activities in connection with both federal and non-federal elections to either establish a

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separate federal campaign committee which shall register as a political committee or establish a single committee with a single account to make contributions to Federal and non-Federal candidates, but only if all contributions received are permissible under the Federal Election Campaign Act (the "Act").

5. The Committee did not establish its accounts pursuant to 11 C.F.R. § 102.6 (presently § 102.5), but rather established numerous accounts from which expenditures for both federal and non-federal election activities were made. These accounts contained funds not permissible under the Act.

6. 11 C.F.R. § 102.6 (presently § 102.5) also prohibits the transferring of monies from an account not specifically designated for federal elections to an account used to finance federal election activities.

7. The Committee transferred monies in 1978 and 1980 from its Regular (10-1620-5) account, which was not specifically designated for federal elections and which contained prohibited contributions, to its Election 1 (18-3584-1) and Election 2 (10-4434-5) accounts from which expenditures for federal elections were made. These transfers are as follows:

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FROM	TO	AMOUNT	DATE OF TRANSFER
Regular	Election 1	$19,700.00	11/01/78
	Total:	$19,700.00	
Regular	Election 2	$ 4,000.00	09/10/80
		$ 8,830.00	10/27/80
		$ 2,000.00	10/30/80
		$ 1,900.00	11/12/80
	Total:	$16,730.00	

E. Failure to Disclose Cash on Hand

1. 2 U.S.C. § 434 and 11 C.F.R. § 104.12 require political committees to disclose the source of its cash on hand.

2. The Committee reported a balance of $2,692.00 as its cash on hand upon registering in 1978.

3. The Committee failed to adequately disclose the origin of this opening balance in its reports.

4. The Committee reported a balance of $1,619.51 upon its re-registration in 1980.

5. The Committee failed to adequately disclose the source of this opening balance in its reports.

F. Inclusion of Monies from Impermissible Sources within Cash on Hand

1. 11 C.F.R. § 104.12 (formerly § 104.10) makes it unlawful for political committees to include within its cash on hand any contributions from sources prohibited by 2 U.S.C. § 441b.

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2. The Committee's cash on hand in 1978 and 1980 contained monies from prohibited sources.

G. Acceptance of Excessive Contributions

1. 2 U.S.C. § 441a(f) makes it unlawful for multicandidate political committees to knowingly accept contributions from individuals exceeding an aggregate of $5,000.00 in any calendar year. (See 2 U.S.C. § 441a(a)).

2. 11 C.F.R. § 100.7(a)(1)(i)(C) states that a loan is a contribution by each endorser or guarantor, and that each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement.

3. The Committee received a $12,000.00 loan endorsed by Mr. Robert Angele and his wife, Lucy Angele, in its Election 2 (10-4434-5) account on October 17, 1980.

4. The $12,000.00 loan constitutes a $6,000.00 contribution from each of the Angeles.

5. Each contribution exceeds the limitations set forth in 2 U.S.C. § 441a(a) by $1,000.00.

V. Respondent agrees that it violated:

1. 2 U.S.C. § 433 by failing to register timely in 1978 and in 1980.

2. 2 U.S.C. § 434 by failing to report its total receipts and disbursements in 1978 and 1980, including administrative costs in 1980.

3. 2 U.S.C. § 441b(a) by accepting contributions from corporations and labor organizations in connection with federal elections in 1978 and 1980.

4. 11 C.F.R. § 102.6 (presently § 102.5) by failing to establish committees in accordance with this provision, and by transferring funds from an account not designated for federal election activities and which contained prohibited funds to an account used to finance federal election activites.

5. 11 C.F.R. § 104.12 (formerly § 104.10) by failing to disclose the source of its cash on hand in 1978 and 1980; and by including within its cash on hand monies not permitted by the Act.

6. 2 U.S.C. § 441a(f) by receiving contributions in excess of limitations set forth by 2 U.S.C. § 441a(a).

VI. Respondent will pay a civil penalty to the treasurer of the United States in the amount of one thousand and five hundred dollars ($1,500.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

civil action for relief in the United States District Court for the District of Columbia.

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

X. It is agreed that respondent shall have no more than ninety (90) days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

DATE: Sept. 16, 1982

Charles N. Steele
General Counsel

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

DATE: Aug. 27, 1982

Passaic County Democratic Committee

BY: William J. Pascrell Jr.

ITS: Chairman

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT F

General Counsel's Report,
In re Passaic County Democratic Committee,
MUR No. 1047 (1982)

NOTE: Pages 5-8 were inadvertently not copied. The document in its entirety is located in the FEC library. The deleted pages are not relevant to this Reply.

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BEFORE THE FEDERAL ELECTION COMMISSION

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OFFICE OF THE
COMMISSION SECRETARY

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In the Matter of	)	
	)	MUR 1047
Passaic County Democratic Committee	)	
	)	

GENERAL COUNSEL'S REPORT

I. Background

On July 14, 1981, the Commission voted to audit the Passaic County Democratic Committee (the "Committee") pursuant to 2 U.S.C. § 437g. Prior to the audit, the Commission had found reason to believe that the Committee had violated certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, on February 8, 1980, the Commission had found reason to believe that the Committee violated 2 U.S.C. § 433, 11 C.F.R. § 102.6(b) 1/ and 2 U.S.C. § 441b(a) by transferring funds from accounts established for non-federal elections which contained corporate monies to its account designated for federal election activities. Additionally, on July 14, 1981, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434, 11 C.F.R. § 104.12 by failing to disclose the source of its cash on hand in 1978 and 1980; 2 U.S.C. § 441a(f) by receiving a contribution

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1/ This cite refers to the regulations in effect at the date that the activity in question took place, namely, the regulations prior to the January 1, 1981 revisions. This provision is presently 11 C.F.R. § 102.5(a).

in excess of limitations set forth by 2 U.S.C. § 441a(a); and 2 U.S.C. § 434 by failing to disclose receipts and expenditures for administrative costs in its 1980 reports.

The Commission and the Committee had been engaged in informal conciliation from November 13, 1980 to July 19, 1981, at which time the Commission suspended the conciliation proceedings until the audit results were available. The audit was completed on January 15, 1982. 2/ The Audit Division forwarded a report to this office on March 4, 1982.

This report will analyze the information obtained from the audit regarding the Committee's general financial activities. This report will also discuss information relating to previous reason to believe findings, and will recommend additional reason to believe findings.

II. Overview: the Committee's General Financial Activities

The most notable fact evidenced by the audit is that the Committee is primarily a state and local committee. The audit work papers show that the Committee's financial activities focused on non-federal party elections. In fact, the Committee never made a direct contribution to any federal candidate. The Committee did however pay for billboards and get-out-the-vote

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2/ The audit was initially scheduled for early November, however, due to problems of coordination with Committee personnel, the audit had to be rescheduled for December 7, 1981. Moreover, due to further problems of coordination with the Committee, the audit was temporarily suspended from December 14 through January 4, 1982.

activities which indirectly supported certain federal candidates whose names appeared on the billboards or ballots. The Committee was therefore required to allocate to federal elections a weighted portion of these expenditures.

The audit disclosed that the Committee had an aggregate of eight accounts 3/ during the audit period; however, expenditures for federal elections were only made from three of these accounts. 4/ Attached for the Commission's reference is a flow chart illustrating the relationship of these accounts (see Attachment 1).

The total amount expended for federal elections only constituted a small percentage of the Commitee's activities. The audit work papers show that from January, 1978 through December, 1981 (hereinafter referred to as the "audit period") 5/ an aggregate of $52,251.04 was attributable to federal election

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3/ The Committee had four "Election" accounts, one "Regular" account, and three "Office" accounts. The label "Election" does not necessary refer to an account established for federal elections. This is evident from the fact that certain "Election" accounts were very active in 1979 and 1981 when no expenditures were made for federal elections.

4/ These three accounts were not all active simultaneously. Also, all three accounts were with the same bank. The Committee drew from the Election 1 account in 1978; the Election 2 account in 1980; and the Regular account in 1978 and 1980. The numerics assigned to these accounts are by this office for reference purposes.

5/ All figures and comments relate to the audit period unless otherwise specified.

activities, whereas the aggregate amount expended was $385,009.68. Thus, the amount of the expenditures attributable to federal elections comprise 13.6% 6/ of the Committee's total financial activity. Also, certain federal candidates reimbursed the Committee for expenditures made on their behalf. Specifically, the principal campaign committee of Congressman Robert A. Roe, repaid the Committee $10,780.00. Likewise, the Carter-Mondale Re-Election Committee, Inc. repaid the Committee $1,436.33. The balance of contributions received from federally registered committees was $2,127.00. 7/

The Committee received an aggregate of $405,010.00 in all eight of its accounts. Of this amount, $50,755.00 were verified as corporate contributions; 8/ $4,870.00 were contributions from labor organizations and local government groups; and $55,868.01 were contributions from unregistered committees. 9/ As noted,

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6/ Additionally, this percentage results after using an allocation formula (approved by the Commission in AO 1976-72) which applies proportionately more weight to federal candidates.

7/ These contributions are as follows: $1,300.00 and $700.00 from the Women's Division of the Passaic County Democratic Club on October 4, 1978 and October 23, 1979, respectively; and $127.00 from the New Jersey Democratic State Committee, Federal Election Account, on October 8, 1980.

8/ The Office of General Counsel sent to the New Jersey State Corporate Division a list of all contributing entities in the Committee's ledger which might have been incorporated. The "corporate contributions" referred to in this report are the contribuitons from those entities the Corporate Division has documented as incorporated.

9/ New Jersey election law permits the receipt and use of all of these contributions for its elections.

the Committee only received $14,370.33 from federally registered committees, of which $12,216.33 were reimbursed. Thus, the audit work papers demonstrate that the Committee's primary concern was non-federal elections. 10/

III. Previous Reason to Believe Findings

A. Use of Impermissible Funds in connection with Federal Elections

On February 8, 1980, the Commission found reason to believe that the Passaic County Democratic Committee violated 2 U.S.C. § 433, 11 C.F.R. § 102.6 and 2 U.S.C. § 441b by transferring monies from an account containing corporate contributions to an account from which expenditures for federal elections were made.

2 U.S.C. § 441b(a) prohibits political committees from accepting and using contributions from corporations and labor organizations in connection with federal elections. In order to ensure that political committees do not commingle these prohibited monies with funds permitted for use in federal elections -- especially in states which permit the use of corporate and labor contributions for state and local elections -

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10/ It should also be noted that had the Committee been knowledgeable of federal election laws and established separate federal and non-federal accounts in accordance with 11 C.F.R. § 102.6, the Committee lawfully could have used corporate and labor contributions to finance those expenditures allocated to state and local candidates in connection with its partisan and get-out-the-vote drives pursuant to AO 1978-10. These drives comprised a good portion of the Committee's activities.

about the origin of its $1,619.57 beginning balance, the Committee explained that this amount was the residual of its 1979 Election account which was transferred to the 1980 Election account. Inasmuch as the last deposit into its 1979 Election account was a $23,000.00 transfer from its Regular Account which contained corporate and labor monies, the 1980 cash on hand apparently contained funds prohibited by 2 U.S.C. § 441b. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 104.12 by including monies from corporations and labor organizations within its cash on hand in 1978 and 1980.

C. Receipt of Excessive Contribution

On July 14, 1981, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by receiving a contribution in excess of limitations set forth by 2 U.S.C. § 441a(a). 15/ The Commission based this finding on a report which disclosed a $12,000.00 loan from the Jefferson National Bank on October 17, 1980, which was endorsed by Robert Angele. Since the Committee's reports only disclosed one person as the endorser, it appeared that the entire amount of the loan may have been a contribution from Mr. Angele.

15/ 2 U.S.C. § 441a(a)(1)(C) prohibits individuals from contributing in excess of $5,000.00 per calendar year to state party committees. 2 U.S.C. § 441a(f) prohibits committees from receiving contributions in excess of the limitations set forth by 2 U.S.C. § 441a(a).

The audit disclosed that the loan was in fact endorsed by Mr. Robert Angele and his wife, Lucy Angele. 16/ The loan was deposited in the Committee's Election 2 account.

11 C.F.R. § 100.7(a)(1)(i)(C) states that a loan is a contribution by each endorser or guarantor, and that each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable. 17/ Accordingly, this loan constitutes a $6,000.00 contribution from each of the Angeles. Each of these contributions exceeds lawful contribution limitations by $1,000.00. 18/ The audit therefore confirms this reason to believe finding, however, the audit also reveals that the Committee accepted not one, but rather two excessive contributions.

16/ It remains unclear to whom the loan check was made payable, however, bank records show that the loan and interest ($12,312.00) were repaid by a February 10, 1981 check drawn on the Committee's Election 3 account.

17/ Moreover, (former) 11 C.F.R. § 102.6 sets forth that all contributions deposited into an account from which both federal and non-federal expenditures are made are subject to the contribution limitations of the act regardless of whether such contributions are for use in connection with federal or non-federal elections. Thus, the loan, regardless of whether the Angeles intended it to finance non-federal elections, is subject to the Act's contribution limitations.

18/ The audit report notes that the Audit Division's review of receipts records for the period audited revealed no other contributions from either Robert or Lucy Angele.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of JOHN J. HUGHES	)	MUR No. 2051

EXHIBIT G

Conciliation Agreement,
In re Citizens Committee for Ernest F. Hollings,
MUR No. 1768 (1985)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Citizens Committee For Ernest F. Hollings by its treasurer, Rene Debacker	)	MUR 1768

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Citizens Committee for Ernest F. Hollings by its treasurer, Rene Debacker ("Respondent"), violated 2 U.S.C. § 441a(a) by making an excessive contribution and 2 U.S.C. § 434(b) for failing to report the contribution.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

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

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

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

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

1. Respondent, Citizens Committee for Ernest F. Hollings, is the authorized political committee of Senator Ernest F. Hollings.

2. Respondent, Rene Debacker, is the treasurer of the Citizens Committee for Ernest F. Hollings.

3. Respondent Citizens Committee For Ernest F. Hollings by its treasurer Rene Debacker guaranteed a $35,000 bank loan to Hollings For President, Inc.

4. The loan was repaid in 31 days.

5. This guarantee of a loan was an excessive contribution (hereinafter "excessive contribution").

6. Respondent Citizens Committee for Ernest F. Hollings by its treasurer Rene Debacker violated 2 U.S.C. §441a(a)(1) by making that excessive contribution in the amount of $34,000 to Hollings For President, Inc.

7. Although Hollings For President, Inc., by its treasurer Rene Debacker disclosed the bank loan in a timely manner, the Respondent Citizens Committee by its treasurer Rene Debacker violated 2 U.S.C. § 434(b) by failing to report that excessive contribution to Hollings for President, Inc.

V. Respondent Citizens Committee for Ernest F. Hollings will pay a civil penalty to the Treasurer of the United States in the amount of Two Thousand Dollars ($2,000), pursuant to 2 U.S.C. §437g(a)(4)(A).

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

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

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

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

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

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

March 25, 1985
Date

FOR THE RESPONDENT:

Rene Debacker

For Respondent Citizens Committee
for Ernest F. Hollings
By Rene Debacker, Treasurer

Feb 26, 1985

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COMMISSION SECRETARY

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Dear Mr. McGarry,

I am responding to your letter of July 18, 1985. Which by the way, I was not in personal receipt of until July 29, 1985 upon my return from a week stay with my family, at my wife's parents home in Ord, Nebraska. Your letter along with all other mail, newspapers, etc. was held by my neighbor Rada Moore for our return. Upon opening your letter, my first act was to contact Mr. Walter Calinger, the Candidate, who I have not yet spoken to about this issue.

On August 8th, I called Jonathan Levin, the attorney from your office assigned to this matter for consultation and advice on how I might proceed. He advised me that my response, whatever it might be, should be posted in today's mail as it shall be!

Let me, at this time, take this opportunity to say that I do not consider myself to be either unsophisticated or naive in the field of politics and campaigns. As a former State Senator and just recently, after a short tenure as State Chairman of the Nebraska Democratic Party, a job which I took after serving as the campaign manager for Walter Calinger losing primary bid, I have had to learn more about the F.E.C. than one normally cares to.

I agreed to sign on to the Calinger Campaign 5 weeks prior to the primary after a mid-campaign readjustment. At that time I asked for and received a short, but practical course on the F.E.C. rules which must be complied with. Needless to say this situation never came up. Nor did it come up some months later while being briefed by my staff or the attorneys advising the State Democratic Party.

To the matter at hand, shortly after taking over as campaign manager I was faced with what is not, I am told, an uncommon situation. A shortage of funds from which to pay the bills and staff. After discussing the issue with the Candiate, he suggested I make arrangements for a Campaign loan.

In compliance with the request and because of the immediacy of our need, I contacted the treasurer of the campaign who said that it would take some time to collect the Co-Signers necessary for the $20,000 note that the campaign would need to finance the rest of the campaign as planned.

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I informed him at the time I needed $5,000.00 by the next day to meet the payroll. I was told at that time that Walt could have to negotiate such a loan on behalf of the Campaign himself.

At this time, I must add for clarification that upon taking over the campaign, I rewrote the campaign plan, hurriedly cancelled numerous commitments previously made and renegotiated salaries and lay off a staff member who was leaving town and had to be paid. I did all this with the candidate's reluctant approval and with a personal guarantee that salaries, except for mine, would be paid on time!

The loan was arranged through the Community Bank of Nebraska and with the understanding that the fundraising activities then planned for would repay the note! It was also understood that this note was to be the first note to be repaid.

I signed some forms at the request of the bank. I never intended to personally guarantee that note and as an employee of the Campaign, I intended only to see that the debt was repayed by the Campaign from expected incomes. My understanding at the time that this was Calinger's personal debt taken out in behalf of his campaign to meet personal commitments to myself and the staff to pay salaries on time. I signed as the Campaign Manager and not as a rich man. I am not a rich man, in fact, I reluctantly had to quit politics recently because my wife stopped working last year refusing to continue to support my political habit.

I respectively request preprobable cause conciliation in this matter, in fact, I would prefer that you drop the whole issue recognizing that I was just a cut rate employee and not a high roller.

This statement represents my best efforts to recall the circumstances and events leading up to taking out the loan. The bank's documents may or may not bear out my recollections, you can be sure I will be contacting them.

Sincerely,

Dave Newell

Dave Newell

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KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

August 9, 1985

85 AUG 12 A11:49

Jonathan Levin, Esquire
Office of General Counsel
Federal Election Committee
Seventh Floor
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: John Hughes

Dear Jon:

Thank you for meeting with us this morning. Our discussions were useful and I trust that our review assisted you in understanding our position.

Enclosed please find the original Statement of Designation of Counsel.

I look forward to talking with you on this matter and working toward a mutually satisfactory resolution.

Sincerely,

F. Joseph Warin

jjb

Enclosure

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2051

NAME OF COUNSEL: F. Joseph Warin/Joseph A. Ingrisano

ADDRESS: Kutak Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

TELEPHONE: (202) 828-2400

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

August 5, 1985
Date

John J. Hughes
Signature

RESPONDENT'S NAME: John J. Hughes

ADDRESS: 1004 Farnam-on-the-Mall
Omaha, NE 68102

HOME PHONE: (402) 397-5913

BUSINESS PHONE: (402) 444-1720

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WALTER M. CALINGER
ATTORNEY AT LAW
1407 SOUTH 13TH STREET
OMAHA, NEBRASKA 68108

TO Mr. Johnathon Levin
Attorney at Law
Office of the General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

DATE August 8, 1985

SUBJECT MUR2051
Calinger for Congress
Committee
John W. Herdzina, Treasurer

Dear Mr. Levin:

John Herdzina, Treasurer for Calinger for Congress Committee, contacted me today and asked that I send you a copy of check #1223.

Therefore, enclosed is the copy of the cancelled check as requested.

Sincerely yours,

Loretta Ethridge
Secretary to Walter Calinger

Item # ML5N72 Wheeler Group Inc. 1982
FOLD AT (—) TO FIT DRAWING BOARD ENVELOPE # EW10P

CALINGER FOR CON[illegible] COMMITTEE
1407 S. 13TH [illegible]
OMAHA, NE 68108

1223

7/13 1985

27-21
1040

PAY TO THE ORDER OF Walter Calinger $ 251.50

Two hundred fifty-one dollars and 50/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Loan Repay-Interest John M. Hechinger

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JY '85 25

JY '85 26

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1202

7/17 1984

27-2
1040

PAY TO THE ORDER OF Walter Calinger and Dave Newell $ 165.68

One hundred Sixty-five and 68/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Int. on loans

John W. Hawkins

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1203

7/17 1984

27-2
1040

PAY TO THE ORDER OF Walter Calinger and Larry Myers $ 59.82

Fifty-Nine dollars and 82/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Int. on loan

John W. Hawkins

Memo from . . .

JOHN W. HERDZINA
~~1102 Woodmen Tower~~
~~344-4884~~ Omaha, Nebraska ~~68102~~

6523 O
Con# 8277

Check No.	Date
1202	7/17/84
1203	7/17
1204	7/17
1205	7/17
1207	7/27
1210	7/27
1212	9/21/84
1213	9/21
1216	11/9
1218	12/29
1221	3/29/85
1223	7/13/85

Don't have canceled checks on there nor do have the bank statements.

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1204

7/17 1984

27-2/1040

PAY TO THE ORDER OF Walter Calinger and John Hughes $ 288.30

Two hundred Eighty-Eight and 30/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Int-on loan

John W. Hughes

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1205

7/17 1984

27-2/1040

PAY TO THE ORDER OF Walter Calinger and Dave Newell $ 2500.00

Twenty-five hundred dollars and 00/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Payment on Principal Bal.

John W. Hughes

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1207

7-27 1984

27-2/1040

PAY TO THE ORDER OF Walter Calinger & Dave Newell $ 2512.12

Two Thousand Five Hundred twelve 12/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Loan payment 4-27-84 $5000

John W. Hughes

CALINGER FOR CONGRESS COMMITTEE

1407 S. 13TH ST.
OMAHA, NE 68108

1210

7-27 1984

27-2
1040

PAY TO THE ORDER OF Walter Calinger and Larry Myers $ 511.22

Five Hundred Eleven & 22/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

5-5-84
Loan payment w 2000

John W. Hedgens

CALINGER FOR CONGRESS COMMITTEE
1407 S. 1[illegible]
OMAHA, N[illegible]

1212

9/21 19[illegible]

27-2
1040

PAY TO THE ORDER OF Walt Calinger ← Larry Myers $1,529.79

One thousand five hundred twenty-nine and 79/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO

John W. Hendrickson

⑆104000029⑆ 0115284⑈ 1212 ⑈0000152979⑈

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1213

9/21 1984

27-2
1040

PAY TO THE ORDER OF Walt Calinger ← John Hughes $252.60

Two hundred fifty-two dollars and 60/100 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Int. on loan

John W. Hendrickson

⑆104000029⑆ 0115284⑈ 1213 ⑈0000025260⑈

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1216

11-9 1984

27-2
1040

PAY TO THE ORDER OF Walt Calinger and John Hughes $2244 31/00

Two Thousand Two Hundred Forty Four & 31/00 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Int. on loan

John W. Hendrickson

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1218

12-29 1984

27-2
1040

PAY TO THE ORDER OF Walter Calinger $ 147.29

One Hundred Forty Seven & 29/00 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Interest Thru 12-21-84

John W. Hendzina

CALINGER FOR CONGRESS COMMITTEE
1407 S. 13TH ST.
OMAHA, NE 68108

1221

3/29 1985

27-2
1040

PAY TO THE ORDER OF Walter Calinger $ 252.71

two hundred fifty-two dollars and 71/00 DOLLARS

Omaha National Bank
Omaha, Nebraska 68102

MEMO Loan Repay

John W. Hendzina

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

8 August 1985

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
John J. Hughes

Dear Mr. Warin:

Pursuant to your letter of July 25, 1985, the Office of the General Counsel is granting your request for an extension of time to respond to the reason to believe finding and the subpoena in the above-captioned matter. Your response is due, therefore, on August 13, 1985.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8704045025

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
John J. Hughes

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

87044349

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Joseph Warin, Esquire
Kutak, Rock & Campbell
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2051
John J. Hughes

Dear Mr. Warin:

Pursuant to your letter of July 25, 1985, the Office of the General Counsel is granting your request for an extension of time to respond to the reason to believe finding and the subpoena in the above-captioned matter. Your response is due, therefore, on August 13, 1985.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

2774748207

RECEIVED AT THE FEC
GCC #8320
85 AUG 6 AM 11:48

August 3, 1985

Mr. Johnathon Levin
Attorney at Law
Office of the General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

85 AUG 6 P1:44

Re: MUR 2051
Calinger for Congress Committee
John W. Herdzina, Treasurer

Dear Mr. Levin:

Thank you for your telephone call and the information concerning procedural matters before the Federal Election Commission.

Pursuant to the subpoena, I was to produce all written materials in my possession including notes, security agreements and checks pertaining to bank loans in 1984 to Walter Calinger and John Hughes, Walter Calinger and David Newell, and Walter Calinger and Larry Myers, and pertaining to the subsequent renegotiation of all of these loans in 1984. I have enclosed herein copies of all of such documents in my possession. I am not enclosing herein copies of any of the reports which have been previously filed with the appropriate agencies.

In connection with the general counsel's factual and legal analysis, I have reviewed the 1984 July quarterly report of the Committee. Apparently I misunderstand the statement in the Analysis which states that the report itemizes $9,642 in contributions, some of which is in the form of loans or loan guarantees from three individuals. I do not see where loans are listed in Schedule A or on the detailed summary page under contributions. I have always tried to patently set out loans to the Committee under the proper form and schedule.

Personally, I do not see much doubt but that "...each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the §441a(a)(1)(A) limit." In fact, except for Mr. Myers, the guarantee of the contributions alone, without being combined with other contributions, exceed the §441 limit. Accordingly, the undersigned and Committee has no real dispute with the basic factual analysis of the general counsel. Dispute certainly does arise in connection with the legal analysis. In part, the

analysis states: "The fact that, as of December 21, the Bank removed the individuals as guarantors does not negate the original violation."

First of all, a loan is considered a contribution only to the extent of the outstanding balance. Once the undersigned and the Committee was informed that a potential illegal contribution, via a loan guarantee, was in existence, action was taken to correct the situation. The guarantees of John Hughes, David Newell and Larry Myers were destroyed by the Community Bank and all the loans were placed in the name of Walter Calinger only. Thus, once the guarantees were destroyed, the loan was repaid as far as the guarantors were concerned. At that point in time the guarantee no longer counts against the guarantor's contribution limit. 100.7(a)(1)(i)(C).

In addition to the foregoing, it is my interpretation of §103.3(b) that a contribution which appears to be illegal must, within ten days, either be returned to the contributor or deposited in the campaign depository giving a statement to the FEC on the next report that the legality of the contribution is in question. Certainly, the fact that the loans had been made and guaranteed was patently set forth on Schedule C in the July 15, 1984 quarterly report. Accordingly, the statement noting that the legality of the contribution was in question was more than clearly set forth, even though by coincidence, in the report. It is my further understanding from reading §103.3(b) that if within a reasonable time the treasurer determines that the "contribution" is illegal he or she must return such contribution and report the refund. Shortly after the undersigned and the Committee was informed that the loan guarantees were illegal contributions the contributions were refunded, i.e., the guarantees were destroyed. Accordingly §103.3(b) had been complied with by the undersigned and the Committee.

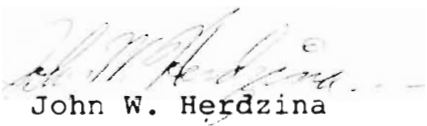
Interestly enough, on or about November 1, 1984, the undersigned received an October 16, 1984 letter from Noriega E. James (copy enclosed) pertaining to Schedule C of the July quarterly report. I believe you can see from reading Mr. James' letter, he did not state the guarantees are in violation of the Federal Election Act. Mr. James obviously read the July quarterly report and saw that the guarantees appeared to exceed the limit set forth in the Act. However, he did not state that fact clearly to the undersigned. Moreover, he stated in his letter: "if the contribution(s) in question was incorrectly reported and/or you have additional information regarding the contributor(s), you <u>may wish</u> to submit documentation for the public record. Please amend your report with clarifying information." Personally, I feel Mr. James mishandled the situation by being subtle and should have

blatantly related to the undersigned the obvious alleged violation of the Act and that the undersigned and the Committee should rectify same by complying with §103.3(b). I also feel that Mr. James not only had an obligation to point out potential illegalities, but also to point out those sections of the Act which allow for a treasurer and his committee to "nip the problem in the bud" and rectify same.

The Act requires political committees to register and disclose their campaign receipts and disbursements. Obviously, the purpose of this is to make sure that the committees abide by certain contribution limits and prohibitions. The fact is that the undersigned wholly and completely disclosed the loans in question in the July quarterly report. That in and of itself proves compliance with the intent and purpose of the Act. The fact that Mr. James picked out the loans as a violation of the Act merely shows that he was doing his job. Mr. James, or any one else aware of each and every rule of the Act, could see the loan problems immediately. He did not have to dig out hidden facts of any nature. Once the undersigned and the Committee were informed by Mr. James that he had performed his job efficiently and correctly and Mr. James pointed out the problem to the undersigned, the problem was rectified. The undersigned does not contend that because as of December 21, 1984 the Bank removed the individuals as guarantors that the original alleged violation was void ab initio. The undersigned does, however, vigorously contend that the fact the full disclosure was made to the Commission in the July quarterly report, the fact that Mr. James discovered (as he should have) an alleged violation, the fact that the alleged violation was reported to the undersigned, and the fact that the violation was promptly corrected, complies with the remedying sections of the Act.

It is impossible for me to set forth in this short letter the facts and feelings that the undersigned and the Committee have which should convince your office that no action should be taken against myself or the Committee. I am interested in pursuing a pre-probable cause conciliation.

Very truly yours,



John W. Herdzina
Treasurer
Calinger for Congress Committee

JWH:kjs
Enc.

Note No. 84-01050 Date

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor **COMMUNITY BANK OF NEBRASKA,**

Debtor's Name Walt Calinger for Congress

Debtor's Address 1407 S. 13th St., Omaha, Ne. 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of my credit as a yearly rate. 2% over Regional prime %	The dollar amount the credit will cost me. $	The amount of credit provided to me or on my behalf. $ 2,000.00	The amount I will have paid after I have made all payments as scheduled. $

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ I do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
Demand		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $_____.

As additional Credit Life Insurance becomes available through the reduction of this indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit Life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

COMMUNITY BANK OF NEBRASKA OMAHA, NEBRASKA 9-21-84

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $_____

SECURITY INTEREST

A. ☒ This loan is covered by a security agreement dated _____, 19____ covering the following property:

Personal Guarantees

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☒ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over regional prime

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: _____

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method.

ADDITIONAL CHARGES Official fees and taxes $_____

Other _____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of **COMMUNITY BANK OF NEBRASKA,**

Two Thousand and 00/100---------- Dollars ($ 2,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $_____, ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over regional prime %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Debtor's Signature Walter M. Calinger Walter M. Calinger Debtor's Address 1407 S. 13th St., Omaha, Ne 68108

Debtor's Signature _____ Debtor's Address _____

NF260-828 Single Payment or Demand Note

3 7 1 1 1 4 3 1

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name WALT CALINGER FOR CONGRESS

Debtor's Address 1407 S. 13 St. - Omaha, NE 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over Regional Prime %	$	$ 5,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization X I do not want an itemization

Your PAYMENT SCHEDULE will be

Number of Payments	Amount of Payments	When Payments Are Due
DEMAND		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. X This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $_____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $_____

SECURITY INTEREST

A. X This loan is covered by a security agreement dated April 27, 19 84 covering the following property Personal Guarantees

B. ☐ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☐ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over Regional Prime %.

PREPAYMENT. If you pay off early, you

☐ may X will not have to pay a penalty, which will be computed as follows: NA

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method.

ADDITIONAL CHARGES Official fees and taxes $_____

Other_____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of **COMMUNITY BANK OF NEBRASKA,**

Five Thousand and 00/100---------- Dollars ($ $5,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $_____ X interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over Regional ~~prime~~ %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Debtor's Signature X [signature] DAVID NEWELL, Campaign Manager — Debtor's Address 1407 S. 13 St - Omaha, NE 68108

Debtor's Signature [signature] WALT CALINGER, Candidate — Debtor's Address 1407 S. 13 St. - Omaha, NE 68108

NF260-828 Single Payment or Demand Note

27 0 1 0 4 2 8 1

WALT CALINGER FOR CONGRESS

SUMMARY OF LOAN ACCOUNTS

June 29, 1984

	Date of Loan	Amount of Loan	Interest Rate	Per Diem	Payoff Balance
1	4-27-84	$ 5,000	14.75	2.02	$ 5,127.29
2	5-05-84	2,000	14.75	.81	2,044.45
3	5-10-84	10,000	15.25	4.18	10,208.90

1 Walt Calinger & Dave Newell
2 " " & Larry Myers
3 " " & John Hughes

FILE COPY

July 23, 1985

Certified Mail No. P 014 044 163
Return Receipt Requested

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

Re: MUR 2051
Calinger for Congress Committee
John W. Herdzina, as treasurer

Dear Sir or Madam:

On this 23rd day of July, 1985 I received a letter from John W. McGarry concerning possible violation to USC Section 441a(f). I also received on this day a Subpoena to Produce Documents together with a description of preliminary procedures for processing possible violations discovered by the Federal Election Commission. First of all, in connection with the Subpoena, I will be glad to produce any and all records which I have in my possession concerning the Calinger for Congress Committee. However, it is my understanding that if I request a desire to enter into negotiations directed towards reaching a conciliation agreement, and should you be kind enough to grant same, the time limit involved in the Subpoena would be stayed. If this is incorrect please inform me and I will immediately produce the documents.

I am optimistic that I can demonstrate to you that no action should be taken against myself or the Committee. I am interested in pursuing a pre-probable cause conciliation. I desire to enter negotiations directed towards reaching a conciliation agreement. If there is a problem with the reports or the content thereof I certainly wish to work with your office in attempting to correct such problem or prevent any future problem. I prefer to do this by informal methods of conference conciliation and persuasion.

If anything further is needed in connection with this request please let me know immediately.

Very truly yours,

cc: Ms. Marjorie W. Emmons
Mr. Walter Calinger

John W. Herdzina, Treasurer
Calinger for Congress Committee
8712 West Dodge Road, Suite 300
Omaha, Nebraska 68114

PLEASE NOTE THE ADDRESS CHANGE

3704054814

FEDERAL ELECTION COMMISSION 202-523-4089
WASHINGTON, D.C. 20463

July 18, 1985

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, Nebraska 68108

RE: MUR 2051
Calinger for Congress Committee
John W. Herdzina, as treasurer

Dear Mr. Herdzina:

On June 26 , 1985, the Federal Election Commission determined that there is reason to believe that the Calinger for Congress Committee and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and your committee. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit such materials along with your response to the enclosed Subpoena to Produce Documents.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. It is required that you submit the information under oath and that you do so within ten days of your receipt of this letter and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Subpoena to Produce Documents
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2051

SUBPOENA TO PRODUCE DOCUMENTS

To: John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, Nebraska 68108

PURSUANT to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby subpoenas all written materials in your possession, including, but not limited to, notes, security agreements and checks, pertaining to bank loans in 1984 to Walter Calinger and John Hughes, Walter Calinger and David Newell, and Walter Calinger and Larry Myers, and pertaining to the subsequent re-negotiation of all of these loans in 1984.

Notice is given that these materials must be submitted to the Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. within ten days of your receipt of this subpoena. Legible copies which, where applicable, show both sides of documents, may be substituted for originals.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 17th day of July, 1985.

John Warren McGarry
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

9704543817

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 2051

RESPONDENT Calinger for Congress Committee
John W. Herdzina, as treasurer

SUMMARY OF ALLEGATIONS

The Calinger for Congress Committee, the principal campaign committee of Walter M. Calinger for election to the House of Representatives from the Second District of Nebraska, was referred by the Reports Analysis Division (RAD) to the Office of the General Counsel for the receipt of excessive contributions from three individuals.

FACTUAL BASIS AND LEGAL ANALYSIS

The 1984 July Quarterly Report of the Calinger for Congress Committee ("the Committee") itemized $9,642 in contributions, some in the form of loans or loan guarantees from three individuals. These contributions were designated for the primary, resulting in the receipt by the Committee of apparent excessive contributions.

Schedule A of the report disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

Schedule A also disclosed a $5 contribution from David Newell on May 10, 1984, bringing his yearly non-loan contribution total to $80. Schedule C of the same report disclosed the receipt of $5,000 from the candidate and Mr. Newell on April 27, 1984, due on demand at 15.75% interest.

Schedule A also disclosed the receipt of a $100 contribution on April 26, 1984, from Larry and Mariana Myers, bringing their yearly non-loan contribution total to $125. Schedule C disclosed a $2,000 loan to the Committee from the candidate and Mr. Myers on May 5, 1984, due on demand at 15.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to these matters immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loans as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for each loan was listed as ten percent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new circumstances of the loans. The treasurer stated that the non-candidate individuals were "accommodating makers" or "accommodating parties" to the loans. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors,

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the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed the individuals as guarantors does not negate the original violation. The treasurer has posed the defense that the non-candidate signatories were not really contributors because they were "accommodating makers." This is of no significance in determining the status of the individuals under

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the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, the non-candidate individuals, as the sole co-makers with the candidate on the loans, have contributed half the amount of the loans. The Committee, therefore, has accepted contributions in excess of $1,000 from each individual. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

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DESCRIPTION OF PRELIMINARY PROCEDURES
FOR PROCESSING POSSIBLE VIOLATIONS DISCOVERED BY THE
FEDERAL ELECTION COMMISSION

Possible violations discovered during the normal course of the Commission's supervisory responsibilities shall be referred to the Enforcement Division of the Office of General Counsel where they are assigned a MUR (Matter Under Review) number, and assigned to a staff member.

Following review of the information which generated the MUR, a recommendation on how to proceed on the matter, which shall include preliminary legal and factual analysis, and any information compiled from materials available to the Commission shall be submitted to the Commission. This initial report shall recommend either: (a) that the Commission find reason to believe that a possible violation of the Federal Election Campaign Act (FECA) may have occurred or is about to occur and that the Commission conduct an investigation of the matter; or (b) that the Commission find no reason to believe that a possible violation of the FECA has occurred and that the Commission close the file on the matter.

Thereafter, if the Commission decides by an affirmative vote of four (4) Commissioners that there is reason to believe that a violation of the Federal Election Campaign Act (FECA) has been committed or is about to be committed, the Office of the General Counsel shall open an investigation into the matter. Upon notification of the Commission's finding(s), within 15 days a respondent(s) may submit any factual or legal materials relevant to the allegations. During the investigation, the Commission shall have the power to subpoena documents, to subpoena individuals to appear for depositions, and to order answers to interrogatories. The respondent(s) may be contacted more than once by the Commission in its investigation.

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If, during this period of investigation, the respondent(s) indicate a desire to enter into conciliation, the Office of General Counsel staff may begin the conciliation process prior to a finding of probable cause to believe a violation has been committed. Conciliation is an informal method of conference and persuasion to endeavor to correct or prevent a violation of the Federal Election Campaign Act (FECA). Most often, the result of conciliation is an agreement signed by the Commission and the respondent(s). The Conciliation Agreement must be adopted by four votes of the Commission before it becomes final. After signature by the Commission and the respondent(s), the Commission shall make public the Conciliation Agreement.

[If the investigation warrants], and no conciliation agreement is entered into prior to a probable cause to believe finding, the General Counsel must notify the respondent(s) of his intent to proceed to a vote on probable cause to believe that a violation of the Federal Election Campaign Act (FECA) has been committed or is about to be committed. Included with the notification to the respondent(s) shall be a brief setting forth the position of the General Counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, the respondent(s) may submit a brief posing the position of respondent(s) and replying to the brief of the General Counsel. Both briefs will then be filed with the Commission Secretary and will be considered by the Commission. Thereafter, if the Commission determines by an affirmative vote of four (4) Commissioners, that there is probable cause to believe that a violation of the FECA has been committed or is about to be committed conciliation must be undertaken for a period of at least 30 days but not more than 90 days. If the Commission is unable to correct or prevent any violation of the FECA through conciliation the Office of General Counsel may recommend that the Commission file a civil suit against the respondent(s) to enforce the Federal Election Campaign Act (FECA). Thereafter, the Commission may, upon an affirmative vote of four (4) Commissioners, institute civil action for relief in the District Court of the United States.

See 2 U.S.C. § 437g, 11 C.F.R. Part 111.

November 1980

9 7 0 4 0 5 4 5 8 2 9

STATEMENT OF DESIGNATION OF COUNSEL

MUR _____

NAME OF COUNSEL: _____

ADDRESS: _____

_____

_____

TELEPHONE: _____

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

_____ _____

Date Signature

RESPONDENT'S NAME: _____

ADDRESS: _____

_____

_____

HOME PHONE: _____

BUSINESS PHONE: _____

87040418324

12206 Orchard
Omaha NE 137

Memo from . . .

JOHN W. HERDZINA
8712 West Dodge Road
392-1250 Omaha, Nebraska 68114

6-13-85

Dear Julie:

Enclosed please find the deposit summary and receipts & disbursements for January thru March for the quarterly report. If you need any additional info please contact me immediately.

Also, any update on the $92.73?

John...

3704548 2

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
8712 WEST DODGE ROAD
SUITE 300
OMAHA, NEBRASKA 68114
TELEPHONE 392-1250
AREA CODE 402

AKSC
FILE COPY

MILTON R. ABRAHAMS
BEN E. KASLOW
FREDERICK S. CASSMAN
HOWARD J. KASLOW
FRANK F. POSPISHIL
WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON
TERRENCE P. MAHER

April 25, 1985

Ms. Julie Gomez
12206 Orchard
Omaha, Nebraska 68137

Dear Julie:

Enclosed please find a letter of April 18, 1985 and a copy of the letter dated March 26, 1985, from the Federal Election Commission. I do not understand how the March 26 letter got side-lined, but apparently it did. As you can see from the April 18 letter, the FEC may be a bit perturbed at my failure to respond earlier. Would you please check the referenced entries and make out an amended filing. I am sure the only amendments that need be made are the pages in concern.

If you have any questions, please do not hesitate to call me.

Very truly yours,

John W. Herdzina
For the Firm

JWH:kjs
Enc.
cc: Walter Calinger

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April 25, 1985

Federal Election Commission
Washington, D.C. 20463

ATTN: Noriega E. James
Reports Analyst
Reports Analysis Division

Re: Identification No. 108367
C00175281

Dear Mr. James:

In connection with your letter of April 18, 1985, an explanation of the $-92.73 is forthcoming. Thank you for your patience.

Very truly yours,

John W. Herdzina

JWH:kjs

cc: John D. Gibson
Assistant Staff Director
Reports Analysis Division

3 7 0 4 0 5 4 1 8 2 7

John

WALTER M. CALINGER
ATTORNEY AT LAW
1407 SOUTH 13TH STREET
OMAHA, NEBRASKA 68108

TELEPHONE
(402) 346-5557

June 17, 1985

Julie Gomez
12206 Orchard
Omaha, NE 68137

RE: Federal Election Commission

Dear Julie:

Enclosed please find a copy of the Report covering the period from July 1, 1984 to September 30, 1984.

John Herdzina sent you a letter previously regarding amendments that needed to be made regarding this report.

Please try to get this report amended and sent out this week, as there is little or no time left before further measures will be taken by the Federal Election Commission.

I understand that you are extremely busy, but your help in completing the attached would be most appreciated.

Sincerely yours,

Loretta Ethridge
Secretary to Walter M. Calinger

Enclosures

87074498

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-3

April 18, 1985

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

This letter is to inform you that as of April 17, 1985, the Commission has not received your response to our request for additional information, dated March 26, 1985. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

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

If you should have any questions related to this matter, please contact Noriega James on our toll-free number (800) 424-9530 or our local number (202) 523-4048.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

87074548227

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On the Detailed Summary Page, Line 11(a) Column A minus the unitemized receipts equals $-92.73. The total of all entries itemized on Schedule A for Line 11(a) equals $5,850.00. These totals should be the same. Please explain the discrepancy and amend your report(s) accordingly. (11 CFR 104.3(a))

-Your report was not signed. Please amend this filing to include the original signature of the treasurer or the designated assistant treasurer. (2 U.S.C. 434(a))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James
Reports Analyst
Reports Analysis Division

87040543830

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

MAR 26 1985

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On the Detailed Summary Page, Line 11(a) Column A minus the unitemized receipts equals $-92.73. The total of all entries itemized on Schedule A for Line 11(a) equals $5,850.00. These totals should be the same. Please explain the discrepancy and amend your report(s) accordingly. (11 CFR 104.3(a))

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Sincerely,

Noriega E. James

Noriega E. James
Reports Analyst
Reports Analysis Division

87040543331

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
1175 WOODMEN TOWER
OMAHA, NEBRASKA 68102-2083
TELEPHONE 341-4334
AREA CODE 402

FILE COPY

MILTON R. ABRAHAMS
BEN E. KASLOW
FREDERICK S. CASSMAN
HOWARD J. KASLOW
FRANK F. POSPISHIL
WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON

December 31, 1984

Federal Election Commission
Washington, D.C. 20463
ATTN: Noriega E. James
Reports Analyst

Re: Walter Calinger
Identification No. C00175281
Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. James:

The undersigned is the Treasurer of the Calinger for Congress committee. Mr. Calinger did not win the primary election.

Pursuant to your letter of October 16, 1984, I am enclosing herein the Amended Schedule C in regard to "Loans". I am sending a copy of the Amended Schedule C together with this letter to the Clerk of the House of Representatives and to the Nebraska Secretary of State.

Very truly yours,

John W. Herdzina

JWH:kjs

9704054872

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On the Detailed Summary Page, Line 11(a) Column A minus the unitemized receipts equals $-92.73. The total of all entries itemized on Schedule A for Line 11(a) equals $5,850.00. These totals should be the same. Please explain the discrepancy and amend your report(s) accordingly. (11 CFR 104.3(a))

-Your report was not signed. Please amend this filing to include the original signature of the treasurer or the designated assistant treasurer. (2 U.S.C. 434(a))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James
Reports Analyst
Reports Analysis Division

37040543873

REPORTS OF RECEIPTS AND DISBURSEMENTS
For Authorized Committee

(Summary Page)

ALIGN AREA | ALIGN AREA

1. Name of Committee (in Full): Celinger For Congress
2. FEC Identification Number: 108367
Address (Number and Street): 1407 South 13th Street
3. Is this Report an Amendment? [X] YES [ ] NO
City, State and Zip Code [ ] Check if address is different than previously reported.

4. TYPE OF REPORT

- [ ] April 15 Quarterly Report
- [ ] July 15 Quarterly Report
- [X] October 15 Quarterly Report
- [ ] January 31 Year End Report
- [ ] July 31 Mid Year Report (Non-election Year Only)
- [ ] Twelfth day report preceding _____ (Type of Election) election on _____ in the State of _____
- [ ] Thirtieth day report following the General Election on _____ in the State of _____
- [ ] Termination Report

This report contains activity for — [X] Primary Election [ ] General Election [ ] Special Election [ ] Runoff Election

SUMMARY

5. Covering Period 7/1/84 through 9/30/84

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (From Line 11 (e))	$ 8,005.59	$ 34,166.82
(b) Total Contribution Refunds (from Line 20 (d))	0.00	1,000.00
(c) Net Contributions (other than loans) (subtract Line 6 (b) from 6 (a))	8,005.59	33,166.82
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17)	499.01	43,618.02
(b) Total Offsets to Operating Expenditures (from Line 14)	0.00	221.46
(c) Net Operating Expenditures (Subtract Line 7 (b) from 7 (a))	499.01	43,396.56
8. Cash on Hand at Close of Reporting Period (from Line 27)	3,881.40	
9. Debts and Obligations Owed TO The Committee (Itemize all on Schedule C or Schedule D)	0.00	
10. Debts and Obligations Owed BY The Committee (Itemize all on Schedule C or Schedule D)	14,186.07	

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

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

John W. Herozina
Type or Print Name of Treasurer

John W. Herozina
SIGNATURE OF TREASURER

7-23-85
Date

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

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used.

FEC FORM 3 (3/80)

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

Name of Committee (in Full): Calinger For Congress Committee

Report Covering the Period: From: 7/1/84 To: 9/30/84

	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date	
I. RECEIPTS			
11. CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees (Memo Entry Unitemized $ 1,557.00)	$ 7,407.00	$ 32,223.73	11 (a)
(b) Political Party Committees	0.00	0.00	11 (b)
(c) Other Political Committees	598.59	1,943.09	11 (c)
(d) The Candidate	0.00	0.00	11 (d)
(e) TOTAL CONTRIBUTIONS (other than loans (add 11(a), 11(b), 11(c) and 11(d).	$ 8,005.59	$ 34,166.82	11 (e)
12. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES	0.00	203.75	12
13. LOANS:			
(a) Made or Guaranteed by the Candidate	0.00	$ 22,000.00	13 (a)
(b) All Other Loans	0.00	0.00	13 (b)
(c) TOTAL LOANS (add 13 (a) and 13 (b))	0.00	22,000.00	13 (c)
14. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)	0.00	221.46	14
15. OTHER RECEIPTS (Dividends, Interest, etc.)	0.00	0.00	15
16. TOTAL RECEIPTS (add 11 (e), 12, 13 (c), 14 and 15)	$ 8,005.59	$ 56,592.03	16
II. DISBURSEMENTS			
17. OPERATING EXPENDITURES	499.01	$ 43,618.02	17
18. TRANSFERS TO OTHER AUTHORIZED COMMITTEES	0.00	0.00	18
19. LOAN REPAYMENTS:			
(a) Of Loans Made or Guaranteed by the Candidate	8,092.61	8,092.61	19 (a)
(b) Of All Other Loans	0.00	0.00	19 (b)
(c) TOTAL LOAN REPAYMENTS (add 19 (a) and 19 (b))	8,092.61	8,092.61	19 (c)
20. REFUNDS OF CONTRIBUTIONS TO:			
(a) Individuals/Persons Other Than Political Committees	0.00	1,000.00	20 (a)
(b) Political Party Committees	0.00	0.00	20 (b)
(c) Other Political Committees	0.00	0.00	20 (c)
(d) TOTAL CONTRIBUTION REFUNDS (add 20 (a), 20 (b), and 20 (c))	0.00	1,000.00	20 (d)
21. OTHER DISBURSEMENTS	0.00	0.00	21
22. TOTAL DISBURSEMENTS (add 17, 18, 19 (c), 20 (d) and 21)	$ 8,591.62	$ 52,710.63	22

III. CASH SUMMARY

23. CASH ON HAND AT BEGINNING OF REPORTING PERIOD	$ 4,467.43	23
24. TOTAL RECEIPTS THIS PERIOD (From Line 16)	$ 8,005.59	24
25. SUBTOTAL (Add Line 23 and Line 24)	$ 12,473.02	25
26. TOTAL DISBURSEMENTS THIS PERIOD (From Line 22)	$ 8,591.62	26
27. CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (Subtract Line 26 from 25)	$ 3,881.40	27

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-7

March 1, 1985

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: 1984 Year End Report (Period Ending 12/31/84)

Dear Mr. Herdzina:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced Report of Receipts and Disbursements as required by the Federal Election Campaign Act. You were previously notified of the due date for this report.

It is important that you file this report immediately with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515, or the Secretary of the Senate, 232 Hart Senate Office Building, Washington, DC 20510, as appropriate. A copy of the report should also be filed with the Secretary of State or equivalent state officer of your state.

The failure to file this report may result in an audit or legal enforcement action.

If you have any questions regarding this matter, please contact Noriega E. James on our toll-free number (800) 424-9530. Our local number is (202) 523-4048.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
8712 WEST DODGE ROAD
SUITE 300
OMAHA, NEBRASKA 68114
TELEPHONE 392-1250
AREA CODE 402

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WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON
TERRENCE P. MAHER

AK&C
FILE COPY

February 18, 1985

Federal Election Commission
Washington, D.C. 20463
ATTN: Noriega E. James
Reports Analyst

Re: Walter Calinger
Identification No. C00175281
Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. James:

As you requested I filed the Amended Schedule C in regard to "Loans". Subsequently you asked for additional information in connection with the signators on the loans. I inquired of The Community Bank pursuant to your letter. I was always under the impression that the individuals (Hughes, Newell and Myers) were merely accommodating makers pursuant to the Uniform Commercial Code for the State of Nebraska. The letter I received from The Community Bank states that some of the loans (totalling $17,000) were guaranteed. I informed The Community Bank through Mr. Calinger that it was the position of the Federal Election Commission that guarantees were the same as contributions. Accordingly, The Community Bank rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed. I am enclosing herein a copy of the December 21, 1984 letter from The Community Bank.

Thank you for your patience in this matter.

Very truly yours,

John W. Herdzina
Treasurer
Calinger for Congress Committee

JWH/kjs
Enc.
cc: Walter Calinger

87049437

THE COMMUNITY BANK

December 21, 1984

Mr. Walter M. Calinger
1450 South 11 Street
Omaha, NE 68108

RE: Commercial Loan - Walt Calinger for Congress

Dear Mr. Calinger:

The three loans totaling $17,000 guaranteed by John Hughes, David Newell, and Larry Myers now stand in the following position:

1. The guarantees of John Hughes, David Newell, and Larry Myers have been destroyed and are no longer valid.

2. All the loans are now in the name of Walter M. Calinger only and are unsecured and not guaranteed.

The $5,000 loan and the $2,000 loan have been paid in full and $2,000 has been paid on the principal on the $10,000 loan.

Very truly,

Leon E. Evans, Jr. (spw)

Leon E. Evans, Jr.
PRESIDENT

spw

Note No. 84-01831-1 Date December 21, 1984

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor, Community Bank of Nebraska

Debtor's Name Walter M. Calinger

Debtor's Address 1450 S. 11 st, Omaha, Ne 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
Base plus 1 %	$	$ 8,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization ☒ I do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
1 (one)	8,000.00 plus int.	March 21, 1985 (90 days)

INTEREST RATE

A. ☒ This loan has a fixed interest rate.

B. ☒ This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above base plus one. The maximum interest rate increase at one time will be base plus1 %. The rate will not increase more than once ☐ every year; ☐ calender Quarterly. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $_____; ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $_____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $_____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $_____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you get the insurance from creditor you will pay $_____.

SECURITY INTEREST

A. ☐ This loan is covered by a security agreement dated _____, 19____ covering the following property:

B. ☒ This loan is unsecured.

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; ☐ interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is base plus 1 %.

PREPAYMENT: If you pay off early, you

☐ may ☒ will not have to pay a penalty, which will be computed as follows: N/A

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method:

ADDITIONAL CHARGES Official fees and taxes $_____

Other _____ $_____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of

Eight Thousand and 00/100 (plus Interest) Dollars ($ 8,000.00 plusint)

on March 21, 19 85 at creditor's office and also to pay ☐ a minimum loan fee of $_____, ☒ interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of base plus 1 %. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan renewal of 84-01831

Debtor's Signature X Walter M. Calinger Debtor's Address 1450 S. 11 st, Omaha, Ne 68108

Debtor's Signature _____ Debtor's Address _____

NF260-828 Single Payment or Demand Note

3 7 1 4 1 4 9 7

Note No. 84-01831 Date May 10, 1984

FEDERAL TRUTH IN LENDING DISCLOSURE

Creditor COMMUNITY BANK OF NEBRASKA,

Debtor's Name Walt Calinger for Congress

Debtor's Address 1407 S. 13th St., Omaha, Ne. 68108

The following disclosures are being made as required by the Truth-in-Lending Act and the Truth-in-Lending Simplification and Reform Act:

ANNUAL PERCENTAGE RATE — The cost of my credit as a yearly rate.	FINANCE CHARGE — The dollar amount the credit will cost me.	Amount Financed — The amount of credit provided to me or on my behalf.	Total of Payments — The amount I will have paid after I have made all payments as scheduled.
2% over reg prime %	$	$ 10,000.00	$

You have the right at this time to receive an itemization of the Amount Financed. ☐ I want an itemization XX do not want an itemization

Your PAYMENT SCHEDULE will be:

Number of Payments	Amount of Payments	When Payments Are Due
Demand		

INTEREST RATE

A. ☐ This loan has a fixed interest rate.

B. X This loan has a variable interest rate. The annual percentage rate may increase during the term of this transaction if the prime interest rate of the Creditor increases. The interest rate will not increase above _____%. The maximum interest rate increase at one time will be _____%. The rate will not increase more than once ☐ every year; ☐ _____. Any increase will take the form of ☐ higher payments amounts; ☐ more payments of the same amount; ☐ a larger amount due at maturity. For example, if the interest rate increased by _____% in ☐ one year; ☐ _____, ☐ your regular payments will increase to $ _____ ☐ you will have to make _____ additional payments; ☐ your final payment will increase by $ _____.

INSURANCE

Credit Life and Credit Disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. The maximum Credit Life Insurance available on this loan when made is $ _____.

As additional Credit Life Insurance becomes available through the reduction of other indebtedness, it will be provided at an additional cost of $ _____ per $1,000.00 of coverage. authorization for premium collection is covered by a separate agreement with the Creditor.

Type	Premium	Signature
Credit Life		I want credit life insurance
Credit Disability		I want credit disability insurance
Credit Life and Disability		I want credit life and disability insurance

COMMUNITY BANK OF NEBRASKA
OMAHA, NEBRASKA
12-21-84
PAID BY RENEWAL

You may obtain property insurance from anyone you want who is acceptable to Creditor. If you buy the insurance from creditor you will pay $ _____

SECURITY INTEREST

A X This loan is covered by a security agreement dated _____, 19____ covering the following property

Personal Guarantee

B. ☐ This loan is unsecured

LATE CHARGE: If payment is not made in full within ten (10) days after its scheduled date, Creditor may charge Debtor(s) a late charge of ☐ five percent (5%) of each delinquent installment or $5.00, whichever is less; X interest on each installment not exceeding the highest possible contract rate permitted by law. The current rate is 2% over regional prime

PREPAYMENT If you pay off early, you

☐ may X will not have to pay a penalty, which will be computed as follows _____

☐ may ☐ will not be entitled to a refund of part of the finance charge, computed using the Actuarial Method

ADDITIONAL CHARGES Official fees and taxes $ _____

Other _____ $ _____

☐ THIS OBLIGATION IS PAYABLE ON DEMAND.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties

CONSUMER SINGLE PAYMENT OR DEMAND NOTE

The undersigned promise(s) to pay to the order of **COMMUNITY BANK OF NEBRASKA,**

Ten Thousand and 00/100---------- Dollars ($ 10,000.00)

on Demand, 19____ at creditor's office and also to pay ☐ a minimum loan fee of $ _____, X interest on the unpaid balance of this note from the date of this note until debtor has paid off the note in full, at the annual rate of 2% over regional prime. Compute the finance charge on the basis of the actual number of days elapsed and a 365 day year. The creditor has a right of set off or lien on any deposit in the financial institution which is the property of a debtor or co-debtor.

The makers, principals, sureties, endorsers and guarantors of this note severally waive presentment for payment, demand, protest and notice of protest and non-payment thereof, and all defenses on the ground of any extension of the time of payment that may be given by the holder or holders to them or either of them.

Debtor will pay a loan fee ☐ when this note is due; ☐ _____; and also when creditor demands payment.

NOTICE TO DEBTOR: Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. Keep this agreement to protect your legal rights. By signing below, you also acknowledge receipt of a copy of this note on the date hereof.

Purpose of Loan Campaign Expenses

Walter Calinger for Congress

Debtor's Signature X Walter M. Calinger Debtor's Address _____

Walter M. Calinger

Debtor's Signature _____ Debtor's Address _____

NF260-828 Single Payment or Demand Note

SCHEDULE C
(Revised 3/80)

LOANS

(Use separate schedules for each numbered line)

Name of Committee (In Full)
Calinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Calinger 1450 So. 11th Str. Omaha, NE 68108 Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5000.00

Terms: Date Incurred 1/4/84 Date Due Demand Interest Rate 10 % (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Calinger (same as above) David Newell Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5,000.00

Terms: Date Incurred 4/27/84 Date Due Demand Interest Rate 19.75 % (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional) $10,000.00

TOTALS This Period (last page in this line only) . . . . . .

Carry outstanding balance only to LINE 2, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

SCHEDULE C
(Revised 3/80)

LOANS

LINE NUMBER 13A
(Use separate schedule for each numbered line)

Name of Committee (In Full)
Colinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Colinger Larry Myers Election: ☒ Primary ☐ General ☐ Other (specify):	$2000.00	-0-	$2,000.00

Terms: Date Incurred 5/5/84 Date Due Demand Interest Rate 15.75 % (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Colinger John Hughes Election: ☒ Primary ☐ General ☐ Other (specify)	$10,000.00	-0-	$10,000.00

Terms: Date Incurred 5/10/84 Date Due Demand Interest Rate 15.75 % (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional)	$12,000.00
TOTALS This Period (last page on this line only)	$22,000.00

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

2 4 4 4 4 2 9 3 4 4 2 1

Although the Commission may take further legal steps concerning the acceptance of an excessive contribution(s), prompt action by you to refund the excessive amount will be taken into consideration.

-Please provide a Schedule A to support the amount reported on Line 13(a) of the Detailed Summary Page. Each person who makes a loan to your committee or to the candidate acting as an agent of the committee, must be reported on Schedule A and Schedule C. The itemization on Schedule A must include the person's full name, mailing address, and zip code, along with the name of his/her employer, the date of the contribution/loan and the aggregate year-to-date amount of contributions made by the person. (11 CFR 104.3(a)(4)(iv))

-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used his/her personal funds or borrowed the money from a lending institution, or any other source. If the candidate borrowed funds from a lending institution or any other source, please provide the name of the lending institution and the complete terms of the loan. If the loan(s) was from personal funds, please acknowledge that fact in an amendment to this report. Further, it is important to note that "personal funds" is strictly defined by Commission regulations and may be found in 11 CFR 110.10. (11 CFR 100.7(a)(1) and 104.3(d))

-On Schedule B of this report, you have reported disbursements for which you have failed to include either the date, amount, address, or purpose. Please amend your report to include the missing information for each of these entries. (11 CFR 104.3(b)(4))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James

Noriega E. James
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

OCT 16 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule C of your report (pertinent portion attached) discloses a contribution(s) which appears to exceed the limits set forth in the Act. An individual or a political committee other than a multicandidate committee may not make contributions to a candidate for Federal office in excess of $1,000 per election. If you have received a contribution(s) which exceeds the limits, the Commission recommends that you refund to the donor(s) the amount in excess of $1,000. The Commission should be notified in writing if a refund is necessary. In addition, any refund should appear on Line 20 of the Detailed Summary Page of your next report. (2 U.S.C. 441a(a) and (f))

The term "contribution" includes 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.

Schedule C of your report fails to indicate the amount of the loan guaranteed or endorsed by each individual. Federal Regulations provide that in the event that the amount endorsed or guaranteed by each individual is not stated, each endorser or guarantor shall be liable proportionately to the number of endorsers or guarantors of the loan. (11 CFR 100.7(a)(1)(i)(B))

If the contribution(s) in question was incorrectly reported and/or you have additional information regarding the contributor(s), you may wish to submit documentation for the public record. Please amend your report with the clarifying information.

87044048 14

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
1175 WOODMEN TOWER
OMAHA, NEBRASKA 68102-2083
TELEPHONE 341-4334
AREA CODE 402

AK&C
FILE COPY

MILTON R. ABRAHAMS
BEN E. KASLOW
FREDERICK S. CASSMAN
HOWARD J. KASLOW
FRANK F. POSPISHIL
WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON

November 23, 1984

Federal Election Commission
Washington, D.C. 20463

ATTN: Don D. Gibson
Reports Analysis Division

Re: Identification No. C00175281

Dear Mr. Gibson:

I am now in receipt of your letters dated November 8 and November 14, 1984, in connection with the July Quarterly Report and October Quarterly Report. Please understand that I was not ignoring your letters. I am sorry for the delay in responding to you.

I am sure you have had experience in the past, where once a primary election is over and a candidate loses, the candidate's staff dissipates. I am not using this as an excuse but merely to let you know the reason for the delay. I did not receive your letters until November 19, 1984. The letters had been held up at the old campaign headquarters. I will tend to these matters immediately.

Very truly yours,

John W. Herdzina
Treasurer
Calinger for Congress Committee

JWH:kjs
cc: Julie Gomez

AMENDED

SCHEDULE C
(Revised 3/80)

LOANS

Page 2 of 2 for
LINE NUMBER 13A
(Use separate schedules for each numbered line)

Name of Committee (in Full)
Colinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5180 Ames Omaha, NE Election: X Primary ☐ General ☐ Other (specify):	$2000.00	0	$2000.00

Terms: Date Incurred 5/5/84 Date Due Demand Interest Rate 10 %(apr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code Walter M. Colinger 1450 So. 11 Str. Omaha, NE 68108	Name of Employer: SELF Occupation: Lawyer Amount Guaranteed Outstanding: $ 2000.00	
2. Full Name, Mailing Address and ZIP Code	Name of Employer: Occupation: Amount Guaranteed Outstanding: $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer: Occupation: Amount Guaranteed Outstanding: $	

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5180 Ames Omaha, NE Election: X Primary ☐ General ☐ Other (specify):	$10,000.00	-0-	$10,000.00

Terms: Date Incurred 5/10/84 Date Due Demand Interest Rate 10 %(apr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code Walter M. Colinger 1450 So. 11 Str. Omaha, NE 68108	Name of Employer: SELF Occupation: Lawyer Amount Guaranteed Outstanding: $ 10,000.00	
2. Full Name, Mailing Address and ZIP Code	Name of Employer: Occupation: Amount Guaranteed Outstanding: $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer: Occupation: Amount Guaranteed Outstanding: $	

SUBTOTALS This Period This Page (optional)	$12,000.00
TOTALS This Period (last page in this line only)	$22,000.00

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

AMENDED for July 1984 Quarterly

SCHEDULE C
(Revised 3/80)

LOANS

Page 1 of 2 for
LINE NUMBER 13A
(Use separate schedules for each numbered line)

Name of Committee (in Full)
Colinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
WALTER COLINGER 1450 So. 11th Omaha 68108 Election: X Primary ☐ General ☐ Other (specify):	$5,000.00	-0-	$5000.00

Terms: Date Incurred 1/4/84 Date Due Demand Interest Rate 10 %(apr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding
Walter M. Colinger 1450 So. 11 Str. Omaha, NE 68108	SELF	Lawyer	$ 5000.00
2. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding: $
3. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding: $

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5180 Ames Omaha, NE Election: X Primary ☐ General ☐ Other (specify):	$5,000.00	-0-	$5000.00

Terms: Date Incurred 4/27/84 Date Due Demand Interest Rate 10 %(apr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding
Walter M. Colinger 1450 So. 11 Str. Omaha, NE 68108	SELF	Lawyer	$ 5000.00
2. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding: $
3. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding: $

SUBTOTALS This Period This Page (optional)	$ 10,000.00
TOTALS This Period (last page in this line only)	

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

RQ-3

November 8, 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. Herdzina:

This letter is to inform you that as of November 7, 1984, the Commission has not received your response to our request for additional information, dated October 16, 1984. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

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

If you should have any questions related to this matter, please contact Noriega James on our toll-free number (800) 424-9530 or our local number (202) 523-4048.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

3 7 0 4 0 5 4 1 3 4 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-7

November 14, 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 So. 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: October Quarterly Report (7/1/84-9/30/84)

Dear Mr. Herdzina:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced Report of Receipts and Disbursements as required by the Federal Election Campaign Act. You were previously notified of the due date for this report.

It is important that you file this report immediately with the Federal Election Commission, 1325 K Street, NW, Washington, DC 20463 (or with the Clerk of the House or the Secretary of the Senate, as appropriate). A copy of the report or its relevant portions should also be filed with the Secretary of State or equivalent state officer (see 11 CFR 108.2, 108.3, 108.4).

The failure to file this report may result in an audit or legal enforcement action.

If you have any questions regarding this matter, please contact Noriega James on our toll-free number (800) 424-9530. Our local number is (202) 523-4048.

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

OCT 16 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule C of your report (pertinent portion attached) discloses a contribution(s) which appears to exceed the limits set forth in the Act. An individual or a political committee other than a multicandidate committee may not make contributions to a candidate for Federal office in excess of $1,000 per election. If you have received a contribution(s) which exceeds the limits, the Commission recommends that you refund to the donor(s) the amount in excess of $1,000. The Commission should be notified in writing if a refund is necessary. In addition, any refund should appear on Line 20 of the Detailed Summary Page of your next report. (2 U.S.C. 441a(a) and (f))

The term "contribution" includes 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.

Schedule C of your report fails to indicate the amount of the loan guaranteed or endorsed by each individual. Federal Regulations provide that in the event that the amount endorsed or guaranteed by each individual is not stated, each endorser or guarantor shall be liable proportionately to the number of endorsers or guarantors of the loan. (11 CFR 100.7(a)(1)(i)(B))

If the contribution(s) in question was incorrectly reported and/or you have additional information regarding the contributor(s), you may wish to submit documentation for the public record. Please amend your report with the clarifying information.

R7040548 50

Although the Commission may take further legal steps concerning the acceptance of an excessive contribution(s), prompt action by you to refund the excessive amount will be taken into consideration.

-Please provide a Schedule A to support the amount reported on Line 13(a) of the Detailed Summary Page. Each person who makes a loan to your committee or to the candidate acting as an agent of the committee, must be reported on Schedule A and Schedule C. The itemization on Schedule A must include the person's full name, mailing address, and zip code, along with the name of his/her employer, the date of the contribution/loan and the aggregate year-to-date amount of contributions made by the person. (11 CFR 104.3(a)(4)(iv))

-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used his/her personal funds or borrowed the money from a lending institution, or any other source. If the candidate borrowed funds from a lending institution or any other source, please provide the name of the lending institution and the complete terms of the loan. If the loan(s) was from personal funds, please acknowledge that fact in an amendment to this report. Further, it is important to note that "personal funds" is strictly defined by Commission regulations and may be found in 11 CFR 110.10. (11 CFR 100.7(a)(1) and 104.3(d))

-On Schedule B of this report, you have reported disbursements for which you have failed to include either the date, amount, address, or purpose. Please amend your report to include the missing information for each of these entries. (11 CFR 104.3(b)(4))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James
Reports Analyst
Reports Analysis Division

SCHEDULE C
(Revised 3/80)

LOANS

LINE NUMBER 15A
(Use separate schedules for each numbered line)

Name of Committee (In Full)
Collinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Collinger Larry Myers Election: ☒ Primary ☐ General ☐ Other (specify):	$2000.00	-0-	$2,000.00

Terms: Date Incurred 5/5/84 Date Due Demand Interest Rate 15.75 %(apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Collinger John Hughes Election: ☒ Primary ☐ General ☐ Other (specify):	$10,000.00	-0-	$10,000.00

Terms: Date Incurred 5/10/84 Date Due Demand Interest Rate 15.75 %(apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional)	$12,000.00
TOTALS This Period (last page on this line only)	$22,000.00

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

84 JUL 31 PM 12:40

SCHEDULE C
(Revised 3/80)

LOANS

(Use separate schedule for each numbered line)

Name of Committee (in Full)
Calinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Calinger 1450 So. 11th Str. Omaha, NE 68108 Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5000.00

Terms: Date Incurred 1/4/84 Date Due Demand Interest Rate 10 % (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Calinger (same as above) David Newell Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5,000.00

Terms: Date Incurred 4/27/84 Date Due Demand Interest Rate 14.75 % (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional)	$10,000.00
TOTALS This Period (last page in this line only)	

Carry forward balance only to LINE 2, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 8 1984

RQ-7

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/1/84-6/30/84)

Dear Mr. Herdzina:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced Report of Receipts and Disbursements as required by the Federal Election Campaign Act. You were previously notified of the due date for this report.

It is important that you file this report immediately with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515, or the Secretary of the Senate, Office of Public Records, 119 D Street, NE, Washington, DC 20510, as appropriate. A copy of the report should also be filed with the Secretary of State or equivalent state officer of your state.

The failure to file this report may result in an audit or legal enforcement action.

If you have any questions regarding this matter, please contact Noriega E. James on our toll-free number (800) 424-9530. Our local number is (202) 523-4048.

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

8 7 0 4 0 5 4 5 8 5 5

OMAHA
AUG 2 '85
NEBR

US POSTAGE
$1.58
METER
2201594

From

FIRST CLASS MAIL

ABRAHAMS, KASLOW & CASSMAN

8712 WEST DODGE ROAD, SUITE 300

OMAHA, NEBRASKA 68114

To

Mr. Jonathon Levin
Attorney at Law
Office of the General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

RECEIVED FEC
GCC#8196
85 AUG 5 A8:01
85 AUG 5 P12:04

August 1, 1985

Jonathan Levin, Esquire
Assistant General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR 2051; John J. Hughes

Dear Jon:

I enjoyed taking with you last week. I appreciate your taking the time to locate and call me while I was out of the city. Unfortunately, I find myself in that same position this week.

I look forward to meeting with you on August 9. The designation of attorney form will follow under a separate cover.

Sincerely,

F. Joseph Warin

jjb

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KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

Jonathan Levin, Esquire
Assistant General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

85 AUG 5 A8:0

GCC# 81 39

COPY

July 23, 1985

Certified Mail No. P 014 044 163
Return Receipt Requested

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY
85 JUL 29 A10:06

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

Re: MUR 2051
Calinger for Congress Committee
John W. Herdzina, as treasurer

Dear Sir or Madam:

On this 23rd day of July, 1985 I received a letter from John W. McGarry concerning possible violation to USC Section 441a(f). I also received on this day a Subpoena to Produce Documents together with a description of preliminary procedures for processing possible violations discovered by the Federal Election Commission. First of all, in connection with the Subpoena, I will be glad to produce any and all records which I have in my possession concerning the Calinger for Congress Committee. However, it is my understanding that if I request a desire to enter into negotiations directed towards reaching a conciliation agreement, and should you be kind enough to grant same, the time limit involved in the Subpoena would be stayed. If this is incorrect please inform me and I will immediately produce the documents.

I am optimistic that I can demonstrate to you that no action should be taken against myself or the Committee. I am interested in pursuing a pre-probable cause conciliation. I desire to enter negotiations directed towards reaching a conciliation agreement. If there is a problem with the reports or the content thereof I certainly wish to work with your office in attempting to correct such problem or prevent any future problem. I prefer to do this by informal methods of conference conciliation and persuasion.

If anything further is needed in connection with this request please let me know immediately.

Very truly yours,

cc: Ms. Marjorie W. Emmons
Mr. Walter Calinger

John W. Herdzina, Treasurer
Calinger for Congress Committee
8712 West Dodge Road, Suite 300
Omaha, Nebraska 68114
ID.# 108367

PLEASE NOTE THE ADDRESS CHANGE

8 7 0 4 0 5 4 5 8 5 8

Herdzina, Treasurer
r for Congress Committee
st Dodge Road, Suite 300
Nebraska 68114

Ms. Marjorie W. Emmons
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

95 JUL 29 A8:59

RECEIVED AT THE FEC
GCC#8161
85 JUL 30 P 1: 06

July 23, 1985

Certified Mail No. P 014 044 163
Return Receipt Requested

85 JUL 30 P 2: 32
RECEIVED
GENERAL COUNSEL

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

Re: MUR 2051
Calinger for Congress Committee
John W. Herdzina, as treasurer

Dear Sir or Madam:

On this 23rd day of July, 1985 I received a letter from John W. McGarry concerning possible violation to USC Section 441a(f). I also received on this day a Subpoena to Produce Documents together with a description of preliminary procedures for processing possible violations discovered by the Federal Election Commission. First of all, in connection with the Subpoena, I will be glad to produce any and all records which I have in my possession concerning the Calinger for Congress Committee. However, it is my understanding that if I request a desire to enter into negotiations directed towards reaching a conciliation agreement, and should you be kind enough to grant same, the time limit involved in the Subpoena would be stayed. If this is incorrect please inform me and I will immediately produce the documents.

I am optimistic that I can demonstrate to you that no action should be taken against myself or the Committee. I am interested in pursuing a pre-probable cause conciliation. I desire to enter negotiations directed towards reaching a conciliation agreement. If there is a problem with the reports or the content thereof I certainly wish to work with your office in attempting to correct such problem or prevent any future problem. I prefer to do this by informal methods of conference conciliation and persuasion.

If anything further is needed in connection with this request please let me know immediately.

Very truly yours,

John W. Herdzina

John W. Herdzina, Treasurer
Calinger for Congress Committee
8712 West Dodge Road, Suite 300
Omaha, Nebraska 68114

cc: Ms. Marjorie W. Emmons
Mr. Walter Calinger

8704064860

PLEASE NOTE THE ADDRESS CHANGE

W. Herdzina, Treasurer
der for Congress Committee
West Dodge Road, Suite 300
, Nebraska 68114

CERTIFIED
P 014 044 163
MAIL

FIED MAIL
N RECEIPT REQUESTED

OMAHA NE 181
PM
JUL
1995

95 JUL 30 P1:25

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

QCC# 8112
RECEIVED AT THE FEC
HAND DELIVERED
85 JUL 25 P12:25

KUTAK ROCK & CAMPBELL
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

ATLANTA
DENVER
OMAHA

July 25, 1985

HAND DELIVERED

85 JUL 25 P2:03

Jonathan Levin, Esquire
Assistant General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR 2051 John J. Hughes

Dear Mr. Levine:

Please be advised that I represent John J. Hughes in the above-styled matter.

I was retained to represent Mr. Hughes on Wednesday, July 24, 1985. Because of prior court and travel commitments, I request that our response to your allegations and subpoena be extended to Tuesday, August 13, 1985. Before that time, I would like to arrange for a conference with you to discuss the matters raised in the General Counsel's Factual and Legal Analysis and the subpoena.

Thank you for your cooperation in this matter. I look forward to working with you in resolving this in an equitable manner.

Sincerely,

F. Joseph Warin

F. Joseph Warin

jjb

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1985

Larry Myers
8725 Countryside Plaza
Omaha, Nebraska 68114

RE: MUR 2051
Larry Myers

Dear Mr. Myers:

On June 26, 1985, the Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission, also on that date, determined to take no further action and close its file as it pertains to you. The General Counsel's Factual and Legal analysis which formed a basis for the Commission's finding is attached for your information.

The file in this matter will be made part of the public record within 30 days after this matter is closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days of your receipt of this letter. The confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

The Commission reminds you that making contributions in excess of the limits set forth in 2 U.S.C. § 441a nevertheless is a violation of the Act. You should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Jonathan Levin, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosure
Factual and Legal Analysis

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GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 2051

RESPONDENT Larry Myers

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of the General Counsel by the Reports Analysis Division (RAD) and involves an allegation that Larry Myers made contributions exceeding the limitation of 2 U.S.C. § 441a(a)(1)(A) to the Calinger for Congress Committee ("the Committee").

FACTUAL BASIS AND LEGAL ANALYSIS

Schedule A disclosed the receipt of a $100 contribution on April 26, 1984, from Larry and Mariana Myers, bringing their yearly non-loan contribution total to $125. Schedule C disclosed a $2,000 loan to the Committee from the candidate and Mr. Myers on May 5, 1984, due on demand at 15.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to [the matter of the contribution] immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loan as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for the loan was listed as ten per cent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

3704143354

circumstances of the loan. The treasurer stated that Mr. Myers was an "accommodating maker" or "accommodating party" to the loan. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank rewrote the Note and the guarantee of Mr. Myers was destroyed. According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $2,000 loan with interest.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Myers has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the

bank removed Mr. Myers as a guarantor does not negate the original violation. The treasurer has posed the defense that Mr. Myers was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, Mr. Myers, as the sole co-maker with the candidate on the $2,000 loan, has contributed half the amount of the loan. Along with his other contribution, he has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that Larry Myers violated 2 U.S.C. § 441a(a)(1)(A). However, because of the small amount of the excessive contribution, this Office recommends that no further action be taken with regard to Mr. Myers.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Larry Myers
8725 Countryside Plaza
Omaha, Nebraska 68114

RE: MUR
Larry Myers

Dear Mr. Myers:

On , 1985, the Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission, also on that date, determined to take no further action and close its file as it pertains to you. The General Counsel's Factual and Legal analysis which formed a basis for the Commission's finding is attached for your information.

The file in this matter will be made part of the public record within 30 days after this matter is closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days of your receipt of this letter. The confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

The Commission reminds you that making contributions in excess of the limits set forth in 2 U.S.C. § 441a nevertheless is a violation of the Act. You should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Jonathan Levin, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

7/3/85

John Warren McGarry
Chairman

Enclosure
Factual and Legal Analysis

8 7 1 1 0 5 4 1 8 5 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Larry Myers
8725 Countryside Plaza
Omaha, Nebraska 68114

RE: MUR
Larry Myers

Dear Mr. Myers:

On , 1985, the Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission, also on that date, determined to take no further action and close its file as it pertains to you. The General Counsel's Factual and Legal analysis which formed a basis for the Commission's finding is attached for your information.

The file in this matter will be made part of the public record within 30 days after this matter is closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days of your receipt of this letter. The confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

The Commission reminds you that making contributions in excess of the limits set forth in 2 U.S.C. § 441a nevertheless is a violation of the Act. You should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Jonathan Levin, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosure
Factual and Legal Analysis

8 7 0 4 0 4 1 9 8 8

BEFORE THE FEDERAL ELECTION COMMISSION

2051

In the Matter of	)	
	)	RAD Ref. 85L-9
Calinger for Congress Committee	)	
John W. Herdzina, as treasurer	)	
John Hughes	)	
David Newell	)	
Larry Myers	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 26, 1985, the Commission decided by a vote of 6-0 to take the following actions in RAD Ref. 85L-9:

1. Open a Matter Under Review.

2. Find reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A).

3. Find reason to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A).

4. Find reason to believe that Larry Myers violated 2 U.S.C. § 441a(a)(1)(A) and take no further action.

5. Find reason to believe that the Calinger for Congress Committee and John W. Herdzina, as its treasurer, violated 2 U.S.C. § 441a(f).

6. Approve the subpoenas for documents attached to the First General Counsel's Report signed June 20, 1985.

7. Approve the letters with General Counsel's Factual and Legal Analysis attached to the First General Counsel's Report signed June 20, 1985.

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

Attest:

6/27/85
Date

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

87040343959

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: June 21, 1985

SUBJECT: RAD 85L-9: First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[x]	Compliance	[x]
Sensitive	[x]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

8704064870

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

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

85 JUN 21 P 1:39

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION _____

RAD Referral No. 85L-9
STAFF MEMBER
Jonathan Levin

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

SENSITIVE

RESPONDENTS' NAMES: Calinger for Congress Committee
John W. Herdzina, as treasurer
John Hughes
David Newell
Larry Myers

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)(i)
§ 431(8)(B)(vii)(I)
§ 441a(a)(1)(A)
§ 441a(f)
Neb. UCC § 3-415

INTERNAL REPORTS
CHECKED: Public Records

FEDERAL AGENCIES
CHECKED: None

9 7 0 4 0 5 4 3 9 7 1

SUMMARY OF ALLEGATIONS

The Calinger for Congress Committee, the principal campaign committee of Walter M. Calinger for election to the House of Representatives from the Second District of Nebraska, was referred by the Reports Analysis Division (RAD) to the Office of the General Counsel for the receipt of excessive contributions from three individuals.

FACTUAL AND LEGAL ANALYSIS

The 1984 July Quarterly Report of the Calinger for Congress Committee ("the Committee") itemized $9,642 in contributions, some in the form of loans or loan guarantees from three individuals. These contributions were designated for the

primary, resulting in the receipt by the Committee of apparent excessive contributions.

Schedule A of the report disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

Schedule A also disclosed a $5 contribution from David Newell on May 10, 1984, bringing his yearly non-loan contribution total to $80. Schedule C of the same report disclosed the receipt of $5,000 from the candidate and Mr. Newell on April 27, 1984, due on demand at 15.75% interest.

Schedule A also disclosed the receipt of a $100 contribution on April 26, 1984, from Larry and Mariana Myers, bringing their yearly non-loan contribution total to $125. Schedule C disclosed a $2,000 loan to the Committee from the candidate and Mr. Myers on May 5, 1984, due on demand at 15.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to these matters immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loans as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for each loan was listed as ten percent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

3 7 0 4 0 5 4 3 8 7 2

circumstances of the loans. The treasurer stated that the non-candidate individuals were "accommodating makers" or "accommodating parties" to the loans. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance

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that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed the individuals as guarantors does not negate the original violation. The treasurer has posed the defense that the non-candidate signatories were not really contributors because they were "accommodating makers." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, the non-candidate individuals, as the sole co-makers with the candidate on the loans, have contributed half the amount of the loans. Each individual has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission open a Matter Under Review. This Office also recommends that the Commission find reason to believe that John Hughes, David Newell, and Larry Myers violated 2 U.S.C. § 441a(a)(1)(A) and that the Calinger for Congress Committee and John W. Herdzina, as treasurer,

violated 2 U.S.C. § 441a(f). Because of the small amount of Larry Myers' excessive contribution, this office recommends taking no further action with regard to him.

In order to determine more exactly the extent of the violation, this Office recommends the approval of the attached subpoenas requesting all documents pertaining to the making of the loans and the re-negotiation of the terms of the loans. Information from these documents may be useful in determining a civil penalty.

RECOMMENDATIONS

1. Open a Matter Under Review.

2. Find reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A).

3. Find reason to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A).

4. Find reason to believe that Larry Myers violated 2 U.S.C. § 441a(a)(1)(A) and take no further action.

5. Find reason to believe that the Calinger for Congress Committee and John W. Herdzina, as its treasurer, violated 2 U.S.C. § 441a(f).

6. Approve the attached subpoenas for documents.

7. Approve the attached letters with General Counsel's Factual and Legal Analyses.

Charles N. Steele
General Counsel

June 20, 1985
Date

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

Attachments
1. Referral from RAD
2. Proposed letter, subpoena, and analysis to Calinger for Congress
3. Proposed letter, subpoena, and analysis to John Hughes
4. Proposed letter, subpoena, and analysis to David Newell
5. Proposed letter and analysis to Larry Myers

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

21 March 1985

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REFERRAL OF THE CALINGER FOR CONGRESS COMMITTEE

This is a referral of the Calinger for Congress Committee ("the Committee"). The Committee has received excessive contributions in the form of loan guarantees and direct contributions from the same individuals. It appears that the loans have been renegotiated, removing the individuals as guarantors; however, it is not clear when the apparent renegotiation occurred.

Walter M. Calinger, the candidate, lost in the Primary Election which was held in Nebraska on May 15, 1984, with 42.2% of the vote.

If you have further questions, please contact Noriega E. James at 523-4048.

Attachment

Attachment 1 - p. 1 of 20

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 21 March 1985

ANALYST: Noriega E. James

I. COMMITTEE: Calinger for Congress Committee
(C00175281)
John W. Herdzina, Treasurer
1407 South 13th Street
Omaha, NE 68108

II. RELEVANT STATUTE: 2 U.S.C. §441a(f)

III. BACKGROUND:

Receipt of Excessive Contributions from Individuals

The 1984 July Quarterly Report of the Calinger for Congress Committee (the "Committee") itemized a total of $9,642 in contributions, some in the form of loans, from three (3) individuals (Attachments 2 and 3).[1] The total amount was designated for the primary election, resulting in the receipt of apparent excessive contributions totalling $6,642.

Schedule A of this report disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C disclosed the receipt of a $10,000 loan from the candidate, Walter M. Calinger, and Mr. Hughes. This loan was incurred on May 10, 1984, had an interest rate of 14.75 percent, and was due on demand.

Schedule A disclosed the receipt of a $5 contribution from David Newell on May 10, 1984. The schedule also indicated that an aggregate year-to-date total of $80 in contributions was received from Mr. Newell. Schedule C disclosed the receipt of a $5,000 loan from the candidate and Mr. Newell. This loan was incurred on April 27, 1984, had an interest rate of 15.75 percent, and was due on demand.

---

[1] The Committee's 1984 July Quarterly Report was not filed until September 1, 1984.

8704049877

Schedule A disclosed the receipt of a $100 contribution on April 26, 1984 from Larry and Mariana M[e]yers. The schedule also indicated that an aggregate year-to-date total of $125 in contributions was received from these two individuals. The amount contributed by each individual was not specified; therefore, the Reports Analysis Division ("RAD") analyst relied upon 11 CFR 100.7(a)(1)(i)(C) to determine that each individual would be considered to have contributed an equal portion, or $62.50, of the total amount. Schedule C disclosed the receipt of a $2,000 loan from the candidate and Mr. Myers. The loan was incurred on May 5, 1984, had an interest rate of 15.75 percent, and was due on demand.

Schedule C did not disclose the portion of the loans provided by each individual. According to 11 CFR 100.7(a)(1)(i)(C), each individual would be considered to have contributed an equal portion of the total amount of each loan, thereby resulting in the receipt of apparent excessive contributions of $5,000, $1,580, and $62 from John Hughes, David Newell, and Larry Myers, respectively.

A Request for Additional Information ("RFAI") was sent to the Committee on October 16, 1984, citing the apparent excessive contributions and requesting the source of the candidate's funds (Attachment 4). When no response was received, a Second Notice was sent to the Committee on November 8, 1984 (Attachment 5).

The Committee filed a letter on November 26, 1984, stating that the Committee would "tend to these matters immediately" (Attachment 6). On January 3, 1985, the Committee submitted an amended Schedule C for the July Quarterly Report which disclosed the source of the three loans as The Community Bank. The candidate was listed as the sole endorser of the loans. The due dates of the loans were unchanged; however, the interest rate for each loan was now listed as 10 percent (Attachment 7).

On January 28, 1985, the RAD analyst telephoned the Committee's treasurer, Mr. John W. Herdzina, and asked why the three individuals identified on Schedule C of the original report were not included on Schedule C of the Amendment (Attachment 8). Mr. Herdzina stated that the individuals were not endorsers of the loans, but were "accommodating makers" or "accommodating parties" to the loans. He said he would submit a definition of these terms in an amended report.

8 7 0 4 0 1 4 5 8 7 8

In an amended July Quarterly Report, received February 25, 1985, the Treasurer stated that, with respect to Mr. Hughes, Mr. Newell, and Mr. Myers, "I was always under the impression that the individuals... were merely accommodating makers [to the loans] pursuant to the Uniform Commercial Code for the State of Nebraska." He explained that, according to the bank, the three individuals were guarantors of the loans and were not accommodating makers (Attachment 9).

Included in this amendment was a copy of a statement from the bank, dated December 21, 1984 and addressed to the candidate. This letter stated that "[t]he guarantees of John Hughes, David Newell, and Larry Myers have been destroyed and are no longer valid," and that "[a]ll of the loans are now in the name of Walter M. Calinger only." Although neither the bank's statement nor any of the Committee's reports or correspondence disclosed the specific date(s) on which the bank removed the three individuals as loan guarantors and replaced them with the candidate as the sole guarantor, the Committee's 1984 October Quarterly Report disclosed that, between July 17 and September 21, 1984, the Committee had made loan repayments to the candidate and the three individuals originally reported as guarantors (Attachment 10).[2/] This report indicated that the Committee had repaid the full amount of the principal, apparently with interest, on the $5,000 and $2,000 loans originally guaranteed by Mr. Newell and Mr. Myers, respectively, together with the candidate. The report also disclosed that, as of September 30, 1984, the Committee had repaid $814 on the $10,000 loan originally guaranteed by Mr. Hughes and the candidate. The bank's statement confirmed the repayment of the $5,000 and $2,000 loans and indicated that, as of December 21, 1984, a total of $2,000 had been repaid on the $10,000 loan (Attachment 9).

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None

2/ The Committee's 1984 October Quarterly Report was not received until January 3, 1985.

8 7 0 4 0 5 4 5 8 7 9

FEDERAL ELECTION COMMISSION
1983-1984
CANDIDATE INDEX OF SUPPORTING DOCUMENTS - (E)

DATE 15MAR85
PAGE 1

ATTACHMENT 1

CANDIDATE/COMMITTEE/DOCUMENT	OFFICE SOUGHT/	PARTY	RECEIPTS PRIMARY	RECEIPTS GENERAL	DISBURSEMENTS PRIMARY	DISBURSEMENTS GENERAL	COVERAGE DATES	# OF PAGES	REF FILM LOCATION
							TYPE OF FILER		
CALINGER, WALTER M	HOUSE 02	DEMOCRATIC PARTY				NEBRASKA	1984 ELECTION	ID# H4NE02013	
1. STATEMENT OF CANDIDATE									
1984 STATEMENT OF CANDIDATE							16JAN84	1	84HSE/251/0802
2. CANDIDATE REPORTS OF RECEIPTS & EXPENDITURES									
3. PRINCIPAL CAMPAIGN COMMITTEE									
CALINGER FOR CONGRESS COMMITTEE							ID# C00175281	HOUSE	
1984 STATEMENT OF ORGANIZATION							16JAN84	1	84HSE/251/0736
APRIL QUARTERLY			10,647		8,565		1JAN84 -31MAR84	32	84HSE/257/0605
APRIL QUARTERLY	AMENDMENT		-		-		1JAN84 -31MAR84	2	84HSE/266/1074
APRIL QUARTERLY	- AMENDMENT		-		-		1JAN84 -31MAR84	2	84HSE/266/1094
1'ST LETTER INFORMATIONAL NOTICE							1JAN84 -31MAR84	1	84FEC/315/4121
PRE-PRIMARY			2,595		4,073		1APR84 -25APR84	22	84HSE/266/0067
PRE-PRIMARY	- AMENDMENT		-		-		1APR84 -25APR84	1	84HSE/266/[illegible]
REQUEST FOR ADDITIONAL INFORMATION							1APR84 -25APR84	1	84FEC/316/4715
REQUEST FOR ADDITIONAL INFORMATION 2ND							1APR84 -25APR84	2	84FEC/318/4202
JULY QUARTERLY			35,343		31,480		26APR84 -30JUN84	50	84HSE/2[illegible]/0629
JULY QUARTERLY	- AMENDMENT		-		-		26APR84 -30JUN84	1	84HSE/277/5687
JULY QUARTERLY	- AMENDMENT		-		-		26APR84 -30JUN84	3	85HSE/2[illegible]/223[illegible]
JULY QUARTERLY	- AMENDMENT		-		-		26APR84 -30JUN84	2	85HSE/285/341[illegible]
NOTICE OF FAILURE TO FILE							1APR84 -30JUN84	1	84FEC/325/0691
REQUEST FOR ADDITIONAL INFORMATION							26APR84 -30JUN84	4	84FEC/340/1443
REQUEST FOR ADDITIONAL INFORMATION 2ND							26APR84 -30JUN84	5	84FEC/343/3332
OCTOBER QUARTERLY			8,005		8,591		1JUL84 -30SEP84	58	85HSE/282/2625
NOTICE OF FAILURE TO FILE							1JUL84 -30SEP84	1	84FEC/348/4354
NOTICE OF FAILURE TO FILE							31DEC84	1	85FEC/367/2069
TOTAL			56,590	0	52,709	0		190	TOTAL PAGES

4. AUTHORIZED COMMITTEES
4B. TRANSFERS IN FROM JOINT FUNDRAISING COMMITTEES

All reports listed above have been reviewed

Ending cash-on-hand as of 9/30/84: $3,881.40

Outstanding debts and obligations as of 9/30/84: $14,186.07

1-p. 5 of 20

8 7 0 4 0 5 4 2 8 0

ATTACHMENT 2
(page 2 of 2)

Page 7 of 1
Line Number 11A
(Use separate schedule(s) for each category of the Detailed Summary Page)

SCHEDULE A **ITEMIZED RECEIPTS**

1984 JULY QUARTERLY REPORT

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

Name of Committee (In Full): Calinger For Congress Committee

Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt This Period
A. M.D. McLaughlin, 1903 W Str., Omaha, NE 68107	— / —	5/7	125.00
Receipt For: X Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date—$ 125.00		
B. B.B. Michael, 6146 Fieldcrest Dr., Omaha, NE 68114	— / —	5/5	100.00
Receipt For: X Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date—$ 100.00		
C. Robert Mierendorf, 1433 N. 102 Ave, Omaha, NE 68144	— / —	3/26	100.00
Receipt For: X Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date—$ 100.00		
D. Morris Miller, 8415 Cleveland Dr., Omaha, NE 68124	— / —	4/4	100.00
Receipt For: X Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date—$ 100.00		
E. Clark Moore, 450 S. 78 St #2, Omaha, NE 68134	— / —	5/4	100.00
Receipt For: X Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date—$ 100.00		
F. Larry & Marilina Nagers, 8725 Countryside Plz., Omaha, NE 68114	— / —	4/26	100.00 MEY
Receipt For: X Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date—$ 125.00		
G. David Newell, 4027 Bowman, Omaha, NE 68112	— / —	3/10	5.00 MEY
Receipt For: X Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date—$ 80.00		
SUBTOTAL of Receipts This Page (optional)		732.00	430.00
TOTAL This Period (last page this line number only)	1-p. 6 of 20		

J 91 70 71 4: 26 3 4 U 3 9 1

ATTACHMENT 2
(page 1 of 2)

SCHEDULE A **ITEMIZED RECEIPTS**

1984 JULY QUARTERLY REPORT

Page 7 of 20
Total Amount $
(Use separate schedule(s) for each category of the Detailed Summary Page)

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

Name of Committee (in Full): Pollinger For Congress Committee

Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt This Period
A. Alan Boer 8211 I Street Omaha, NE 68137 Receipt For: X Primary ☐ General ☐ Other (specify)	J.L. Brandeis & Sons Occupation: Dept. Store Owner Aggregate Year-to-Date-$ 500.00	3/20	$500.
B. John Cavanaugh 3425 So. 94 Ave Omaha, NE 68124 Receipt For: X Primary ☐ General ☐ Other (specify):	Kutak Rock & Huie Occupation: Attorney Aggregate Year-to-Date-$ 250.00	1/23	$250.
C. Thomas J. DiBiase 9202 West Dodge Road Omaha, NE 68114 Receipt For: X Primary ☐ General ☐ Other (specify):	Self-Employed Occupation: Stockbroker Aggregate Year-to-Date-$ 500.00	5/3	$500.00
D. John J. Hughes 1004 Farnam on the Mall Suite 400 Omaha, NE 68102 Receipt For: X Primary ☐ General ☐ Other (specify):	Self-Employed Occupation: Broker-Investor Aggregate Year-to-Date-$ 1000.00	5/2	$1000.00 MEF
E. Tom Kennedy 6011 "L" Str. Omaha, NE 68117 Receipt For: X Primary ☐ General ☐ Other (specify):	Sears Mobile Homes Occupation: Sales/President Aggregate Year-to-Date-$ 500.00	2/28	$500.00
F. Nick Lalich 807 So. 218 Str. Elkhorn, NE 68022 Receipt For: X Primary ☐ General ☐ Other (specify):	Self-Employed Occupation: Insurance Salesman Aggregate Year-to-Date-$ 250.00	5/7	$250.00
G. Full Name, Mailing Address and ZIP Code Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Name of Employer Occupation Aggregate Year-to-Date-$	Date (month, day, year)	Amount of Each Receipt This Period
SUBTOTAL of Receipts This Page (optional)			1,750.00
TOTAL This Period (last page this line number only) ... 1-p 7 of 20			

3101126 0 0 0 3 1

ATTACHMENT 3

(page 1 of 2)

SCHEDULE C
(Revised 3/80)

LOANS

Page 1 of 2
LINE NUMBER 12A
(Use separate schedules for each numbered line)

1984 JULY QUARTERLY REPORT

Name of Committee (In Full): Calinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
Walter M. Calinger 1450 So. 11th St. Omaha, NE 68108 Election: ☒ Primary ☐ General ☐ Other (specify):	$5000.00	-0-	$5000.00

Terms: Date Incurred 1/4/84 Date Due Demand Interest Rate 10 % (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
Walter M. Calinger (same as above) David Newell Election: ☒ Primary ☐ General ☐ Other (specify)	$5000.00	-0-	$5,000.00 MCJ

Terms: Date Incurred 4/27/84 Date Due Demand Interest Rate 14.75 % (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional)	$10,000.00
TOTALS This Period (last page in this line only) 1 - p. 8 of 20	

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

3 2 8 P 2 0 3 0 4 0 7 3 6 2 3

SCHEDULE C
(Revised 3/80)
1984 JULY QUARTERLY REPORT

LOANS

Page 2 of 2 by
LINE NUMBER 13
(Use separate schedule for each numbered line)

Name of Committee (In Full)
Collinger for Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Collinger Larry Myers	$2000.00	-0-	$2,000.00 MEY

Election: ☒ Primary ☐ General ☐ Other (specify):
Terms: Date Incurred 5/5/84 Date Due Demand Interest Rate 15% (apr) ☐ Secured

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

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

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter M. Collinger John Hughes	$10,000.00	-0-	$10,000.00 MEY

Election ☒ Primary ☐ General ☐ Other (specify)
Terms: Date Incurred 5/10/84 Date Due Demand Interest Rate 15.75 % (apr) ☐ Secured

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

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

SUBTOTALS This Period This Page (optional) $12,000.00
TOTALS This Period (last page on this line only) . . . . . 1 - p. 9 of 20 $22,000.00

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

11070123 0 7 3 8 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

OCT 16 1984

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. Herdzina:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule C of your report (pertinent portion attached) discloses a contribution(s) which appears to exceed the limits set forth in the Act. An individual or a political committee other than a multicandidate committee may not make contributions to a candidate for Federal office in excess of $1,000 per election. If you have received a contribution(s) which exceeds the limits, the Commission recommends that you refund to the donor(s) the amount in excess of $1,000. The Commission should be notified in writing if a refund is necessary. In addition, any refund should appear on Line 20 of the Detailed Summary Page of your next report. (2 U.S.C. 441a(a) and (f))

The term "contribution" includes 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.

Schedule C of your report fails to indicate the amount of the loan guaranteed or endorsed by each individual. Federal Regulations provide that in the event that the amount endorsed or guaranteed by each individual is not stated, each endorser or guarantor shall be liable proportionately to the number of endorsers or guarantors of the loan. (11 CFR 100.7(a)(1)(i)(B))

If the contribution(s) in question was incorrectly reported and/or you have additional information regarding the contributor(s), you may wish to submit documentation for the public record. Please amend your report with the clarifying information.

MEY

1-p. 10 of 20

Although the Commission may take further legal steps concerning the acceptance of an excessive contribution(s), prompt action by you to refund the excessive amount will be taken into consideration.

-Please provide a Schedule A to support the amount reported on Line 13(a) of the Detailed Summary Page. Each person who makes a loan to your committee or to the candidate acting as an agent of the committee, must be reported on Schedule A and Schedule C. The itemization on Schedule A must include the person's full name, mailing address, and zip code, along with the name of his/her employer, the date of the contribution/loan and the aggregate year-to-date amount of contributions made by the person. (11 CFR 104.3(a)(4)(iv))

-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used his/her personal funds or borrowed the money from a lending institution, or any other source. If the candidate borrowed funds from a lending institution or any other source, please provide the name of the lending institution and the complete terms of the loan. If the loan(s) was from personal funds, please acknowledge that fact in an amendment to this report. Further, it is important to note that "personal funds" is strictly defined by Commission regulations and may be found in 11 CFR 110.10. (11 CFR 100.7(a)(1) and 104.3(d)) many

-On Schedule B of this report, you have reported disbursements for which you have failed to include either the date, amount, address, or purpose. Please amend your report to include the missing information for each of these entries. (11 CFR 104.3(b)(4))

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Noriega E. James
Reports Analyst
Reports Analysis Division

1 - p. 11 of 20

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9103310144

ATTACHMENT 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 8, 1984

John W. Herdzina, Treasurer
Callaper for Congress Committee
1467 South 13th Street
Omaha, NE 68108

Identification Number: C00175281

Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. Herdzina:

This letter is to inform you that as of November 7, 1984, the Commission has not received your response to our request for additional information, dated October 16, 1984. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

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

If you should have any questions related to this matter, please contact Noriega James on our toll-free number (800) 424-9530 or our local number (202) 523-4048.

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

9 4 0 3 1 8 3 3 3 2 / 3 7 0 4 0 4

1-p. 12 of 20

ATTACHMENT 6

RECEIVED AT THE FEC

LAW OFFICES
ABRAHAMS, BARLOW & GASSMAN
[illegible]
OMAHA, NEBRASKA [illegible]
TELEPHONE [illegible]
AREA CODE [illegible]

REGULAR MAIL

NOV 23 1984

118367

November 23, 1984

RECEIVED
OFFICE OF ATTORNEYS & RULINGS
NOV 26 PM 2:52
OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES

Federal Election Commission
Washington, D.C. 20463

ATTN: Don D. Gibson
Reports Analysis Division

Re: Identification No. C00175281

Dear Mr. Gibson:

I am now in receipt of your letters dated November 8 and November 14, 1984, in connection with the July Quarterly Report and October Quarterly Report. Please understand that I was not ignoring your letters. I am sorry for the delay in responding to you.

I am sure you have had experience in the past, where once a primary election is over and a candidate loses, the candidate's staff dissipates. I am not using this as an excuse but merely to let you know the reason for the delay. I did not receive your letters until November 19, 1984. The letters had been held up at the old campaign headquarters. I will tend to these matters immediately.

Very truly yours,

John W. Herdrina
Treasurer
Calinger for Congress Committee

JWH:kjs
cc: Julie Gomez

8401277568 7

1 - p. 13 of 20

ATTACHMENT 7
(page 1 of 3)

HAND DELIVERED

Fed. Elec. Com.

LAW OFFICES
HERMAHANS, KASLOW & CASSMAN
[illegible]
OMAHA, NEBRASKA 68102-[illegible]
TELEPHONE [illegible]
AREA CODE [illegible]

FREDERICK F. CASSMAN
HOWARD J. KASLOW
FRANK P. POSPISHIL
WILLIAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
RANDALL C. HANSON
R. CRAIG FRY
PAUL R. CLOTSON

December 31, 1984

108367

Federal Election Commission
Washington, D.C. 20463
ATTN: Noriega E. James
Reports Analyst

Re: Walter Calinger
Identification No. C00175281
Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. James:

The undersigned is the Treasurer of the Calinger for Congress committee. Mr. Calinger did not win the primary election.

Pursuant to your letter of October 16, 1984, I am enclosing herein the Amended Schedule C in regard to "Loans". I am sending a copy of the Amended Schedule C together with this letter to the Clerk of the House of Representatives and to the Nebraska Secretary of State.

Very truly yours,

John W. Herdzina

JWH:kjs

1 - p. 14 of 20

AMENDED

ATTACHMENT 7

(page 2 of 3)

SCHEDULE C
(Revised 2/80)

LOANS

Amended 1984 July Quarterly Report

Name of Committee (In Full)
Bellinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Walter Cronkite [illegible] Omaha 68108 Election: ☒ Primary ☐ General ☐ Other (specify):	$5,000.00	-0-	$5,000.00

Terms: Date Incurred [illegible] Date Due Demand Interest Rate 10 (Mo/yr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code Walter M. Bellinger 1450 So. 11 Str. Omaha, NE 68108	Name of Employer: SELF Occupation: Lawyer Amount Guaranteed Outstanding: $ [illegible]	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding: $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding: $	

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5100 Auck Omaha, NE Election: ☒ Primary ☐ General ☐ Other (specify):	$5,000.00	-0-	$5,000.00

Terms: Date Incurred [illegible] Date Due Demand Interest Rate 10 (Mo/yr) ☐ Secured

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

1. Full Name, Mailing Address and ZIP Code Walter M. Bellinger 1450 So. 11 Str. Omaha, NE 68108 MW	Name of Employer: SELF Occupation: Lawyer Amount Guaranteed Outstanding: $ 5000.00	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding: $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding: $	

SUBTOTALS This Period This Page (optional) ..... $ 10,000.00

TOTALS This Period Rest page in this line only) ..... 1 - p. 15 of 20

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

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ATTACHMENT 7

(page 3 of 3)

AMENDED

SCHEDULE C

(Revised 2/80)

LOANS

Page 1 of

LINE NUMBER

(Use separate schedule for each numbered line)

Amended 1984 July Quarterly Report

Name of Committee (in full)
Collinger for Congress Committee

Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5180 Ames Omaha, NE Election: ☒ Primary ☐ General ☐ Other (specify):	$2000.00	0	$2000.00

Terms: Date Incurred 5/15/84 Date Due Demand Interest Rate 10 % (apr) ☐ Secured

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

Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding
1. Walter M. Collinger 1450 So. 11 Str. Omaha, NE 68108 MZJ	Self	Lawyer	$ 2000.00
2.			$
3.			$

Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Community Bank 5180 Ames Omaha, NE Election: ☒ Primary ☐ General ☐ Other (specify):	$10,000.00	-0-	$10,000.00

Terms: Date Incurred 5/10/84 Date Due Demand Interest Rate 10 % (apr) ☐ Secured

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

Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding
1. Walter M. Collinger 1450 So. 11 Str. Omaha, NE 68108 MZJ	Self	Lawyer	$ 10,000.00
2.			$
3.			$

SUBTOTALS This Period This Page (optional)	$12,000.00
TOTALS This Period (last page in this line only) 1 - p. 16 of 20	$22,000.00

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

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ATTACHMENT 8

MEMORANDUM FOR THE FILES: TELECON

SUBJECT: July Quarterly Amendment

DATE: January 28, 1985

FROM: Noriega E. James, Report Analyst

TO: John W. Herdzina, Treasurer

NAME OF COMMITTEE: Calinger for Congress Committee

I telephoned Mr. Herdzina to acknowledge the receipt of his committee's July Quarterly amended report and to ask him to explain why the three individuals were dropped from Schedule C of the amended report. I explained to Mr. Herdzina that endorsements and guarantees of loans are considered contributions to the extent of the outstanding balance of the loans. I also explained that according to Federal Regulations, since his report did not disclose what portion of each loan each individual provided, for each loan, each individual would be considered to have contributed an equal portion.

Mr. Herdzina said that he would amend his report by explaining that the individuals were not endorsers of the loans. He would also explain that the individuals were "accommodating parties or accommodating makers" of the loans. He said that he would also include a definition of accommodating parties or accommodating makers.

ATTACHMENT 9

(page 1 of 2)

FEB 18 1985
REGULAR MAIL

LAW OFFICES
ABRAHAMS, KASLOW & CASSMAN
6710 WEST DODGE ROAD
SUITE 200
OMAHA, NEBRASKA 68114
TELEPHONE 393-1000
AREA CODE 402

OF COUNSEL
BYRON E. KASLOW
FREDERICK B. CASSMAN
HOWARD J. KASLOW
FRANK P. POSPISHIL
GRAHAM H. COATES
JOHN W. HERDZINA
JOHN S. KATELMAN
HARVEY B. COOPER
MARSHALL C. HANSON
R. CRAIG FRY
PAUL R. ELOFSON
TERRENCE P. HANER

February 18, 1985

1985 FEB 25 AM 11:52

10X367

Federal Election Commission
Washington, D.C. 20463
ATTN: Noriega E. James
Reports Analyst

Re: Walter Calinger
Identification No. C00175281
Reference: July Quarterly Report (4/26/84-6/30/84)

Dear Mr. James:

As you requested I filed the Amended Schedule C in regard to "Loans". Subsequently you asked for additional information in connection with the signators on the loans. I inquired of The Community Bank pursuant to your letter. I was always under the impression that the individuals (Hughes, Newell and Myers) were merely accommodating makers pursuant to the Uniform Commercial Code for the State of Nebraska. The letter I received from The Community Bank states that some of the loans (totalling $17,000) were guaranteed. I informed The Community Bank through Mr. Calinger that it was the position of the Federal Election Commission that guarantees were the same as contributions. Accordingly, The Community Bank rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed. I am enclosing herein a copy of the December 21, 1984 letter from The Community Bank.

Thank you for your patience in this matter.

Very truly yours,

John W. Herdzina
Treasurer
Calinger for Congress Committee

JWH/kjs
Enc.
cc: Walter Calinger

1-p. 18 of 20

THE COMMUNITY BANK COPY

December 21, 1984

Mr. Walter M. Calinger
1450 South 11 Street
Omaha, NE 68108

RE: Commercial Loan - Walt Calinger for Congress

Dear Mr. Calinger:

The three loans totaling $17,000 guaranteed by John Hughes, David Newell, and Larry Myers now stand in the following position:

1. The guarantees of John Hughes, David Newell, and Larry Myers have been destroyed and are no longer valid.

2. All the loans are now in the name of Walter M. Calinger only and are unsecured and not guaranteed.

The $5,000 loan and the $2,000 loan have been paid in full and $2,000 has been paid on the principal on the $10,000 loan.

Very truly,

Leon E. Evans, Jr. (spw)

Leon E. Evans, Jr.
PRESIDENT

spw

23570114203564944

1-p. 19 of 20

ATTACHMENT 10

Page 1 of 1
LINE NUMBER 17.b
(Use separate schedule(s) for each category of the Detailed Summary Page)

SCHEDULE B **ITEMIZED DISBURSEMENTS**

1984 OCTOBER QUARTERLY REPORT

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

Name of Committee (In Full)
Colinger For Congress Committee

A. Full Name, Mailing Address and ZIP Code Dave Newell & Walt Colinger	Purpose of Disbursement Loan Repayment Disbursement for: ☒ Primary ☐ General ☐ Other (specify):	Date (month, day, year) 7/17 7/17 7/27	Amount of Each Disbursement This Period 86.68 2400.00 2612.12
B. Full Name, Mailing Address and ZIP Code Larry Ayers & Walt Colinger	Purpose of Disbursement Loan Repayment Disbursement for: ☒ Primary ☐ General ☐ Other (specify):	Date (month, day, year) 7/17 7/27 8/21	Amount of Each Disbursement This Period 97.82 611.89 1527.77
C. Full Name, Mailing Address and ZIP Code John Hughes & Walt Colinger	Purpose of Disbursement Loan Repayment Disbursement for: ☒ Primary ☐ General ☐ Other (specify):	Date (month, day, year) 7/17 9/21	Amount of Each Disbursement This Period 208.55 526.60
D. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
SUBTOTAL of Disbursements This Page (optional) ..... 1 - p. 20 of 20			
TOTAL This Period (last page this line number only)			

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, Nebraska 68108

RE: MUR
Calinger for Congress Committee
John W. Herdzina, as treasurer

Dear Mr. Herdzina:

On , 1985, the Federal Election Commission determined that there is reason to believe that the Calinger for Congress Committee and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and your committee. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit such materials along with your response to the enclosed Subpoena to Produce Documents.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. It is required that you submit the information under oath and that you do so within ten days of your receipt of this letter and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Subpoena to Produce Documents
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

87044048927

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR

SUBPOENA TO PRODUCE DOCUMENTS

To: John W. Herdzina, Treasurer
Calinger for Congress Committee
1407 South 13th Street
Omaha, Nebraska 68108

PURSUANT to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby subpoenas all written materials in your possession, including, but not limited to, notes, security agreements and checks, pertaining to bank loans in 1984 to Walter Calinger and John Hughes, Walter Calinger and David Newell, and Walter Calinger and Larry Myers, and pertaining to the subsequent re-negotiation of all of these loans in 1984.

Notice is given that these materials must be submitted to the Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. within ten days of your receipt of this subpoena. Legible copies which, where applicable, show both sides of documents, may be substituted for originals.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this _____ day of _____, 1985.

_____
John Warren McGarry
Chairman

ATTEST:

_____
Marjorie W. Emmons
Secretary to the Commission

2-p 3 of 7

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GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. _____

RESPONDENT Calinger for Congress Committee
John W. Herdzina, as treasurer

SUMMARY OF ALLEGATIONS

The Calinger for Congress Committee, the principal campaign committee of Walter M. Calinger for election to the House of Representatives from the Second District of Nebraska, was referred by the Reports Analysis Division (RAD) to the Office of the General Counsel for the receipt of excessive contributions from three individuals.

FACTUAL BASIS AND LEGAL ANALYSIS

The 1984 July Quarterly Report of the Calinger for Congress Committee ("the Committee") itemized $9,642 in contributions, some in the form of loans or loan guarantees from three individuals. These contributions were designated for the primary, resulting in the receipt by the Committee of apparent excessive contributions.

Schedule A of the report disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

Schedule A also disclosed a $5 contribution from David Newell on May 10, 1984, bringing his yearly non-loan contribution total to $80. Schedule C of the same report disclosed the receipt of $5,000 from the candidate and Mr. Newell on April 27, 1984, due on demand at 15.75% interest.

Schedule A also disclosed the receipt of a $100 contribution on April 26, 1984, from Larry and Mariana Myers, bringing their yearly non-loan contribution total to $125. Schedule C disclosed a $2,000 loan to the Committee from the candidate and Mr. Myers on May 5, 1984, due on demand at 15.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to these matters immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loans as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for each loan was listed as ten percent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new circumstances of the loans. The treasurer stated that the non-candidate individuals were "accommodating makers" or "accommodating parties" to the loans. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Notes and the guarantees of Hughes, Newell and Myers were destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loans were now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed the three individuals as loan guarantors,

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the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 and $2,000 loans with interest. The October report revealed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 441a(f) prohibits knowing acceptance of any contribution made in violation of section 441a. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, each non-candidate signatory has served as a guarantor for amounts which, when combined with his other contributions, exceed the § 441a(a)(1)(A) limit. The fact that, as of December 21, the bank removed the individuals as guarantors does not negate the original violation. The treasurer has posed the defense that the non-candidate signatories were not really contributors because they were "accommodating makers." This is of no significance in determining the status of the individuals under

the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, the non-candidate individuals, as the sole co-makers with the candidate on the loans, have contributed half the amount of the loans. The Committee, therefore, has accepted contributions in excess of $1,000 from each individual. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that the Calinger for Congress Committee and John W. Herdzina, as treasurer, violated 2 U.S.C. § 441a(f).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

John J. Hughes
1004 Farnam on the Mall
Suite 400
Omaha, Nebraska 68102

RE: MUR
John J. Hughes

Dear Mr. Hughes:

On , 1985, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit such materials along with your response to the enclosed Subpoena to Produce Documents.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. It is required that you submit the information under oath and that you do so within ten days of your receipt of this letter and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Subpoena to Produce Documents
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR

SUBPOENA TO PRODUCE DOCUMENTS

To: John J. Hughes
1004 Farnam on the Mall
Suite 400
Omaha, Nebraska 68102

PURSUANT to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby subpoenas all written materials in your possession, including, but not limited to, notes, security agreements and checks, pertaining to the $10,000 bank loan in 1984 to Walter Calinger and John J. Hughes and pertaining to the subsequent re-negotiation of this loan in 1984.

Notice is given that these materials must be submitted to the Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. within ten days of your receipt of this subpoena. Legible copies which, where applicable, show both sides of documents, may be substituted for originals.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this _____ day of _____, 1985.

_____
John Warren McGarry
Chairman

ATTEST:

_____
Marjorie W. Emmons
Secretary to the Commission

3-p 3 of 6

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GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. _____

RESPONDENT John Hughes

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of the General Counsel by the Reports Analysis Division (RAD) and involves an allegation that John Hughes made contributions exceeding the limitation of 2 U.S.C. § 441a(a)(1)(A) to the Calinger for Congress Committee ("the Committee").

FACTUAL BASIS AND LEGAL ANALYSIS

Schedule A of the 1984 July Quarterly Report of the Committee disclosed the receipt of a $1,000 contribution from John Hughes on May 2, 1984. Schedule C of the report disclosed a $10,000 loan from the candidate and Mr. Hughes on May 10, 1984, due on demand at 14.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to [the matter of the contribution] immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loan as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for the loan was listed as ten per cent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

circumstances of the loan. The treasurer stated that Mr. Hughes was an "accommodating maker" or "accommodating party" to the loan. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank "rewrote the Note and the guarantee of Mr. Hughes was destroyed." According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, as of September 30, $814 of the $10,000 loan had been repaid, and the bank's letter of December 21 indicated that $2,000 of this loan had been repaid.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Hughes has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the

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bank removed Mr. Hughes as a guarantor does not negate the original violation. The treasurer has posed the defense that Mr. Hughes was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, Mr. Hughes, as the sole co-maker with the candidate on the $10,000 loan, has contributed half the amount of the loan. He has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that John Hughes violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

RE: MUR
David Newell

Dear Mr. Newell:

On , 1985, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit such materials along with your response to the enclosed Subpoena to Produce Documents.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. It is required that you submit the information under oath and that you do so within ten days of your receipt of this letter and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Subpoena to Produce Documents
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

87044574910

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR

SUBPOENA TO PRODUCE DOCUMENTS

To: David Newell
4027 Bauman Avenue
Omaha, Nebraska 68112

PURSUANT to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby subpoenas all written materials in your possession, including, but not limited to, notes, security agreements and checks, pertaining to the $5,000 bank loan in 1984 to Walter Calinger and David Newell, and pertaining to the subsequent re-negotiation of this loan in 1984.

Notice is given that these materials must be submitted to the Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. within ten days of your receipt of this subpoena. Legible copies which, where applicable, show both sides of documents, may be substituted for originals.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this _____ day of _____, 1985.

_____
John Warren McGarry
Chairman

ATTEST:

_____
Marjorie W. Emmons
Secretary to the Commission

4 - p. 3 of 6

8704345911

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. _____

RESPONDENT David Newell

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of the General Counsel by the Reports Analysis Division (RAD) and involves an allegation that David Newell made contributions exceeding the limitation of 2 U.S.C. § 441a(a)(1)(A) to the Calinger for Congress Committee ("the Committee").

FACTUAL BASIS AND LEGAL ANALYSIS

Schedule A of the Committee's 1984 July Quarterly Report disclosed a $5 contribution from David Newell on May 10, 1984, bringing his yearly non-loan contribution total to $80. Schedule C of the same report disclosed receipt of a $5,000 loan from the candidate and Mr. Newell on April 27, 1984, due on demand at 15.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to [the matter of the contribution] immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loan as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for the loan was listed as ten per cent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

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circumstances of the loan. The treasurer stated that Mr. Newell was an "accommodating maker" or "accommodating party" to the loan. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank rewrote the Note and the guarantee of Mr. Newell was destroyed. According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed Mr. Newell as a loan guarantor, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $5,000 loan with interest.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Newell has served as a guarantor for an amount exceeding the § 441a(a)(1)(A) limit. The fact that, as of

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December 21, the bank removed Mr. Newell as a guarantor does not negate the original violation. The treasurer has posed the defense that Mr. Newell was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, Mr. Newell, as the sole co-maker with the candidate on the $5,000, has contributed half the amount of the loan. He has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that David Newell violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Larry Myers
8725 Countryside Plaza
Omaha, Nebraska 68114

RE: MUR
Larry Myers

Dear Mr. Myers:

On , 1985, the Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission, also on that date, determined to take no further action and close its file as it pertains to you. The General Counsel's Factual and Legal analysis which formed a basis for the Commission's finding is attached for your information.

The file in this matter will be made part of the public record within 30 days after this matter is closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days of your receipt of this letter. The confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

The Commission reminds you that making contributions in excess of the limits set forth in 2 U.S.C. § 441a nevertheless is a violation of the Act. You should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Jonathan Levin, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosure
Factual and Legal Analysis

Attachment 5 - p. 1 of 4

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GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. _____

RESPONDENT Larry Myers

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of the General Counsel by the Reports Analysis Division (RAD) and involves an allegation that Larry Myers made contributions exceeding the limitation of 2 U.S.C. § 441a(a)(1)(A) to the Calinger for Congress Committee ("the Committee").

FACTUAL BASIS AND LEGAL ANALYSIS

Schedule A disclosed the receipt of a $100 contribution on April 26, 1984, from Larry and Mariana Myers, bringing their yearly non-loan contribution total to $125. Schedule C disclosed a $2,000 loan to the Committee from the candidate and Mr. Myers on May 5, 1984, due on demand at 15.75% interest.

After two Requests for Additional Information were sent to the Committee, one on October 15 and one on November 8, the Committee replied, on November 16, 1984, that it would "tend to [the matter of the contribution] immediately." On January 3, 1985, the Committee submitted an amended Schedule C disclosing the source of the loan as the Community Bank with the candidate as the sole endorser or guarantor. The interest rate for the loan was listed as ten per cent.

In a telephone conversation on January 28, 1985, and in a letter attached to an amended July Quarterly and received on February 28, the Committee treasurer explained the apparently new

circumstances of the loan. The treasurer stated that Mr. Myers was an "accommodating maker" or "accommodating party" to the loan. He informed RAD that, upon being informed by the treasurer that the Commission considered "guarantees" to be "the same as contributions," the bank rewrote the Note and the guarantee of Mr. Myers was destroyed. According to a letter from the bank to the candidate, dated December 21, 1984, and enclosed by the treasurer, the loan was now "unsecured and unguaranteed."

While none of the reports or documents submitted disclosed when the bank removed Mr. Hughes as a loan guarantor, the Committee's 1984 October Quarterly (which was not received until January, 1985) disclosed that, between July 17 and September 21, 1984, the Committee had repaid the full amount of the principal of the $2,000 loan with interest.

Section 441a(a)(1)(A) of Title 2 prohibits contributions from a person to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. Section 431(8)(A)(i) states that the term "contribution" includes a loan. Section 431(8)(B)(vii)(I) provides that a loan from a bank is considered "a loan by each endorser or guarantor in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

In this matter, Mr. Myers has served as a guarantor for an amount which, when combined with his other contribution, exceeds the § 441a(a)(1)(A) limit. The fact that, as of December 21, the

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bank removed Mr. Myers as a guarantor does not negate the original violation. The treasurer has posed the defense that Mr. Myers was not really a contributor because he was an "accommodating maker." This is of no significance in determining the status of the individuals under the Act. An accommodation party "is one who signs an instrument in any capacity for the purpose of lending his name to another to it." Neb. UCC 3-415(1). He is liable just as anyone else in the capacity in which he signs (e.g., maker, endorser), except that he can never be liable to the party he is accommodating. The official comment to UCC 3-415 states that "[s]ubsection (1) recognizes that an accommodating party is always a surety (which includes a guarantor)...."

Under the Act, therefore, Mr. Myers, as the sole co-maker with the candidate on the $2,000 loan, has contributed half the amount of the loan. Along with his other contribution, he has, therefore, exceeded the $1,000 limit. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that Larry Myers violated 2 U.S.C. § 441a(a)(1)(A). However, because of the small amount of the excessive contribution, this Office recommends that no further action be taken with regard to Mr. Myers.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

21 March 1985

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REFERRAL OF THE CALINGER FOR CONGRESS COMMITTEE

This is a referral of the Calinger for Congress Committee ("the Committee"). The Committee has received excessive contributions in the form of loan guarantees and direct contributions from the same individuals. It appears that the loans have been renegotiated, removing the individuals as guarantors; however, it is not clear when the apparent renegotiation occurred.

Walter M. Calinger, the candidate, lost in the Primary Election which was held in Nebraska on May 15, 1984, with 42.2% of the vote.

If you have further questions, please contact Noriega E. James at 523-4048.

Attachment

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 2081

DATE FILMED 3/31/87 CAMERA NO. 2

CAMERAMAN AS

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