FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

July 22, 1977

Mr. Richard A. Zimmer
Common Cause
28 W. State Street
Room 910
Trenton, New Jersey 08605

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. Zimmer:

This letter is to advise you that the Federal Election Commission has entered into a conciliation agreement with the Okonite Company pursuant to 2 U.S.C. §437g(a)(5). Enclosed is a copy of the agreement. This agreement serves as a final disposition of the matter raised by the complaint which you filed.

The Commission appreciates your interest in this matter.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

AMERICAN REVOLUTION BICENTENNIAL 1776 1976

FEDERAL ELECTION COMMISSION
[illegible] NW
Washington, D.C. [illegible]

July [illegible]

John R. McKay 2d, Esquire
Lowenstein, Sandler, Brochin,
Kohl and Fisher
744 Broad Street
Newark, New Jersey 07102

RE: MUR 200 (76)
MUR 213 (76)

Dear Mr. McKay:

We have received a check in the amount of five hundred dollars ($500) from the Okonite Company, in compliance with the conciliation agreement in the above-referenced matters. Accordingly, these matters are now closed.

In response to your telephone inquiry of Friday, July 8, 1977, please be advised that, in accordance with the usual practice of our Public Information Office, there will be no press release regarding these matters. The entire file will, however, be available to the public on request.

We appreciate your cooperation.

Sincerely yours,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N.J. 07102

NEWARK, N.J. PM 15 MAR 1977

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

Attn: Ms. Sherry Swirsky

MCC 853

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N.J. 07102

RECEIVED
FEDERAL ELECTION
COMMISSION
77 JUL 8 PM 1:32

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
MURRY O. BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON

JOHN R. MACKAY 2ND
MURRAY J. LAULIGHT
MARTIN R. GOODMAN
JOHN D. SCHUPPER
STEPHEN N. DEHMER
WILLIAM T. KNOX IV
MICHAEL L. RODBURG
ALLEN B. LEVITHAN

R. BARRY STIGER
GREGORY B. REILLY
DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PAPER

STANLEY A. EPSTEIN
FRANCO GARCIA, JR.
RONALD H. JANIS
LEE HILLES WERTHEIM
JOSEPH M. FINNIN
M. JOAN FOSTER
WILLIAM L. MUELLER

TELEPHONE
201 624-4600

July 6, 1977

772055

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

Attention: Ms. Sherry Swirsky

Re: MUR 200 (76)
MUR 213 (76)

Dear Ms. Swirsky:

Enclosed herewith is a check drawn by The Okonite Company to the order of United States Treasury in the amount of $500 in full payment of the amount owing pursuant to the conciliation agreement. I presume your receipt of this check brings this matter to a close.

Yours very truly,

John R. MacKay 2nd

JRM:ed
Enclosure
cc: Jeffry H. Kittross, Esq.

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N J 07102

'77 JUL 5 PM 1:52

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

Attention: Ms. Sherry Swirsky

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

MUR 200/213 - - Swirsky

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

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

- ☐ Show to whom and date delivered..... 15¢
- ☒ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
John R McKay 2d, Esq.
Lowenstein, Sandler, Brochin,
Kohl + Fisher

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943473	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. Norma Corona
DATE OF DELIVERY 6/27/77 POSTMARK

NEWARK, NJ REGISTRY DIV. JUN 27 1977 USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☆ GOP 1976—O-203-456

7 7 0 4 0 0 2 2 0 5 1

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

June 24, 1977

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John R. McKay 2d, Esquire
Lowenstein, Sandler, Brochin,
Kohl and Fisher
744 Broad Street
Newark, New Jersey 07102

RE: MUR 200 (76)
MUR 213 (76)

Dear Mr. McKay:

On June 22, 1977, the Federal Election Commission ratified the conciliation agreement in the above-referenced matters. Accordingly, enclosed herein is a fully executed copy of the conciliation agreement for your files.

The effective date of the agreement is the date which appears on the agreement. Within thirty (30) days of the effective date, please forward to the Federal Election Commission a check in the amount of five hundred dollars ($500). The check should be made payable to the United States Treasury and should be directed to the attention of Sherry A. Swirsky.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7704022051

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 200 (76)
The Okonite Company	)	MUR 213 (76)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint by James Ellison Parker and a letter filed by Richard A. Zimmer, an investigation having been conducted, and reasonable cause to believe having been found that respondent violated 2 U.S.C. §441b(a).

Now therefore, the respective parties herein, the Federal Election Commission and the respondent having duly entered into conciliation pursuant to §437g(a)(5), do hereby agree as follows:

I. That the Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

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

III. That the pertinent facts in this matter are as follows:

A. Respondent is a corporation organized under the laws of Delaware and having its business headquarters in

FEDERAL ELECTION COMMISSION
OFFICIAL MAIL
OFFICE OF GENERAL COUNSEL

Ramsey, New Jersey. Respondent has facilities in Passaic, Paterson, Ramsey, and North Brunswick, New Jersey and eight other states. Respondent's Paterson and Passaic plants are within the New Jersey 8th Congressional District, represented by Congressman Robert A. Roe. Both plants are within economically distressed areas.

B. Respondent has not established a separate segregated fund.

C. All of the stock of respondent was purchased on June 30, 1976 for a price of $44 million by an Employee Stock Ownership Trust (ESOT) for the benefit of respondent's employees. The entire purchase price was borrowed by the ESOT and $13 million of it was derived from a grant from the Federal Economic Development Administration. The grant was the key to the entire transaction. Congressman Robert A. Roe had been instrumental in obtaining the federal grant funds for the New Jersey Economic Development Authority (which then loaned the funds to the ESOT) and had substantially assisted respondent to ensure that the grant was made in a timely fashion.

D. Respondent spent $12,183.84 of corporate treasury funds to place full-page advertisements in four New Jersey newspapers on July 16, 1976 and July 21, 1976.

E. The text of the advertisements is attached hereto as Appendix A.

F. Congressman Roe was a candidate for Federal office from the 8th Congressional District of New Jersey at the time of the publication of the advertisements. The advertisements were placed two to three weeks after the closing of the ESOT purchase, five weeks after Roe's victory in the New Jersey congressional primary, and three and one-half months before the general elections in November, 1976.

G. The four newspapers in which the advertisements were placed have an area of distribution which includes Mr. Roe's Congressional District and substantial other areas of New Jersey. No advertisements were placed in Ramsey and North Brunswick local newspapers. Okonite has plants in both cities which are not within the 8th Congressional District.

H. Acting through counsel, respondent has cooperated with the Federal Election Commission in its investigation of this matter, responding promptly and candidly to all inquiries by the Commission.

Wherefore, respondent agrees:

I. That for the purposes of this proceeding only, the costs of the advertisements herein described were in connection with a federal election, and therefore constitute an expenditure, within the meaning of 2 U.S.C. §441b(b)(2).

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

II. That it will pay a civil penalty in the amount of five hundred dollars ($500), pursuant to 2 U.S.C. §437g(a)(6)(B).

General Conditions:

I. 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.

II. It is mutually agreed that this agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

III. It is agreed that respondent shall have no more than thirty (30) 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.

WILLIAM C. OLDAKER JUN 24 1977
GENERAL COUNSEL
THE OKONITE COMPANY

By: [signature]
For the Respondent
Victor A. Viggiano, President

FEDERAL ELECTION COMMISSION
OFFICIAL FILE
OFFICE OF CONSENT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 200 (76)
The Okonite Company	)	MUR 213 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on June 22, 1977, the Commission approved by a vote of 6-0 the proposed conciliation agreement submitted by the staff in the above-captioned matter.

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Gec #676

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N.J. 07102

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
MURRY D. BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON

JOHN R. MACKAY 2ND
MURRAY J. LAULICHT
MARTIN R. GOODMAN
JOHN D. SCHUPPER
STEPHEN N. DERMER
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MICHAEL L. RODBURG
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R. BARRY STIGER
GREGORY B. REILLY
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PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PAPER

STANLEY A. EPSTEIN
FRANCO GARCIA, JR.
RONALD H. JANIS
LEE MILLER WERTHEIM
JOSEPH M. FINNIN
M. JOAN FOSTER
WILLIAM L. MUELLER

TELEPHONE
201 624-4600

771835

June 15, 1977

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

Attention: Ms. Sherry Swirsky

Dear Ms. Swirsky:

Enclosed herewith are two copies of the conciliation agreement, duly executed on behalf of The Okonite Company by Victor A. Viggiano, President.

I would appreciate your returning one completely executed copy to me after it has been executed on behalf of the Commission.

Please advise me of the effective date of the agreement so that I will be able to advise the company of when to pay the $500 amount. In addition, please advise me of how the check should be made payable and to whose attention it should be directed.

Yours very truly,

John R. MacKay 2nd

JRM:ed
Enclosures

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

200/213

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Comp[illegible] items 1, 2, and 3.
Add[illegible] address in the "RETURN TO" space on reve[illegible]

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

☐ Show to whom and date delivered..... 15¢

☒ Show to whom, date, & address of delivery.. 35¢

☐ RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢

☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery.. 85¢

2. ARTICLE ADDRESSED TO:
LOWENSTEIN, SANDLER
BROCHIN, KOHL & FISHER
McKay

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943308	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. Norma Cosma

DATE OF DELIVERY 6/8/77

POSTMARK

JUN 8 77

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GOP: 1976—O-203-456

7 7 0 4 0 0 2 2 0 6 1

file

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

6 JUN 1977

Mr. John R. McKay 2d, Esquire
Lowenstein, Sandler, Brochin,
Kohl, & Fisher
744 Broad Street
Newark, New Jersey 07102

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. McKay:

Enclosed herein please find the draft conciliation agreement in the above-referenced matters. We would appreciate it if both copies could be signed and returned at your earliest convenience. A copy of the signed agreement will be returned to you following Commission ratification.

In response to your inquiry on June 1, 1977, please be advised that the Commission views the file in this matter as governed by the Freedom of Information Act. Accordingly, the documents contained within the file will be available for public inspection when this matter is closed, unless certain documents fall within one of the Act's exemptions.

Sincerely yours,

William C. Oldaker
General Counsel

SSwirsky:dks:6/2/77

7704002206 1

ACC 473

FILE COPY

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N.J. 07102

'77 MAY 18 AM 10:47

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
MURRY D. BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON

JOHN R. MACKAY 2ND
MURRAY J. LAULICHT
MARTIN R. GOODMAN
JOHN D. SCHUPPER
STEPHEN N. DERMER
WILLIAM T. KNOX IV
MICHAEL L. RODBURG
ALLEN B. LEVITHAN

R. BARRY STIGER
GREGORY B. REILLY
DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PAPER

STANLEY A. EPSTEIN
FRANCO GARCIA, JR.
RONALD H. JANIS
LEE HILLES WERTHEIM
JOSEPH M. FINNIN
M. JOAN FOSTER
WILLIAM L. MUELLER

TELEPHONE
201 624-4600

May 16, 1977

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

771539

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

Attention: Ms. Sherry Swirsky

Dear Ms. Swirsky:

I received the Commission's letter of May 4 on May 9 and, unfortunately, was not able to focus on the conciliation agreement until late last week. There are a few matters which I would like to clarify before we sign the agreement.

1. As you will recall, I proposed the insertion of the following language immediately preceding the last sentence in Paragraph IIIE on page 3 as follows:

> "The advertisements did not mention the forthcoming federal election or Roe's candidacy; did not mention his opponent; did not advocate his election; and did not comment on any facet of his character or behavior in office other than his role in helping the ESOT."

I was under the impression from our telephone conversation that you had finally accepted the inclusion of this language, except that you indicated that you would want to include the word "expressly" before the word "advocate."

2. The last two sentences in Section IIIG are new, and we find them objectionable because they imply some motive in not placing advertisements in such newspapers. If, in fact, there are such newspapers,

my best guess is that they are weekly's not daily's. So far as I know, Ramsey falls well within the circulation area of The Bergen Record and North Brunswick within the circulation area of The Star Ledger. I would suggest deleting these two sentences, which I do not believe contribute to the agreement.

3. In my discussions with you and Mr. Steele concerning whether a conciliation agreement could be used for purposes other than conciliation, either you or Mr. Steele indicated that the agreement could be drafted to eliminate any such possibility. I have reviewed the act and note that Section 437(g)(a)(5)(A) provides that an agreement shall constitute a complete bar to any further action by the Commission, but I find no provision making the agreement a bar to an action by anyone other than the Commission. I would suggest that Paragraph I of the operative provisions be changed to read "for purposes of this proceeding only, that costs...." Of course, I would be satisfied with any similar change which would achieve the same objective which, I believe we all agreed, would be consistent with the purposes of conciliation and appropriate in this proceeding.

I would be glad to discuss these modifications with you as soon as you have had a chance to review them. I believe that they are all consistent with our prior discussions. Thank you for your time and cooperation.

Yours very truly,

John R. MacKay 2nd

JRM:ed

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

5/4/77

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John R. McKay, ~~II~~ 3d, Esquire
Lowenstein, Sandler, Brochin,
Kohl & Fisher
744 Broad Street
Newark, New Jersey 07102

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. McKay:

Enclosed herein please find the draft conciliation agreement in the above-referenced matters. We would appreciate it if the chairman of the Okonite Company would sign and return the agreement at his earliest convenience in order to expedite ratification by the Federal Election Commission.

A copy of the signed agreement will be returned to you following Commission ratification. The agreement becomes effective upon Commission ratification and the Okonite Company has thirty (30) days from that date to comply with the requirement contained within the agreement.

Please feel free to contact us if you have any further questions.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosure
Swirsky, pwb 5/4/77

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7704120064

(3)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 200 (76)
	)	MUR 213 (76)
The Okonite Company	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on April 20, 1977, the Commission approved the Interim Conciliation Report, dated April 11, 1977, regarding the above-captioned matter.

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

7704002206

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
Office of General Counsel

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N.J. 07102

RECEIVED
FEDERAL ELECTION
COMMISSION

'77 APR 13 AM 11:43

TELEPHONE
201 624-4600

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
MURRY D. BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEON W. STEINBERG
MATTHEW P. BRYLAN
BRUCE D. SHONILSON
JOHN R. MACKAY 2ND
MURRAY J. CAULICHT
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DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PARER
STANLEY A. EPSTEIN
FRANCO GARGLIA, JR.
RONALD H. JANIS
LEE HILLES WERTHEIM
JOSEPH M. FINNIN
M. JOAN FOSTER
WILLIAM L. MUELLER

771167

April 11, 1977

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

Re: MUR 200 (76)
MUR 213 (76)

Gentlemen:

This law firm represents The Okonite Company, the Respondent in the above matters. Both complaints relate to the placing of advertisements by Respondent which thanked Congressman Robert Roe for his assistance in obtaining federal funding which enabled Respondent's Employee Stock Ownership Trust (ESOT) to purchase all of the capital stock of Respondent for a purchase price aggregating $44 million. Respondent has consistently taken the view that the advertisements were neither for the purpose of influencing the outcome of a federal election nor incurred in connection with a federal election; rather, that the advertisements were placed in connection with the ESOT transaction. The procedural background of the matter at this point is relevant.

We were advised by a letter dated January 18, 1977, that the Commission had determined that there is reasonable cause to believe that the Respondent had violated 2 U.S.C. §441b. Thereafter, on February 14, 1977, we visited with staff members at your offices and were presented with a copy of a proposed conciliation agreement, the operative provisions of which specified that Respondent agrees that it violated the Act and that Respondent would pay a fine of $500.

On February 25, 1977, we forwarded to you a revision of the proposed conciliation agreement, correcting and adding to the factual recitals in the draft conciliation agreement and modifying the operative provisions by deleting the payment of a fine and by substituting for the admission of a violation of the Act a statement that Respondent may have violated the Act,

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

that Respondent neither admits nor denies a violation, and that Respondent in substance accepts the view of the Commission with regard to such conduct for purposes of all of its future activities.

On March 18, 1977, we were advised by telephone by a staff member that the Commission had rejected a significant number of the proposed changes to the factual recitals included in Respondent's revision of the conciliation agreement. For example, the Commission's version of the conciliation agreement set out the content of the advertisements placed by Respondent thanking Congressman Roe, but it failed to note that the advertisements did not discuss (a) the federal election, (b) Roe's candidacy, (c) his opponent, or (d) anything other than the fact that he assisted in the financing and the creation of the ESOT. In addition, the Commission's version of the agreement mentioned that the advertisements were placed five weeks after his primary victory but failed to mention that the advertisements were placed shortly after the closing of the ESOT transaction and three and one-half months before the general elections in November. We proposed the inclusion of these facts, all of which relate directly to the key question of whether the funds expended by Respondent were "in connection with" a federal election.

Admittedly, the staff ultimately indicated that it would recommend the inclusion of some of the additional facts which we were advised had been rejected by the Commission, but this was done only after Respondent had vehemently protested that the failure to include these facts presented a highly slanted picture of the circumstances under which Respondent took the action which led to this alleged violation. (Initially, we had been advised that some of the proposed factual insertions were not appropriate because the inclusion of information about what the advertisements did not say was contrary to Commission policy.)

Insofar as the operative provisions of the conciliation agreement are concerned Staff has advised us that the Commission as a matter of policy insists upon an admission of a violation of the Act in connection with all conciliation proceedings. Consequently, we have been advised that the Commission is unprepared to make any changes to the two key operative provisions of the initially proposed conciliation agreement.

Conciliation as mandated by the Act necessarily must involve more than the unilateral dictation by the Commission and/or the staff of settlement terms. The word "conciliation"

FEDERAL ELECTION
OFFICE
OFFICE

itself implies negotiation and further implies an attempt to correct future behavior, not an attempt to exact an admission of a violation of the law, particularly in a case where at best, from the point of view of the Commission, we are in a gray area.

Respondent has entered into the conciliation process in good faith and is fully willing to bind itself to the views of the Commission as to the law in all of its future conduct. But Respondent is extremely reluctant to make a public record that it agrees that it violated the Act under circumstances where it is not at all clear that it did.

Respondent recognizes that the Commission has the power to compel it to spend far more than the $500 fine sought by the Commission in defending this matter in the courts. In that sense, the Commission has enormous leverage, as does every regulatory agency or similar body, to insist upon its views being accepted without question. On the other hand, the Commission undoubtedly is mindful of its responsibility to conciliate and not to dictate unilaterally that any particular respondent capitulate to its view of the law in an instance where the Respondent is prepared to accept the views of the Commission as to the law and to conform its conduct to those views for all future purposes.

It is submitted that Respondent's proposal to accept the Commission's views of the law for all future purposes, without stipulating a violation of the Act, is entirely consistent with the spirit of the use of the word "conciliation" in the Act and the regulations. Moreover, such a conciliation agreement would be consistent with the ordinarily accepted definition of the term "conciliation" and with the actions and regulatory interpretation of that term as used by the Equal Employment Opportunity Commission. (E.E.O.C. guidelines specify that conciliation agreements are attempts "to achieve a just resolution and to obtain assurances that the respondent will eliminate the unlawful employment practice." 29 C.F.R. §1601.22.) It is further submitted that an arbitrary insistence upon acceptance of conciliation terms initially proposed, particularly in a unique situation such as this present case, is inconsistent with the spirit of conciliation. Instead, such insistence appears to be an attempt on the part of the Commission or the Staff to use the conciliation process to help mold their view of the law.

It is difficult to imagine any public interest that would be served by compelling Respondent to say without qualification that Respondent's behavior violated the law and to remit a $500 fine. Surely, the agreement of Respondent and the Commission would not be binding on third parties and undoubtedly alternative language in the agreement (or, for that matter, the promulgation of regulations or similar guidelines) would make all others aware of the views of the Commission on the law.

Respondent respectfully requests (a) that the Commission reconsider its policy, if indeed it is a policy, that statutory violations be admitted and that fines be exacted in all instances of conciliation and (b) that Respondent be apprised of the Commission's position on this matter. In the interim, Respondent would be pleased to argue its view on this matter through the Staff or directly to the Commission.

Yours very truly,

John R. MacKay 2nd

John R. MacKay 2nd

JRM:ed

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

FEDERAL ELECTION COMMISSION

'77 JUL 13 PM 10:59

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

April 11, 1977

BEFORE THE FEDERAL ELECTION COMMISSSION

In the Matter of	)	
	)	MUR 200 (76)
The Okonite Company	)	MUR 213 (76)

INTERIM CONCILIATION REPORT

On March 16, 1977, the Commission approved the recommendation in the Interim Conciliation Report that respondent's revised conciliation agreement be rejected except insofar as it includes a fuller description of the facts surrounding the corporate expenditure at issue in this matter. The Commission's action was reported to counsel for respondent on March 18, 1977. Counsel for respondent indicated in a telephone conversation on April 4, 1977 that a letter setting forth respondent's position with respect to conciliation will be forwarded to the General Counsel's Office by April 15, 1977.

WILLIAM C. OLDAKER
GENERAL COUNSEL

DATE: 4/4/77

FEDERAL ELECTION COMMISSION
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3-14-77

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:	)	
	)	MUR 200(76)
THE OKONITE COMPANY	)	MUR 213(76)

INTERIM CONCILIATION REPORT

This matter involves corporate expenditures for newspaper advertisements placed in four newspapers of general circulation in New Jersey. The advertisements expressed the corporation's gratitude to Congressman Robert A. Roe of the 8th Congressional District in New Jersey for his efforts in securing a grant to finance the corporation's new employee stock ownership trust ("ESOT"). The advertisements appeared five weeks after Congressman Roe's victory in the New Jersey primary election. Respondent spent $12,183.84 of corporate treasury funds for the advertisements.

On January 13, 1977, the Commission found reasonable cause to believe that the advertisements were "in connection with" a Federal election, in violation of 2 U.S.C. 441b. The Commission recommended that conciliation should proceed in this matter, with provision for a civil penalty of $500.00.

We proposed a conciliation agreement reflecting the Commission's recommendation and presented it to counsel for respondent on February 14, 1977. Our proposed conciliation agreement (attached hereto as Appendix A) briefly set out the facts surrounding the corporate expenditures for the advertisements and provided for respondent to agree to the following: (1) that the costs of the advertisements were in connection with a Federal election, and therefore constitute an expenditure within the meaning of 2 U.S.C. 441b(b)(2).

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

As such, the expenditure is in violation of 2 U.S.C. 441b(a) and (2), that respondent will pay a civil penalty in the amount of $500.00, pursuant to 2 U.S.C. 437g(a)(6)(B).

On February 28, 1977, we received from John R. McKay, counsel for respondent, a proposed revision of the conciliation agreement (attached hereto as Appendix B). Mr. McKay indicated that the Okonite Board of Directors will most likely accept the agreement in its revised form. Respondent's proposed revision differs substantially from the draft prepared by this office. First, respondent would add factual recitals relating to the formation of the company's employee stock ownership trust. Second, the revision would eliminate the reference to the amount spent for the advertisements, as well as the paragraph summarizing the text of the advertisement and describing its focus on Congressman Roe. Instead, respondent would substitute a statement setting forth what the advertisements did not mention. Third, the revision would relate the placement of the advertisements to the closing date of the company's ESOT purchase, rather than to the election. Fourth, respondent would eliminate the reference to the fact that no advertisements were published in newspapers with areas of circulation which include Okonite's other facilities but are outside of Congressman Roe's Congressional District. Fifth, the revision would state that the basis of the Commission's determination is that "any paid advertisement which prominently and favorably mentions a candidate for Federal election, regardless of whether it mentions the election or advocates the election of a candidate, and regardless of whether it relates to an event other than the election, is as a matter of law 'in connection with' a Federal election." The Commission

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has, in fact, not made such a determination. Sixth, the revision would state that the company's actions "may have" constituted a violation of 2 U.S.C. 441b(a), but respondent neither admits nor denies such a violation. Finally, respondent proposes that the provision for a civil penalty be deleted and replaced with a statement indicating that respondent acquiesces in the views of the Commission and shall not henceforth incur any expenditures such as those at issue herein.

While we have no objection to including in the conciliation agreement a futher description of the ESOT transaction, we believe other proposed revisions are contrary to the reasoning which underlies the Commission determination of reasonable cause to believe in this matter. Thus, we recommend that the conciliation agreement proposed by the staff (Appendix A) be modified solely to add the language contained on page 2, paragraph C of respondent's agreement (Appendix B). Moreover, the enumeration of statements not made in the advertisements (see page 3 of respondent's revision) appears to be inappropriate in a conciliation agreement. In our view, a conciliation agreement should at the very least contain a clear statement of the violation and an admission of guilt, and not merely indicate that a violation may have occurred. Accordingly, we propose that the respondent's revised conciliation agreement be rejected except insofar as it includes a description of the ESOT transaction.

William C. Oldaker
General Counsel

DATED: 3/14/77

FEDERAL ELECTION COMMISSION
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3-14-77 APPENDIX A

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 200 (76)
	)	MUR 213 (76)
The Okonite Company	)	

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint by James Ellison Parker and a letter filed by Richard A. Zimmer, an investigation having been conducted, and reasonable cause to believe having been found that respondent violated 2 U.S.C. §441b(a).

Now therefore, the respective parties herein, the Federal Election Commission and the respondent having duly entered into conciliation pursuant to §437g(a)(5), do hereby agree as follows:

I. That the Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

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

III. That the pertinent facts in this matter are as follows:

A. Respondent is a corporation organized under the laws of Delaware and having its business headquarters in Ramsey, New Jersey. Respondent has facilities in Passaic, Patterson, Ramsey, and North Brunswick, New Jersey and eight other states.

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B. Respondent has not established a separate segregated fund.

C. Respondent spent $12,183.84 of corporate treasury funds to place full-page advertisements in four New Jersey newspapers on July 16, 1976 and July 21, 1976.

D. The advertisements state in bold-face type, "Thank You Congressman Robert A. Roe!" and consist of a photograph of Roe, identifying him as the Congressman from the 8th Congressional District of New Jersey; a statement explaining Roe's "major" role in securing a grant to finance the corporation's new employee stock ownership trust; a photograph of Roe with Federal, State and Okonite Company official; and a five paragraph tribute to Roe for his "untiring efforts in [the Company's] behalf resulting in the purchase of the Okonite Company by an employee stock ownership trust." The text of the advertisements is appended hereto as Appendix A.

E. Congressman Roe was a candidate for Federal office from the 8th Congressional District of New Jersey at the time of the publication of the advertisements. The advertisements were placed five weeks after his victory in the New Jersey congressional primary.

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F. The four newspapers in which the advertisements were placed have an area of distribution which includes Mr. Roe's Congressional District. The area of distribution does not include the Ramsey and North Brunswick plants of Okonite, which are not within the 8th Congressional District. No advertisements

were published in these areas.

Wherefore, the respondent agrees:

I. The costs of the advertisements herein described were in connection with a federal election, and therefore constitute an expenditure, within the meaning of 2 U.S.C. §441b(b)(2). As such the costs are in violation of 2 U.S.C. §441b(a).

II. That it will pay a civil penalty in the amount of five hundred dollars ($500), pursuant to 2 U.S.C. §437g(a)(6)(B).

General Conditions:

I. 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.

II. It is mutually agreed that this agreement shall become effective as to the date that all parties hereto have executed some and the Commission has approved the entire agreement.

III. It is agreed that Respondent shall have no more than 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.

OFFICE OF GENERAL COUNSEL

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

ALAN V LOWENSTEIN
RICHARD M. SANDLER
MURRY D BROCHIN
BENEDICT M KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P BOYLAN
BRUCE D SHOULSON
JOHN R MACKAY 2ND
MURRAY J LAULICHT
ARCHIBALD S. ALEXANDER, JR.
MARTIN R. GOODMAN
JOHN D SCHUPPER
STEPHEN N DERMER

WILLIAM T. KNOX IV
MICHAEL L. RODBURG
ALLEN B. LEVITHAN
R BARRY STIGER
GREGORY B. REILLY
DAVID W MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PAPER
STANLEY A. EPSTEIN
FRANCO GARCIA
RONALD H. JANIS

TELEPHONE
201 624-4600

'77 FEB 29 AM 10:52

APPENDIX B

February 25, 1977

770653

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

Attention: Ms. Sherry Swirsky

Dear Ms. Swirsky:

Enclosed herewith is our proposed revision of the conciliation agreement. For your convenience, I have attempted to underscore all new material and indicate the deletion of material by the use of a caret.

As you can see, I felt it important that certain information be included in the recitals which provides a balanced view concerning the background and the circumstances with regard to the expenditure by The Okonite Company.

Since the date of our meeting at your offices, the company has not had a board of directors meeting, but I have been advised by management that they are reasonably confident that the company's board would accept the agreement in its revised form. As you can see, we are of the view that it is conceivable that the company's actions constituted a technical violation of the act--although I am by no means certain that it was. On the other hand, the circumstances involved in this particular case were certainly unique. Consequently, the company is willing to concede that its actions may have constituted a violation and is prepared to acquiesce in your view of the law for the purposes of its future activities. In light of these unique circumstances, we believe that it would certainly be inappropriate for the company to be compelled to pay a fine.

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

I would be glad to discuss this matter with you further as soon as you have had a chance to review the enclosed revision.

Yours very truly,

John R. MacKay 2nd

JRM:ed
Enclosure
cc: Jeffry H. Kittross, Esq.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
MURRY D. BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON
JOHN R. MACKAY 2ND
MURRAY J. LAULICHT
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JOHN D. SCHUPPER
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WILLIAM T. KNOX IV
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R. BARRY STIGER
GREGORY B. REILLY
DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PAPER
STANLEY A. EPSTEIN
FRANCO GARCIA
RONALD H. JANIS

TELEPHONE
201 624-4600

FEDERAL ELECTION COMMISSION
'77 FEB 28 AM 10:52

February 25, 1977

770653

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

Attention: Ms. Sherry Swirsky

Dear Ms. Swirsky:

Enclosed herewith is our proposed revision of the conciliation agreement. For your convenience, I have attempted to underscore all new material and indicate the deletion of material by the use of a caret.

As you can see, I felt it important that certain information be included in the recitals which provides a balanced view concerning the background and the circumstances with regard to the expenditure by The Okonite Company.

Since the date of our meeting at your offices, the company has not had a board of directors meeting, but I have been advised by management that they are reasonably confident that the company's board would accept the agreement in its revised form. As you can see, we are of the view that it is conceivable that the company's actions constituted a technical violation of the act--although I am by no means certain that it was. On the other hand, the circumstances involved in this particular case were certainly unique. Consequently, the company is willing to concede that its actions may have constituted a violation and is prepared to acquiesce in your view of the law for the purposes of its future activities. In light of these unique circumstances, we believe that it would certainly be inappropriate for the company to be compelled to pay a fine.

FEDERAL ELECTION COMMISSION
OFFICIAL MAIL
Office of General Counsel

I would be glad to discuss this matter with you further as soon as you have had a chance to review the enclosed revision.

Yours very truly,

John R. MacKay 2nd

JRM:ed
Enclosure
cc: Jeffry H. Kittross, Esq.

FEDERAL ELECTION
OFFICE OF GENERAL COUNSEL

Rev. 2/24/77

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 200 (76)
	)	MUR 213 (76)
The Okonite Company	)	

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint by James Ellison Parker and a letter filed by Richard A. Zimmer, an investigation having been conducted, and reasonable cause to believe having been found that respondent violated 2 U.S.C. §441b(a).

Now therefore, the respective parties herein, the Federal Election Commission and the Respondent, having duly entered into conciliation pursuant to §437g(a)(5), do hereby agree as follows:

I. That the Federal Election Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

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

III. That the pertinent facts in this matter are as follow:

A. Respondent is a corporation organized under the laws of Delaware and having its business headquarters in Ramsey, New Jersey. Respondent has facilities in Passaic, Paterson, Ramsey, and North Brunswick, New Jersey and eight other states.

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OFFICE

Respondent's Paterson and Passaic plants are within the New Jersey 8th Congressional District, represented by Congressman Robert A. Roe. Both plants are within economically distressed areas.

B. Respondent has not established a separate segregated fund.

C. All of the stock of Respondent was purchased on June 30, 1976 for a price of $44 million by an Employee Stock Ownership Trust (ESOT) for the benefit of Respondent's employees. The entire purchase price was borrowed by the ESOT and $13 million of it was derived from a grant from the Federal Economic Development Administration. The grant was the key to the entire transaction. Congressman Robert A. Roe had been instrumental in obtaining the federal grant funds for the New Jersey Economic Development Authority (which then loaned the funds to the ESOT) and had substantially assisted Respondent to ensure that the grant was made in a timely fashion.

D. Respondent spent $12,183.84 of corporate treasury funds to place full-page advertisements in four New Jersey newspapers on July 16, 1976 and July 21, 1976.

E. The advertisements state in bold-face type, "Thank You Congressman Robert A. Roe!" and consist of a photograph of Roe, indentifying him as the Congressman from the 8th Congressional District of New Jersey; a statement explaining Roe's "major" role in securing a grant to finance the corporation's new employee stock ownership trust; a photograph of

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Roe with Federal, State and Okonite Company officials; and a five paragraph tribute to Roe for his "untiring efforts in [the Company's] behalf resulting in the purchase of the Okonite Company by an employee stock ownership trust." The advertisements did not mention the forthcoming federal election or Roe's candidacy; did not mention his opponent; did not advocate his election; and did not comment on any facet of his character or behavior in office other than his role in helping the ESOT. The text of the advertisements is appended hereto as Appendix A.

F. Congressman Roe was a candidate for Federal office from the 8th Congressional District of New Jersey at the time of the publication of the advertisements. The advertisements were placed two to three weeks after the closing of the ESOT purchase; five weeks after his victory in the New Jersey congressional primary; and three and one-half months before the general elections in November.

G. The four newspapers in which the advertisements were placed have an area of distribution which includes Mr. Roe's Congressional District and substantial other areas of New Jersey.

H. Acting through counsel, Respondent has cooperated with the Federal Election Commission in its investigation of this matter, responding promptly and candidly to all inquiries. Respondent has pointed out the unique circumstances which led to the placing of the advertisements and has emphasized that the advertisements were directed to the consummation of the

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

ESOT's purchase of all of the stock of Respondent two to three weeks earlier, not to the federal election which was to be held three and one-half months later.

I. The Federal Election Commission is of the view that any paid advertisement which prominently and favorably mentions a candidate for federal office, regardless of whether it mentions the election or advocates the election of a candidate and regardless of whether it relates to an event other than the election, is as a matter of law "in connection with a federal election" and thus constitutes an "expenditure" within the meaning of 2 U.S.C. §441b(b)(2). Consequently, it has determined that there is reasonable cause to believe that Respondent violated 2 U.S.C. §441b(a).

Wherefore, the Respondent agrees:

I. The costs of the advertisements herein described, although not intended to be, may as a matter of law have been "in connection with a federal election", and therefore may have constituted an expenditure, within the meaning of 2 U.S.C. §441b(b)(2). As such, incurring the costs may have been in violation of 2 U.S.C. §441b(a). Consequently, for purposes of this proceeding, Respondent neither admits nor denies that its conduct violated 2 U.S.C. §441b(a).

II. As a result of the parties having entered into conciliation pursuant to 2 U.S.C. §437g(a)(5), Respondent acquiesces in the views of the Federal Election Commission, as stated above, and agrees that it shall not henceforth incur any expend-

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OFFICIAL FILE
OFFICE OF GENERAL COUNSEL

itures for advertisements in any media which prominently and favorably (or unfavorably) mention a candidate for federal office, regardless of whether the candidate is endorsed in the advertisement and regardless of whether the advertisement relates directly to some event other than the election, except as permitted by law through the use of a separate segregated fund.

General Conditions:

I. 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.

II. It is mutually agreed that this agreement shall become effective as to the date that all parties hereto have executed same and the Commission has approved the entire agreement.

III. It is agreed that Respondent shall have no more than 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.

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itures for advertisements in any media which prominently and favorably (or unfavorably) mention a candidate for federal office, regardless of whether the candidate is endorsed in the advertisement and regardless of whether the advertisement relates directly to some event other than the election, except as permitted by law through the use of a separate segregated fund.

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I. 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.

II. It is mutually agreed that this agreement shall become effective as to the date that all parties hereto have executed same and the Commission has approved the entire agreement.

III. It is agreed that Respondent shall have no more than 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.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

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PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

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

- ☐ Show to whom and date delivered..... 15¢
- ☑ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY.
  Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Mr. Victor A. Viggiano

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	438151	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Geo Schaefer

4. DATE OF DELIVERY

POSTMARK

RAMSEY, N.J.
JAN 21 1977

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GOP : 1976—O-203-458

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JAN 1 9 1977

Victor A. Viggiano
Chairman
Okonite Company
Ramsey, New Jersey 07445

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. Viggiano:

Please find attached hereto a copy of a letter mailed to your counsel with respect to the above-numbered matter. The letter is a notification that the Commission has found reasonable cause to believe that the Okonite Company has committeda violation of 2 U.S.C. §441b.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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

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

- ☐ Show to whom and date delivered..... 15¢
- ☒ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

LOWENSTEIN, SANDLER
BROCHIN, KOHL & FISHER
John A. McKay 2nd, Esq.

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	938150	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. Norma Corono

DATE OF DELIVERY 1/21/77

POSTMARK NEWARK, NJ REGISTRY DIV. JAN 21 1977 CLERK'S INITIALS USED

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

☆ GOP : 1976—O-203-458

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file

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

JAN 18 1977

John R. McKay 2nd, Esq.
Lowenstein, Sandler, Brochin,
Kohl & Fisher
744 Broad Street
Newark, New Jersey 07102

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. McKay:

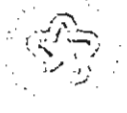
The Federal Election Commission has determined that there is reasonable cause to believe that the Okonite Company has committed a violation of 2 U.S.C. §441b by using corporate funds to place four newspapers advertisements which express gratitude to Congressman Robert A. Roe. It is the Commission's view that the expenditures for those advertisements were "in connection with" a Federal election and therefore, prohibited by 2 U.S.C. §441b.

Pursuant to 2 U.S.C. §437g(a)(5)(A), the Commission has a duty to correct such violations for a period of 30 days by informal methods of conference, conciliation and persuasion and to enter into a conciliation agreement. If we are unable to reach an agreement during that period, 2 U.S.C. §437g(a)(5)(B) provides that the Commission may, upon a finding of probable cause to believe that a violation has occurred, institute a civil suit.

cc: Victor Viggiano
Chairman
Okonite Company
Ramsey, New Jersey 07446

Sincerely yours,

William C. Oldaker
General Counsel



FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 200 (76)
The Okonite Company)	MUR 213 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on January 13, 1977, the Commission determined by a vote of 4-0 that there was reasonable cause to believe a violation of 2 U.S.C. §441b had occurred in the above-captioned matter, and instructed the staff to seek a fine for said violation. Commissioners Springer and Tiernan were not present at the time of the vote.

Marjorie W. Emmons

Secretary to the Commission

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N.J. 07102

NEWARK
FEB 25 '77
N.J.

U.S. POSTAGE
.24

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

Attention: Ms. Sherry Swirsky

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 200 (76)
The Okonite Company	)	MUR 213 (76)

GENERAL COUNSEL'S REPORT

I. Summary of Allegations

The two complaints raise the same issue. It is alleged that the Okonite Company, a corporation, placed full-page advertisements in four newspapers of general circulation in New Jersey which refer to Congressman Robert A. Roe and constitute prohibited corporate expenditures for the purpose of influencing his re-election in the 8th District of New Jersey or in connection with his election.

II. Evidence

The advertisements appeared on the following dates in the following newspapers with circulations which include the 8th District of New Jersey: The Morning Call Paterson News, July 16, 1976; The Passaic Herald News, July 16, 1976; The Bergen Record, July 21, 1976; and The Newark Star Ledger, July 21, 1976. The advertisements appeared approximately five weeks after Congressman Roe's victory in the New Jersey primary election. The advertisements, which were the same

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in all of the newspapers, state in head-line style, bold-face type, "Thank You Congressman Robert A. Roe!". A large photograph of Roe, identifying him as the Congressman from the 8th District and accompanied by a statement explaining his "major" role in securing a grant to fund the corporation's new employee stock ownership trust [ESOT], appears at the top of the page. The bottom half of the advertisement consists of a photograph of Congressman Roe with Federal, State and Okonite Company officials and a five-paragraph tribute to Roe for his "untiring efforts in [the Company's] behalf resulting in the purchase of the Okonite Company by an [ESOT]." The advertisement ends with "Congressman Roe, we deeply appreciate all that you did to make our American dream a reality."

The Okonite Company has plants in Passaic, Paterson, Ramsey, and North Brunswick, New Jersey. The latter two facilities are not within the 8th Congressional District and no advertisements were placed in newspapers which cover the two areas.

In response to the Commission's preliminary inquiry to the Okonite Company, the attached letter from counsel to the company, John R. McKay 2nd, and affidavit from its chairman, president and chief executive officer, Victor Viggiano, were submitted

OFFICE OF GENERAL COUNSEL

to the Commission. Both documents indicate, in summary, that the Okonite Company has recently been in uncertain financial condition due to frequent changes in ownership. At the company's request, Congressman Roe was instrumental in obtaining a grant from the U.S. Department of Commerce Economic Development Administration to finance an ESOT for the company. Congressman Roe was contacted because he represents the congressional district in which two of the company's plants are located and is Chairman of the House Subcommittee on Economic Development. The Okonite ESOT was finalized on June 30, 1976. The aforementioned documents indicate that the purpose of the ads was to express gratitude to Congressman Roe for his material role in the establishment of the ESOT and to announce the change in corporate structure to Okonite's suppliers and customers and to the general public. The affidavit and letter from counsel do not deny that the ads were financed by corporate funds.

According to the affidavit, the ads were not placed at the request or suggestion of Congressman Roe or his authorized committee. Nor is there any evidence that Okonite consulted with Roe or his authorized committee regarding the placement of the ads. Congressman Roe and his authorized committee do not report any contributions from an Okonite PAC, nor does Okonite claim to have established a separate segregated fund.

In an affidavit submitted pursuant to the Commission's investigation of this matter, Congressman Roe stated that "he did not participate in the preparation or placement of the advertisements; nor did [he] authorize anyone or any political committee to do so."

In an affidavit submitted on November 2, 1976, Victor Viggiano stated that the total cost of the advertisements was $12,183.84. He further indicated that the Okonite Company has not placed any newspaper advertisements with respect to any other elected officials in Federal office.

Counsel for respondent, in a letter accompanying Mr. Viggiano's most recent affidavit, contends that the advertisements were in connection with the successful completion of the stock purchase and were intended to thank Congressman Roe and to promote the company's business relations. Respondent further argues that the content and timing of the advertisements and Mr. Viggiano's initial affidavit establish an absence of intention to influence the outcome of the election. Respondent concedes that the advertisements could be construed as favorable to Mr. Roe, but insists that they do not evidence active electioneering because they also communicated Okonite's own business interests. It is respondent's position that §441b of the Act is violated only by expenditures which are for the purpose of influencing an election and which constitute active

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electioneering. Respondent therefore asserts that since the advertisements did not mention the election, endorse Mr. Roe, or advocate the defeat of his opponent, they do not reflect the requisite intent to establish a violation of §441b.

III. Analysis

The issue in these MURs is whether Okonite's advertisements -- concededly made out of general treasury funds -- were in connection with Congressman Roe's re-election campaign in the 8th Congressional District of New Jersey, and therefore subject to the general prohibition of §441b(a) on corporate expenditures.

Although respondents state that their intent in placing the ad was solely to express gratitude to Mr. Roe and to publicize the change in Okonite's corporate structure, it is our opinion that when the ad is placed in an objective factual context, one must presumably conclude that it falls within the ambit of §441b. We reach this conclusion mindful of the fact that there is no definitive judicial interpretation of the phrase "in connection with;" however, our conclusion follows from the legislative evolution of §441b and its predecessor 18 U.S.C. §610. It also follows from established Commission policy.

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The proximity of the general election and the content of the advertisements overshadow Okonite's purported informative purpose and give the advertisements a clear political message. The medium -- general circulation newspapers which include Roe's district -- and the timing of the advertisements -- shortly after his primary victory -- inevitably have the impact on voters of seeming to promote the merits of Roe as a candidate in the general election. Both the text and lay-out evidence a decided emphasis on Roe's achievements in aiding a corporate constitutent, the Okonite Company. The advertisements are only tangentially related to Okonite's other claimed purpose to promote business relations and publicize its change in corporate structure. In fact, only three sentences of the entire text are devoted to the formation of the Okonite ESOT. The Okonite Company, according to the advertisement, has plants in other areas of New Jersey which are not within Roe's congressional district. Yet, the advertisements were published only in newspapers whose area of distribution included Roe's district. Although the advertisements do not expressly call for Roe's election, they unmistakably serve as a tribute to him. As such, it is reasonable to infer that the advertisements appeared to the general public as related to Roe's merits as a candidate. In our view, it is not conclusive that the advertisements did not directly mention Roe's

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candidacy; his primary victory made that candidacy a known fact and the impact of the ad must be assessed in that context.

A. Case Law

No court has reached the precise issue which arises here, i.e., whether a corporate expenditure for a communication which does not contain words which directly call for the election of a clearly identified candidate but can be inferentially interpreted as doing so is "in connection with" an election, and therefore, within the ambit of §441b. (See, e.g., Cort v. Ash, 423 U.S. 812 (1975), where the Court expressly declined to decide whether 18 U.S.C. §610, the predecessor of 2 U.S.C. §441b, proscribed corporate expenditures for specific advertisements.) Thus, there has been no definitive judicial decision as to whether §441b establishes a broader standard than 2 U.S.C. §431(f) anddescribing the content of the "in connection with" standard.

Although some lower courts have alluded to 18 U.S.C. §610 as establishing an active electioneering standard, see Miller v. AT & T Co., 507 F. 2d 759, 764 (3d Cir. 1974); United States v. Lewis Food Co., 366 F. 2d 710, 712 (9th Cir. 1966), that view is contrary to a consistent line of

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legislative intent and Commission policy. It should be noted that both cases were decided on the basis of the 1972 law, before the 1974 amendments gave §610 a different internal definition of "contribution or expenditure" than "the purpose of influencing" test in 18 U.S.C. §591 which underlay the court's enunciation of the active electioneering test. 1/ Moreover, courts which imposed such a test were generally motivated by concerns to which the Congress has subsequently directed specific legislative attention in the Hansen Amendment and the statutory provision for the formation of separate segregated funds as permissible vehicles for corporate political activity. (See Discussion, infra, section B, p. 10 et seq.)

Respondent relies on Ash v. Cort, 350 F. Supp. 227, 232 (E.D. Pa. 1972), aff'd, 471 F. 2d 811 (3d Cir.), rev'd. on other grounds, 496 F. 2d 416 (3d Cir. 1973), rev'd. on other grounds, 423 U.S. 812 (1975), where the district court found permissible under §610 advertisements in national magazines expressing a corporation's views as to a statement made by an unnamed candidate. The Third Circuit Court of Appeals, however, disagreed with the district

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1/ See Miller v. AT & T Co., supra, at 765 . Even in that case the court held direct proof of a partisan purpose on the part of the defendants was not necessary. Rather, it held that the plaintiffs needed to produce (Cont'd.)

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court's narrow interpretation of §610. Chief Judge Seitz, writing for the court stated:

> Nothing in the language or legislative history supports an interpretation of sections 591 and 610 [of Title 18] that would make lawful an expenditure simply because in the communication it paid for no candidate was named. There is no evidence Congress thought the American public so unperceptive that it would recognize a statement as supporting or attacking a particular candidate only by use of his name; such a requirement would eviscerate §610. 496 F. 2d at 425. (Emphasis added.)

Although the court of appeals in Ash required evidence that the communication was partisan, supra at p. 425, the court enunciated a standard which encompasses communications which do not expressly identify the target candidate. While the court did not expressly address the issue of how explicitly partisan a particular communication must be to fall within the sweep of §441b, analogous logic would suggest that the same standard of public perception of the election relatedness of the communication would be applied to that question as well.

1/ (Cont'd.) evidence to support the inference that the only discernible reason for the defendants' failure to collect a debt owed by a national committee of a political party was a desire to assist that committee in a Federal election.

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In summary, the content and evidentiary parameters of "in connection with" remain undefined. Analysis of the cases does suggest, however, that factors such as whether communications financed from a corporation's general treasury are aimed at the general public, are partisan in nature, and are not part of the corporation's normal organizational activity will trigger strict scrutiny. See generally, United States v. Auto Workers, 352 U.S. 567 (1957); United States v. C.I.O., 335 U.S. 106 (1948).

B. Evolution of Statutory Prohibitions on Corporate Contributions and Expenditures in Connection With Federal Elections

The lack of clarity in the case law requires that this matter be resolved by reference to statutory history and Commission policy. The statutory history and legislative intent surrounding §441b and its predecessors evidence a clear desire to subject corporations to a different and more restrictive standard with respect to political activities than that applied to individuals. The evil which Congress has sought to eliminate by §441b and its predecessors is not only direct, partisan political activity by corporations, but also more generally, the use by corporations of treasury funds to promote their own political views by endorsing or opposing candidates for Federal office.

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Accordingly, in 1947 Congress extended the prohibition of §313 of the Federal Corrupt Practices Act to "expenditures" to prevent corporations and labor unions from circumventing the Act by way of indirect disbursements. 61 Stat. 159 (June 23, 1947). 2/

Pursuant to the legislative purpose discussion above, Congress has narrowly limited the audience to which a corporation may direct communications having some connection with a Federal election when such communications are financed from general treasury funds. Thus, in explaining his amendment to §610, Representative Hansen stated:

2/ See also United States v. Auto Workers, supra, 352 U.S. at 582, 585; United States v. C.I.O., supra, 335 U.S. at 112, 115; and United States v. Chestnut, 394 F. Supp. 581, 587 (S.D. N.Y. 1975), aff'd., 533 F. 2d 40 (2d Cir. 1976), for judicial recognition of Congress' intent to curb those corporate expenditures which, in substance, exerted direct or indirect influence over Federal elections. These cases also make it clear that corporations have long been on notice of the strict prohibition on the use of their funds in connection with elections of candidates for Federal office.

> The dividing line established by section 610 is between political activity directed at the general public in connection with Federal elections which must be financed out of political donations and activities directed at members or stockholders which may be financed by general funds. 117 Cong. Rec. H. 11478 (Nov. 30, 1971).
>
> At the present time there is broad agreement as to the essence of the proper balance in regulating corporate and union political activity required by sound policy and the Constitution. It consists of a strong prohibition on the use of corporate and union treasury funds to reach the general public in support of, or opposition to, Federal candidates. . . . 117 Cong. Rec. H. 11479 (Nov. 30, 1971).

It should be noted that the class of persons to whom corporations may communicate regarding political matters has been restricted even when such activity is clearly non-partisan. For example, in the Conference Report on the 1976 Amendments to the Act, H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 63-64 (1976), the conferees provided that corporations may take part in nonpartisan registration and get-out-the-vote activities that are not restricted to stockholders and executive or administrative personnel only if such activities are jointly sponsored by the corporation and an organization that does not endorse candidates and are conducted by that organization. The restrictions on non-partisan activities by corporations suggest that Congress did not intend "in connection with" to import an express advocacy or active electioneering test, but rather, intended that phrase to be construed broadly.

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Okonite's advertisements praising Congressman Roe appear to be communications directed to the general public and whose predictable impact is to make that public believe that Roe's candidacy is supported by a corporate entity in the body politic, a form of communication which §441b contemplated in its prohibition. Unlike the house organ at issue in United States v. C.I.O., supra, and exempted by §441b(b)(2)(A) of the Act, Okonite's advertisements were not published in the course of its normal business activities and predictably reached an audience much larger than the permissible class of stockholders and executive and administrative personnel and their families.

Further evidence of congressional intent to make the statutory restriction on the use of corporate treasury funds broader than that for individuals is afforded by the various 1974 and 1976 amendments permitting use of corporate funds to facilitate the establishment of separate segregated funds for soliciting individual contributions. This evolving statutory outlet constitutes a legislative response to suggestions of judicial concern over interference with corporations'(and labor unions') ability to communicate with their respective members, and in certain circumstances, with the public at large. (Cf. C.I.O. case, concurring

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opinion of Justice Rutledge at 335 U.S. 152, ff., referring to the potential for a "bludgeon[ing] of First Amendment rights resulting from an expansive, absolute restriction on the political uses of unions' general treasury funds"). The amendments provide a clear method -- available here to Okonite -- for political association or expression by individuals connected to the corporation, while continuing the explicit bar on corporate funds being directly used for the same purpose.

C. Commission Policy

Commission policy has been consistent with congressional intent in interpreting the prohibition on corporate contributions and expenditures strictly and preserving "in connection with" as a standard distinct from "for the purpose of influencing." While the proposed regulations permit independent expenditures by an individual, partnership, committee, association, etc., they expressly prohibit such expenditures by labor organizations, corporations, and national banks. See §§109.1(b)(1) and 114.1(a)(1) of the proposed regulations. Further, §100.4(b)(15) excludes from the term "contribution" "a gift, subscription, loan, advance, or deposit of money or anything of value made

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with respect to the recount of the results of a Federal election, or an election contest concerning a Federal election, except when made by an organization subject to the prohibitions of §114.2." (Emphasis added.) Finally, the existence of two separate and distinct standards is evident in the Policy Statement on Presidential Debates in which the Commission held that disbursements by the League of Women Voters through a charitable trust fund "are not made for the purpose of influencing a Federal election and are therefore not contributions as defined in 2 U.S.C. §431(e)," but are "'in connection with' a Federal election and accordingly may not be made with funds from corporate or labor organization treasuries."

In light of the foregoing, it is our view that Okonite's expenditures for a tribute to Congressman Roe evince the requisite elements to establish a violation of 2 U.S.C. §441b. The advertisements' timing, medium, intended audience, and logical effect of influencing the general public to support Congressman Roe bring the expenditures within the ambit of §441b.

IV. Recommendation

Find reasonable cause to believe that a violation of 2 U.S.C. §441b has occurred. Send attached letters. We expect to report to the Commission shortly on a proposed conciliation agreement for this matter. In view of the uncertain case law parameters associated with the phrase "in connection with," the conciliation agreement will not recommend a fine.

JOHN G. MURPHY, JR.
General Counsel

DATE: December 17, 1976

FEDERAL ELECTION COMMISSION
OFFICIAL
MAIL

RC 908

Robert A. Roe
717 ROUTE 23
WAYNE, N. J.

RECEIVED
FEDERAL ELECTION
COMMISSION
'76 NOV 1 PM 2:55

76334C

Dear Mr. Murphy:

Re: MUR 200 (76) -- MUR 233 (76)

I enclose herewith a sworn statement in response to your request to me under date of October 20, 1976 with respect to whether certain newspaper advertisements are "independent expenditures" as defined by 2 U.S.C. § 431 (p).

I am pleased to cooperate with the commission and strongly support the basic statute under which it functions. In the event the commission determines that it requires any additional information or reports from me or any political committee supporting my candidacy, please let me know. I and the committees will be happy to oblige.

Sincerely,

Robert A. Roe

John G. Murphy, Jr., Esquire
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D. C. 20463

October 29, 1976

FEDERAL ELECTION
OFFICE
OFFICIAL

AFFIDAVIT OF ROBERT A. ROE

STATE OF NEW JERSEY)
) ss
COUNTY OF PASSAIC)

ROBERT A. ROE, being of full age, deposes and says:

1. I am a Member of Congress of the United States, elected from the Eighth Congressional District of New Jersey.

2. I am submitting this sworn statement to the Federal Election Commission in response to a letter from John G. Murphy, Jr., General Counsel to the Federal Election Commission by a letter dated October 20, 1976, requesting my sworn statement with respect to whether certain newspaper advertisements, thanking me for my role in the establishment of an employee stock ownership trust of The Okonite Company "constitute independent expenditures within the meaning of the Federal Election Campaign Act of 1971, as amended."

3. I have seen the newspaper advertisements which, I believe, were published in July of 1976.

4. It is my opinion that the said advertisements do not constitute independent expenditures within the meaning of the Federal Election Campaign Act of 1971, as amended, because they do not appear to me to be "expressly advocating the election or defeat" of myself or any other candidate for public office.

5. I did not participate in the preparation or placement of the advertisements; nor did I authorize anyone or any political committee to do so.

Robert A. Roe

Subscribed and sworn to before
me this 29th day of October, 1976

An attorney at law of the State of
New Jersey

FEDERAL ELECTION COMMISSION
OFFICIAL
OFFICE OF GENERAL COUNSEL

Robert A. Roe
717 Route 23
Wayne, New Jersey 07470

John G. Murphy, Jr., Esquire
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D. C. 20463

CC # 919

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
MURRY D. BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE O. SHOULSON
JOHN R. MACKAY 2ND
MURRAY J. LAULICHT
ARCHIBALD S. ALEXANDER, JR.
MARTIN R. GOODMAN
JOHN O. SCHUPPER
STEPHEN N. DERMER

WILLIAM T. KNOX IV
MICHAEL L. ROOBURO
ALLEN B. LEVITHAN
R. BARRY STIGER
GREGORY B. REILLY
DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PAPER
STANLEY A. EPSTEIN
FRANCO GARCIA
RONALD H. JANIS

RECEIVED
FEDERAL ELECTION
COMMISSION

'76 NOV 2 AM 10:23

TELEPHONE
201 624-4600

November 1, 1976

763356

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John G. Murphy, Jr.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 200(76)
MUR 213(76)

Dear Mr. Murphy:

This letter is in response to your request, received by me on October 22, 1976, for further factual and legal submissions in reference to a complaint alleging that The Okonite Company (the "Company") violated §441b of the Federal Election Campaign Act of 1971, as amended, (the "Act") by using corporate funds to place in four newspapers an advertisement which recognized the service of Congressman Robert A. Roe in facilitating the purchase of all of the outstanding stock of the Company by The Okonite Company Employee Stock Ownership Trust.

I respectfully submit, for the reasons that follow, that the Company has not made any prohibited corporate contribution or expenditure.

LEGAL ISSUES

To constitute a prohibited corporate contribution or expenditure under section 441b, a corporation must incur an obligation (1) "in connection with" an election to federal office, (2) "for the purpose of" influencing the election or

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nomination of any person to federal office and (3) in a manner that constitutes "active electioneering."

1. "In Connection With" Test. -- Section 441b and the Commission's Regulations 114.2(b) and 114.1(a) make it unlawful for "any corporation . . . to make a contribution or expenditure in connection with any election" to federal office. While no definition of "in connection with" is provided in the Act, it imports a requirement that there be a reasonably direct causal connection between the contribution or expenditure and the federal election. This point is especially important in viewing corporate expenditures. It means that it is not enough to find that the corporate obligation was incurred when a federal election is in progress. The expenditure or contribution must be prompted, caused by, or made with an eye toward the election.

2. "For the Purpose of Influencing," Test. -- Under the definitions of contribution and expenditure set forth in subsections 431(e) and (f), only corporate advertising obligations incurred "for the purpose of influencing the nomination for election, or election, of any person to Federal office" are prohibited. This element is included as part of the definition of contribution in subsections 431(e)(1) to (e)(4), except in the instance of transfers of funds made by a political committee. The definition of expenditure specifically excludes in subsection 431(f)(4)(f) "any communication" not made for the requisite purpose. Consequently, to be illegal under section 441b a corporate advertisement must be undertaken with the specific "purpose" on the part of the corporation to influence the outcome of a federal election.

3. "Active Electioneering" Test. -- To the extent that case law exists dealing with the issues raised by this matter, federal courts have construed Section 441b, or, more accurately, its predecessor section 610 of Title 18, to require a finding that a communication constitutes "active electioneering." In Ash v. Cort, 350 F.Supp. 227 (E.D. Pa. 1972), aff'd, 471 F.2d 811 (3d Cir.), reversed on other grounds, 496 F.2d 416 (3d Cir. 1973), reversed on other grounds, 45 L.Ed. 26 (1974), a stockholder complained about advertisements which Bethlehem Steel Corporation had placed in late 1972 concerning the need for an honest campaign. The advertisements quoted from a speech by Bethlehem's Chairman of the Board concerning the need for honesty in campaigns; an unnamed candidate was quoted, the intent of the advertisement being to refute the quotation.

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Although the candidate is unnamed, it was obviously a statement made by George McGovern. In any event, the stockholder argued that these advertisements violated section 610. The Court disagreed, stating:

> "The expenditures made by Bethlehem Steel Corporation in connection with the advertisement, the speech, and the folder did not constitute 'active electioneering directed at the general public on behalf of a candidate in a Federal Election' as defined in the legislative history to the recent amendment of 18 U.S.C. §610; Congressional Record, November 30, 1971, H 11477, 11478." 350 F.Supp. at 232.

Although ultimately this case was disposed of on other grounds, the Court of Appeals and the Supreme Court did not take exception to this fundamental point made by the District Court. This case illustrates the fundamental proposition, particularly relevant to the present situation that in the case of cash contributions to a candidate or a committee the Act can and should be broadly construed; but the Act must be narrowly and carefully construed when applied to independent obligations incurred to make a public communication, cf. United States v. CIO, 335 U.S. 106 (1948), in order to avoid making every communication that directly or indirectly relates to political matters or potential candidates - regardless of timing and content - a violation of the Act.

The Facts

The affidavit submitted by Victor Viggiano, Chairman and President of the Company, establishes the following facts: (1) the advertisement was published in response to, and immediately following, the successful completion of the purchase of all of the stock of the Company by the employee stock ownership trust; (2) the advertisement was published for the dual purpose of thanking Congressman Roe for his help and making the successful completion of the purchase known in New Jersey; (3) the advertisement served the legitimate business interests of the Company by advertising the Company's independence to its customers and suppliers.

In addition, the advertisements were placed and ran as soon after the stock purchase as practicable, which happened

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to be several weeks after the New Jersey primary and three and a half months prior to the election.

Applying the law to these facts, it is respectfully submitted that the funds spent for this advertisement were not prohibited by section 441b.

First, the advertisement was run because of, and thus "in connection with", the successful completion of the stock purchase. It was not prompted by or related to the election. Both the timing and the content of the advertisement point to the fact that it was not in connection with the election. The advertisement did not mention Mr. Roe's candidacy, his opponent, the election, or his political views. It merely stated objectively determinable facts concerning the Company, the ESOT, and Mr. Roe's role.

Second, the purposes of the advertisement were to thank Congressman Roe and to promote the Company's business relations. There is absolutely no evidence that the advertisement was intended to have any influence upon the election or that such an advertisement would actually have any influence on the election. To the contrary, Mr. Viggiano's affidavit establishes an absence of at least any subjective intention to influence the outcome of the election. Moreover, the objective facts of content and timing of the advertisement provide an inference that the advertisement was not meant to, nor could it have, any influence on the election. For these reasons, the advertisement constitutes a communication not undertaken for the purpose of influencing an election and, therefore, by definition is not an "expenditure" prohibited by section 441b.

Third, the communication by the advertisement of existing fact, which could be construed as favorable to Mr. Roe, should not be confused with active electioneering. Although gratitude to Mr. Roe was clearly and openly expressed, the Company also advertised its own business interests in the communication. The advertisement did not mention the election. It did not endorse Mr. Roe, advocate his political views, or advocate the defeat of any opponent. Finally, the timing of the advertisement could not have been worse in terms of active electioneering. Consequently, the advertisement did not constitute a prohibited expenditure because the communication did not constitute active electioneering, as required by the judicial gloss on the statute.

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Finally, an interpretation which places this communication in the category of unlawful expenditures would expand the statute to prohibit the communication by a company to the public of facts relating to itself if those facts happen to involve persons holding public office -- regardless of whether any advocacy is involved. Clearly, the law prohibits a company from taking sides in an election. Obviously, it was designed to prohibit under-the-table contributions and indirect contributions of money, goods, or services. But the law cannot, without infringing upon due process and First Amendment concepts, prohibit a company from publishing news or commentary concretely related to its own business interests or activities. (Cf. Section 441(f)(4)(A), excluding news stories from the definition of "expenditure." This underscores the importance of the distinction between communications which "advocate" and those which report fact.) The test cannot be loosely drawn, prohibiting a corporate advertisement simply because it involves a political figure and is published at a time when an election is several months away. The test must provide more visible lines of demaraction. It is submitted that the advertisement in question, which neither speaks to the election nor voices an endorsement and which is clearly and directly related to the Company's business activities and interests, falls on the permissible side of the line that must be drawn to protect First Amendment rights, and, of equal importance, to prevent the law from being so vague as to infringe due process standards.

You have also asked that we forward to you information on the costs of the advertisement and on any other advertisements with respect to elected officials. Enclosed herewith is an affidavit executed by Victor S. Viggiano in response to that request.

Very truly yours,

John R. MacKay 2d

JRM/gc

encl.

OFFICE

AFFIDAVIT OF VICTOR A. VIGGIANO

STATE OF NEW JERSEY)
) ss
COUNTY OF BERGEN)

VICTOR A. VIGGIANO, being of full age, deposes and says:

1. I am the Chairman of the Board, President, and Chief Executive Officer of The Okonite Company, a corporation organized under the laws of Delaware, having its business headquarters in Ramsey, New Jersey.

2. This affidavit is submitted in response to a letter from the Federal Election Commission, dated October 20, 1976, relating to MUR 200(76) and MUR 213(76).

3. The amounts paid by The Okonite Company for the advertisements referring to Congressman Roe which appeared in the newspapers are as follows:

Passaic-Clifton Herald News	$ 2,184.00	
Paterson News	1,637.44	
Newark Star Ledger	4,964.40	
Bergen Evening Record	2,400.00	
		$11,185.84
Advertising agency costs, including type, photo copies, layout and paste up		998.00
		$12,183.84

My knowledge of the foregoing amounts is based upon the records of the Company of which I am Chairman of the Board, President, and Chief Executive Officer.

4. The Okonite Company has not placed any newspaper advertisements with respect to any other elected officals in federal office.

Victor A. Viggiano

Victor A. Viggiano

Sworn to and subscribed before me this 29th day of October, 1976.

Elsie E. Eastle

(Notary Public)

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FI
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, N.J. 07102

COMMISSION

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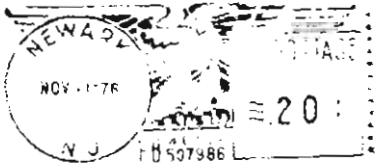

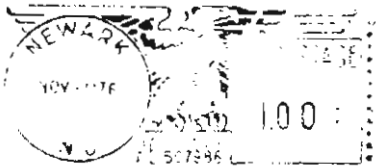

CERTIFIED
No.
MAIL

John G. Murphy, Jr.
General Counsel

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

CERTIFIED--R.R.R.

10/28/76

John R. McKay 2d, Esquire
Lowenstein, Sandler, Brochier,
Kohl, and Fisher
744 Broad Street
Newark, New Jersey 07102

Re: MUR 213 (76)

Dear Mr. McKay:

Enclosed please find a copy of the complaint numbered MUR 213 (76), which you requested during your telephone conversation with Sherry Swirsky on October 26, 1976.

You will note that the allegations of this complaint are identical to those contained in MUR 200 (76), with the exception that this complaint refers only to the advertisement in the Newark Star-Ledger on July 21, 1976.

Sincerely yours,

William Oldaker
Assistant General Counsel

Enclosure

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OFFICE OF GENERAL COUNSEL

2/28/76

John R. McKay 2d, Esquire
Lowenstein, Sandler, Brochier,
Kohl, and Fisher
744 Broad Street
Newark, New Jersey 07102

Re: MUR 213 (76)

Dear Mr. McKay:

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Sincerely yours,

William Oldaker
Assistant General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
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PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

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

- ☐ Show to whom and date delivered..... 15¢
- ☒ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢

LOWENSTEIN, SANDLER
[illegible], KOHL & FISHER

2. ARTICLE ADDRESSED TO:

John R. McKay Jr, Esq

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	438291	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☒ Authorized agent

[signature]

4. DATE OF DELIVERY 10-22-76

POSTMARK

OCT 22 1976 USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GOP 1976—O-203-458

7 7 0 4 0 0 2 2 1 2 1

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

20 OCT 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John R. McKay 2d, Esq.
Lowenstein, Sandler, Brochin,
Kohl & Fisher
744 Broad Street
Newark, NJ 07102

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. McKay:

As we have previously indicated to you, in each of the above-numbered matters under review, the complainants alleged that the Okonite Company made prohibited corporate contributions or expenditures in placing advertisements with respect to Congressman Robert A. Roe in four newspapers.

Based on these allegations and your response to our preliminary inquiry, the Federal Election Commission has found that there is reason to believe that the Okonite Company committed violations of §441b of the Federal Election Campaign Act of 1971, as amended.

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

The Commission asks that you voluntarily comply with the following requests for information:

(1) Please indicate the amounts paid by the Okonite Company for the advertisements referring to Congressman Roe which appeared in the Morning Call Paterson News (July 16, 1976), The Passaic Herald News (July 16, 1976), The Bergen Record (July 21, 1976) and the Newark Star Ledger (July 21, 1976).

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(2) Please indicate whether the Okonite Company has placed any newspaper advertisements with respect to any other elected officials in Federal office.

This information should be provided in the form of sworn statements by individuals with personal knowledge of the matters alleged and submitted within ten days of receipt of this letter.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

FEDERAL ELECTION COMMISSION
OFFICIAL
OFFICE OF

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

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

- ☐ Show to whom and date delivered..... 15¢
- ☒ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Hon. Robert R. Roe

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	438290	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

S. Ferguson

4. DATE OF DELIVERY | POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

☆ GOP: 1976—O-203-488

7 7 0 4 0 0 3 1 2 1

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

20 OCT 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Robert A. Roe
U. S. House of Representatives
Washington, D. C. 20515

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. Roe:

The Federal Election Commission is currently investigating allegations regarding the Okonite Company's expenditure of corporate funds for four newspaper advertisements expressing appreciation for your role in the establishment of Okonite's Employee Stock Ownership Trust.

In connection with this investigation, we would appreciate a sworn statement from you with respect to whether the newspaper advertisements constitute independent expenditures within the meaning of the Federal Election Campaign Act of 1971, as amended. "Independent expenditure" is defined by 2 U.S.C. §431(p) as:

> an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with [you] or any authorized committee or agent of [yours] . . . and which is not made in concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

The Commission is under a duty to investigate this matter expeditiously; therefore, your prompt reply would be appreciated. If you have any questions, please contact David R. Spiegel (telephone no. 202/382-4055), the attorney assigned to this matter. We have enclosed herewith a copy of our letter to the Okonite Company.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 200 (76)
The Okonite Company	)	MUR 213 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on October 19, 1976, the Commission determined by a vote of 5 - 1, that there was reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended, had been committed in the above-captioned matter. Commissioner Aikens voted against the above action.

Marjorie W. Emmons

Marjorie W. Emmons
Commission Secretary

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10-18-76

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 200 (76)
	)	MUR 213 (76)
the Okonite Company	)	

GENERAL COUNSEL'S REPORT

I. Summary of Allegations

The two complaints raise the same issue. It is alleged that the Okonite Company, a corporation, placed full-page advertisements in four newspapers of general circulation in New Jersey which refer to Congressman Robert A. Roe and constitute prohibited corporate contributions or expenditures for the purpose of influencing his re-election in the 8th District of New Jersey or in connection with his election.

II. Evidence

The advertisements appeared on the following dates in the following newspapers with circulations which include but are not limited to the 8th District of New Jersey: The Morning Call Paterson News, July 16, 1976;

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The Passaic Herald News, July 16, 1976; The Bergen Record, July 21, 1976; and The Newark Star Ledger, July 21, 1976. The advertisements appeared approximately five weeks after Congressman Roe's victory in the New Jersey primary election. The advertisements, which were the same in all of the newspapers, state in headline-style, bold-face type, "Thank You Congressman Robert A. Roe!". A large photograph of Roe accompanied by some of his biographical data appears at the top of the page. The bottom half of the advertisement consists of a photograph of Congressman Roe with Okonite Company officials and a five-paragraph description of the Company's new employee stock ownership trust [ESOT]. The ad ends with the sentence "Congressman Roe, we deeply appreciate all that you did to make our American dream a reality."

In response to the Commission's preliminary inquiry to the Okonite Company, the attached letter from counsel to the company, John R. McKay 2nd, and affidavit from its chairman, president and chief executive officer, Victor Viggiano, were submitted to the Commission. Both documents indicate, in summary, that the Okonite Company has recently been in uncertain financial condition due to frequent changes in ownership. At the company's

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request, Congressman Roe was instrumental in obtaining a grant from the U.S. Department of Commerce Economic Development Administration to finance an ESOT for the company. Congressman Roe was contacted because he represents the congressional district in which two of the company's plants are located. The Okonite ESOT was finalized on June 30, 1976. The aforementioned documents indicate that the purpose of the ads was to express gratitude to Congressman Roe for his material role in the establishment of the ESOT and to announce the change in corporate structure to Okonite's suppliers and customers and to the general public.

According to the affidavit, the ads were not placed at the request or suggestion of Congressman Roe or his authorized committee. Nor is there any evidence that Okonite consulted with Roe or his authorized committee regarding the placement of the ads.

Congressman Roe and his authorized committee do not report any contributions from an Okonite PAC, nor does Okonite claim to have established such a separate segregated fund. The aforementioned affidavit and letter from counsel do not deny that the ads were financed by corporate funds.

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III. Analysis

The threshold question in these MURs is factual: whether the payment for the advertisements by the corporation constituted a contribution or expenditure in connection with Congressman Roe's re-election campaign in the 8th District of New Jersey. Although the issue is controverted, with respondent contending that the sole motivation for the ads was to express gratitude, the circumstances surrounding the ads, in our view, meet a determination that there is reason to believe they constituted a contribution and were therefore in violation of 2 U.S.C. §441b. It is uncontroverted that Okonite paid for the ads with corporate funds.

In our view, the proximity of the general election overshadows the purported informative role of the Okonite advertisements and gives them a clear political effect. The medium, general circulation newspapers which include Roe's district, and the timing of the ads logically have the effect of enhancing Roe's candidacy regardless of whether they constituted a meaningful expression of appreciation for a congressman seeking re-election.

2 U.S.C. §441b prohibits corporate contributions and expenditures "in connection with [an election for Federal office]." No court has reached the precise

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issue which arises here, i.e., whether a corporate expenditure for a communication which does not expressly advocate the election of a clearly identified candidate but can be inferentially interpreted as doing so is "in connection with" an election, and therefore, within the ambit of §441b. See, e.g., Cort v. Ash, 423 U.S. 812 (1975), where the Court expressly declined to decide whether 18 U.S.C. §610, the predecessor of 2 U.S.C. §441b, proscribed corporate expenditures for advertisements analogous to those placed by the Okonite Company. However, the phrase "in connection with," which appears in all of the legislative enactments which preceded 2 U.S.C. §441b, is broadly fashioned, in contrast to other sections of the Act, such as §§431(e) and (f), which contain the phrase "for the purpose of influencing [an election]." In addition, the Supreme Court has consistently found the elimination of "the corroding effect of money employed in elections by aggregated power" to be one of the purposes underlying 18 U.S.C. §610. United States v. Auto. Workers, 352 U.S. 567, 582 (1957). Thus, in light of the statutory history and legislative intent of §441b, it is our view the Okonite's expenditures for the newspaper advertisements acclaiming the accomplishments of Congressman Roe on

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Okonite's behalf was in connection with the election of Congressman Roe and therefore, in violation of §441b.*

The fact that the available evidence indicates that the Okonite advertisements constitute an independent expenditure does not change this analysis because §441b appears to cover such expenditures. The term "expenditure" in §441b is used in an undifferentiated sense and therefore, may be construed to include independent expenditures. Furthermore, in cases arising under 18 U.S.C. §610, no court has predicated its analysis of what is or is not a prohibited expenditure on the issue of independence. In fact, in holding that the use of labor union dues to sponsor a commercial television broadcast designed to influence the public at large to vote for certain candidates violated the Corrupt Practices Act, the Supreme Court emphasized that the Act was amended to include "expenditures" to embrace precisely the kind of indirect

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*/ The Commission's similarly expansive reading of the term "expenditure" lends support to the conclusion urged here. See, e.g., AO 1975-108, 41 Fed. Reg. 5753 (1976), in which the Commission held that costs incurred by Federal candidates of the Labor Party in making non-party appearances may be expenditures within the meaning of the Act.

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activity alleged in the indictment. United States v. Auto. Workers, supra, 352 U.S. at 585. More recently, in the context of §610, a court stressed that "[i]t is the substance of the transaction and not the form that controls." United States v. Chestnut, 394 F. Supp. 581, 587 (S.D.N.Y. 1975), aff'd, 533 F. 2d 40 (2d Cir. 1976).

The above analysis is supported by the Commission's proposed regulations. §114.1(1) refers to contributions or expenditures "to any candidate, political party or committee, organization, or any other person in connection with any election . . ." [emphasis added]. That language covers Okonite's expenditures for newspaper advertisements praising Congressman Roe.

IV. Recommendation

The Commission should find reason to believe that violations of 2 U.S.C. §441b have been committed by the Okonite Company. The attached letters should be sent.

John G. Murphy, Jr.
JOHN G. MURPHY, JR.
GENERAL COUNSEL

DATE: October 18, 1976

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CC #496

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

76 SEP 7 A9:25

ALAN V LOWENSTEIN
RICHARD M SANDLER
MURRY O. BROCHIN
BENEDICT M KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON
JOHN R MACKAY 2ND
MURRAY J LAULICHT
ARCHIBALD S. ALEXANDER, JR
MARTIN R GOODMAN
JOHN D SCHUPPER
STEPHEN N DERMER

WILLIAM T. KNOX IV
MICHAEL L. RODBURG
ALLEN B. LEVITHAN
R BARRY STIGER
GREGORY B REILLY
DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PAPER
STANLEY A EPSTEIN
FRANCO GARCIA
RONALD H JANIS

TELEPHONE
201 624-4600

September 2, 1976

761995

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

Attention: Victor Sterling, Esq.

Re: MUR 200 (76)

Gentlemen:

Enclosed herewith is the affidavit of Victor A. Viggiano, in support of a number of factual contentions contained in my letter of August 26, 1976, with regard to the complaint concerning The Okonite Company.

Yours very truly,

John R. MacKay 2nd

JRM:epd
Enclosure

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OFFICIAL

AFFIDAVIT OF VICTOR A. VIGGIANO

STATE OF NEW JERSEY:
:ss
COUNTY OF ESSEX :

VICTOR A. VIGGIANO, being of full age, deposes and says:

1. I am the Chairman of the Board, President, and Chief Executive Officer of The Okonite Company, a corporation organized under the laws of Delaware, having its business headquarters in Ramsey, New Jersey.

2. I have been employed by The Okonite Company since 1952 and have held my present office since 1971.

3. The Okonite Company was independent until 1958 when it became a wholly owned subsidiary of Kennecott Copper Corp.; in 1965 it became a wholly owned subsidiary of L-T-V Corp.; in 1971 it became a wholly owned subsidiary of Omega-Alpha, Inc.; in 1974 Omega-Alpha, Inc. declared bankruptcy. Shortly thereafter it became apparent that the Company would be sold once again.

4. Since June 30, 1976, the Company has been wholly owned by The Okonite Company Stock Ownership Trust (the ESOT), a qualified employee benefit trust pursuant to which all issued and outstanding stock of the Company is or shall be owned beneficially by the employees of the Company.

5. To my personal knowledge, each of the changes of ownership (except the last) was disruptive to the conduct of

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the business of the Company, causing significant apprehension throughout the Company with regard to job stability, continuation of management policies, and in particular, the ever-present threat of the termination of business activities at one or more of the Company's several facilities in New Jersey and in the other eight states in which the Company has plants or warehouses.

6. The apprehension concerning new ownership was substantially increased during the period from June 1975 through June 1976 when it was learned that some of the prospective purchasers of the Company might be inclined to cut back on or dispose of significant parts of the Company's manufacturing activities.

7. In approximately June of 1975, after reading about the experience of South Bend Lathe Company with an ESOT and the federal funding it obtained, I contacted Congressman Robert A. Roe by letter to seek his assistance in determining whether such federal funding might be available to an ESOT formed on behalf of the employees of The Okonite Company. Neither I nor, to the best of my knowledge, anyone I knew had had any previous contact with Representative Roe, and I was not even aware at that time of any of the committee assignments which he had.

8. Congressman Roe answered my inquiry promptly and, thereafter, took the lead in assisting the ESOT in obtaining federal funding through a federal grant to the New Jersey

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Economic Development Authority and a loan of the grant funds from the NJEDA to the ESOT.

9. My initial contact with Representative Roe, as noted above, was in about June of 1975. The grant agreement between the federal Economic Development Administration and the NJEDA relating to the $13 million grant was not actually entered into until May 27, 1976, and the final authorization from the federal Economic Development Administration to the NJEDA to disburse the $13 million loan to the ESOT was not given until June 25, 1976. In the intervening period, Representative Roe provided invaluable assistance to the Company and to the ESOT by following through with the various layers of the federal Economic Development Administration to ensure that the grant application was processed promptly and that there were no delays on account of administrative lapse.

10. The federal grant (and attendant loan from the NJEDA) was the key to the entire ESOT transaction. Without it, none of the other ESOT financing, obtained directly and indirectly from ten banking institutions, would have been possible.

11. At no time did Representative Roe or any member of his staff ever suggest or imply that anything was expected in return from the Company, the ESOT, or the employees of the Company. Similarily, at no time did I or any member of my staff indicate to him or any member of his staff that we would do anything for him in exchange for his efforts.

12. I was enormously impressed by this example of public service as were the many employees in the Company who had knowledge of the efforts expended by Representative Roe to enable us to achieve our goal of employee ownership of the Company.

13. When the ESOT transaction was closed, the ESOT purchasing 100 percent of the Company's issued and outstanding stock, on June 30, 1976, I immediately took steps to announce this event to the lead members of my staff and thereafter to promulgate this information to all of the employees of the Company.

14. The response to this news was -- as I characterized it then -- "euphoric" on the part of all employees of whom I have knowledge.

15. It was at or about the time of the closing that it occurred to me that Representative Roe should be thanked in the most resounding fashion possible and having made that determination, I took action to place these messages in the newspapers to serve the purpose not only of thanking Congressman Roe but also of making generally known the fact that the Company was no longer under the control of a bankrupt company, Omega-Alpha, Inc.

16. A significant number of the Company's customers and suppliers are located in New Jersey, and the Company's competitors had, since the bankruptcy of Omega-Alpha, Inc., attempted to undermine the confidence of customers and sup-

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pliers in the Company, with varying degrees of success, by calling to their attention the bankruptcy of Omega-Alpha, Inc.

17. In causing these newspaper messages to be published, it was not my intention or purpose to influence or in any other way to affect the outcome of the general elections to be held in November 1976, but rather to accomplish precisely what these printed messages did accomplish -- that is, to say thank you in the loudest, clearest fashion possible on behalf of the approximately 1,700 employees of the Company who benefited by the actions of Representative Roe and at the same time to let the word out publicly that the Company was no longer owned by Omega-Alpha, Inc. I am sure that I would have taken the same action shortly after the closing, regardless of when the closing took place, whether in January 1976, December 1976, or any other time.

Victor A. Viggiano

Victor A. Viggiano

Subscribed and sworn to
before me this 22nd day
of September 1976

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 20, 1981

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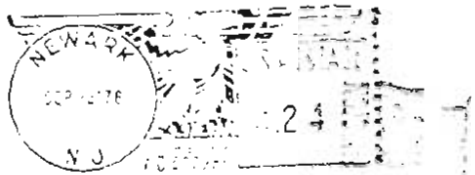
OFFICE OF GENERAL COUNSEL

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N.J. 07102



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

Attention: Victor Sterling, Esq.

CC #462 MUR 200

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

76 AUG 30 A 9: 09

ALAN V LOWENSTEIN
RICHARD M. SANDLER
MURRY D BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
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R BARRY STIGER
GREGORY B REILLY
DAVID W MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G TRAPUNSKY
LEWIS J PAPER
STANLEY A EPSTEIN
FRANCO GARCIA
RONALD H JANIS

TELEPHONE
201 624-4600

August 26, 1976

FEC Correspondence Control # 761823

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

Attention: Victor Sterling, Esq.

Re: MUR 200 (76)

Gentlemen:

This firm represents The Okonite Company. I am writing in response to your letter, dated August 10, 1976, and received by the Company on August 16, 1976, concerning a complaint against the Company, designated by you as MUR 200.

The complaint concerns the publication on behalf of the employees of the Company in two newspapers of a public "Thank You Congressman Robert A. Roe!" for his substantial efforts in assisting The Okonite Company Employee Stock Ownership Trust (the ESOT) to finance the purchase of all of the issued and outstanding shares of the Company. Although the complaint deals with publication in two newspapers, the same message appeared in a total of four newspapers, The Morning Call Paterson News (July 16, 1976), The Passaic Herald News (July 16, 1976), The Bergen Record (July 21, 1976), and The Newark Star Ledger (July 21, 1976).

These messages were placed in the newspapers without the prior knowledge of Congressman Roe, and there had been no commitment or understanding that the Company would do any such thing. As a matter of fact, I understand that the Congressman was surprised when he learned of it.

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It should be apparent from the text of the published message (certainly not "active electioneering") and from the timing of publication (as soon as practicable after the purchase by the ESOT and co-incidentally a few weeks after the New Jersey primary and three and one-half months before the general election -- hardly good timing for a company that intended to influence an election) that the publication was not with an intention or purpose to influence or otherwise affect an election.

The overriding fact, compelling dismissal of the complaint, is that the publication of this message in these newspapers related directly to the consummation of the purchase of the Company stock by the ESOT, not to an election. This stock purchase was an extraordinary event, resulting in the employees of the Company becoming the beneficial owners of 100 percent of a major American company and the creation of the biggest ESOT in the United States.

In order to understand the context of the publication of these public messages of appreciation to Congressman Roe and the circumstances in which they were made, it is helpful to have some understanding of the background of the Company, the ESOT, and the stock purchase transaction which was closed on June 30, 1976.

The Company is a major American producer of wire and cable, and has been in business since 1878. Until 1958, it was independent; since then, it has been traded around by a succession of owners -- Kennecott Copper Corp. (1958-1965), L-T-V Corp. (1965-1971), and most recently Omega-Alpha, Inc. (1971-1976), each change in ownership causing substantial apprehension among the Company's employees with regard to top management policies, especially with regard to whether the new owners would cause the Company to discontinue part or all of its business, shut down one or more plants, etc.

In September of 1974, the most recent parent of the Company, Omega-Alpha, Inc., filed a petition under the federal bankruptcy laws, and top management of the Company thereafter determined that they would take all possible steps to avoid a repetition of finding still another stranger coming into ownership of the Company with all of the accompanying uncertainties created by such a change of ownership.

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By June of 1975, Company management decided to explore seriously the possibility of creating an ESOT to acquire the Company's stock from the trustees in bankruptcy of Omega-Alpha, Inc. The Company learned of the ESOT concept and EDA assistance from the experience and publicity of the ESOT formed by South Bend Lathe Company in South Bend, Indiana. Congressman Roe was contacted, since he represented the congressional district in which two of the Company's plants were located, both in areas deemed to be economically disadvantaged. As it turned out, he expressed immediate and strong concern for the problem faced by the Company, particularly since it was quite possible that any new owner of the Company might seriously consider a shut-down of the Passaic and/or Paterson plants, employing a total of approximately 500 people. As a result, he adopted this project as though it were his own, taking the lead in many respects to assist the Company and its ESOT-in-formation to obtain a $13 million grant from the federal Economic Development Administration of the Department of Commerce to the New Jersey Economic Development Authority upon the condition that the NJEDA loan that sum to the ESOT as part of the financing to be used by the ESOT to purchase all of the Company's shares.

This grant was the keystone of the entire transaction. Without it, none of the other financing would have been possible. Congressman Roe worked tirelessly to ensure that the grant was made in a timely fashion, that the paper work was handled promptly, and more than once intervened in order to ensure that there would be no delays caused by apathy, inefficiency, or red tape in the processing of the application. In addition, he was instrumental in assisting the Company and its ESOT in establishing a sound and good working relationship with the NJEDA in its initial stages.

In the intervening period, the ESOT was involved in a bidding war with a number of other prospective purchasers of the Company, including Perilli Wire and Cable Corp., a wholly-owned subsidiary of a publicly owned Swiss international conglomerate, already a dominant force in the world market for wire and cable products; Ocifint Corporation, a subsidiary of related Swiss and Luxembourg international corporations; Bethlehem Copper Corporation, a Canadian based company; Valhi, Inc., a domestic company, apparently working with and influenced by James T. Ling, who had been a dominant force in Omega-Alpha, Inc. and previously in L-T-V Corp.; Summit Oil

Company, a domestic company, apparently supported by foreign money; and possibly others. In February of 1976, the trustees of Omega-Alpha, Inc. determined to sell the Company to the Okonite ESOT at a price of $38 million. Thereafter, in June, Perilli Wire and Cable Corp. and Summit Oil Company interposed higher bids, driving the final price to $44 million. Even on the last day, June 30, 1976, Valhi, Inc., purported to submit a further competing offer to the Court, which delayed the closing for a number of hours. Ultimately the Court entered the order, confirming the modified proposal by the trustees, and the transaction was consummated.

The result of these efforts was the creation of what we understand to be the biggest ESOT in the United States and probably the only one which owns 100 percent of a major industrial company. In sum and substance, the employees of The Okonite Company are now the beneficial owners of all of its issued and outstanding shares. Commentators have characterized the ESOT concept as a new and dramatic form of workers' capitalism. At the same time, the public benefits because the Company is committed to maintain reasonable levels of economic activity and employment in New Jersey and, in particular, in the economically distressed areas of Passaic and Paterson, and because the grant funds, as they are repaid by the ESOT to the NJEDA must be reapplied for similar purposes.

It was in the context of this dramatic series of events resulting in an extraordinary corporate structure, with enormous potential benefits to the Company, each of its employees, and the public, that the message of appreciation was published.

The publication of these messages of appreciation in four New Jersey newspapers, at least two of which circulate widely beyond the boundaries of Congressman Roe's congressional district, was a way of making the "thank you note" as resounding as possible. They would have appeared shortly after the closing, regardless of whether the closing took place in March 1976, June 1976, or December 1976. Moreover, publication also served the not insignificant purpose of publicizing the Company by bringing to the attention of the public its new corporate structure, in particular suppliers and customers who had been apprehensive because of the bankrupt status of the Company's parent. Perhaps these circumstances are not dissimilar to advertisements which appear, from time to time, announcing the death of a partner or officer of a business, expressing public appreciation of the services rendered by the decedent; or the publication, from time

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to time, in newspapers or other media of anniversary greetings from one spouse to another. People frequently do such things -- and without ulterior motives.

Obviously, if the Company had had any intent to influence the outcome of the general election, it would have had a better sense of timing and would have deferred publication until late September or October when the possibility of members of the public remembering the message would have been enhanced. What's more, if the Company had had in mind violating election laws, publication in four newspapers would hardly seem an appropriate method for avoiding detection.

Enclosed are newspaper clippings from the Wall Street Journal and from the Newark Star Ledger, describing in some detail another ESOT transaction and this ESOT transaction in various stages of its development. These clippings support and expand upon the descriptions I have provided in this letter.

On the basis of the foregoing, it is respecfully submitted that the complaint should be dismissed. I will be forwarding to you shortly an affidavit of Victor A. Viggiano, President of the Company, supporting a number of the factual assertions contained in this letter.

Yours very truly,

John R. MacKay 2nd
epd

John R. MacKay 2nd

JRM:mag

Enclosure

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

THE STAR-LEDGER, Thursday, December 4, 1975

BUSINESS / FINANCE

Okonite employes move to buy company control

By DAVID SANDLER

[illegible] Co. of Ramsey, [illegible] the [illegible] New Jersey [illegible] the [illegible] corporation [illegible] by [illegible] company

[illegible] of [illegible] company [illegible] to [illegible] by [illegible] is [illegible] by [illegible]

[illegible] and [illegible] with [illegible] they [illegible] with the [illegible]

creation of a trust fund, called an employe stock option trust (ESOT), which would use corporate revenues to finance the purchase over a period of years.

Once [illegible] at Okonite employes would receive in addition to their pensions a share of the company's stock determined by [illegible] company and [illegible] years. The stock [illegible] from the open market or through Block [illegible] ESOT.

The [illegible] employes are participating while other corporate [illegible] including two Delaware [illegible] firms, Reach Wire and Cable Corp. [illegible] Coat Inc. and a Canadian firm, British Copper [illegible]

[illegible] trustees [illegible] Fleming and Lawrence L. Beason, senior partners in the Dallas law firm Coke & Coke, are presently evaluating the proposals to determine which of the four is most favorable to Omega-Alpha's creditors.

The trustees' recommendation to the court for the sale of Okonite, Omega-Alpha's only [illegible] asset, is expected [illegible] Hearing. However, further [illegible] and [illegible] of the [illegible] could offer [illegible] could delay the [illegible] by [illegible] months [illegible]

[illegible] in 1971 [illegible] the United States and is one of the four largest suppliers to the nation's utilities. During the past two decades, however, the company has suffered from an unsettling succession of corporate partners.

[illegible] by Kon[illegible] in 1968, [illegible] 10 years [illegible] antitrust ruling by the U.S. Department of Justice Okonite was then acquired by LTV Corp., the [illegible]

In 1974 Omega-Alpha collapsed and filed for Chapter 10 under the Federal Bankruptcy Act in U.S. District Court for the Eastern District of Texas.

During all the trials and travails of its parents, Okonite serenely continued to operate successfully. The firm has operated independently throughout Omega-Alpha's reorganization under its own directors and management, and is not under the jurisdiction of the court.

In addition to its headquarters in Ramsey, Okonite operates plants in Paterson, Passaic and North Brunswick that comprise more than one million square feet of manufacturing space.

Advocated by Okonite's management as a means of stabilizing the ownership of the company while providing an added benefit for all its workers, the employes' ownership plan won the backing of Rep. Robert A. Roe (D-8th Dist.).

[illegible] chairman of the [illegible] subcommittee of the House Public Works Committee has recommended that the Federal Economic Development Administration provide a major share of the funding for the takeover.

The plan calls for a multi-million dollar grant to the State Department of Labor and Industry, which would then lend it to Okonite's ESOT for the purchase of the company from Omega-Alpha. [illegible]

FEDERAL ELECTION
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SUNDAY STAR-LEDGER
February 15, 1976
Section One: Page 73

Workers try to buy Okonite

By DAVID WALD

Court-appointed trustees for the bankrupt Omega-Alpha Inc., which owns the Okonite Co. of Ramsey, a giant electrical cable manufacturer with 1,500 New Jersey workers, have filed a plan in federal court in Dallas which could make Okonite the largest American corporation ever bought by its employes.

Under the terms of a plan of reorganization filed in court, Omega-Alpha would receive $33 million in cash for all issued and outstanding shares of the capital stock of Okonite from an Employe Stock Ownership Trust (ESOT) established by the company for the benefit of the employes of Okonite.

The purchase would be made with the aid of a multi-million dollar government loan from the federal Economic Development Administration, which would be funneled through the State Department of Labor and Industry.

The employe ownership plan won the backing of the trustees, J. Edwin Fleming and Lawrence L. Beason, senior partners in the Dallas law firm of Coke & Coke, over competing offers from two Italian industrial firms and James J. Ling, who put together the Omega-Alpha [illegible] which became [illegible]

Okonite is the only profitable asset in the conglomerate. Founded in 1878, Okonite is the oldest producer of electrical cable in the United States and is one of the four largest suppliers to the nation's utilities.

In addition to its headquarters in Ramsey, Okonite operates plants in Paterson, Passaic and North Brunswick that comprise more than one million square feet of manufacturing space.

The [illegible] would [illegible] to finance the [illegible] over a period of years.

On retirement, Okonite employes would receive, in addition [illegible] share [illegible] by their salary and years of service. The stock [illegible] on the open market or bought back by the ESOT.

An approval hearing of the [illegible] plan is scheduled in federal court in Dallas for [illegible] 24.

THE WALL STREET JOURNAL, Wednesday, February 18, 1976

Omega-Alpha to Sell Okonite for $38 Million To an Employe Trust

By a WALL STREET JOURNAL *Staff Reporter*

DALLAS—In a sudden and unexpected move, the trustees of Omega-Alpha Inc.—currently in reorganization under Chapter 10 of the U.S. Bankruptcy Act—approved a plan through which Omega-Alpha will receive $38 million in cash for all the shares of the issued and outstanding capital stock of Okonite Co., Omega-Alpha's only operating subsidiary.

The trustees, J. Edwin Fleming and Lawrence L. Beason, said the sale is to be made to an Employe Stock Ownership Trust to be established by Okonite "for the benefit of the employes of Okonite."

As recently as Thursday, it was assumed an earlier offer totaling $30.7 million by two Italian companies for Okonite would be the basis for the trustees' reorganization plan, which was filed Friday in Dallas federal court. However, the trustees said that continued interest by several parties resulted in "substantial increases" being made to previous offers and that they regarded the employe trust offer "superior to any other received."

Under Chapter 10, control of the company passes to court-appointed trustees who investigate company affairs and try for complete financial reorganization. If necessary, they may sell some or all of the company's assets to raise money to pay creditors.

LTV Cancels Agreement

In another surprise announcement, the trustees said that LTV Corp. informed them last Thursday that it didn't intend to complete a settlement agreement it had previously reached with Omega-Alpha covering some $33 million in debentures. The trustees said they had considered the terms of the defunct agreement "favorable" to them but that LTV's claims would have to be included with those of other creditors.

The effect of the plan on a tender offer by Valhi, Inc. for Omega-Alpha's outstanding $25 million principal amount of subordinated debentures at 30 cents on the dollar wasn't immediately known, although the trustees said they "may reasonably forecast payment of claims substantially in excess of 30 cents on the dollar."

[illegible] James J. [illegible], adviser to Valhi, [illegible] copies of the trustees' news release were mailed by Valhi to debenture holders so they could be aware of all developments. He [illegible] further [illegible] Valhi [illegible] by Dallas [illegible] Corp.

Claim Would Be Dropped

In addition to paying $38 million in cash for the Okonite stock, Okonite also will cancel a claim it has against Omega-Alpha of about $3 million concerning previous unfunded pension liability. Worth about $1 million at current values, the unfunded pension fund liability was included in the previously reported Italian offer.

That previous offer was by Ocifint Co., a Delaware concern held by IFI International S.A., an investment and holding company affiliated with the Agnelli Group of Italy and by Ceat International of Lausanne, Switzerland, an affiliate of Ceat International S.A., Turin, Italy.

The trustees said that earlier offer contemplated a continuation of Okonite operations by Omega-Alpha until at least 1980 to take advantage of tax savings resulting from the prior net operating losses available to Omega-Alpha.

The trustees said the transaction will be completed June 30, if the plan is approved by the court and the Securities and Exchange Commission. The source of the Okonite funds wasn't disclosed, but the trustees said they "are satisfied funding is available." An Okonite lawyer said bank financing will provide "a significant piece" but declined to be more specific.

The trustees said that proceeds derived from the transaction, together with other assets owned by Omega-Alpha, will exceed $50 million and will be used by the trustees to pay claims approved in the reorganization court. The trustees said the company's liabilities were set at $120 million at the time it filed for court protection under the Bankruptcy Act but that contingent liabilities have also been asserted. "It isn't possible at this time to determine accurately the amount of claims which will be approved and allowed," they said.

The bankruptcy judge directed the trustees to [illegible] by Feb. 21 of a hearing on the plan [illegible] for March 21.

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Ling Hopes to Build New Conglomerate, Apparently via Omega-Alpha's Okonite

By PRISCILLA MEYER
Staff Reporter of THE WALL STREET JOURNAL

James J. Ling, the persistent conglomerator, is trying another comeback.

This time his vehicle is Matrix Inc. Not only does he hope to build Matrix in the mold of his former conglomerates, but he apparently hopes to do it with Okonite Co., which was part of those conglomerates.

Currently Okonite is the principal asset of Mr. Ling's previous effort, Omega-Alpha Inc., which has been mired in a Chapter 10 bankruptcy proceeding for more than a year. An offer by two Italian companies for Okonite—largely $30.7 million in cash, preferred stock and debt forgiveness—will be the basis of a reorganization plan for Omega-Alpha that its bankruptcy trustees plan to file in federal court tomorrow. But Mr. Ling and some of his associates hope to block that plan, replace it with one of their own and ultimately take over Okonite.

Last week Valhi Inc., which is advised by Mr. Ling and controlled by Contran Corp., made a public offering for Omega-Alpha's outstanding $25 million principal amount of subordinated debentures at 30 cents on the dollar. Valhi had set an expiration date for the offer of next Tuesday.

Trading Is Suspended

Tuesday the Securities and Exchange Commission suspended over-the-counter trading in securities of Omega-Alpha through next Thursday so that holders being asked to tender notes to Valhi could "consider information" about the co-trustee's reorganization plan.

Valhi countered yesterday by extending its expiration date until Feb. 20 and explaining that holders could tender the notes even while trading is suspended. (The median price of the debentures earlier this month was $17 bid and $21 asked per $100 principal amount.)

The theory behind the offer is that by controlling at least one-third of one class of debt—in this case the subordinated debt—the Ling group can vote down the Italian plan or any other offer it doesn't like.

According to the offering material Valhi figures "if it is a controlling factor in the company's bankruptcy proceedings it may ultimately be able to gain control of the company and its subsidiary Okonite."

The Ling group has tried once already to revamp Omega-Alpha. Last month Valhi and an investor group headed by Mr. Ling offered to buy all of the common stock of Omega-Alpha for $15 million. Their plan was to declare a $5 million dividend to Omega-Alpha from Okonite which earned $7.2 million in fiscal 1975 and Omega-Alpha would use the $10 million to pay off [illegible] over the next five years with notes and any remaining cash. And what remained would be Okonite.

Private Sale by Matrix

The offer and the joint plan to reorganize Omega-Alpha resulted from a private sale by Mr. Ling's Matrix to Valhi of some $1.4 million principal amount of the Omega-Alpha subordinated debentures it held at Matrix's average cost of about $17 per $100 principal amount.

Mr. Ling still owns about $4.2 million principal amount of these notes and other Omega-Alpha subordinated debt. William H. Tinsley, Mr. Ling's attorney, a former Omega-Alpha officer and currently adviser to Valhi on the offer holds about $654,000 principal amount.

Thus Valhi and the two investors as a group would own 62.9% of Omega-Alpha's total subordinated debt including the $25 million issue if all the other Omega-Alpha notes are tendered to Valhi and if a proposed settlement of a lawsuit (which would reduce Omega-Alpha's subordinated debt) becomes effective before any vote on the co-trustee's reorganization plan.

Mr. Ling had faded from the scene quietly when Omega-Alpha filed for protection against creditors' suits under Chapter 11 of federal bankruptcy law in September 1974. That was later converted to a Chapter 10 reorganization. Under Chapter 10, control of a company passes to a court-appointed trustee who investigates company affairs and tries for complete reorganization.

Mr. Ling's approach to conglomerate building basically involves buying companies, selling off minority interests to the public and redeploying the resulting funds into still more acquisitions.

He used to to [illegible] a small electrical contracting company into LTV Corp., which was, for a while, the nation's 14th largest company. When ousted from LTV he produced Omega-Alpha from his small LTV consulting fees and using his own life insurance policies for security.

Within a few years [illegible] the Fortune 500 list in [illegible] simultaneously produced, from [illegible] in December 1970 through September 1974, some $118 million in [illegible] were blamed, either directly or indirectly on a single large [illegible]

[illegible]

[illegible] for Matrix.

[illegible]

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THE WALL STREET JOURNAL
Friday, December 12, 1975

Omega-Alpha Trustees Say Italian Firms' Bid Is Base for Revamping

By a WALL STREET JOURNAL *Staff Reporter*

DALLAS – Trustees for Omega-Alpha Inc., which is in Chapter 10 proceedings under federal bankruptcy law, said a bid for Omega-Alpha's Okonite Co. unit submitted by two Italian concerns will form the basis for their plan of reorganization for Omega-Alpha.

Under Chapter 10, control of Omega-Alpha earlier this year passed to J. Edwin Fleming and Lawrence L. Beason, Dallas lawyers who were appointed trustees to investigate company affairs and try for complete financial reorganization.

The trustees made their announcement in filing for an extension until Jan. 12 of the deadline for submitting their reorganization plan.

The trustees said their plan will be based on an offer by Ocifint Corp., a Delaware concern held by IFI International S.A., an investment and holding company affiliated with the Agnelli Group of Italy, and by Ceat International of Lausanne, Switzerland, an affiliate of Ceat International S.A., Turin, Italy. Ceat International makes cable, tires and textiles; Okonite makes wire and cable products.

The Ocifint offer is a combination of cash, preferred stock and forgiveness of a liability valued at $30.7 million, the trustees said. Under the proposal, they said, Ocifint will pay $5 million cash to acquire the common stock of Okonite, which will constitute 20% of Okonite's voting stock.

In addition, Omega-Alpha will be issued $19 million in preferred stock in Okonite, which will constitute 80% of Okonite's voting shares, the trustees said. Ocifint can repurchase the preferred stock for $19 million after Jan. 1, 1979, and before Dec. 31, 1983, the trustees added.

Ocifint's proposal further calls for Okonite to forgive $3 million in unfunded pension liabilities owed by Omega-Alpha with a current value of $1 million. According a closing date of June 30, 1976, for the transaction, the trustees said Ocifint would pay an additional $2.7 million cash on closing.

The trustees confirmed that the Ocifint offer was one of seven and said that, in addition to the transaction's original value of $30.7 million, they expect [illegible] additional benefit to Omega-Alpha by [illegible] a tax-loss carry-forward credits, which will approximate $10.5 million if Okonite has average earnings for three years of $7 million before taxes each year.

[illegible]

Saving Jobs

How and Why U.S. Helped 500 Workers Take Over a Machine-Tool Manufacturer

By JOHN J. RYAN
Staff Reporter of THE WALL STREET JOURNAL

SOUTH BEND, Ind.—The workers take over a factory, and the government backs them to the hilt. Moscow, 1917? No, South Bend, 1975, but don't worry. The revolution hasn't come.

What has come is federal assistance for employes who want to buy up the stock of troubled companies in areas that can't afford to lose industry. The objective: to keep the companies from going out of business and adding to the economic woes of their communities. The tactic has saved a machine-tool maker here—South Bend Lathe Inc.—and is spreading to bigger concerns elsewhere.

These rescue operations are being conducted by the Economic Development Administration (EDA) of the Department of Commerce, using an increasingly popular 20-year-old vehicle, the Employe Stock Ownership Plan, or ESOP.

Your average ESOP isn't a rescue operation. Rather, it is a handy way for management to raise funds while the employes reap a benefit: a stake in the business. Workers buy company stock through a trust that borrows the purchase money from conventional lenders and uses the shares as collateral. The company contributes to the trust. In recent years, Congress has enacted a number of tax breaks to encourage the use of ESOPs. Beyond that, the government has had nothing to do with them.

The kind of ESOP that has come to South Bend Lathe is different in two basic ways:

First, the government has quite a lot to do with it. The EDA grants funds to a state or community, which then lends the funds, at low interest, to the trust, supplementing what the workers can borrow from conventional lenders.

Second, although the purpose isn't to fire workers, that is the effect. The workers wouldn't need federal help if they were simply buying a small stake in the company rather than buying the whole [illegible].

[illegible] Act

It was the Public Works and Economic Development Act of 1965 that paved the way [illegible] of ESOPs. Title 9 of the act says [illegible] granted to states or local com[illegible] [illegible]

[illegible] Inc [illegible]

conglomerate. Today it is a thriving independent enterprise. Its orders and shipments are outpacing those of the machine-tool industry as a whole. The productivity of its 500 workers is up 25%. Pretax profit is running at 9% of sales, as against losses a year ago. The company estimates that sales will total $18 million to $20 million in the fiscal year that began last July 1. (Previous years' sales by SBL weren't broken out by Amsted.)

Since South Bend Lathe built its better ESOP, the world has been beating a path to South Bend. "I had a Fortune 500 conglomerate in here last week, and another is due next Tuesday," says Dick Boulis, who was SBL's president under Amsted and, like some other management people, has remained in his post since independence. Mr. Boulis estimates that he has had inquiries from a couple of hundred companies.

The first concern to set out on the specific trail blazed by South Bend Lathe is Okonite Co. of Ramsey, N.J., a producer of wire and cable. Okonite was slated to be sold by Omega Alpha Inc. to Italian interests when a $13 million EDA grant to the state of New Jersey produced an ESOP instead. Also preparing to follow the same path is W. R. Grace & Co.'s Seapak frozen-seafood division at Brunswick, Ga., where a threatened closing imperils over a thousand jobs.

It Started With an Article

Events leading to South Bend Lathe's pioneering role in federally funded ESOPs began in January 1975 when a trade journal carried the news that Amsted was considering liquidating the division. Mr. Boulis, who had been president of the division since 1969, broached the idea of employe ownership to Robert F. McGinty, director of area development for three South Bend banks. Mr. McGinty was aware of the possibility of EDA funding, and the two men approached the agency.

The EDA had already decided to run a test of the ESOP approach, and the agency says South Bend Lathe emerged as the best candidate because of "the character of the company itself, its background and management." A $5 million grant was approved.

The city of South Bend [illegible]

[illegible]

manufacturing; the present estimate is only 25%, and South Bend would like to raise that to 35%. Unemployment in the area, about 7%, isn't horrendous, but EDA officials felt that the loss of 500 jobs would be a severe blow to the community.

Delivered by Pitcher

The $5 million in EDA funds was delivered to the city on June 6, 1975, by Wilmer D. (Vinegar Bend) Mizell, the former major league baseball pitcher then serving as assistant Secretary of Commerce for economic development. An additional $2 million that SBL needed to buy out of Amsted was supplied by banks. Within a month, SBL was an independent concern.

SBL has since renegotiated lower interest rates on the bank loans, in view of what the banks call the firm's excellent progress. The company is about seven months ahead on the bank payments; its first-year contribution to the ESOP, for payment to the city of South Bend, will be $750,000, the maximum allowed for the tax breaks that ESOPs enjoy. (A major benefit is that ESOP loan payments, both interest and principal, are tax deductible.)

Besides paying off its loans, South Bend Lathe is giving each employe a vacation bonus of a week's extra pay at a total cost of about $100,000. The workers also got a turkey at Thanksgiving, a $50 Christmas bonus and a pay increase that wasn't due until next October, bringing average pay to nearly $5.75 an hour.

SBL's prosperity reflects a wealth of changes instituted since independence, which appropriately was achieved over last year's Fourth of July weekend. Mr. Boulis and his management team have slapped tighter controls on inventories and expenses and have vigorously attacked a major problem: excess space.

The company's offices are in a big two-story structure that once housed Studebaker's engineering department, and its factory occupies the old Studebaker engine plant [illegible] Mr. Boulis has leased out the en[illegible] [illegible] a year. To [illegible] Dyn[illegible] [illegible] for [illegible] Still another [illegible] is leased to Mr. McGinty, the bank [illegible] [illegible] for [illegible] South Bend Lathe may move its offices into the plant, making room by storing some materials outdoors.

Biggest Job in History

But more important than such ancillary income as rentals is SBL's performance in the marketplace. The current rate of incoming orders is 75% ahead of last year. The company just landed the biggest job in its 70-year history with a bid of $1.5 million to supply 236 lathes to Tennessee schools for use in industrial-arts classes. (Government and school orders account for about 25% of SBL's business. There is a South Bend lathe aboard virtually every vessel in the Navy.)

Ray Manley, a drill foreman who has been with the company 25 years, senses "a great change in attitude." He says that previously "this was just another job, but now we all realize that broken [illegible] scrap come out of our own [illegible]."

Another 25-year worker, [illegible] Sears, says that better management-worker communication is the biggest change that ESOP has wrought. Bulletin boards keep workers abreast of the company's progress. Mr. Boulis holds meetings of his foremen every two weeks, and of the entire work force every month. "If there's anything we don't like," Mr. Sears says, "we scream and holler."

Right now, most of the hollering is about pensions. The sale to the employes terminated Amsted's retirement plan, on the theory that pensions were being replaced by stock ownership. At retirement, a worker can sell his shares back to the ESOP trust at a value set by an outside consultant. However, current older employes can't accumulate enough equity to match their lost Amsted rights.

10,000 Shares Issued

When South Bend Lathe was set up as an independent entity, it issued 10,000 shares of stock, all held for the workers in an employe stock ownership trust and put up as collateral for the loans to buy the company. A committee of five employes, including Mr. Boulis, decides how the trust will vote the shares. As the loans are paid off, stock becomes available for vesting to individual employes under a point system based on pay and length of service. For the average employe, that means about 2.3 shares the first year. Shares are worth just over $1,000 each.

Gerald Vogel, one of two United Steelworkers local officials on the ESOP committee that decides how unallocated stock is voted, calls the retirement problem "a thorn in our side" and the only aspect of the change that workers are unhappy with. The union, which had a contract with Amsted and continues to represent the workers, has gone to court to force arbitration of the pension responsibilities of SBL and Amsted. Mr. Boulis says SBL is willing to do everything it can to "make whole" the retirement benefits of veteran employes.

Among most workers, the pension difficulty is overshadowed by the essential fact that they still have their [illegible] concern whereas a year ago they thought they'd be on the streets by now.

Chalk up a save for Vinegar Bend Mitchell.

FEDERAL ELECTRONIC MISSION
OFFICIAL [illegible]
OFFICE OF GENERAL COUNSEL

LOWENSTEIN, BANDLER, BROCHIN, KOHL & FISHER
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, N.J. 07102

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

Attn: Victor Sterling, Esq.

PC

PS Form 3811, Mar. 1976

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Mr. Richard A. Zimmer

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Richard Zimmer

Eleanor Payne

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

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

AUG 20 1976

Mr. Richard A. Zimmer
Common Cause
28 West State Street, Rm. 910
Trenton, New Jersey 08605

Re: MUR 213 (76)

Dear Mr. Zimmer:

This acknowledges receipt of your letter of July 27, 1976, alleging violations of the Federal Election Campaign Act of 1971, as amended , by the Okonite Company. As you may be aware, the Federal Election Campaign Act of 1971, as amended, requires that all complaints be signed, sworn, and notarized by the person(s) making the complaint (see 2 U.S.C. Section 437g(a)(2)). Section 111 of our proposed regulations requires that a complaint contain: (1) the full name, address and telephone number of the complainant; (2) a clear and concise statement of the Acts which are alleged to constitute a violation of the Federal Election Campaign Laws; (3) copies of any evidence available to you which sustains the allegations of the complaint. In the event you wish to file a complaint, these requirements must be followed.

Please feel free to contact me if you have further questions. The attorney assigned to this matter is Victor Sterling (telephone no. 202/382-4055).

Sincerely yours,

William Oldaker
Assistant General Counsel

V Sterling: [illegible] 8/20/76

PS Form 3811, Mar. 1976

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James Ellison Parker
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SIGNATURE ☐ Addressee ☑ Authorized agent
J. E. Parker

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8/12/76

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PS-SAIC WASHINGTON DC
AUG 12 1976

5. ADDRESS (Complete only if requested)

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☆ GOP 1976—O-203-456

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10 AUG 1976

Mr. James Ellison Parker
32 Spring Street, Apt. 102
Wellington, N. J. 07057

Re: MUR 200 (76)

Dear Mr. Parker:

This letter is to acknowledge receipt of your complaint dated July 21, 1976, alleging violations of the Federal Election Campaign Act off1971, as amended, by the Okonite Company. We have numbered your complaint as MUR 200, please refer to this number in any correspondence.

The Commission has opened a preliminary inquiry into your allegations. A copy of your complaint has been forwarded to respondent and he has been asked to submit any relevant materials within ten days. If you have any other evidence regarding this matter, please submit it within five days.

The attorney assigned to this case is Victor Sterling (telephone no. 202/382-4055). Please do not hesitate to write or call if you have any questions.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

FEDERAL ELECTION COMMISSION
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VSterling:pjg:7/29/76

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PS Form 3811, Mar. 1976

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

- ☐ Show to whom and date delivered ..... 10¢
- ☒ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY.
  Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
Victor Viggiano

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	438150	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
X Okonetz

4. DATE OF DELIVERY Leo Selmer POSTMARK

RAMSEY N.J. AUG 10 1976 USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GOP: 1976—O-203-456

7 7 0 4 0 0 2 2 1 5 3

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

10 AUG 1976

Mr. Victor Viggiano
Chairman of the Board
The Okonite Company
Ramsey, New Jersey 07446

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

Re: MUR 200 (76)

Dear Mr. Viggiano:

This letter is to notify you that the Federal Election Commission has received a complaint against the Okonite Company, which we have numbered MUR 200. A copy of the complaint is enclosed. The Commission is forwarding this information to you toapprise you that these matters have been raised; it has made no final determination that the matters fall within its jurisdiction or that the allegations made set forth any violation of the Federal Election Campaign Act of 1971, as amended.

The Commission is presently conducting a preliminary inquiry into this matter to determine what action, if any, it should take. Under the Act, the Commission must consider such matters expeditiously; accordingly, please submit within ten days any factual or legal materials which you believe are relevant to the Commission's analysis of the matters alleged to violate the Act.

You will be sent copies or summaries of all correspondence received by the Commission from the complaint concerning this matter. If you have any questions please do not hesitate to contact us. The attorney assigned to this case is Victor Sterling (telephone no. 202/382-4055). Please feel free to call if you have any questions regarding this matter.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely yours,

Enclosure

John G. Murphy, Jr.
General Counsel

VSterling:gg: 7/30/76

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

10 AUG 1976

Mr. Victor Viggiano
Chairman of the Board
The Okonite Company
Ramsey, New Jersey 07446

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

Re: MUR 200 (76)

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If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

Enclosure

VSterling: pjg: 7/29/76

0400221 59

DATE AND TIME OF TRANSMITTAL: AUG 6 1976

NO. MUR 200 (76)

REC'D: 7/26/76

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: James Ellison Parker (notarized)

Respondent's Name: The Okonite Company, Victor A. Viggiano, Chairman of the Board.

Relevant Statute: 2 U.S.C. 441b

Internal Reports Checked: Reports of Congressman Robert A. Roe, candidate, 8th Congressional District, N.J.

Federal Agencies Checked: None

SUMMARY OF ALLEGATION

The complaint alleges that the Okonite Company contributed to the campaign of Congressman Robert A. Roe by placing full page advertisements concerning him in The Record and the Patterson News, in violation of 2 U.S.C. 441b.

PRELIMINARY LEGAL ANALYSIS

The complaint and attachments may give reason to believe that the Okonite Company made either a contribution or independent expenditure in connection with the Congressional election in the 8th district of New Jersey in violation of 2 U.S.C. 441b. The full page ads which the corporation placed in two wide circulation newspapers purport to thank the Congressman for helping the company, but appear to be aimed at the general public in his district. As such, there

(see continuation sheet)

RECOMMENDATION

The attached letters should be sent.

Date of Next Commission Review:

CONTINUATION SHEET

PRELIMINARY LEGAL ANALYSIS:

could be no conceivable purpose for placing them other than to publicly endorse the Congressman/candidate and thereby enhance his re-election campaign. The question remains as to whether the ads were placed with his cooperation, in which case they would be contributions, or independently by the corporation, in which case they would be independent expenditures.

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Victor Viggiano
Chairman of the Board
The Okonite Company
Ramsey, New Jersey 07446

Re: MUR 200 (76)

Dear Mr. Viggiano:

This letter is to notify you that the Federal Election Commission has received a complaint against the Okonite Company, which we have numbered MUR 200. A copy of the complaint is enclosed. The Commission is forwarding this information to you to apprise you that these matters have been raised; it has made no final determination that the matters fall within its jurisdiction or that the allegations made set forth any violation of the Federal Election Campaign Act of 1971, as amended.

The Commission is presently conducting a preliminary inquiry into this matter to determine what action, if any, it should take. Under the Act, the Commission must consider such matters expeditiously; accordingly, please submit within ten days any factual or legal materials which you believe are relevant to the Commission's analysis of the matters alleged to violate the Act.

You will be sent copies or summaries of all correspondence received by the Commission from the complainant concerning this matter. If you have any questions please do not hesitate to contact us. The attorney assigned to this case is Victor Sterling (telephone no. 202/382-4055). Please feel free to call if you have any questions regarding this matter.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely yours,

Enclosure

John G. Murphy, Jr.
General Counsel

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Ellison Parker
32 Spring Street, Apt. 102
Wellington, N. J. 07057

Re: MUR 200 (76)

Dear Mr. Parker:

This letter is to acknowledge receipt of your complaint dated July 21, 1976, alleging violations of the Federal Election Campaign Act of 1971, as amended, by the Okonite Company. We have numbered your complaint as MUR 200; please refer to this number in any correspondence.

The Commission has opened a preliminary inquiry into your allegations. A copy of your complaint has been forwarded to respondent and he has been asked to submit any relevant materials within ten days. If you have any other evidence regarding this matter, please submit it within five days.

The attorney assigned to this case is Victor Sterling (telephone no. 202/382-4055). Please do not hesitate to write or call if you have any questions.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

Enclosure

CC #372
MUR 213

28 WEST STATE STREET, RM. 910, TRENTON, NEW JERSEY 08605 ☐ 609•396-1150

July 27, 1976

76 JUL 2 P12:12

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

Dear Sirs:

The enclosed full-page tribute to U.S. Representative Robert A. Roe appeared in the Newark Star-Ledger of Wednesday, July 21, 1976. Rep. Roe is currently a candidate for reelection.

The advertisement begins "We 1700 employees of The Okonite Company and our families..." and is signed by the company's chairman of the board. Its manner of presentation raises the possibility that it was paid for by means of a prohibited corporate political expenditure.

I would appreciate your looking into this matter to determine whether Federal law has been complied with.

Very truly yours,

Richard A. Zimmer

Richard A. Zimmer

RAZ:fkl

cc: Mr. Fred Wertheimer, Washington, D.C. CC.
Ms. Julia Fremon, N.J. CC., Trenton, N.J.

FEC Control # 761365

FEDERAL ELECTION COMMISSION
OFFICIAL FILE

Richard A. Zimmer,

common cause NEW JERSEY

28 WEST STATE STREET, RM. 910, TRENTON, NEW JERSEY 08608

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

James Ellison Parker
32 Spring Street, Apt. 102
Wellington, N. J. 07057
Tel. 201 471-3896
July 21, 1976

OC# 34276 JUL 23 AM 8:09

FEC CORRESPONDENCE
CONTROL # 76-1402

General Council's Office
Compliance Div.
David Spiegel
1325 K. Street, N. W.
Washington, D. C., 20463

Dear Sir:

I understand that the F.E.C. does not allow Companies or Corp. to give money or fifts to Congressmen, for their Campaign.

I am enclosing two paid adds by the Oksnite Company, Ramsey, New Jersey, 07446 for Congressman Robert AA. Roe.

I would appreciate this type of support by a company be stopped. I would appreciate this company be proceeded.

I am sure you will take care of this matter.

Sincerely yours,

James Ellison Parker

James Ellison Parker

P. S. I have enclosed two adds from -one The Record-160 River Street Hackensack, New Jersey, and The Morning Call Paterson News, July 16, 1976. The Record is July 21, 1976

Witness:

Candice Tabor

Candice Tabor
CANDICE TABOR
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 8, 1978

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7704002216

JAMES ELLISON PARKER
32 SPRING STREET · Apt. 102
WALLINGTON, N. J. 07057

PASSAIC, NJ
JUL 21
PM
1976

United States 13c United States 13c

General Counsel's Office of the F.F.C.
[illegible]
[illegible]
[illegible]
[illegible], D. C. [illegible]

FEDERAL [illegible]

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY

Thank you Congressman Robert A. Roe!

[illegible] Congressman Joseph Hoffman, New Jersey Commissioner of Labor and Industry.

[illegible] employees of The Okonite Company, and [illegible] to acknowledge with grateful [illegible] untiring efforts in our behalf [illegible] of The Okonite Company [illegible] Ownership Trust.

[illegible] the funds provided to the ESOT, largely through your efforts, permitted us to purchase all the shares of Okonite stock, we became the largest employee owned company in the United States.

The employees of our Passaic and Paterson plants, within the 8th Congressional District of New Jersey, which you represent, along with those in our Ramsey and North Brunswick, New Jersey facilities, are joined by fellow employees in other manufacturing plants and sales offices throughout the United States in extending personal thanks for your deep interest in and sensitivity to their continued welfare.

The significance of the fact that the employee purchase of Okonite was completed during the period of our nation's 2[illegible]th birthday celebration is not lost to any of us. In fact the timeliness serves to reconfirm, to all of us, added respect for those privileges and advantages inherent within our democratic form of government.

Congressman Roe, we deeply appreciate all that you did to make our American dream a reality.

Victor A. Viggiano, Chairman of the Board
The Okonite Company, [illegible] N.J. 07448

FEDERAL ELECTION COMMISSION

1. Memo to Spiegel, 9-23-77
2. Memo from Oldaker to Emmons, 6-20-77
3. Memo from Oldaker to the Commission, 6-17-77
4. Memo from Emmons to Oldaker, 8-9-77
5. Memo from Emmons to Steele, 4-21-77
6. ~~[illegible]~~ Draft 48 H.L. Report - no date

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 Kurt Burkhart

date 10-11-77

[illegible] 9-21-77

7 7 0 4 0 0 2 2 1 6 7

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John R. McKay 2nd, Esq.
Lowenstein, Sandler, Brochin,
Kohl & Fisher
744 Broad Street
Newark, New Jersey 07102

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. McKay:

The Federal Election Commission has determined that there is reasonable cause to believe that the Okonite Company has committed a violation of 2 U.S.C. §441b by using corporate funds to place in four newspapers advertisements which express gratitude to Congressman Robert A. Roe. It is the Commission's view that the expenditures for those advertisements were "in connection with" a Federal election and therefore, prohibited by 2 U.S.C. §441b.

Pursuant to 2 U.S.C. §437g(a)(5)(A), the Commission has a duty to correct such violations for a period of 30 days by informal methods of conference, conciliation and persuasion and to enter into a conciliation agreement. If we are unable to reach an agreement during that period, 2 U.S.C. §437g(a)(5)(B) provides that the Commission may, upon a finding of probable cause to believe that a violation has occurred, institute a civil suit.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

cc: Victor Viggiano
Chairman
Okonite Company
Ramsey, New Jersey 07446

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7 7 0 4 0 0 2 2 6 4 5

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Victor A. Viggiano
Chairman
Okonite Company
Ramsey, New Jersey 07446

Re: MUR 200 (76)
MUR 213 (76)

Dear Mr. Viggiano:

Please find attached hereto a copy of a letter mailed to your counsel with respect to the above-numbered matter. The letter is a notification that the Commission has found reasonable cause to believe that the Okonite Company has committed a violation of 2 U.S.C. §441b.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

Enclosure

7704002646

ROBERT A. ROE, Member of the Congress of the United States
Eighth Congressional District of New Jersey.

As Chairman of the House Subcommittee on Economic Development, Congressman Roe played the major role in securing a $1 million grant from the federal Economic Development Administration to the State of New Jersey Economic Development Authority to establish the seventh free economic revolving fund that will serve as a lender to county New Jersey towns. The $1 million grant was used to enable Okonite ESOT to be repaid over 25 years at low interest rates. As Okonite ESOT repays this loan the funds can then be used to grant other companies in Passaic and Middlesex counties, thereby providing economic stability to needy communities.

Thank you Congressman Robert A. Roe!

Looking over the $1 million check presented to Okonite ESOP are from left: Marion Gorman, chief financial officer, New Jersey Economic Development Authority; John Eden, assistant secretary of Economic Development, U.S. Department of Commerce; Congressman Roe; Victor A. Viggiano, chairman of the board and president of The Okonite Company and Joseph Hudson, New Jersey Commissioner of Labor and Industry.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

We 1700 employees of The Okonite Company, and our families, wish to acknowledge with grateful appreciation your untiring efforts in our behalf resulting in the purchase of The Okonite Company by an Employee Stock Ownership Trust.

On June 30, 1976 when the funds provided to the ESOT, largely through your efforts, permitted us to purchase all the shares of Okonite stock, we became the largest employee owned company in the United States.

The employees of our Passaic and Paterson plants, within the 8th Congressional District of New Jersey, which you represent, along with those in our Ramsey and North Brunswick, New Jersey facilities, are joined by fellow employees in other manufacturing plants and sales offices throughout the United States in extending personal thanks for your deep interest in and sensitivity to interconnected welfare.

The significance of the fact that the employee purchase of Okonite was completed during the period of our nation's 200th birthday celebration is not lost to any of us. In fact the timeliness serves to reconfirm, to all of us, added respect for those privileges and advantages inherent within our democratic form of government.

Congressman Roe, we deeply appreciate all that you did to make our American dream a reality.

Victor A. Viggiano, Chairman of the Board
The Okonite Company, Ramsey, N.J. 07446

CC #496

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

76 SEP 7 A9:25

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
HURRY S. BROCHIN
BENEDICT H. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON
JOHN R. MACKAY 2ND
MURRAY J. LAULICHT
ARCHIBALD S. ALEXANDER, JR.
MARTIN R. GOODMAN
JOHN B. SCHUPPER
STEPHEN N. BERNER

WILLIAM T. KNOX IV
MICHAEL L. ROSBURG
ALLEN B. LEVITHAN
R. BARRY STIGER
GREGORY B. REILLY
DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA RYNO WECKER
ALLAN B. TRAPUNSKY
LEWIS J. PAPER
STANLEY A. EPSTEIN
FRANCO GARCIA
RONALD N. JANIS

TELEPHONE
201 624-4600

September 2, 1976

761995

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

Attention: Victor Sterling, Esq.

Re: MUR 200 (76)

Gentlemen:

Enclosed herewith is the affidavit of Victor A. Viggiano, in support of a number of factual contentions contained in my letter of August 26, 1976, with regard to the complaint concerning The Okonite Company.

Yours very truly,

John R. MacKay 2nd

JRM:epd
Enclosure

AFFIDAVIT OF VICTOR A. VIGGIANO

STATE OF NEW JERSEY:
:ss
COUNTY OF ESSEX :

VICTOR A. VIGGIANO, being of full age, deposes and says:

1. I am the Chairman of the Board, President, and Chief Executive Officer of The Okonite Company, a corporation organized under the laws of Delaware, having its business headquarters in Ramsey, New Jersey.

2. I have been employed by The Okonite Company since 1952 and have held my present office since 1971.

3. The Okonite Company was independent until 1958 when it became a wholly owned subsidiary of Kennecott Copper Corp.; in 1965 it became a wholly owned subsidiary of L-T-V Corp.; in 1971 it became a wholly owned subsidiary of Omega-Alpha, Inc.; in 1974 Omega-Alpha, Inc. declared bankruptcy. Shortly thereafter it became apparent that the Company would be sold once again.

4. Since June 30, 1976, the Company has been wholly owned by The Okonite Company Stock Ownership Trust (the ESOT), a qualified employee benefit trust pursuant to which all issued and outstanding stock of the Company is or shall be owned beneficially by the employees of the Company.

5. To my personal knowledge, each of the changes of ownership (except the last) was disruptive to the conduct of

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the business of the Company, causing significant apprehension throughout the Company with regard to job stability, continuation of management policies, and in particular, the ever-present threat of the termination of business activities at one or more of the Company's several facilities in New Jersey and in the other eight states in which the Company has plants or warehouses.

6. The apprehension concerning new ownership was substantially increased during the period from June 1975 through June 1976 when it was learned that some of the prospective purchasers of the Company might be inclined to cut back on or dispose of significant parts of the Company's manufacturing activities.

7. In approximately June of 1975, after reading about the experience of South Bend Lathe Company with an ESOT and the federal funding it obtained, I contacted Congressman Robert A. Roe by letter to seek his assistance in determining whether such federal funding might be available to an ESOT formed on behalf of the employees of The Okonite Company. Neither I nor, to the best of my knowledge, anyone I knew had had any previous contact with Representative Roe, and I was not even aware at that time of any of the committee assignments which he had.

8. Congressman Roe answered my inquiry promptly and, thereafter, took the lead in assisting the ESOT in obtaining federal funding through a federal grant to the New Jersey

Economic Development Authority and a loan of the grant funds from the NJEDA to the ESOT.

9. My initial contact with Representative Roe, as noted above, was in about June of 1975. The grant agreement between the federal Economic Development Administration and the NJEDA relating to the $13 million grant was not actually entered into until May 27, 1976, and the final authorization from the federal Economic Development Administration to the NJEDA to disburse the $13 million loan to the ESOT was not given until June 25, 1976. In the intervening period, Representative Roe provided invaluable assistance to the Company and to the ESOT by following through with the various layers of the federal Economic Development Administration to ensure that the grant application was processed promptly and that there were no delays on account of administrative lapse.

10. The federal grant (and attendant loan from the NJEDA) was the key to the entire ESOT transaction. Without it, none of the other ESOT financing, obtained directly and indirectly from ten banking institutions, would have been possible.

11. At no time did Representative Roe or any member of his staff ever suggest or imply that anything was expected in return from the Company, the ESOT, or the employees of the Company. Similarily, at no time did I or any member of my staff indicate to him or any member of his staff that we would do anything for him in exchange for his efforts.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

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12. I was enormously impressed by this example of public service as were the many employees in the Company who had knowledge of the efforts expended by Representative Roe to enable us to achieve our goal of employee ownership of the Company.

13. When the ESOT transaction was closed, the ESOT purchasing 100 percent of the Company's issued and outstanding stock, on June 30, 1976, I immediately took steps to announce this event to the lead members of my staff and thereafter to promulgate this information to all of the employees of the Company.

14. The response to this news was -- as I characterized it then -- "euphoric" on the part of all employees of whom I have knowledge.

15. It was at or about the time of the closing that it occurred to me that Representative Roe should be thanked in the most resounding fashion possible and having made that determination, I took action to place these messages in the newspapers to serve the purpose not only of thanking Congressman Roe but also of making generally known the fact that the Company was no longer under the control of a bankrupt company, Omega-Alpha, Inc.

16. A significant number of the Company's customers and suppliers are located in New Jersey, and the Company's competitors had, since the bankruptcy of Omega-Alpha, Inc., attempted to undermine the confidence of customers and sup-

pliers in the Company, with varying degrees of success, by calling to their attention the bankruptcy of Omega-Alpha, Inc.

17. In causing these newspaper messages to be published, it was not my intention or purpose to influence or in any other way to affect the outcome of the general elections to be held in November 1976, but rather to accomplish precisely what these printed messages did accomplish -- that is, to say thank you in the loudest, clearest fashion possible on behalf of the approximately 1,700 employees of the Company who benefited by the actions of Representative Roe and at the same time to let the word out publicly that the Company was no longer owned by Omega-Alpha, Inc. I am sure that I would have taken the same action shortly after the closing, regardless of when the closing took place, whether in January 1976, December 1976, or any other time.

Victor A. Viggiano

Victor A. Viggiano

Subscribed and sworn to
before me this 2nd day
of September 1976

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N.J. 07102

NEWARK SEP -2'76 N.J.
U.S. POSTAGE .24
PB METER 507986

76 SEP 7 A3

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

Attention: Victor Sterling, Esq.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

OC # 919

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

RECEIVED
FEDERAL ELECTION
COMMISSION

'76 NOV 2 AM 10:23

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
MURRY G. BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW R. BOYLAN
BRUCE D. SHOULSON
JOHN R. MACKAY 2nd
MURRAY J. LAULICHT
ARCHIBALD S. ALEXANDER, JR.
MARTIN R. GOODMAN
JOHN D. SCHUPPER
STEPHEN H. DERMER

WILLIAM T. KNOX IV
MICHAEL L. RODBURG
ALLEN B. LEVITHAN
R. BARRY STIGER
GREGORY B. REILLY
DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
BARBARA BYRD WECKER
ALLAN G. TRAPUNSKY
LEWIS J. PAPER
STANLEY A. EPSTEIN
FRANCO GARCIA
RONALD H. JANIS

TELEPHONE
201 624-4600

November 1, 1976

763356

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John G. Murphy, Jr.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 200(76)
MUR 213(76)

Dear Mr. Murphy:

This letter is in response to your request, received by me on October 22, 1976, for further factual and legal submissions in reference to a complaint alleging that The Okonite Company (the "Company") violated §441b of the Federal Election Campaign Act of 1971, as amended, (the "Act") by using corporate funds to place in four newspapers an advertisement which recognized the service of Congressman Robert A. Roe in facilitating the purchase of all of the outstanding stock of the Company by The Okonite Company Employee Stock Ownership Trust.

I respectfully submit, for the reasons that follow, that the Company has not made any prohibited corporate contribution or expenditure.

LEGAL ISSUES

To constitute a prohibited corporate contribution or expenditure under section 441b, a corporation must incur an obligation (1) "in connection with" an election to federal office, (2) "for the purpose of" influencing the election or

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7704020265

nomination of any person to federal office and (3) in a manner that constitutes "active electioneering."

1. "In Connection With" Test. -- Section 441b and the Commission's Regulations 114.2(b) and 114.1(a) make it unlawful for "any corporation . . . to make a contribution or expenditure in connection with any election" to federal office. While no definition of "in connection with" is provided in the Act, it imports a requirement that there be a reasonably direct causal connection between the contribution or expenditure and the federal election. This point is especially important in viewing corporate expenditures. It means that it is not enough to find that the corporate obligation was incurred when a federal election is in progress. The expenditure or contribution must be prompted, caused by, or made with an eye toward the election.

2. "For the Purpose of Influencing," Test. -- Under the definitions of contribution and expenditure set forth in subsections 431(e) and (f), only corporate advertising obligations incurred "for the purpose of influencing the nomination for election, or election, of any person to Federal office" are prohibited. This element is included as part of the definition of contribution in subsections 431(e)(1) to (e)(4), except in the instance of transfers of funds made by a political committee. The definition of expenditure specifically excludes in subsection 431(f)(4)(f) "any communication" not made for the requisite purpose. Consequently, to be illegal under section 441b a corporate advertisement must be undertaken with the specific "purpose" on the part of the corporation to influence the outcome of a federal election.

3. "Active Electioneering" Test. -- To the extent that case law exists dealing with the issues raised by this matter, federal courts have construed Section 441b, or, more accurately, its predecessor section 610 of Title 18, to require a finding that a communication constitutes "active electioneering." In Ash v. Cort, 350 F.Supp. 227 (E.D. Pa. 1972), aff'd, 471 F.2d 811 (3d Cir.), reversed on other grounds, 496 F.2d 416 (3d Cir. 1973), reversed on other grounds, 45 L.Ed. 26 (1974), a stockholder complained about advertisements which Bethlehem Steel Corporation had placed in late 1972 concerning the need for an honest campaign. The advertisements quoted from a speech by Bethlehem's Chairman of the Board concerning the need for honesty in campaigns; an unnamed candidate was quoted, the intent of the advertisement being to refute the quotation.

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Although the candidate is unnamed, it was obviously a statement made by George McGovern. In any event, the stockholder argued that these advertisements violated section 610. The Court disagreed, stating:

> "The expenditures made by Bethlehem Steel Corporation in connection with the advertisement, the speech, and the folder did not constitute 'active electioneering directed at the general public on behalf of a candidate in a Federal Election' as defined in the legislative history to the recent amendment of 18 U.S.C. §610; Congressional Record, November 30, 1971, H 11477, 11478." 350 F.Supp. at 232.

Although ultimately this case was disposed of on other grounds, the Court of Appeals and the Supreme Court did not take exception to this fundamental point made by the District Court. This case illustrates the fundamental proposition, particularly relevant to the present situation that in the case of cash contributions to a candidate or a committee the Act can and should be broadly construed; but the Act must be narrowly and carefully construed when applied to independent obligations incurred to make a public communication, cf. United States v. CIO, 335 U.S. 106 (1948), in order to avoid making every communication that directly or indirectly relates to political matters or potential candidates - regardless of timing and content - a violation of the Act.

The Facts

The affidavit submitted by Victor Viggiano, Chairman and President of the Company, establishes the following facts: (1) the advertisement was published in response to, and immediately following, the successful completion of the purchase of all of the stock of the Company by the employee stock ownership trust; (2) the advertisement was published for the dual purpose of thanking Congressman Roe for his help and making the successful completion of the purchase known in New Jersey; (3) the advertisement served the legitimate business interests of the Company by advertising the Company's independence to its customers and suppliers.

In addition, the advertisements were placed and ran as soon after the stock purchase as practicable, which happened

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to be several weeks after the New Jersey primary and three and a half months prior to the election.

Applying the law to these facts, it is respectfully submitted that the funds spent for this advertisement were not prohibited by section 441b.

First, the advertisement was run because of, and thus "in connection with", the successful completion of the stock purchase. It was not prompted by or related to the election. Both the timing and the content of the advertisement point to the fact that it was not in connection with the election. The advertisement did not mention Mr. Roe's candidacy, his opponent, the election, or his political views. It merely stated objectively determinable facts concerning the Company, the ESOT, and Mr. Roe's role.

Second, the purposes of the advertisement were to thank Congressman Roe and to promote the Company's business relations. There is absolutely no evidence that the advertisement was intended to have any influence upon the election or that such an advertisement would actually have any influence on the election. To the contrary, Mr. Viggiano's affidavit establishes an absence of at least any subjective intention to influence the outcome of the election. Moreover, the objective facts of content and timing of the advertisement provide an inference that the advertisement was not meant to, nor could it have, any influence on the election. For these reasons, the advertisement constitutes a communication not undertaken for the purpose of influencing an election and, therefore, by definition is not an "expenditure" prohibited by section 441b.

Third, the communication by the advertisement of existing fact, which could be construed as favorable to Mr. Roe, should not be confused with active electioneering. Although gratitude to Mr. Roe was clearly and openly expressed, the Company also advertised its own business interests in the communication. The advertisement did not mention the election. It did not endorse Mr. Roe, advocate his political views, or advocate the defeat of any opponent. Finally, the timing of the advertisement could not have been worse in terms of active electioneering. Consequently, the advertisement did not constitute a prohibited expenditure because the communication did not constitute active electioneering, as required by the judicial gloss on the statute.

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Finally, an interpretation which places this communication in the category of unlawful expenditures would expand the statute to prohibit the communication by a company to the public of facts relating to itself if those facts happen to involve persons holding public office -- regardless of whether any advocacy is involved. Clearly, the law prohibits a company from taking sides in an election. Obviously, it was designed to prohibit under-the-table contributions and indirect contributions of money, goods, or services. But the law cannot, without infringing upon due process and First Amendment concepts, prohibit a company from publishing news or commentary concretely related to its own business interests or activities. (Cf. Section 441(f)(4)(A), excluding news stories from the definition of "expenditure." This underscores the importance of the distinction between communications which "advocate" and those which report fact.) The test cannot be loosely drawn, prohibiting a corporate advertisement simply because it involves a political figure and is published at a time when an election is several months away. The test must provide more visible lines of demaraction. It is submitted that the advertisement in question, which neither speaks to the election nor voices an endorsement and which is clearly and directly related to the Company's business activities and interests, falls on the permissible side of the line that must be drawn to protect First Amendment rights, and, of equal importance, to prevent the law from being so vague as to infringe due process standards.

You have also asked that we forward to you information on the costs of the advertisement and on any other advertisements with respect to elected officials. Enclosed herewith is an affidavit executed by Victor S. Viggiano in response to that request.

Very truly yours,

John R. MacKay 2d

JRM/gc

encl.

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AFFIDAVIT OF VICTOR A. VIGGIANO

STATE OF NEW JERSEY)
) ss
COUNTY OF BERGEN)

VICTOR A. VIGGIANO, being of full age, deposes and says:

1. I am the Chairman of the Board, President, and Chief Executive Officer of The Okonite Company, a corporation organized under the laws of Delaware, having its business headquarters in Ramsey, New Jersey.

2. This affidavit is submitted in response to a letter from the Federal Election Commission, dated October 20, 1976, relating to MUR 200(76) and MUR 213(76).

3. The amounts paid by The Okonite Company for the advertisements referring to Congressman Roe which appeared in the newspapers are as follows:

Passaic-Clifton Herald News	$ 2,184.00	
Paterson News	1,637.44	
Newark Star Ledger	4,964.40	
Bergen Evening Record	2,400.00	
		$11,185.84
Advertising agency costs, including type, photo copies, layout and paste up		998.00
		$12,183.84

My knowledge of the foregoing amounts is based upon the records of the Company of which I am Chairman of the Board, President, and Chief Executive Officer.

4. The Okonite Company has not placed any newspaper advertisements with respect to any other elected officals in federal office.

Victor A. Viggiano

Victor A. Viggiano

Sworn to and subscribed before me this 29th day of October, 1976.

Grace E. Easter
(Notary Public)

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CERTIFIED

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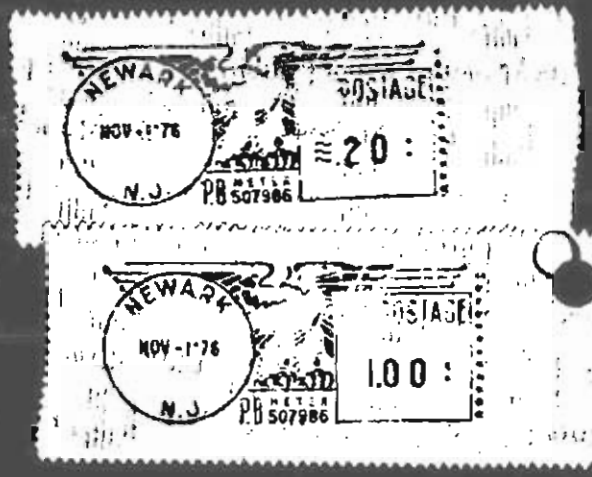
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