



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC RECORD IN (CLOSED) MUR 2336

3 7 7 4 0 7 0 3 0 0 4

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
William Woodward Webb;) MUR 2336
Webb for Congress Committee,)
Roy D. Fowler, III, as treasurer;)
and Mrs. M. Woodward Webb)

SENSITIVE

GENERAL COUNSEL'S REPORT

On February 14, 1989, the Commission found probable cause to believe William Woodward Webb, Webb for Congress Committee, and Roy D. Fowler, III, as treasurer ("Webb Committee"), violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive contribution from Mrs. M. Woodward Webb. The Commission also found probable cause to believe the Webb Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. Additionally, the Commission found probable cause to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution to the Webb Committee.

On May 23, 1989, the Commission determined to take no further action against Mrs. M. Woodward Webb and approved a final revised conciliation agreement for William Woodward Webb, Webb for Congress Committee and Roy D. Fowler, III, as treasurer. On that same date, the Commission authorized this Office to institute a civil suit in U.S. District Court against William Woodward Webb, Webb for Congress Committee and Roy D. Fowler, III, as treasurer, in the event that respondents failed to sign the Commission's final proposed agreement within 10 days of receipt.

On June 13, 1989, Respondents submitted a response to the Commission's final conciliation proposal. (Attachment 1).

Therefore, this Office will institute a civil suit in the United States District Court.

Lawrence M. Noble
General Counsel

8 7 7 4 0 7 6 3 0 0 0
Date 7/5/89

BY: 
Lois G. Lerner
Associate General Counsel

Staff Assigned: Debby Curry



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2386

DATE FILMED 5/23/91 CAMERA NO. 4

CAMERAMAN AS

91040842619

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: November 10, 1986

ANALYST: Noriega E. James

I. COMMITTEE: Webb for Congress Committee
(C00194985)
Roy D. Fowler III, Treasurer
P.O. Box 25636
Raleigh, NC 27611

II. RELEVANT STATUTE: 2 U.S.C. §441a(f)

III. BACKGROUND:

Acceptance of Excessive Contribution

The Webb for Congress Committee ("the Committee") has received an excessive contribution in the form of a \$19,000 loan from the candidate's mother, Martha Woodward Webb. This resulted in an excessive contribution of \$18,000.

The Committee filed its 1986 12 Day Pre-Primary Report on May 6, 1986. Line 13(a) of the Detailed Summary Page disclosed a \$19,000 loan made or guaranteed by the candidate (Attachment 2). Schedule C supporting Line 13(a) failed to disclose whether the loan was from the candidate's personal funds (Attachment 3). The loan was incurred on April 2, 1986 for the primary election.

A Request for Additional Information ("RFAI") was sent to the Committee on May 20, 1986 (Attachment 4). The RFAI asked the Committee to clarify whether or not the loan was from the candidate's personal funds. A Second Notice was sent on June 12, 1986, for failure to respond to the RFAI (Attachment 5).

On July 14, 1986, a Reports Analysis Division analyst contacted the candidate, William Woodward "Woody" Webb (Attachment 6). The analyst explained to Mr. Webb that it was not clear if the loan was from the candidate's personal funds. The candidate stated that the loan was from his personal funds and that he would provide a statement to that effect for the public record. On July 16, 1986, an Amended

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12 Day Pre-Primary Report was filed (Attachment 7). It stated that the loan was "from personal funds of the family."

On July 23, 1986 an analyst contacted the candidate (Attachment 8). The analyst asked Mr. Webb to clarify the phrase "from personal funds of the family." Mr. Webb explained that several members of his family; spouse, cousins, etc., pooled their funds and loaned them to the candidate. The analyst asked if any one individual, besides the candidate, loaned over \$1,000? He responded "yes" and asked the analyst why the question was asked. The analyst responded that the loan was incorrectly reported, as the original source was not disclosed. Additionally, the analyst stated that if any one individual loaned more than \$1,000 it was a possible violation of the Act and the excessive portion must be repaid to those individuals. The candidate said that one individual gave "the bulk" of the \$19,000 and that the Committee did not have the funds to repay the excessive portions of the loans. The analyst informed Mr. Webb that the excessive amounts should be considered outstanding debts. Additionally, Mr. Webb was told that the Committee could not terminate its reporting obligations until all loans and debts were paid. Mr. Webb said that he didn't care about the reporting obligations. The candidate asked if he could write checks to repay the loans. The analyst explained that he could and told him how to properly report this transaction. Mr. Webb then asked if he did this and then told the individual receiving the loan repayment not to cash the check, what would happen? The analyst explained that the goal of the Federal Election Commission is the public disclosure of campaign finance activity. The analyst stated that he would not assist the candidate or the Committee in circumventing federal law. The candidate asked if the analyst was a lawyer. The analyst stated that he was not. The candidate refused to discuss this matter further and stated he would talk only to an attorney from the Office of General Counsel.

A RFAI was sent to the Committee on August 5, 1986, referencing the Amended 12 Day Pre-Primary Report (Attachment 9). The RFAI advised the Committee that it may have received excessive contributions from individuals. The Committee was also advised that if it had received excessive contributions that it refund the excessive amounts to the donors and notify the Commission in writing of the refunds.

On August 28, 1986, a Second Notice was sent for failure to respond to the RFAI (Attachment 10).

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On October 10, 1986, an analyst contacted the candidate, Mr. Webb and explained that a response to the RFAI of August 5, 1986 was needed (Attachment 11). Mr. Webb said he thought Mr. Merkel, a campaign worker, had already responded to the RFAI. Mr. Webb gave the analyst the telephone number for Mr. Merkel and asked the analyst to contact Mr. Merkel about the matter. Mr. Webb said that he would also talk to Mr. Merkel about the matter.

On October 16, 1986, Mr. Merkel contacted an analyst (Attachment 12). The analyst explained to Mr. Merkel that a response to the RFAI detailing the original source of the \$19,000 loan was needed. Mr. Merkel informed the analyst that the loan which had been disclosed as personal funds of the candidate's family was actually a loan to the candidate from his mother. The analyst explained to Mr. Merkel that members of the candidate's family are subject to the contribution limitations of 2 U.S.C. §441a(a)(1)(A) and therefore the loan from the candidate's mother is an excessive contribution that must be repaid.

Mr. Merkel said that the Committee has disbanded and there were no funds available to repay the loan. The analyst told Mr. Merkel that the candidate could repay the loan from his personal funds. Mr. Merkel said that the loan was part of the funds the candidate would inherit upon the death of his mother. It was explained that at the time the loan was made the money was not the personal funds of the candidate. Mr. Merkel asked if it would be acceptable if the candidate wrote a check to his mother for the loan amount and sent the Commission a copy of the check which the candidate's mother would never cash. The analyst explained that this would not be acceptable. Mr. Merkel then asked if it would be acceptable for the candidate's mother to send a letter to the Commission stating that the \$19,000 loan has been re-attributed to herself and fifteen (15) other family members such that no one member has contributed more than \$1,000. The analyst explained that the loan would still be considered excessive since the original source of the loan was still the candidate's mother. Mr. Merkel said that he would talk to the candidate and a response would be forthcoming.

On October 20, 1986, the Committee filed a response at the Commission disclosing that the \$19,000 loan was from the candidate's mother, Martha Woodward Webb (Attachment 13). The response also indicated that the Committee would be unable to repay the loan.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

91040842622

CANDIDATE INDEX OF SUPPORTING DOCUMENTS - (E)

CANDIDATE/COMMITTEE/DOCUMENT RECEIPTS DISBURSEMENTS # OF MICROFILM
OFFICE SOUGHT/ PARTY PRIMARY GENERAL PRIMARY GENERAL COVERAGE DATES PAGES LOCATION
TYPE OF FILER

WEBB, WILLIAM WOODWARD HOUSE 04 DEMOCRATIC PARTY NORTH CAROLINA 1986 ELECTION ID# H6NC04086

1. STATEMENT OF CANDIDATE									
1985 STATEMENT OF CANDIDATE						16APR85			1 85HSE/286/2067
2. PRINCIPAL CAMPAIGN COMMITTEE									
WEBB FOR CONGRESS COMMITTEE									
1985 STATEMENT OF ORGANIZATION						ID# C00194985 HOUSE			
MID-YEAR REPORT	47,875			32,928		16APR85			1 85HSE/286/2066
MID-YEAR REPORT - AMENDMENT	-			-		1JAN85 -30JUN85			10 85HSE/289/2203
YEAR-END	22,770			34,243		1JAN85 -30JUN85			1 85HSE/291/0344
YEAR-END - AMENDMENT	22,770			34,243		1JUL85 -31DEC85			16 86HSE/296/1176
REQUEST FOR ADDITIONAL INFORMATION						1JUL85 -31DEC85			3 86HSE/298/5050
REQUEST FOR ADDITIONAL INFORMATION						1JUL85 -31DEC85			3 86FEC/403/351
REQUEST FOR ADDITIONAL INFORMATION						1JUL85 -31DEC85			1 86FEC/406/361
REQUEST FOR ADDITIONAL INFORMATION						1JUL85 -31DEC85			1 86FEC/406/362
1986 APRIL QUARTERLY	13,740			17,022		1JAN86 -31MAR86			12 86HSE/302/2290
APRIL QUARTERLY - AMENDMENT	-			-		1JAN86 -31MAR86			1 86HSE/320/1806
REQUEST FOR ADDITIONAL INFORMATION						1JAN86 -31MAR86			2 86FEC/413/2131
REQUEST FOR ADDITIONAL INFORMATION 2ND						1JAN86 -31MAR86			3 86FEC/413/4897
PRE-PRIMARY	21,470			20,751		1APR86 -16APR86			6 86HSE/303/3123
PRE-PRIMARY - AMENDMENT	-			-		1APR86 -16APR86			1 86HSE/308/3003
PRE-PRIMARY - AMENDMENT	-			-		1APR86 -16APR86			1 86FEC/448/4367
NOTICE OF FAILURE TO FILE						1APR86 -16APR86			1 86FEC/413/0807
REQUEST FOR ADDITIONAL INFORMATION						1APR86 -16APR86			2 86FEC/416/3020
REQUEST FOR ADDITIONAL INFORMATION 2ND						1APR86 -16APR86			3 86FEC/416/4392
REQUEST FOR ADDITIONAL INFORMATION						1APR86 -16APR86			4 86FEC/426/2360
REQUEST FOR ADDITIONAL INFORMATION 2ND						1APR86 -16APR86			5 86FEC/429/2691
NOTICE OF FAILURE TO FILE						30JUN86			1 86FEC/626/4678

TOTAL 195,855 0 104,944 0 70 TOTAL PAGES

3. AUTHORIZED COMMITTEES									
4. JOINT FUNDRAISING COMMITTEES AUTHORIZED BY THE CAMPAIGN									
FOURTH DISTRICT UNITY CAMPAIGN COMMITTEE						ID# C00209221 HOUSE			
1986 STATEMENT OF ORGANIZATION						22JUL86			2 86HSE/310/282
MISCELLANEOUS REPORT TO FEC						20OCT86			2 86HSE/319/520
MISCELLANEOUS REPORT TO FEC						21OCT86			2 86HSE/320/180

All reports have been reviewed. 6 TOTAL PAGES

Cash-on-hand as of 4/16/86: \$908.70
 Debts owed to Committee as of 4/16/86: \$0
 Debts owed by Committee as of 4/16/86: \$59,000.00

Attachment 1

12 Day Pre-Primary Report

Name of Guarantor to Pay			
Webb for Congress Campaign			
A. Full Name, Mailing Address and ZIP Code of Loan Source First Union Bank P.O. Box 1700 Raleigh, N.C. 27602		Original Amount of Loan 40,000.00	Balance Outstanding at Close of This Period 40,000.00
System: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (Specify): _____ Term: <input type="checkbox"/> One Year <input type="checkbox"/> Two Year <input type="checkbox"/> Three Year <input type="checkbox"/> Other _____			
List All Endorsers or Guarantors of any to Item A			
1. Full Name, Mailing Address and ZIP Code Mr. Woodward Webb 801 Old Hill Road Chapel Hill, N.C. 27514		Name of Employer Broughton, Wilkins, Webb & Cannon Attorneys	
		Amount Guaranteed Outstanding \$ 40,000.00	
		Name of Employer Occupation Amount Guaranteed Outstanding \$	
2. Full Name, Mailing Address and ZIP Code 		Name of Employer Occupation Amount Guaranteed Outstanding \$	
3. Full Name, Mailing Address and ZIP Code 		Name of Employer Occupation Amount Guaranteed Outstanding \$	
B. Full Name, Mailing Address and ZIP Code of Loan Source Mr. Woodward Webb 810 Old Hill Road Chapel Hill, N.C. 27514		Original Amount of Loan 19,000.00	
System: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (Specify): _____ Term: <input type="checkbox"/> One Year <input type="checkbox"/> 1-2-3-6 <input type="checkbox"/> One Day Demand <input type="checkbox"/> Other _____			
List All Endorsers or Guarantors of any to Item B			
1. Full Name, Mailing Address and ZIP Code Mr. Woodward Webb 801 Old Hill Road Chapel Hill, N.C. 27514		Name of Employer Broughton, Wilkins, Webb & Cannon Attorneys	
		Amount Guaranteed Outstanding \$ 19,000.00	
		Name of Employer Occupation Amount Guaranteed Outstanding \$	
2. Full Name, Mailing Address and ZIP Code 		Name of Employer Occupation Amount Guaranteed Outstanding \$	
3. Full Name, Mailing Address and ZIP Code 		Name of Employer Occupation Amount Guaranteed Outstanding \$	
GRAND TOTAL This Period This Page (Carry all)		59,000.00	
Copy outstanding balance only to LINE 2, Schedule B, for this loan. If on Schedule B, carry forward to appropriate line of Summary.			

9 0 4 0 8 4 2 6 3 3 5 2 8



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20543

FD-2

MAY 20 1985

Ray D. Fowler III, Treasurer
Webb for Congress Committee
P.O. Box 25636
Raleigh, NC 27611

Identification Number: C00194985

Reference: 12 Day Pre-Primary Report (4/1/85-4/16/85)

Dear Mr. Fowler:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

Sgt
-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used his/her personal funds or borrowed the money from a lending institution, or any other source. If the candidate borrowed funds from a lending institution or any other source, please provide the name of the lending institution and the complete terms of the loan. If the loan(s) was from personal funds, please acknowledge that fact in an amendment to this report. Further, it is important to note that "personal funds" is strictly defined by Commission regulations and may be found in 11 CFR 110.10. (11 CFR 100.7(a)(1) and 104.3(d))

-On Schedule C of your report, you have failed to include information required by Commission regulations. You must provide the date incurred, the original source and amount of the loan, due date, interest rate, the cumulative payment and the outstanding balance. Further, if there are any endorsers or guarantors, their mailing address along with the name of their employer and occupation must be disclosed. Please amend your report to include the complete terms of the loans. (11 CFR 100.7(a)(1) and 104.3(d))

-Column A, Line 10 of the Summary Page of your report discloses \$19,000 in outstanding obligations. Schedule C of your report discloses \$59,000 in outstanding loans. Please explain the difference and amend your report accordingly. (11 CFR 104.3(d))

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-Line 11a of the Detailed Summary Page should equal the sum of the itemized receipts and unitemized receipts. The amount on the same entry line should be the sum of all contributions from individuals which, in the aggregate, are \$200 or less for the calendar year and which need not be itemized.

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1936 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 376-2400.

Sincerely,



Stuart W. Herschfeld
Reports Analyst
Reports Analysis Division

910439843027



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20543

89-3

June 12, 1986

Ray D. Fowler III, Treasurer
Webb for Congress Committee
P.O. Box 25636
Raleigh, NC 27611

Identification Number: C00194985

Reference: 12 Day Pre-Primary Report (4/1/86-4/16/86)

Dear Mr. Fowler:

This letter is to inform you that as of June 11, 1986, the Commission has not received your response to our request for additional information, dated May 20, 1986. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

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

If you should have any questions related to this matter, please contact Stuart Herschfeld on our toll-free number (800) 424-9530 or our local number (202) 376-2480.

Sincerely,

John D. Gibson
John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

867341543928

MEMORANDUM FOR FILES: TELECOM

SUBJECT: Source of Candidate Loan

FROM: Stuart Herschfeld, Analyst

TO: William Woodward "Woody" Webb, Candidate

NAME OF COMMITTEE: Webb for Congress Committee (C00194985) North Carolina

DATE: July 14, 1986

The RAD analyst contacted the candidate, Mr. Webb to ascertain the source of a \$19,000 loan reported on the 12 Day Pre-Primary Report. Mr. Webb explained that the source was from personal funds, but that the campaign manager and the treasurer were out of town and could not be located. The analyst explained to Mr. Webb that he could amend the report and all he would have to do is to provide a statement concerning the source of the candidate loan. Mr. Webb stated that he would comply with the request.

(919) 833-2752

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REGULAR MAIL
JUL 14 1988

Attachment 7

RECEIVED AT THE FEC

114629

88 JUL 18 AM: 08

William Woodward Wall
Droughton, Wilkins, Wall & Gannon, P.A.
Post Office Box 2307
Raleigh, North Carolina 27602

7/14/88

U.S. DEPARTMENT OF JUSTICE
FEDERAL ELECTION COMMISSION
1111 K STREET, N.W.
WASHINGTON, D.C. 20543

Dear Mr. Hirschfeld -

The \$40,000 loan was secured from

5 Northeastern Bank (now First Choice Nat'l Bank)

9 on 5/31/85. It is a secured note at prime plus

3 0 one. The entire amount of \$40,000 is still out-

1 standing although I hope to pay it off next

6 month.

The \$20,000 was for general funds of
the family. MZJ

Very truly yours
W. W. Wall

MEMORANDUM FOR FILES: TELECOM

SUBJECT: Source of Candidate Loan

FROM: Stuart Hirschfeld, Analyst

TO: William Woodward "Woody" Webb

NAME OF COMMITTEE: Webb for Congress Committee (C00194985) North Carolina

DATE: July 23, 1986

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The RAD analyst called Mr. Webb due to the inadequate response provided in the 12 Day Pre-Primary Report. On July 17, 1986, the analyst called and left a message with Mr. Webb's secretary. The analyst stated that he would not be available on July 18, but the candidate should return the call the week of July 21. The candidate returned the call on July 18 and stated that he would not be available until July 23.

On July 23, 1986, the analyst contacted Mr. Webb and informed him that the Amended 12 Day Pre-Primary Report was received, but the response seemed unclear. The analyst asked Mr. Webb to clarify the phrase "from personal funds of the family." Mr. Webb explained that several members of his family; spouse, cousins, etc., loaned the candidate money which totaled \$19,000. The analyst asked Mr. Webb if any one individual contributed more than \$1,000. He responded "yes" and that one individual gave "the bulk" of the \$19,000, and then he asked why he was asked this question. The analyst responded that the loan was misreported and that the reports should reflect the original source of the loan and then explained that the loans that exceeded \$1,000 were in violation of federal law and would have to be repaid. Mr. Webb said that the committee did not have the funds to repay the individuals. The analyst stated that the excessive portions should be considered outstanding debts and must be continuously reported until they are extinguished, and only at that time would the committee be allowed to terminate its reporting obligations. Mr. Webb stated that he didn't care about the committee's reporting obligations. Mr. Webb asked if he could write a check to repay the loans to the members of his family. The analyst said yes and explained the proper means to report this transaction. Mr. Webb then asked what would happen if he told the members of his family not to cash the checks after the books had been wiped clean of the violations. The analyst explained that the purpose of the Federal Election Commission is for public disclosure of financial activity and the compliance of the Federal Election Campaign Act, as Amended. The analyst stated that he would not assist the candidate, nor the committee in circumventing federal law. The candidate asked if the analyst was a lawyer, to which the response was no. The candidate refused to discuss this matter further and would only talk to an attorney from the Office Of General Counsel.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

AUG 5 1986

Roy D. Fowler, III, Treasurer
Webb for Congress Committee
P.O. Box 25636
Raleigh, NC 27611

Identification Number: C00194985

Reference: Amended 12 Day Pre-Primary Report (4/1/86-4/16/86)

Dear Mr. Fowler:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule A of your report (pertinent portion attached) discloses contributions which appear to exceed the limits set forth in the Act. An individual or a political committee other than a multicandidate committee may not make contributions to a candidate for Federal office in excess of \$1,000 per election. If you have received a contribution which exceeds the limits, the Commission recommends that you refund to the donor the amount in excess of \$1,000. The Commission should be notified in writing if a refund is necessary. In addition, any refund should appear on Line 20 of the Detailed Summary Page and Schedule B of your next report. (2 U.S.C. §§441a(a) and (f))

The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

If the contributions in question were incompletely or incorrectly reported, you may wish to submit documentation for the public record. Please amend your report with the clarifying information.

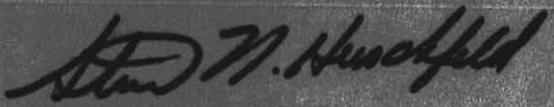
Although the Commission may take further legal steps concerning the acceptance of excessive contributions, prompt action by you to refund the excessive amounts will be taken into consideration.

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of

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Representatives, 1036 Longworth House Office Building,
Washington, DC 20515 within fifteen (15) days of the date of
this letter. If you need assistance, please feel free to contact
me on our toll-free number, (800) 424-9530. My local number is
(202) 376-2480.

Sincerely,



Stuart N. Herschfeld
Reports Analyst
Reports Analysis Division

91040842633



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-3

August 28, 1986

Roy D. Fowler III, Treasurer
Webb for Congress Committee
P.O. Box 25636
Raleigh, NC 27611

Identification Number: C00194985

Reference: Amended 12 Day Pre-Primary Report (4/1/86-4/16/86)

Dear Mr. Fowler:

This letter is to inform you that as of August 27, 1986, the Commission has not received your response to our request for additional information, dated August 5, 1986. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

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

If you should have any questions related to this matter, please contact Noriega James on our toll-free number (800) 424-9530 or our local number (202) 376-2480.

Sincerely,

John D. Gibson
John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

91040842634

MEMORANDUM FOR FILES: TELECON

SUBJECT: Source of Candidate Loan

FROM: Pamela Sheppard, Reports Analyst

TO: William Woodward Webb

NAME OF COMMITTEE: Webb For Congress Committee (C00194985) North Carolina

DATE: October 10, 1986

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On October 10, 1986, the RAD analyst contacted Mr. Webb to inform him that the Commission had not received a response to the RFAI of August 5, 1986. Mr. Webb said that he thought that Mr. Thomas Merkel, a campaign worker had already responded. He gave the analyst the telephone number for Mr. Merkel and asked the analyst to contact Mr. Merkel about the matter. He also said that he would talk to Mr. Merkel about the matter.

MEMORANDUM FOR FILES: TELECON**SUBJECT: Source of Candidate Loan****FROM: Pamela Sheppard, Reports Analyst****TO: Mr. Thomas Merkel****NAME OF COMMITTEE: Webb For Congress Committee (C00194985) North Carolina****DATE: October 16, 1986**

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On October 16, 1986, Mr. Merkel contacted the RAD analyst. The analyst explained to Mr. Merkel that a response to the RFAI of August 5, 1986 was needed. The analyst explained that the response should disclose the original source of the \$19,000 loan. Mr. Merkel then noted that the loan was from the candidate's mother. The analyst explained that members of the candidate's family are subject to the contribution limitations of 2 U.S.C. 441a(a)(1)(A), and therefore the loan from the candidate's mother is an excessive contribution that must be repaid. Mr. Merkel said that the committee had disbanded and that there were no funds to repay the loan. He said that the loan was part of the funds the candidate would inherit upon the death of his mother. The analyst explained that the funds still could not be considered personal funds of the candidate. Mr. Merkel asked if it would be acceptable for the candidate to write a check to repay his mother and then send a copy of the check to the Commission. The analyst explained that it would be acceptable if the funds were from the personal funds of the candidate or other permissible funds. Mr. Merkel then asked what would happen if the candidate's mother did not cash the check. The analyst explained that the loan could not then be considered to have been repaid. Mr. Merkel then asked if it would be acceptable for the candidate's mother to send a letter to the Commission stating that the \$19,000 loan has been reattributed to herself and fifteen (15) other family members such that no one member would contribute more than \$1,000. The analyst explained that the loan would still be considered excessive since the original source of the loan was still the candidate's mother. Mr. Merkel said that he would talk to the candidate and that a response would be forthcoming.

October 16, 1951

OCT 20 1951
OCT 21 1951

Dear Mr. Sheppard:

114609

At your request I am writing to advise that the \$19,000.⁰⁰ received by the West for Congress from the last spring was a loan from my sister, Martha Woodhead West of Birmingham, Alabama. Although you did not inquire, I will also inform you that in March and April of 1951, I loaned my campaign the sum of \$6,177.14.

For your further information, the campaign is now totally closed down (as to August) and made to repay the above-mentioned loans.

Sincerely yours,
Woody West

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION

RAD REFERRAL 86L-25
STAFF MEMBER:
Deborah Curry

SOURCE OF MUR: INTERNALLY GENERATED
RESPONDENTS' NAMES: William Woodward Webb; Webb for Congress
Committee and Roy D. Fowler, III, as
treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(8)
2 U.S.C. § 441a(f)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 434(b)
11 C.F.R. § 110.10
11 C.F.R. § 110.7(a)(1)
11 C.F.R. § 104.3(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

97 JAN 28 11:18

FILED
OFFICE OF THE
COMMISSIONER
SECRETARY

GENERATION OF MATTER

This matter was generated by the Reports Analysis Division after a review of the disclosure reports of the Webb for Congress Committee (hereinafter "Webb Committee").

SUMMARY OF ALLEGATIONS

The RAD review revealed that the Webb Committee may have received an excessive contribution. The money in question had previously been reported as a \$19,000 loan of funds from the candidate to the Webb Committee.

FACTUAL AND LEGAL ANALYSIS

The Webb Committee filed its 1986 12 day Pre-Primary Report on May 6, 1986. Line 13(a) of the Detailed Summary Page disclosed a \$19,000 loan made or guaranteed by the candidate

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(Attachment 1, page 6). Schedule C supporting Line 13(a) failed to disclose whether the loan was from the candidate's personal funds (Attachment 1, page 7). The loan was incurred on April 2, 1986 for the primary election.

A Request for Additional Information ("RFAI") was sent by RAD to the Committee on May 20, 1986 (Attachment 1, page 8). The RFAI asked the Committee to clarify whether or not the loan was from the candidate's personal funds. A Second Notice was sent on June 12, 1986, for failure to respond to the RFAI (Attachment 1, page 10).

On July 14, 1986, a Reports Analysis Division analyst contacted the candidate, William Woodward "Woody" Webb (Attachment 1, page 11). The RAD analyst explained to Mr. Webb that it was not clear if the loan was from the candidate's personal funds. The candidate stated that the loan was from his personal funds and that he would provide a statement to that effect for the public record. On July 16, 1986, an Amended 12 Day Pre-Primary Report was filed (Attachment 1, page 12). It stated that the loan was "from personal funds of the family."

On July 23, 1986, a RAD analyst contacted the candidate (Attachment 1, page 13). The RAD analyst asked Mr. Webb to clarify the phrase "from personal funds of the family." Mr. Webb explained that several members of his family: spouse, cousins, etc., pooled their funds and loaned them to the candidate. The RAD analyst asked if any one individual, besides the candidate, loaned over \$1,000. Mr. Webb responded "yes." At that point the

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RAD analyst responded that the loan was incorrectly reported, as the original source was not disclosed. Additionally, the analyst stated that if any one individual loaned more than \$1,000 it was a possible violation of the Act and the excessive portion must be repaid to those individuals. The candidate indicated that one individual gave "the bulk" of the \$19,000, and that the Webb Committee did not have the funds to repay the excessive portions of the loans. The RAD analyst informed Mr. Webb that the excessive amounts should be considered outstanding debts.

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Additionally, Mr. Webb was told that the Webb Committee could not terminate its reporting obligations until all loans and debts were paid. Mr. Webb said that he didn't care about the reporting obligations. The candidate asked if he could write checks to repay the loans. The RAD analyst explained that he could and told him how to properly report this transaction. Mr. Webb then asked if he did this and then told the individual receiving the loan repayment not to cash the check, what would happen. The RAD analyst explained that the goal of the Federal Election Commission is the public disclosure of campaign finance activity. The RAD analyst stated that he would not assist the candidate or the Committee in circumventing federal law.

A RFAI was sent to the Committee on August 5, 1986, referencing the Amended 12 Day Pre-Primary Report (Attachment 1, page 14). The RFAI advised the Committee that it may have received excessive contributions from individuals. The Committee

was also advised that if it had received excessive contributions that it refund the excessive amounts to the donors and notify the Commission in writing of the refunds.

On August 28, 1986, a Second Notice was sent for failure to respond to the RFAI (Attachment 1, page 16).

On October 10, 1986, a RAD analyst contacted the candidate, Mr. Webb, and explained that a response to the RFAI of August 5, 1986 was needed (Attachment 1, page 17). Mr. Webb said he thought Mr. Merkel, a campaign worker, had already responded to the RFAI. Mr. Webb gave the RAD analyst the telephone number for Mr. Merkel and asked the RAD analyst to contact Mr. Merkel about the matter. Mr. Webb said that he would also talk to Mr. Merkel about the matter.

On October 16, 1986, Mr. Merkel contacted a RAD analyst (Attachment 1, page 18). The RAD analyst explained to Mr. Merkel that a response to the RFAI detailing the original source of the \$19,000 loan was needed. Mr. Merkel informed the RAD analyst that the loan which had been disclosed as personal funds of the candidate's family was actually a loan to the candidate from his mother. The RAD analyst explained to Mr. Merkel that members of the candidate's family are subject to the contribution limitations of 2 U.S.C. § 441a(a)(1)(A) and therefore the loan from the candidate's mother is an excessive contribution that must be repaid.

Mr. Merkel said that the Committee had disbanded and there were no funds available to repay the loan. The RAD analyst told Mr. Merkel that the candidate could repay the loan from his

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personal funds. Mr. Merkel indicated that the loan was part of the funds the candidate would inherit upon the death of his mother. The RAD analyst explained that at the time the loan was made the money was not the personal funds of the candidate. Mr. Merkel asked if it would be acceptable if the candidate wrote a check to his mother for the loan amount and sent the Commission a copy of the check which the candidate's mother would never cash. The RAD analyst explained that this would not be acceptable. Mr. Merkel then asked if it would be acceptable for the candidate's mother to send a letter to the Commission stating that the \$19,000 loan has been re-attributed to herself and fifteen (15) other family members such that no one member has contributed more than \$1,000. The RAD analyst explained that the loan would still be considered excessive since the original source of the loan was still the candidate's mother. Mr. Merkel said that he would talk to the candidate and a response would be forthcoming.

On October 20, 1986, the Committee filed a response at the Commission disclosing that the \$19,000 loan was from the candidate's mother, Martha Woodward Webb (Attachment 1, page 19). The response also indicated that the Committee would be unable to repay the loan. 1/

1/ In the same response, Mr. Webb also indicated that, in March and April of 1986, he loaned his campaign the sum of \$6,177.14. However, since it does not appear that this money was reported, it is unclear whether this money represents personal funds of the candidate or additional money contributed to the candidate from other family members.

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2 U.S.C. § 431(8)(A)(i) states that the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." An individual may not make contributions to a candidate for federal office in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). A loan which exceeds the contribution limitation of the Act is unlawful. 11 CFR § 100.7(a)(1)(i)(A). Additionally, the Act also makes unlawful the acceptance of excessive contributions by candidates and political committees. 2 U.S.C. § 441a(f).

2 U.S.C. § 434(b) requires that debts and obligations be reported accurately and properly disclose the amount and nature of outstanding debts.

The issue raised by this referral is whether William Woodward Webb and the Webb Committee accepted an excessive contribution in the form of a loan from a family member.

It appears from the referral materials, that the main contributor of the \$19,000 loan made by Mr. Webb to his Committee was his mother, Martha Woodward Webb. It also appears that Mrs. Woodward clearly exceeded the \$1,000 contribution limit of the Act in contributing the bulk of money that constituted the \$19,000 loan. However, due to the failure of Mr. Webb and Webb for Congress Committee to accurately report this loan it is unclear as to what extent 441a was violated by Mrs. Webb and possibly other family members. Information regarding, among

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other things, the names, addresses of the original source(s) of the loan, date(s) incurred, due date(s), interest rate(s) etc. will be needed to clarify these issues.

Initially, the issue of whether the money in question was the personal funds of the candidate was raised by the candidate. Monies received by a candidate after initiation of his candidacy are presumed to be for the purpose of influencing a Federal election. Hence, such monies would be contributions under the Act. However, this presumption may be rebutted if it can be shown that the monies are personal funds within the meaning of the Act. 11 C.F.R. § 110.10. The term personal funds means, among other things, those assets which the candidate had legal or equitable right of access or control. 11 C.F.R. § 110.10. If such legal right or equitable interest could be shown then Mr. Webb could make unlimited expenditures from such funds. 11 C.F.R. § 110.10.

However, this does not appear to be the case according to the information provided in the referral materials. In his conversation with the RAD analyst, Mr. Merkel indicated that the loan was part of funds that the candidate would inherit upon the death of his mother. Therefore, Mr. Webb does not appear to have had any legal right or equitable interest to access or control of the money in question at the time the loan was made.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that William Woodward Webb,

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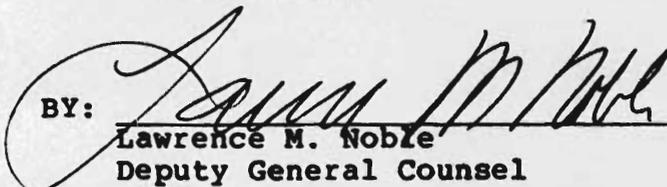
the Webb Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f) in accepting an excessive contribution and that the Webb Committee and Roy D. Fowler, III, as treasurer, also violated 2 U.S.C. § 434(b) for failure to accurately report its debts and obligations. Additionally, the Office of General Counsel notes that when the factual issues have been clarified additional respondents may be added for making the excessive contribution in violation of 2 U.S.C. § 441a(a)(1)(A).

RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended;
3. Find reason to believe the Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434(b) of the Federal Election Campaign Act of 1971, as amended.
4. Approve attached letters and questions; and
5. Approve General Counsel's factual and legal analysis.

Charles N. Steele
General Counsel

1/27/87
Date

BY: 
Lawrence M. Noble
Deputy General Counsel

Attachments

1. Referral Materials
2. Proposed Letters and Questions (2)
3. General Counsel's Factual and Legal Analysis (2)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
William Woodward Webb; Webb for Congress)
Committee and Roy D. Fowler, III, as)
treasurer)

RAD Ref. 86L-25

(MUR 2336)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 30, 1987, the Commission decided by a vote of 6-0 to take the following actions in RAD Ref. 86L-25.

1. Open a MUR.
2. Find reason to believe William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended.
3. Find reason to believe the Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434(b) of the Federal Election Campaign Act of 1971, as amended.
4. Approve the letters and questions, as recommended in the First General Counsel's Report signed January 27, 1987.
5. Approve General Counsel's factual and legal analysis, as recommended in the First General Counsel's Report signed January 27, 1987.

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

Attest:

2/2/87

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

February 6, 1987

Roy D. Fowler, III, Treasurer
Webb for Congress Committee
P.O. Box 25636
Raleigh, N.C. 27611

RE: MUR 2336
Webb for Congress Committee
and Roy D. Fowler, III,
as treasurer

Dear Mr. Fowler:

On January 30, 1987, the Federal Election Commission determined that there is reason to believe that Webb for Congress Committee and you, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and the committee. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials, along with your answers to the enclosed questions, within fifteen days of your receipt of this letter.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.19(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so

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that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Deborah Curry, the attorney assigned to this matter, at (202) 376-0200.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 6, 1987

William Woodward Webb
801 Old Mill Road
Chapel Hill, N.C. 27514

RE: MUR 2336
William Woodward Webb

Dear Mr. Webb:

On January 30, 1987, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials, along with your answers to the enclosed questions, within fifteen days of your receipt of this letter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Deborah Curry, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

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

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2336

NAME OF COUNSEL: Sherry E. Tucker

ADDRESS: 800-D Franklin Square

Chapel Hill, N.C. 27514

TELEPHONE: 919-967-3095

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

2/10/87

Date

William Woodward Webb
Signature

William Woodward Webb

RESPONDENT'S NAME: William Woodward Webb

ADDRESS: 801 Old Mill Road

Chapel Hill, N.C. 27514

HOME PHONE: 919-929-6095

BUSINESS PHONE: 919-833-2752

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Office of the
GENERAL COUNSEL

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GENERAL COUNSEL

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
P.O. BOX 8504

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87 FEB 24 P 3:44 CHAPEL HILL, NORTH CAROLINA 27514

February 18, 1987

Deborah Curry, Attorney
Federal Election Commission
Washington, D.C. 20463

RE: MUR 2336
William Woodward Webb

Dear Ms. Curry:

Enclosed please find the interrogatories, with responses, that you requested from Mr. Webb.

I am certain you are well aware that campaigns done on this level in which there are four candidates splitting the party ticket do not receive a large amount of money in contributions and must be financed by the candidates for the most part. In Mr. Webb's case, there were no funds for hiring professional personnel, and the only full time employee was Mr. Merkel, who had some limited previous experience with political campaigns, and the rest of the staff was composed of people hired on an hourly basis. As a result of the lack of funds, the campaign was run primarily on a "hand to mouth" basis and the vast majority of the work was done on a volunteer basis. The volunteers, staff and candidate certainly made every effort to comply with all the provisions of the Federal Election Campaign Act of 1971.

Parenthetically, I will add that after conferring with Mr. Webb (who recently spoke with Mr. Merkel), I am at a loss to understand how your RAD interviewer could have concluded that either of these two gentlemen sought to circumvent federal law. Both Mr. Merkel and Mr. Webb were merely pointing out the incongruity of this situation, asking rhetorical questions and exploring various options for resolving this issue.

After the primary in May, the staff quickly disbanded and sought jobs elsewhere since the Webb for Congress Committee had no more funds. Every effort was made by the Committee to pay all the debts and loans incurred during the campaign before the staff disbanded and in fact, Mr. Webb himself is still in the process of paying off campaign debts from his own personal funds.

From the General Counsel's Factual and Legal Analysis (GCFLA) of this situation it seems the issue becomes the exact status of the \$19,000.00 loan made on April 2, 1986. According to the GCFLA, the Committee was informed that it may have received an excessive contribution and if it had that it should refund the excessive amounts to the donors and notify the Commission in writing of the refunds. It was the belief of the Committee that it had not received excessive funds and that is why no response was made by the Committee to the Commission after the notices sent by the RFAI on August 5, 1986, and August 28, 1986.

According to 2 U.S.C. §431(8)(A)(i) a contribution includes "...any gift, subscription,

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loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." Because of the etiology of the money in question, Mr. Webb believed, in good faith, that his campaign Committee had not violated any part of the Act, since it is clearly evident that Mr. Webb's mother gave him the \$19,000.00 to be used in the campaign or not, but just where he needed it the most. From reading the Act, it appears that Mrs. Webb's contribution to Mr. Webb clearly fell within the realm of personal funds as she was well aware that the time demanded of Mr. Webb by the campaign had caused him to have a decrease in income because the campaign had taken so much time away from his practice of law.

Given the facts stated in the interrogatories, it seems that the intent of the contributor, Mrs. Webb, was merely to help her son with his financial situation. The intent of Mr. Webb was clearly not to do, or allow his Committee to do, anything illegal. Therefore, I believe that the \$19,000.00 would indeed fall within the realm of personal funds of the candidate and no further action needs to be taken by him at this time. However, it may well be that the Committee needs to file an amended report correctly disclosing the \$19,000.00 as personal funds. I feel it is clear from the interrogatories that Mrs. Webb (who certainly had nothing to gain if Mr. Webb won the election since she does not reside in the state of North Carolina), Mr. Webb, and the Webb for Congress Committee were under the belief that the funds were indeed a loan made to Mr. Webb, which at that time became his personal funds and were not given with any remote desire to influence the election in any way whatsoever. Mr. Webb, therefore, could use them in any manner he saw fit, and he chose to use those funds for his campaign.

We assume that the responses to the interrogatories and this letter will serve to set the record straight. Please inform me of any other information you may need to resolve this matter as expeditiously as possible.

Alternately, it seems to me that if the Commission does not believe that the \$19,000.00 were personal funds of the candidate, which they, as the interrogatories state, were, then from reading the information in the GCFLA, the Committee (at this time it would actually be Mr. Webb) could refund the excessive amounts of the contribution to Mrs. Webb and notify the Commission in writing that it has done so, or the \$19,000.00 could be considered a loan and the Committee (actually Mr. Webb), could repay the loan.

If you have any questions, please do not hesitate to contact me.

I am,

Respectfully,

Sherry E. Tucker
Sherry E. Tucker

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INTERROGATORIES:

WILLIAM WOODWARD WEBB

1. The Webb for Congress Committee filed its 12 Day Pre-Primary Report with the Commission on May 6, 1986. Line 13(a) of the Detailed Summary Page disclosed a \$19,000.00 loan made or guaranteed by the candidate. With regard to this loan, please provide the following information:

PREAMBLE: Mrs. M. Woodward Webb, 3612 Country Club Road, Birmingham, Alabama 35212, gave a check in the amount of \$19,000.00 to the candidate, William Woodward Webb, who is her only child, on or about March 5, 1986, to be used by the candidate in the campaign, or outside the campaign, as he saw fit. Mr. Webb directed Mrs. Webb to make the check payable to the Webb for Congress Committee and accepted the \$19,000.00 as a loan to be used by the campaign. It was understood that repayment would be made when funds were available, which they have not been to date. If necessary, Mr. Webb will make arrangement, somehow, to make repayment of the loan.

(a). Please state original amount and original source of the \$19,000.00 loan.

Original Amount: \$19,000.00
Original Source: Mrs. M. Woodward Webb

(b). Please give name(s), mailing address(es), along with employer(s) and occupation(s) for each individual who provided funds for the \$19,000.00 loan.

Name(s): Mrs. M. Woodward Webb
Address(es): 3612 Country Club Road, Birmingham, Alabama 35212
Employer(s): unemployed
Occupation(s): not applicable

(c). Please provide the date(s) the loan was incurred, due date(s), interest rate(s), cumulative payment and outstanding balance(s) for the \$19,000.00 loan in question.*

Date(s) incurred: March 5, 1986
Due Date(s): none
Interest rate(s): none
Cumulative Payment: none
Outstanding Balance(s): \$19,000.00

* On or about, March 5, 1986, Mrs. Webb gave the candidate a check in the amount of \$19,000.00 which he accepted as a loan for his Congressional campaign. There were no terms, interest, or definite due date. The \$19,000.00 has not been repaid or returned. (See preamble above).

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
William Woodward Webb;)	
Webb for Congress Committee and)	MUR 2336
Roy D. Fowler, III)	
as treasurer)	

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GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated by the Reports Analysis Division ("RAD") after a review of the disclosure reports of Webb For Congress Committee (hereinafter "Webb Committee"). The RAD review had revealed a possible receipt of an excessive contribution by the Webb Committee. The money in question had previously been reported as a \$19,000 loan of funds from the candidate to the Webb Committee. Further contact between the candidate or committee and RAD indicated that the money in question may have been a loan of funds from a family member. Based on the foregoing, the Commission on January 30, 1987, found reason to believe William Woodward Webb, the Webb Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive contribution and the Webb Committee and Roy D. Fowler, III, as treasurer, also violated 2 U.S.C. § 434 for failing to accurately report its debts and obligations. On February 24, 1987 the Office of General Counsel received a response from Counsel for William Woodward Webb and the Webb Committee.

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II. ANALYSIS

The issue raised by the referral is whether William Woodward Webb and the Webb Committee accepted an excessive contribution in form of a loan from a family member. However, the threshold question is whether or not the \$19,000 loan constitutes personal funds of the candidate or a loan from a member of the candidate's family. Disposition of this question is pivotal to a determination of whether or not a 2 U.S.C. § 441a(a)(1)(A) violation has occurred.

2 U.S.C. § 431(8)(A)(i) states that the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." An individual may not make contributions to a candidate for federal office in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). A loan which exceeds the contribution limitation of the Act is unlawful. 11 CFR § 100.7(a)(1)(i)(A). Additionally, the Act also makes unlawful the acceptance of excessive contributions by candidates and political committees. 2 U.S.C. § 441a(f).

Monies received by a candidate after initiation of his candidacy are presumed to be for the purpose of influencing a Federal election. Hence, such monies are considered contributions under the Act. However, this presumption may be rebutted if it can be shown that the monies are personal funds within the meaning of the Act. 11 C.F.R. § 110.10(b). The term personal funds means, among other things, those assets which the candidate had legal or equitable right of access or control. 11 C.F.R. § 110.10(b).

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The Webb response consists of a letter and answers to written questions approved by the Commission. (Attachment 1) According to the Webb Response, the money in question (\$19,000) was loaned to the Webb Committee by the candidate's mother Mrs. M. Woodward Webb on March 5, 1986. (Attachment 1, pages 2-3). According to the preamble to the answers to the interrogatories, Mrs. Webb gave her son, Mr. Webb, a check for \$19,000 "to be used by the candidate in the campaign, or outside the campaign, as he saw fit." (Attachment 1, page 3). Apparently, (and this is not clear from the preamble) Mr. Webb directed Mrs. Webb to make the check for \$19,000 payable to the Webb for Congress Committee. (Attachment 1, page 3).

It appears that Mr. Webb accepted the \$19,000 check from Mrs. Webb as a loan for his congressional campaign. There were no terms, interest, or definite due date, just the understanding that repayment would be made when funds became available. (Attachment 1, page 3). Since, according to the Committee, funds are not available, no repayments have been made on the outstanding loan balance. (Attachment 1, pages 2-3).

The Webb Committee contends that the \$19,000 loan, from Mrs. Webb to the candidate, constitutes personal funds of the candidate and therefore are not for the purpose of influencing a federal election. The Webb Committee believes that the funds in question were personal funds for the following reasons. First, the Webb Committee argues that Mrs. Webb's only reason for

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loaning the money to her son was to help him out during a time in need. 1/ Second, the Webb response states that the money in question was given to Mr. Webb to use in any manner he saw fit, and he happened to use those funds directly in the campaign. Third, the Webb Committee contends that Mrs. Webb's purpose in making the \$19,000 was not to influence the election since she did not live in North Carolina. (Attachment 1, page 2).

Based on the foregoing, the Webb Committee concludes that the \$19,000 was personal funds of the candidate at the time the loan was made to the Committee. The position of the Webb Committee is without merit. The \$19,000 gift or loan by Mrs. Webb to the candidate and Webb Committee is not personal funds of the candidate within the meaning of the Act and is, therefore, subject to the contribution limitations of the Act. (See A.O.'s 1978-40 and 1982-64; See also MUR 1456).

It appears from the Webb response, that Mrs. Webb drew the check for \$19,000, that was given as a gift or loan to her son, on her personal account. There is no indication that Mr. Webb had any prior legal right or equitable interest to access or control of the money in question until the check was given to him and the Webb Committee. Even though the Webb response indicates that the money in question was given with no strings attached, it also appears that Mrs. Webb was aware that her son was running for office and that he planned to give the \$19,000 gift or loan

1/ According to the Webb response, Mrs. Webb was aware that the campaign was causing a decrease in income for Mr. Webb, since the time demanded by the campaign took away time from his law practice. (Attachment 2, page 2).

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to the Webb Committee. Moreover, the fact that Mrs. Webb was not a resident in the candidate's home state does not shield her from the proscription against excessive individual contributions under 2 U.S.C. § 441a(a) (1) (A).

Therefore, the \$19,000 loan in question made by Mrs. Webb to the Webb Committee was not personal funds of the candidate. ^{2/} Consequently, the \$19,000 loan to the Committee by Mrs. Webb exceeded the \$1,000 individual contribution limit of the Act.

The Office of General Counsel recommends that the Commission add Mrs. Webb as a respondent to the matter and find reason to believe Mrs. Webb violated 2 U.S.C. § 441a(a) (1) (A).

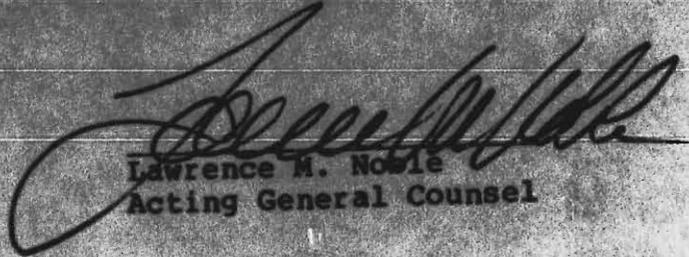
III. RECOMMENDATIONS

1. Find reason to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a) (1) (A) of the Federal Election Campaign Act of 1971, as amended.
2. Approve attached letter and Factual and Legal Analysis.

Date

5/20/87

Lawrence M. Noble
Acting General Counsel



1. Respondents' Answer
2. Letter (1)
3. Factual and Legal Analysis (1)

^{2/} The Webb response states that if the Commission does not believe the \$19,000 to be personal funds of the candidate, the Committee could either refund the excessive amount and notify the Commission or treat the \$19,000 as loan and repay it as such. (Attachment 1, page 2). In any case, a violation occurred when Mrs. Webb exceeded the \$1,000 contribution limit of the Act. Any subsequent refund of the monies could only be considered in mitigation of the apparent 2 U.S.C. § 441a(a) (1) (A) violation.

91040842359



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JERYL L. WARREN *JLW*

DATE: MAY 22, 1987

SUBJECT: OBJECTION TO MUR 2336 - GENERAL COUNSEL'S REPORT
SIGNED MAY 20, 1987

The above-captioned document was circulated to the Commission on Wednesday, May 20, 1987 at 4:00.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens _____

Commissioner Elliott _____

Commissioner Josefiak _____

Commissioner McDonald _____

Commissioner McGarry _____

Commissioner Thomas _____ X

This matter will be placed on the Executive Session agenda for Tuesday, June 2, 1987.

91040842660



OFFICE OF THE CHAIRMAN

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: MARGE EMMONS
COMMISSION SECRETARY

FROM: CHAIRMAN SCOTT E. THOMAS *ST*

DATE: MAY 27, 1987

I would like to withdraw my objection
to MUR 2336 which was circulated for vote due
Friday May 22 - 4:00 p.m. I herewith approve
the recommendations in the report.

91040842661

SECRETARY

27 MAY 27 P 4: 50

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
William Woodward Webb;)
Webb for Congress Committee and) MUR 2336
Roy D. Fowler, III)
as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 27, 1987, the Commission decided by a vote of 6-0 to take the following actions in MUR 2336:

1. Find reason to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) of the Federal Election Campaign Act of 1971, as amended.
2. Approve the letter and Factual and Legal Analysis, as recommended in the General Counsel's Report signed May 20, 1987.

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

Attest:

5/28/87

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary: Wed., 5-20-87, 12:25
Circulated on 48 hour tally basis: Wed., 5-20-87, 4:00
Deadline for vote: Fri., 5-22-87, 4:00
Objection received 5-22-87, Objection withdrawn 5-27-87

/jw/

91040842662



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 3, 1987

Mrs. M. Woodward Webb
3612 Country Club Road
Birmingham, Alabama 35212

RE: MUR 2336
Mrs. M. Woodward Webb

Dear Mrs. Webb:

On May 27, 1987, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

In the absence of any additional information which demonstrates that no further action should be taken against you the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Furthermore, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

91040842663

JLW

Mrs. M. Woodward Webb
Page 2

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Deborah Curry, the attorney assigned to this matter, at (202) 376-8200

Sincerely,



Scott E. Thomas
Chairman

Enclosures

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

91040842664

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR NO. 2336

RESPONDENT: Mrs. M. Woodward Webb

The RAD review revealed that the Webb Committee may have received an excessive contribution. The money in question had previously been reported as a \$19,000 loan of funds from the candidate to the Webb Committee. The response of the candidate, William Woodward Webb, indicates that the \$19,000 loan was made by the candidate's mother Mrs. M. Woodward Webb.

The issue raised by the referral is whether William Woodward Webb and the Webb Committee accepted an excessive contribution in form of a loan from a family member. However, the threshold question is whether or not the \$19,000 loan constitutes personal funds of the candidate or a loan from a member of the candidate's family. Disposition of this question is pivotal to a determination of whether or not a 2 U.S.C. § 441a(a)(1)(A) violation has occurred.

2 U.S.C. § 431(8)(A)(i) states that the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." An individual may

91040842665

John

not make contributions to a candidate for federal office in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). A loan which exceeds the contribution limitation of the Act is unlawful. 11 CFR § 100.7(a)(1)(i)(A). Additionally, the Act also makes unlawful the acceptance of excessive contributions by candidates and political committees. 2 U.S.C. § 441a(f).

Monies received by a candidate after initiation of his candidacy are presumed to be for the purpose of influencing a Federal election. Hence, such monies are considered contributions under the Act. However, this presumption may be rebutted if it can be shown that the monies are personal funds within the meaning of the Act. 11 C.F.R. § 110.10(b). The term personal funds means, among other things, those assets which the candidate had legal or equitable right of access or control. 11 C.F.R. § 110.10(b).

The Webb response consists of a letter and answers to written questions approved by the Commission. According to the Webb Response, the money in question (\$19,000) was loaned to the Webb Committee by the candidate's mother Mrs. M. Woodward Webb on March 5, 1986. According to the preamble to the answers to the interrogatories, Mrs. Webb gave her son, Mr. Webb, a check for \$19,000 "to be used by the candidate in the campaign, or outside the campaign, as he saw fit." Apparently, (and this is not clear from the preamble) Mr. Webb directed Mrs. Webb to make the check for \$19,000 payable to the Webb for Congress Committee.

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It appears that Mr. Webb accepted the \$19,000 check from Mrs. Webb as a loan for his congressional campaign. There were no terms, interest, or definite due date, just the understanding that repayment would be made when funds became available. Since, according to the Committee, funds are not available, no repayments have been made on the outstanding loan balance.

The Webb Committee contends that the \$19,000 loan, from Mrs. Webb to the candidate, constitutes personal funds of the candidate and therefore are not for the purpose of influencing a federal election. The Webb Committee believes that the funds in question were personal funds for the following reasons. First, the Webb Committee argues that Mrs. Webb's only reason for loaning the money to her son was to help him out during a time in need. 1/ Second, the Webb response states that the money in question was given to Mr. Webb to use in any manner he saw fit, and he happened to use those funds directly in the campaign. Third, the Webb Committee contends that Mrs. Webb's purpose in making the \$19,000 was not to influence the election since she did not live in North Carolina.

Based on the foregoing, the Webb Committee concludes that the \$19,000 was personal funds of the candidate at the time the loan was made to the Committee. The position of the Webb Committee is without merit. The \$19,000 gift or loan by Mrs. Webb to the candidate and Webb Committee is not personal

1/ According to the Webb response, Mrs. Webb was aware that the campaign was causing a decrease in income for Mr. Webb, since the time demanded by the campaign took away time from his law practice.

91040842667

funds of the candidate within the meaning of the Act and is, therefore, subject to the contribution limitations of the Act. (See A.O.'s 1978-40 and 1982-64; See also MUR 1456).

It appears from the Webb response, that Mrs. Webb drew the check for \$19,000, that was given as a gift or loan to her, son on her personal account. There is no indication that Mr. Webb had any prior legal right or equitable interest to access or control of the money in question until the check was given to him and the Webb Committee. Even though the Webb response indicates that the money in question was given with no strings attached, it also appears that Mrs. Webb was aware that her son was running for office and that he planned to give the \$19,000 gift or loan to the Webb Committee. Moreover, the fact that Mrs. Webb was not a resident in the candidate's home state does not shield her from the proscription against excessive individual contributions under 2 U.S.C. § 441a(a)(1)(A).

Therefore, the \$19,000 loan in question made by Mrs. Webb to the Webb Committee was not personal funds of the candidate. 2/ Consequently, the \$19,000 loan to the Committee by Mrs. Webb exceeded the \$1,000 individual contribution limit of the Act.

The Office of General Counsel recommends that the Commission add Mrs. Webb as a respondent to the matter and find reason to believe Mrs. Webb violated 2 U.S.C. § 441a(a)(1)(A).

2/ The Webb response states that if the Commission does not believe \$19,000 to be personal funds of the candidate, they could either refund the excessive amounts and notify the Commission it has done so or the Committee could treat the \$10,000 as loan and repay it as such. In any case, a violation occurred when Mrs. Webb exceeded the \$1,000 contribution limit of the Act. Any subsequent refund of the monies could only be considered in mitigation of the apparent 2 U.S.C. § 441a(a)(1)(A) violation.

91040842668

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
800-D FRANKLIN SQUARE
CHAPEL HILL, NORTH CAROLINA 27514
(919) 967-8096

37 JUN 16 11:31

June 12, 1987

Deborah Curry, Attorney at Law
Federal Elections Commission
Washington, D.C. 20463

RE: MUR 2336
William Woodward Webb
M. Woodward Webb

Dear Ms. Curry:

Enclosed herewith is the "Statement of Designation of Counsel" executed by Mrs. M. Woodward Webb. As you can see I have been designated as counsel for Mrs. Webb. Hence, I now represent all respondents in this matter.

Mrs. Webb confirms the nature of the transaction under review and would only add that the funds were offered to her son as a personal gift which he, not knowing any more about elections law than most people, simply requested be made available to his congressional campaign. Mrs. Webb has customarily made personal gifts of this nature to her son (in fact every year since 1976) prior to his candidacy. Consequently, it would seem that the \$19,000.00 loan would fall within the contribution-limitation exception of 11 C.F.R. § 110.10 (b)(2), particularly in view of the judicial mandate that the Act is to be liberally construed in favor of respondents.

However, it is now apparent that notwithstanding the intentions of the parties involved you have rejected the position that the \$19,000.00 loan from Mr. Webb's mother constituted personal funds.

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37 JUN 16 13:03

It is my sincere hope that the foregoing conciliation offer will be accepted by your agency since we are only concerned with a simple and innocent family transaction in which Mrs. Webb offered her son money, personally. Mr. Webb, not being aware of the ramifications of having his mother issue the check with Webb for Congress Committee as the payee as opposed to having Mr. Webb as payee, requested that she issue the check to Webb for Congress. In my opinion, the issue of personal funds is very clear as Mr. Webb did have complete control over where the funds were to be directed and the funds had vested in Mr. Webb at the time his mother offered him the money.

In any event, we would appreciate the courtesy of a timely reply and notice of any further proceedings.

Sincerely yours,

Sherry E. Tucker
Sherry E. Tucker

91040842670

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2336

NAME OF COUNSEL: Sherry E. Tucker

ADDRESS: P.O. Box-2504 800-D Franklin Square
Chapel Hill, NC 27514

TELEPHONE: (919) 967-3095

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

June 10, 1987
Date

Mrs. M. Woodward Webb
Signature

RESPONDENT'S NAME: Mrs. M. Woodward Webb

ADDRESS: 3612 Country Club Road
Birmingham, AL 35213

HOME PHONE: (205) 871-3035

BUSINESS PHONE: none

91040842671

SENSITIVE

In the Matter of)
William Woodward Webb;)
Webb for Congress Committee)
and Roy D. Fowler, as)
treasurer, and)
Mrs. M. Woodward Webb)

MUR 2336

87 AUG 13 P 2: 35

SECRETARY

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated by the Report Analysis Division ("RAD"). The RAD review revealed a possible receipt of an excessive contribution in the form of a \$19,000 loan from a family member. On January 30, 1987, the Commission found reason to believe William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer, ("Webb Committee"), violated 2 U.S.C. § 441a(f). The Commission also found reason to believe the Webb Committee violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. On May 27, 1987, the Office of General Counsel found reason to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(1)(A) by making the excessive contribution to the Webb Committee. On June 16, 1987, the Commission received a response from Counsel for all the above-mentioned Respondents requesting pre-probable cause conciliation (Attachment 1).

II. ANALYSIS

The submission of Counsel for Respondents generally confirmed the facts of the transaction as discussed in the General Counsel's previous reports. However, Counsel argues that such facts should give rise to an exception to the contribution limitation, under 11 C.F.R. § 110.10 for personal funds. (Attachment 1, pages 1-2).

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As noted in the General Counsel's Report of May 20, 1987, the \$19,000 gift or loan made by Mrs. Webb to the Webb Committee did not constitute personal funds of the candidate. Mr. Webb had no legal or equitable interest in the funds until Mrs. Webb gave him the check for \$19,000.

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

91040842673

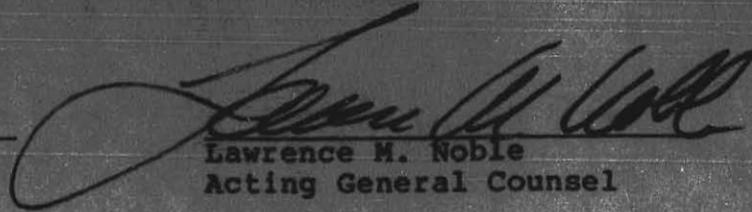
IV. RECOMMENDATIONS

1. Enter into conciliation with William Woodward Webb, Webb for Congress Committee and Roy D. Fowler, III, as treasurer, and Mrs. M. Woodward Webb prior to a finding of probable cause to believe.

2. Approve the attached proposed conciliation agreement and letter.

Date

8/13/57



Lawrence M. Noble
Acting General Counsel

Attachments

1. Request for conciliation
2. Proposed conciliation agreement and letter

91040842674



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN *Jm*
DATE: AUGUST 17, 1987
SUBJECT: OBJECTIONS TO MUR 2336 - General Counsel's Report
Signed August 13, 1987

The above-captioned document was circulated to the Commission on Friday, August 14, 1987 at 12:00 P.M.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____ X
Commissioner Josefiak	_____ X
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Thomas	_____

This matter will be placed on the Executive Session agenda for Wednesday, September 9, 1987.

Please notify us who will represent your Division before the Commission on this matter.

91040842675

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
William Woodward Webb;)
Webb for Congress Committee and) MUR 2336
Roy D. Fowler, as treasurer, and)
Mrs. M. Woodward Webb)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 9, 1987, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 2336:

1. Enter into conciliation with William Woodward Webb, Webb for Congress Committee and Roy D. Fowler, III, as treasurer, and Mrs. M. Woodward Webb prior to a finding of probable cause to believe.
2. Approve the proposed conciliation agreement and letter attached to the General Counsel's report dated August 13, 1987.

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

Attest:

9-10-87
Date

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

91040842676



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 15, 1987

Ms. Sherry E. Tucker, Esquire
800-D Franklin Square
Chapel Hill, N.C. 27514

RE: MUR 2336
William Woodward
Webb, Webb for
Congress Committee
and Roy D. Fowler,
III, as treasurer
and Mrs. M.
Woodward Webb

Dear Ms. Tucker:

On January 30, 1987, the Federal Election Commission found reason to believe that William Woodward Webb, Webb for Congress Committee (hereinafter "Webb Committee") and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive contribution. The Commission also found reason to believe that the Webb Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. On May 27, 1987, the Commission found reason to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution to the Webb Committee. At your request, on September 9, 1987, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

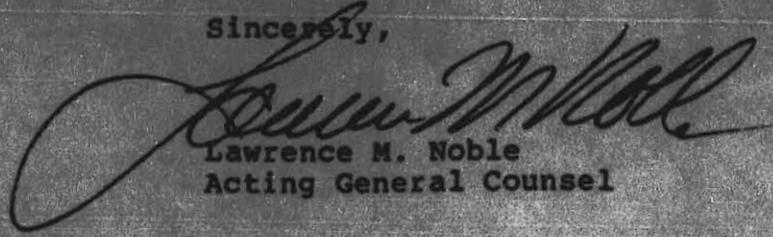
Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your clients agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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Plan

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Deborah Curry, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,



Lawrence M. Noble
Acting General Counsel

Enclosure
Conciliation Agreement

91040842678

600#6615

RECEIVED
FEDERAL ELECTION COMMISSION
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88 FEB 29 AM 9:51

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
600-D FRANKLIN SQUARE
CHAPEL HILL, NORTH CAROLINA 27514
(919) 967-8095

February 24, 1988

Ms. Lois G. Lerner, Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 2336
William Woodward Webb; Webb for
Congress Committee and Roy D.
Fowler, as Treasurer, and
Mrs. M. Woodward Webb

91040842679

Dear Ms. Lerner:

In response to your time limit for submitting the reply to your Interrogatories and Request for Production of Documents, dated February 11, 1988, and received by me on February 18, 1988, I am requesting that the time for submitting the reply be extended until March 19, 1988, as the information requested covers a ten-year period and is not readily available.

Please inform me of your grant of the extension of time.

Sincerely,

Sherry E. Tucker
Sherry E. Tucker

c: Ms. Deborah Curry, Attorney at Law
Federal Elections Commission

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 FEB 29 AM 12:46



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 3, 1988

Sherry E. Tucker, Esquire
800-D Franklin Square
Chapel Hill, NC 27514

RE: MUR 2336
William Woodward Webb;
Webb for Congress
Committee and Roy D.
Fowler, as treasurer
and Mrs. M. Woodward
Webb

Dear Ms. Tucker:

This is in response to your letter dated February 24, 1988, which we received on February 29, 1988, requesting an extension until March 19, 1988 to respond to the Commission's interrogatories and request for documents. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by close of business on March 19, 1988.

If you have any questions, please contact Deborah Curry, the attorney assigned to this matter at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel


By: Lois G. Lerner
Associate General Counsel

91040842680

HAND DELIVERED
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FEDERAL ELECTION COMMISSION
MAIL ROOM
GC# 8796

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
800-D FRANKLIN SQUARE
CHAPEL HILL, NORTH CAROLINA 27514
(919) 967-8095

88 MAR 16 PH 2:55

March 15, 1988

RECEIVED COMMISSION
OFFICE OF GENERAL COUNSEL
88 MAR 16 PH 3:41

Ms. Lois G. Lerner
Associate General Counsel
Federal Elections Commission
Washington, D.C. 20463

RE: MUR 2336

91040842681

Dear Ms. Lerner:

I enclose herewith my clients' responses to the discovery received on February 18, 1988. We appreciate, by the way, your courtesy in allowing us the extension of time in which to respond.

The Gift Tax Returns referred to by Mr. Jackson in his affidavit of March 2, 1988, are available should you wish to review them. Mr. Jackson, I am sure, would also agree to be deposed by telephone if that is your desire. However, it seems to me that this matter is now ripe for final disposition without any further evidence being required to show that this situation patently falls within the purview of the Federal Regulation found at 11 CFR Section 110.10(b)(2), a copy of which has already been furnished to your office. Since you have not provided me with any administrative/judicial interpretation of this regulation to the contrary (as requested in October, 1987), I am assuming that you are in agreement with our position on this point.

Mr. Webb, moreover, has authorized me to reiterate his willingness to have this issue determined by the United States Attorney for the Eastern District of North Carolina.

I look forward to hearing from you soon.

Sincerely,
Sherry E. Tucker
Sherry E. Tucker

BEFORE THE FEDERAL ELECTIONS COMMISSION

IN RE: WILLIAM WOODWARD WEBB

MUR 2336

AFFIDAVIT OF RICHARD L. JACKSON

STATE OF ALABAMA

COUNTY OF JEFFERSON

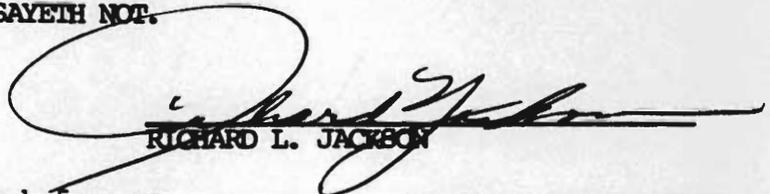
Before the undersigned officer authorized by law to administer oaths, came Richard L. Jackson, who after being sworn states as follows:

1. My name is Richard L. Jackson, and I am a resident of Birmingham, Alabama, over eighteen (18) years of age, and I am a Vice President and Trust Officer at AmSouth Bank in Birmingham, Alabama.

2. All of the information contained in this affidavit is based upon my own knowledge and examination of United States Gift Tax Returns (Form 709) signed by Mrs. Martha Woodward Webb, and upon the business records maintained by the Trust Division of AmSouth Bank.

3. Since 1976 Mrs. M. Woodward Webb has annually made a monetary or stock gift to her son, William Woodward Webb, to be used as he deemed appropriate. The range of these gifts has been from \$3,000 in some years to \$191,294 in 1981. This practice is expected to continue into the foreseeable future.

FURTHER THE AFFIANT SAYETH NOT.


RICHARD L. JACKSON

Sworn to and subscribed to before me,
this 2nd day of March, 1988.

Carolyn A. Garrison
Notary Public

My Commission Expires: 3/20/1990

91040842682

Checked
MRS. MARTHA WOODWARD WEBB 4/2/16 27

3612 COUNTRY CLUB RD
BIRMINGHAM, AL 35213

1095

March 6 1986 $\frac{61-1}{620}$

TO THE ORDER OF WEBB for program committee \$ 19,000.00

nineteen thousands DOLLARS

AMSOUTH

Amsouth Bank N.A.
Birmingham, Alabama 35288

Martha Woodward Webb

FOR _____
⑆05 2000019⑆ 27⑆6751032⑆ 1095 ⑆000⑆908000⑆⑆

9 1 0 0 8 4 2 6 8 3

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RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
800-D FRANKLIN SQUARE
CHAPEL HILL, NORTH CAROLINA 27514
(919) 967-3095

88 MAR 29 AM 9:00

March 25, 1988

Ms. Deborah Curry
Attorney at Law
Federal Elections Commission
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 MAR 29 AM 9:23

RE: MUR 2336

Dear Ms. Curry:

I am writing per our telephone conversation of March 24, 1988, regarding the above referenced MUR. In our conversation, you informed me that you needed copies of the documents that Mr. Jackson referred to in his affidavit which we offered as the answer to number 2.a. of the interrogatories that you had previously sent.

I will request these copies from Mr. Jackson immediately and will inform you when I have received them.

I am,

Respectfully,

Sherry E. Tucker
Sherry E. Tucker

91040842685

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION COMMISSION
APR -8 11:12
SENSITIVE

In the Matter of)
)
William Woodward Webb; Webb for Congress)
Committee and Roy D. Fowler as)
treasurer;)
and Mrs. M. Woodward Webb)

MUR 2336

COMPREHENSIVE INVESTIGATIVE REPORT

On January 30, 1987, the Commission found reason to believe William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, as treasurer, violated 2 U.S.C. § 441a(f). The Commission also found reason to believe the Webb Committee violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. On May 27, 1987, the Commission found reason to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution to the Webb Committee. On September 9, 1987, the Commission entered into conciliation with Respondents prior to a finding of probable cause to believe.

21040842686

the
Commission approved letters and directed the Office of General Counsel to revise the interrogatories. The letters, revised interrogatories and request for documents were mailed to Respondents on February 11, 1988.

Pursuant to their request on March 3, 1988, Respondents were granted an extension of time until March 19, 1988, to respond to the interrogatories and request for documents. On March 16, 1988, the Office of General Counsel received a response to the interrogatories and request for documents. However, the

information submitted by Respondents was not responsive to the questions submitted by the Commission. Subsequently, in a telephone conversation with Respondents' counsel, Ms. Tucker, it became clear that she did not understand the detailed answers required by the interrogatories. Additionally, Ms. Tucker assumed that, as a federal agency, we had access to the Gift Tax Returns of Mrs. Webb that were referred to in the response and affidavit.

Ms. Tucker is in the process now of contacting the individual knowledgeable about the transactions at issue (a bank trust officer). In any case, she has indicated that a response will be submitted shortly. After receiving and evaluating this response, this Office will submit a report to the Commission.

Lawrence M. Noble
General Counsel

Date

4/8/88

By:

Lois G. Lerner
Lois G. Lerner
Associate General Counsel

Staff Person: Debby Curry

910440842687



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN *JM*

DATE: APRIL 12, 1988

SUBJECT: MUR 2336 - COMPREHENSIVE INVESTIGATIVE
REPORT
SIGNED APRIL 8, 1988

The above-captioned matter was received in the Office of the Secretary of the Commission Friday, April 8, 1988 at 12:12 P.M. and circulated to the Commission on a 24-hour no-objection basis Monday, April 11, 1988 at 11:00 A.M.

There were no objections received in the Office of the Secretary of the Commission to the Comprehensive Investigative Report at the time of the deadline.

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 APR -8 AM 9:49

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
800-D FRANKLIN SQUARE
CHAPEL HILL, NORTH CAROLINA 27514
(919) 967-3095
March 31, 1988

Ms. Deborah Curry
Attorney at Law
Federal Elections Commission
Washington, D.C. 20463

RE: MUR 2336
Answer to Interrogatories

Dear Ms. Curry:

Enclosed please find copies of Federal Gift Tax Returns for the years 1978, 1979, 1981, 1983, 1985, and 1987, prepared by Snow, Stewart and Strickland, C.P.A.s, for Mrs. Martha Woodward Webb. The above referenced documents provide evidence that the gifts were given to Mr. Webb in the years stated.

It is my understanding that in the years in which no gift tax return was filed, Mrs. Webb also made the maximum non-taxable gifts to Mr. William W. Webb and/or his family, based on the information provided in the letter of February 24, 1988, from Snow, Stewart and Strickland, C.P.A.s, Programmers & Analysts, to Mr. Richard Jackson (copy of which is attached to the interrogatories and marked as Exhibit B).

As is requested per your instructions for answering the interrogatories I herein provide the following information:

1. The copies of the United States Gift Tax Returns which are included as supporting documents were provided by Snow, Stewart and Strickland, C.P.A.s, Programmers and Analysts, 1210 South Twentieth Street, P.O. Box 10805, Birmingham, Alabama 35202-0805, telephone number, (205) 933-7484.
2. The statement as to the gifts given in the years in which no gift tax return was filed was provided by Snow, Stewart and Strickland, C.P.A.s, Programmers and Analysts, 1210 South Twentieth Street, P.O. Box 10805, Birmingham, Alabe 35202-0805, telephone number (205) 933-7484, in a letter to Mr. Richard Jackson, AmSouth Bank, N.A. Trust Department, P.O. Box 11007, Birmingham, Alabama 35288.
3. The answers to the interrogatories were drafted by Sherry E. Tucker, Attorney at Law, 800-D Franklin Square, Chapel Hill, North Carolina 27514, telephone number (919) 967-3095.

I look forward to hearing from you in the near future.

I am,

Respectfully,
Sherry E. Tucker
Sherry E. Tucker

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ANSWER TO INTERROGATORIES

1.a. Attached please find a copy of the check (front and back) evidencing the Nineteen-Thousand and No/100 Dollars (\$19,000.00) payment from Mrs. Webb to the Webb for Congress Committee and identified as "Exhibit A".

2.a. Listed below please find a description of all transactions evidencing gifts of a personal nature received by Mr. Webb from his mother, Mrs. Webb, for the years 1976 through 1987:

1976: 1.-6. In 1976, it is my understanding that Mrs. Martha W. Webb made a maximum non-taxable gift (i.e., \$3,000/\$10,000) to Mr. William W. Webb and/or the family of Mr. William W. Webb, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.

7. It is my understanding that the gift was not given in the form of a loan, based on information supplied by Snow, Stewart & Strickland C.P.A.s, on Exhibit B, attached hereto.

1977: 1.-6. In 1977, it is my understanding that Mrs. Martha W. Webb made a maximum non-taxable gift (i.e., \$3,000/\$10,000) to Mr. William W. Webb and/or the family of Mr. William W. Webb, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.

7. It is my understanding that the gift was not given in the form of loan, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.

1978: 1. Date of gift: 03/04/78.

2. Nature of gift: The gift was a life insurance policy.

3. Monetary value at date of gift: \$6,000.00.

4. Purpose or occasion for gift: None stated on gift tax return.

5. Method used to give gift: Irrevocable Designation of Ownership.

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1978:(cont'd)

- 6. Supporting documents: Copy of U.S. Form 709, United States Quarterly Gift Tax Return, for the year ending 12/31/78, attached hereto and marked as "Exhibit C".
- 7. It is my understanding that the gift was not in the form of a loan as is evidenced by the filing of U.S. Form 709, United States Quarterly Gift Tax Return.

1979: 1. Date of gift(s): 01/04/79 and 10/11/79.

- 2. Nature of gift(s): Cash.
- 3. Monetary value at date of gift(s): \$3,000.00 and \$3,500.00.
- 4. Purpose or occasion for gift(s): None stated on gift tax return.
- 5. Method used to give gift(s): Cash.
- 6. Supporting documents: Copy of U.S. Form 709, United States Quarterly Gift Tax Return, for the year ending 12/31/79, attached hereto and marked as "Exhibit D".
- 7. It is my understanding that the gifts were not in the form of loans as is evidenced by the filing of U.S. Form 709, United States Quarterly Gift Tax Return.

1980: 1.-6. In 1980, it is my understanding that Mrs. Martha W. Webb made a maximum non-taxable gift (i.e., \$3,000/\$10,000) to Mr. William W. Webb and/or the family of Mr. William W. Webb, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.

- 7. It is my understanding that the gift was not given in the form of loan, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.

1981: 1. Date of gift: 05/08/81.

- 2. Nature of gift: Stock.
- 3. Monetary value at date of gift: \$191,294.00.
- 4. Purpose or occasion for gift: None stated on gift tax return.

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1981: (cont'd)

5. Method used to give gift: 6,350 shares of Mead Common Stock (NYSE) were given to Mr. Webb as is stated on Exhibit E, attached hereto.
6. Supporting Documents: Copy of U.S. Form 709, United States Quarterly Gift Tax Return for the quarter ending June, 1981, attached hereto and marked as "Exhibit E".
7. It is my understanding that the gift was not in the form of a loan as is evidenced by the filing of U.S. Form 709, United States Quarterly Gift Tax Return.

1982:

- 1.-6. In 1982, it is my understanding that Mrs. Martha W. Webb made a maximum non-taxable gift (i.e., \$3,000/\$10,000) to Mr. William W. Webb and/or the family of Mr. William W. Webb, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.
7. It is my understanding that the gift was not given in the form of loan, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.

1983:

1. Date of gift: 04/04/83.
2. Nature of gift: Stock.
3. Monetary value at date of gift: \$77,986.00.
4. Purpose or Occasion for gift: None stated on gift tax return.
5. Method used to give gift: 3,275 shares of Mead Common Stock (NYSE) were given to Mr. Webb as is stated on Exhibit F, attached hereto.
6. Supporting Documents: Copy of U.S. Form 709, United States Gift Tax Return, for the calendar year 1983, attached hereto and marked as "Exhibit F".
7. It is my understanding that the gift was not in the form of a loan as is evidenced by the filing of U.S. Form 709, United States Gift Tax Return.

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- 1984: 1.-6. In 1984, it is my understanding that Mrs. Martha W. Webb made a maximum non-taxable gift (i.e., \$3,000/\$10,000) to Mr. William W. Webb and/or the family of Mr. William W. Webb, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.
7. It is my understanding that the gift was not given in the form of loan, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.
- 1985: 1. Date of gift: 01/15/85.
2. Nature of gift: Stock.
3. Monetary value at date of gift: \$9,996.00.
4. Purpose or Occasion for gift: None stated on gift tax return.
5. Method used to give gift: 267 shares of Mead Common Stock (NYSE) were given to Mr. Webb as is stated on Exhibit G, attached hereto.
6. Supporting documents: Copy of U.S. Form 709, United States Gift Tax Return, for the calendar year 1985, attached hereto and marked as "Exhibit G".
7. It is my understanding that the gift was not in the form of a loan as is evidenced by the filing of U.S. Form 709, United States Gift Tax Return.
- 1986: 1.-6. In 1986, it is my understanding that Mrs. Martha W. Webb made a maximum non-taxable gift (i.e., \$3,000/\$10,000) to Mr. William W. Webb and/or the family of Mr. William W. Webb, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.
7. It is my understanding that the gift was not given in the form of loan, based on information supplied by Snow, Stewart & Strickland, C.P.A.s, on Exhibit B, attached hereto.
- 1987: 1. Date of gift: 01/19/87.
2. Nature of gift: Stock.

1987 (cont'd):

- 3. Monetary value at date of gift: \$79,976.00.
- 4. Purpose or occasion for gift: None stated on gift tax return.
- 5. Method used to give gift: 1,221 shares of Mead Common Stock (NYSE) were given to Mr. Webb as is stated on Exhibit H, attached hereto.
- 6. Supporting documents: Copy of U.S. Form 709, United States Gift Tax Return, for the calendar year 1987, attached hereto and marked as "Exhibit H".
- 7. It is my understanding that the gift was not in the form of a loan as is evidenced by the filing of U.S. Form 709, United States Gift Tax Return.

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Handwritten: 4/2/16

Handwritten: Mrs. MARTHA WOODWARD WEBB 27

3612 COUNTRY CLUB RD
BIRMINGHAM, AL 35219

1095

Handwritten: March 6 1986 $\frac{61-1}{626}$

PAID TO THE ORDER OF

Handwritten: WEBB for Congress Committee

\$ 19,000.00

Handwritten: nineteen thousand

DOLLARS

AMESOUTH

AmSouth Bank N.A.
Birmingham, Alabama 35208

Handwritten: Martha Woodward Webb

FOR DEPOSIT ONLY: 27MB751032# 1095 #00019080000

21040842695

February 24, 1988

Mr. Richard Jackson
AmSouth Bank, N.A.
Trust Department
P. O. Box 11007
Birmingham, AL 35288

RE: Gift Tax Returns for Mrs. Martha V. Webb

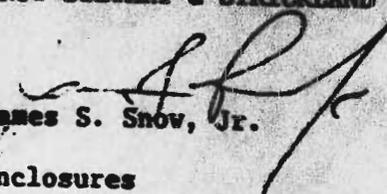
Dear Mr. Jackson:

Enclosed are copies of all of Mrs. Webb's gift tax returns from 1978 through 1987. In addition to the gifts reported by these returns, Mrs. Webb also made the maximum non-taxable gifts (i.e. \$3,000/\$10,000) to her son's family in each year for which there is not a gift tax return attached.

If any additional information is necessary, it will promptly be provided upon request.

Sincerely,

SNOW STEWART & STRICKLAND


James S. Snow, Jr.

Enclosures

JSS/bc

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BEFORE THE FEDERAL ELECTION COMMISSION

88 AUG 23 AM 9:21

In the Matter of)
William Woodward Webb; Webb for Congress)
Committee and Roy D. Fowler, III, as)
treasurer; and Mrs. M. Woodward Webb)

MUR 2336

SENSITIVE

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer; and Mrs. M. Woodward Webb, based on the assessment of the information presently available.

Date 8/22/88

LM Noble (J/J)
Lawrence M. Noble
General Counsel

Staff Member: Deborah Curry

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SECRETARY

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

October 11, 1988

MEMORANDUM

TO: The Commission
FROM: Lawrence M. Noble
General Counsel
SUBJECT: MUR # 2336

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe were mailed on October 11, 1988. Following receipt of the respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments

- 1-Brief
- 2-Letter to respondent

Staff Person: Deborah Curry

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88 OCT 11 AM 9:41 SENSITIVE



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 11, 1988

Sherry E. Tucker, Esquire
800-D Franklin Square
Chapel Hill, North Carolina 27515

RE: MUR 2336
William Woodward Webb;
Webb for Congress
Committee and Roy D.
Fowler, III, as
treasurer; and Mrs. M.
Woodward Webb

Dear Ms. Tucker:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by your clients, on January 30, 1987, the Federal Election Commission found reason to believe William Woodward Webb, Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441(a)(f) by knowingly accepting an excessive contribution. The Commission also found reason to believe the Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. Subsequently, on May 17, 1987, the Commission found reason to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution. Based on these findings, the Commission instituted an investigation of this matter.

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

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General

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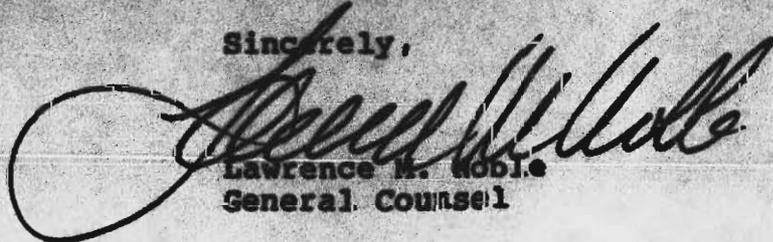
Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Deborah Curry, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
William Woodward Webb; Webb for Congress) MUR 2336
Committee and Roy D. Fowler, III, as)
treasurer; and Mrs. M. Woodward Webb)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated by the Reports Analysis Division ("RAD") after a review of the disclosure reports of Webb for Congress Committee (hereinafter "Webb Committee"). The RAD review had revealed a possible receipt of an excessive contribution by the Webb Committee. The money in question had previously been reported as a \$19,000 loan of funds from the candidate to the Webb Committee. Further clarification by the Committee to RAD indicated that this money may have been a loan of funds from a family member. Based on the foregoing, the Commission on January 30, 1987, found reason to believe William Woodward Webb, the Webb Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive contribution. The Commission also found reason to believe the Webb Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. On February 24, 1987, the Office of General Counsel received a response from Counsel for William Woodard Webb and the Webb Committee, Ms. Sherry Tucker.

The Webb response dated February 24, 1987, consisted of a letter and answers to written questions approved by the Commission. According to the Webb response, the \$19,000 was a

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loan made by the candidate's mother, Mrs. M. Woodward Webb, on or about March 5, 1986. The preamble to the answers to the interrogatories states that Mrs. Webb gave her son, Mr. Webb, a check for \$19,000 "to be used by the candidate in the campaign, or outside the campaign, as he saw fit." According to Respondents, Mr. Webb chose to use the funds in his campaign. Mr. Webb, therefore, directed Mrs. Webb to make the check for \$19,000 payable to the Webb for Congress Committee. In subsequent correspondence with the Commission, Respondents explained that "Mrs. Webb offered her son Mr. Webb the money personally," and that "Mr. Webb not being aware of the ramifications of having his mother issue the check with Webb for Congress Committee as the payee as opposed to having Mr. Webb as payee, requested that she issue the check to Webb for Congress."

Respondents assert "that the intent of the contributor, Mrs. Webb, was merely to help her son with his financial situation." Respondents explain that Mrs. Webb was aware that the campaign was causing a decrease in income for Mr. Webb, since the time demanded by the campaign took away time from Mr. Webb's law practice.

Finally, Respondents state that Mr. Webb accepted the \$19,000 check from Mrs. Webb as a loan for his congressional campaign. There were no terms, interest, or definite due date for the loan, just the understanding that repayment would be made when funds became available. Since no funds have come available, no repayments have been made on the outstanding loan balance.

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Based on the above, on May 27, 1987, the Commission found reason to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution to the Committee.

During the course of the investigation Respondents appeared to alter their initial characterization of the \$19,000 loan from Mrs. Webb to a \$19,000 gift from Mrs. Webb. Respondents noted, therefore, that Mrs. Webb "had customarily made personal gifts of this nature to her son (in fact every year since 1976) prior to his candidacy." To support this contention Respondents submitted on October 8, 1987, an affidavit of Mr. Richard Jackson, the Trust Officer for Mrs. Webb, who stated that since 1976, Mrs. Webb has made annual monetary or stock gifts to Mr. Webb to use as he deemed appropriate. According to Mr. Jackson, this practice is expected to continue in the future. Indeed, Respondents state that the funds "given in 1986 were given with the same intent as other years, i.e. to be personal funds of Mr. Webb and not given for the purpose of influencing a Federal Election." Based on the foregoing, the Commission approved interrogatories and request for production of documents exploring the pattern of claimed gifts of a personal nature received by Mr. Webb prior to candidacy (1976-1986).

The initial response, received March 16, 1988, to the Commission's request included a second affidavit from Mr. Jackson

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and a copy of the check for the \$19,000 in question. The copy of the check for \$19,000, submitted by Respondents, shows that it was drawn by Mrs. Webb on March 6, 1986 and made payable to Webb for Congress Committee. The back side of the check indicates that it was deposited by the Webb Committee on April 2, 1986. The affidavit of Mr. Jackson again stated that since 1976 Mrs. Webb had annually made a monetary or stock gift to her son to use as he deemed appropriate. Furthermore, Mr. Jackson states that the gifts ranged from \$3,000 to \$191,294. According to Mr. Jackson, his affidavit is based upon review of U.S. Gift Tax Returns signed by Mrs. Webb. Apparently due to a misunderstanding, Respondents' March 16, 1988, submission failed to answer some of the Commission's interrogatories. Neither were copies of Mrs. Webb's U.S. Gift Tax Returns included in the submission as requested by the Commission.

Due to the inadequacy of their response, this Office requested that Respondents submit a supplement. That response, received on April 8, 1988, contained copies of Mrs. Webb's Federal Gift Tax Returns for the years 1978, 1979, 1981, 1983, 1985 and 1987, prepared by a CPA firm. According to the response, for years in which no gift tax return was filed, Mrs. Webb made the maximum non-taxable gifts to Mr. Webb and/or his family of \$3,000/10,000. 1/

1/ According to the April 8, 1988, response, \$3,000/\$10,000 was the maximum non-taxable amount for gifts. Ms. Tucker explained that due to a change in the U.S. tax laws the non-taxable amount went from \$3,000 to \$10,000 at some point during the time period covered by the filed reports. Research indicates that the non-taxable amount went from \$3,000 to \$10,000 in 1982. See 26 U.S.C. 2503. Since Respondents were uncertain of the year the change went into effect, their reference to (\$3,000/\$10,000) signals only that the maximum non-taxable amount was given in the year that no return was filed.

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It appears from the information submitted, (U.S. Gift Tax Returns), that Mrs. Webb has made annual gifts of varying amounts of stock or cash to Mr. Webb during the time period in question (1976-1986). Mrs. Webb's gifts to her son and/or his family consisted of stock, an insurance policy, and cash. In most instances gifts of cash to Mr. Webb and/or his family stayed within the non-taxable gift limit of \$3,000/\$10,000. Usually, when Mrs. Webb made gifts that exceeded the non-taxable amounts, she made her gifts in stock. It also appears that the gifts made by Mrs. Webb alternated between cash (within the non-taxable limits of \$3,000/\$10,000) in even numbered years and stock (usually above the non-taxable limits) in odd numbered years. The \$19,000 in question was received by Mr. Webb and the Webb Committee during 1986 -- an even numbered year. Mrs. Webb filed no Federal Gift Tax Return for that year since according to Respondents she made only the maximum non-taxable gift (\$3,000/\$10,000) to Mr. Webb and/or his family. 2/

II. ANALYSIS

A. Contributions Under the Act

2 U.S.C. § 431(8)(A)(i) states that the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." An individual may

2/ The only question not answered by Respondents' submission was item 4 regarding the purpose or occasion for each gift. Ms. Tucker explained in a telephone conversation that neither party (Mrs. Webb or Mr. Webb) could remember the purpose or occasion for each gift. According to the submission, none of the gifts were in the form of a loan.

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not make contributions to a candidate for federal office or his political committee in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). When a candidate receives a loan for use in connection with his campaign, the candidate receives such loan as an agent of his authorized committee or committees. 2 U.S.C. § 432(e)(2). A loan which exceeds the contribution limitation of the Act is unlawful. 11 C.F.R. § 100.7(a)(1)(i)(A). Additionally, the Act also makes unlawful the knowing acceptance of excessive contributions by candidates and political committees. 2 U.S.C. § 441a(f). Section 434(b) of Title 2 requires that political committees accurately report debts and obligations and that political committees properly disclose the amount and nature of outstanding debts.

The issue in this matter is whether Mrs. Webb made an excessive \$18,000 contribution under the Act that was knowingly accepted by Mr. Webb and the Webb Committee. The facts and circumstances of this matter demonstrate that the \$19,000 loan or gift from Mrs. Webb to Mr. Webb was for the purpose of influencing a federal election and thus a contribution subject to the limitations of the Act.

The evidence indicates that the \$19,000 payment ^{3/} from Mrs. Webb to her son was in the form of a loan drawn on the personal account of Mrs. Webb. The check was made out by Mrs. Webb to the Webb for Congress Committee, as payee.

^{3/} Whether the \$19,000 is characterized as a loan or a gift is of no consequence. Both gifts and loans fall within the meaning of contribution under the Act.

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Mr. Webb accepted the \$19,000 loan on behalf of his congressional campaign. The check was dated March 6, 1986, and deposited by the Webb Committee on April 2, 1986, during the campaign period. ^{4/}

Respondents argue that \$19,000 was not a contribution under the Act since they were not given for the purpose of influencing an election. Respondents state that Mrs. Webb's intent in loaning the money to her son was to help him out during a time of financial need since the campaign was causing a decrease in his income.

Respondents also contend that Mrs. Webb's purpose in loaning the money to Mr. Webb could not be to influence an election since she did not live in North Carolina.

The evidence indicates that Mrs. Webb knew Mr. Webb was running for office; after all, she made a check out for \$19,000 with the Webb Committee as payee. The expressed intent of the contributor in making the contribution in this instance is significant.

Respondents state that Mrs. Webb intent in making the loan was to help her son financially since the campaign was causing a decrease in his income. It is the view of this Office that loans to pay living expenses of a candidate for the campaign period are contributions under the Act. Thus, such loans are not excludable as personal funds of the candidate. See Advisory Opinions 1982-64 and

^{4/} The timing and amount of the \$19,000 loan is significant in this matter. The North Carolina primary was May 6, 1986, so the money was received by the Webb Committee within a month of the primary. Moreover, the \$19,000 represents nearly 90% of the total receipts received by the Webb Committee for that reporting period (\$21,470).

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1978-40. Moreover, the fact Mrs. Webb was not a resident in the candidate's home state does not shield her from the proscription against excessive individual contributions under 2 U.S.C.

§ 441a(a)(1)(A). Thus, the funds must be deemed to have been for the purpose of influencing a federal election.

Based on the foregoing, it is apparent that the \$19,000 loan from Mrs. Webb to the Webb Committee was a contribution that exceeded the limits of 2 U.S.C. § 441a(a)(1)(A). Respondents have also argued that \$19,000 loan was not a contribution because it falls within the personal funds exemption at 11 C.F.R. § 110.10.

B. Exemption for Personal Funds at 11 C.F.R. § 110.10

Under the Act monies received by a candidate after initiation of his candidacy and during the campaign period are presumed to be for the purpose of influencing a Federal election. Hence, such monies are contributions under the Act. However, Commission regulations at 11 C.F.R. § 110.10 provide an exception for monies that constitute personal funds of the candidate. Pursuant to 11 C.F.R. § 110.10 candidates may make unlimited expenditures from personal funds. The term "personal funds" means, among other things, those assets to which the candidate had legal or equitable right to access to or control over and "gifts of a personal nature which had been customarily received prior to candidacy; . . ." 11 C.F.R. §§ 110.10(b)(1) and (b)(2).

Respondents' view that the \$19,000 loan constitutes personal funds of the candidate under 11 C.F.R. § 110.10, however, is

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without merit. Contrary to Respondents' assertions, the evidence in this case demonstrates that: 1) Mr. Webb had neither access nor control over the funds; and 2) the funds were not a gift of a personal nature customarily received prior to candidacy.

Respondents have set forth essentially two arguments for their view that the \$19,000 was personal funds of Mr. Webb. First, Respondents argue that Mr. Webb had access or control over the funds in question. Respondents argue that the money was offered to Mr. Webb personally to do as he wanted, and he decided to use it in the campaign. Respondents' contend, therefore, that Mr. Webb had "complete control over where the funds were to be directed and the funds had vested in Mr. Webb at the time his mother offered him the money." Section 110.10(b)(1) of the Commission Regulations, however, requires that at the time a person becomes a candidate that there be access to or control over the asset, and that the candidate also have legal title or an equitable interest in the asset. Here, the check was drawn on the personal account of Mrs. Webb, and there is no indication that Mr. Webb had the requisite access to or control over funds coupled with legal or equitable interest until Mrs. Webb gave him the check for the \$19,000. Consequently, the exemption for personal funds at 11 C.F.R. § 110.10(b)(1) does not apply to the transaction in question.

Second, Respondents argue that \$19,000 was a gift of a personal nature that had customarily been received by Mr. Webb prior to candidacy. To support this argument, Respondents rely

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on the specific exemption for personal funds at 11 C.F.R. § 110.10(b) (2). Respondents contend that the \$19,000 loan from Mrs. Webb to her son Mr. Webb was a gift of a personal nature that had been customarily received prior to candidacy. Respondents assert that since 1976 Mrs. Webb has made annual monetary or stock gifts to Mr. Webb, and that this practice is expected to continue in the future. Respondents also assert that the \$19,000 gift was given with the same intent as gifts in other years. Respondents point to the affidavits from the Trust Officer who handles Mrs. Webb's bank accounts and the U.S. Gift Tax Returns filed by Mrs. Webb to substantiate their contention. Based on this evidence, Respondents conclude that this pattern of giving gifts nine years prior to the year Mr. Webb ran for Office is sufficient to establish that the \$19,000 loan was a gift of a personal nature and thus exempted from the contribution limits of the Act.

It is the opinion of this Office that Respondents' reliance on 11 C.F.R. § 110.10(b) (2) is misplaced. The facts of this matter indicate that rather than being a gift of a personal nature, the \$19,000 loan from Mrs. Webb to Mr. Webb was made in anticipation of a Federal election and was related to a campaign for Federal office. Compare Advisory Opinion 1988-7. 5/

While the facts indicate that for the past ten years Mrs. Webb has made gifts of cash and stock to her son, the

5/ In Advisory Opinion 1988-7, a \$20,000 gift received by an "undeclared candidate" for the years 1985-1987, was viewed as being of a personal nature, rather than in anticipation of or related to a federal election campaign.

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\$19,000 loan appears to deviate from this pattern for several reasons. First, the \$19,000 payment check from Mrs. Webb to Mr. Webb was in the form of a loan drawn on the personal account of Mrs. Webb with the Webb Committee as payee. A review of the U.S. Gift Tax Returns filed by Mrs. Webb show no loans and primarily only gifts of stock or cash to Mr. Webb and his family.

Furthermore, the evidence indicates that whenever the non-taxable limits for gifts (\$3,000/\$10,000) were exceeded, Mrs. Webb, for the most part made her gift in stock for that year. Therefore, since the \$19,000 loan exceeded the non-taxable limit substantially, according to this pattern of gift giving, it should have been a stock gift. ^{6/} Indeed, it is interesting to note that the \$19,000 loan now claimed as a gift was not even mentioned on the U.S. Gift Tax Returns filed by Mrs. Webb. According to Respondents, no gift tax returns were filed during 1986 because Mrs. Webb made only the maximum non-taxable gift allowable under the law (\$3,000/\$10,000). Thus, the evidence indicates that Mrs. Webb did not consider this a gift for Federal Gift Tax law purposes. As noted, supra at footnote 2 p. 5, Respondents did not submit the purpose of each gift made by Mrs. Webb to Mr. Webb from 1976-1986. The evidence, however, demonstrates that the purpose of \$19,000 differed from past gifts in that it was clearly for the purpose of influencing a Federal election.

^{6/} As noted, supra at p. 5, the pattern of gifts, for the most part, alternated between cash in even numbered years within the non-taxable limit of \$3,000/\$10,000 and stock (amounts substantially above the non-taxable limits) in odd numbered years.

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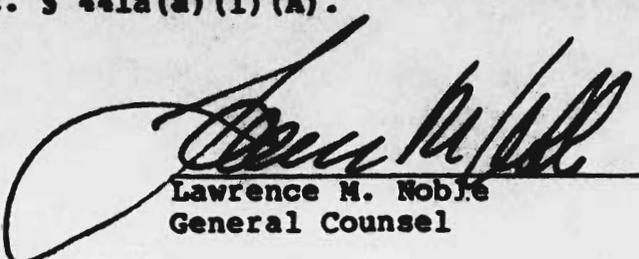
Based on the foregoing, the Office of the General Counsel recommends that the Commission find probable cause to believe that Mrs. Webb made an excessive \$18,000 contribution in violation of 2 U.S.C. § 441a(a)(1)(A) that was knowingly accepted by Mr. Webb and the Webb Committee in violation of 2 U.S.C. § 441a(f). The Office of the General Counsel also recommends probable cause to believe that the Webb Committee violated the reporting requirements of the Act at 2 U.S.C. § 434(b).

IV. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f).
2. Find probable cause to believe the Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434(b).
3. Find probable cause to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A).

Date

10/5/88


Lawrence M. Noble
General Counsel

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OGC #785

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

08 OCT 27 AM 9:48

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
800-D FRANKLIN SQUARE
CHAPEL HILL, NORTH CAROLINA 27514
(919) 967-8098

October 21, 1988

Mr. Lawrence W. Noble,
General Counsel
Federal Election Commission
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
08 OCT 27 PM 3:29

RE: MUR 2336
William Woodward Webb;
Webb for Congress Committee
and Roy D. Fowler, III, as
Treasurer; and Mrs. M.
Woodward Webb

Dear Mr. Noble:

This is to acknowledge receipt of your letter of October 11, 1988,
on this the 21st day of October, 1988.

Sincerely,

Sherry E. Tucker
Sherry E. Tucker

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RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
600-D FRANKLIN SQUARE
CHAPEL HILL, NORTH CAROLINA 27514
(919) 967-3095

88 NOV -9 AM 11:19

November 7, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE
88 NOV -9 PM 12:47

Mr. Lawrence M. Noble,
General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 2336
William Woodward Webb, et al

Dear Mr. Noble:

Enclosed please find the original Respondents' Memorandum of Points and Authorities, Exhibit A and Exhibit B in the above referenced case.

These originals were inadvertently omitted from the envelope which contained the three copies of such that were mailed to you on November 4, 1988.

I apologize for any inconvenience this may have caused.

Sincerely,

Sherry E. Tucker
Sherry E. Tucker

enclosures: originals

91040842715

BEFORE THE FEDERAL ELECTIONS COMMISSION

IN THE MATTER OF:

William Woodward Webb; Webb for Congress)
Committee and Roy D. Fowler, III,) MUR 2336
as treasurer; and)
Mrs. M. Woodward Webb)

RESPONDENTS' MEMORANDUM OF
POINTS AND AUTHORITIES

I. INTRODUCTION:

In 1985-1986, William Woodward Webb was a candidate for Congress from the Fourth Congressional District of North Carolina in the Democratic primary. There were three other candidates and, on May 6, 1986, Mr. Webb placed third in the primary election. The victor (David E. Price) who later went on to defeat the incumbent Congressman expended over three quarters of a million dollars (\$755,048) to be elected to the United States House of Representatives.

In 1987-1988 Mr. Price has already expended \$577,058 to retain his seat in Congress, and he has raised \$647,999. His Republican challenger has, to date, expended \$446,435. Neither candidate was faced with a primary election! See Raleigh, N.C. News & Observer, October 27, 1988, article based on federal campaign finance reports submitted by the candidates.

According to a recent report in Time magazine (October 31, 1988), by election day, the two presidential candidates will have expended nearly \$70 million each. In the opinion of the authors of this report PAC contributions and corporate donors have made the 1988 national campaign (including Congressional races) "the most free-spending in history". In 1987, the AT&T PAC expended \$1.45 million to support 398 Congressional candidates. In 1986, United Parcel Service contributed \$616,000 to more than 300 members of Congress. In addition to direct contributions, corporations and PACs are funneling "donations" to the political parties at the national, state and local levels thereby circumventing federal election laws. This type of contribution is commonly referred to as "soft money", and in 1988 it will amount to \$100 million evenly divided by the Republicans and the Democrats. Great Western Resources of Houston "donated" \$100,000 to the Democratic Party

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while ARCO of Los Angeles "donated" \$135,000 to the Republicans and \$85,000 to the Democrats. Their fear, ostensibly, is that Congress will attempt to balance the budget, in part, by increasing taxes on gasoline. [In this regard, one cannot help but muse at the salutary impact on the deficit if all these political campaign funds were directed toward the Federal Treasury.] A view expressed by the President of Common Cause is that "Congress is being corrupted" by contributions that "buy influence and undermine meaningful elections".

With the foregoing as framework, it is indeed ironic that the General Counsel's Office of the Commission is contending that the sum of \$19,000 given to the Respondent by his mother on March 6, 1986 was made illegally "for the purpose of influencing a federal election". In its analysis as well as in its odd conduct in this case, the General Counsel's Office has exalted a simple, personal transaction between a mother and her only child (and heir) into some type of sinister and corrupting attempt to influence the outcome of an election in violation of federal law. To allow the position of the General Counsel in this case to prevail, in the face of the real and overwhelming evidence of attempts to influence and undermine elections as set out above, would constitute the acceptance of an expedient (albeit incorrect) characterization over the reality of a benign situation. As such, it would be a travesty of justice.

II. ARGUMENT

For some unknown reason, from the outset of this proceeding it has evidently offended the General Counsel's Office that Mrs. Webb has been in a position and has seen fit to provide gifts to her son over an extended period of time. Nonetheless, it is a matter of fact that Mrs. Webb has for over 30 years been giving her son taxable and non-taxable gifts of stock, cash and insurance policies. See Affidavit "A". The record in the instant action reveals a prolonged history of such giving (1976-1986). Respondent has presented evidence which fully substantiates his argument and which fulfills the "personal funds" requirement for exemption as is defined in 11 C.F.R. 110.10(a) and has also met the two-pronged test of the 11 C.F.R. 110.10(b)(2) exemption, i.e., (1) the gift be of a personal nature and, (2) the gift be customarily received prior to candidacy. To substantiate the "personal funds" requirement, Respondent has presented evidence that the funds were offered to him by his mother and he accepted the funds; he then directed that the check be written to "Webb For Congress". The "personal nature" prong of the test in (b)(2) is satisfied by the evidence that the funds were offered to the Respondent by his mother. The "customarily received" prong in (b)(2) has ten years of physical evidence to substantiate it. The General Counsel's Office has erroneously applied the evidence presented to the test of C.F.R.110.10(b)(1) and it is not necessary that the funds of the Respondent meet the requirements of more than one section of

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this regulation for the funds to be deemed "personal funds".

Given the fact that intent is a crucial factor in determining the legality of a contribution to a political candidate, the Respondents have stated that the intent of Mrs. Webb in giving the funds to her son was to help Mr. Webb financially since the campaign was causing a decrease in his income. The General Counsel's Office has misconstrued that statement of intent and concluded, in the only interpretation of that statement that would allow the contribution to be construed as an illegal one, that Mrs. Webb must have given her son a loan to pay his living expenses and therefore the contribution is not excludable as personal funds of the candidate. The fact of the matter is that the funds were given to Mr. Webb as personal funds and he chose to spend them on the campaign. It is axiomatic, of course, that there is no limit on the amount of personal funds a candidate can spend on his own campaign.

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Contrary to the conclusion of the General Counsel's Office, there has never been any type of pattern of giving (see Affidavit "B"), and the assertion that a deviation from a perceived pattern establishes a violation of federal election law is about as logical and meaningful as a suggestion that since a full moon was out when Mrs. Webb made all of her gifts prior to 1986, the presence of a quarter moon at the time of the 1986 gift established that there was some different (and sinister) motivation behind that gift. The General Counsel's Office has attempted to impose a much stricter standard on the "customarily received" test than is required by the regulation. The regulation does not at any place state or imply that there must be a definite pattern of giving or type of gift, but rather, that there must have been an established practice of giving gifts. Moreover, as Mr. Webb has explained on several occasions, the funds were taken with the understanding that they would be repaid if he were victorious in the election (or if his post-election debt retirement functions were successful) and otherwise they would be accepted as a gift. The 1987 gift tax return would naturally have been amended early on to reflect that a loan became, by unfortunate necessity, a gift were it not for the protracted nature of this case. Of course, final disposition of this case will govern the appropriate tax treatment, at least by the taxpayer. [Mandated reimbursement of the funds obviously will not require any amendment to the return.]

The Respondent has consistently advanced the argument that the \$19,000 received from his mother fell within the purview of the exemption regulation found at 11 C.F.R. Section 110.10 which defines "personal funds" as, *inter alia*, "gifts of a personal nature which had been customarily received prior to candidacy...". This argument has been advanced because it is the truth of the matter notwithstanding the efforts of the General Counsel to draw an attenuated and different conclusion from an undisguised, if naive, transaction between an only child and his mother, based on

irrelevant and immaterial matters, (e.g., the date on the check).

It is revealing that on two separate occasions (October 23, 1987 and March 14, 1988) the Respondent, through undersigned counsel, requested of the General Counsel, in writing, any administrative/judicial interpretations of the aforesaid regulation contrary to his position. However, none was ever forthcoming.

Furthermore, and perhaps even more significant, on two separate occasions, (October 23, 1987 and March 14, 1988, the Respondent, once again in writing, expressed his willingness to have this issue of whether the \$19,000 was a gift "of a personal nature...customarily received prior to candidacy" resolved by the United States Attorney for the Eastern District of North Carolina. This offer which could have abbreviated this case and resulted in cost savings to the parties was summarily rejected without explanation, an action that may well betray the lack of confidence of the General Counsel in her position.

III. CONCLUSION

The current matter which has, to date, been pending for almost two and a half years since the primary election was held should be dismissed. There is no legitimate reason for the type of transaction under review in this case to attract the time, talent and resources of the Commission and its legal staff (which hopefully have more important affairs to handle) and the time and resources of the Respondent and his family.

Respectfully submitted this 3rd day of November, 1988.


Sherry E. Tucker
Counsel for Respondent
800-D Franklin Square
Chapel Hill, N.C. 27514
(919) 967-3095

91040342719

EXHIBIT A

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
William Woodward Webb; Webb for)
Congress Committee and Roy D.) MUR 2336
Fowler, III, as treasurer; and)
Mrs. M. Woodward Webb)

AFFIDAVIT OF WILLIAM WOODWARD WEBB

William Woodward Webb, having been duly sworn, states as follows:

1. I was a Democratic candidate for Congress from the Fourth Congressional District of North Carolina in 1985-1986.

2. In early March of 1986 my mother, Martha Woodward Webb, and I traveled to Washington, D.C. to visit a friend of hers.

3. While we were in Washington, my mother inquired about my financial situation given the fact I was away from my law practice for long periods of time while campaigning. I told her that my income from the law practice had decreased significantly.

4. When she offered to help me out, I gladly accepted on the express understanding that whatever funds she gave me would be repaid if I won the election or if I was able to retire my campaign debt if I lost. I also told her that there was a possibility that I would neither win nor be able to raise debt retirement funds after the election. She responded that we would deal with that later.

5. The simple fact of the matter is that since the only hope of repayment of the funds came from a victorious campaign, my mother wrote the check out, in the amount of \$19,000, to the Webb Committee. That is the way I told her to draw the check.

6. Since 1956 my mother and deceased father have been providing gifts to me in the form of cash, securities and insurance policies. Several trust funds have been established and are administered by Am South Bank. I can recall annual gifts having been received since 1976 although I know I received gifts prior to that year, probably on an annual basis.

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7. I am the only child of my mother who is 81 years old. She is totally and completely non-political and, in fact, rarely votes. She resides in Birmingham, Alabama and could care less about North Carolina politics. It is the unabashed truth when I say that my mother expressed to me and my wife on several occasions during the campaign that she hoped I would lose because of the hectic life a Congressman must live away from his family. So, to suggest that she was "attempting to influence an election" is preposterous.

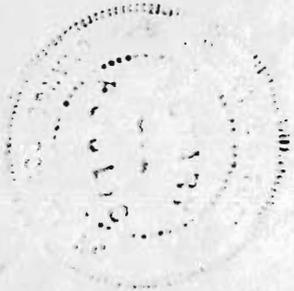
8. I hope the Commission will not countenance a mischaracterization of this transaction. Believe me when I say that if I had it do do over again, I would just ask my mother to make an outright gift to me which I then could have used in any way I saw fit.

William Woodward Webb
WILLIAM WOODWARD WEBB

Sworn to to and subscribed before me
this 31st day of October, 1988.

Sherry R. Tucker
Notary Public

My Commission Expires: 10/6/92



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EXHIBIT B

BEFORE THE FEDERAL ELECTIONS COMMISSION

IN RE: WILLIAM WOODWARD WEBB

)
)
)
MUR 2336

AFFIDAVIT OF RICHARD JACKSON

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

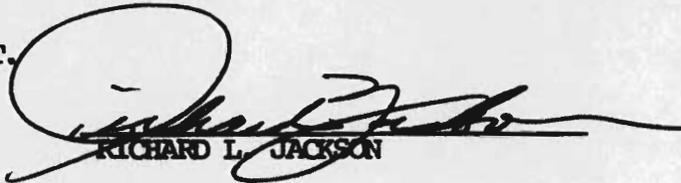
Before the undersigned officer authorized by law to administer oaths, came Richard L. Jackson, who after being duly sworn states as follows:

1. My name is Richard L. Jackson, and I am a resident of Birmingham, Alabama, over eighteen (18) years of age, and I am a Vice President and Trust Officer at AmSouth Bank in Birmingham, Alabama.

2. All of the information contained in this affidavit is based upon my own knowledge and upon the business records maintained by the Trust Division of AmSouth Bank.

3. In connection with the annual gift program of Mrs. M. Woodward Webb to her son, William Woodward Webb and to his family, there never has been any special reason behind the selection of cash or securities other than the customary reason of tax considerations, availability of cash or securities, and similar considerations. Even when gifts in excess of the annual exclusions were made, they were made after similar reasons were considered.

FURTHER THE AFFIANT SAYETH NOT.


RICHARD L. JACKSON

Sworn to and subscribed to before me,
this 26th day of October, 1989.

Caryn A. Garrison
Notary Public

My Commission Expires: 3/20/1990

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
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SECRETARIAT

CONFIDENTIAL

In the Matter of)
)
William Woodward Webb; Webb for Congress)
Committee and Roy D. Fowler, III, as)
treasurer; and Mrs. M. Woodward Webb)

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MUR 2336

EXECUTIVE SESSION

FEB 14 1989

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated by the Reports Analysis Division ("RAD"). The RAD review revealed a possible receipt of an excessive contribution in the form of a \$19,000 loan from a family member. On January 30, 1987, the Commission found reason to believe William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer, ("Webb Committee"), violated 2 U.S.C. § 441a(f). The Commission also found reason to believe the Webb Committee violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. On May 27, 1987, the Commission found reason to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution to the Webb Committee. On October 11, 1988, the Office of the General Counsel sent a brief to the Respondents recommending that the Commission find probable cause to believe that the cited violations occurred. On November 7, 1988, the Office of the General Counsel received from Respondents their Memorandum of Points and Authorities and two exhibits in response to the General Counsel's Brief. (Attachment 1).

II. ANALYSIS

The Office of the General Counsel relies chiefly on the legal analysis set out in its brief dated October 5, 1988.

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Nevertheless, this Office will address some of the issues raised by the Webb submission.

Respondents contend that the \$19,000 in question fulfills the exception for personal funds under 11 C.F.R. 110.10(b)(2) because the \$19,000 was a personal gift to Mr. Webb by his mother of the kind customarily received prior to candidacy. To demonstrate that the gift of personal nature was customarily received prior to candidacy, Respondents cite to evidence of a history of gift giving over an extended period of time. The evidence and information submitted by the Respondents, however, make it clear that the \$19,000 in question was neither a gift nor of a personal nature within the meaning of the regulation and therefore was a contribution under the Act.

Respondents claim to have explained on numerous occasions that the \$19,000 was a loan to be repaid if the campaign was victorious, and if not to be accepted as a gift by Mr. Webb. (Attachment 1, page 4). Initially, as the General Counsel's Brief recounted, Respondents' explanation of the transaction has continuously evolved in the course of the investigation; in fact this is the first time Respondents have explained the \$19,000 as a campaign loan that would turn into a personal gift in the event that Mr. Webb was unable to raise the funds to retire the debt. Moreover, this new explanation completely undermines Respondents' argument that the transaction was a "gift of personal nature" within the meaning of the regulation.

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Aside from the inconsistency cited above, the \$19,000 loan falls outside of the regulation for another fundamental reason. The purpose of 11 C.F.R. § 110.10(b)(2) was to exempt gifts that were unrelated to federal elections. Here, there is a clear causal connection between Mr. Webb's participation in a federal election and the receipt of the \$19,000 in question. Respondents concede that the \$19,000 loan was offered to Mr. Webb to help him out during the campaign. The check for the \$19,000 was made out to Webb for Congress Committee. Respondents have now explained that the loan was to become a gift to Mr. Webb only in the event that there were insufficient funds to repay the \$19,000 loan. Therefore, the \$19,000 loan was made in anticipation of a federal election and provided direct support for the candidate's campaign. Consequently, the \$19,000 loan to the Webb Committee from Mrs. Webb is a contribution under the Act.

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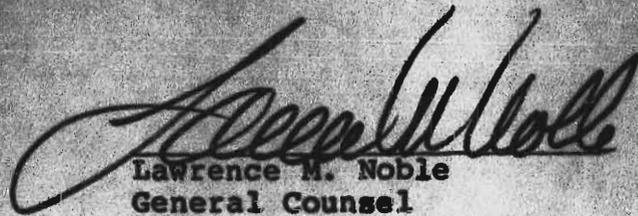
III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find probable cause to believe William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f).

2. Find probable cause to believe the Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434(b).
3. Find probable cause to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A).
4. Approve the attached Letter and Conciliation Agreement to William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer; and Mrs. M. Woodward Webb.

2/3/87
Date


Lawrence M. Noble
General Counsel

Attachments

1. Respondents Brief
2. Letter and Conciliation Agreements to Respondents

Staff person: Deborah Curry

91040842726

Bernstein

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
William Woodward Webb)	
Webb for Congress Committee)	MUR 2336
and Roy D. Fowler, III, as)	
treasurer)	
Mrs. M. Woodward Webb)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 14, 1989, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2336:

1. Find probable cause to believe William Woodward Webb, Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441a(f).
2. Find probable cause to believe the Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434(b).
3. Find probable cause to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A).

(continued)

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4. Approve the letter and Conciliation Agreement to William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer; and Mrs. M. Woodward Webb, as recommended in the General Counsel's report dated February 3, 1989.

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

Attest:

2-14-89

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

91040842728



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 17, 1989

Sherry E. Tucker, Esquire
800-D Franklin Square
Chapel Hill, North Carolina 27514

RE: MUR 2336
William Woodward Webb;
Webb for Congress Committee
and Roy D. Fowler, III, as
treasurer; and
Mrs. M. Woodward Webb

Dear Mrs. Tucker:

On February 14, 1989, the Federal Election Commission found that there is probable cause to believe William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 441(a)(f) by accepting an excessive contribution. The Commission also found that there is probable cause to believe Webb for Congress Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. Additionally, the Commission found that there is probable cause to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

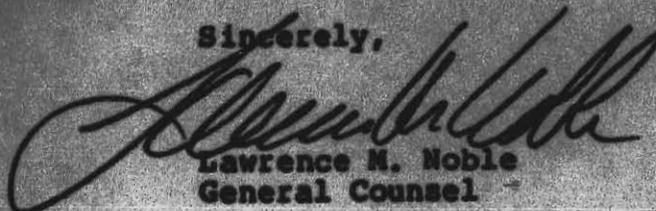
Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

91040842729

Sherry E. Tucker, Esquire
Page 2

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Deborah Curry, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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RECEIVED
FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION

89 APR 10 AM 9:06

SHERRY E. TUCKER
ATTORNEY AND COUNSELLOR AT LAW
800-D FRANKLIN SQUARE
CHAPEL HILL, NORTH CAROLINA 27514
(919) 967-3095

April 4, 1989

Ms. Deborah Curry
Attorney at Law
Federal Election Commission
Washington, D.C. 20463

RE: MUR 2336
William Woodward Webb;
Webb for Congress Committee
and Roy D. Fowler, III, as
treasurer; and
Mrs. M. Woodward Webb

89 APR 10 PM 12:10

RECEIVED
FEDERAL ELECTION COMMISSION

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Dear Ms. Curry:

This is to inform you that William Woodward Webb has returned the funds in question to Mrs. M. Woodward Webb. Enclosed please find a notarized Acknowledgement of Receipt which is signed by Martha Woodward Webb and the copy of the check in the amount of \$18,000.00 dated March 14, 1989, drawn on the account of William Woodward Webb and Mary Grimes Webb, made payable to Martha Woodward Webb and signed by William Woodward Webb.

It is our opinion that the return of these funds resolves the issues and constitutes full settlement of this matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sherry E. Tucker
Sherry E. Tucker

enclosures: Acknowledgement of Receipt
copy of check

copy: William Woodward Webb

ACKNOWLEDGEMENT OF RECEIPT

I, **MARTHA WOODWARD WEBB**, do hereby acknowledge receipt from my son, William Woodward Webb, of check number 0620, drawn to me on Merrill Lynch CMA Number 702-42424 in the amount of eighteen thousand dollars (\$18,000.00) which check constitutes return to me of a personal funds gift made to my son in March of 1986.

This the 21 day of March, 1989.

Martha Woodward Webb
MARTHA WOODWARD WEBB

Sworn to and subscribed before me,
this 21 day of March, 1989.

Stephen Scroggs
Notary Public
My Commission Expires:
March 28, 1990

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Neenah Bond
25% COTTON FIBER

9 1 0 4 0 8 4 2 7 3 3

WILLIAM WOODWARD WEBB
MARY GRIMES WEBB
801 OLD MILL ROAD
CHAPEL HILL, NC 27614

0620

CMAA Cash Management Account

3/14 19 87 \$18,100.00

Pay to the order of

Merrill Lynch

eighteen thousand & no/100

Dollars

Merrill Lynch

BANK ONE, COLUMBUS, MISSISSIPPI

MEMO: *3/14/87*

William Woodward Webb

3030400175P 0620

FOR DEPOSIT ONLY
Martina Woodward Welch

91040842734

90 day limit May 18, 1989

Handwritten initials/signature

0310X 11 PM 3:44

EXECUTIVE SESSION

BEFORE THE FEDERAL ELECTION COMMISSION

MAY 23 1989

In the Matter of)
William Woodward Webb;)
Webb for Congress)
Committee, Roy D. Fowler, III,)
as treasurer; and)
Mrs. M. Woodward Webb)

MUR 2336

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 14, 1989, the Commission found probable cause to believe William Woodward Webb, Webb for Congress Committee, and Roy D. Fowler, III, as treasurer ("Webb Committee"), violated 2 U.S.C. § 441a(f) by accepting an excessive contribution from Mrs. M. Woodward Webb. The Commission also found probable cause to believe the Webb Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. Additionally, the Commission found probable cause to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution to the Webb Committee.

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III. CIVIL SUIT AUTHORIZATION

The Commission and Respondents are within the statutorily-mandated period for conciliation.

The parties, however, appear far from an acceptable agreement and further conciliation may not be fruitful.

Therefore, it is also the recommendation of this Office that the Commission authorize civil suit in the event that an acceptable agreement is not reached within ten days of

Respondents' receipt of this letter. Accordingly, this Office will report to the Commission at the expiration of this ten-day period.

IV. RECOMMENDATIONS

- 1.
2. Approve the attached letter and proposed conciliation agreement.
3. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer; and Mrs. M. Woodward Webb.

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Date

5/11/89


 Lawrence M. Noble
 General Counsel

Attachments

- 1.
- 2.
3. Letter and Proposed Agreement

Staff assigned: Deborah Curry

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
William Woodward Webb;)
Webb for Congress Committee,) MUR 2336
Roy D. Fowler, III, as)
treasurer; and)
Mrs. M. Woodward Webb)

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission executive session of May 23, 1989, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to the above-captioned matter:

- 1.
2. Amend the letter and conciliation agreement recommended in the General Counsel's report dated May 11, 1989, and take no further action against Mrs. M. Woodward Webb.
3. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against William Woodward Webb; Webb for Congress Committee and Roy D. Fowler, III, as treasurer.

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

May 23, 1989
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant

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CLOSED

FEDERAL BUREAU OF INVESTIGATION
SECRETARIAT

BEFORE THE FEDERAL ELECTORAL COMMISSION

69 JUL -6 AM 11:53

In the Matter of)

William Woodward Webb,)
Webb for Congress Committee,)
Roy D. Fowler, III, as treasurer,)
and Mrs. M. Woodward Webb)

MUR 2336

SENSITIVE

GENERAL COUNSEL'S REPORT

On February 14, 1989, the Commission found probable cause to believe William Woodward Webb, Webb for Congress Committee, and Roy D. Fowler, III, as treasurer ("Webb Committee"), violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive contribution from Mrs. M. Woodward Webb. The Commission also found probable cause to believe the Webb Committee and Roy D. Fowler, III, as treasurer, violated 2 U.S.C. § 434 by failing to accurately report its debts and obligations. Additionally, the Commission found probable cause to believe Mrs. M. Woodward Webb violated 2 U.S.C. § 441a(a)(1)(A) by making the excessive contribution to the Webb Committee.

On May 23, 1989, the Commission determined to take no further action against Mrs. M. Woodward Webb and approved a final revised conciliation agreement for William Woodward Webb, Webb for Congress Committee and Roy D. Fowler, III, as treasurer. On that same date, the Commission authorized this Office to institute a civil suit in U.S. District Court against William Woodward Webb, Webb for Congress Committee and Roy D. Fowler, III, as treasurer, in the event that respondents failed to sign the Commission's final proposed agreement within 10 days of receipt.

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On June 13, 1989, Respondents submitted a response to the Commission's final conciliation proposal. (Attachment 1).

Respondents have failed to sign the Commission's proposal and their counterproposal is unacceptable. Therefore, this Office will institute a civil suit in the United States District Court.

Lawrence M. Noble
General Counsel

Date 7/5/89

BY: 
Lois G. Lerner
Associate General Counsel

Staff Assigned: Debby Curry

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FEDERAL ELECTION COMMISSION
OFFICE SERVICES BRANCH

06C 9721
FILED

91 JAN -4 AM 10:30

JAN 2 1991

United States District Court

LEONARD, CLERK
U. S. DISTRICT COURT
DIST. NO. 11

EASTERN DISTRICT OF NORTH CAROLINA

FEDERAL ELECTION COMMISSION,
Plaintiff,

JUDGMENT IN A CIVIL CASE

v.
ROY D. FOWLER, III, WEBB FOR
CONGRESS COMMITTEE and WILLIAM
WOODWARD WEBB,

CASE NUMBER: 89-664-CIV-5

Defendants.

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91 JAN -4 AM 11:40

- Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED the plaintiff's motion for summary judgment is hereby GRANTED. The plaintiff is granted declaratory and injunctive relief in accordance with the statute and a civil penalty is set at \$5,000.00.

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JUDGMENT FILED AND ENTERED THIS 2nd DAY OF JANUARY, 1991, AND COPIES MAILED TO:

Charles W. Snyder, Esquire
999 E. Street NW
Washington, DC 20463

Randolf Palmer Sugg, Esquire
Broughton, Wilkins & Webb
411 Fayetteville Street Mall
Raleigh, NC 27602

January 2, 1991
Date

J. Rich Leonard
Clerk

Rebecca Dover
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 89-664-CIV-5-BO

JAN 2 1990

J. RICHARD LEONARD, CLERK
U. S. DISTRICT COURT,
E. DIST. NO. CAR.

FEDERAL ELECTION COMMISSION,
Plaintiff,

v.

WEBB FOR CONGRESS COMMITTEE,
et al.,
Defendants.

ORDER

This matter comes before the undersigned United States District Judge on the Plaintiff's and Defendants' motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

The material facts in this case are undisputed. William Woodward Webb was a candidate for the United States House of Representatives in 1986. Near the end of the campaign, Mr. Webb traveled to Washington, D.C. with his mother. During that trip his mother, Mrs. Webb, asked Mr. Webb about his financial situation. Mr. Webb stated to her that because of the campaign he had suffered a loss of income due to the time spent away from his law practice and the expenditure of personal funds for the campaign. Mr. Webb indicated to his mother that some form of financial assistance would be appreciated. Rather than making it a gift to him personally, Mr. Webb decided that the money from his mother should be made as a loan to the campaign. A check was

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written from Mrs. Webb to The Webb For Congress Committee (the "Committee") for \$19,000. In its reports to the Federal Election Commission, (the "Commission") the Committee reported the source of the \$19,000 was the personal funds of Mr. Webb and not his mother Mrs. Webb.

On January 30, 1987, the Commission found reason to believe that the Committee had violated the Federal Election Campaign Act of 1971, as amended (the "Act"), 2 U.S.C. § 431 et seq., by accepting a contribution in excess of the limitations set by the Act and by failing to accurately report to the Commission the debts and obligations of the Committee. After unsuccessfully attempting to correct the violations in this case by informal methods, the Commission authorized the filing of this action.

CONCLUSIONS OF LAW

The Commission claims that the defendants have violated the Federal Election Campaign Act. Under Section 442a(a)(1)(A) of the Act, no person may make contributions to any candidate or his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000. A loan or a gift is considered a contribution. 2 U.S.C. § 431(8)(A)(i). Candidates for federal office are prohibited from accepting contributions that exceed the Act's limitations. 2 U.S.C. § 441a(f). In addition, the Act requires that political committees report to the Commission all loans received, the identification of each person making the loan, and the amount and nature of

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outstanding debts and obligations owed by the political committee.

The defendants argue that they are not in violation of 2 U.S.C. § 441a(f) because the funds were the personal funds of the Mr. Webb and were not given for the purpose of influencing Mr. Webb's election to Congress. The defendants rely on 11 C.F.R. 110.10(b)(2) which defines personal funds among others things as those "gifts of a personal nature which had been customarily received prior to candidacy." While Mrs. Webb's gift may have been intended to be a gift to Mr. Webb, similar to those gifts she had given to him prior to his candidacy, this gift was distinct in the fact that it was given to Mr. Webb's election committee and not to Mr. Webb directly. In addition, the defendants have stated that it was a loan to the Committee that Mr. Webb hoped would be paid back to his mother by the Committee. Whether it was a loan or a gift is of little importance. What is important is that the money was given directly to the Committee and not to Mr. Webb. Merely because Mr. Webb had received gifts in the past it does not follow that this particular loan was customary or of a personal nature as required by 11 C.F.R. 110.10(b)(2). This gift was made at the request of Mr. Webb and as a direct result of his candidacy.

Section 431(8)(A) of the Act defines contribution as money given "for the purpose of influencing any election for Federal office." It is clear that the money was given in order to influence a federal election. The money was paid directly to the

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Committee and the sole purpose of the Committee was to elect Mr. Webb to the U.S. House of Representatives.

Accepting the \$19,000 from Mrs. Webb violated Section 441a(a)(1)(A) of the Act because the amount of money exceeded the contribution limit imposed by that provision. The acceptance of the money was made knowingly by both Mr. Webb and the Committee. See FEC v. John A. Damesi For Congress Committee, 640 F.Supp. 985, 987 (D.N.J. 1986) ("knowing" standard of 2 U.S.C. §441a(f) "does not require knowledge that one is violating a law, but merely requires an intent to act.").

From the undisputed facts it follows that the defendants violated § 441a(f) of the Act and therefore, summary judgment is appropriate on Counts one and two of the complaint which charge that Mr. Webb, the Committee and the Committee's treasurer Mr. Roy D. Fowler violated 2 U.S.C. § 441a(f). Further, the Commission is also entitled to Summary Judgment on count three of the complaint because the Committee violated 2 U.S.C. §434(b) by falsely reporting the source of the \$19,000 as being Mr. Webb rather than Mrs. Webb.

RELIEF

The Act allows the court to grant " a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed ... a violation of this Act." There has been a proper

showing that the defendants have violated this Act and thus a civil penalty is warranted.

The Commission is entitled to declaratory and injunctive relief based on the defendants' violations. The Commission is entitled to declarations that the defendants violated Sections 441a(f) and 434(b) of the Act by accepting the contribution in excess of the limitations proposed by the Act and by failing to report the true source and nature of the \$19,000. Further, the plaintiff is entitled to a permanent injunction requiring them to comply with the provisions of the Act.

The Commission further asks the court to give the defendants a substantial civil penalty. The court finds that a reasonable penalty should be assessed. The defendants did not act in bad faith when they represented in their campaign reports that the money was from the personal funds of Mr. Webb instead of funds from a relative. It is apparent that the defendants and Mr. Webb in particular believed that the money from Mrs. Webb was similar to money he had been given by her in the past. Additionally, by asking his mother to make the check payable to his election committee he was hoping that he might be able to repay it.

However, after the Commission began investigating Mr. Webb and his committee, the facts show that Mr. Webb and the Committee were not completely candid with the Commission. Throughout the investigation, the defendants showed an insensitivity to the election laws. The Committee failed to reply to notices sent by the Commission, and when Mr. Webb finally spoke with the

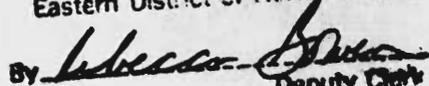
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Commission he was not completely forthright with them. While initially Mr. Webb may have had no intention of violating the Act, after it was discovered that he had, he tried to find ways to circumvent the law. Mr. Webb did not act in good faith with the Federal Election Commission once the proceedings were started against him. Therefore, a penalty is warranted.

Accordingly, the plaintiff's motion for summary judgment is hereby GRANTED. The plaintiff is granted declaratory and injunctive relief in accordance with the statute and a civil penalty is set at \$5,000.

SO ORDERED this 28th day of December, 1990.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

I certify the foregoing to be a true
and correct copy of the original.
J. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina
By 
Deputy Clerk

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2336

DATE FILMED 5/23/91 CAMERA NO. 1

CAMERAMAN AS

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