



FEDERAL ELECTION COMMISSION
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A85-19

March 13, 1987

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA *for RJC 3/13/87*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: WEST VIRGINIA REPUBLICAN STATE EXECUTIVE
COMMITTEE - MATTERS REFERRED TO OFFICE
OF GENERAL COUNSEL

On March 10, 1987, the Commission approved the final audit report of the Audit Division on the West Virginia Republican State Executive Committee. Attached as Exhibits A through D are matters noted in the final audit report which the Commission voted to refer to your office for review and consideration.

All workpapers in support of these matters are available for review in the Audit Division.

Should you have any questions, please contact Karin Simmons or Joe Stoltz at 376-5320.

Attachments as stated

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Exhibit A

Expenditures in Excess of Limitation Made
on Behalf of Candidates

Section 441a(d) (1) of Title 2 of the United States Code states, in part, that the national committee of a political party and a State committee of a political party may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations prescribed in that section.

Sections 110.7(b) (1) and (2) of Title 11, Code of Federal Regulations, state that the national committee of a political party and State committee of a political party may each make expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party. In the case of a candidate for election to the office of Senator, these expenditures are limited to the greater of \$20,000 or two cents multiplied by the voting age population of the State. In the case of the 1984 elections held in the State of West Virginia, the limitation was \$57,570.00.

Section 441a(a) (2) (A) of Title 2, United States Code, states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Section 106.1(a) of Title 11, Code of Federal Regulations, states that expenditures, including independent expenditures, made on behalf of more than one candidate shall be attributed to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived.

Sections 434(b) (4) (H) (iv) and (6) (B) (iv) of Title 2, United States Code, require that each report disclose the total amount of expenditures made under 2 U.S.C. § 441a(d). The disclosure required includes the name and address of each person who receives any expenditure from the reporting committee in connection with Section 441a(d) expenditures, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made.

Section 110.7(b) (4) of Title 11, Code of Federal Regulations, states that the party committees identified in 11 CFR § 110.7(b) (1) shall not make independent expenditures in connection with the general election campaign of candidates for Federal office.

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A review of reports and statements on file with the Federal Election Commission disclosed that the National Republican Senatorial Committee ("N.R.S.C.") reported \$115,140 in expenditures made on behalf of John Raese's 1984 general election campaign for U.S. Senator from West Virginia. These expenditures were made between July 26 and November 9, 1984. The Audit staff notes that this amount represents exactly twice the N.R.S.C.'s 2 U.S.C. § 441a(d) expenditure limitation (2 x \$57,570 = \$115,140). It is further noted that the N.R.S.C. has been known to enter into agreements with state party committees whereby the state party committee assigns their expenditure limitation pursuant to 2 U.S.C. § 441a(d) to the N.R.S.C. ^{1/}

It appeared to the Audit staff that the N.R.S.C. and the Committee may have entered into such an agreement with respect to expenditures made on Mr. Raese's behalf. Such an arrangement, however, would have precluded the Committee from independently making any such expenditures on this candidate's behalf.

The possibility of such an arrangement was pursued with Committee officials at the time of the audit fieldwork, however, the individual(s) who would have had knowledge of any such arrangement was not present when the matter was formally addressed.

In addition, during the entrance conference, Committee officials provided copies of materials related to expenditures for media communications which advocated the defeat of a clearly identified candidate (see Section(s) 1 and 2 below), however, they stated that no (other) expenditures were made on behalf of specific candidates. Further, with the exception of the expenditures addressed in Section 1., the Committee disclosed no such activity.

The auditors reviewed the Committee's expenditure records and documentation to determine if any expenditures were made on behalf of candidates, and, if so, if they were properly reported and within the prescribed limitation. During this review, the following expenditures were noted.

^{1/} See summary of FEC v. Democratic Senatorial Campaign Committee, Federal Election Commission Record, August 1981, Volume 7, No.8 and January 1982, Volume 8, No.1.

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1. Expenditures for Billboard Advertising

During the period May 22 through June 20, 1984, the Committee made 12 disbursements totaling \$21,733 to several vendors for billboard advertising. The billboards displayed negative statements regarding the record of then Governor Jay Rockefeller, the Democratic Party's candidate for U.S. Senate. The following messages were displayed:

"16%... Highest Unemployment in the U.S.
Just part of Jay's record for West Virginia"
and
"Biggest Tax Increase in State History.
Just part of Jay's record for West Virginia."

Billboard advertising space was purchased from at least four agencies. The supporting documentation was neither complete nor fully descriptive, yet from the information available, it appears that ads were displayed no earlier than June 1, 1984 and ran as late as July 4, 1984. The primary election in West Virginia was held on June 5, 1984.

On the July Quarterly FEC Report, covering April 1 - June 30, 1984, the Committee disclosed the above mentioned 12 disbursements as operating expenditures. On August 17, 1984, in response to correspondence from the Reports Analysis Division, the Committee amended their July Quarterly Report to disclose these expenditures as coordinated expenditures on behalf of John Raese, candidate for U.S. Senate, applicable to the \$57,570 general election expenditure limitation. Then, on December 10, 1984, the Committee again amended the July Quarterly Report, this time disclosing in-kind contributions of either \$2,716.63 or \$2,716.62 designated for the primary election campaigns of eight Republican candidates, including Raese for Senate. ^{2/}

In the interim audit report, the Audit staff argued that these expenditures were made on behalf of, and are allocable to, the general election campaign of Mr. John Raese. The advertisements contained clearly negative statements directed at the Democratic Party's senatorial nominee and ostensibly ran for a period of time subsequent to the primary election. The timing of the advertisements notwithstanding, their intent appeared to weaken support for Mr. Rockefeller's campaign, to the benefit of his opponent, Mr. Raese. Consequently, the advertisements sought to influence the outcome of the general election for the office of U.S. Senator from West Virginia. (See Advisory Opinion 1984-15.).

^{2/} The remaining seven candidates included four for U.S. House of Representatives as well as candidates for Governor, Secretary of State and Attorney General.

In the Interim Report, the Audit staff recommended that the Committee:

1. Provide an explanation and a copy of any agreement with the N.R.S.C. with respect to the assignment of the Committee's expenditure limitation pursuant to 2 U.S.C. § 441a(d).

2. Provide an explanation and/or documentation as to why the limitations of 2 U.S.C. § 441a(a)(2)(A) and 441a(d)(3)(A) have not been exceeded. Absent such a showing, the Audit staff recommended that a reimbursement equal to the amount in excess of the limitation be sought from the John Raese for Senate Committee.

3. File amended reports to disclose the allocation of these expenditures to the respective candidates as either general election contributions or coordinated party expenditures (Form 3X, Schedule F, line 23).

On May 19, 1986, the Committee filed their second response to the interim audit report stating that the purpose of the billboard advertising was to "display statements regarding the record of then-Governor Jay Rockefeller." The Committee's purpose was to show the voters how Jay Rockefeller and his Democratic administration had damaged the State of West Virginia.

The Committee's position is that the advertising project was designed to help the entire Republican ticket, especially gubernatorial candidate Arch Moore. The Committee feels that the billboards did not urge any West Virginia voter to vote for John Raese or against Jay Rockefeller. The Committee further stated that, in their opinion, the billboards do not depict a clearly identified candidate and there was no candidate-specific electioneering message. Therefore, the billboard activities are not subject to any limitations under Section 441a(d) of the Act (see Attachment 2. pp.4-5, Section #1).

After considering the Committee's response, it is the Audit staff's opinion that the billboard advertising could have been instrumental in Arch Moore's campaign for governor since the principal theme(s) were attacking Rockefeller's past record as governor. But it is also the opinion of the Audit staff that the advertisements benefited Mr. John Raese, the Republican Party's senatorial nominee who was running against Rockefeller at the time. We feel that, in the state of West Virginia, reference to "Jay" constitutes a clearly identified candidate. In addition, in Advisory Opinion 1985-14, the Commission addressed mailers proposed by the Democratic Congressional Campaign Committee. These mailers were to discuss the record of Republican members of Congress on selected issues. With respect to these mailers, the Commission stated -

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"With regard to DCCC's proposed sample mailer, the Commission assumes that its references to "Cong. X" indicate that a specific congressman will be identified by name. The Commission also assumes that the mailer's dissemination may include part or all of the district represented by the identified congressman. The Commission concludes that DCCC's expenditures for producing and disseminating the mailer either with or without the "Vote Democratic" statement will be subject to the Act's limitations and attributable pursuant to 11 C.F.R. § 106.1."

Given the Commission's opinion concerning the mailers noted above and the content and timing of the billboards in this case, it is the opinion of the Audit staff that the cost of the billboards are allocable under 11 C.F.R. § 106.1.

However, since the expenditures likely benefited the campaigns of both Governor Arch Moore and John Raese, they should be attributed to both. Therefore, in the opinion of the Audit staff one-half of the total expenditures made for the billboard advertising, or \$10,866.50 (\$21,733 x 50%), should be allocated to the general election campaign of Mr. John Raese.

2. Newspaper Advertisements

The Committee disclosed operating expenditures totaling \$2,060.47 for advertisements in three local newspapers just prior to the general election. The advertisements contained statements related to Governor Rockefeller's record and concluded with the following message: "Don't Be Fooled Again! VOTE Against Rockefeller on Tuesday!" No portion of the expenditures was allocated to specific candidates.

As noted at 11 C.F.R. § 110.7(b)(4), the Committee is precluded from making independent expenditures in relation to the general election. Therefore, it appears that the \$2,060.47 in expenditures which advocated the defeat of Governor Rockefeller should be treated as expenditures on behalf of, or contributions to, the general election campaign of his senatorial opponent, Mr. John Raese. As such, they should be reported as either in-kind contributions (Form 3X, line 21, Schedule B) or coordinated party expenditures (Form 3X, line 23, Schedule F).

In their response to the interim audit report, dated May 19, 1986, the Committee stated that the newspaper advertisements were purchased prior to the general election and therefore should be reported as either in-kind contributions or coordinated party expenditures on behalf of Mr. Raese (see Attachment 2.p.5, Item #2).

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3. Expenditures for Voter Registration
and Get Out the Vote (GOTV) -
Senatorial Candidate

Section 106.1(c) (3) of Title 11, Code of Federal Regulations states, in part, that payments made for the cost of certain voter registration and get-out-the-vote activities conducted by State or local party organizations on behalf of any Presidential or Vice-Presidential candidate(s) are exempt from the definition of a contribution or an expenditure under 11 CFR §§ 100.7(b) (17) and 100.8(b) (18). If the State or local party organization includes references to any candidate(s) seeking nomination or election to the House of Representatives or Senate of the United States, the portion of the cost of activities allocable to such candidate(s) shall be considered a contribution to or expenditure on behalf of such candidate(s), unless such reference is incidental to the overall activity.

In addition, Sections 100.7(b) (17) (vii) and 100.8(b) (18) (vii) of Title 11, Code of Federal Regulations, state that this exception shall not apply to payments for voter registration and get-out-the-vote which are made from funds donated by a national committee of a political party. Rather, such funds shall be subject to the limitation of 2 U.S.C. § 441a(d) and 11 C.F.R. § 110.7.

In September, 1984 the Committee conducted a voter registration/GOTV phone bank drive. The cost of this effort was \$9,000 (\$5,000 for telephone service and \$4,000 in consulting fees). It was noted that this drive appears to have been financed by funds received from the National Republican Party Committees.^{3/} The Committee disclosed these payments as operating expenditures. The Committee did not allocate any amounts to the candidates referred to in the calls.

A review of the script used by the callers indicates that the telephone calls were made on behalf of the party's gubernatorial candidate with specific reference made to four other candidates by name. Three of these were candidates for Federal office, including John Raese for Senate.

^{3/} The voter registration/GOTV phone bank drive was paid for from the Committee's Field Account. During the review of Committee bank documentation, it was noted that the Field Account was financed primarily by transfers from the National Republican Party Committees. In addition, a \$4,000 transfer from the RNC (deposited into the Field Account) was accompanied by a memorandum which specifically designated that the funds were to be used to pay the GOTV phone bank consulting fees.

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It is the opinion of the Audit staff that the phone bank script contained more than incidental candidate reference. Further, the expenditures used in connection with the GOTV phone bank drive do not satisfy the requirements for a contribution exemption set forth in 11 C.F.R. § 100.7(b) (17). Therefore, an allocation to the respective candidates involved is required.

Using a conservative approach, one-sixth of the cost could be allocated to each of the five candidates mentioned and the remaining one-sixth to the other candidates on the ballot. This would result in \$1,500 being allocable to John Raese for Senate (\$9,000 x 1/6).

In the Interim Report, the Audit staff recommended that the Committee provide an explanation and/or documentation as to why the limitations of 2 U.S.C. §§ 441a(a) (2) (A) and 441a(d) (3) (A) have not been exceeded. Further, the Committee should amend their reports if the GOTV costs are designated as in-kind contributions.

On May 19, 1986, the Committee responded that "the purpose of the phone bank was to generate support for the entire Republican ticket running in West Virginia ... but primarily to support the candidacies of Arch Moore (gubernatorial candidate) and President Reagan." The Committee feels that the mentioning of the other candidates for state and federal office were incidental to the purpose of the phone bank (see Attachment 2.pp.5-6, Section 3 and 4).

It is the opinion of the Audit staff that the mentioning of John Raese (and other state and federal candidates) in the phone bank script was more than incidental reference. Therefore, \$1,500 is allocable to the John Raese For Senate Committee.

4. Expenditures For Voter Registration and Get-Out-The-Vote (GOTV) - Presidential Candidate

Section 441a(d) (2) of Title 2, United States Code, states that the national committee of a political party may not make any expenditures in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

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As noted in Section 3. above, the Committee conducted a voter registration/GOTV phone bank drive on behalf of a number of candidates, including President Reagan. Also as noted above, the drive appears to have been funded in large part by transfers from the National Republican Party Committees and therefore does not satisfy the requirements for an exempt expenditure under 11 C.F.R. § 100.7(b) (17) (vii).

Using the approach mentioned in Section 3., one-sixth of the cost, or \$1,500, would be allocable to President Reagan, which would result in an expenditure in excess of the § 441a(d) (2) limitation. ^{4/}

On May 19, 1986, the Committee responded that "expenditures in connection with this phone bank are exempt from the definition of contribution and require no allocation to any Federal contribution limit set forth in 11 C.F.R. § 100.7(b) (17)." The Committee further argues that "Republican National Committee transfers can be used to pay for costs incurred by the Party associated with the phone bank allocable under any reasonable theory to candidates for state office without affecting in any manner the exemption of the phone bank expenditures on behalf of the federal candidates. The amount of funds received from the RNC by the Party used for the GOTV phone bank drive reflect less than the amount which, under any reasonable theory, would be allocable to the candidates benefitting from the phone bank drive who were seeking state office. The clear intent of the transfers was to support state candidacies or for other appropriate purposes."

The Committee also explained that each transmittal letter contained the admonition that these funds were not to be used for exempted expenditures as described in 11 C.F.R. § 100.7(b). The Committee also states that no funds transferred by the RNC were used by the West Virginia Republican Party for these exempt expenditures.

^{4/} As noted earlier, Committee officials stated that no coordinated party expenditures were made on behalf of candidates. In addition, there was no indication of the R.N.C. authorizing these as 2 U.S.C. § 441a(d) (2)/11 C.F.R. § 110.7(a) (4) expenditures. Further, as of December 31, 1984, the R.N.C. reported spending within \$511.50 of their \$6,924,802.40 2 U.S.C. § 441a(d) (2) limitation.

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As noted earlier, the voter registration/GOTV phone bank drive, which cost \$9,000, was paid for from the Committee's Field Account. During the audit period a total of \$84,916.76 was deposited into the Field Account. Of this amount, \$74,000 came directly from National Republican Party Committees, including a \$4,000 transfer from the Republican National Committee accompanied by a memorandum which specified that the funds were to be used to pay the GOTV phone bank consulting fees.

On September 28, 1984, the Committee transferred an additional \$10,000 to the Field Account from the Victory '84 account, which was an account set up by the RNC to deposit contributions to a Reagan-Bush fundraiser.^{5/}

Given the above, the Audit staff concludes the GOTV/Voter Registration phone bank was primarily paid for by funds received from the National Republican Party Committees and do not qualify for the exemption at 11 C.F.R. § 100.7(b)(17).

Summary

It is the opinion of the Audit staff that the expenditures discussed in Exhibit A, Sections 1 through 3 constitute contributions to or expenditures on behalf of Mr. John Raese's general election campaign for U.S. Senate. With the exception of the billboard activity noted in Section 1, in which an allocation adjustment was made based on the Committee's response, the Audit staff's position has not changed on any of the other issues. Therefore, it would appear that the Committee made contributions to and/or expenditures on behalf of John Raese For Senate in an amount which exceeded the allowable limitation(s) by \$9,426.97 and an expenditure in excess of the limitation to President Reagan of \$1,500.

^{5/} The Republican National Committee and the Republican National State Elections Committee each made a \$5,000 transfer into the Committee's Victory '84 account on September 19 and 20 of 1984 respectively.

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Recap: Expenditures on Behalf of John Raese for Senate

Expenditures for Billboards (Section #1)	\$10,866.50
Expenditures for Newspaper Advertisements (Section #2)	2,060.47
Expenditures for Voter Registration and G.O.T.V. (Section #3)	<u>1,500.00</u>
Subtotal	\$14,426.97
Less: 2 U.S.C. § 441a(a) (2) (A) General Election Contribution Limitation	(<u>5,000.00</u>)
Contributions/Expenditures in Excess of the Limitation	\$ <u>9,426.97</u>

Finally, it is noted that in their response, the Committee did not discuss the existence of any agreement between the N.R.S.C. and the Committee concerning the assignment of the Committee's expenditure limitation pursuant to 2 U.S.C. § 441a(d).

Recommendation

The Audit staff recommends that these matters be referred to the Office of General Counsel for further review.

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Apparent Prohibited Contributions

Section 441(b) of Title 2, United States Code, states, in part, that it is unlawful for any corporation, national bank, or labor organization to make a contribution or expenditure in connection with any election to any Federal office.

During the review of the Committee's contribution records the Audit staff noted a \$3,000.00 apparent corporate contribution.

In the Interim Report, the Audit staff recommended that the Committee either refund the corporate contribution, transfer the monies into the Committee's non-federal account (if permissible under state law), or, provide evidence to the Audit Division that the contribution was comprised of funds which are permissible under the requirements of the Act.

On May 1, 1986, the Committee responded that they were unable to locate either PINCO or Mr. Phillips to make a refund of the \$3,000 contribution. The Committee contacted the Cash Management Account Division of Merrill Lynch in New York, which informed them that the account was closed on December 18, 1985. Therefore, the Committee was unable to follow the Audit staff's recommendation (see Attachment 2, pg.1 of 12).

Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel for further review.

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Transfers of Funds From Unregistered/Non-Federal Committees

Section 102.5(a)(1)(i) of Title 11, Code of Federal Regulations states, in part, that a political committee which finances political activity in connection with both federal and non-federal elections and establishes separate federal and non-federal accounts shall only deposit funds subject to the prohibitions and limitations of the Act into such federal accounts.

During the review of the Committee's contribution records, it was noted that of the 28 transfers and contributions received from party and other political committees, nine transfers totaling \$52,670.00 were from committees which were not registered with the Federal Election Commission. Four of the transfers, totaling \$50,000, were from the Republican National State Elections Committee. The remaining five transfers were from either (West Virginia) local party organizations or political action committees. Since these committees are not registered under the Act and since West Virginia State election law permits contributions from labor organizations, these transfers may be comprised of funds which are not permissible for use in federal elections.

In the Interim Report the Audit staff recommended that the Committee do one of the following:

1. refund the monies to the respective political committees,
2. transfer the monies into the Committee's non-federal account (if funds are not available report the amounts as debts until transferred) or,
3. provide evidence to show that the funds are permissible under the Act.

On June 2, 1986, the Committee sent an update to a previous response informing the Audit staff that it has been determined that the Committee's Field Account, which was previously reported as a federal account, is actually a state account and should not have been reported. It should be noted that three of the four transfers from the Republican National State Elections Committee, totaling \$45,000, went into the Field Account. The other \$5,000 transfer went into the Victory '84 account, which is a federal account.

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On June 16, 1986, the Committee filed a comprehensive amendment for 1984 and deleted the Field Account, which contained the \$45,000 in transfers from the Republican National State Elections Committee.

The Committee submitted evidence to show that of the remaining \$7,670.00, \$7,020.00 has been transferred into their non-federal account. The Committee further states that the final \$650.00 will be transferred.

Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel for further review.

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Itemization and Disclosure of Contributions
From Political Committees

Section 434(b) (3) (D) of Title 2, United States Code, requires disclosure of the identification of each affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers. Instructions for the Detailed Summary Page of FEC Form 3X dictate that for each transfer, the identification of the committee, date and amount of the transfer and the aggregate year-to-date total must be disclosed.

A review of the Committee's reporting of transfers received was conducted. It was noted that the Committee received 28 transfers and contributions, totaling \$141,466.50, from party and other political committees. Of the 28, 20 were either not itemized or lacked certain required disclosure information as follows:

1. eight transfers totaling \$14,246.50 were not itemized as required. This represents 28.57% of the number and 10.07% of the dollar value of the transfers received, and
2. 12 were lacking aggregate year-to-date totals. In addition, five of the 12 identified the name of the contributing committee incorrectly (4 transfers totaling \$50,000 from the Republican National State Elections Committee were itemized as having been received from the Republican National Committee (see Exhibit C)).

In the Interim Report, the Audit staff recommended the Committee file amended reports for 1983 and 1984 properly disclosing the items noted above.

On June 16, 1986, the Committee filed a comprehensive amendment correcting the items noted above. As part of that amendment, the Committee deleted from their disclosure report all transactions related to their "field account" noting that this account was actually a non-federal account. It should be noted that three of the four transfers, totaling \$45,000, came from the Republican National State Elections Committee and were deposited into the Field Account.

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Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel for further review.

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EXECUTIVE SESSION

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 2370

STAFF MEMBER: Sandra H. Robinson

SOURCE: Internally Generated

RESPONDENTS: West Virginia Republican State Executive
Committee and Jack Rossi, as treasurer

Republican National Committee and William J.
McManus, as treasurer

- RELEVANT STATUTES:
- 2 U.S.C. § 441a(a)
 - 2 U.S.C. § 441a(d)
 - 2 U.S.C. § 441a(f)
 - 2 U.S.C. § 441b
 - 11 C.F.R. § 110.7(b)(1) and (2)
 - 11 C.F.R. § 106.1
 - 2 U.S.C. § 434(b)(3)(D)
 - 2 U.S.C. § 434(b)(4)(H)(iv)
 - 2 U.S.C. § 434(b)(6)(B)(iv)
 - 11 C.F.R. § 110.7(a)(4)
 - 11 C.F.R. § 110.7(b)(4)
 - 11 C.F.R. § 102.5(a)
 - 11 C.F.R. § 100.7(b)(17)(vii)
 - 11 C.F.R. § 100.8(b)(18)(vii)

INTERNAL REPORTS

CHECKED: Audit Referral
Disclosure Reports
Audit Workpapers

FEDERAL AGENCIES

CHECKED: None

I. GENERATION OF MATTER

Pursuant to Section 438(b) of the Federal Election Campaign Act of 1971, as amended, Title 2 of the U.S. Code ("the Act"), the Commission conducted an audit of the West Virginia Republican State Executive Committee ("the Committee"). The audit covered the period of January 1, 1983, through December 31, 1984. The treasurers of the Committee during the period audited were Ronald Pearson, from January 1, 1983, to August 1983; and Thomas D.

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Winter, from August 1983, to July 19, 1986. The current treasurer is Jack Rossi. On March 10, 1987, the Commission approved the Final Audit Report, and certain matters arising from it were referred to the Office of the General Counsel. Attachment I.

The Committee is a registered, party-related, multicandidate committee, within the meaning of 2 U.S.C. § 431(4)(C). The Committee made certain expenditures connected with the John Raese campaign^{1/} and the Reagan presidential campaign during the 1984 election cycle, which allegedly resulted in excessive expenditures in violation of 2 U.S.C. § 441a(d). Information obtained during the audit suggested that the Committee entered into an agreement assigning its Section 441a(d) expenditure limitation attributable to the John Raese campaign to the National Republican Senatorial Committee ("NRSC"). On its reports filed with the Commission the NRSC disclosed a total of \$115,140 in coordinated expenditures on behalf of John Raese's general election campaign, this amount equalling exactly twice the state party's coordinated expenditure limitation of \$57,570.^{2/} The audit was unable to verify the existence of an assignment agreement between the NRSC and the Committee, as the person(s) with such knowledge was not present when the matter was formally addressed. There is no evidence of a written designation.

^{1/} John Raese was the Republican candidate for Senator from the State of West Virginia during the 1984 election cycle. Mr. Raese lost the general election with 48 percent of the vote.

^{2/} The NRSC also disclosed that it had been designated by the Republican National Committee ("RNC"), as well as the individual state committees, to make coordinated expenditures on behalf of various candidates.

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The audit also found an apparent corporate contribution to the Committee, the status of which has not been resolved. The audit further noted that the Committee's Field Account may have included funds from sources prohibited by the Act, and that several disbursements for federal activity were made from this account. In response to the Interim Audit Report, mailed to the Committee on March 5, 1986, the Committee stated that its Field Account had been erroneously designated a federal account and deleted it as such. All of these issues were included in the audit referral and are discussed below.

II. FACTUAL AND LEGAL ANALYSIS

A. TRANSFERS OF FUNDS FROM UNREGISTERED/NON-FEDERAL COMMITTEES

The Act prohibits corporations and labor organizations from making any contributions or expenditures in connection with any election for federal office. Candidates, political committees and other persons are prohibited from knowingly accepting or receiving any contributions so prohibited. 2 U.S.C. § 441b(a).

Pursuant to 11 C.F.R. § 102.5(a)(1)(i), a political committee which finances political activity in connection with both federal and non-federal elections and establishes separate federal and non-federal accounts shall only deposit funds subject to the prohibitions and limitations of the Act into its federal accounts. In addition, only contributions meeting the following criteria shall be deposited in such federal accounts:

- 1) contributions designated for the federal account;
- 2) contributions resulting from solicitations expressing

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that they will be used in connection with a federal election; and,

3) contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act. 11 C.F.R. § 102.5(a)(2).

Four accounts of the Committee were examined during the audit. The Committee's Main Account was identified as a federal account, with funds deposited in it received from contributions and transfers from the RNC and the NRSC. The purpose of the account was to fund federal activity. Expenditures were generally for the Committee's overhead. The Committee's A-Team Account was a federal account established to retire the debts of the Committee and the Arch Moore for Governor Committee. Receipts came from contributions. Expenditures were characterized as "miscellaneous." The Victory '84 Account was a federal account established in conjunction with the RNC for the deposit of funds generated for the Reagan-Bush campaign. Receipts were derived from contributions and transfers; and expenditures were for miscellaneous expenses. The Committee's Field Account was initially disclosed by the Committee as a federal account. It was established prior to the 1984 general election for a get-out-the-vote (GOTV) drive for the Committee and the Moore for Governor Committee. Receipts were derived from transfers from the RNC and the Republican National State Elections Committee ("RNSEC"). Expenditures were for overhead, salaries, and travel expenses. Activity involving the Field

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Account is discussed further in this report in greater detail.

The audit found 28 transfers to the Committee's four accounts, of which nine transfers and contributions, totalling \$52,670, were from committees not registered with the Commission. Attachment I(13)-(14). The West Virginia state election law prohibits corporate contributions, but permits contributions from labor organizations up to \$1,000 per candidate per election. Therefore, some of the transferred funds from these unregistered/non-federal committees might have included contributions prohibited by the Act at Section 441b and failed to meet the requirements of 11 C.F.R. § 102.5(a). The RNSEC does not appear to be regulated even by the West Virginia election law, therefore, its funds could have included corporate or labor union contributions. The following chart shows the transfers into the Committee's accounts from the unregistered/non-federal committees.

<u>Name of unregistered/ non-federal committee</u>	<u>Amount</u>	<u>Account where Deposited</u>
1. RNSEC	\$15,000	Field Account
2. RNSEC	10,000	Field Account
3. RNSEC	20,000	Field Account
4. RNSEC	5,000	Victory '84 Account
5. Jefferson County Women's Club	100	Victory '84 Account
6. CONCEPT	520	Main Account
7. Magnolia County	550	Main Account

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<u>Name of unregistered/ non-federal committee</u>	<u>Amount</u>	<u>Account where Deposited</u>
8. Ritchie County Republican Executive Committee	1,000	A-Team Account
9. Eastern Association Coal PAC	500	A-Team Account
Total	\$52,670	

In response to the recommendations in the Interim Audit Report to either refund the monies, transfer the monies to a non-federal account or provide evidence that the monies are permissible under the Act, the Committee stated that the Field Account had been incorrectly reported as a federal one, as it was actually a state account established to manage funds and expenses for state election activities.^{3/} The Committee filed an amendment to its 1984 Year End Report on June 17, 1986, wherein it summarized the receipts and disbursements per reporting period for its three federal accounts and deleted the Field Account. Since \$45,000 of the total amount received from the unregistered/non-federal committees was already in the Field Account, a balance of \$7,670 (\$52,670 - \$45,000) remained to be transferred from the Committee's three federal accounts. In its amended 1984 Year End Report, the Committee disclosed transfers totalling \$6,500 to its Field Account, made on May 8,

^{3/} As discussed elsewhere in this report, disbursements were made from the Field Account in connection with federal election activity. Recommendations regarding this are included in other sections.

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1985.^{4/} The amended report also disclosed that on July 5, 1984, the Committee transferred \$520 from its Main Account to the Field Account. Additional information is needed to determine whether the Committee transferred the \$100 contributed by the Jefferson County Women's Club from its Victory '84 Account, and the \$550 contributed by Magnolia County from its Main Account, to its non-federal account. This Office recommends a finding of reason to believe the Committee violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a), for accepting funds from unregistered/non-federal organizations and prohibited by the Act; and for depositing such funds in its federal accounts.

B. EXPENDITURES IN EXCESS OF LIMITATIONS

The Act and the Commission's Regulations provide in relevant parts, the following:

2 U.S.C. § 441a(d)(1) - the national committee of a political party and a state committee of a political party may each make expenditures in connection with the general election campaign of respective party candidates for Federal office, subject to the limitations prescribed in Section 441a.

2 U.S.C. § 441a(d)(2) - the national committee of a political party may not make any expenditures in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party, which exceeds an amount equal to 2 cents multiplied by the voting age

^{4/} The Committee provided a list of the interaccount transfers for the audit, which showed that \$5,000 of this amount came from the Victory '84 Account and \$1,500 came from the A-Team Account.

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population of the United States. Any expenditure under this section shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President. For the 1984 Presidential election, the expenditure limitation was \$6,924,802.40.

11 C.F.R. § 100.7(b)(17) - the state or local committee of a political party may make payments for the costs of voter registration and get-out-the-vote activities conducted by such committee of behalf of that party's Presidential and Vice-Presidential nominee(s) which are not contributions to such candidate(s) provided that the following criteria are met:

- a. such payment cannot be for the costs of general public communications or political advertising;
- b. such payment is made from contributions subject to the limitations and prohibitions of the Act;
- c. such payment is not made from contributions designated for a specific candidate;
- d. where such activities include references to any candidate(s) for the House or Senate, the costs of such activities shall be allocated proportionately to that candidate(s) unless the mention of such candidate(s) is merely incidental;
- e. the phone banks conducted in connection with the voter registration/GOTV activities are operated by volunteers;

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f. payments for the costs of such activities are not made from funds donated by a national committee of a political party to a state or local party committee.

11 C.F.R. § 102.5(a) - all expenditures made by a committee in connection with any federal election must be made from its federal account(s). In addition, only contributions meeting the following criteria shall be deposited in a federal account:

- 1) contributions designated for the federal account;
- 2) contributions resulting from solicitations expressing that they will be used in connection with a federal election; and,
- 3) contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act.

2 U.S.C. § 441a(d) (3) and 11 C.F.R. § 110.7(b) (1) and (2) - the national committee of a political party and the state committee of a political party may each make expenditures in connection with the general election campaign of a candidate for Federal office in the state, who is affiliated with the party. Expenditures on behalf of a candidate for the office of Senator are limited to the greater of \$20,000 or two cents multiplied by the voting age population of the respective State. For the 1984 election held in the State of West Virginia, the expenditure limitation was \$57,570. Expenditures on behalf of a candidate for the office of Representative in a state with more than one

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district are limited to \$10,000, adjusted by the consumer price index. For the 1984 election held in the State of West Virginia the expenditure limitation was \$20,200.

2 U.S.C. § 441a(a)(2)(A) - no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

2 U.S.C. § 441a(f) - a candidate or political committee is prohibited from knowingly accepting any contribution or making any expenditure in violation of the provisions established in Section 441a; and no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed under Section 441a.

11 C.F.R. § 106.1(a) - expenditures made on behalf of more than one candidate shall be attributed to each candidate in proportion to the benefit reasonably expected to be derived and shall be reported to reflect such benefit.

2 U.S.C. § 434(b)(4)(H)(iv) and (6)(B)(iv) - each report filed with the Commission shall disclose the total amount of expenditures made under 2 U.S.C. § 441a(d). The disclosure required includes the name and address of each person who received any expenditure from the reporting committee in connection with Section 441a(d) expenditures, together with the date, amount, and purpose of any such expenditure, as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made.

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11 C.F.R. § 110.7(b)(4) - party committees shall not make independent expenditures in connection with the general election campaign of candidates for Federal office.

The Committee's expenditure records and documentation were reviewed by the auditors to determine (1) if expenditures were made on behalf of federal candidates, and (2) whether such expenditures were within the prescribed limitations and properly reported. The following expenditures were referred.

1. Voter Registration and Get Out the Vote (GOTV)

In September 1984, the Committee conducted a voter registration/GOTV drive which cost \$9,000 (\$5,000 for the telephone service and \$4,000 for consulting fees). The audit found that funds were disbursed from the Committees's Field Account to pay for the GOTV activity. Attachment I(7)-(10).

The Committee disclosed payment for the GOTV activity as operating expenditures and did not allocate any amount to any candidates. In response to the Interim Audit Report, the Committee asserted that the purpose of the drive was to promote the entire Republican ticket, especially the gubernatorial candidate, Arch Moore, and President Reagan. The Committee stated that the mention of other candidates was incidental. This Office has reviewed the script used by the callers and concurs with the audit conclusion that the mention of the other candidates was more than incidental. The script included the following statement: "President Reagan, John Raese for Senate, Jim Altmeyer for U.S. Congress, and John McCuskey for Attorney

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General are asking for your support and so are the other fine, Republican candidates running here in West Virginia." Arch Moore, the gubernatorial candidate, is mentioned twice in the script; no other candidates are mentioned by name.

Pursuant to 11 C.F.R. § 100.7(b)(17), when the reference to any candidates for the House or Senate are made during a GOTV activity for a party's Presidential candidate, and such reference is more than incidental, the costs for the activity must be allocated proportionately to those candidates. The costs would, therefore, be subject to the limitations of the Act under 2 U.S.C. § 441a(a) or 441a(d). A formula was devised during the audit to allocate one-sixth of the total cost to each of the five candidates mentioned individually in the script and to allocate the remaining one-sixth to the other candidates referred to in the script (\$9000 x 1/6).

In addition to the above circumstances, it appears that the expenditures may not qualify for the exemption pursuant to 11 C.F.R. § 100.7(b)(17), because national party funds were used to pay for connected costs. The documentation showed that an adjusted total of \$82,750 was deposited in the Committee's Field Account. In addition to the \$45,000 transferred from the RNSEC to the Field Account, noted above, the audit also found that the RNC had transferred \$29,000 into that account. A memorandum accompanied a \$4,000 transfer from the RNC, which stated that the funds were to pay the consulting fees for the GOTV phone bank.^{5/}

5/ The RNC disclosed this disbursement in its 1984 Pre-General Report as a transfer to the Committee.

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Using the above formula, one-sixth of the cost, or \$1,500, would be allocable to the Reagan campaign.

There is no evidence to suggest that the RNC designated the Committee to make Section 441a(d) coordinated party expenditures for the Reagan campaign. To the contrary, the audit noted that the RNC reported spending within \$511.50 of its Section 441a(d) limitation of \$6,924,802.40 for the Presidential election. However, the RNC, having transferred the \$4,000 to the Committee for the GOTV activity appears to have made additional coordinated party expenditures on behalf of the Reagan campaign. When the \$4,000 is divided proportionately according to the recommended formula, \$666.67 should be allocated to the Reagan presidential campaign ($\$4,000 \times 1/6$). Therefore, it appears that the Republican National Committee violated 2 U.S.C. § 441a(f), by exceeding the coordinated party expenditure limitation by \$155.17 ($\$666.67 - \511.50).

Based on the circumstances discussed above, and in the previous section where it appears that monies in the Field Account included contributions not subject to the limitations and prohibitions of the Act, the Committee, having redesignated its Field Account as a non-federal one and having made expenditures for the phone bank from that account, has also violated 11 C.F.R. § 102.5(a)(1), by making such expenditures from a non-federal account. This too would, therefore, preclude the Committee from claiming an exemption under 11 C.F.R. § 100.7(b)(17) regarding its voter registration-GOTV activity. Since none of these

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expenditures have been reported as allocable to any candidate for federal office, the Committee is also in violation of 2 U.S.C. § 434(b)(4)(H)(iv) and 434(b)(6)(B)(iv).

2. Expenditures for Billboard Advertising

The Committee disbursed \$21,733 between May 22 and June 20, 1984, on billboards displaying statements about the record of then governor, Jay Rockefeller, who was also the Democratic Party's candidate (and Mr. Raese's opponent) for the U.S. Senate. A copy of pictures of the billboards obtained from the Audit Division showed that they displayed the following messages:

**"16% . . . Highest Unemployment in the U.S.
Just part of Jay's record for West Virginia."**

and

**"Biggest Tax Increase in State History
Just part of Jay's record for West Virginia."**

The audit discerned from available information that the billboard advertisements were displayed no earlier than June 1, 1984, and remained as late as July 4, 1984. Attachment I(4)-(6). The primary election in West Virginia was held on June 5, 1984.

The Committee initially reported the disbursements for the costs of the billboards on its 1984 July Quarterly Report as operating expenditures. Following a Request for Additional Information ("RFAI") from the Reports Analysis Division ("RAD"), that Report was amended on August 14, 1984, to disclose these expenditures as made on behalf of John Raese, applicable to the Section 441a(d) coordinated party expenditure limitation of \$57,570.

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On August 20, 1984, the Committee submitted an amended Summary Page for the 1984 July Quarterly Report to correct certain totals previously reported. The cover letter stated that this action was taken following a telephone conversation with the RAD analyst.

On December 6, 1984, the Committee again amended the 1984 July Quarterly Report. In this amended Report the Committee changed the designation of the billboard expenditures from coordinated party expenditures to in-kind contributions made on behalf of eight federal and state candidates. Specifically, the Committee reported the total billboard expenditures of \$21,733, as operating expenditures, and simultaneously divided that total among five candidates for Federal offices and three candidates for state offices, who apparently benefitted from the billboard advertising. As a result, the Committee allocated \$2,715.62 to the Raese campaign. It is not clear whether this contribution is for the primary or general election, as no designation was checked. However, the contributions allocated to the campaigns of the other federal and non-federal candidates are each designated for the primary election.^{6/} This amendment appears to have been made as a result of a RFAI mailed to the Committee on November 8, 1984, regarding a discrepancy between information on the July Quarterly Report and the year-to-date totals for

^{6/} The other four candidates for Federal offices were in the races for Representative from four districts in the State of West Virginia. There is no evidence to suggest that the Committee exceeded its contribution limitation in either of these campaigns.

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disbursements disclosed on the 1984 October Quarterly Report. The RFAI specifically referenced an apparent omission of the activity disclosed on the 1984 July Quarterly Report at Lines 23 (coordinated expenditures) and 27 (other disbursements) on the Detailed Summary Sheet. In response, the Committee amended the October Report and stated in the cover letter that the July Report had been amended. The reason for deleting the billboard disbursements as coordinated party expenditures on behalf of the Raese campaign is not clear. This action does further substantiate the possibility that the Committee assigned its Section 441a(d) limitation to the NRSC.

The Interim Audit Report stated that the above advertisement expenditures were made on behalf of, or allocable to, the general election campaign of Mr. Raese, as the billboards appeared to seek to influence the outcome of the general election for the office of U.S. Senator from West Virginia. The Committee was asked to explain why a Section 441a(a) or Section 441a(d) limitation did not apply. Chief Counsel for the RNC responded by a letter dated May 16, 1986, on behalf of the Committee and stated that the advertisements were designed to bolster the entire Republican ticket, especially Arch Moore, the party's candidate for governor. Further, he asserted that the advertisements did not depict a clearly identified candidate and that there was no candidate-specific electioneering message, therefore, the Section 441a(d) limitation was not applicable. He stated that the Committee had properly reported

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the disbursements initially as operating expenditures and proposed to amend the Report to reflect that designation. To date that amendment has not been filed, therefore, the Report remains with the expenditures disclosed as in-kind contributions divided proportionately among the federal and non-federal candidates.

As previously discussed, the NRSC disclosed in reports filed with the Commission that it made coordinated party expenditures on behalf of the 1984 Raese general election campaign. In these reports the NRSC stated that it was designated by the national and state party committees to make such expenditures. The expenditures made on behalf of the Raese campaign equalled the total amount allowed by the Act for the 1984 election in West Virginia. The absence of a written agreement or verbal verification from the Committee was noted during the audit and it was recommended that one-half of the total expenditures for the billboard advertising, \$10,866.50 (\$21,733 x 50%), be allocated to Mr. Raese's general election campaign, presumably attributable to the Section 441a(a) limitation. The Committee's amendment to its 1984 July Quarterly Report, which deleted the billboard expenditures as coordinated party expenditures, lends further credence to the possibility that a designation was in effect. This Office recommends a finding of reason to believe the Committee violated 2 U.S.C. § 441a(f), for making excessive expenditures on behalf of the Raese campaign and has

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included questions in the proposed interrogatories regarding the designation.

3. Newspaper Advertisements

The Committee disclosed operating expenditures on its 1984 Post General Election Report, totalling \$2,060.47, for advertisements appearing in three newspapers prior to the 1984 general election. Copies of the advertisements were not available for the audit; however, the Committee did provide copies of the work papers which depicted what was contained in them. The advertisements advocated the defeat of Jay Rockefeller in the election with such statements as, "Why West Virginians CANNOT Vote for Gov. Rockefeller" and "Don't Be Fooled Again! VOTE Against Rockefeller on Tuesday!" No portion of the expenditures were allocated to a specific candidate. Attachment I(6).

The Committee is precluded by 11 C.F.R. § 110.7(b)(4) from making independent expenditures in connection with the general election campaign of candidates for Federal office. In response to the Interim Audit Report, the Committee agreed that the newspaper advertisements were purchased prior to the general election and, therefore, should be reported as either in-kind contributions or coordinated party expenditures on behalf of Mr. Raese. To date, the Committee has not amended its 1984 Post-General Election Report to change the allocation of these expenditures to the Raese campaign. Therefore, this Office recommends a finding of reason to believe the Committee is in violation of 2 U.S.C. § 434(b).

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In consideration of the above discussions, and using the amounts resulting from the formulas recommended in the Final Audit Report, the Committee's expenditures on behalf of the John Raese for Senate campaign totalled \$14,426.97.

Billboards	\$10,866.50
Newspaper Advertisements	2,060.47
Voter Registration/GOTV	<u>1,500.00</u>
Total	\$14,426.97

The billboard expenditures are the only ones currently reported by the Committee as allocable to the Raese campaign. As noted above, the last disclosure for this allocation was as an in-kind contribution in the amount of \$2,715.62. Using the current total of \$14,426.97, the Committee has exceeded the expenditure limitations of the Act in violation of 2 U.S.C. § 441a(f).

C. PROHIBITED CONTRIBUTION

Section 441b of Title 2, United States Code, states that it is unlawful for any corporation, national bank, or labor organization to make a contribution or expenditure in connection with any election to any Federal office. Any candidate, political committee, or other person is prohibited from knowingly accepting and receiving a contribution so prohibited.

The audit found an apparent corporate contribution to the Committee in the amount of Three Thousand Dollars (\$3000) from PIMCO and Trevor Phillips. When requested to either refund the corporate contribution, transfer the monies into the Committee's

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non-federal account, or provide additional evidence of permissibility, the Committee responded that it could not follow either recommendation. Upon conducting its own investigation, the Committee concluded that the corporation and its representative were unavailable, as the account (a Merrill Lynch Cash Management Account) was closed and there was no forwarding address. Attachment I(12). In its response the Committee also stated that it had learned that the cash management account was for a partnership. The contribution at issue was reported on the Committee's 1984 Post-General Election Report filed on December 6, 1984. Amendments to that Report were filed on January 9, 1985, and March 19, 1985. In neither amended report is this contribution adjusted.

The address for Trevor Phillips, as identified on the Committee's disclosure reports, is located in Garden Grove, California. The address on a copy of the check found in the audit files coincided with that in the reports. The check has the name "PIMCO" printed over Mr. Phillip's name. There is currently an active corporation in good standing in the State of California named PIMCO, Inc., but it is located in Santa Ana, California, and neither the president nor the agent for the company is identified as Mr. Phillips. A second corporation which initially had the name PIMCO, Inc., changed its name to Industrial Molding Corporation in August 1978. This company is located in Quintana, California, and Mr. Phillips is not identified as president or agent here either. This Office has

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also learned that a Trevor Phillips is not listed with the telephone directory in Garden Grove, California, but there is a listing under that name in Newport Beach, California. This Office, therefore, recommends a finding of reason to believe the Committee violated 2 U.S.C. § 441b by knowingly accepting an apparent corporate contribution, and has included questions regarding this issue in the proposed interrogatories.

D. ITEMIZATION AND DISCLOSURE OF CONTRIBUTIONS

Pursuant to 2 U.S.C. § 434(b)(3)(D), reporting committees must disclose the identification of each affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee must be disclosed, regardless of whether such committees are affiliated, together with the date and amount of such transfers. Instructions for the Detailed Summary Page of FEC Form 3X require that, for each transfer, the identification of the committee, date and amount of the transfer and the aggregate year-to-date total be disclosed.

The Committee received a total of 28 transfers and contributions from party and other political committees totalling \$141,466.50. Of the 28 transfers, 20 were either not itemized or lacked certain required information as indicated below:

- 1) 8 transfers totalling \$14,246 were not itemized as required; and

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- 2) 12 lacked aggregate year-to-date totals (5 of these identified the contributing committee incorrectly). Attachment I(15)-(16).

The Committee made the appropriate corrections in response to the recommendations in the Interim Audit Report, in its comprehensive amendment to the 1984 Year-End Report filed on June 17, 1986, discussed above. This Office recommends a finding of reason to believe the Committee violated 2 U.S.C. §§ 434(b) (2) and 434(b) (3) (D), for failure to report these transfers and contributions accurately and in a timely manner.

B. SUMMARY

In summary, this Office is recommending that the Commission find reason to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated the following sections of the Act and the Regulations: 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a) (2), for accepting funds prohibited by the Act and depositing such funds in its federal accounts; 2 U.S.C. §§ 434(b) (4) (H) (iv) and 434(6) (B) (iv), for failing to properly allocate expenditures for a voter registration/GOTV activity; 2 U.S.C. § 441a(f), for making excessive expenditures on behalf of the Reagan and Raese campaigns; 11 C.F.R. §102.5(a) (1), for making expenditures from a non-federal account connected with federal election activity; and 2 U.S.C. § 434(b) (2) and 434(b) (3) (D), for failing to report certain contributions and transfers accurately and in a timely manner. This Office also recommends that the Commission find

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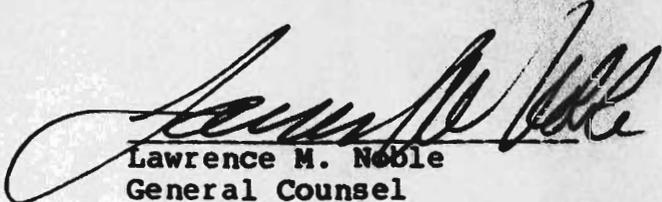
reason to believe the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 441a(f), for making excessive coordinated party expenditures of \$155.17 on behalf of the Reagan campaign, and take no further action against this respondent.

III. RECOMMENDATIONS

1. Find reason to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b)(2), 434(b)(3)(D), 434(b)(4)(H)(iv), 434(b)(6)(B)(iv) and 441b; and 11 C.F.R. § 102.5(a).
2. Find reason to believe the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 441a(f), and take no further action and close the file as it pertains to this respondent.
3. Approve the attached letters, Factual and Legal Analyses, Interrogatories and Requests for Production of Documents.

Date

1/22/89


Lawrence M. Noble
General Counsel

Attachments

1. Audit Referral
2. Factual and Legal Analyses(2)
3. Letters and Interrogatories and Requests for Production of Documents(2)

Staff Person: Sandra H. Robinson

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN
DATE: JANUARY 27, 1988
SUBJECT: OBJECTIONS TO MUR 2370 - General Counsel's Report
Signed January 25, 1988

The above-captioned document was circulated to the Commission on Monday, January 25, 1988 at 4:00 P.M.

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

Commissioner Aikens	<u> X </u>
Commissioner Elliott	<u> </u>
Commissioner Josefiak	<u> XX </u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> X </u>
Commissioner Thomas	<u> </u>

This matter will be placed on the Executive Session agenda for February 2, 1988.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
West Virginia Republican State)
Executive Committee and Jack)
Rossi, as treasurer) MUR 2370
Republican National Committee)
and William J. McManus, as)
treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 2, 1988, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 2370:

1. Find reason to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b)(2), 434(b)(3)(D), 434(b)(4)(H)(iv), 434(b)(6)(B)(iv) and 441b; and 11 C.F.R. § 102.5(a).
2. Find reason to believe the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 441a(f), and take no further action and close the file as it pertains to this respondent.

(continued)

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3. Approve the letters, Factual and Legal Analyses, Interrogatories and Requests for Production of Documents as recommended in the General Counsel's report dated January 22, 1988.

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

Attest:

Feb. 3, 1988

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 5, 1988

William J. McManus, Treasurer
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2370
Republican National
Committee and William J.
McManus, as treasurer

Dear Mr. McManus:

On February 2, 1988, the Federal Election Commission found reason to believe the Republican National Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and close its file as it pertains to the committee and you, as treasurer. The Factual and Legal Analysis which formed a basis for the Commission's finding is attached for your information.

The file will be made part of the public record within 30 days after this matter has been closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

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

If you have any questions, please direct them to Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Thomas J. Josefiak
Chairman

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 5, 1988

Jack Rossi, Treasurer
West Virginia Republican State
Executive Committee
101 Dee Street
Charleston, West Virginia 25311

RE: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
treasurer

Dear Mr. Rossi:

On February 2, 1988, the Federal Election Commission found that there is reason to believe the West Virginia Republican State Executive Committee ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b)(2), 434(b)(3)(D), 434(b)(4)(H)(iv), 434(b)(6)(B)(iv) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"); and 11 C.F.R. § 102.5(a), a provision of the Commission's Regulations. 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 the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, along with answers to the enclosed interrogatories and request for production of documents, within 15 days of your receipt of this letter. Statements should be submitted under oath.

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

91040845239

Letter to Jack Rossi, Treasurer
Page 2

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 the 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 the 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, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

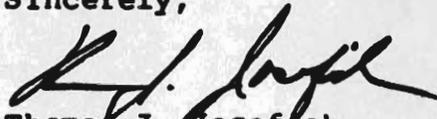
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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

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

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 Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,



Thomas J. Josefiak
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Interrogatories and Request for
Production of Documents

91040845240



**Republican
National
Committee**

**E. Mark Braden
Chief Counsel**

**Michael A. Hess
Randall Davis
Deputy Chief Counsels**

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

88 FEB 23 PM 4: 06

February 12, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 FEB 23 PM 4: 15

**Honorable Thomas J. Josefiak
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463**

**RE: MUR 2370, Republican
National Committee and
William J. McManus, as
Treasurer**

Dear Chairman Josefiak:

I am writing in response to your letter dated February 5, 1988, indicating that the Federal Election Commission had found reason to believe that the Republican National Committee may have violated provisions of the Federal Election Campaign Act of 1971, as amended. In your letter, you stated that in consideration of the circumstances of the matter, the Commission had determined no further action would be taken and the file as pertaining to the RNC would be closed.

This letter is to state that the Republican National Committee (RNC) has examined the factual and legal analysis attached to your February 5 letter and strongly disagrees with its tentative conclusions. The RNC did not violate 2 USC, Section 441a(f), by exceeding the party coordinated expenditure limit for the Reagan Presidential Campaign. Although the RNC is aware that the Commission intends to undertake no further action in this matter, this letter is provided to the Commission so there can be no question as to the RNC's position in regard to this matter.

Very truly yours,
E. Mark Braden
E. Mark Braden

EMB:jd

91040845241



CC#648

WEST VIRGINIA REPUBLICAN PARTY

P.O. Box A, Charleston, WV 25362 Phone 1-304-344-3446

Edgar F. "Hike" Heiskell, Chairman

February 12, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIA
88 FEB 17 PM 1:30

Thomas J. Josefiak, Chairman
Federal Election Commission
Washington, DC 20463

RE: MOR2370
West Virginia Republican State
Executive Committee

Dear Mr. Josefiak:

A copy of your letter of February 5, 1988, to Jack Rossi, our Treasurer, was received by me on February 11th, and has been referred to our counsel. An appropriate Statement of Designation of Counsel is being prepared and will be forwarded to you, and we intend to respond appropriately.

In the meantime, however, I would respectfully ask your urgent consideration of a request which I communicated to Sandra H. Robinson, as attorney for the Commission, by telephone earlier today, in which I asked that the Commission send a follow-up letter to Mr. Rossi, informing him as follows:

1. Your letter was directed to him only in his capacity as treasurer and custodian of records; and,
2. His predecessor(s), and not Mr. Rossi, is alleged to have violated the cited provisions of the United States Code.

This request is eminently fair and reasonable, in view of the fact that, on the face of your letter and the factual and legal analysis sent in support thereof, it can be absolutely concluded that all of the facts giving rise to the allegations, if they occurred, occurred long before Mr. Rossi assumed his duties as Treasurer in September, 1987.

The objectionable language which should either be deleted in an amended letter, or should be the subject of a follow-up letter of clarification, is contained in the first paragraph of your letter, in pertinent part as follows:

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 FEB 17 PM 3:26

91040845242

Thomas J. Josefiak, Chairman
February 12, 1988
Page 2

" . . . [T]here is reason to believe that the West Virginia Republican State Executive Committee ("Committee") and you, as Treasurer, violated [several provisions of the U.S. Code]."

On the face of your letter and supporting documents, it is absolutely clear that Mr. Rossi, either individually, or in his capacity as Treasurer, did not violate anything. Your statement, as it relates to Mr. Rossi at least, is therefore shown to be patently untrue.

To address such a letter as this to an individual, suggesting that he somehow violated the federal election laws, when your information is otherwise, is, in my opinion, unconscionable, unconstitutional and downright un-American. Mr. Rossi was asked by me to serve as Treasurer precisely because he enjoys the highest professional standing and reputation in this State and is a partner in the most prominent and respectable independent public accounting firm here. To be on the receiving end of a letter such as yours would certainly tend to cause Mr. Rossi to doubt whether he should be so giving of his time and professional talents in this purely voluntary, unremunerated position of service. If we drive people like Mr. Rossi out of such an important position, I would submit that, sooner or later, we are going to be left with people of lesser talent and integrity.

Please re-consider your letter of February 5th and make an appropriate amendment or clarification. If this objectionable language is in your word processor, it should be deleted at once, so that your legal staff will be required to make a case-by-case determination as to its appropriateness in other instances. Your attention to this matter will be deeply appreciated.

Very truly yours,


Edgar F. Heiskell, III
State Chairman

EFH,III:bjc

91040845243



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 29, 1988

Edgar F. Heiskell, Chairman
West Virginia Republican Party
P.O. Box A
Charleston, West Virginia 25362

RE: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
treasurer

Dear Mr. Heiskell:

I am in receipt of your letter addressed to Chairman Josefiak concerning the naming of Jack Rossi, the current treasurer of the West Virginia Republican State Executive Committee, as a respondent in the above referenced matter.

On May 24, 1984, the Federal Election Commission ("Commission") adopted a policy of naming a successor treasurer in his or her official capacity as treasurer as a respondent in enforcement matters immediately before the Commission, even though the current treasurer may not have held that position at the time the events in question took place. This action was taken after a careful consideration of the relevant rules of civil procedure and case law. A copy of materials related to this policy is enclosed for your information.

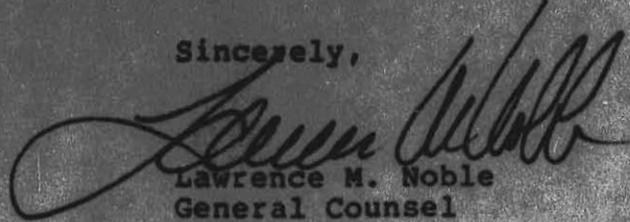
You should note that at such time that a proposed conciliation agreement is prepared in this matter (either during pre-probable cause conciliation or post-probable cause conciliation), a statement can be added to the proposed agreement which identifies the treasurer(s) of the West Virginia Republican State Executive Committee at the time the events in question occurred.

91040845244

Letter to Edgar F. Heiskell, Chairman
Page 2

If you have any further questions, please direct them to
Sandra H. Robinson, the attorney handling this matter, at (202)
376-8200.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosures

cc: Jack Rossi, Treasurer
West Virginia Republican
State Executive Committee
101 Dee Street
Charleston, West Virginia 25311

91040845245

6006493

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 FEB 22 PM 5:04

J. THOMAS LANE

ATTORNEY AT LAW

P.O. BOX 1386

CHARLESTON, WEST VIRGINIA 25325

PHONE NUMBER 347-1100

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARY'S OFFICE
88 FEB 22 PM 12:04

February 19, 1988

Thomas J. Josefiak, Chairman
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
Treasurer

Respondents, by counsel, hereby request an extension
of twenty (20) days to adequately prepare their case and to
file a brief setting forth respondents' position on the
factual and legal issues of the case pursuant to 2 U.S.C.
§ 437g(a)(3) (1985); 11 C.F.R. § 111.16 (1987).

91040845246



J. Thomas Lane
Counsel for Respondents
P.O. Box 1386
Charleston, West Virginia 25325
(304) 347-1100

cc: Edgar F. Heiskell, III, Esq.
E. Mark Braden, Esq.

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2370

NAME OF COUNSEL: J. Thomas Lane

and

E. Mark Braden
Chief Legal Counsel
Republican National
Committee
310 First Street, S.E.
Washington, D.C. 20003

ADDRESS: P. O. Box 1386

Charleston, WV 25325

(304) 347-1111

(202) 863-8638

TELEPHONE: _____

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

2/18/88
Date

Jack Rossi
Signature

RESPONDENT'S NAME: West Virginia Republican State Executive
Committee and Jack Rossi, as Treasurer

ADDRESS: P.O. Box A

Charleston, WV 25362

HOME PHONE: (304) 346-0441

BUSINESS PHONE: (304) 344-3446

91040845247



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1988

J. Thomas Lane, Esquire
P.O. Box 1386
Charleston, West Virginia 25325

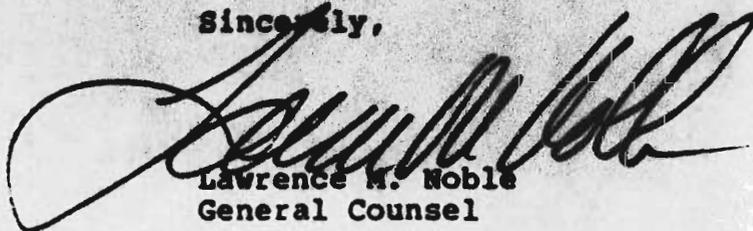
RE: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
treasurer

Dear Mr. Lane:

This is in response to your letter dated February 19, 1988, which we received on February 22, 1988, requesting an extension of twenty (20) days to respond to the reason to believe finding and 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 the close of business on March 14, 1988.

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

Sincerely,



Lawrence M. Noble
General Counsel

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SENSITIVE

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
88 FEB 26 PM 2:48

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
West Virginia Republican State) MUR 2370
Executive Committee and Jack Rossi,)
as treasurer)

COMPREHENSIVE INVESTIGATIVE REPORT #1

On February 2, 1988, the Commission found reason to believe that the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b) (2), 434(b) (3) (D), 434(b) (4) (H) (iv), 434(b) (6) (B) (iv) and 441b; and 11 C.F.R. § 102.5(a).^{*/} The alleged violations are connected with a voter registration/get-out-the-vote activity conducted during the 1984 general election cycle, certain reporting errors, expenditures which may be in excess of the statutory limitations, and deposits in federal accounts which may be prohibited by the Act. This matter resulted from an audit referral.

Notification of the Commission's reason to believe finding, and interrogatories and a request for documents, were mailed to

^{*/} On that same date the Commission found reason to believe that the Republican National Committee ("RNC") and William J. McManus, as treasurer, violated 2 U.S.C. § 441a(f), in connection with alleged excessive expenditures on behalf of the Reagan Presidential campaign, and determined to take no further action against these respondents. Chief Counsel for the RNC submitted a letter in response to the notification of the Commission's action, which was received in this Office on February 23, 1988. The letter stated that the RNC disagrees with the conclusions of the Factual and Legal Analysis, which served as a basis for the Commission's action, and denies any violation of 2 U.S.C. § 441a(f). Attachment.

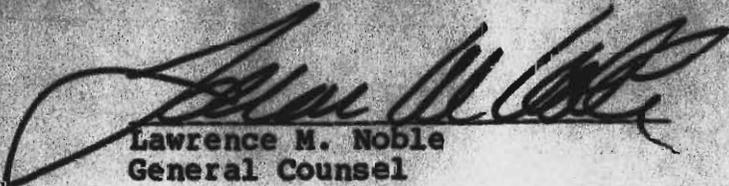
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Respondents on February 5, 1988. On February 22, 1988, this Office received a request from counsel for Respondents for an extension of time to respond. The request stated that the extended period was needed to adequately prepare their case and to file a brief. In light of this circumstance, this Office granted a twenty-day extension of time to March 14, 1988.

After receiving and evaluating the response, this Office will report to the Commission with appropriate recommendations.

Date

2/26/88


Lawrence M. Noble
General Counsel

Attachment

Staff person: Sandra H. Robinson

91040845250

600#6778

J. THOMAS LANE
ATTORNEY AT LAW
P.O. BOX 1386
CHARLESTON, WEST VIRGINIA 25325
PHONE 347-1100

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
89 MAR 14 PM 5:17

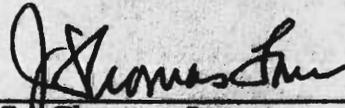
March 11, 1988

Thomas J. Josefiak, Chairman
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as Treasurer

Respondents, by counsel, hereby request an additional extension of twenty (20) days to file a brief setting forth respondents' position on the factual and legal issues of the above-referenced case. Respondents are attempting to gather the information necessary to file their responsive brief and to answer the interrogatories propounded by the Federal Election Committee and are unable to meet the March 14 deadline.

The Commission's indulgence in this matter will be greatly appreciated.



J. Thomas Lane
Counsel for Respondents
Post Office Box 1386
Charleston, WV 25325-1386
(304) 347-1100

cc: Edgar F. Heiskell, III, Esquire
E. Mark Braden, Esquire

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 16, 1988

J. Thomas Lane, Esquire
P.O. Box 1386
Charleston, West Virginia 25325

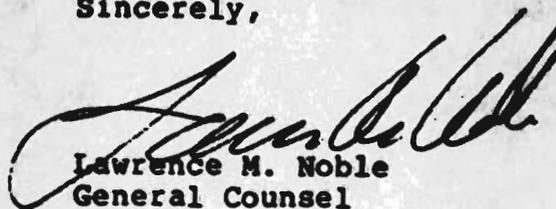
RE: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
treasurer

Dear Mr. Lane:

This is in response to your letter dated March 11, 1988, which we received on March 14, 1988, requesting an additional extension of twenty (20) days to respond to the reason to believe finding, 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 the close of business on April 4, 1988.

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

Sincerely,



Lawrence M. Noble
General Counsel

91040845252

CC# 8978

J. THOMAS LANE
ATTORNEY AT LAW
P.O. BOX 1888
CHARLESTON, WEST VIRGINIA 25308
PHONE 367-1111

April 1, 1988

Thomas J. Josefiak, Chairman
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as Treasurer

Dear Mr. Josefiak:

Enclosed please find Respondents' Answer to Interrogatories and Request for Production of Documents of the Federal Election Commission.

As noted in its Answer, the West Virginia Republican State Executive Committee will furnish the Commission with a full response after it meets on April 11, 1988.

Thanking the Commission for its indulgence in this matter, I am

Very truly yours,

Vanessa T. Valldejuli

Vanessa T. Valldejuli
Attorney-at-Law
Assistant to J. Thomas Lane, Esq.

cc: Sandra H. Robinson, Esquire
Edgar F. Heiskell, III, Esquire
E. Mark Braden, Esquire
John Scott, Director
Jack Rossi, Treasurer

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 APR -4 PM 3:31

91040845253

FEDERAL ELECTION COMMITTEE

Re: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as Treasurer

RESPONDENTS' ANSWER TO INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
OF THE FEDERAL ELECTION COMMISSION

TO: Thomas J. Josefiak, Chairman
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

1. Respondent, Jack Rossi did not assume his duties as Treasurer of the West Virginia Republican Party until September, 1987. He is not familiar with the facts of the audit period of January 1, 1983, through December 31, 1984, and as such, is unable to answer the Interrogatories and Request for Production of Documents.

2. Respondent, West Virginia Republican State Executive Committee (the "Committee") is unable to furnish the Commission with a complete response to its Interrogatories and Request for Production of Documents. However, the Committee has identified other parties who do have knowledge of the facts of this case and who will voluntarily provide information to the extent that the Committee will be able to answer the Interrogatories and Request for Production of Documents. The Committee plans to meet on April 11, 1988, at which time it will identify the parties involved and ascertain the facts surrounding the audit period of January 1, 1983, through December 31, 1984.

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The Committee reserves the right to supplement its Answer and to furnish the Commission with a full response to its Interrogatories and Request for Production of Documents.



JACK ROSSI, Treasurer
West Virginia Republican
State Executive Committee



JOHN SCOTT, Director
West Virginia Republican
State Executive Committee

91040845255

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FEDERAL ELECTION COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION MUR 12 PH12:05

SENSITIVE

In the Matter of)
)
West Virginia Republican State) MUR 2370
Executive Committee and Jack)
Rossi, as treasurer)

COMPREHENSIVE INVESTIGATIVE REPORT #2

On February 2, 1988, the Federal Election Commission ("Commission") found reason to believe that the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer ("Respondents"), violated 2 U.S.C. §§ 441a(f), 434(b)(2), 434(b)(3)(D), 434(b)(4)(H)(iv), 434(b)(6)(B)(iv) and 441b; and 11 C.F.R. § 102.5(a). The alleged violations are connected with a voter registration/get-out-the-vote activity conducted by Respondents during the 1984 general election cycle; certain reporting errors; expenditures which may be in excess of the statutory limitations; and deposits in federal accounts which may be prohibited by the Federal Election Campaign Act of 1971, as amended ("the Act"). This matter was generated by a referral from the Audit Division.

Respondents have designated counsel in this matter. On February 24, 1988, this Office granted Respondents an extension until March 14, 1988, to respond to the Commission's finding, interrogatories, and request for production of documents. See, MUR 2370 - Comprehensive Investigative Report #1, signed February 26, 1988. On March 16, 1988, in response to a request for an additional extension of twenty days to prepare their answers, Respondents were given until April 4, 1988, to make their submission.

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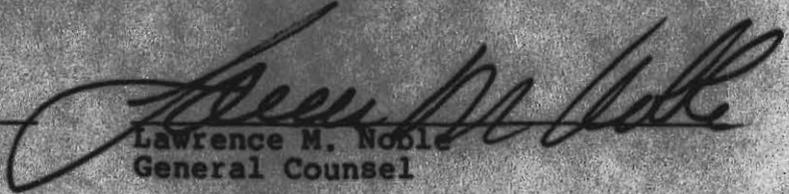
On April 4, 1988, this Office received a letter with an attached statement, which was presented as a response to the interrogatories and request for production of documents. Attachment I. The statement, which was signed by the treasurer and the director of the committee, does not answer any of the interrogatories propounded to Respondents in this matter, nor were copies of requested documents provided. Instead, the statement asserted that Mr. Rossi was not the Committee's treasurer at the time the alleged violations may have occurred, and therefore, he is unable to provide relevant information. It was also stated that the Committee plans a meeting on April 11, 1988, wherein it will "identify the parties involved and ascertain the facts" pertaining to this matter. Attachment I(2).

Staff contacted counsel's office via telephone to discuss the incompleteness of their submission. The principal attorney was out of the office until April 11, 1988, however, an assistant attorney was familiar with these proceedings. She informed staff that information is being gathered without the full assistance of witnesses familiar with the facts. She also stated that two witnesses are currently located in Washington, D.C., and are, therefore, being questioned by counsel for the Republican National Committee. Respondents' counsel indicated that some of the documents have been gathered, but that they require interpretation by the witnesses. Counsel further stated that all of the interested persons and attorneys will attend the April 11th meeting. She expects that a more substantial response will be provided to the Commission within a week of that meeting.

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Following a reasonable elapse of time for a response to be received as anticipated by Respondents' counsel, this Office will report to the Commission with appropriate recommendations.

Date 4/11/81


Lawrence M. Noble
General Counsel

Attachment

Staff Person: Sandra H. Robinson

91040845258

000 # 4246
RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
MAY 2370
88 MAY -9 AM 11:00

LAW OFFICES

Bowles McDavid Graff & Love

P.O. Box 1386 • Charleston, West Virginia 25325-1386 • Area Code (304) 347-1100

18th Floor • Commerce Square • Lee Street • Charleston, West Virginia 25301 • Telecopier (304) 343-2887

4th Floor • United Center • 500 Virginia Street East • Charleston, West Virginia 25301 • Telecopier (304) 347-1196

PAUL N. BOWLES (1921-1988)
WILLIAM R. McDAVID
F. T. GRAFF, JR.
CHARLES M. LOVE, III
P. MICHAEL FLECKA
ROGER W. TOMPKINS, II
GARY G. MARDHAM
DAVID C. HARDESTY, JR.
CARL S. ANDREWS
ROSLIN BROWN

J. THOMAS LANE
GERARD A. STOWERS
F. NATHAN BOWLES, JR.
THOMAS B. BENNETT
SARAH E. SMITH
RICHARD M. FRANCIS
WILLIAM H. SCHARF
GEORGE A. PATTERSON, II
ROGER D. HUNTER
THOMAS E. SCARB

PAUL E. FRAMPTON
PHYLLIS M. POTTERFIELD
DEBORAH A. BINK
ALICIA J. OLEGG
GORDON C. LANE
JOHN W. WOODS
THOMAS A. HEYWOOD
CAMDEN P. BEGRIST
WILLIAM S. GERWIS, III
SANDRA M. MURPHY

KEVIN K. DISTLER
VANESSA T. VALLDEJULI
MARCA MONTELEONE
R. JEFFREY JOHNSON
P. J. LOEHR
BARBARA L. FREEDY
CYNTHIA J. JARRELL

WRITER'S DIRECT DIAL NUMBER

347-1133

AND LOCATION

United Center

May 4, 1988

Sandra H. Robinson, Esquire
The Office of General Counsel
999 E. Street, N.W.
Washington, D.C. 20463

Pursuant to our telephone conversation of May 4, 1988, enclosed please find Respondent's Answers to Interrogatories and Request for Production of Documents.

As previously discussed, these Answers will be supplemented by a Responsive Brief which is forthcoming.

Should you have any questions with regard to the foregoing, please do not hesitate to call me.

Very truly yours,

BOWLES McDAVID GRAFF & LOVE

Vanessa T. Valldejuli

VTV/skm
Enclosure

91040845259

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 MAY -9 PM 4:17

FEDERAL ELECTION COMMITTEE

Re: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as Treasurer

**RESPONDENT, WEST VIRGINIA REPUBLICAN
STATE EXECUTIVE COMMITTEE'S ANSWERS TO THE
FEDERAL ELECTION COMMISSION'S INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: Sandra H. Robinson, Esquire
The Office of General Counsel
999 E. Street, N.W.
Washington, D.C. 20463

ANSWER TO INTERROGATORY NO. 1

(a) Expenditures from the Field Account to finance the GOTV activity were made under the belief that such activity was on behalf of Arch Moore, then a candidate for governor. The Respondent was unaware that there was any mention of any federal candidates. After the audit was conducted, the phone bank script was brought to the attention of the Respondent.

(b) The Field Account was established for generic party activities and candidates for state office; principally, Arch Moore. The Field Account was established pursuant to state law. Thus, there is no prohibited money such as corporate or labor union money in said account. The Field Account data was available to the audit team who had an opportunity to review in great detail the receipts and the sources of contributions. Disbursements from the Field Account went to pay field staff

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salaries, withholding taxes, FICA, and travel expenses. Those disbursements were also available and were reviewed thoroughly by the audit team.

(c) No. The principal purpose of the Field Account was to support state candidates. There was no intent to use any funds for federal candidates.

ANSWER TO INTERROGATORY NO. 2

(a) Yes.

(b) Financial assistance was provided.

(c) RNC transferred \$14,000. to the Committee to assist with costs for the GOTV activity as set forth in a letter dated September 20, 1984, and a letter dated October 3, 1984, Kent Hall, Chairman of the Committee in 1984. The purpose of these funds were to benefit Arch Moore and not any identifiable federal candidate as set forth in an agreement letter dated September 21, 1984, signed by Kent Hall. The Committee warranted that "no funds transferred from the RNC shall be used to make contributions or expenditures in support of specific candidates for federal office."

ANSWER TO INTERROGATORY NO. 3

Yes. The money was transferred to the non-federal account by the Committee's present accountant, Art Schumate on October 14, 1986, in a lump sum transfer. The Committee will amend the report to show the specific transfer as a memo entry, if the FEC so requests.

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ANSWER TO INTERROGATORY NO. 4

See Answer to Interrogatory No. 3.

ANSWER TO INTERROGATORY NO. 5

Yes. There are no written or oral agreements.

ANSWER TO INTERROGATORY NO. 6

No. There are no written or oral agreements.

ANSWER TO INTERROGATORY NO. 7

(a) The contribution from PIMCO/Trevor Phillips was an unsolicited contribution received in the mail on or about October 18, 1984.

(b) After due inquiry, the committee ascertained that PIMCO was a partnership.

(c) Upon receipt of Audit A85-19, Committee staff attempted by telephone to locate Mr. Trevor Phillips and/or PIMCO. No listings could be found. The actual Trevor Phillips/PIMCO check was issued on a cash management account of Merrill Lynch. Committee staff telephoned the Cash Management Account Division of Merrill Lynch in New York and was advised that the account was for a limited partnership but had been closed on December 18, 1985. Merrill Lynch also reported that the company had no forwarding address for either Mr. Phillips or PIMCO. Mr. Scott reported these efforts in a letter to Mr. Robert J. Costa at the FEC Audit Division in a letter dated April 21, 1986. In that

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letter, Mr. Scott indicated that due to the results of this investigation, the Committee could not follow recommendations contained in the audit report and recommendations. No further recommendations or inquiries were received by the Committee from the FEC until the February 5, 1988, letter from Thomas J. Josefiak, Chairman, and the Factual and Legal Analysis.

(d) The Committee staff followed the same procedure as outlined in Answer to Interrogatory No. 7(c). On Wednesday March 30, 1988, the Committee staff contacted the PINCO companies in Santa Ana and Newport Beach, California. Both companies stated categorically that they had no record of a Trevor Phillips nor had they made any contributions to the West Virginia Republican Party.

(e) The \$3,000. contribution was left in the federal account.

ANSWER TO INTERROGATORY NO. 8

Supplemental Answer to Interrogatory No. 2(c)

Exhibit A. Letter dated September 20, 1984, from RNC to Kent S. Hall, Chairman, regarding GOTV activity.

Exhibit B. Letter dated October 3, 1984, from RNC to Kent S. Hall regarding the transfer of \$4,000. for the GOTV activity.

Exhibit C. agreement dated September 21, 1984, between RNC and West Virginia Republican State Committee.

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Supplemental Answer to Interrogatory Nos. 3 and 4

Exhibit D. Report indicating lump sum transfers to non-federal account.

Supplemental Answer to Interrogatory No. 7

Exhibit E. Check from PIMCO/Trevor Phillips and deposit slip made in the name of the signatory, Trevor Phillips.



JOHN SCOTT, Director
West Virginia Republican
State Executive Committee

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Republican
National
Committee

Frank J. Fahrenkopf, Jr.
Chairman

September 20, 1984

Kent S. Hall, Sr., Chairman
West Virginia Republican State Committee
P.O. Box A, 113 Washington Street West
Charleston, WV 25362

Dear Kent:

As we all know, voter contact is the single most important element of a successful campaign. At Ed Brookover's request we are sending the enclosed contribution to assist with your program. Ed tells us yours is a very comprehensive program which promises to benefit Republicans at all levels. We're delighted to be able to help.

Thanks for all your efforts to make 1984 the best year for Republicans ever.

Very truly yours,



Frank J. Fahrenkopf, Jr.

FJF/mkg

P.S. Please sign one copy of the attached and return in the enclosed envelope. This is a record keeping formality.

EXHIBIT A

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**Republican
National
Committee**

**Frank J. Fahrenkopf, Jr.
Chairman**

October 3, 1984

**Mr. Kent S. Hall, Sr., Chairman
Republican State Executive Committee
of West Virginia
Post Office Box A
113 Washington Street West
Charleston, West Virginia 25362**

Dear Kent:

The Republican National Committee is pleased to send you this check in the amount of \$4,000 for your voter turnout operation affecting Kanawha, Wood, Monongalia, and Harrison counties. This contribution is being made at the recommendation of your Regional Political Director, Ed Brookover.

As you know, I believe any effective political organization requires strong local leadership and I am proud of the job that you are doing in communicating our message.

We wish you great success in November. If I or the Republican National Committee can be of further assistance, please do not hesitate to call on us.

Very truly yours,

Frank J. Fahrenkopf, Jr.

FJF/lab
enc

cc: Arch A. Moore, Jr.
Priscilla Humphreys
Ed Brookover

EXHIBIT B

237



**Republican
National
Committee**

**Frank J. Fahrenkopf, Jr.
Chairman**

September 21, 1984

**Kent S. Hall, Sr., Chairman
West Virginia Republican State Committee
P.O. Box A, 113 Washington Street West
Charleston, WV 25362**

Dear Kent:

This letter will set forth the terms and conditions of the agreement between the West Virginia Republican State Committee and the Republican National Committee (RNC). Under the terms of this agreement, the RNC agrees to transfer funds to the West Virginia Republican State Committee.

The West Virginia Republican State Committee warrants that no funds transferred from the RNC shall be used to make contributions of expenditures in support of specific candidates for federal office without the express written approval of the RNC. The West Virginia Republican State Committee warrants that none of the funds transferred from the RNC shall be used for the cost of campaign materials (such as pins, bumper strips, handbills, newsletters or yard signs) used by the West Virginia Republican State Committee on behalf of any candidate for federal office. (See 11 CFR 100.7 (b) (15)).

Funds transferred to your committee are for the sole purpose of permitting your committee to utilize locally generated funds for the support of candidates for federal and state office.

**WEST VIRGINIA REPUBLICAN
STATE COMMITTEE**

**REPUBLICAN NATIONAL
COMMITTEE**

BY: *Kent S. Hall, Sr.*
**Kent S. Hall, Sr.
Chairman**

BY: *Frank J. Fahrenkopf, Jr.*
**Frank J. Fahrenkopf, Jr.
Chairman**

EXHIBIT C

239

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REPORT OF RECEIPTS AND DISBURSEMENTS
For a Political Committee Other Than an Authorized Committee

(Summary Page)

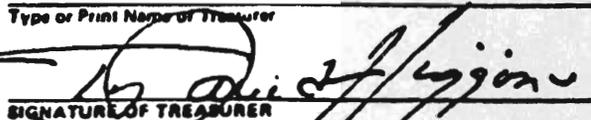
<p>1. Name of Committee (In Full) VIRGINIA REPUBLICAN STATE EXEC. COMM.</p> <p>Address (Number and Street) OFFICE BOX A</p> <p>City, State and ZIP Code CHARLESTON, WEST VIRGINIA 25362</p> <p><input type="checkbox"/> Check here if address is different than previously reported.</p> <p>2. FEC Identification Number 01302</p> <p><input checked="" type="checkbox"/> This committee qualified as a multicandidate committee during Reporting Period on _____ (Date)</p>	<p>4. TYPE OF REPORT (Check appropriate boxes)</p> <p>(a) <input type="checkbox"/> April 15 Quarterly Report <input type="checkbox"/> October 15 Quarterly Report <input type="checkbox"/> July 15 Quarterly Report <input type="checkbox"/> January 31 Year End Report <input type="checkbox"/> July 31 Mid Year Report (Non-Election Year Only) <input type="checkbox"/> Monthly Report for _____ <input checked="" type="checkbox"/> Twelfth day report preceding <u>GENERAL</u> (Type of Election) election on <u>11-04-86</u> in the State of <u>W. VA.</u> <input type="checkbox"/> Thirtieth day report following the General Election on _____ in the State of _____ <input type="checkbox"/> Termination Report</p> <p>(b) Is this Report an Amendment? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>
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	COLUMN A This Period	COLUMN B Calendar Year-to-Date
5. Covering Period <u>10-01-86</u> through <u>10-15-86</u>		
6. (a) Cash on hand January 1, 19<u>86</u>		\$ 48996.83
(b) Cash on Hand at Beginning of Reporting Period	\$ 11086.70	
(c) Total Receipts (from Line 1B)	\$ 3712.29	\$ 68304.11
Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B)	\$ 14798.99	\$ 117306.94
Total Disbursements (from Line 2B)	\$ 4915.00	\$ 107416.95
8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d))	\$ 9883.99	\$ 9883.99
9. Debts and Obligations Owed TO The Committee	\$ 1000.00	
(Itemize all on Schedule C or Schedule D)		
10. Debts and Obligations Owed BY the Committee	\$ 13185.25	
(Itemize all on Schedule C or Schedule D)		

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

T. DAVID HIGGINS

Type or Print Name of Treasurer

SIGNATURE OF TREASURER

10-20-86
Date

For further information contact:
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Tel Free 800-424-9530
Local 202-376-3120

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

All previous versions of FEC FORM 3 and FEC FORM 3e are obsolete and should no longer be used.

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FEC FORM 3X (3/80)

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

Name of Committee (or Fund)

Report Covering the Period

WEST VIRGINIA REPUBLICAN STATE EXECUTIVE COMMITTEE

From: 10-01-86 To: 10-15-86

	COLUMN A Total This Period	COLUMN B Calendar Year-To-Date	
I. RECEIPTS			
11. CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees (Memo Entry Unitized \$ <u>3516.00</u>)	3616.00	63390.95	11(a)
(b) Political Party Committees			11(b)
(c) Other Political Committees			11(c)
(d) TOTAL CONTRIBUTIONS (other than loans) (add 11(a), 11(b) and 11(c))	3616.00	63390.95	11(d)
12. TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES	-0-	1000.00	12
13. ALL LOANS RECEIVED	-0-	2500.00	13
LOAN REPAYMENTS RECEIVED			14
OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)	87.27	397.27	15
16. REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES			16
17. OTHER RECEIPTS (Dividends, Interest, etc.)	9.02	1015.89	17
18. TOTAL RECEIPTS (Add 11(d), 12, 13, 14, 15, 16 and 17)	3712.29	68304.11	18
II. DISBURSEMENTS			
19. OPERATING EXPENDITURES	415.00	81166.95	19
20. TRANSFERS TO AFFILIATED/OTHER PARTY COMMITTEES			20
21. CONTRIBUTIONS TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES	1000.00	1000.00	21
22. INDEPENDENT EXPENDITURES (see Schedule E)			22
23. COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES (2 U.S.C. § 441 a(d)) (Use Schedule F)			23
24. LOAN REPAYMENTS MADE	500.00	2500.00	24
25. LOANS MADE	-0-	1000.00	25
26. REFUNDS OF CONTRIBUTIONS TO			
(a) Individuals/Persons Other Than Political Committees	-0-	250.00	26(a)
(b) Political Party Committees			26(b)
(c) Other Political Committees			26(c)
(d) TOTAL CONTRIBUTION REFUNDS (Add 26(a), 26(b) and 26(c))	-0-	250.00	26(d)
27. OTHER DISBURSEMENTS	3000.00	21000.00	27
28. TOTAL DISBURSEMENTS (add lines 19, 20, 21, 22, 23, 24, 25, 26(d) and 27)	4915.00	107098.49	28
III. NET CONTRIBUTIONS AND NET OPERATING EXPENDITURES			
29. TOTAL CONTRIBUTIONS (other than loans) from Line 11(d)	3616.00	63390.95	29
30. TOTAL CONTRIBUTION REFUNDS from Line 26(d)	-0-	250.00	30
31. NET CONTRIBUTIONS (other than loans) (Subtract Line 30 from Line 29)	3616.00	63140.95	31
32. TOTAL OPERATING EXPENDITURES from Line 19	415.00	81166.95	32
33. OFFSETS TO OPERATING EXPENDITURES from Line 15	87.27	397.27	33
34. NET OPERATING EXPENDITURES (Subtract Line 33 from Line 32)	327.73	80769.68	34

9
0
4
5
2
6
9

107416.95

SCHEDULE B

ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

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

NAME OF COMMITTEE (in Full)
WEST VIRGINIA REPUBLICAN STATE EXECUTIVE COMMITTEE

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A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
WV REPUBLICAN STATE EXECUTIVE COMMITTEE POST OFFICE BOX A CHARLESTON, WV 25362	TRANSFER TO STATE ACCOUNT Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) OPERATIONS	10/14/86	3000.00
B. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
C. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
D. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period

SUBTOTAL of Disbursements This Page (optional)

TOTAL This Period (last page this line number only)

3000.00



Merrill Lynch Cash Management Account

708

PIMCO
TREVOR PHILLIPS
10441 STANFORD BOX 309
GARDEN GROVE, CA 92642

10.09.1984

25.80
440

Pay to the order of West Virginia State Republican \$ 3000.00
Three Thousand Dollars

BANK ONE
BANK ONE OF COLUMBIA, N.A.
COLUMBIA, Ohio 43221

Phillips

For
⑆044000804⑆ 3015108382⑈ 0708



Kanawha Valley Bank

One Valley Square P.O. Box 1700 Charleston, WV 25301
An affiliate of the Kanawha Valley Bancorp of West Virginia, Inc.

DEPOSITED
TO THE
ACCOUNT OF

ACCOUNT NUMBER
DATE

10-16-84

CURRENCY		
COIN		
CHECKS	<u>3500.00</u>	
TOTAL FROM OTHER BANKS		
LIST ADDITIONAL CHECKS ON BACK		
PLEASE ENTER TOTAL DEPOSIT AMOUNT HERE		

WV REPUBLICAN EXECUTIVE COMMITTEE
P O BOX A
CHARLESTON, WEST VIRGINIA 25362

ALL DEPOSITS ARE SUBJECT TO FINAL AUDIT AND TO THE CONDITIONS APPEARING ON SIGNATURE CARDS USED BY THIS BANK.
SEND CURRENCY ONLY BY REGISTERED MAIL.

⑆051900353⑆ ⑈741 091 3⑈

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88 JUN 13 PM 4:31

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)	
)	MUR 2370
West Virginia Republican State Executive)	
Committee and Jack Rossi, as treasurer)	

COMPREHENSIVE INVESTIGATIVE REPORT #3

On February 2, 1988, the Federal Election Commission ("Commission") found reason to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer ("Respondents"), violated 2 U.S.C. §§ 441a(f), 434(b)(2), 434(b)(3)(D), 434(b)(4)(H)(iv), 434(b)(6)(B)(iv) and 441b; and 11 C.F.R. § 102.5(a). The alleged violations are connected with a voter registration/get-out-the-vote activity conducted during the 1984 general election cycle, certain reporting errors, expenditures which may be in excess of the statutory limitations, and deposits in federal accounts which may be prohibited by the Act. This matter resulted from an audit referral.

Following the granting of an extension of time and follow-up telephone calls to Respondents' counsel, a response to the interrogatories and request for documents was submitted on May 9, 1988. Counsel stated that a supplement to that response in the form of a responsive brief would be sent to the Office of the General Counsel. To date such brief has not been received. Staff of this Office talked with counsel several times via

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telephone in the past weeks to ascertain whether such brief is still forthcoming and the date it can be expected. Counsel stated that the brief should be mailed by June 10, 1988.

Upon receipt and analysis of Respondents' complete response in this matter, this Office will report to the Commission with appropriate recommendations.

Date

6/13/88


Lawrence M. Noble
General Counsel

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HAND DELIVERED

RECEIVED
FEDERAL ELECTION COMMISSION

FEDERAL ELECTION COMMITTEE

88 JUN 10 PM 12:04

Re: NUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as Treasurer

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 JUN 10 PM 5:06

**RESPONDENT'S BRIEF IN RESPONSE
TO THE FEDERAL ELECTION
COMMISSION'S FACTS AND LEGAL ANALYSIS**

In the summer of 1985, auditors of the Federal Election Commission ("Commission") conducted an audit of the activities of the West Virginia Republican State Executive Committee ("Party") for the period January 1, 1983, through December 31, 1984. On March 5, 1986, the Party was formally advised of the findings and recommendations of the Commission's audit staff. This enforcement matter arises from issues which were referred to the Office of the General Counsel from that audit report.

A. TRANSFERS OF FUNDS FROM UNREGISTERED/NON-FEDERAL COMMITTEES.

The West Virginia Republican State Committee's Field Account should not have been reported to the Commission. The Field Account was established as a non-federal account and all directed disbursements made were for state expenditures. The account was mistakenly reported as a federal committee account and should be deleted from the Commission's files. This registration and reporting by the Field Account was a simple clerical error abetted by questionable or misunderstood advice received from the Commission staff.

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The Party has promptly undertaken all steps requested of it by the Commission's audit report to rectify the minor remaining problems in this account in regard to transfers of funds from unregistered party organizations to the Party's federal committee most of which were not resolved by the changed status of the Field Account.

Of the \$7,670 balance which remains to be transferred, \$6,500 has already been transferred out pursuant to the audit team's advice. Furthermore, the Committee's accountant transferred the \$100 contributed by the Jefferson County Women's Club and the \$550 contributed by Monongalia County to its non-federal account in a lump sum transfer. The Committee's accountant will amend the report, if necessary, to show the specific transfers as memo entries. The Party only awaits request guidance of the Commission.

Allegations that the unregistered/non-federal party committees may contain prohibited money under the Federal Election Campaign Act are completely unfounded. The affidavit of John Scott, Director of the West Virginia Republican Party which is attached hereto as Exhibit "A", and made a part hereof clearly establishes that no contribution from labor unions or corporations were accepted by any of the non-federal committees.

B. EXPENDITURES IN EXCESS OF LIMITATIONS.

1. Voter Registration and Get-Out-The-Vote (GOTV).

The West Virginia Republican Party conducted a registration get-out-the-vote phone bank in conjunction with the 1984 election. Attached hereto as Exhibit "B", and made a part hereof is a copy of the script used in that phone bank. That script indicates that the major thrust of the phone call was on

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behalf of the "top" of the Republican ticket, President Reagan and gubernatorial candidate (now governor), Arch Moore. The purpose of the phone bank was to generate support for the entire Republican ticket running in West Virginia, but the structure of the script for the phone bank and the political realities of West Virginia politics confirm that the phone bank program was designed and executed primarily to support the candidacies of Arch Moore and President Reagan. The inclusion of other candidates for state and federal office was incidental to the primary purpose of the phone call. Under the Commission's regulations set forth in 11 CFR Section 100.7(b)(17), expenditures in connection with this phone bank are exempt from the definition of contribution and require no allocations to any federal contribution limit.

The Interim Audit Report also asserts that funds received from the Republican National Committee by the Party disqualify this phone bank from the exemption. Republican National Committee transfers can be used to pay for costs incurred by the Party associated with the phone bank which is allocable to candidates for state office without affecting in any manner the exemption of other volunteer phone bank expenditures on behalf of the Presidential campaign. The amount of funds received from the Republican National Committee by the Party used for the GOTV phone bank drive reflect less than the amount which, under any reasonable theory, would be allocable to the candidates benefiting from the phone bank drive who were seeking state office. The clear and express intent of the transfers was to support state candidacies or for other appropriate purposes.

See attached copy of transmittal letter of transfer from the Republican National Committee (RNC) to the West Virginia Republican Party (See Exhibit "C" attached hereto and made a part hereof). The transmittal letter contains the admonition that these funds are not to be used for exempted

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expenditures as described in 11 CFR Section 100.7(b). No funds transferred by the RNC were used by the Party for these exempt expenditures. RNC funds were used for a variety of Party activities, including payments for the appropriate share of party activities on behalf of state candidates. Financial support for state and local campaigns is an area over which the Commission has repeatedly recognized it has no authority and is a matter exclusively for regulation by the State of West Virginia.

The purpose of the GOTV activity was to promote President Reagan and the state candidates, especially gubernatorial candidate, Arch Moore. The phone bank which implemented the GOTV drive was an all-volunteer phone bank staffed by Reagan and Arch Moore supporters. Of the \$9,000. expended, over fifty percent (50%) was spent on behalf of Arch Moore. The mention of Messrs. Altmeyer and Raese was merely incidental. A closer review of the phone script attached hereto as Exhibit "B", clearly demonstrates that volunteers were calling principally on behalf of Arch Moore.

The Federal Election Campaign Act permits volunteer phone banks for a presidential candidate and state candidates (paid for by a state account) and other federal candidates if their mention is merely incidental.

2. Expenditures for Billboard Advertising.

The allegation that these operating expenditures were made on behalf of, and are allocable to, the general election campaign is without merit and has no support in the Federal Election Campaign Act (FECA), the Commission's regulations, or the Commission's advisory opinions. In advisory opinion 1985-14, the Commission "concluded that the limitations of Section 441a(d) did apply where the communication both (1)

depicted a clearly identified candidate, and (2) conveyed an election year message." The Commission recognizes that electioneering messages are statements designed to urge the public to elect a certain candidate. These advertisements do not urge any West Virginia voter to vote for John Raese or to vote against Jay Rockefeller. There is no candidate-specific electioneering message. For that reason, these billboards are not subject to any limitation under Section 441a(d).

The Committee contends that the billboard message was to benefit the Republican ticket as a whole and especially their gubernatorial candidate, Arch Moore. (See Exhibit "D" attached hereto and made a part hereof). The advertisements which were purchased prior to the general election do not urge any West Virginian to vote for John Raese or to vote against Jay Rockefeller. There is no direct advocacy or candidate -- specific electioneering message. Therefore, the billboards are not subject to any limitation under Section 441a(b).

The Party did rent billboard advertising displaying statements regarding the record of then-Governor Jay Rockefeller. The West Virginia Republican Party made the political decision that then-Governor Rockefeller's leadership, or lack thereof, should be the major focus of the Republican Party's campaign in West Virginia in 1984. It was the opinion of the West Virginia Republican Party that Jay Rockefeller and his Democratic administration and the Democratic State Legislature had damaged the State of West Virginia. The Party viewed that one of its principal missions was to send this message to the voters of the State of West Virginia. This particular advertising project was designed to discuss the issue of Rockefeller's record as governor, to assist all Republican office holders and seekers, and was a key component of Arch Moore's gubernatorial campaign. One of the principal themes of the Moore campaign was attacking "Jay's record for West Virginia."

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The discussion of issues and officeholders is an integral part of our system of government. So important is this right that the "First Amendment affords the broadest possible protection to such political expression to assure [the] unfettered interchange of ideas." Buckley v. Valeo, 424, U.S. 1, 14 (1986). Not only do the parties promote candidates, but they also debate the positions and qualifications of officeholders, sponsor policy discussions, engage in party-building activity, and release issue-oriented mailings to the public on topics of government and governance. Speaking on all these issues is fundamental to the party system. The Party has engaged in precisely this type of political expression in this case.

The Supreme Court has stated that the Commission cannot constitutionally regulate the discussion of all public issues even if the discussion "draws in candidates and their positions, their voting records and other office conduct." Buckley at 42 n.50 (emphasis added). Although the discussion of issues "naturally and inexorably . . . exert(s) some influence on voting at election" the Commission may only regulate those communications which, at a minimum, contain an electioneering message urging the public to vote for a particular candidate or party. Id. Limiting a party's issue-oriented speech conflicts with the decisional law that clearly divides the regulated advocacy of campaigns and elections from the free discussion of issues, officeholders, their conduct and their votes. Buckley at 42-45; Central Long Island Tax Reform Immediately Committee v. FEC, ("CLITRIM") 616 F.2d 45, 53 (2nd. Cir. 1980).

On the July quarterly FEC report covering April 1 - June 30, 1984, the Party disclosed the disbursements for this billboard advertising as operating expenditures. This was the appropriate manner in which to disclose these disbursement. Unfortunately, following discussion with the Reports Analysis Division, the Party followed the Reports Analysis Division's

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erroneous advice and amended the June quarterly report. The original manner of reporting was correct and the Party proposes to amend its report to return to its original form.

3. Newspaper Advertisements.

The party did purchase advertisements in three West Virginia newspapers prior to the election with expenditures totaling \$2,060.47. The advertisements were as described in the Audit Committee's findings. Although these expenditures should be reported as either in kind contributions or coordinated party expenditures to the Raese campaign, the Party maintains that the limitations imposed are unconstitutional.

C. PROHIBITED CONTRIBUTION.

There is no evidence to support the allegation that the Party accepted a corporate contribution in violation of 2 U.S.C. Section 441b.

The Party's investigation revealed that the Merrill Lynch Cash Management Account from which PIMCO/Trevor Phillips' check was issued, was closed with no forwarding address. According to One Valley Bank's records, PIMCO was a limited partnership.

The Party staff telephoned the companies identified by the Office of General Counsel, on March 30, 1988. Both the company in Santa Ana and Newport Beach, California categorically stated that there was no one by the name of Trevor Phillips under their employ nor had they made any contributions to the West Virginia Republican Party. See Exhibit "E" Affidavit of John Scott, attached hereto and made a part hereof.

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The Party has no reason to believe that PIMCO is not a partnership and therefore it did not accept a corporate contribution in violation of 2 U.S.C. Section 441b.

D. ITEMIZATION AND DISCLOSURE OF CONTRIBUTIONS.

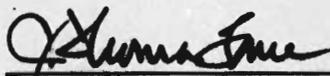
The Party agrees that it may not have itemized and aggregated correctly. However, such accounting mistakes normally occur and only total ten percent (10%) of the total transfers reviewed. Such an amount is di minimus. A ten percent (10%) error is indicative of the application of good accounting procedures and demonstrates a high level of compliance with the Federal Election Campaign Act.

The Party maintains that it should not be penalized for di minimus mistakes in accounting.

Respectfully submitted,

**WEST VIRGINIA REPUBLICAN
STATE EXECUTIVE COMMITTEE**

By Counsel.



J. Thomas Lane
BOWLES McDAVID GRAFF & LOVE
Post Office Box 1386
Charleston, WV 25325-1386
(304) 347-1100

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FEDERAL ELECTION COMMITTEE

Re: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as Treasurer

**RESPONDENT'S BRIEF IN RESPONSE
TO THE FEDERAL ELECTION
COMMISSION'S FACTS AND LEGAL ANALYSIS**

AFFIDAVIT OF JOHN F. SCOTT

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

This day John F. Scott personally appeared before me, the undersigned authority, and after first being duly sworn upon oath did depose and say:

1. That he was at all relevant times and still is the Executive Director of the West Virginia Republican Party, Respondent, in the above matter under review before the Federal Election Commission, and as such, he has personal knowledge of the facts herein stated, and that he is duly authorized to make this Affidavit;

2. That after due inquiry he has ascertained that no prohibited contributions (such as corporate or labor union money) as defined by the Federal Election Campaign Act are accepted by the following unregistered/non-federal committees.

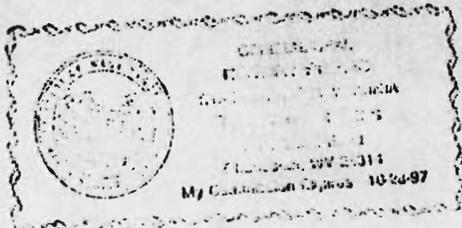
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- a. Jefferson County Women's Club
- b. CONCEPT
- c. Monongalia County
- d. Ritchie County Republican Executive Committee
- e. Eastern Association Coal PAC

John F. Scott
John F. Scott

Taken, subscribed and sworn to before me this 8th day of June, 1988, as witness my hand and official seal.

My commission expires: 10-28-97.



Tamara A. Miles
Notary Public

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ADVOCACY CALL CONVERSATION

HELLO! IS THIS _____ ? I'M A VOLUNTEER CALLING
FOR THE REPUBLICAN TICKET HERE IN WEST VIRGINIA. ARCH MOORE
ASKED ME TO CALL BECAUSE WE HAVE OUTSTANDING REPUBLICAN CANDIDATES
RUNNING FOR OFFICE AND THEY NEED YOUR VOTE AND THE VOTES OF OTHERS
IN YOUR HOUSEHOLD. PRESIDENT REAGAN, JOHN RAESE FOR SENATE,
JIM ALTMAYER FOR U.S. CONGRESS, AND JOHN MC CUSKEY FOR
ATTORNEY GENERAL ARE ASKING FOR YOUR SUPPORT AND SO ARE THE OTHER
FINE, REPUBLICAN CANDIDATES RUNNING HERE IN WEST VIRGINIA.
CAN GOVERNOR MOORE COUNT ON YOUR SUPPORT FOR OUR TEAM?

(pause for response)

THANK YOU VERY MUCH AND PLEASE DON'T FORGET ELECTION DAY IS
TUESDAY, NOVEMBER 6.

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Exhibit C

Republican
National
Committee

Frank J. Fahrenkopf, Jr.
Chairman

September 21, 1984

Kent S. Hall, Sr., Chairman
West Virginia Republican State Committee
P.O. Box A, 113 Washington Street West
Charleston, WV 25362

Dear Kent:

This letter will set forth the terms and conditions of the agreement between the West Virginia Republican State Committee and the Republican National Committee (RNC). Under the terms of this agreement, the RNC agrees to transfer funds to the West Virginia Republican State Committee.

The West Virginia Republican State Committee warrants that no funds transferred from the RNC shall be used to make contributions or expenditures in support of specific candidates for federal office without the express written approval of the RNC. The West Virginia Republican State Committee warrants that none of the funds transferred from the RNC shall be used for the cost of campaign materials (such as pins, bumper strips, handbills, newsletters or yard signs) used by the West Virginia Republican State Committee on behalf of any candidate for federal office. (See 11 CFR 100.7 (b) (15)).

Funds transferred to your committee are for the sole purpose of permitting your committee to utilize locally generated funds for the support of candidates for federal and state office.

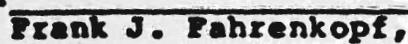
WEST VIRGINIA REPUBLICAN
STATE COMMITTEE

REPUBLICAN NATIONAL
COMMITTEE

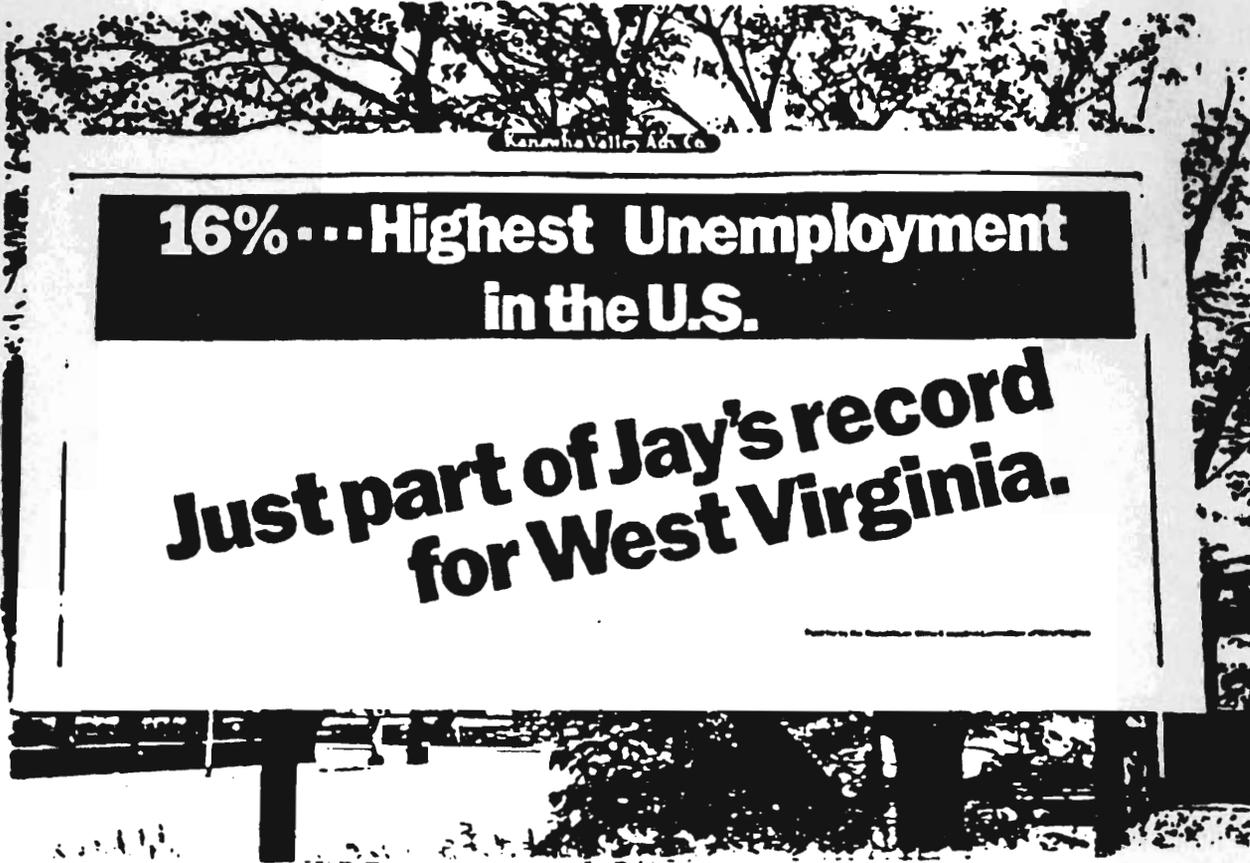
BY:


Kent S. Hall, Sr.
Chairman

BY:


Frank J. Fahrenkopf, Jr.
Chairman

102



**16%... Highest Unemployment
in the U.S.**

**Just part of Jay's record
for West Virginia.**

9 1 0 4 0 8 4 5 2 8 6

FEDERAL ELECTION COMMITTEE

Re: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as Treasurer

**RESPONDENT'S BRIEF IN RESPONSE
TO THE FEDERAL ELECTION
COMMISSION'S FACTS AND LEGAL ANALYSIS**

AFFIDAVIT OF JOHN F. SCOTT

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

This day John F. Scott personally appeared before me, the undersigned authority, and after first being duly sworn upon oath did depose and say:

1. That he was at all relevant times and still is the Executive Director of the West Virginia Republican Party, Respondent, in the above matter under review before the Federal Election Commission, and as such, he has personal knowledge of the facts herein stated, and that he is duly authorized to make this Affidavit;

2. That the contribution from PIMCO/Trevor Phillips was an unsolicited contribution received in the mail on or about October 18, 1984;

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3. That upon receipt of Audit A85-19, the Committee staff attempted by telephone to locate Mr. Trevor Phillips and/or PIMCO;

4. That no listings could be found;

5. That the actual Trevor Phillips/PIMCO check was issued on a cash management account of Merrill Lynch;

6. That the Committee staff telephoned the Cash Management Account Division of Merrill Lynch in New York and was advised that the account was for a limited partnership but had been closed on December 18, 1985. Merrill Lynch also reported that the company had no forwarding address for either Mr. Phillips or PIMCO;

7. That John F. Scott reported these efforts in a letter to Mr. Robert J. Costa at the FEC Audit Division in a letter dated April 21, 1986. In that letter, Mr. Scott indicated that due to the results of this investigation, the Committee could not follow recommendations contained in the audit report and recommendations;

8. That no further recommendations or inquiries were received by the Committee from the FEC until the February 5, 1988 letter from Thomas J. Josefiak, Chairman, and the Factual and Legal Analysis;

9. That the Committee staff followed the same procedure as outlined in Paragraphs 3 through 6 above;

10. That on Wednesday March 30, 1988, the Committee staff contacted the PIMCO companies in Santa Ana and Newport Beach, California;

11. That both companies stated categorically that they had no record of a Trevor Phillips nor had they made any contributions to the West Virginia Republican Party; and

12. That after due inquiry, the Committee ascertained that PIMCO was a partnership.

John F. Scott
John F. Scott

Taken, subscribed and sworn to before me this 8th day of June, 1988, as witness my hand and official seal.

My commission expires: 10-28-97.

Yamara A. Miles
Notary Public

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRET

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
West Virginia Republican State Executive
Committee and Jack Rossi, as treasurer

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) MUR 2370
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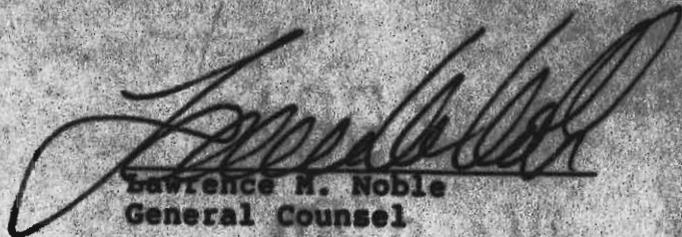
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GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, based on the assessment of the information presently available.

Date

11/23/89


Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 3, 1989

J. Thomas Lane, Esq.
Bowles McDavid Graff & Love
P.O. Box 1386
Charleston, West Virginia 25325-1386

RE: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
treasurer

Dear Mr. Lane:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on February 2, 1988, the Federal Election Commission found reason to believe that your clients, West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b)(2), 434(b)(3)(D), 434(b)(4)(H)(iv), 434(b)(6)(B)(iv) and 441b; and 11 C.F.R. § 102.5(a), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that certain violations have occurred, and no probable cause to believe that your clients violated 2 U.S.C. § 441b with respect to the alleged receipt of a corporate contribution.

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 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.

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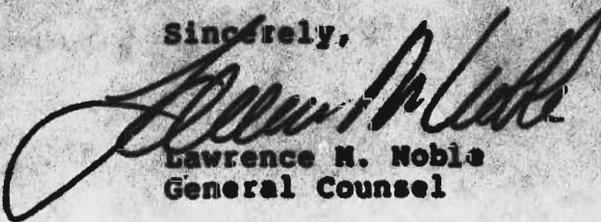
J. Thomas Lane, Esq.
Page 2

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 Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,



Lawrence N. Nobis
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

West Virginia Republican State Executive
Committee and Jack Rossi, as treasurer

)
) NUR 2370
)
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GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

Pursuant to Section 438(b) of the Federal Election Campaign Act of 1971, as amended ("the Act"), the Federal Election Commission ("the Commission") conducted an audit of the West Virginia Republican State Executive Committee. The West Virginia Republican State Executive Committee is registered with the Commission as a party-related multicandidate political committee within the meaning of 2 U.S.C. § 431(4)(C). The audit covered the period of January 1, 1983, through December 31, 1984. On February 2, 1988, the Commission found reason to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer ("Respondents"), violated 2 U.S.C. §§ 441a(f), 434(b)(2), 434(b)(3)(D), 434(b)(4)(H)(iv), 434(b)(6)(B)(iv) and 441b; and 11 C.F.R. § 102.5(a); and instituted an investigation into this matter. The alleged violations ensued from a voter registration/get-out-the-vote drive conducted during the 1984 general election cycle that resulted in excessive expenditures on behalf of federal candidates, certain reporting errors, and certain prohibited financial transactions that occurred in both federal and non-federal accounts.

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II. ANALYSIS

A. Expenditures in Excess of Limitations

The Act and Commission regulations provide in relevant parts, the following:

2 U.S.C. § 441a(d)(1) - the national committee of a political party and a state committee of a political party may each make expenditures in connection with the general election campaign of respective party candidates for federal office, subject to the limitations prescribed in Section 441a.

11 C.F.R. § 100.7(b)(17) - the state or local committee of a political party may make payments for the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of that party's Presidential and Vice-Presidential nominee(s) which are not contributions to such candidate(s) provided that the following criteria are met:

- a. such payment cannot be for the costs of general public communications or political advertising;
- b. such payment is made from contributions subject to the limitations and prohibitions of the Act;
- c. such payment is not made from contributions designated for a specific candidate;
- d. where such activities include references to any candidate(s) for the House or Senate, the costs of such activities shall be allocated proportionately to that candidate(s) unless the mention of such candidate(s) is merely incidental;
- e. phone banks conducted in connection with the voter registration/get-out-the-vote activities are operated by volunteers;
- f. payments for the costs of such activities are not made from funds donated by a national committee of a political party to a state or local party committee.

11 C.F.R. § 102.5(a) - all expenditures made by a committee

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in connection with any federal election must be made from its federal account(s).

2 U.S.C. § 441a(d)(3) and 11 C.F.R. § 110.7(b)(1) and (2) - the national committee of a political party and the state committee of a political party may each make expenditures in connection with the general election campaign of a candidate for federal office in the state, who is affiliated with the party. Expenditures on behalf of a candidate for the office of Senator are limited to the greater of \$20,000 or two cents multiplied by the voting age population of the respective State. For the 1984 election, the State of West Virginia expenditure limitation for Senate candidates was \$57,570. Expenditures on behalf of a candidate for the office of Representative in a state with more than one district are limited to \$10,000, adjusted by the consumer price index. For the 1984 election, the State of West Virginia expenditure limitation for House candidates was \$20,200.

2 U.S.C. § 441a(a)(2)(A) - no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$5,000.

2 U.S.C. § 441a(f) - a candidate or political committee is prohibited from knowingly accepting any contribution or making any expenditure in violation of the provisions established in Section 441a; and no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed under

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Section 441a.

11 C.F.R. § 106.1(a) - expenditures made on behalf of more than one candidate shall be attributed to each candidate in proportion to the benefit reasonably expected to be derived and shall be reported to reflect such benefit.

2 U.S.C. § 434(b)(4)(H)(iv) and (6)(B)(iv) - each report filed with the Commission by any political committee other than an authorized committee shall disclose the total amount of expenditures made under 2 U.S.C. § 441a(d). The disclosure required shall include the name and address of each person who received any expenditure from the reporting committee in connection with Section 441a(d) expenditures, together with the date, amount, and purpose of any such expenditure, as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made.

2 U.S.C. § 434(b)(4)(H)(i) & (6)(B)(i) - each report filed with the Commission by any committee other than an authorized committee shall disclose the total amount of contributions made to other political committees. The disclosure required shall include the name and address of the political committee, together with the date and amount of any such contribution.

11 C.F.R. § 110.7(b)(4) - party committees shall not make independent expenditures in connection with the general election campaign of candidates for federal office.

During the 1984 election cycle Respondents conducted certain activities, discussed below, which resulted in excessive contributions to the campaign committee of John Raese, a

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candidate of the U.S. Senate from the State of West Virginia.¹

1. Voter Registration and Get-Out-the-Vote Drive

In September 1984, Respondents conducted a voter registration/get-out-the-vote drive ("GOTV activity") that consisted of a phone bank. Respondents expended \$5,000 for the telephone service and \$4,000 for consulting fees in connection with the phone bank. Respondents first disclosed these payments as operating expenditures and did not allocate any amount to individual candidates. Respondents have stated that they made expenditures from their non-federal account for the phone bank activity, under the assumption that the activity was for the benefit of Arch Moore, the 1984 Republican candidate for governor of West Virginia. They further explained that they were not aware of the mention of federal candidates in the phone script until the Commission audit. Contemporaneously, Respondents, admitted that the GOTV activity was for the benefit of both Arch Moore and President Reagan's campaign for re-election in 1984, and sought to classify the activity as exempt pursuant to 11 C.F.R. § 100.7(b)(17). Respondents further contended that the phone bank was operated by volunteers, with the mere incidental mention of other federal candidates in the script, therefore, allocation of costs between such candidates was not required.

A proportional allocation of the GOTV activity expenditures to federal candidates mentioned in the phone script was required

1. Mr. Raese lost the general election, with 48% of the vote, to the Democratic candidate, Jay Rockefeller. Mr. Rockefeller was also the incumbent governor of West Virginia at the time of the 1984 elections.

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pursuant to 11 C.F.R. § 106.1. The script used by the callers in the phone bank mentioned several different federal and state candidates. The script included the statements that:

"Arch Moore asked me to call because we have outstanding Republican candidates running for office and they need your vote and the votes of others in your household. President Reagan, John Raese for Senate, Jim Altmeyer for U.S. Congress, and John McCuskey for Attorney General are asking for your support and so are the other fine, Republican candidates running here in West Virginia."

Arch Moore, the gubernatorial candidate, is mentioned once more in the script; no candidates, other than those mentioned above, are identified by name. Pursuant to 11 C.F.R.

§ 100.7(b)(17)(iv), when the reference to any candidates for the House or Senate are made during a GOTV activity for a party's Presidential candidate, and such reference is more than incidental, the costs for the activity must be allocated proportionately to those candidates as a contribution, subject to the limitations of the Act. The telephone script in this instance was very brief, consisting of approximately six sentences. The statements noted above clearly identified specific candidates for federal office, not only by name, but also by identification of the office sought by each. These statements clearly solicited support for the named candidates. Under these circumstances, the mention of such candidates is more than incidental in the text of the script. Costs for the phone bank, therefore, are allocable to each candidate identified in the script, and specifically, a proportion is allocable to the Raese Senatorial campaign. Therefore, a one-sixth proportion of

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the total cost for the phone bank was allocable to the Raese campaign in the amount of \$1,500.

2. Expenditures for Billboard Advertising

Respondents disbursed \$21,733 between May 22 and June 20, 1984, on billboards displaying statements about the record of then governor, Jay Rockefeller, who was also the Democratic Party's candidate for the U.S. Senate. The billboards displayed the following messages:

"16% . . . Highest Unemployment in the U.S. Just part of Jay's record for West Virginia."

and

"Biggest Tax Increase in State History Just part of Jay's record for West Virginia."

The billboard advertisements were displayed no earlier than June 1, 1984, and remained as late as July 4, 1984. The primary election in West Virginia was held on June 5, 1984.

Respondents initially reported the disbursements for the costs of the billboards in their 1984 July Quarterly Report as operating expenditures. Following a Request for Additional Information ("RFAI") from the Reports Analysis Division ("RAD"), that Report was amended on August 14, 1984, to disclose these expenditures as made on behalf of John Raese, applicable to the Section 441a(d) coordinated party expenditure limitation of \$57,570. On December 6, 1984, Respondents again amended the 1984 July Quarterly Report. In this amended Report, Respondents changed the designation of the billboard expenditures from coordinated party expenditures to in-kind contributions made on behalf of eight federal and state candidates. Specifically,

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Respondents reported the total billboard expenditures of \$21,733, as operating expenditures, and simultaneously divided that total among five candidates for federal offices and three candidates for state offices. As a result, Respondents allocated \$2,715.62 to the Raese campaign. Respondents did not designate this contribution for the primary or general election, however, the contributions allocated to the campaigns of the other federal and non-federal candidates are each designated for the primary election.² This last amendment appears to have been made as a result of a RFAI mailed to the Committee on November 8, 1984, regarding a discrepancy between information on the 1984 July Quarterly Report and the year-to-date totals for disbursements disclosed on the 1984 October Quarterly Report.

Respondents have contended throughout these proceedings that the billboard advertisements were designed to bolster the entire Republican ticket, especially the gubernatorial candidate, Arch Moore. Respondents have also asserted that the advertisements did not depict a clearly identified candidate, there was no direct advocacy for or against any Senatorial candidate, nor was there a candidate-specific electioneering message. Respondents, therefore, reasoned that the section 441a(d) limitation did not apply to such advertisements. Finally, Respondents asserted that they were exercising a First Amendment right of "political

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2. The other four candidates for federal offices were in the races for Representative from four districts in the State of West Virginia. There is no evidence that Respondents exceeded their limitations in either of these campaigns.

expression" to discuss "issues and officeholders." It was stated that Respondents had decided to focus the Arch Moore gubernatorial campaign on Jay Rockefeller's tenure as governor and to place emphasis on the actions of the state Democratic administration and legislature that had "damaged" West Virginia.

The issue in this matter is whether the expenditure for the billboards was made in connection with the general election campaign of a nominee for federal office, or whether it was made to a particular candidate in cooperation, consultation, or concert with, or at the request or suggestion of, such candidate, his authorized political committees or their agents, pursuant to 2 U.S.C. § 441a(a)(7)(B)(i). Respondents are a party committee and, therefore, are prohibited from making independent expenditures in connection with the general election campaign of candidates for federal office. 11 C.F.R. § 110.7(b)(4).

Respondents paid for billboard advertisements that identified by name the opposing party's Senatorial candidate and criticized his record as the incumbent governor of the State of West Virginia. Mr. Rockefeller had not held a federal office at the time of the 1984 election, such that criticism of his role as a public official was logically limited to his term as governor of the state. It is noted that the billboards in this instance were displayed just three days prior to the primary election in West Virginia and continued to be on display approximately 30 days after that election. Thus, such advertisements were not limited to influencing the primary election, but were to also impact on the outcome of the general election. At the time when

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the billboards were on display, Respondents' party candidate had announced and was engaged in a fully active campaign.³ Further, it was not necessary that the billboard advertisements identify the political party of Jay Rockefeller, as such information was common knowledge. Respondents' previously noted contention that the billboard advertisements were to bolster their party's ticket acknowledges their own understanding that the mention of the candidate's name alone was sufficient to identify his party affiliation. Therefore, the lack of such information on the billboard advertisements does not weaken their stance as providing an electioneering message. Further, the objective of any effort to "bolster" a party's ticket is to have that party's candidates voted into the respective offices sought. An electioneering message is one "designed to urge the public to elect a certain candidate or party." United States v. International Union United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), 352 U.S. 567, 587 (1957). See also, Advisory Opinions 1984-15 and 1985-14. Given the facts in this matter, including that Respondents are a political committee and their expenditures were made during a federal election year, the expenditures should be considered campaign related. See, Buckley v. Valeo, 424 U.S. 1, 79 (1976) ("Expenditures... of... 'political committees' [when construed to mean organizations, the major purpose of which is the nomination or election of a candidate] are, by definition, campaign

3. John Raese filed a Statement of Candidacy with the Commission for the 1984 Senatorial election on April 12, 1984.

related."). Because the expenditures are campaign related, depicted a clearly identified candidate, and conveyed an electioneering message, they must be viewed as directed to that campaign involving the identified candidate, the Rockefeller-Raese Senate contest. Thus, the expenditure for the billboards was made in connection with the general election campaign of Raese, or made in cooperation, consultation, or concert with his campaign, and should have been reported as a coordinated party expenditure or as an in-kind contribution.

At the time of the audit review, the Commission recognized that this expenditure may also have been related to the gubernatorial campaign and, therefore, allowed Respondents to attribute one half the total cost of \$21,733 for the billboard advertisement to the Moore gubernatorial campaign and one-half, or \$10,866.50, to the Raese campaign.

3. Newspaper Advertisements

Respondents disclosed certain operating expenditures in their 1984 Post-General Election Report that totaled \$2,060.47. These disbursements were for advertisements that appeared in three newspapers prior to the 1984 general election. The advertisements advocated the defeat of Jay Rockefeller in the election and included statements such as "why West Virginians CANNOT Vote for Gov. Rockefeller" and "Don't Be Fooled Again! VOTE Against Rockefeller on Tuesday!"

The newspaper advertisements clearly identified a candidate for federal office and included an electioneering message directed towards the outcome of the general election.

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Respondents acknowledged that the costs for these advertisements are allocable to the Raese campaign as an in-kind contribution or as a coordinated party expenditure.

4. Disbursements from a Non-federal Account

All of the disbursements for the GOTV activity were made from Respondents' Field Account. The Field Account is a non-federal account that was reported to the Commission by mistake as a federal account. Commission regulations at Section 102.5(a) require that all disbursements made by a political committee in connection with federal election activity be made from such committee's federal account. Since the GOTV activity is in part allocable to federal candidates, all of the allocable portions should have been paid from the federal account.

5. Reporting Errors

In each of the above instances, Respondents failed to report the expenditures as allocable to the Raese campaign pursuant to 2 U.S.C. § 434(b). Respondents also failed to disclose the expenditure on behalf of the Jim Altmeyer for Congress Committee that resulted from the GOTV phone bank activity pursuant to 2 U.S.C. § 434(b).

6. Summary

Respondents' expenditures on behalf of the 1984 John Raese for Senate campaign equaled \$14,426.97:

GOTV Activity (allocable portion)	\$ 1,500.00
Billboards (allocable portion)	10,866.50
Newspaper Advertisements	<u>2,060.47</u>
Total	\$14,426.97

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Respondents stated that they assigned their coordinated party expenditure limitation allowed for John Raese's 1984 Senatorial campaign to the National Republican Senatorial Committee ("NRSC"), however, they were unable to produce a written verification of such an assignment. See, Advisory Opinion 1985-14. It is noted that, in financial disclosure reports filed with the Commission, the NRSC disclosed a total of \$115,140 in coordinated party expenditures on behalf of John Raese's general election campaign. That total equaled exactly twice the state party's coordinated expenditure limitation of \$57,570. The NRSC further disclosed in its financial reports that it had been designated by the RNC, as well as the individual state committees, to make coordinated party expenditures on behalf of certain candidates, including John Raese. This information, coupled with Respondents' amendment to their disclosure report on file with the Commission, strongly evidences the existence of an assignment of their coordinated party expenditure limitation to the NRSC. Specifically, Respondents changed a designation of expenditures for the Raese campaign from coordinated party expenditures to an in-kind contribution. Therefore, on the basis of these factors, this matter will continue to proceed on the assumption that an assignment of the state party Section 441a(d) limitation to the NRSC occurred, although written evidence of such an assignment has not been found. Thus, because Respondents apparently no longer retained any such limitation for their use, their expenditures that benefited the Raese campaign were excessive.

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Therefore, this Office recommends that the Commission find probable cause to believe Respondents violated 2 U.S.C. § 441a(f). In addition, this Office recommends that the Commission find probable cause to believe Respondents violated 11 C.F.R. § 102.5(a) by making expenditures in connection with a federal election from their Field Account, which is a non-federal account. Respondents also failed to report the above expenditures made on behalf of federal candidates, thus, this Office recommends that the Commission find probable cause to believe they are in violation of 2 U.S.C. § 434(b).⁴

B. Transfers of Funds From Unregistered/Non-Federal Committees

The Act prohibits corporations and labor organizations from making any contributions or expenditures in connection with any election for federal office. Candidates, political committees and other persons are prohibited from knowingly accepting or receiving any contribution so prohibited. 2 U.S.C. § 441b(a).

Pursuant to 11 C.F.R. § 102.5(a)(1)(i), a political committee which finances political activity in connection with both federal and non-federal elections and establishes separate federal and non-federal accounts shall only deposit funds subject to the prohibitions and limitations of the Act into its federal accounts. In addition, only contributions meeting the following criteria shall be deposited in such federal accounts:

- 1) contributions designated for the federal account;
- 2) contributions resulting from solicitations

⁴ Although the reason to believe finding identified specific subsections of Section 434(b), this general term incorporates all relevant subsections.

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expressing that they will be used in connection with a federal election; and,

3) contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act.

11 C.F.R. § 102.5(a)(2).

During the audit, four accounts of Respondents were examined. These included three federal accounts and the non-federal account, the Field Account noted above, that had been mistakenly reported by Respondents as a federal account.

The audit found that 22 transfers were made to Respondents' three federal accounts, of which seven transfers and contributions, totaling \$7,670, were from committees not registered with the Commission. The West Virginia state election law prohibits corporate contributions, but permits contributions from labor organizations up to \$1,000 per candidate per election.

The following unregistered non-federal committees transferred funds to Respondents' federal accounts:

<u>Name of unregistered non-federal committee</u>	<u>Amount</u>	<u>Federal Account where Deposited</u>
1. Republican National State Elections Committee ("RNSEC")	5,000	Victory '84 Account
2. Jefferson County	100	Victory '84 Account
3. CONCEPT	520	Main Account
4. Monongalia County	550	Main Account
5. Ritchie County Republican Executive Committee	1,000	A-Team Account
6. Eastern Association Coal PAC	500	A-Team Account
TOTAL	\$7,670	

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Respondents filed an amendment to their 1984 Year End Report on June 17, 1986, wherein they summarized the receipts and disbursements per reporting period for their three federal accounts and deleted the Field Account. In the amended 1984 Year End Report, Respondents disclosed transfers totaling \$6,500 to the Field Account from the federal accounts that were made on May 8, 1985.⁵ The amended report also disclosed that on July 5, 1984, Respondents transferred \$520 from the Main Account to the Field Account. On October 14, 1986, Respondents transferred a lump sum to the non-federal account which included the remaining funds received from the unregistered non-federal committees.

Respondents presented a sworn statement from John F. Scott, Executive Director of the West Virginia Republican Party, wherein he averred that after due inquiry he ascertained that no contributions from labor unions or corporations were accepted by any of the following non-federal committees at issue here: Jefferson County Women's Club, CONCEPT, Monongalia County, the Ritchie County Republican Executive Committee and the Eastern Association Coal PAC. However, there is no such denial with respect to the RNSEC. The affidavit is silent as to this committee. Thus, funds transferred from the RNSEC may have included contributions received from prohibited sources.

Therefore, this Office recommends that there is probable cause to believe Respondents violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a) by accepting funds prohibited by the Act and

⁵ \$5,000 of this amount came from the Victory '84 Account and and \$1,500 came from the A-Team Account.

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depositing such funds in their federal account.

C. Itemization and Disclosure of Contributions

Pursuant to 2 U.S.C. § 434(b)(3)(D), reporting committees must disclose the identification of each affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee must be disclosed, regardless of whether such committees are affiliated, together with the date and amount of such transfers. Instructions for the Detailed Summary Page of FEC Form 3X require that, for each transfer, the identification of the committee, the date and amount of the transfer, and the aggregate year-to-date total be disclosed.

As noted above, Respondents received a total of 22 transfers and contributions from party and other political committees and organizations into their federal accounts. These transfers and contributions totaled \$67,466.50. Of those 22 transfers, some were either not itemized or lacked aggregate year-to-date totals in disclosure reports filed with the Commission. In several instances the contributing committee was identified incorrectly. Although Respondents filed a comprehensive amendment to their 1984 Year-End Report to correct these reporting errors, they failed to make such corrections in a timely manner.

Therefore, this Office recommends that the Commission find probable cause to believe Respondents violated 2 U.S.C. § 434(b) by failing to report these transfers and contributions accurately

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and in a timely manner.

D. Alleged Prohibited Contribution

Section 441b of the Act states that it is unlawful for any corporation, national bank, or labor organization to make a contribution or expenditure in connection with any election to any federal office. Any candidate, political committee, or other person is prohibited from knowingly accepting and receiving a contribution so prohibited.

Respondents accepted what appeared to be a corporate contribution in the amount of Three Thousand Dollars (\$3000) from PIMCO and Trevor Phillips. The address for Trevor Phillips, as identified in Respondents' disclosure reports, was located in Garden Grove, California. The check had the name "PIMCO" printed over Mr. Phillip's name. There is currently an active corporation in good standing in the State of California named PIMCO, Inc., but it is located in Santa Ana, California, and there is no evidence that Mr. Phillips is connected with that company. A second corporation which initially had the name PIMCO, Inc., changed its name to Industrial Molding Corporation in August 1978. That company is located in Quintana, California, and there is no evidence that Mr. Phillips had any connection with that company either.

Respondents supported their response to the allegation of receiving a prohibited corporate contribution with another affidavit signed by John F. Scott, wherein he stated that he had personal knowledge of the circumstances of the contribution from PIMCO and that an attempt to ascertain the status of PIMCO and

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the whereabouts of Mr. Phillips had been made by Respondents. The affiant declared that the contribution was unsolicited and had been received by mail on or about October 18, 1984. Affiant further stated that upon contacting the Merrill Lynch Cash Management Account, from which the PINCO/Trevor Phillip's check was issued, the committee staff had been informed that PINCO was a limited partnership and that the account was closed on December 18, 1985, with no forwarding address. Affiant affirmed that neither of the above companies located in Santa Ana and Newport Beach, California, had made any contribution to the West Virginia Republican Party.

There is no evidence available to this Office to refute the assertion that PINCO was other than a limited partnership. It appears that the only indication that the contribution at issue may have been made by a corporation was the printed acronym "PINCO" on the check. Therefore, this Office recommends that the Commission find no probable cause to believe Respondents violated 2 U.S.C. § 441b with respect to the contribution received from PINCO and Trevor Phillips.

E. Recommendations Summary

Based on the foregoing, this Office recommends that the Commission find probable cause to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 441a(f) by making excessive expenditures on behalf of the 1984 Raese Senatorial campaign; 11 C.F.R. § 102.5(a) by making expenditures in connection with a federal election from their non-federal account; 2 U.S.C.

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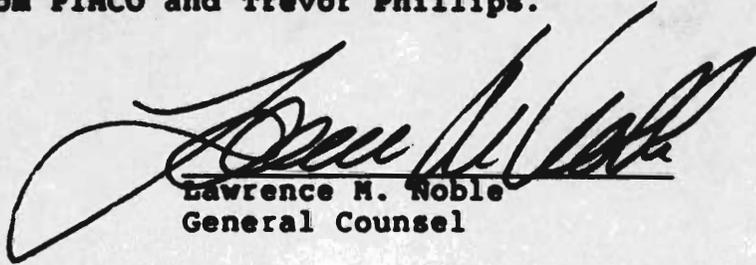
§ 434(b) by failing to report certain expenditures made on behalf of federal candidates, and by failing to report the receipt of certain contributions and transfers accurately and in a timely manner; and 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a) by accepting funds prohibited by the Act from the Republican National State Elections Committee and depositing such funds in their federal account.

Based on the foregoing, this Office also recommends that the Commission find no probable cause to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 441b by accepting a contribution from PINCO.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. §§ 441a(f), 441b, and 434(b); and 11 C.F.R. § 102.5(a).
2. Find no probable cause to believe the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 441b with respect to the contribution received from PINCO and Trevor Phillips.

Date 2/2/89


Lawrence M. Noble
General Counsel

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06C 1854

J. THOMAS LANE
ATTORNEY AT LAW
P.O. BOX 1386
CHARLESTON, WEST VIRGINIA 25325
PHONE 344-8821

RECEIVED
FEDERAL ELECTION COMMISSION
89 FEB 15 PM 12:23

February 9, 1989

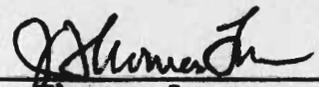
Thomas J. Josefiak, Chairman
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

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OFFICE OF THE
89 FEB 16 AM 9:58

Re: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
Treasurer

Respondents, by counsel, hereby request an extension of time to file a responsive brief. In support of its request, Respondents assert that:

1. Counsel for Respondents received General Counsel's brief on February 9, 1989.
2. Counsel for Respondents will be out of state from February 11 until February 21, 1989, and thus will be unable to begin preparation of a responsive brief until after that time.
3. In view of the fact that the Office of General Counsel plans to recommend a finding of probable cause on virtually all issues in the matter under review, counsel for Respondents will need until March 27, 1989, to file its brief.



J. Thomas Lane
Counsel for Respondents
P.O. Box 1386
Charleston, West Virginia 25325-1386
(304) 347-1100

cc: Edgar F. Heiskell, III, Esq.
E. Mark Braden, Esq.
Lawrence M. Noble, Esq.
Sandra H. Robinson, Esq.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 17, 1989

J. Thomas Lane, Esq.
P.O. Box 1386
Charleston, West Virginia 25325-1386

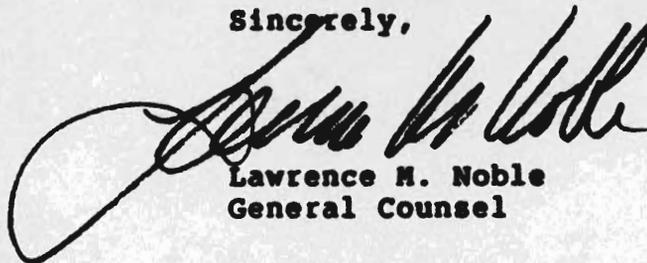
RE: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
treasurer

Dear Mr. Lane:

This is in response to your letter dated February 9, 1989, which we received on February 13, 1989, requesting an extension until March 27, 1989, to respond to the General Counsel's Brief. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on March 27, 1989.

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

Sincerely,



Lawrence M. Noble
General Counsel

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OFC 2327

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ADMINISTRATIVE DIVISION

89 MAR 30 AM 11:41

LAW OFFICES

Bowles Rice McDavid Graff & Love

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P.O. Box 1386 • Charleston, West Virginia 25325-1386 • (304) 347-1100
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P.O. Box 59 • Charles Town, West Virginia 25414 • (304) 725-1535
207 East Liberty Street • Charles Town, West Virginia • 25414
204 North Washington Street • Berkeley Springs, West Virginia 25418 • (304) 258-2581

WRITER'S DIRECT DIAL NUMBER

347-1133

AND LOCATION

United Center

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March 28, 1989

Secretary of the Commission
Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

Re: MUR ~~0000~~ 2370

Gentlemen:

Enclosed please find an original and nine (9) copies of Reply Brief of Respondent West Virginia Republican State Executive Committee for filing.

Thank you for your cooperation.

Very truly yours,

BOWLES RICE McDAVID GRAFF & LOVE

Vanessa T. Valldejuli

VTV/skm
Enclosures

cc: Lawrence M. Noble, General Counsel
Federal Election Commission

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BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF)
WEST VIRGINIA REPUBLICAN STATE)
EXECUTIVE COMMITTEE AND JACK)
ROSSI, AS TREASURER)

MUR ~~8920~~ 2370

REPLY BRIEF OF RESPONDENT
WEST VIRGINIA REPUBLICAN
STATE EXECUTIVE COMMITTEE

In the summer of 1985, auditors of the Federal Election Commission ("Commission") conducted an audit of the activities of the West Virginia Republican State Executive Committee and its treasurer, Jack Rossi ("Party" or "Respondent") for the period January 1, 1983, through December 31, 1984. On March 5, 1986, the Party was formally advised of the findings and recommendations of the Commission's audit staff. This enforcement matter arises from issues which were referred to the Office of the General Counsel from that audit report.

A. Expenditures in Excess of Limitations.

1. Voter Registration and Get-Out-The-Vote (GOTV).

The West Virginia Republican Party conducted a registration get-out-the-vote phone bank in conjunction with the 1984 election. The Party expended \$5,000 for the telephone service and \$4,000 for consulting fees in connection with the phone bank for a total of \$9,000. General Counsel contends that costs for the phone bank should be allocated to each candidate mentioned in the script used by the volunteer callers. More specifically, a one-sixth proportion of the total cost for the phone bank should be allocated to the campaign of John Raese for Senator in the amount of \$1,500. Respondent maintains that the script indicates that the major thrust of each phone call was on behalf of the "top" of the Republican ticket, President Reagan and gubernatorial candidate (now former governor), Arch Moore.

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Attached hereto as Exhibit "A", and made a part hereof is a copy of the script used in that phone bank.

The purpose of the GOTV activity was to promote President Reagan and the state candidates, especially gubernatorial candidate, Arch Moore. The phone bank which implemented the GOTV drive was designed generally to generate support for the entire Republican ticket running in West Virginia, although the structure of the script for the phone bank and the political realities of West Virginia politics confirm that the phone bank program was designed and executed primarily to support the candidacies of President Reagan and Arch Moore. The phone bank was an all-volunteer phone bank staffed by Reagan and Arch Moore supporters. See Affidavit of John Scott attached hereto as Exhibit "B" and made a part hereof. Of the \$9,000 expended, over fifty percent (50%) was spent on behalf of Arch Moore. The mention of Messrs. Altmeyer, McCuskey and Raese was merely incidental to the primary purpose of the phone call. A closer review of the phone script attached hereto as Exhibit "A", clearly demonstrates that volunteers were calling principally on behalf of Arch Moore. Under these facts the expenditures in connection with this phone bank are exempt from the definition of contribution and require no allocations to any federal contribution limit as set forth in 11 CFR Section 100.7(b)(17).

The Federal Election Campaign Act permits volunteer phone banks for a presidential candidate, state candidates (paid for by a state account), and other federal candidates if mention of such federal candidates is merely incidental.

2. Expenditures for Billboard Advertising.

General Counsel contends that because the expenditures made in connection with the billboard advertisements are campaign

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related, depicted a clearly identified candidate, and conveyed an electioneering message, they must be viewed as directed to the Rockefeller- Raese contest. Thus, the expenditures should have been reported as a coordinated party expenditure or as an in-kind contribution to the Raese campaign.

Respondent initially reported the disbursements for the costs of the billboards in its 1984 July Quarterly Report as operating expenditures. Pursuant to the Report Analysis Division's Report ("RAD"), Respondent amended its Report and reported these disbursements as expenditures made on behalf of John Raese, applicable to the section 441a(d) coordinated party expenditure limitation. After ascertaining that the advice given in the RAD Report was erroneous, Respondent again amended the 1984 July Quarterly Report changing the designation of billboard expenditures as operating expenses, and simultaneously divided that total among five candidates for federal office and three candidates for state offices. As a result Respondent did allocate \$2,715.62 to the Raese campaign. Respondent inadvertently failed to designate said allocation for the primary election.

The billboards in question were purchased days before the primary election when they became available as a result of a last minute cancellation made by the Democratic Party. The Committee decided to take advantage of the available billboards to bolster the entire Republican ticket.

Based on the last amended report General Counsel has made the finding that these expenditures were made (i) in connection with the general election of a nominee for federal office which is prohibited by 11 C.F.R. §110.7(b)(4), or (ii) were made on behalf of a particular candidate as defined in 2 U.S.C. § 441 (a)(7)(B)(i), in which case the expenditures should have been reported as a coordinated party expenditure or an in-kind contribution to the Raese campaign.

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Respondent contends that the foregoing findings are without merit, and have no support in the Federal Election Campaign Act (FECA), the Commission's regulations, or the Commission's advisory opinions. Furthermore the expenditures associated with the billboard advertisements are protected by the First Amendment.

With respect to the first finding, the original manner of reporting the billboard expenses was the appropriate manner in which to disclose these disbursements. Unfortunately, the Party has followed the Reports Analysis Division's erroneous advice. Respondent proposes to amend its report to return to its original form.

With respect to the second finding, in advisory opinion 1985-14, the Commission "concluded that the limitations of Section 441a(d) did apply where the communication both (1) depicted a clearly identified candidate, and (2) conveyed an election year message." The Commission has recognized that electioneering messages are statements designed to urge the public to elect a certain candidate. These advertisements do not urge any West Virginia voter to vote for John Raese or to vote against Jay Rockefeller. There is no candidate-specific electioneering message. For that reason, these billboards are not subject to any limitation under Section 441a(d).

Respondent contends that the billboard message was to benefit the Republican ticket as a whole and especially its gubernatorial candidate, Arch Moore. (See Exhibit "D" attached hereto and made a part hereof). The advertisements which were purchased prior to the general election do not urge any West Virginian to vote for John Raese or to vote against Jay Rockefeller. There is no direct advocacy or candidate - specific electioneering message. Therefore, the billboards are not subject to any limitation under Section 441a(b).

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The West Virginia Republican Party made the political decision that then - Governor Rockefeller's leadership, or lack thereof, should be the major focus of the Republican Party's campaign in West Virginia in 1984. It was the opinion of the West Virginia Republican Party that Jay Rockefeller and his Democratic administration and the Democratic State Legislature had damaged the State of West Virginia. This particular advertising project was designed to discuss the issue of Rockefeller's record as governor, to assist all Republican office holders and seekers, and was a key component of Arch Moore's gubernatorial campaign. One of the principal themes of the Moore campaign was attacking "Jay's record for West Virginia."

Notwithstanding that General Counsel's findings have no statutory support under the facts of this case, the discussion of issues and officeholders is, such an integral part of our system of government and is such an important right that the "First Amendment affords the broadest possible protection to such political expression to assure [the] unfettered interchange of ideas." Buckley v. Valeo, 424 U.S. 1, 14 (1986). Not only do the parties promote candidates, but they also debate the positions and qualifications of officeholders, sponsor policy discussions, engage in party - building activity, and release issue - oriented mailings to the public on topics of government and governance.

"In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation . . . [I]t can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." Id. at 14-15. Thus, speaking on all these issues is fundamental to the party system and

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protected by the First Amendment. The Party has engaged in precisely this type of political expression in this case.

The Supreme Court has stated that the Commission cannot constitutionally regulate the discussion of all public issues even if the discussion "draws in candidates and their positions, their voting records and other office conduct." Buckley at 42 n. 50 (emphasis added). Although the discussion of issues "naturally and inexorably . . . exert(s) some influence on voting at election" the Commission may only regulate those communications which, at a minimum, contain an electioneering message urging the public to vote for a particular candidate or party. Id. Limiting a party's issue - oriented speech conflicts with the decisional law that clearly divides the regulated advocacy of campaigns and elections from the free discussion of issues, officeholders, their conduct and their votes. Buckley at 42-45; Central Long Island Tax Reform Immediately Committee v. FEC, ("CLITRIM") 616 F.2d 45, 53 (2nd. Cir. 1980).

Respondent maintains that it should not be penalized for following the erroneous advice of RAD and in any event, the billboard expenditures are not subject to section 441a(d) limitations both on statutory and constitutional grounds.

3. Newspaper Advertisements.

The party did purchase advertisements in three West Virginia newspapers prior to the election with expenditures totaling \$2,060.47. The advertisements were as described in the Audit Committee's findings. Although these expenditures should be reported as either in-kind contributions or coordinated party expenditures to the Raese campaign, the Party maintains that the limitations imposed are unconstitutional. See Buckley v. Valeo, supra.

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4. Disbursement from a Non-Federal Account.

The West Virginia Republican State Committee's Field Account should not have been reported to the Commission. The Field Account was established as a non-federal account and all directed disbursements made were for state expenditures. The account was mistakenly reported as a federal committee account and should be deleted from the Commission's files. This registration and reporting by the Field Account was a simple clerical error abetted by questionable or misunderstood advice received from the Commission staff.

5. Reporting Errors.

These findings have been previously discussed with respect to the issues of the GOTV Activity, the Billboard and the newspaper advertisements. For the reasons above stated, Respondent maintains that allegations of reporting errors with respect to the Raese and Altmeyer campaigns are unfounded.

B. Transfer of Funds From Unregistered/Non-Federal Committees.

Respondent has promptly undertaken all steps requested of it by the Commission's audit report to rectify the minor remaining problems in the Field Account in regard to transfers of funds from unregistered party organizations to the Party's federal committee most of which were not resolved by the changed status of the Field Account.

Of the \$7,670 balance which remains to be transferred, \$6,500 has already been transferred out pursuant to the audit team's advice. Furthermore, the Committee's accountant transferred the \$100 contributed by the Jefferson County Women's Club and the \$550 contributed by Monongalia County to its non-federal account in a lump sum transfer. The Committee's accountant will

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amend the report, if necessary, to show the specific transfers as memo entries. Respondent only awaits the guidance of the Commission.

Allegations that the unregistered/non-federal party committees may have accepted prohibited money under the Federal Election Campaign Act are completely unfounded. The original affidavit of John Scott, Director of the West Virginia Republican Party which was previously tendered did not include funds transferred from the RNSEC inasmuch as Respondent was lead to believe that the focus of inquiry was other non-federal committees and Respondent has no direct control over the RNSEC account. Respondent herewith tenders the amended affidavit of John Scott, Director of the West Virginia Republican Party, attached hereto as Exhibit "D", and made a part hereof. Said affidavit clearly establishes that no contributions from labor unions or corporations were accepted by any of the unregistered/non-federal accounts including the RNSEC account.

C. Itemization and Disclosure of Contributions.

The Party agrees that it may not have itemized and aggregated correctly and that it did not make corrections in a timely manner. However, such accounting mistakes normally occur and only total ten percent (10%) of the total transfers reviewed. Such an amount is di minimus. A ten percent (10%) error is indicative of the application of good accounting procedures and demonstrates a high level of compliance with the Federal Election Campaign Act. Additionally, the Party's attempt to make corrections, however untimely, is further indicative of the Party's good faith effort to comply with the Federal Election Campaign Act.

The Party maintains that it should not be penalized for di minimus mistakes in accounting.

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D. Prohibited Contribution.

Respondent agrees with General Counsel's finding that there is no evidence to support the allegation that the Party accepted a corporate contribution in violation of 2 U.S.C. Section 441b. Respondent further agrees with General Counsel's recommendation that the Commission find no probable cause that Respondent violated 2 U.S.C. Section 441b with respect to the contribution from PIMCO and Trevor Phillips.

E. Conclusion.

Based on the foregoing, Respondent urges that the Commission find no probable cause that Respondent violated:

1. Section 441a(f) by making excessive expenditures on behalf of the 1984 Raese Senatorial campaign;
2. 11 C.F.R. Section 1025(a) by making expenditures in connection with a federal election from its non-federal account;
3. 2 U.S.C. Section 434(b) by failing to report certain expenditures made on behalf of federal candidates and, by failing to report the receipt of certain contributions and transfers accurately and in a timely manner;

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4. 2 U.S.C. Section 441b and 11 C.F.R. Section 1025(a) by accepting funds prohibited by the Act from the Republican National State Election Committee and depositing such funds in its federal account; and,

5. 2 U.S.C. Section 441b by accepting a contribution from PIMCO.

Respectfully submitted,

WEST VIRGINIA REPUBLICAN
STATE EXECUTIVE COMMITTEE,

By Counsel.

Vanessa T. Valldejuli

J. Thomas Lane
Vanessa T. Valldejuli
BOWLES RICE McDAVID GRAFF & LOVE
Post Office Box 1386
Charleston, West Virginia 25325-1386
(304) 347-1100

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ADVOCACY CALL CONVERSATION

HELLO! IS THIS _____ ? I'M A VOLUNTEER CALLING
FOR THE REPUBLICAN TICKET HERE IN WEST VIRGINIA. ARCH MOORE
ASKED ME TO CALL BECAUSE WE HAVE OUTSTANDING REPUBLICAN CANDIDATES
RUNNING FOR OFFICE AND THEY NEED YOUR VOTE AND THE VOTES OF OTHERS
IN YOUR HOUSEHOLD. PRESIDENT REAGAN, JOHN RAESE FOR SENATE,
JIM ALTMAYER FOR U.S. CONGRESS, AND JOHN MC CUSKEY FOR
ATTORNEY GENERAL ARE ASKING FOR YOUR SUPPORT AND SO ARE THE OTHER
FINE, REPUBLICAN CANDIDATES RUNNING HERE IN WEST VIRGINIA.
CAN GOVERNOR MOORE COUNT ON YOUR SUPPORT FOR OUR TEAM?

(pause for response)

THANK YOU VERY MUCH AND PLEASE DON'T FORGET ELECTION DAY IS
TUESDAY, NOVEMBER 6.

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EXHIBIT B

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF)
WEST VIRGINIA REPUBLICAN STATE)
EXECUTIVE COMMITTEE AND JACK)
ROSSI, AS TREASURER)

MUR 2320

REPLY BRIEF OF RESPONDENT
WEST VIRGINIA REPUBLICAN
STATE EXECUTIVE COMMITTEE

AFFIDAVIT OF JOHN F. SCOTT

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, To-Wit:

This day John F. Scott personally appeared before me, the undersigned authority, and after first being duly sworn upon oath did depose and say:

1. That he was at all relevant times and still is the Executive Director of the West Virginia Republican Party, Respondent, in the above matter under review before the Federal Election Commission, and as such, he has personal knowledge of the facts herein stated, and that he is duly authorized to make this Affidavit;

2. That after due inquiry he has ascertained that:

(a) The phone bank which implemented the GOTV drive was an all-volunteer phone bank staffed by Reagan and Arch Moore supporters.

(b) That the volunteers called principally on behalf of Arch Moore.

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(c) That payment for the costs of the phone bank were not made from funds donated by the Republican National Committee.

John F. Scott
JOHN F. SCOTT

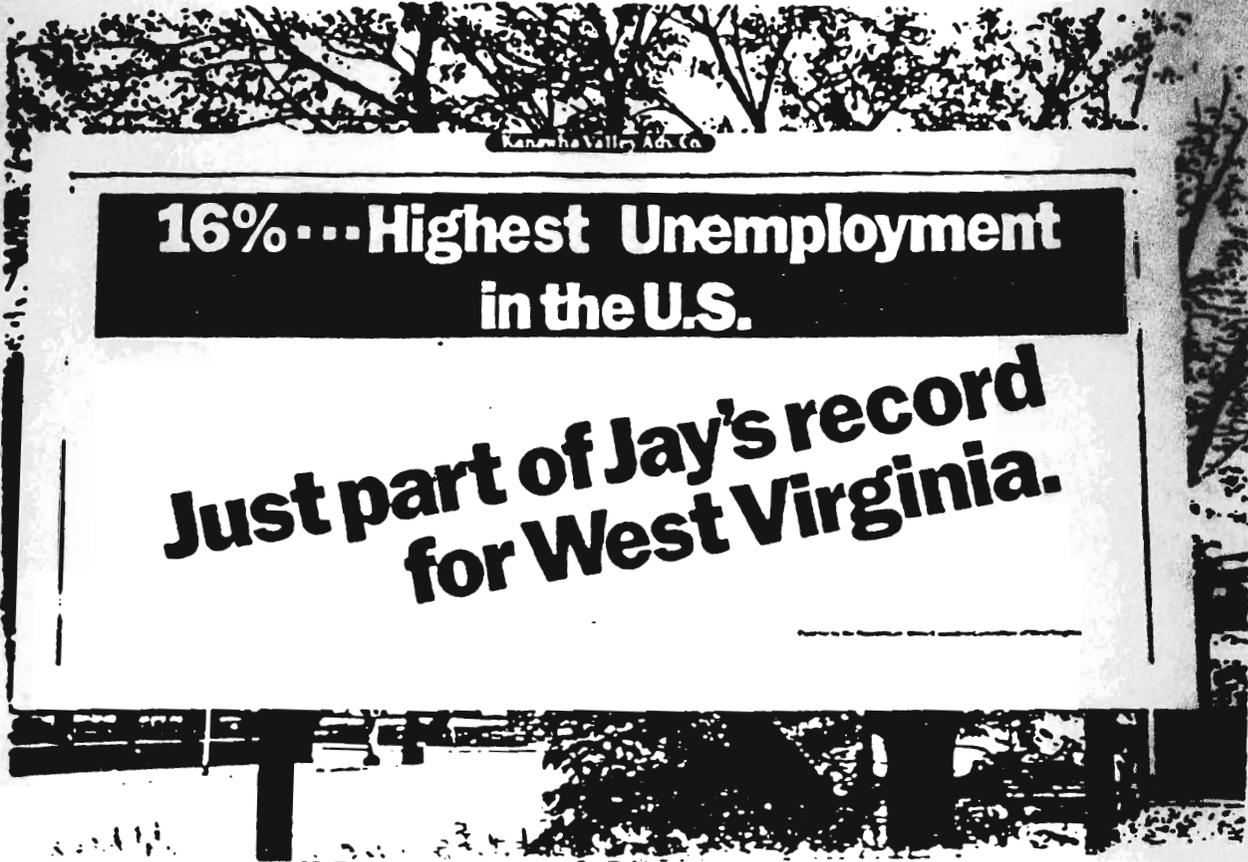
Taken, subscribed and sworn to before me this 28th day of March, 1989, as witness my hand and official seal.

My commission expires July 17, 1995.



Sandra K. May
NOTARY PUBLIC

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Kenmore Valley Ad Co.

**16%... Highest Unemployment
in the U.S.**

**Just part of Jay's record
for West Virginia.**

9 1 0 4 0 8 4 5 3 2 9

EXHIBIT D

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF)	MUR 2320
WEST VIRGINIA REPUBLICAN STATE)	
EXECUTIVE COMMITTEE AND JACK)	
ROSSI, AS TREASURER)	

REPLY BRIEF OF RESPONDENT
WEST VIRGINIA REPUBLICAN
STATE EXECUTIVE COMMITTEE

AFFIDAVIT OF JOHN F. SCOTT

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, To-Wit:

This day John F. Scott personally appeared before me, the undersigned authority, and after first being duly sworn upon oath did depose and say:

1. That he was at all relevant times and still is the Executive Director of the West Virginia Republican Party, Respondent, in the above matter under review before the Federal Election Commission, and as such, he has personal knowledge of the facts herein stated, and that he is duly authorized to make this Affidavit;

2. That after due inquiry he has ascertained that no prohibited contributions (such as corporate or labor union money) as defined by the Federal Election Campaign Act are accepted by the following unregistered/non-federal committees.

- a. Republican National State Election Committee
- b. Jefferson County Women's Club

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- c. CONCEPT
- d. Monongalia County
- e. Ritchie County Republican Executive Committee
- f. Eastern Association Coal PAC

John F. Scott
JOHN F. SCOTT

Taken, subscribed and sworn to before me this 28th day
of March, 1989, as witness my hand and official seal.

My commission expires July 17, 1995.



Sandra K. May
NOTARY PUBLIC

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AGENDA DOCUMENT #X89-056

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
West Virginia Republican State
Executive Committee and Jack Rossi,
as treasurer

)
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SENSITIVE

MUR 2370

AGENDA ITEM

GENERAL COUNSEL'S REPORT For Meeting of: July 18, 1989

I. BACKGROUND

This matter was generated through an audit of the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer ("Respondents"), conducted by the Federal Election Commission ("Commission") pursuant to Section 438(b) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit covered the period of January 1, 1983, through December 31, 1984. On February 2, 1988, the Commission found reason to believe Respondents violated 2 U.S.C. §§ 441a(f), 434(b)(2), 434(b)(3)(D), 434(b)(4)(H)(iv), 434(b)(6)(B)(iv), and 441b; and 11 C.F.R. § 102.5(a). An investigation was subsequently instituted in this matter. The alleged violations ensued from a voter registration/get-out-the-vote drive conducted during the 1984 election cycle that resulted in excessive expenditures on behalf of federal candidates, certain reporting errors, and certain prohibited financial transactions that occurred in both federal and non-federal accounts.

II. ANALYSIS

This Office relies primarily on its legal analysis set forth in its Brief to Respondents signed February 2, 1989. One change in this Office's recommendations, discussed below, is also made due to additional information provided by Respondents in their

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Reply Brief.

A. Expenditures in Excess of Limitations

During the 1984 election cycle Respondents conducted certain activities, which resulted in excessive contributions to the campaign committee of John Raese, a candidate for the U.S. Senate from the State of West Virginia.¹

1. Voter Registration/Get-Out-the-Vote Activity

Respondents continue to assert that the GOTV activity, which consisted of a phone bank, should not be allocated to the federal candidates mentioned in the script. Respondents maintain that the mention of such candidates was incidental and that the focus of the phone bank was the Reagan presidential and Arch Moore gubernatorial campaigns. Respondents further state that the phone bank was operated by volunteers. In addition, attached to Respondents Reply Brief was an affidavit signed by John F. Scott, Executive Director of the West Virginia Republican Party, wherein he declared that national party funds were not used to pay for the phone bank activity.

Respondents assertions do not comport with the evidence in this matter. It was determined by the Commission earlier in this matter that at least \$4,000 of the total \$9,000 expended for the GOTV activity was transferred from the Republican National Committee ("RNC") for such purpose. It was determined that the Field Account was financed primarily with transfers from the RNC

1. Mr. Raese lost the general election with 48% of the vote to the Democratic candidate, Jay Rockefeller. Mr. Rockefeller was also the incumbent governor of West Virginia at the time of the 1984 elections.

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during the period audited and documentation indicated that at least \$4,000 from the RNC was to be used to pay the consulting fees connected with the phone bank. See, MUR 2370 - First General Counsel's Report, signed January 25, 1988. Further, in response to interrogatories propounded to Respondents following the reason to believe finding, it was stated that the RNC had assisted with the GOTV activity by providing financial assistance and that the "RNC transferred \$14,000. [sic] to the Committee to assist with costs for the GOTV activity as set forth in a letter dated September 20, 1984, and a letter dated October 3, 1984, Kent Hall, Chairman of the Committee in 1984." The responses to the interrogatories were signed by Mr. Scott, although not under oath. Attached to the responses were copies of the letters referenced above. The letter dated October 3, 1984, was identified by Respondents as evidence of the \$4,000 transfer from the RNC "for the GOTV activity". The letter itself begins with the sentence, "[t]he Republican National Committee is pleased to send this check in the amount of \$4,000 for your voter turnout operation ..." As noted in this Office's Brief, Respondents also offered as an explanation that they considered the GOTV activity to be for the benefit of the gubernatorial candidate, and that they were not aware of the mention of federal candidates in the phone script until the Commission audit.

Regardless of the use of national party funds to pay for expenses connected with the GOTV activity, it is the position of this Office that the identification of the candidates in the telephone script was more than incidental and required allocation

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pursuant to 11 C.F.R. 100.7(b)(17(iv)). As stated in our Brief, the telephone script in this instance was short, consisting of approximately six sentences. The statements about the federal candidates clearly identified each candidate by name and by the office sought.

2. Expenditures for Billboard Advertising

Respondents continue to raise certain constitutional objections to the Commission's actions with regard to the billboard advertising. Specifically, Respondents argue that such advertising did not contain an electioneering message and that they are protected by the First Amendment right to free political speech. This Office relies on its analysis set forth in its Brief with respect to this issue.

Respondents further contend that the advertisements were for the benefit of the gubernatorial candidate, Arch Moore, and that they inadvertently failed to designate them for the primary election as the billboards were purchased prior to that election. As stated in our Brief, the advertisements identified by name the opposing party's Senatorial candidate and criticized his record as the incumbent governor of West Virginia. It was noted that Mr. Rockefeller had not held a federal office at the time of the 1984 election, such that criticism of his role as a public official was limited to his term as governor of the state. The billboards were displayed approximately three days before the primary election and approximately 30 days after that election.

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Thus, the advertisements were not limited to influencing the primary election, but were to also impact on the general election.

3. Newspaper Advertisements

Respondents acknowledge that the expenditures for this activity should be allocated to the Raese campaign and reported as an in-kind contribution or coordinated party expenditure. Respondents maintain, however, that such limitations of the Act are unconstitutional.

4. Disbursements from Non-federal Account

Respondents reiterated that the Field Account was erroneously reported to the Commission as a federal account. Respondents did not address the fact that all of the disbursements for the GOTV activity, discussed above, were made from the Field Account.

5. Reporting Errors

Respondents asserted that the reporting errors alleged in connection with the federal candidates are unfounded. This Office relies on its analysis set forth in its Brief.

Therefore, this Office recommends that the Commission find probable cause to believe Respondents violated 2 U.S.C. §§ 441a(f) and 434(b), and 11 C.F.R. § 102.5(a).

B. Transfers of Funds from Unregistered/Non-federal Committees

Respondents attached a second affidavit signed by Mr. Scott to their Reply Brief. In that affidavit Mr. Scott included the Republican National State Election Committee ("RNSEC") in the list of unregistered, nonfederal organizations that had

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contributed money to Respondents during the period in question, and for which he stated that "after due inquiry he has ascertained that no prohibited contributions (such as corporate or labor union money)" was accepted by those committees. In an affidavit signed by Mr. Scott and previously submitted by Respondents, the RNSEC had been omitted from this list. The first affidavit included the same type of information as the second, with the exclusion of the RNSEC, and was considered adequate to determine that the contributions from the other unregistered, nonfederal organizations did not include prohibited funds. Thus, at the time of this Office's Brief to Respondents, the make-up of the funds received from the RNSEC was unresolved. It was noted then that West Virginia state election law permits labor organizations to contribute to election campaigns. Based on the additional information, this Office now recommends that the Commission find no probable cause to believe Respondents violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a) with respect to this financial activity.

C. Itemization and Disclosure of Contributions

Respondents acknowledge that there was a mistake in their accounting that contributed to reporting errors with regard to transfers and contributions received during the audited period. This Office relies on its analysis set forth in its Brief. This Office recommends that the Commission find probable cause to believe Respondents violated 2 U.S.C. § 434(b) by failing to report certain transfers and contributions accurately and in a timely manner.

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D. Alleged Prohibited Contribution

Respondents accept this Office's analysis and recommendation with respect to this issue. This Office recommends that the Commission find no probable cause to believe Respondents violated 2 U.S.C. § 441b with respect to the contribution received from PINCO and Trevor Phillips.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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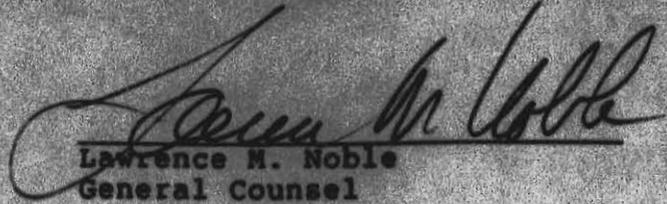
IV. RECOMMENDATIONS

1. Find probable cause to believe that West Virginia State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b); and 11 C.F.R. § 102.5(a).

2. Find no probable cause to believe that West Virginia State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a) with respect to contributions received from PIMCO and certain unregistered, nonfederal committees.

3. Approve the attached conciliation agreement and letter.

7/3/89
Date


Lawrence M. Noble
General Counsel

Attachments:

1. Conciliation Agreement
2. Letter

Staff assigned: Sandra H. Robinson

91040845339

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
West Virginia Republican State) MUR 2370
Executive Committee and)
Jack Rossi, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of August 1, 1989, do hereby certify that the Commission took the following actions in MUR 2370:

1. Failed in a vote of 3-3 to pass a motion to find probable cause to believe that West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 441a(f).

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

2. Decided by a vote of 5-1 to find probable cause to believe that West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 102.5(a).

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

(continued)

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3. Decided by a vote of 6-0 to find no probable cause to believe that West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a) with respect to contributions received from PIMCO and certain unregistered, nonfederal committees.

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

4. Decided by a vote of 5-1 to approve the conciliation agreement and letter attached to the General Counsel's report dated July 3, 1989.

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

5. Decided by a vote of 6-0 to request the General Counsel to circulate the amended conciliation agreement for final approval on a tally vote basis.

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

Attest:

8-1-89

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

91040845341

89 AUG 15 AM 9:03

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)	
)	
West Virginia Republican State)	MUR 2370
Executive Committee and Jack)	
Rossi, as treasurer)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 1, 1989, the Federal Election Commission ("Commission") made certain probable cause to believe findings with respect to the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer. The Commission also directed this Office to make certain revisions to the Conciliation Agreement and letter to Respondents.

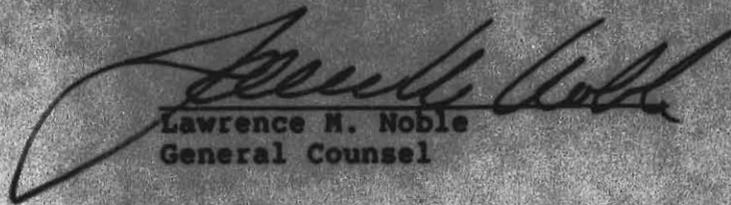
The Commission further directed that these revised documents be circulated for final approval on a tally vote basis. The revised documents are attached for the Commission's consideration. The revised documents have been marked to indicate where revisions were made. A copy of the initial Conciliation Agreement has been marked and attached to facilitate a comparison of the two versions.

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II. RECOMMENDATION

1. Approve the attached revised Conciliation Agreement and letter to West Virginia Republican State Executive Committee and Jack Rossi, as treasurer.

8/11/87
Date


Lawrence M. Noble
General Counsel

Attachments

1. Revised Conciliation Agreement
2. Initial Conciliation Agreement
3. Letter

Staff Assigned: Sandra H. Robinson

91040845343

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
West Virginia Republican State)
Executive Committee and Jack)
Rossi, as treasurer)

MUR 2370

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 17, 1989, the Commission decided by a vote of 4-1 to approve the revised Conciliation Agreement and letter to West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, as recommended in the General Counsel's Report to the Commission dated August 11, 1989.

Commissioners Elliott, Josefiak, McDonald, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented and Commissioner McGarry did not cast a vote.

Attest:

8-18-89
Date

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

Received in the Secretariat: Tuesday, August 15, 1989 at 9:03 a.m.
Circulated to the Commission: Tuesday, August 15, 1989 at 4:00 p.m.
Deadline for vote: Thursday, August 17, 1989 at 4:00 p.m.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

August 22, 1989

J. Thomas Lane, Esq.
Bowles Rice McDavid Graff & Love
P.O. Box 1386
Charleston, West Virginia 25325-1386

RE: MUR 2370
West Virginia Republican
State Executive Committee
and Jack Rossi, as
treasurer

Dear Mr. Lane:

On August 1, 1989, the Federal Election Commission found that there is probable cause to believe your clients, West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 102.5(a), a provision of Commission regulations, in connection with certain expenditures made on behalf of federal candidates, disbursements from a non-federal account made in connection with federal election activity, and certain reporting errors. On that same date, the Commission found no probable cause to believe your clients violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a), in connection with the receipt of apparent prohibited funds and depositing such funds in a federal account. The Commission was equally divided on whether to find probable cause to believe your clients violated 2 U.S.C. § 441a(f).

The Commission has a duty to attempt to correct 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.

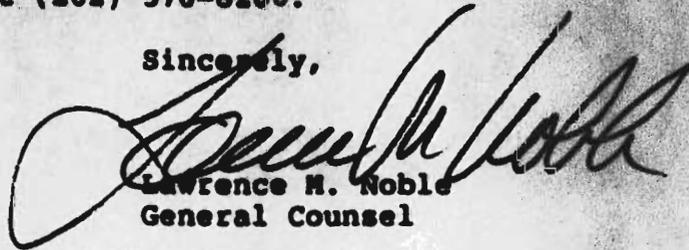
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J. Thomas Lane, Esq.
Page 2

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.

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 Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

91040845346



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

September 25, 1989

J. Thomas Lane, Esq.
Bowles Rice McDavid Graff & Love
P.O. Box 1386
Charleston, West Virginia 25325-1386

RE: MUR 2370

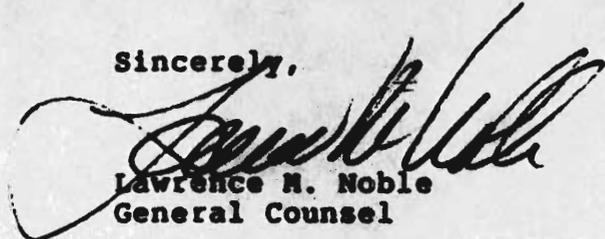
Dear Mr. Lane:

On August 22, 1989, you were notified that the Federal Election Commission found probable cause to believe that your clients, West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 102.5(a). On that same date, you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the conciliation period in this matter may not extend for more than 90 days, but may cease after 30 days. Insofar as more than 30 days have elapsed without a response from you, a recommendation concerning the filing of a civil suit will be made to the Commission by the Office of the General Counsel unless we receive a response from you within 15 days of receipt of this letter.

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

Sincerely,



Lawrence M. Noble
General Counsel

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OGC 4247

RECEIVED
ELECTION COMMISSION
MAIL ROOM

89 OCT 12 AM 10:34

October 9, 1989

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
89 OCT 12 AM 11:27

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 East Street, N. W.
Washington, D. C. 20463

MUR 2370

RE: ~~MUR 26-370~~ West Virginia Republican
State Executive Committee and Jack Rossi,
as Treasurer

Dear Mr. Noble:

On October 3, 1989, I received a copy of your letter dated September 25, 1989 to J. Thomas Lane, Esq. This was my first knowledge of a proposed "conciliation Agreement". In response to this letter, on October 3, 1989, I requested a copy of the conciliation agreement from Mr. George Rishel of your office. (I was informed that Ms. Sandra H. Robinson, was out of the office until after October 4, 1989.)

As a result of my request, I received a copy of the proposed conciliation agreement and a copy of your letter dated August 22, 1989, to J. Thomas Lane, Esquire. I received this from Ms. Robinson on October 9, 1989.

In regard to the proposed conciliation agreement, please delete my name from any proceedings or actions toward or against the West Virginia Republican State Executive Committee.

Since I did not become the Treasurer of the West Virginia Republican State Executive Committee until September 22, 1987, it is impossible for me to agree that I violated any laws, statutes or regulations in conjunction with the 1984 election and the related campaign activities that were conducted by the former West Virginia Republican State Executive Committee Chairman and Treasurer. I must emphasize, that I was not a member of, nor did I serve in any capacity for the West Virginia Republican State Executive Committee prior to September 22, 1987. Based on this, for me to agree that I, as Treasurer, violated a law in connection with the 1984 election campaign, would be tantamount to being untruthful.

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Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
Page 2

Also please be advised, that effective immediately (October 9, 1989) I have resigned as Treasurer of the Committee. (See Attached) Therefore, I request that you delete my name from the proposed conciliation agreement. Further, correspondence should be directed to:

Edgar F. Heiskell, III, Esq.
West Virginia Republican State
Executive Committee
P. O. Box A
Charleston, West Virginia 25362

My personal attorney is James M. Sturgeon of Pauley, Curry, Sturgeon & Vanderford, P. O. Box 2786, Charleston, West Virginia 25330. You may call him at 304-342-6000.

Sincerely,



Jack Rossi

JR/sgs

cc: Edgar F. Heiskell, III
James A. Sturgeon

91040845349

October 9, 1989

Federal Election Commission
999 East Street, N.W.
Washington, D. C. 20463

RE: Notice of Resignation of Treasurer of
West Virginia Republican State Executive
Committee

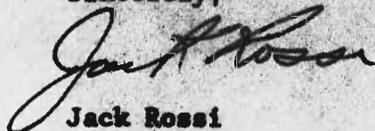
To Whom It May Concern:

Due to my current employment related workload demands and personal commitments, please be advised that effective immediately, I (Jack Rossi) do hereby resign my position as Treasurer of the West Virginia Republican State Executive Committee.

The FEC identification number for the West Virginia State Executive Committee is C00081802.

Should you need to contact me, you may do so at: Arnett & Foster, P. O. Box 2629, Charleston, West Virginia 25329 or by phone at 304-346-0441.

Sincerely,



Jack Rossi

JR/sgs

cc: Edgar F. Heiskell, III

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

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SENSITIVE

FEB 13 1990

MUR 2370

EXECUTIVE SESSION

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

West Virginia Republican State Executive)
and Robert W. DeVaul, as acting treasurer)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been submitted by counsel for the West Virginia Republican State Executive Committee and its treasurer ("Respondents").

On August 1, 1989, the Federal Election Commission ("Commission") found probable cause to believe West Virginia Republican State Executive Committee and Jack Rossi, as treasurer ("Respondents"), violated 2 U.S.C. § 434(b) and 11 C.F.R. § 102.5(a). These findings were made in connection with certain expenditures made by Respondents on behalf of federal candidates, disbursements from a non-federal account made in connection with federal election activity, and certain reporting errors. On that same date, the Commission found no probable cause to believe Respondents violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a) in connection with the receipt of apparent prohibited funds and depositing such funds in their federal account. The Commission was equally divided on whether to find probable cause to believe Respondents violated 2 U.S.C. § 441a(f). On August 17, 1989, the Commission approved a revised conciliation agreement and letter, which was mailed to Respondents' counsel on August 22, 1989. Subsequent to the Commission's finding of probable cause to believe a violation had occurred, Mr. Rossi resigned as treasurer

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of the Committee on October 12, 1989. Mr. Rossi and Mr. Heiskell, the chairman of the Committee, as well as counsel have expressed concern about Mr. Rossi being named in the conciliation agreement because he was not the treasurer at the time of the violations.

On November 28, 1989, the Commission directed this Office to determine the plausibility of substituting Mr. Heiskell in the conciliation agreement, since he already had notice of the proceedings and has been actively involved, or someone else authorized to sign for Respondents.

On December 4, 1989, the Committee filed an amended statement of organization naming an acting treasurer, Robert W. DeVaul. Staff also contacted Respondents' counsel to discuss the conciliation agreement.

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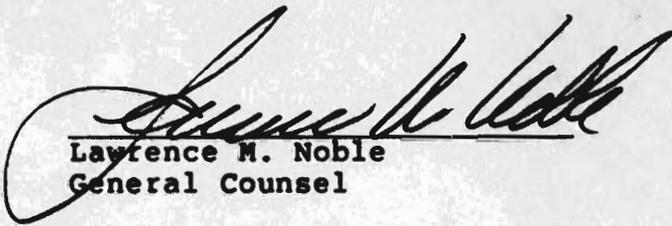
The Act provides for a period of conciliation efforts to

correct violations to extend for at least 30 days, but no longer than 90 days. However, such period need not extend beyond 30 days. In the instant matter, the period of conciliation has exceeded well beyond 90 days, primarily due to Respondents' belated submission of a counterproposal. Therefore, this Office recommends that the Commission authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against Respondents, if they do not accept the Commission's counterproposal within 15 days of receipt.

II. RECOMMENDATIONS

1. Reject the counteroffer of West Virginia Republican State Executive Committee and its treasurer.
2. Approve the attached counterproposal and letter.
3. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against West Virginia Republican State Executive Committee and its treasurer, if they do not accept the counterproposal within 15 days of receipt.

2/6/90
Date


Lawrence M. Noble
General Counsel

Attachments

1. Respondent's counteroffer
2. Proposed counterproposal and letter

Staff Assigned: Sandra H. Robinson
Jeff Long

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2370
West Virginia Republican State Executive)
Committee and Robert W. DeVaul, as)
acting treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 13, 1990, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions in MUR 2370:

1. Reject the counteroffer of West Virginia Republican State Executive Committee and its treasurer.
2. Approve the counterproposal and letter recommended in the FEC General Counsel's report dated February 6, 1990, subject to amendment of the counterproposal.

(continued)

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3. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against West Virginia Republican State Executive Committee and its treasurer, if they do not accept the counterproposal within fifteen days of receipt.

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

Attest:

2-13-90
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

February 15, 1990

J. Thomas Lane, Esq.
Bowles Rice McDavid Graff & Love
P.O. Box 1386
Charleston, West Virginia 25325-1386

RE: MUR 2370
West Virginia Republican
State Executive Committee
and its treasurer

Dear Mr. Lane:

This letter is to confirm the Federal Election Commission's receipt of the proposed conciliation agreement submitted on behalf of West Virginia Republican State Executive Committee ("the Committee") and its treasurer, on January 26, 1990.

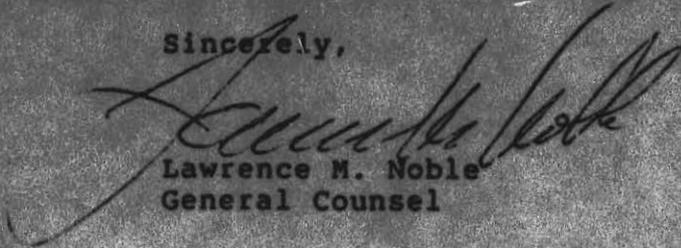
Although I am hopeful that this matter can be settled through a conciliation agreement, please be advised that in the absence of your client's acceptance of the enclosed agreement within 15 days, the Commission has authorized this Office to institute a civil suit in the U.S. District Court.

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J. Thomas Lane, Esq.
Page 2

Should you have any questions, please contact Jeff Long, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUL -2 AM 11:41

SENSITIVE

July 2, 1990

JUL 10 1990

EXECUTIVE SESSION

MEMORANDUM

TO: The Commission
FROM: Lawrence M. Noble
General Counsel
Richard B. Bader
Associate General Counsel
David M. FitzGerald
Assistant General Counsel

SUBJECT: Suit Authorization in MUR 2370, West Virginia Republican State Executive Committee and Jack Rossi, as treasurer

On February 13, 1990, the Commission authorized the Office of the General Counsel to file suit against the West Virginia Republican State Executive Committee and its treasurer (the "Committee") if the Committee did not accept the Commission's final counterproposal of a conciliation agreement within 15 days of receipt.

On March 13, 1990, a response was received from counsel for the Committee, essentially rejecting the Commission's final counteroffer but making an additional counteroffer.

Further negotiations with the Committee appeared to be proving successful, and a verbal agreement on a written settlement of the matter was reached on May 14, 1990. Counsel for the Committee signed the agreement and returned it to this Office. However, before the agreement was received by the Office of General Counsel, the Committee's counsel contacted this Office and informed us that his clients were withdrawing the agreement. Essentially, according to counsel, the Committee chairman had expected to raise sufficient funds to pay the minimal civil penalty, but was finding himself unable to do so.

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Therefore, on June 11, 1990, the Committee withdrew its consent to the settlement. See Attachment 1.

Therefore, this Office recommends that the Commission re-authorize suit against the West Virginia Republican State Executive Committee. This Office does not recommend that the Commission name a treasurer in the authorization. Suit should be filed against the Committee alone, at this time, and served on an officer of the Committee.

Naming a treasurer as codefendant in a suit authorization is problematic in this matter for several reasons, and due to the nature of this Committee, not necessary. It is the position of this Office that a suit filed against an individual as treasurer is improper unless there has been a finding of probable cause to believe that that individual as treasurer has violated the Act. FEC v. NRA, 553 F.Supp. 1331 (1983). In this case, Jack Rossi, was the treasurer of the Committee at the time of the February 2, 1988 reason to believe findings and the August 1, 1989 probable cause findings by the Commission, but resigned as treasurer when attempts to conciliate failed. Since Rossi was the treasurer at probable cause, he would be the appropriate person to be named in the suit. However, he has resigned and there has not been a treasurer named to replace him.

The Committee has designated an acting treasurer, who could be named in the suit if the Commission were to reopen the MUR and find probable cause against him. This treasurer will very likely be replaced at the State convention in July, which would necessitate another reopening of the MUR, a new probable cause finding, and a new suit authorization. In light of the fact that Rossi resigned in the face of a potential suit authorization, there is a basis to suspect that a new treasurer might well do the same. Therefore, in order to avoid what might become an endless circle of resignations and reauthorizations in this case, suit should be authorized against the Committee alone. Because this is a state party Committee, whose structure and existence is governed by state law, there is no reason to suspect that the Committee will terminate as a reaction to our suit.

Although it should continue to be the policy of the Commission to name the treasurer as a codefendant in suits to enforce the Act, in this particular matter, application of the policy is unnecessary and counterproductive.

RECOMMENDATION

Authorize the Office of the General Counsel to file a civil

91040845360

suit for relief in the United States District Court against
West Virginia Republican Executive Committee.

Attachments

1. Letter to Counsel confirming withdrawal of agreement.
2. Notification letter.

91040845361

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2370
West Virginia Republican Executive)
Committee)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary of the Federal Election Commission executive session on July 10, 1990, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 2370:

1. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against West Virginia Republican Executive Committee.
2. Approve the Notification letter attached to the General Counsel's report dated July 2, 1990, subject to amendment as agreed in the meeting.

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

Attest:

7-11-90
Date

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

91040845362



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1990

J. Thomas Lane, Esq.
Bowles, Rice, McDavid, Graff & Love
P.O. Box 1386
Charleston, West Virginia 25325-1386

Re: MUR 2370
West Virginia Republican
State Executive Committee

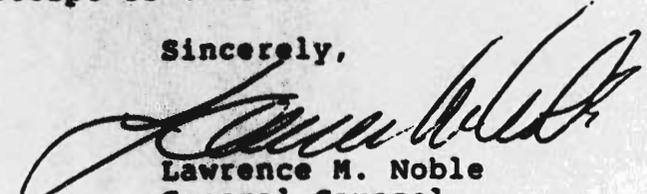
Dear Mr. Lane:

You were previously notified that on August 1, 1989, the Federal Election Commission found probable cause to believe that your clients, West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 102.5(a), provisions of the Federal Election Campaign Act of 1971, as amended, and Commission regulations. You were likewise notified that, as a result of our inability to settle this matter through conciliation within the allowable time period, the Commission, on February 13, 1990, authorized the General Counsel to institute a civil action for relief in the United States District Court.

Although it subsequently appeared that we would be able to resolve this matter short of litigation, your clients withdrew consent to the agreement which was to be presented to the Commission for approval. Therefore, on July 10, 1990, the Commission authorized the General Counsel to institute a civil action for relief in the United States District Court against the West Virginia Republican State Executive Committee.

Should you have any questions, or should you wish to settle this matter prior to suit, please contact David Fitzgerald, Assistant General Counsel, at (202) 376-8200, within five days of your receipt of this letter.

Sincerely,


Lawrence M. Noble
General Counsel

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66-29885
ENTERED

91 JAN 22 AM 10:34

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

ORDER BOOK
NO. _____ PAGE _____

FEDERAL ELECTION COMMISSION,)
)
Plaintiff,)
)
v.)
)
WEST VIRGINIA REPUBLICAN STATE)
EXECUTIVE COMMITTEE,)
)
Defendant.)

CA No. 2:90-0898
FINAL CONSENT ORDER
AND JUDGMENT

91 JAN 22 PM 3:46

FINAL CONSENT ORDER AND JUDGMENT

This action for declaratory, injunctive and other relief was instituted by the plaintiff Federal Election Commission ("Commission") against the defendant West Virginia Republican State Executive Committee, ("Defendant") pursuant to the express authority granted the Commission by sections 307(a)(6) and 309(a)(6)(A) of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), codified at 2 U.S.C. § 437d(a)(6) and 437g(a)(6)(A).

This Court has original jurisdiction over this suit pursuant to 28 U.S.C. § 1345 as an action brought by an agency of the United States expressly authorized to sue by an Act of Congress. Venue is properly found in the Southern District of West Virginia in accord with 2 U.S.C. § 437g(a)(6)(A) as the defendant can be found, resides, or transacts business in this district. The plaintiff Commission has satisfied all jurisdictional requirements which are prerequisites to filing this suit.

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The parties now agree to entry of this Court's judgment and consent to the issuance of this order, as evidenced by the signatures of their respective counsel affixed hereto.

The parties agree that the pertinent facts in this matter are as follows:

1. Plaintiff Federal Election Commission is the agency of the United States government empowered with exclusive primary jurisdiction to administer, interpret and enforce the Act. See generally 2 U.S.C. §§ 437c(b)(1), 437d(a), and 437g. The FEC is authorized to institute investigations of possible violations of the Act, 2 U.S.C. § 437g(a)(2), and has exclusive jurisdiction to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act. 2 U.S.C. §§ 437c(b)(1) and 437d(e).

2. Defendant West Virginia Republican State Executive Committee is a multicandidate political committee within the meaning of 2 U.S.C. §§ 431(4)(C) and 441a(a)(4), a State Committee within the meaning of 2 U.S.C. § 431(15), and a political party within the meaning of 2 U.S.C. § 431(16). Thomas D. Winter was the treasurer of the West Virginia Republican State Executive Committee from August, 1983 to July 19, 1986. See 2 U.S.C. § 432.

3. Pursuant to 2 U.S.C. § 434(b), treasurers of political committees are required to file periodic reports of contributions and expenditures on behalf of federal candidates.

4. Pursuant to 2 U.S.C. § 431(8)(B)(xii) and

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431(9)(B)(ix), payment by a state or local committee of a political party of costs incurred with respect to voter registration and get-out-the-vote activities conducted by such party on behalf of the party's nominees for President and Vice President are excluded from the definitions of contribution and expenditure, provided certain criteria are met. 11 C.F.R. § 100.7(b)(17), a rule of the Commission adopted pursuant to 2 U.S.C. § 437d(a)(8), provides that if such activities include references to any candidate(s) for the House or Senate, the costs of such activities shall be allocated proportionately to the candidate(s) and reported as a contribution to the candidate(s), unless the mention of such candidate(s) is merely incidental.

5. Defendant conducted a voter registration/get out the vote drive in September 1984 in connection with the 1984 elections that included a phone bank. Defendant spent a total of \$9,000 for the phone bank. The script of the phone bank included statements that identified by name and office sought, several state and federal candidates. These statements were not incidental.

6. Defendant failed to report the expenditures for the phone bank as allocated to the House and Senate candidates mentioned in the script.

7. Defendant violated 2 U.S.C. § 434(b), by failing to report the expenditures for the phone bank as allocated to the House and Senate candidates in the script.

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8. 11 C.F.R. § 102.5(a), a rule of the Commission adopted pursuant to 2 U.S.C. § 437d(a)(8), requires that all disbursements, contributions, expenditures and transfers in connection with a federal election be made from a committee's federal account(s).

9. Defendant expended One Thousand Five Hundred Dollars (\$1,500) on behalf of candidates for U.S. House of Representatives for the phone bank activity described in paragraph 5.

10. Defendant's expenditures on behalf of the 1984 Senatorial campaign of John Raese included the phone bank activity, described in paragraph 5, of One Thousand Five Hundred Dollars (\$1,500) as well as newspaper advertisements of Two Thousand Sixty Dollars and Forty-Seven Cents (\$2,060.47), for a total of Three Thousand Five Hundred Sixty Dollars and Forty-Seven Cents (\$3,560.47) expended on behalf of John Raese.

11. Defendant made disbursements on behalf of federal candidates from its non-federal account to make payments for the phone bank activity described in paragraph 5 and for the newspaper advertisements described in paragraph 10.

12. Defendant violated 11 C.F.R. § 102.5(a) by making disbursements on behalf of federal candidates from its non-federal account to make payments for phone bank activity and newspaper advertisements.

13. Pursuant to 2 U.S.C. § 434(b), treasurers of political committees must report expenditures in separate

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categories, including inter alia, operating expenditures, transfers to affiliated committees, and independent expenditures.

14. Defendant disclosed a total of Two Thousand Sixty Dollars and Forty-Seven Cents (\$2,060.47) for disbursements made for newspaper advertisements that appeared in three newspapers prior to the 1984 general election. The advertisements advocated the defeat of Jay Rockefeller in the election and included statements such as "why West Virginians CANNOT Vote for Gov. Rockefeller" and "Don't Be Fooled Again! VOTE Against Rockefeller on Tuesday!"

15. Defendant reported these disbursements as operating expenditures rather than expenditures in connection with the general election campaign of a candidate for federal office.

16. Defendant violated 2 U.S.C. § 434(b) by incorrectly reporting expenditures for a federal candidate.

17. 2 U.S.C. § 434(b)(4) requires that each report filed with the Commission by any committee other than an authorized committee shall disclose the total amount of contributions made to other political committees. 2 U.S.C. § 434(b)(5) requires that the disclosure include the name and address of the committee, together with the date and amount of any such contribution. 2 U.S.C. § 434(b)(3) requires the identification of each affiliated committee which makes a transfer to the reporting committee during the reporting period. Where the committee is a political party committee, pursuant to 2 U.S.C. § 434(b)(2) and (b)(3) each transfer of funds to the reporting

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committee from another political party committee must be disclosed, regardless of whether such committees are affiliated, together with the date and amount of such transfers. 2 U.S.C. § 434(b)(3) and the instructions for the Detailed Summary Page of FEC Form 3X, a form adopted by the Commission pursuant to 2 U.S.C. § 437d(a)(8), require that, for each transfer, the identification of the committee, the date and amount of the transfer, and the aggregate year-to-date total be disclosed.

18. Defendant received a total of 22 transfers and contributions from party and other political committees and organizations, totaling Sixty-Seven Thousand Four Hundred Sixty-Six Dollars and Fifty Cents (\$67,466.50) in 1984.

19. Defendant failed to itemize certain of these transfers and failed to provide aggregate year-to-date totals in their financial disclosure reports filed with the Commission.

20. Defendant violated 2 U.S.C. § 434(b) by failing to correctly report transfers and contributions.

21. Defendant contends that the violations were not knowingly and willfully made.

Therefore, it is ORDERED, ADJUDGED AND DECREED:

1. That Defendant violated 2 U.S.C. § 434(b), by failing to report the expenditures for the phone bank as allocated to the House and Senate candidates in the script;

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2. That Defendant violated 11 C.F.R. § 102.5(a) by making disbursements on behalf of federal candidates from its non-federal account to make payments for phone bank activity and newspaper advertisements;

3. That Defendant violated 2 U.S.C. § 434(b) by incorrectly reporting expenditures for a federal candidate;

4. That Defendant violated 2 U.S.C. § 434(b) by failing to correctly report transfers and contributions;

5. That Defendant West Virginia Republican State Executive Committee shall pay a civil penalty in the amount of Two Thousand Dollars (\$2,000) for the foregoing violations, to be due on the effective date of this Order;

6. That Defendant West Virginia Republican State Executive Committee is permanently enjoined from failing to report expenditures for federal candidate as being allocated to those candidates in violation of 2 U.S.C. § 434(b); from making disbursements on behalf of federal candidates from its non-federal account in violation of 11 C.F.R. § 102.5(a); from incorrectly reporting expenditures for a federal candidate in violation of 2 U.S.C. § 434(b); and from failing to correctly report transfers and contributions in violation of 2 U.S.C. § 434(b); and

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7. That the parties shall bear their own costs and attorney's fees in this litigation.

Date _____

Charles H. Haden, II
Charles H. Haden, II
Attorney

We hereby consent to the entry of the foregoing consent order and judgment.

Lawrence M. Noble (RBB)
Lawrence M. Noble
General Counsel

John Preston Bailey
John Preston Bailey
Attorney

Richard B. Bader
Richard B. Bader
Associate General Counsel

FOR THE DEFENDANT
WEST VIRGINIA REPUBLICAN
STATE EXECUTIVE COMMITTEE
Byrum & Bailey
600 Riley Building
Wheeling, WV 26003
(304) 232-6675

David M. FitzGerald
David M. FitzGerald
Assistant General Counsel

A TRUE COPY, Certified this

JAN 18 1990

RONALD D. LAWSON, CLERK
BY Eugene Burger
DEPUTY

V. Colleen Miller
V. Colleen Miller
Attorney

FOR THE PLAINTIFF
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
(202) 376-8200

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
)	MUR 2370
West Virginia Republican State)	
Executive Committee and)	
Jack Rossi, as treasurer)	

STATEMENT OF REASONS

Chairman John Warren McGarry
Commissioner Danny Lee McDonald
Commissioner Scott E. Thomas

In Matter Under Review ("MUR") 2370, the Commission split 3-3 on whether to find probable cause to believe that the West Virginia Republican State Executive Committee violated 2 U.S.C. §441a(f) by making excessive expenditures on behalf of the 1984 Senatorial campaign of John Raess. We supported the General Counsel's recommendation to find probable cause.

I.

At issue in MUR 2370 was whether certain billboard ads, paid for by the West Virginia Republican Party, were subject to limitation either as in-kind contributions or coordinated party expenditures by the state party committee in connection with the general election for United States Senate, or whether the disbursements were unrelated to the U.S. Senate general election

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and, thus, subject to no monetary limitation. Under the Federal Election Campaign Act of 1971, as amended ("the Act"), the national and state committees of the political parties may make expenditures "in connection with the general election campaign" of the parties' candidates, but such expenditures may not exceed certain specific dollar limitations. 2 U.S.C. §441a(d). In addition, the Act requires that political committees separately report all disbursements made under §441a(d) to aid in monitoring adherence with the limits. 2 U.S.C. §434(b).

In 1984, West Virginia Governor Jay Rockefeller was the Democratic candidate for the United States Senate. In May and June 1984, the West Virginia Republican State Executive Committee spent a total of \$21,733 to display billboards in the state which read:

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**16%...HIGHEST UNEMPLOYMENT IN THE U.S.
JUST PART OF JAY'S RECORD FOR WEST VIRGINIA
and
BIGGEST TAX INCREASE IN STATE HISTORY.
JUST PART OF JAY'S RECORD FOR WEST VIRGINIA**

The billboards were displayed between June 1 and July 4, 1984 -- after the June 5 primary and only four months before the November general election.

Our three colleagues believe that these billboard ads attacking United States Senate candidate Jay Rockefeller were unrelated to the race for the United States Senate and, thus, subject to no limits. In our opinion, that view not only ignores established precedent, but defies common sense.

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In Advisory Opinion 1984-15, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5766 (1984) and again in Advisory Opinion 1985-14, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5819 (1985), the Commission clearly articulated the test to determine whether certain party expenditures were subject to the coordinated party expenditure limitation. In those opinions, the Commission stated that the limitations of §441a(d) would apply where the communication (1) depicted a clearly identified candidate and (2) conveyed an electioneering message. Advisory Opinion 1985-14 further noted that "[e]lectioneering messages include statements 'designed to urge the public to elect a certain candidate or party.'" Advisory Opinion 1985-14, supra, quoting United States v. United Auto Workers, 352 U.S. 567, 587 (1957).

In this case, there is no question that the billboard ads depicted a clearly identified candidate. To the citizens of the State of West Virginia, a reference to "Jay" refers unambiguously to Jay Rockefeller, two-term governor of that state, who at the time the billboards were paid for, was actively running for election to the United States Senate. Thus, the first part of the legal standard developed by the Commission was satisfied.

The billboard ads also plainly were designed to urge the public to elect a certain candidate or party, conveying an electioneering message satisfying the second part of the two-part test. In Advisory Opinion 1984-15, supra, the Commission concluded that the limitations of §441a(d) would apply because "[t]he clear import and purpose of these proposed advertisements is to diminish support for any Democratic Party...nominee and to

garner support for...the...Republican Party nominee." (emphasis added). That analysis applies with equal force to the instant matter.

Unlike our colleagues, we believe that the clear import and purpose of the billboard ads was to diminish support for Jay Rockefeller and garner support for the Republican Senate candidate. The ads clearly represented an attack on Jay Rockefeller. Voters in the State of West Virginia were being urged to vote against Jay Rockefeller for Senate because of his purported record as governor of the state. That is an electioneering message.¹

In our view, the West Virginia Republican Party's billboard ads were clearly "in connection with" the general election for United States Senate. Accordingly, the disbursements for these ads were subject to limit either as in-kind contributions or as coordinated party expenditures for the benefit of the general election campaign of John Raese. Because the West Virginia

1. We recognize that the expenditures for the billboard ads also may have had some impact on the 1984 gubernatorial election in West Virginia. At the audit stage and the "reason to believe" stage, the Commission allowed respondents to attribute one-half the total cost of \$21,733 for the billboard advertisement to the Moore gubernatorial campaign and one-half, or \$10,866.50 to the Raese campaign. Even this compromise position, however, is far removed from our colleagues' remarkable and new conclusion at the probable cause stage of this MUR that the billboards had absolutely no bearing on the election to the United States Senate.

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Republican State Executive Committee apparently had assigned its §441a(d) state party expenditure allowance to the National Republican Senatorial Committee and the allowance was exhausted, the billboard ad expenditures were excessive and in violation of 2 U.S.C. §441a(f).

II.

No one disputes that political party committees have a legitimate role to play with respect to all elections, whether they are Federal elections or state and local elections. But that role is not without limitation, as Congress clearly spelled out in the law and the legislative history. See Statement of Reasons of Commissioners McDonald and McGarry in MUR 2116 (1988) at 2-5, 20-21. Enforcement of the §441a(d) limitation depends, in large part, upon the identification of those party committee expenditures which are made in connection with the general election. This limitation means little, however, when the law is read so narrowly as to exclude the most obvious campaign-related material. If at least four Commissioners cannot recognize the plain political purpose of these billboard ads and their obvious impact upon an election to the United States Senate, then the law is not being enforced as intended.

We agree with the legal judgment of the General Counsel that this spending was in connection with the general election campaign of the nominee of the Republican Party in West Virginia, and that half of the cost of the billboards should have been allocated as a §41a(d) expenditure on behalf of the Senate campaign of John Raese, Jay Rockefeller's general election opponent.

3 June, 1991
Date


John Warren McGarry
Chairman

31 May 1991
Date


Danny Lee McDonald
Commissioner

31 May 1991
Date


Scott E. Thomas
Commissioner

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 8370

DATE FILMED 6/26/91 CAMERA NO. 4

CAMERAMAN A.S.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 2370 .

6/27/91

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V. Conway



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: COMMISSIONERS
STAFF DIRECTOR
GENERAL COUNSEL
PRESS OFFICER

FROM: *MWC* MARJORIE W. EMMONS/DELORES HARRIS *DA*
COMMISSION SECRETARY

DATE: JUNE 27, 1991

SUBJECT: STATEMENT OF REASONS FOR MUR 2370

Attached is a copy of the Statement of Reasons in MUR 2370 signed by Commissioners Elliott and Josefiak. This was received in the Commission Secretary's office on Wednesday, June 26, 1991 at 5:34.

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STATEMENT OF REASONS

Commissioners Lee Ann Elliott and Thomas J. Josefiak

In the Matter of)	
)	
West Virginia Republican)	MUR 2370
State Executive Committee, and)	
)	
Jack Rossi, as treasurer)	

1. Commission Action

On August 1, 1989, by a 3 to 3 vote, the Federal Election Commission declined to approve the recommendation of the General Counsel to find probable cause to believe that the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. §441a(f) by making an excessive contribution to a candidate for Federal office. At issue was whether expenditures by the state party for billboard advertisements were party "operating expenditures" or constituted contributions to the party's candidate for U.S. Senate subject to limitation under 2 U.S.C. §441a(a)(2)(A) and §441a(d)(3)(A). \¹

1. Pursuant to 2 U.S.C. §441a(d)(3)(A), the national committee and state committee of a political party are each permitted to make expenditures (commonly called "coordinated expenditures") in connection with the general election campaign of a candidate for U.S. Senate in a state, who is affiliated with the party, in an amount equal to the greater of \$20,000 or two cents multiplied by the voting age population of the respective state. In 1984 in West Virginia, the expenditure limitation for U.S. Senate candidates was \$57,570.

Pursuant to 2 U.S.C. §441a(a)(2)(A), a multicandidate political committee (including political party committees) may not make contributions to any candidate or his authorized committee with respect to any election for Federal office which, in the aggregate, exceed \$5000. [footnote continued >]

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On the same date, the Commission voted to find probable cause to believe the respondents violated 11 CFR §102.5(a) by using funds from a non-Federal account to pay expenses incurred in a telephone bank operation undertaken on behalf of certain Federal and non-Federal candidates, and violated 2 U.S.C. §434(b) by failing to report those payments. The Commission approved a proposed conciliation agreement and civil penalty based on these violations. \²

We voted against finding respondents in violation of §441a(d)'s expenditure limitations regarding payments for the billboards, and voted for finding respondents in violation of the Act and Commission regulations regarding the telephone bank activity. Now that the file has recently closed in this matter, we can explain why our position in this case was consistent with Commission precedent and reasonable statutory interpretation.

2. §441a(d) Expenditure Limits and Commission Precedent

In 1974, Congress recognized its pending campaign finance legislation provided parties inadequate opportunities to contribute to

(Footnote 1 continued from previous page)

Pursuant to 2 U.S.C. §434(b)(4), political committees must report all disbursements according to eight categories. See also 11 CFR 104.3(b)(1) and FEC Form 3X. For party committees, the "operating expenditures" category includes disbursements for polling, travel, telephone banks, catering, media, rent, personnel, overhead, fundraising, training seminars, get-out-the-vote and registration drives and other day-to-day costs not directly attributable to any particular candidate. See 11 CFR 104.3(b)(3)(i), 106.1(c) and 110.8(e).

2. The vote on these motions was 5 to 1 (Commissioner Aikens dissenting). The Commission also voted unanimously to find no probable cause to believe the party committee violated 2 U.S.C. §441b and 11 CFR §102.5(a) with respect to the receipt of contributions from certain organizations.

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their candidates. Accordingly, Congress enacted §441a(d) to give national and state parties an additional means of providing support for their candidates. See S. Rep. No. 689, 93rd Cong., 2d Sess. 15 (1974), reprinted in the Legislative History of the Federal Election Campaign Act Amendments of 1974, 111 (GPO 1977); H.R. Rep. No. 1057, 94th Cong., 2d Sess. 59 (1976), reprinted in Legislative History of the Federal Election Campaign Act Amendments of 1976, 1053 (GPO 1977). By the provision's terms (see Footnote 1), Congress only requires political party committees allocate those expenditures made "in connection with" a party nominee's "general election campaign" to this limit. 2 U.S.C. §441a(d). ³ Those expenditures not attributable to specific candidates would still be reported as "operating expenditure" and not subject to any limit. (See Footnote 1 and citations therein).

The Commission described a two-part test for identifying which party communications are allocable under §441a(d) in Advisory Opinion 1985-14. Citing its prior conclusion in Advisory Opinion 1984-15, the Commission stated:

... [T]he limitations of §441a(d) would apply where the communication both (1) depicted a clearly identified candidate and (2) conveyed an electioneering message. See also Advisory Opinion 1978-46. Under the Act and regulations, a candidate is clearly identified if his or her name or likeness appears or if his or her identity is apparent by unambiguous reference. 2 U.S.C. §431(18); 11 CFR 106.1(d). Electioneering messages include statements "designed to urge the public to elect a certain candidate or party." United States v. Auto Workers, 352 U.S. 567, 587 (1957); see Advisory Opinion 1984-62.

3. Although the statute speaks of "coordinated" expenditures made for a candidate's "general election campaign," the Commission does not require the expenditure actually be coordinated with the benefited candidate, nor do we require the party making the expenditure to have necessarily selected a general election nominee. In fact, the Commission allows a party committee to make its expenditures under §441a(d) before the primary election. Advisory Opinions 1984-15 and 1985-14.

Together, these two essential components of "clearly identified candidate" and "electioneering message" are sometimes called the "electioneering standard" for attributing party expenditures as coordinated expenditures on behalf of candidates under §441a(d).

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The result in Advisory Opinion 1985-14 illustrates the allocation distinctions drawn by this standard. In 1985-14, the requestor provided alternative proposed scripts for radio and television advertisements critical of the other political party and its officeholders, and asked which would be allocable to §441a(d) and which would not. A majority of the Commission concluded the proposed advertisements using a tagline "the Republicans in Congress," either with or without a proposed "Vote Democratic" statement "or other electioneering message," would not be subject to the limitations of §441a(d), and that advertisements using a tagline "your Republican Congressman" without the "Vote Democratic" statement would also not be subject to contribution limits. The Commission split its vote on whether advertisements using the tagline "your Republican Congressman" with a "Vote Democratic" statement would be attributed to the limits of §441a(d).

It is important to note the Commission's conclusions in Advisory Opinion 1985-14 did not find the advertisements to be within the reach of §441a(d) limitations if they lacked either (or both) elements of the electioneering standard within the message of the communication. By that standard, mere criticism of a clearly identified candidate without an electioneering message would not bring the ads within §441a(d)'s limits. A partisan electioneering statement ("Vote

Democratic") without some reference to a clearly identified candidate ("your Republican Congressman") was also insufficient to attribute the ads as contributions to specific candidates.

Further, we note the operative "electioneering message" in Advisory Opinion 1985-14 ("Vote Democratic") was an explicit partisan appeal for an election-related action. In applying the electioneering standard in cases involving §441a(d), the Commission has gradually broadened that component to encompass virtually any direct references to elections, campaigns, candidates, voting or voters. See, e.g., MURs 2116 and 2186. ⁴ Clearly, however, the electioneering standard is not satisfied by an advertisement merely bestowing praise or criticism upon an officeholder, if unaccompanied by an electioneering message. Nor is it of legal significance that such an ad may be generally intended by its sponsor to discourage support for that officeholder or "influence" an election (we can safely assume the general "purpose" of party activity).

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4. In MUR 2116, we voted against attributing to §441a(d) limits the cost of a political party mailer that criticized the official conduct of then-Congressman Ferdinand St Germain. The mailer contained "no references to voters or voting, no mention of any upcoming election or political campaign, no mention of political contributions and no partisan appeals." MUR 2116 Statement of Reasons (Commissioners Elliott and Josefiak).

In MUR 2186, we voted to attribute to §441a(d) limits only one of four political party advertisements critical of the legislative record of then-Congressman Tim Wirth. While all the ads criticized his record as an officeholder, only one included the language "Tim Wirth has the right to run for the Senate, but he does not have the right to change the facts." That reference to his Senate campaign is precisely the type of language requiring allocation of the advertisements to the limits of §441a(d), pursuant to the Commission's reasoning in Advisory Opinion 1985-14, and without which no electioneering message is present.

The Commission's electioneering standard is only met, and application of §441a(d) triggered, if references to clearly identified candidates are joined by references to voting or elections or similar language in the communication -- an "electioneering message" placing discussion of officeholders or candidates in an unmistakably election-related context. These references must be explicit and objectively recognizable, not merely inferred, implicit or presumed.

Where, as with respect to §441a(d) expenditures, the Commission has taken the laudable step of proclaiming an objective standard, we believe the Commission should stick to that standard or enunciate a new, prospective one. The Commission should not backslide into subjective speculation as to the particular intent or motive behind party activity, nor retreat to vague, we-know-it-when-we-see-it determinations on a case-by-case basis.

3. Billboards

The West Virginia Republican party committee spent \$21,733 in May and June of 1984 to place billboards containing two separate messages: "16%... Highest Unemployment in the U.S. Just part of Jay's record for West Virginia." and "Biggest Tax Increase in State History. Just part of Jay's record for West Virginia." The General Counsel recommended the Commission allocate the billboard advertisement costs to the state party's §441a(d) coordinated expenditure limit for the Republican candidate for U.S. Senate, whose opponent was then-Governor Jay Rockefeller. Attributing those costs to the Senate campaign would result in the party committee having made an excessive contribution to its candidate, John Raese.

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In their response to the General Counsel's brief, the West Virginia Republican party committee described why the expenditures were made:

...[T]he billboard message was to benefit the Republican ticket as a whole and especially its gubernatorial candidate, Arch Moore...

The West Virginia Republican Party made the political decision that then-Governor Rockefeller's leadership, or lack thereof, should be the major focus of the Republican Party's campaign in West Virginia in 1984. It was the opinion of the West Virginia Republican Party that Jay Rockefeller and his Democratic administration and the Democratic State Legislature had damaged the State of West Virginia. This particular advertising project was designed to discuss the issue of Rockefeller's record as governor, to assist all Republican office holders and seekers, and was a key component of Arch Moore's gubernatorial campaign. One of the principal themes of the Moore campaign was attacking "Jay's record for West Virginia."

The party committee also argued the legal perspective from which its activity should be viewed:

The advertisements which were purchased prior to the general election do not urge any West Virginian to vote for John Raese or to vote against Jay Rockefeller. There is no direct advocacy or candidate-specific electioneering message. Therefore, the billboards are not subject to any limitation under Section 441a(d)...

The Supreme Court has stated that the Commission cannot constitutionally regulate the discussion of all public issues even if the discussion "draws in candidates and their positions, their voting records and other office conduct." Buckley [v. Valeo], 424 U.S. 1 (1976) at 42 n. 50 (emphasis added). Although the discussion of issues "naturally and inexorably ... exert[s] some influence on voting at elections" the Commission may only regulate those communications which, at a minimum, contain an electioneering message urging the public to vote for a particular candidate or party. Id. Limiting a party's issue-oriented speech conflicts with the decisional law that clearly divides the regulated advocacy of campaigns and elections from the free discussion of issues, officeholders, their conduct and their votes. Buckley at 42-45; Central Long Island Tax Reform Immediately Committee v. FEC (CLITRIM), 616 F.2d 45, 53 (2nd Cir. 1980).

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We joined Commissioner Aikens in rejecting the recommendation of the General Counsel to find probable cause the respondents violated the §441a(d)'s limits on coordinated expenditures by not allocating the costs of these billboards to the Republican candidate for Senate. We agreed with the party committee that its billboard activity did not fall within the Commission's electioneering standard for attribution as an expenditure on behalf of a specific candidate, and were properly reportable as "operating expenditures." Although the billboards were clearly critical of then-Governor Rockefeller's ("Jay's") record, their message did not contain any language regarding voting or elections, or any electioneering message, to place such criticism in a context urging a vote for a particular candidate. \⁵

The General Counsel's legal analysis in this matter was a clear effort to backpeddle from the Commission's stated position in Advisory Opinions 1984-15 and 1985-14 and to abandon an objective measure for §441a(d) expenditures. \⁶ The Counsel's brief glossed over the ads' lack of any words referring to voters or elections. The analysis imputed an electioneering message from the generally election-related purpose of political party advertising. Coupled with the reference to

5. We agreed with our colleagues the reference to "Jay" in the billboards was sufficient to meet the standard's requirement for a "clearly identified candidate." See Advisory Opinion 1985-14.
6. For example, the General Counsel's brief stated "it was not necessary that the billboard advertisements identify the political party of Jay Rockefeller, as such information was common knowledge." OGC Brief at 10. While that conjecture may be factually accurate, it would demolish Commission precedent to suggest public awareness of an officeholder's party affiliation constitutes or implies an "electioneering message" in any communication regarding that officeholder.

a clearly identified candidate, the General Counsel pronounced the standard created by the Commission in Advisory Opinion 1985-14 to be satisfied. \⁷ In our opinion, the words of these advertisements do not support that conclusion. Since the billboards' language merely criticized the record of a public officeholder without any reference to elections, campaigns, candidates, voting or voters. Although we may impute a general intent of the party to influence elections, the face of these ads did not urge a vote for any Federal candidate.

Importantly, the electioneering standard does not invite the Commission to review all the surrounding facts and circumstances to find evidence for inferring an electioneering motive by the political party financing the communication. \⁸ The standard of 1985-14

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7. The General Counsel's brief (at 10-11) also inexplicably mixed in "independent expenditure" analysis. Although noting party committees are not permitted to make independent expenditures on behalf of their candidates, the analysis improperly suggested these expenditures would be attributable to specific candidates if failing the regulatory test for "independence" -- i.e., if "coordinated" with a candidate. That backhanded analytical approach is totally inappropriate, however, for reviewing activity alleged to be "coordinated expenditures." Expenditures which on their face are outside the reach of the electioneering standard of §441a(d) do not change their legal character if made with the approval or in consultation with the party's candidates. Coordination with candidates can be fairly assumed without affecting the legal consequence of party expenditures. Their legal character is determined by the objective qualities of the expenditures themselves -- the content of communications.
 8. The correctness of our application here of the objective "electioneering standard" is supported by the subjective purpose argued by the respondents, i.e., the record of the Democratic Governor and administration of the state was a central and unifying theme of West Virginia Republican candidates in 1984, and the billboards use of the theme was intended to reinforce that partisan pitch on behalf of the entire ticket. Nevertheless, we think the Commission would operate contrary to sound Constitutional and regulatory principles if it were to decide these [footnote continued >]

requires an electioneering message to be clearly present, not imputed. Language recognizably framing discussion of officeholders' records in an election context may be subject to varied interpretation, but application of §441a(d) limits is not required unless such language referring to elections can first be identified in the communication's message. These billboards speak for themselves, and their content fails to cross the line into an "electioneering message."

Our reliance upon the "electioneering standard" in this matter was not only consistent with Commission precedent, but reasonable as an objective means of distinguishing "coordinated expenditures" on behalf of particular candidates from other party activity. We recognize political party activity is generally intended to benefit its candidates -- that is the reason parties exist. Recognizing that general purpose does not assist, and in many ways complicates, the Commission's task of separating their support of particular candidates (contributions or coordinated expenditures) from traditional party activity that works to the benefit of all candidates or the party generally.

The Commission must state with some specificity where the line is drawn between unallocable party speech on issues and officeholders, election-related activity generally allocable between Federal and non-Federal accounts and electioneering activity that demands attribution

(Footnote 8 continued from previous page)

cases on the basis of competing arguments as to motive or purpose.

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to the contribution limits for specific candidates. \⁹ Application of the law may require difficult distinctions under particular facts, but it cannot consist solely of subjective conclusions about what a party committee meant to do in a particular situation. Legal consequences should be found by use of reasonably objective standards applied through review of the activity itself. Regarding communications to the public, that review should focus upon the message itself.

4. Telephone banks

In late September of 1984, the West Virginia Republican party committee spent a total of \$9000 for telephone service expenses and consulting fees to conduct a telephone bank operation in support of Republican candidates. The party committee contended the phone bank activity was conducted for voter registration and get-out-the-vote purposes on behalf of the Presidential ticket. The party argued the expenditures were exempt from the limits on contributions to candidates under the Commission's regulations at 11 CFR §100.7(b)(17), since the mention of candidates other than Reagan for President and

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9. In a general sense, most party activity is election-related and may involve, at least in part, an "expenditure" for purposes of influencing Federal elections. The Commission's regulations at 11 CFR 106, recently revised in considerable detail, are based on the premise that certain political activity, particularly activity engaged in by political parties, requires allocation between Federal and non-Federal accounts. Under these "allocation regulations," an appropriate share of overhead, fund-raising and other "mixed" costs must be allocated to "Federal political activity" and paid by a "Federal account" for the benefit provided to the party's Federal candidates as a group. Those regulations indicate the Commission's long-standing assumption that some activity resides in a category of "operating expenditures" that benefits Federal candidates generally without requiring attribution as contributions to specific Federal candidates, and that such expenditures may be made without limitation from funds raised from sources permissible under the FECA.

Moore for Governor was only "incidental." The General Counsel contended the costs of the phone bank were allocable to each candidate mentioned in the script, resulting in a one-sixth, or \$1500, share allocable to the U.S. Senate campaign of John Raese.

We joined a majority of the Commission in concluding a share of the party's costs for this telephone bank activity required allocation to the Raese campaign. ¹⁰ These circumstances indicated the telephone bank operation communicated a purely promotional message to voters advocating election of Governor Moore and four other candidates. ¹¹ Although respondents called the phone bank program a get-out-the-vote

10. Because these costs were not allocated and reported as a contribution to him (and absent reimbursement by Raese's campaign), the Commission found payments for such costs to have been misreported. See 2 U.S.C. §434(b). Further, since payments for the phone bank costs were made solely out of non-Federal funds, the Commission found the party to have impermissibly used its non-Federal account to finance activity in support of a Federal candidate. See 11 CFR 102.5(a). An allocation of a share of the telephone bank expenses, when added to other party contributions or expenditures for Raese, did not result in excessive contributions to him under 2 U.S.C. 441a.

11. Transcript of West Virginia Republican Party's telephone bank script:

ADVOCACY CALL CONVERSATION

HELLO! IS THIS _____ ? I'M A VOLUNTEER CALLING FOR THE REPUBLICAN TICKET HERE IN WEST VIRGINIA. ARCH MOORE ASKED ME TO CALL BECAUSE WE HAVE OUTSTANDING REPUBLICAN CANDIDATES RUNNING FOR OFFICE AND THEY NEED YOUR VOTE AND THE VOTES OF OTHERS IN YOUR HOUSEHOLD. PRESIDENT REAGAN, JOHN RAESE FOR SENATE, JIM ALTMAYER FOR U.S. CONGRESS, AND JOHN MCCUSKEY FOR ATTORNEY GENERAL ARE ASKING FOR YOUR SUPPORT AND SO ARE THE OTHER FINE REPUBLICAN CANDIDATES RUNNING HERE IN WEST VIRGINIA. CAN GOVERNOR MOORE COUNT ON YOUR SUPPORT FOR OUR TEAM? ----- THANK YOU VERY MUCH AND PLEASE DON'T FORGET ELECTION DAY IS TUESDAY, NOVEMBER 6.

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project, this type of advocacy calling is genuinely advertising. ¹²
Further, the advocacy script was candidate specific rather than merely generic, subjecting this activity to the attribution requirements of 11 CFR 106.1, and resulting in expenditures on behalf of particular candidates. The party committee could rightfully claim and allocate a sizeable "share" for the rest of the ticket benefited by the operation, but the named candidates clearly received a specific benefit from the promotional nature of the call.

We note, however, the candidate allocation question raised by this particular activity should be distinguished from other phone banks in which political parties traditionally engage. The allocation result reached here should not be viewed as a normal or inevitable consequence for more commonplace party "voter identification" (ID) and "get-out-the-vote" (GOTV) phone operations. ¹³ This result is better

12. Moreover, information obtained from the audit demonstrated no discernible voter registration, voter identification or voter turnout purpose from the timing and extent of payments for phones and salaries for the telephone bank. The audit work papers indicated the phoning program was only in operation during the last two weeks of September, with no evidence the phone bank was in operation around election day for voter turnout purposes. Although the timing of the telephone bank could suggest a voter registration purpose (registration closes 30 days prior to election day in West Virginia), no registration question appeared in the script. Thus, a voter identification or voter turnout purpose would be inconsistent with timing of the telephone bank, as well as the purely advocacy nature of the script. The 'Presidential GOTV telephone bank' exemption at 11 CFR 100.7(b)(17)(iv), which permits "incidental" references to other Federal candidates without attribution of a contribution, did not appear to be available for this activity.

13. Identifying voters likely to vote for a party's candidates necessarily requires some means of evaluating party support. Instead of a general "Do you tend to favor Republicans or Democrats?" question, which depends upon voters' self-description, GOTV efforts commonly identify party leanings by asking an index of candidate questions. [footnote continued]

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viewed within the context of party advertising and communications to the public, for which the Commission has adopted the "electioneering standard" for determining attribution to candidates.

5. Constitutional Protection for Political Party Speech

In the landmark case of Buckley v. Valeo, 424 U.S. 1 (1976), the U.S. Supreme Court observed that limitations on political expenditures under the Act "impose direct and substantial restraints on the quantity of political speech." Buckley at 39. Restrictions upon political expenditures, "... while neutral as to the ideas expressed, limit political expression 'at the core of our electoral process and of the First Amendment freedoms.' Williams v. Rhodes, 393 U.S. 23, 32 (1968)." Id. See also Federal Election Commission v. National Conservative Political Action Committee, 470 U.S. 480 (1985); Federal

(Footnote 13 continued from previous page)

In such circumstances, unfortunately, the General Counsel encourages the Commission to make too much out of a script's mention of a candidate's name, as if each question is intended for "name recognition" advertising (even where the opponent's name is included too).

The attribution of GOTV telephone bank expenses to candidates on the basis of each name used in the voter identification script greatly exaggerates the benefit to the named candidates, and ignores the significant benefit the rest of the ticket enjoys by having voters generally favorable to the party's candidates identified and turned out to vote. In circumstances of traditional GOTV telephone bank operations by party committees, therefore, we believe the activity should not generally be subject to mechanical application of 110.6's attribution to specific candidates. Unless such phone bank (or door-to-door canvas) operations are devoted to only one or two candidates (or, as here, are better viewed as advocacy rather than voter ID), or unless "poll" results or "favorable voter" lists or similar tangible assets are provided to candidates, we consider funding by party committees for voter ID and GOTV phone banks to be generally not allocable to specific candidates, even where questions regarding candidates are used.

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Election Commission v. Massachusetts Citizens for Life, Inc. ("MCFL"),
107 S. Ct. 616 (1987).

We acknowledge the Court in Buckley found limits placed upon contributions to candidates by the Act to be less onerous a restraint upon speech than limitations upon independent expenditures. ¹⁴ We do not, however, view the constitutionality of contribution limits to diminish the protection afforded groups, whose activity may be subject to limit, from unconstitutionally vague and subjective standards. Coming within the Act's jurisdictional reach does not undermine party committees' rights to some specificity and precision in application of the law. As the Court noted in Buckley, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." NAACP v. Button, 371 U.S. 415, 433 (1963)." Buckley at p. 41, n. 48.

We also recognize the unique status and purpose of political parties in the American electoral system and the unique treatment of party committees under many provisions of the Act. However, the special role of parties does not disentitle them to Constitutional protection of their free speech activity outside the specific prohibitions, limits or requirements of the Act. Parties do not lose Constitutional rights generally afforded other groups simply because 'we know what they are up to.' Party committee speech may be specially regulated and limited by the Act, but it cannot be regulated

14. Although coordinated expenditures are reported under the Commission's regulations only as party "expenditures" rather than "contributions," party committees may not make "independent expenditures" on behalf of candidates. 11 CFR 110.7. See Advisory Opinion 1980-119.

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or limited in any more subjective, unreasonable or arbitrary of a manner than application of the Act to any other person. If there are special rules for political parties, those rules must nevertheless be clear enough to permit the parties to know their rights and operate within a protected, if more confined, sphere. \¹⁵

Interpretation of the Act must define as clearly as possible which expenditures are allocable to §441a(d)'s coordinated expenditure limits to avoid improperly restricting party committees' policy or issue-oriented speech or general party-building activity, or impinging upon their allowable contribution limits. Where, as here, the law and Commission precedent provide an objective measure for identifying the legal consequences of party activity, the Commission is bound to

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15. Generally, the constitutional deficiency of restrictions upon expenditures for political speech may only be avoided by limiting their reach to words of "express advocacy." Buckley, supra, at 41-44. A strong argument can be made that the only appropriate standard for allocating any expenditures would be the "express advocacy" threshold rather than the broader "electioneering" standard.

In a recent U.S. Supreme Court case involving independent expenditures by an incorporated interest group, the Court stated "[w]e therefore hold an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of §441b." MCFL, at 623. See Faucher v. FEC, 928 F.2d 468 (1st Cir. 1991). If that holding applies across the board to political expenditures, and the "in connection with" language of §441a(d) has the same meaning as under §441a(d), then "express advocacy" should be the threshold for attributing expenditures to candidates under §441a(d).

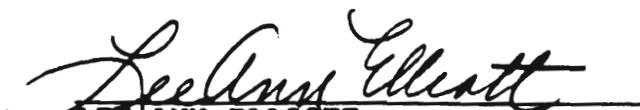
We have acquiesced in the Commission's adoption of an electioneering standard for §441a(d) cases that is somewhat broader than "express advocacy," but we will not agree to reducing interpretation of "electioneering message" to subjective or intuitive guesswork as to party's purpose or motive. The electioneering standard may represent a lower threshold for finding attribution of a contribution, but it nevertheless demands an objective reading of the message itself, as with "express advocacy."

follow the law rather than Commissioners' instinctive conclusions about the presumed purposes and effect of the activity.

The combination of reference to a "clearly identified candidate" and an "electioneering message" constitutes an objective standard for attribution of §441a(d) expenditures. If not perfect, the standard devised in Advisory Opinion 1985-14 is certainly the best (and only) standard the Commission has yet developed. The respondents in this matter were entitled to rely on it. At the very least, it is fair to say the respondents in this matter would have had no basis to know their conduct was contrary to another, yet to be defined (and largely undefinable) Commission standard for §441a(d) attribution.

Accordingly, under these facts, and consistent with Commission precedent, we voted to find the West Virginia Republican Party did not exceed the limits upon contributions and expenditures to Federal candidates under 2 U.S.C. §441a.

June 26, 1991


LEE ANN ELLIOTT


THOMAS J. JOSEFIK

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO
THE PUBLIC RECORD IN CLOSED MUR 2370.

7/8/91

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

July 5, 1991

J. Thomas Lane, Esquire
Bowles, Rice, McDavid, Graff & Love
P.O. Box 1386
Charleston, West Virginia 25325-1386

RE: MUR 2370
West Virginia Republican Executive
Committee and Robert W. DeVaul, as
acting treasurer

Dear Mr. Lane:

By letter dated August 22, 1989, the Office of the General Counsel informed you of determinations made with respect to the above-referenced matter.

Enclosed please find a Statement of Reasons from five Commissioners explaining their vote. This document will be placed on the public record as part of the file of MUR 2370.

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Statement of Reasons

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10/1/91



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: COMMISSIONERS
STAFF DIRECTOR
GENERAL COUNSEL
PRESS OFFICER

FROM: *MW* MARJORIE W. EMMONS/DELORES HARRIS *DA*
COMMISSION SECRETARY

DATE: JUNE 26, 1991

SUBJECT: STATEMENT OF REASONS FOR MUR 2370

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Attached is a copy of the Statement of Reasons in MUR 2370 signed by Commissioners McGarry, McDonald and Thomas. This was received in the Commission Secretary's Office on Wednesday, June 26, 1991 at 2:00 p.m.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEDERAL ELECTION COMMISSION

In the Matter of)
)
West Virginia Republican State) MUR 2370
Executive Committee and)
Jack Rossi, as treasurer)

STATEMENT OF REASONS

Chairman John Warren McGarry
Commissioner Danny Lee McDonald
Commissioner Scott E. Thomas

In Matter Under Review ("MUR") 2370, the Commission split 3-3 on whether to find probable cause to believe that the West Virginia Republican State Executive Committee violated 2 U.S.C. §441a(f) by making excessive expenditures on behalf of the 1984 Senatorial campaign of John Raese. We supported the General Counsel's recommendation to find probable cause.

I.

At issue in MUR 2370 was whether certain billboard ads, paid for by the West Virginia Republican Party, were subject to limitation either as in-kind contributions or coordinated party expenditures by the state party committee in connection with the general election for United States Senate, or whether the disbursements were unrelated to the U.S. Senate general election

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and, thus, subject to no monetary limitation. Under the Federal Election Campaign Act of 1971, as amended ("the Act"), the national and state committees of the political parties may make expenditures "in connection with the general election campaign" of the parties' candidates, but such expenditures may not exceed certain specific dollar limitations. 2 U.S.C. §441a(d). In addition, the Act requires that political committees separately report all disbursements made under §441a(d) to aid in monitoring adherence with the limits. 2 U.S.C. §434(b).

In 1984, West Virginia Governor Jay Rockefeller was the Democratic candidate for the United States Senate. In May and June 1984, the West Virginia Republican State Executive Committee spent a total of \$21,733 to display billboards in the state which read:

16%...HIGHEST UNEMPLOYMENT IN THE U.S.

JUST PART OF JAY'S RECORD FOR WEST VIRGINIA

and

BIGGEST TAX INCREASE IN STATE HISTORY.

JUST PART OF JAY'S RECORD FOR WEST VIRGINIA

The billboards were displayed between June 1 and July 4, 1984 -- after the June 5 primary and only four months before the November general election.

Our three colleagues believe that these billboard ads attacking United States Senate candidate Jay Rockefeller were unrelated to the race for the United States Senate and, thus, subject to no limits. In our opinion, that view not only ignores established precedent, but defies common sense.

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In Advisory Opinion 1984-15, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5766 (1984) and again in Advisory Opinion 1985-14, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5819 (1985), the Commission clearly articulated the test to determine whether certain party expenditures were subject to the coordinated party expenditure limitation. In those opinions, the Commission stated that the limitations of §441a(d) would apply where the communication (1) depicted a clearly identified candidate and (2) conveyed an electioneering message. Advisory Opinion 1985-14 further noted that "[e]lectioneering messages include statements 'designed to urge the public to elect a certain candidate or party.'" Advisory Opinion 1985-14, supra, quoting United States v. United Auto Workers, 352 U.S. 567, 587 (1957).

In this case, there is no question that the billboard ads depicted a clearly identified candidate. To the citizens of the State of West Virginia, a reference to "Jay" refers unambiguously to Jay Rockefeller, two-term governor of that state, who at the time the billboards were paid for, was actively running for election to the United States Senate. Thus, the first part of the legal standard developed by the Commission was satisfied.

The billboard ads also plainly were designed to urge the public to elect a certain candidate or party, conveying an electioneering message satisfying the second part of the two-part test. In Advisory Opinion 1984-15, supra, the Commission concluded that the limitations of §441a(d) would apply because "[t]he clear import and purpose of these proposed advertisements is to diminish support for any Democratic Party...nominee and to

garner support for...the...Republican Party nominee." (emphasis added). That analysis applies with equal force to the instant matter.

Unlike our colleagues, we believe that the clear import and purpose of the billboard ads was to diminish support for Jay Rockefeller and garner support for the Republican Senate candidate. The ads clearly represented an attack on Jay Rockefeller. Voters in the State of West Virginia were being urged to vote against Jay Rockefeller for Senate because of his purported record as governor of the state. That is an electioneering message.¹

In our view, the West Virginia Republican Party's billboard ads were clearly "in connection with" the general election for United States Senate. Accordingly, the disbursements for these ads were subject to limit either as in-kind contributions or as coordinated party expenditures for the benefit of the general election campaign of John Raese. Because the West Virginia

1. We recognize that the expenditures for the billboard ads also may have had some impact on the 1984 gubernatorial election in West Virginia. At the audit stage and the "reason to believe" stage, the Commission allowed respondents to attribute one-half the total cost of \$21,733 for the billboard advertisement to the Moore gubernatorial campaign and one-half, or \$10,866.50 to the Raese campaign. Even this compromise position, however, is far removed from our colleagues' remarkable and new conclusion at the probable cause stage of this MUR that the billboards had absolutely no bearing on the election to the United States Senate.

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Republican State Executive Committee apparently had assigned its §441a(d) state party expenditure allowance to the National Republican Senatorial Committee and the allowance was exhausted, the billboard ad expenditures were excessive and in violation of 2 U.S.C. §441a(f).

II.

No one disputes that political party committees have a legitimate role to play with respect to all elections, whether they are Federal elections or state and local elections. But that role is not without limitation, as Congress clearly spelled out in the law and the legislative history. See Statement of Reasons of Commissioners McDonald and McGarry in MUR 2116 (1988) at 2-5, 20-21. Enforcement of the §441a(d) limitation depends, in large part, upon the identification of those party committee expenditures which are made in connection with the general election. This limitation means little, however, when the law is read so narrowly as to exclude the most obvious campaign-related material. If at least four Commissioners cannot recognize the plain political purpose of these billboard ads and their obvious impact upon an election to the United States Senate, then the law is not being enforced as intended.

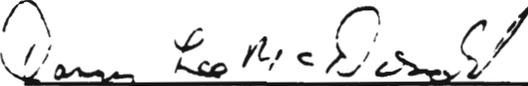
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We agree with the legal judgment of the General Counsel that this spending was in connection with the general election campaign of the nominee of the Republican Party in West Virginia, and that half of the cost of the billboards should have been allocated as a §441a(d) expenditure on behalf of the Senate campaign of John Raese, Jay Rockefeller's general election opponent.

3 June, 1991


John Warren McGarry
Chairman

31 May 1991
Date


Danny Lee McDonald
Commissioner

31 May 1991
Date


Scott E. Thomas
Commissioner

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STATEMENT

Page 2



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: COMMISSIONERS
STAFF DIRECTOR
GENERAL COUNSEL
PRESS OFFICER

FROM: *MW* MARJORIE W. EMMONS/DELORES HARRIS *DH*
COMMISSION SECRETARY

DATE: JUNE 27, 1991

SUBJECT: STATEMENT OF REASONS FOR MUR 2370

Attached is a copy of the Statement of Reasons in MUR 2370 signed by Commissioners Elliott and Josefiak. This was received in the Commission Secretary's office on Wednesday, June 26, 1991 at 5:34.

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STATEMENT OF REASONS

Commissioners Lee Ann Elliott and Thomas J. Josefiak

In the Matter of)	
)	
West Virginia Republican)	MUR 2370
State Executive Committee, and)	
)	
Jack Rossi, as treasurer)	

1. Commission Action

On August 1, 1989, by a 3 to 3 vote, the Federal Election Commission declined to approve the recommendation of the General Counsel to find probable cause to believe that the West Virginia Republican State Executive Committee and Jack Rossi, as treasurer, violated 2 U.S.C. §441a(f) by making an excessive contribution to a candidate for Federal office. At issue was whether expenditures by the state party for billboard advertisements were party "operating expenditures" or constituted contributions to the party's candidate for U.S. Senate subject to limitation under 2 U.S.C. §441a(a)(2)(A) and §441a(d)(3)(A). ¹

1. Pursuant to 2 U.S.C. §441a(d)(3)(A), the national committee and state committee of a political party are each permitted to make expenditures (commonly called "coordinated expenditures") in connection with the general election campaign of a candidate for U.S. Senate in a state, who is affiliated with the party, in an amount equal to the greater of \$20,000 or two cents multiplied by the voting age population of the respective state. In 1984 in West Virginia, the expenditure limitation for U.S. Senate candidates was \$57,570.

Pursuant to 2 U.S.C. §441a(a)(2)(A), a multicandidate political committee (including political party committees) may not make contributions to any candidate or his authorized committee with respect to any election for Federal office which, in the aggregate, exceed \$5000. [footnote continued >]

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their candidates. Accordingly, Congress enacted §441a(d) to give national and state parties an additional means of providing support for their candidates. See S. Rep. No. 689, 93rd Cong., 2d Sess. 15 (1974), reprinted in the Legislative History of the Federal Election Campaign Act Amendments of 1974, 111 (GPO 1977); H.R. Rep. No. 1057, 94th Cong., 2d Sess. 59 (1976), reprinted in Legislative History of the Federal Election Campaign Act Amendments of 1976, 1053 (GPO 1977). By the provision's terms (see Footnote 1), Congress only requires political party committees allocate those expenditures made "in connection with" a party nominee's "general election campaign" to this limit. 2 U.S.C. §441a(d).³ Those expenditures not attributable to specific candidates would still be reported as "operating expenditure" and not subject to any limit. (See Footnote 1 and citations therein).

The Commission described a two-part test for identifying which party communications are allocable under §441a(d) in Advisory Opinion 1985-14. Citing its prior conclusion in Advisory Opinion 1984-15, the Commission stated:

... [T]he limitations of §441a(d) would apply where the communication both (1) depicted a clearly identified candidate and (2) conveyed an electioneering message. See also Advisory Opinion 1978-46. Under the Act and regulations, a candidate is clearly identified if his or her name or likeness appears or if his or her identity is apparent by unambiguous reference. 2 U.S.C. §431(18); 11 CFR 106.1(d). Electioneering messages include statements "designed to urge the public to elect a certain candidate or party." United States v. Auto Workers, 352 U.S. 567, 587 (1957); see Advisory Opinion 1984-62.

3. Although the statute speaks of "coordinated" expenditures made for a candidate's "general election campaign," the Commission does not require the expenditure actually be coordinated with the benefited candidate, nor do we require the party making the expenditure to have necessarily selected a general election nominee. In fact, the Commission allows a party committee to make its expenditures under §441a(d) before the primary election. Advisory Opinions 1984-15 and 1985-14.

Democratic"); without some reference to a clearly identified candidate ("your Republican Congressman") was also insufficient to attribute the ads as contributions to specific candidates.

Further, we note the operative "electioneering message" in Advisory Opinion 1985-14 ("Vote Democratic") was an explicit partisan appeal for an election-related action. In applying the electioneering standard in cases involving §441a(d), the Commission has gradually broadened that component to encompass virtually any direct references to elections, campaigns, candidates, voting or voters. See, e.g., MURs 2116 and 2186. ⁴ Clearly, however, the electioneering standard is not satisfied by an advertisement merely bestowing praise or criticism upon an officeholder, if unaccompanied by an electioneering message. Nor is it of legal significance that such an ad may be generally intended by its sponsor to discourage support for that officeholder or "influence" an election (we can safely assume the general "purpose" of party activity).

4. In MUR 2116, we voted against attributing to §441a(d) limits the cost of a political party mailer that criticized the official conduct of then-Congressman Ferdinand St Germain. The mailer contained "no references to voters or voting, no mention of any upcoming election or political campaign, no mention of political contributions and no partisan appeals." MUR 2116 Statement of Reasons (Commissioners Elliott and Josefiak).

In MUR 2186, we voted to attribute to §441a(d) limits only one of four political party advertisements critical of the legislative record of then-Congressman Tim Wirth. While all the ads criticized his record as an officeholder, only one included the language "Tim Wirth has the right to run for the Senate, but he does not have the right to change the facts." That reference to his Senate campaign is precisely the type of language requiring allocation of the advertisements to the limits of §441a(d), pursuant to the Commission's reasoning in Advisory Opinion 1985-14, and without which no electioneering message is present.

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In their response to the General Counsel's brief, the West Virginia Republican party committee described why the expenditures were made:

...[T]he billboard message was to benefit the Republican ticket as a whole and especially its gubernatorial candidate, Arch Moore...

The West Virginia Republican Party made the political decision that then-Governor Rockefeller's leadership, or lack thereof, should be the major focus of the Republican Party's campaign in West Virginia in 1984. It was the opinion of the West Virginia Republican Party that Jay Rockefeller and his Democratic administration and the Democratic State Legislature had damaged the State of West Virginia. This particular advertising project was designed to discuss the issue of Rockefeller's record as governor, to assist all Republican office holders and seekers, and was a key component of Arch Moore's gubernatorial campaign. One of the principal themes of the Moore campaign was attacking "Jay's record for West Virginia."

The party committee also argued the legal perspective from which its activity should be viewed:

The advertisements which were purchased prior to the general election do not urge any West Virginian to vote for John Raese or to vote against Jay Rockefeller. There is no direct advocacy or candidate-specific electioneering message. Therefore, the billboards are not subject to any limitation under Section 441a(d)...

The Supreme Court has stated that the Commission cannot constitutionally regulate the discussion of all public issues even if the discussion "draws in candidates and their positions, their voting records and other office conduct." Buckley [v. Valeo, 424 U.S. 1 (1976)] at 42 n. 50 (emphasis added). Although the discussion of issues "naturally and inexorably ... exert[s] some influence on voting at elections" the Commission may only regulate those communications which, at a minimum, contain an electioneering message urging the public to vote for a particular candidate or party. Id. Limiting a party's issue-oriented speech conflicts with the decisional law that clearly divides the regulated advocacy of campaigns and elections from the free discussion of issues, officeholders, their conduct and their votes. Buckley at 42-45; Central Long Island Tax Reform Immediately Committee v. FEC (CLITRIM), 616 F.2d 45, 53 (2nd Cir. 1980).

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a clearly identified candidate, the General Counsel pronounced the standard created by the Commission in Advisory Opinion 1985-14 to be satisfied. \⁷ In our opinion, the words of these advertisements do not support that conclusion. Since the billboards' language merely criticized the record of a public officeholder without any reference to elections, campaigns, candidates, voting or voters. Although we may impute a general intent of the party to influence elections, the face of these ads did not urge a vote for any Federal candidate.

Importantly, the electioneering standard does not invite the Commission to review all the surrounding facts and circumstances to find evidence for inferring an electioneering motive by the political party financing the communication. \⁸ The standard of 1985-14

7. The General Counsel's brief (at 10-11) also inexplicably mixed in "independent expenditure" analysis. Although noting party committees are not permitted to make independent expenditures on behalf of their candidates, the analysis improperly suggested these expenditures would be attributable to specific candidates if failing the regulatory test for "independence" -- i.e., if "coordinated" with a candidate. That backhanded analytical approach is totally inappropriate, however, for reviewing activity alleged to be "coordinated expenditures." Expenditures which on their face are outside the reach of the electioneering standard of §441a(d) do not change their legal character if made with the approval or in consultation with the party's candidates. Coordination with candidates can be fairly assumed without affecting the legal consequence of party expenditures. Their legal character is determined by the objective qualities of the expenditures themselves -- the content of communications.

8. The correctness of our application here of the objective "electioneering standard" is supported by the subjective purpose argued by the respondents, i.e., the record of the Democratic Governor and administration of the state was a central and unifying theme of West Virginia Republican candidates in 1984, and the billboards use of the theme was intended to reinforce that partisan pitch on behalf of the entire ticket. Nevertheless, we think the Commission would operate contrary to sound Constitutional and regulatory principles if it were to decide these [footnote continued >]

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to the contribution limits for specific candidates. \⁹ Application of the law may require difficult distinctions under particular facts, but it cannot consist solely of subjective conclusions about what a party committee meant to do in a particular situation. Legal consequences should be found by use of reasonably objective standards applied through review of the activity itself. Regarding communications to the public, that review should focus upon the message itself.

4. Telephone banks

In late September of 1984, the West Virginia Republican party committee spent a total of \$9000 for telephone service expenses and consulting fees to conduct a telephone bank operation in support of Republican candidates. The party committee contended the phone bank activity was conducted for voter registration and get-out-the-vote purposes on behalf of the Presidential ticket. The party argued the expenditures were exempt from the limits on contributions to candidates under the Commission's regulations at 11 CFR §100.7(b)(17), since the mention of candidates other than Reagan for President and

9. In a general sense, most party activity is election-related and may involve, at least in part, an "expenditure" for purposes of influencing Federal elections. The Commission's regulations at 11 CFR 106, recently revised in considerable detail, are based on the premise that certain political activity, particularly activity engaged in by political parties, requires allocation between Federal and non-Federal accounts. Under these "allocation regulations," an appropriate share of overhead, fund-raising and other "mixed" costs must be allocated to "Federal political activity" and paid by a "Federal account" for the benefit provided to the party's Federal candidates as a group. Those regulations indicate the Commission's long-standing assumption that some activity resides in a category of "operating expenditures" that benefits Federal candidates generally without requiring attribution as contributions to specific Federal candidates, and that such expenditures may be made without limitation from funds raised from sources permissible under the FECA.

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project, this type of advocacy calling is genuinely advertising. \¹²
Further, the advocacy script was candidate specific rather than merely generic, subjecting this activity to the attribution requirements of 11 CFR 106.1, and resulting in expenditures on behalf of particular candidates. The party committee could rightfully claim and allocate a sizeable "share" for the rest of the ticket benefited by the operation, but the named candidates clearly received a specific benefit from the promotional nature of the call.

We note, however, the candidate allocation question raised by this particular activity should be distinguished from other phone banks in which political parties traditionally engage. The allocation result reached here should not be viewed as a normal or inevitable consequence for more commonplace party "voter identification" (ID) and "get-out-the-vote" (GOTV) phone operations. \¹³ This result is better

12. Moreover, information obtained from the audit demonstrated no discernible voter registration, voter identification or voter turnout purpose from the timing and extent of payments for phones and salaries for the telephone bank. The audit work papers indicated the phoning program was only in operation during the last two weeks of September, with no evidence the phone bank was in operation around election day for voter turnout purposes. Although the timing of the telephone bank could suggest a voter registration purpose (registration closes 30 days prior to election day in West Virginia), no registration question appeared in the script. Thus, a voter identification or voter turnout purpose would be inconsistent with timing of the telephone bank, as well as the purely advocacy nature of the script. The 'Presidential GOTV telephone bank' exemption at 11 CFR 100.7(b)(17)(iv), which permits "incidental" references to other Federal candidates without attribution of a contribution, did not appear to be available for this activity.

13. Identifying voters likely to vote for a party's candidates necessarily requires some means of evaluating party support. Instead of a general "Do you tend to favor Republicans or Democrats?" question, which depends upon voters' self-description, GOTV efforts commonly identify party leanings by asking an index of candidate questions. [footnote continued]

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Election Commission v. Massachusetts Citizens for Life, Inc. ("MCFL"),
107 S. Ct. 616 (1987).

We acknowledge the Court in Buckley found limits placed upon contributions to candidates by the Act to be less onerous a restraint upon speech than limitations upon independent expenditures. ¹⁴ We do not, however, view the constitutionality of contribution limits to diminish the protection afforded groups, whose activity may be subject to limit, from unconstitutionally vague and subjective standards. Coming within the Act's jurisdictional reach does not undermine party committees' rights to some specificity and precision in application of the law. As the Court noted in Buckley, "'[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.' NAACP v. Button, 371 U.S. 415, 433 (1963)." Buckley at p. 41, n. 48.

We also recognize the unique status and purpose of political parties in the American electoral system and the unique treatment of party committees under many provisions of the Act. However, the special role of parties does not disentitle them to Constitutional protection of their free speech activity outside the specific prohibitions, limits or requirements of the Act. Parties do not lose Constitutional rights generally afforded other groups simply because 'we know what they are up to.' Party committee speech may be specially regulated and limited by the Act, but it cannot be regulated

14. Although coordinated expenditures are reported under the Commission's regulations only as party "expenditures" rather than "contributions," party committees may not make "independent expenditures" on behalf of candidates. 11 CFR 110.7. See Advisory Opinion 1980-119.

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follow the law rather than Commissioners' instinctive conclusions about the presumed purposes and effect of the activity.

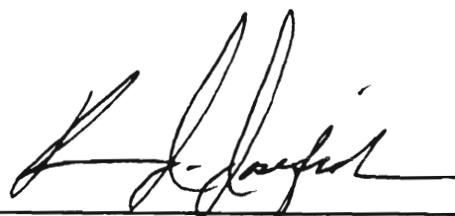
The combination of reference to a "clearly identified candidate" and an "electioneering message" constitutes an objective standard for attribution of §441a(d) expenditures. If not perfect, the standard devised in Advisory Opinion 1985-14 is certainly the best (and only) standard the Commission has yet developed. The respondents in this matter were entitled to rely on it. At the very least, it is fair to say the respondents in this matter would have had no basis to know their conduct was contrary to another, yet to be defined (and largely undefinable) Commission standard for §441a(d) attribution.

Accordingly, under these facts, and consistent with Commission precedent, we voted to find the West Virginia Republican Party did not exceed the limits upon contributions and expenditures to Federal candidates under 2 U.S.C. §441a.

June 26, 1991

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LEE ANN ELLIOTT


THOMAS J. JOSEFIAK